MEMORANDUM

TO: Thurston County Planning Commission
FROM: Olivia Story, Assistant Planner
MEETING DATE: September 19, 2012
SUBJECT: GMHB Compliance Order - Mineral Lands

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 Growth Management Hearings Board (GMHB). Of the 23 issues brought by the challenge, the GMHB held that Thurston County must reconsider seven. Through several work sessions in 2011 and 2012, the Planning Commission and the Board of Commissioners reviewed and made the appropriate amendments to the Comprehensive Plan and the Development Code.

On April 17, 2012, the Board of Commissioners amended the County’s criteria for designating mineral lands of long-term commercial significance by adopting Ordinance No. 14740 and Resolution No. 14739.

On July 18, 2012, the Growth Management Hearings Board issued a compliance order, which is discussed below.

GROWTH MANAGEMENT HEARINGS BOARD COMPLIANCE ORDER:
The GMHB held a hearing on June 5, 2012 following the submittal of Thurston County’s Compliance Report. As a result of the June 5, 2012, hearing, the GMHB issued to the
County a Compliance Order on July 18, 2012. This Compliance Order found the County generally met the previous Compliance Order requirements. However, two issues remained unresolved. Generally, the GMHB found that Thurston County must reconsider dual designation of mineral lands where long term forestlands and critical areas are also present. A summary of the issues follows:

Forestlands:

The GMHB stated that Thurston County must reassess the adoption of Comprehensive Plan and development regulation criteria precluding dual designation of forest lands and mineral resource lands of long-term commercial significance by:

- First, determine if the two kinds of natural resource lands are incompatible.
- If necessary, determine which has the greater long-term commercial significance should such dual designation be found incompatible.

The GMHB found the County, in electing to prohibit the co-designation of mineral and forest lands, failed to address and provide an analysis regarding the incompatibility between forest and mineral lands and produced little or no rational for the departure from them.

Jurisdictions have the flexibility to assign carrying weight to the factors related to long term commercial significance included in RCW 36.70A.030 and the applicable Guidelines.

Jurisdictions also have the discretion to depart from other portions of the Guidelines where “should” or “may” are used, provided the departure provides comparable benefit. That freedom, however, does not extend to deviating from those portions of the minimum Guidelines that are requirements, noted by the words, “shall” and “must”.

Critical areas:

The GMHB stated that Thurston County must designate mineral lands and critical area if both are present. To do this the county must amend the Comprehensive Plan allow for dual designation of mineral resource lands of long-term commercial significance and critical areas.

The GMHB stated that Thurston County clearly considered BAS in its decisions and met the requirements of the GMA, the failure is in not complying with RCW 36.70A.170 and following the minimum Guidelines. RCW 36.70A.170 requires counties and cities to designate natural resource lands “not already characterized by urban growth and that have long-term commercial significance”. WAC 360-190-020(7) and WAC 360-190-040(7) require dual designation of overlapping designation of critical areas and natural resource lands. It is then upon jurisdictions to adopt development regulations to conserve the natural resource lands and protect the critical areas.

The GMHB concludes that the exclusionary criteria in the Comprehensive Plan designed to protect critical areas violates RCW 36.70A.170’s mandate to designate mineral resource lands of long term commercial significance and critical areas, and the WAC
Minimum Guidelines which provide that if such designations overlap, both designations apply.

On the other hand, the Ordinance No. 14740 establishes development regulations, which are the appropriate method for reconciling multiple designations. That section of the Code includes the development regulations from Ordinance No. 14740 designed to exclude certain areas from mining and to protect critical areas.

SOLUTIONS:

Forestlands:

Staff is researching all relevant scientific reviews regarding this subject. The results of this review along with staff recommendations will be presented and discussed with the Planning Commission during the October 3, 2012 meeting.

Critical areas:

To comply with this order, staff is recommending striking the text in the Comprehensive Plan that prohibits the designation of mineral resource lands in the critical areas, while keeping the text in the development code. These amendments can be reviewed in Attachment A to this memo.

NEXT STEPS:

Staff will review the co-designation of mineral and forest lands during the Planning Commission meeting on October 3, and 17, 2012. A Public hearing must be held no later than November 7, 2012 in order to achieve the compliance deadline of January 14, 2013.

ATTACHMENTS:

Attachment A: Comprehensive Plan Chapter 3 Natural Resources