

PRELIMINARY STAFF REPORT

**Mineral Lands GMA Compliance Issue**

Date: August 17, 2011

Public Hearing Date: September 7, 2011

Prepared by: Olivia Story,  
Assistant Planner

Proponent/Applicant: Thurston County

Action Requested: Consider amendments to the Comprehensive Plan and Chapter 20.30B.030 of the Thurston County Code to change the mineral lands designation requirements. Amendments would affect Areas designated as mineral resource lands of long-term commercial significance.

Location:

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

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PURPOSE:

The intent of this preliminary staff report is to:

- Provide the Planning Commission with sufficient background information to objectively hear public testimony on proposed amendments.
- Provide the Planning Commission and the public several options that may be considered in an attempt to comply with the Western Washington Growth Management Hearings Board (WWGMHB) compliance order.
- Allow the Planning Commission to make informed recommendations to the Board of County Commissioners (Board).

BACKGROUND:

On September 7, 2010, the Board of County Commissioners amended the County’s criteria for designating mineral lands of long-term commercial significance by adopting Resolution No. 14401 and Ordinance No. 14402. The adoption followed significant research and analysis by stakeholder committees, the Planning Commission, and the Board of County Commissioners. On November 23, 2010, mineral lands interest groups filed a challenge to the County’s ordinance with the WWGMHB. Of the 23 issues brought by the challenge, the WWGMHB held that Thurston County must reconsider seven.

1 GMA REQUIREMENTS:

2 The intent of the 1990 Washington State Growth Management Act (GMA) is to recognize the  
3 importance of rural lands and rural character to Washington's economy, its people, and its  
4 environment, while respecting regional differences (RCW 36.70A.011).

5  
6 The GMA lists 14 goals that should be considered when developing local land-use policies. In order  
7 to balance these goals, the GMA requires the designation and conservation of natural resource lands  
8 (long-term forestry, agriculture and mineral lands - RCW 36.70A.050).

9  
10 The state provides administrative guidance under the Washington Administrative Code (WAC) to  
11 help local governments develop land-use regulations under the GMA. Guidance for the designation  
12 of mineral resource lands (gravel, sand, and valuable metallic substances) is found in WAC 365-190,  
13 which states that “counties shall identify and classify aggregate and mineral resource lands from  
14 which the extraction of minerals occurs or can be anticipated.” To ensure the future supply of these  
15 aggregate and mineral-resource materials, and to maintain a balance of land uses, other types of  
16 proposed land uses in these areas may require special attention.

17  
18 Additionally, counties must adopt regulations to prevent interference with the continued use of  
19 mineral lands and the extraction of minerals from these lands.

20  
21 It is important to note that lands designated as “mineral resource lands” are not automatically used  
22 for mining-related activities. The designation simply confines the excavation and processing of  
23 minerals to the designated areas. Any proposed mineral operations would still need to obtain the  
24 necessary permits from Thurston County.

25  
26 HISTORY OF RESEARCH AND DELIBERATIONS

27 **Board of County Commissioners**

28 During the seven-year review of the Comprehensive Plan in 2003, the Board of County  
29 Commissioners reviewed and, in some cases, expanded existing designated mineral lands of long-  
30 term commercial significance. The Board’s decision led to citizen challenges over these new  
31 designations. To provide time for the County to consider citizens’ concerns, the Board in October  
32 2003 adopted Interim Ordinance No. 13030. The ordinance effectively froze future decisions about  
33 mineral lands until a Mineral Lands Task Force provided recommendations for consideration by the  
34 Planning Commission and Board. Specifically, the ordinance prohibited the:

- 35  
36
  - designation of new mineral resource lands.
  - 37 • permitting of new gravel mining operations.
  - 38 • permitting of new asphalt plants outside the Rural Resource Industrial zone.

39

40 The Mineral Lands Task Force was formed shortly after the ordinance was passed. Its mission was  
41 to develop policy recommendations that would address citizens’ concerns and comply with the GMA  
42 and, in doing so, ultimately enable the Board of Commissioners to lift the prohibitions.

43  
44 The Board of Commissioners has renewed Interim Ordinance No. 13030 several times, most recently  
45 on August 9, 2011 for a six-month period (with amendments). This latest renewal will allow time for  
46 Thurston County to come into compliance with the Growth Management Hearings Board findings.

1 **Mineral Lands Task Force**

2 In October 2003, the Board of Commissioners appointed an 11-member Mineral Lands Task Force  
3 made up of representatives from the mining and asphalt industries, building industry, municipalities,  
4 environmentalists, and the general public. A facilitator was hired to help the task force develop  
5 recommendations. The task force reviewed existing County policies and regulations, case law,  
6 scientific studies, maps, and related technical information. It also heard from experts on mining and  
7 asphalt plant regulation. The task force met from January through June 2004 and delivered its final  
8 recommendations in July 2004. The task force recommended the following with regard to the  
9 designation of mineral lands of long-term commercial significance:

- 10 • Lands may be co-designated as both forest lands of long-term commercial  
11 significance and as mineral lands of long-term commercial significance, provided  
12 Thurston County experiences no net loss in forest lands of long-term commercial  
13 significance.
- 14 • Designated mineral lands may contain Class 3 and Class 4 wetlands, but not Class 1  
15 or 2 wetlands and their protective buffers.
- 16 • Designated mineral lands may not be located within 100-year floodplains.
- 17 • Designated mineral lands should be located at least 1,000 feet away from public  
18 preserves, including parks, national wildlife refuges, state conservation areas, wildlife  
19 areas, and other government-owned preserves (except exclusive hunting areas).
- 20 • Designated mineral lands may include important habitats and species. Potential  
21 impacts to these areas would be evaluated during the permitting process.
- 22 • Designated mineral lands may include wellhead protection areas, critical aquifers,  
23 and other critical areas not excluded by the criteria above. Potential impacts to these  
24 areas would be evaluated during the permitting process.

25  
26 **Planning Commission Review**

27 On February 18, 2009, the Planning Commission decided to form a subcommittee to further review  
28 the designation and permitting criteria for mineral lands of long-term commercial significance in  
29 light of Best Available Science. The subcommittee gave its final report to the full Planning  
30 Commission in October 2009, and the Planning Commission then held a public hearing on November  
31 18, 2009. The Planning Commission gave its final recommendations to the Board of County  
32 Commissioners on February 17, 2010. The recommendations included the following provisions:

- 33  
34 • Forest lands of long-term commercial significance may be co-designated as mineral  
35 lands of long-term commercial significance.
  - 36 • Mineral resource lands shall not include Class 1 or Class 2 wetlands or their  
37 protective buffers, but may include Class 3 and Class 4 wetlands.
  - 38 • Mineral resource lands shall not include any Federal Emergency Management  
39 Agency (FEMA) 100-year floodplains.
  - 40 • Mineral resource lands shall not include important habitats and species areas and their  
41 buffers as established by the Critical Areas Ordinance at the time of designation.
  - 42 • Mineral resource lands shall not include delineated wellhead protection areas and  
43 Category 1 Critical Aquifer Recharge Areas.
- 44  
45

1 **Board of County Commissioner Review and Adoption of Ordinance No. 14402**

2 The Board held a work session on March 30, 2010 and a hearing on April 20, 2010 and several  
3 follow up work sessions on May 19, June 2 and June 16, 2010. During these work sessions, the  
4 Board considered Best Available Science and deliberated on the recommendations from the Mineral  
5 Lands Task Force, the Planning Commission, staff, and the public. The Board of County  
6 Commissioners adopted Resolution No. 14401 and Ordinance No. 14402 amending mineral lands  
7 designation criteria on September 7, 2010.  
8

9 In general, Ordinance No. 14402 adopted the Planning Commission’s recommendations, with one  
10 significant exception: The ordinance prohibits forest lands of long-term commercial significance  
11 from being co-designated as mineral lands of long-term commercial significance – in effect,  
12 prohibiting mining in forest resource lands.  
13

14 In November 2010, mineral lands interest groups filed a challenge to Ordinance No. 14402 with the  
15 Western Washington Growth Management Hearings Board.  
16

17 WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD  
18 COMPLIANCE ORDER:

19 In its Final Decision and Order dated May 23, 2011, the Western Washington Growth Management  
20 Hearings Board found that Thurston County must reconsider seven of the 23 issues brought by the  
21 challenge. In summary, the Hearings Board found that Thurston County:  
22

- 23 • **Violated standards for public participation** as set forth in RCW 360.70A.035(2): The  
24 Growth Management Hearings Board found that, after holding public hearings, Thurston  
25 County made significant revisions to the drafts of Resolution No. 14401 and Ordinance No.  
26 14402 and then approved them. (Those revisions banned the co-designation of mineral lands  
27 of long-term commercial significance and forest lands of long-term commercial  
28 significance.) The Hearings Board found that, because of those significant revisions,  
29 Thurston County should have provided the public with an additional opportunity to review  
30 and comment.  
31
- 32 • **Failed to show record that Thurston County considered minimum state guidelines.**  
33 While jurisdictions are not required to follow minimum state guidelines, they are required to  
34 show record that they at least *considered* them. According to the Growth Management  
35 Hearings Board, Thurston County showed inadequate record of its consideration of the  
36 minimum guidelines, particularly when the county barred the co-designation of mineral-  
37 resource lands and forest lands, and prohibited land from being designated as mineral-  
38 resource land if it contained certain types of critical areas. The minimum guidelines are  
39 discussed on the following page. Among other things, the plaintiffs held that Thurston  
40 County’s prohibition against mining in forest-resource lands barred the expansion of one of  
41 the state’s primary quarries that provides a unique type of rock used in marine jetties. Thus,  
42 the plaintiffs claimed, Thurston County violated the goals of the GMA to maintain and  
43 enhance the mineral resource industry.  
44
- 45 • **Failed to comply with the Growth Management Act by requiring property owners to**  
46 **obtain a reclamation permit** from the Washington State Department of Natural Resources  
47 before their land may be designated as a mineral land of long-term commercial significance.  
48 Thurston County conceded on this issue.

1 **Failed to comply with the Growth Management Act’s requirements for protecting**  
2 **critical areas.** In summary, the Hearings Board found that Thurston County’s prohibition on  
3 designating mineral resource lands if they contain certain types of critical areas amounts to a  
4 defacto type of critical areas protection that is not supported by Best Available Science.  
5

6 Thurston County must be in compliance by November 21, 2011.  
7

8 PROPOSED TEXT CHANGE FOR CO-DESIGNATION OF FOREST LANDS AND  
9 MINERAL LANDS:

10 On July 20, 2011, Thurston County staff presented the minimum guidelines contained in WAC 365-  
11 190-020(5), and WAC 365-190-040(7b) to the Planning Commission during its regularly scheduled  
12 meeting. The Planning Commission will take public comment at a public hearing scheduled for  
13 September 7, 2011.  
14

15 The WACs that were considered state, “There are also qualitative differences between and among  
16 natural resource lands. The three types of natural resource lands (agricultural, forest, and mineral)  
17 vary widely in their use, location, and size. One type may overlap another type. For example,  
18 designated forest resource lands may also include designated mineral resource lands. Agricultural  
19 resource lands vary based on the types of crops produced, their location on the landscape, and their  
20 relationship to sustaining agricultural industries in an identified geographic area.” (WAC 365-190-  
21 020 (5). They also state, “If two or more natural resource land designations apply, counties and cities  
22 must determine if these designations are incompatible. If they are incompatible, counties and cities  
23 should examine the criteria to determine which use has the greatest long-term commercial  
24 significance, and that resource use should be assigned to the lands being designated.” (WAC 365-  
25 190-040 (7b).  
26

27 The Planning Commission had discussed these WACs back on June 14, 2005 during a broader  
28 discussion of the co-location of mineral and forest lands. The Mineral Lands Task Force  
29 recommended that if mineral lands were in forestry lands, there must be no net loss of forestry  
30 resources. According to the task force, the only way a mine could be permitted in a long-term  
31 forestry area was if it could reasonably be returned to forestry use. That same evening,  
32 Weyerhaeuser submitted a comment letter advocating mining as an outright use in long-term forestry  
33 areas.  
34

35 After reviewing all relevant information from the Mineral Lands Task Force, the Best Available  
36 Science (BAS), and the WACs, the Planning Commission has settled on several options for the  
37 public to comment on. They include:  
38  
39

1 **Options for Forest Lands and Mineral Lands:**

2 **Option A:** Leave the adopted text as it is, and prohibit the co-designation of mineral and  
3 forest resource lands:

4 Comprehensive Plan, Minimum Designation Criteria

5 ...

6 9. Mineral resource lands may not include lands designated for long-term forestry.

7 ...

8 Thurston County Code, 20.30B.030

9 ...

10 f. Designated mineral resource lands may not include lands designated for long-term forestry.

11 **Option B:** Strike out “not”, and allow the co-designation of mineral and forest lands: (Staff  
12 recommended)

13 Comprehensive Plan, Minimum Designation Criteria

14 ...

15 9. Mineral resource lands may ~~not~~ include lands designated for long-term forestry.

16 ...

17 Thurston County Code, 20.30B.030

18 ...

19 f. Designated mineral resource lands may ~~not~~ include lands designated for long-term forestry.

20 ...

21 **Staff Recommendation for Forest Lands and Mineral Lands:**

22 Staff recommends the Planning Commission select Option B and strike the word “not.” This will  
23 allow the designation of mineral resource lands in designated forest lands, thus making the County’s  
24 rules consistent with the state’s guidance. Further, at this time there does not appear to be any  
25 evidence in front of the Planning Commission to justify departure from the minimum guidelines.

26 PROPOSED TEXT CHANGE FOR CRITICAL AREAS AND MINERAL LANDS:

27 During an August 3, 2011 meeting, Thurston County staff presented the minimum guidelines  
28 contained in WAC 365-190-020(7), and WAC 365-190-040 (7a) to the Planning Commission during  
29 its regularly scheduled meeting. The Planning Commission had a substantial discussion about the  
30 minimum guidelines within the WACs and the Best Available Science that was discussed in 2005,  
31 2010, and again in 2011 during Planning Commission work sessions on the Critical Areas Ordinance.  
32 The Planning Commission will take public comment at a public hearing scheduled for September 7,  
33 2011.

34 The WACs that were considered say, “It is the intent of these guidelines that critical areas  
35 designations overlay other land uses including designated natural resource lands. For example, if  
36 both critical area and natural resource land use designations apply to a given parcel or a portion of a  
37 parcel, both or all designations must be made (WAC 365-190-020 (7)). Further, WAC 365-190-040  
38 (7a) advises, “Overlapping designations: The designation process may result in critical area  
39 designations that overlay other critical area or natural resource land classifications. Overlapping  
40 designations should not necessarily be considered inconsistent. If two or more critical area  
41 designations apply to a given parcel, or portion of a given parcel, both or all designations apply.”

1 (a) If a critical area designation overlies a natural resource land designation, both designations  
2 apply.”

3  
4 The minimum guidelines contained in the WACs were in fact considered by the Planning  
5 Commission during a meeting back in June 22, 2005. As stated in the meeting minutes, “Ms. Hayes  
6 referred to critical areas and mineral lands designation. After review of the WAC, if two or more  
7 land-use designations apply to a parcel or a portion of a parcel, both or all designations shall be  
8 made.”

9  
10 After reviewing all relevant information from the Mineral Lands Task Force, the Best Available  
11 Science, and the WACs, the Planning Commission settled on several options for the public to  
12 comment on. They include:

13  
14 **Category 1, Critical Aquifer Recharge Area (CARA 1) and Wellhead Protection Areas**

15 During a June 6, 2007 Planning Commission meeting, staff reviewed a Department of Ecology  
16 (DOE) critical aquifer recharge area guidance document. No decisions were made that evening.

17 **Option A:** Leave the adopted text as it is and prohibit designation in wellhead protection  
18 areas and CARA I

19  
20 Comprehensive Plan, Minimum Designation Criteria

21 ...

22 5. Mineral resource lands shall not include delineated wellhead protection areas and CARA I.

23 ...

24  
25 Thurston County Code, 20.30B.030

26 ...

27 i. Mineral a resource lands shall not include delineated wellhead protection areas and CARA

28  
29 **Option B:** Allow designation in wellhead protection areas and CARA 1:

30 Comprehensive Plan, Minimum Designation Criteria

31 ...

32 5. Mineral resource lands ~~shall not~~ may include delineated wellhead protection areas and  
33 CARA I. Potential impacts to these areas will be evaluated at the permitting stage. The  
34 permit will be required to meet the CAO in effect at that time.

35 ...

36  
37 Thurston County Code, 20.30B.030

38 ...

39 i. Mineral resource lands ~~shall not~~ may include delineated wellhead protection areas  
40 and CARA 1. Potential impacts to these areas will be evaluated at the permitting  
41 stage. The permit will be required to meet the CAO in effect at that time.

42  
43  
44 A third option being introduced for discussion or Option C is to consider the State Department of  
45 Health’s guidance (Wellhead Protection Guidance Document, June 2010) regarding the protection of  
46 public water supplies and water systems. Option C would prevent the designation of mineral lands in  
47 the Zone 1 or Zone 2 Horizontal Time of Travel boundary for any Group A, Public Water System, as  
48 shown below.

1 **Option C:** Prohibit Designation of Mineral Resource Lands with Zone 1 or Zone 2,  
2 Horizontal Time of Travel boundaries for any Group A Public Water System: Staff  
3 Recommended.

4  
5 Comprehensive Plan, Minimum Designation Criteria

6 ...  
7 11. Mineral Resource Land shall not be designated in the Zone 1 or Zone 2 Horizontal time  
8 of travel boundary for any Group A, Public Water Systems or CARA 1.

9 ...  
10 Thurston County Code, 20.30B.030

11 ...  
12 vi. Mineral Resource Land shall not be designated in the Zone 1 or Zone 2 Horizontal Time  
13 of Travel boundary for any Group A Public Water System or CARA 1.

14 ...  
15  
16 **Staff Recommendation for Category 1 CARAs and Wellhead Protection Areas:**

17 Staff recommends the Planning Commission select Option C, and prohibit the designation of mineral  
18 resource lands in any Group A Public Water Systems Zone 1 or Zone 2 Horizontal Time of Travel  
19 boundary and Category 1 Critical Aquifer Recharge Areas (areas of extreme aquifer susceptibility).  
20 Category 1 Critical Aquifer Recharge Areas are typified by the presence of usable aquifer(s),  
21 moderate to rapid drainage, and coarse soil materials (sands and gravels, fine sands and silts). Critical  
22 Aquifer Recharge Areas are also categorized based on examples of aquifer contamination incidents  
23 in similar soils and geology, and general estimate of run-off versus run-in into the aquifer systems  
24 below.

25 In a CARA 1, an undetected fuel spill would absorb more quickly and deeply into the soil, and would  
26 travel more quickly through the soil to the aquifer, than in less sensitive CARAs. Turbidity also  
27 tends to travel faster and further in a CARA 1. Wellhead protection areas are identified as those  
28 protective radii around a public water supply where uses and potential sources of contamination  
29 should be prohibited. Activities within a CARA 1 and a wellhead protection area have the highest  
30 potential to impact public and private water supplies, streams, wetlands and other fish and wildlife  
31 habitat.

32 The Best Available Science and state guidance reviewed suggests mining within the CARA 1 and  
33 wellhead protection areas poses a potential threat to groundwater quality. Specifically, CARA 1s and  
34 Group A Public Water Systems Zone 1 or Zone 2 Horizontal Time of Travel boundaries are at risk  
35 and merit significant protection. According to the County's Geodata mapping, delineated wellhead  
36 protection areas and CARA 1s are clearly and accurately defined and would not require the applicant  
37 or the County additional time or costs at the time of designation.

38  
39 **Fish and Wildlife Habitat Conservation Areas**

40 During a June 6, 2007 Planning Commission meeting, staff and the commissioners discussed whether  
41 to allow sand and gravel mining within riparian habitat areas, streams, lakes, ponds, and buffers,  
42 marine habitat areas and buffers, and important species and habitats. Members of the Planning  
43 Commission also discussed protecting critical areas and water quality. A final decision was not  
44 made that evening.

1 Fish and wildlife habitat conservation areas include:

- 2 ○ Riparian habitat areas
- 3 ○ Important marine habitats
  - 4 ■ marine shorelines of statewide significance
  - 5 ■ marine shorelines of the state
  - 6 ■ marine areas supporting kelp and eelgrass beds
  - 7 ■ herring spawning areas
  - 8 ■ intertidal areas supporting:
    - 9 ● surf smelt
    - 10 ● sand lance spawning
    - 11 ● salmonids
    - 12 ● shellfish beds sustaining commercial or recreational harvest,
    - 13 including shellfish protection districts
- 14 ○ Marine riparian habitat
- 15 ○ Ponds and lakes
- 16 ○ Federally listed species and habitats
- 17 ○ State listed species and associated habitats
  - 18 ■ Prairie and Oregon white oak
- 19 ○ Habitats and species of local importance

21 **Option A:** Leave the adopted text as it is and prohibit the designation in fish and wildlife  
22 habitat conservation areas:

23  
24 Comprehensive Plan, Minimum Designation Criteria

25 ...  
26 6. Mineral resource lands shall not include ~~important habitats and species areas~~ fish and  
27 wildlife habitat conservation areas and their buffers as established by the Critical Areas  
28 Ordinance at the time of designation.

29 ...  
30  
31 Thurston County Code, 20.30B.030

32 ...  
33 iv. Mineral resource lands shall not include ~~important habitats and species areas~~ fish and  
34 wildlife habitat conservation areas and their buffers as established by the Critical Areas  
35 Ordinance at the time of designation.

36 ...  
37  
38 **Option B:** Allow designation to include fish and wildlife habitat conservation areas: (Staff  
39 recommended)

40  
41 Comprehensive Plan, Minimum Designation Criteria

42 ...  
43 6. Mineral resource lands ~~shall not~~ may include ~~important habitats and species areas~~ fish and  
44 wildlife habitat conservation areas and their buffers as established by the Critical Areas  
45 Ordinance at the time of designation. Protection measures for these areas will be evaluated at  
46 the permitting stage. The permit will be required to meet the CAO in effect at that time.

1 Thurston County Code, 20.30B.030

2 ...

3 iv. Mineral resource lands ~~shall not~~ may include ~~important habitat and species areas~~ fish and  
4 wildlife habitat conservation areas and their buffers as established by the Critical Areas  
5 Ordinance at the time of designation. Protection measures for these areas will be evaluated at  
6 the permitting stage. The permit will be required to meet the CAO in effect at that time.

7 ...

### 8

### 9 **Staff Recommendation for Fish and Wildlife Habitat Conservation Areas:**

10 Staff recommends the Planning Commission select Option B and strike the words “shall not” to  
11 allow the designation of mineral resource lands to include fish and wildlife habitat conservation  
12 areas. Best Available Science indicates that fish and wildlife habitat conservation areas should be  
13 protected from development and disturbance, and that mining activity can cause impacts to these  
14 areas. The delineation of these areas at the time of designation can be more difficult due to the  
15 different types of habitat and natural changes over time. In particular, staff agrees with the BAS that  
16 suggests habitat loss to development has eliminated most of the prairie vegetation and expanding  
17 human development and has resulted in an increasing number of species being restricted to small  
18 pieces of isolated habitat that require intensive management for the species to survive (Stinson, 2005,  
19 p. 48). However, the impacts of mining development appear to be better addressed at the time of  
20 permitting when details of the proposal are available and site-specific analyses can be prepared. The  
21 intent of designation of a mineral land is simply to locate the potential mineral resources, not to  
22 outline where the applicant intends to mine. Protection of Fish and Wildlife Habitat Conservation  
23 Areas will still be a high priority at the time of a permit application. Protection measures for these  
24 areas will be better evaluated at the permitting stage and the permit will be required to meet the CAO  
25 in effect at that time.

### 26

### 27 **FEMA 100 Year Floodplain**

28 **Option A:** Leave the adopted text as it is and prohibit designation of mineral lands in Federal  
29 Emergency Management Agency (FEMA) 100 year floodplains: (Staff recommended)

30 Comprehensive Plan, Minimum Designation Criteria

31 ...

32 ...  
33 7. Mineral resource lands shall not include agriculture lands of long-term commercial  
34 significance, historical/cultural preservation sites, and any Federal Emergency Management  
35 Agency (FEMA) 100 year floodplain.

36 ...

37  
38 Thurston County Code, 20.30B.030

39 ...

40 iii. Mineral resource lands shall not include agriculture lands of long-term commercial  
41 significance, historical/cultural preservation sites, and any Federal Emergency Management  
42 Agency (FEMA) 100 year floodplain.

43 ...

1 **Option B:** Allow designation to include Federal Emergency Management Agency (FEMA)  
2 100 year floodplains:

3  
4 Comprehensive Plan, Minimum Designation Criteria

5 ...  
6 7. Mineral resource lands shall not include agriculture lands of long-term commercial  
7 significance, historical/cultural preservation sites, ~~and any~~ but may include Federal  
8 Emergency Management Agency (FEMA) 100 year floodplains. Potential impacts to these  
9 areas will be evaluated at the permitting stage. The permit will be required to meet the CAO  
10 in effect at that time.

11 ...  
12  
13 Thurston County Code, 20.30B.030

14 ...  
15 iii. Mineral resource lands shall not include agriculture lands of long-term commercial  
16 significance, historical/cultural preservation sites, ~~and any~~ but may include Federal  
17 Emergency Management Agency (FEMA) 100 year floodplains. Potential impacts to these  
18 areas will be evaluated at the permitting stage. The permit will be required to meet the CAO  
19 in effect at that time.

20 ...  
21  
22 **Staff Recommendation for FEMA 100 Year Floodplains:**

23 Staff recommends the Planning Commission select Option A and continue to prohibit the designation  
24 of mineral resource lands in FEMA 100 year floodplains. According the FEMA Biological Opinion,  
25 no development, including mining, should be allowed in the floodway, the channel migration zone  
26 plus 50 feet, and/or the riparian buffer zone due to the impacts on anadromous fish. Additionally,  
27 mining within the floodplain can cause other impacts to fish and wildlife habitat and water quality,  
28 and increase the risk of impacts to private and public property. According to the County's Geodata  
29 mapping, FEMA 100 year floodplains are clearly identified, and would not require the applicant or  
30 the County additional time or costs at the time of designation.

31  
32 **Wetlands**

33 During the June 14, 2005 Planning Commission meeting, staff presented several maps showing the  
34 likelihood of gravel sites being located. The task force recommended that those sites with Class I  
35 and II wetlands are not suitable for designation, but that Class III and IV wetlands could be  
36 considered subject to critical areas regulations. The concern is that in order to identify the extent and  
37 category of wetland, a wetland report that delineates and categorizes the wetland would have to be  
38 required at the time of designation. This is a normally an issue dealt with at the special use permit  
39 stage. The CAO does not allow a permit to mine in the areas that are protected.

1 **Option A:** Leave the adopted text as it is and prohibit the designation of mineral lands in  
2 Class 1 or Class 2 wetlands:

3  
4 Comprehensive Plan, Minimum Designation Criteria

5 ...  
6 8. Mineral resource lands shall not include Class 1 or Class 2 wetlands or their protective  
7 buffers, but may include Class 3 and Class 4 wetlands.

8 ...  
9  
10 Thurston County Code, 20.30B.030

11 ...  
12 i. Mineral resource lands shall not include Class 1 or Class 2 wetlands or their protective  
13 buffers, but may include Class 3 and Class 4 wetlands.

14 ...  
15  
16 **Option B:** Allow designation of mineral lands in areas containing Class 1 or Class 2  
17 wetlands: (Staff recommended)

18  
19 Comprehensive Plan, Minimum Designation Criteria

20 ...  
21 8. Mineral resource lands ~~shall not~~ may include all classes 1 or 2 of wetlands or and their  
22 protective buffers, but may include class 3 and 4 wetlands. Protection measures for these  
23 areas will be evaluated at the permitting stage. The permit will be required to meet the CAO  
24 in effect at that time.

25 ...  
26  
27 Thurston County Code, 20.30B.030

28 ...  
29 i. Mineral resource lands ~~shall not~~ may include all classes 1 or 2 of wetlands or and their  
30 protective buffers, but may include class 3 and 4 wetlands. Protection measures for these  
31 areas will be evaluated at the permitting stage. The permit will be required to meet the CAO  
32 in effect at that time.

33 ...  
34  
35 **Staff Recommendations for Wetlands**

36 Staff recommends the Planning Commission select Option B and allow the designation of mineral  
37 resource lands in all classes of wetlands. Staff agrees with the BAS that suggests major disturbances  
38 created by surface mining can impact fish and wildlife habitats, as well as the quantity and quality of  
39 water resources, including increased groundwater turbidity. Spills or pollutant-discharges from  
40 mining activities may also impact surface and groundwater, causing toxic pollution levels for many  
41 organisms and increased acidity of surface waters. The specific impacts of mining development,  
42 however, are better addressed at the time of permitting when more details of the mining activity are  
43 available. The intent of designation of mineral land is to locate potential mineral resources, not to  
44 outline the specific area where the applicant intends to mine. Potential impacts and protection of  
45 these areas would be better evaluated at the permitting stage. Protection of wetlands will still be a  
46 high priority at the time of a permit application. As always, the permit will be required to meet the  
47 CAO in effect at that time.

1 **Geologically Hazardous Areas**

2 **Option A:** Leave the text and locate mineral lands away from geologically hazardous areas:

3  
4 Comprehensive Plan, Minimum Designation Criteria

5 ...

6 10. Mineral resource lands shall be located away from geologically hazardous areas such as  
7 steep and/or unstable slopes as provided by the Critical Areas Ordinance.

8 ...

9  
10 Thurston County Code, 20.30B.030

11 ...

12 vi. Mineral resource lands shall be located away from geologically hazardous areas such as  
13 steep and/or unstable slopes as provided by the Critical Areas Ordinance.

14 ...

15  
16 **Option B:** Allow designation to be included in some geologically hazardous areas such as  
17 steep and/or unstable slopes, erosion hazards, seismic hazards and volcanic hazards, but not  
18 in others such as and marine bluffs due to the biological impacts: (Staff recommended)

19  
20 Comprehensive Plan, Minimum Designation Criteria

21 ...

22 10. Mineral resource lands ~~shall~~ may be located ~~away from~~ near geologically hazardous areas  
23 such as steep and/or unstable slopes, erosion hazards, seismic hazards, and volcanic hazards,  
24 but not in others such as marine bluffs as provided by the Critical Areas Ordinance. Potential  
25 impacts to these areas will be evaluated at the permitting stage. The permit will be required to  
26 meet the CAO in effect at that time.

27 ...

28  
29 Thurston County Code, 20.30B.030

30 ...

31 vi. Mineral resource lands may be located near geologically hazardous areas such as steep  
32 and/or unstable slopes, erosion hazards, seismic hazards, and volcanic hazards, but not in  
33 others such as marine bluffs as provided by the Critical Areas Ordinance. Potential impacts to  
34 these areas will be evaluated at the permitting stage. The permit will be required to meet the  
35 CAO in effect at that time.

36 ...

37  
38 **Staff Recommendation for Geologically Hazardous Areas:**

39 Staff recommends the Planning Commission select Option B and allow the designation of mineral  
40 resource lands in some geologically hazardous areas such as steep and/or unstable slopes, erosion  
41 hazards, seismic hazards and volcanic hazards, but not in others such as marine bluffs due to the  
42 biological impacts. The Planning Commission took testimony on the designation of mineral lands  
43 near steep and/or unstable slopes on November 18, 2009. Subsequent to this discussion the  
44 Commission voted to recommend the equivalent of Option A. While staff agrees with the BAS that  
45 suggests geologically hazardous areas pose a threat to the health and safety of citizens when  
46 incompatible industrial development is sited in areas of significant hazard, the impacts of mining  
47 development are better addressed at the time of permitting. The intent of designation of mineral  
48 lands is to locate potential mineral resources, not to outline where the applicant intends to mine.

1 Potential impacts to these areas would be better evaluated at the permitting stage. The permit will be  
2 required to meet the CAO in effect at that time.

3  
4 ADDITIONAL PROPOSED TEXT CHANGES:

5  
6 **Marketability**

7 During a December 1, 2004 Planning Commission meeting, the Planning Commission agreed that  
8 text should be added to allow an entire parcel to be designated as a mineral land even though critical  
9 areas exist on the parcel. The commission recognized that the CAO would regulate the uses within  
10 those critical areas. At designation, the existence of critical areas would be noted and the applicant  
11 would have to take those into consideration. In order to provide further explanation for the term  
12 “marketability” and to consider areas in a mining site that are not predominantly covered by critical  
13 areas, staff suggests the following edits be made:

14  
15 **Option A:** provide further explanation for the term “marketability,” and consider areas in a  
16 mining site that are not predominantly covered by critical areas.

17  
18 Comprehensive Plan, Minimum Designation Criteria

19 ...

20 4. Marketability. Mineral resource lands shall contain non-strategic minerals which are  
21 minable, recoverable and marketable, under applicable Federal, State, and County  
22 regulations, in the present or foreseeable future as determined by a licensed professional  
23 geologist, and based on the guidelines found in WAC 365-190-070. In determining  
24 marketability, the county will consider if the proposed site in encumbered by un-mineable  
25 areas such as critical areas and other protected lands.

26 ...

27  
28 **Known Critical Areas**

29 During two Planning Commission meetings held on December 15, 2004 and June 14, 2005,  
30 Commissioner Roper suggested that excluding all critical areas from designation would be difficult  
31 because some critical areas might allow mining with management plans. The Planning Commission  
32 discussed excluding from designation those areas where mining should be prohibited according to  
33 BAS, but including other areas with the recognition that the included areas may end up being  
34 excluded or face conditions during the permitting process.

35  
36 In the event that some critical areas are allowed to be designated as mineral resource lands, staff  
37 proposes adding stronger language to ensure that once designated, the critical areas would be  
38 required to be considered and be protected at the time of permitting.

39  
40 **Option A:**

41 Comprehensive Plan, Goal 7

42 ...

43 Policy 12: Known critical areas shall be considered at time of designation; however,  
44 designated mineral resource lands may include critical areas. Protection and potential impacts  
45 to these areas shall be evaluated at the permitting stage. The permit shall be required meet the  
46 CAO in effect at that time.

47 ...

1 **Clarifying that Some Critical Areas May be Designated**

2 Certain language must be removed from Thurston County code if some critical areas are to be  
3 allowed to be designated as mineral resource lands. However, it is recommended that other language  
4 be included to require review at the time of permitting.

5  
6 **Option A:**

7 Thurston County Code, 20.30B.030

8 ...

9 g. Critical areas: Critical areas will be examined at the time of designation review using the  
10 County’s Geodata information. ~~If there are known critical areas and/or buffers predominantly~~  
11 ~~covering the site, it will not be designated.~~ A more comprehensive critical areas review will  
12 be done at time of permitting. At that time tThe applicant may be required to provide detailed  
13 information (such as a wetland delineation, habitat evaluation, or geotechnical report)  
14 prepared by a qualified expert to determine the extent of the critical areas and protection  
15 measures required to prevent impacts to any  
16 ~~clarify County mapping of critical areas.~~

17 ...

18 **Staff Recommendation:**

19 Staff recommends the Planning Commission choose Option A for changes regarding:

- 20 • Marketability  
21 • Known Critical Areas  
22 • Clarifying that some critical areas may be designated

23  
24 This would clarify and emphasize the need to protect critical areas at the time of permitting if they  
25 are allowed to be designated.

26  
27 NEXT STEPS:

28 The Planning Commission will hold a public hearing on September 7, 2011 to take comment on these  
29 proposed options. A follow up work session will be held on September 21, 2011 to draft a  
30 recommendation on this issue to the Board of County Commissioners.