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.
Commissioner Spaulding then brought up that the work inaudible is used within the
minutes. The audio device for recording was then discussed and maybe adding additional
microphones. The PC was asked to look at inaudible words during their discussion.
Commissioner Spaulding made a motion that was not seconded. It was then brought up
that the audio is the official record if ever challenged in court.

5. **6:44 P.M. PUBLIC COMMUNICATIONS** (Not associated with topics for which
public hearings have been held.)

*No members of the audience chose to speak.*

The official audio is available on line at:

http://www.co.thurston.wa.us/planning/planning_commission/planning_comm_minutes.h
ml

6. **6:44 P.M. WORK SESSION: CAO – Fish and Wildlife Habitat Conservation Areas
(including Prairies); Shoreline Armoring; Cluster (Density) Options; Review of
Proposed Chapter 24.50 Nonconforming Structures and Uses**

Mr. Deffobis started the discussion with Fish & Wildlife Habitat Conservations Areas.
Staff and the PC have identified several issues in the draft CAO that require revisiting.

Staff and the Planning Commission have identified several issues in the draft CAO that
require revisiting following testimony submitted for the Planning Commission’s public
hearing. Staff has put together a background and summary of prairie regulation in
Thurston County. Future work sessions will focus on other elements of the draft Fish and
Wildlife Habitat Conservation Areas element of the CAO, including review of the land
use table and lists of protected species within the CAO, as well as review of habitat
management plan requirements.

**Background**

Prairie habitat has been regulated by the Thurston County Critical Areas Ordinance since
the original ordinance went into effect in 1994. In the original CAO, “Native outwash
prairies” and “oak woodlands” were included as an important habitat subject to critical
areas regulation. Several prairie species were also included as important species subject
to critical areas regulation. Some prairie and oak woodland species, such as the Mardon
skipper and Western gray squirrel, are listed in the CAO but with caveats on
implementation of habitat protections. For the Mardon skipper, implementation is
delayed until management recommendations are completed by the Washington
Department of Fish and Wildlife, and implementation is deferred for the Western gray
squirrel in the county’s urban growth areas. An interesting thing that was noted is that in
the existing CAO is a stipulation that protection of species will be deferred until such
time official guidance has been published by State Department of Fish and Wildlife.
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 science¹. 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

¹ Best available science for prairie habitats and species was previously distributed to the Planning Commission on September 21, 2011.
strategies for the pocket gopher would remain the same. Another concern is that the interim prairie ordinance requires a habitat management plan (HMP) to be developed when prairie habitat is encountered during the permit review process. The interim ordinance did not create a new requirement for a HMP for proposals in prairie and oak habitat areas; that requirement has been in place since 1996. The IIMP identifies the location of the important habitat, describes potential impacts to the habitat area, and lists approaches to mitigating any impacts. Lastly, the interim ordinance does not prohibit development of property or make homeowners remove lawns or existing development on their properties.

Adoptions and Public Input

Thurston County’s interim prairie conservation ordinance was originally adopted for a period of one year, and has been renewed several times since. In July 2010, the ordinance was renewed and amended, including revisions to the prairie soils list and changes to administrative language to increase internal consistency. Since July 2010, the interim prairie ordinance has been renewed on a six-month basis.

The interim prairie ordinance has been the subject of much debate in Thurston County. The public hearings regarding renewal of the ordinance have typically been well attended, with the July 2011 hearing exhibiting a turnout of approximately 400 citizens. Most recently, the March 2012 hearing on the latest iteration of the interim prairie ordinance featured an attendance of approximately 30 citizens, excluding staff. Major themes brought forward during the March 2012 public hearing are summarized below; these themes are consistent with testimony received during previous comment periods.

Themes presented by commenter’s who support renewal included the following:

- Critical Areas Ordinance update needs to move forward
- Prairie protections are important, prairie habitat is disappearing
- Protecting sensitive species with the CAO could prevent federal listing, keeping regulations local
- Society cannot function if property rights are absolute
- A public forum should be scheduled to discuss property rights
- County’s mapping does not include all oak habitat that is present on the landscape
- Not all prairie landowners have altruistic intentions
- Development seen on Hawks Prairie is staggering
- Sentiment regarding private stewardship of land is not reflected in the overall trend [of prairie loss]
- Prairie protections should be made permanent

Themes presented by commenter’s who oppose renewal included the following:

2 The March 2012 hearing was not a renewal of the interim prairie ordinance. A hearing on the renewal had been scheduled in January 2012 but was canceled due to conditions brought about by the winter storm event. The Board of County Commissioners passed Ordinance No. 14706 on January 24, 2012, which included the exact same language of the previous interim prairie ordinance. Pursuant to state law, a public hearing was held on March 10, 2012, within 60 days of the passage of Ordinance No. 14706.
• 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.
From 2007 through April 2011, staff received approximately 4,400 land use applications on either prairie or Mazama pocket gopher soils. Of these, only 25 projects were required to submit HMPs, or less than 1%. This means that less than 1% of visited sites actually contained prairie habitat or species, or that the prairie habitat or species locations on the property would not be impacted by the proposed development.

Proposed Amendments to Review of Prairie Habitat

The basic process by which the extent of prairie habitat and species will be delineated is not proposed to change. Under the draft CAO, applications on prairie soils or within 600 feet of point location of species will require further review to determine whether prairie habitat or species are present, as outlined above. Buffers for prairie habitat and species are proposed to be established on a case by case basis in review of the HMP, as is currently the case.

Both the current and draft CAOs allow the approval authority to consult with wildlife agencies regarding appropriate buffers for development proposals. Washington Department of Fish and Wildlife management recommendations are also adopted by reference in the draft CAO, similar to the current CAO. The draft CAO sets a default buffer of fifty (50) feet from the edge of delineated habitat, but would defer to a HMP or wildlife agency determination that a larger buffer is necessary.

The draft CAO includes sections on the waiver of special reports for fish and wildlife habitat conservation areas, and also makes a distinction between minor projects and those with larger impacts. The draft essentially includes the same reporting requirements for fish and wildlife habitat conservation areas as the current CAO, and generally expands the language to provide for greater specificity. Both the current and draft CAO require mitigation of impacts to habitats, and requirements for mitigation plans are also expanded in the draft. A new section on restoration plans was also added to requirements in the draft CAO. Restoration is required for any habitat area reductions.

Proposed Exemptions to Regulation

The draft CAO allows for habitat area reduction in exchange for restoration. Habitat area reduction could occur through one of two pathways. The first is a reasonable use exception, where the hearing examiner grants an applicant a larger development site that encroaches on prairie habitat. The other pathway is the policy in draft Chapter 24.50 TCC whereby up to 5,000 square feet of critical area buffer could be encroached upon if a site does not have a total of 5,000 square feet of buildable area outside critical areas and their buffers. It is important to note that Chapter 24.50 does not allow for encroachment into any critical areas themselves, but rather into the outer 50% of critical area buffers (outer 25% for wetlands and riparian habitat). As stated previously, the draft CAO requires a minimum fifty (50) foot buffer outside of prairie habitat, indicating that any buffer reduction would not allow encroachment closer than twenty-five (25) feet to prairie habitat without a reasonable use exception.
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, ariel 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 purposed 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
a presubmission conference which is when they pay staff (each department that may require review) to look at their application at a flat rate to get it to a point where they won’t need additional information which may cause extra race charges through their permit process. The BOCC made the call a couple of years ago however that the Resource Stewardship Department would not be funded by the general fund. The fee schedule is available on line for viewing.

Nondefferal previsions were then discussed in regards to species that are not listed. Concerns with starting an applicant down a road where on a case by case basis state and federal government has comment could be a very long arduous process. Staff responded with reading the section of code that discusses this process. In theory staff would have already been out to the site knowing what is out there, where the species are, point location and what due project is likely to be. This would not be starting from zero and specific information would have already been provided to staff. In return it would be working with state and federal which have expertise with these specific species and what their recommendations may be and would be best available science. The PC would like to see a list or table of what species this may apply too.

**MOTION:** Commissioner O’Connor moved to approve point 1, 2 and 3 within staff’s memorandum and for staff to go forward with those items. Move forward with staff recommendation to clarify review process and text, seek habitat management plan term with special report requirements to clarify that there is one process and to clarify the 600 foot distance as a review area not a buffer. Commissioner Spaulding seconded. Motion carried.

Commissioner Earle brought up comments from the public hearing that were made by the fire marshal about defensible fuel protection zones in development in near wildlife areas. Staff will be looking into these comments again and coming back to the PC on the 18th with further information.

Commissioner Davis asked Robert Smith if in the process that he lined out after staff is unsure could staff say that they would try to consult with an expert from a State agency so that we are not jumping from uncertain staff review straight to a paid consultant? During certain review already the experts at State agencies are consulted with in the initial survey but because of the States staffing issues and the volume of permits they are no longer able to provide that level of service where they go out to the site and provide a plan themselves. This is why the new requirements of a private biologist are being required. Staff does consult as much as possible during the process with State agencies before requiring a permit. State Fish and Wildlife is working on prairie protocols to identify viable prairie and they will be running that up to United States Fish and Wildlife to try and get concurrence in that working group. This is part of the habitat conservation plan. This is certainly a work in progress due to state funding issues. Staff is imagining this within one of the umbrella chapter’s language.

Mr. Davis then stated the discussion on Existing Lot 5,000 square feet buildable area exception. As part of the critical areas update, staff has proposed to add a 5,000 square foot development area exemptions specifically to allow single family residential homes on lots with less than 5,000 square feet of buildable area without going through a
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.
Handouts were given to the PC which were for size demonstration only but were applications out of the reasonable use table that was previously handed out. The Clearwood subdivision was discussed and examples were given of buildable areas. The septic could be outside of the use area the way the policy is currently written. This is only if there is no other place to put the septic.

The PC would like to know where the 5,000 square foot discussions regarding intrusion into the buffers come from. The context actually came from a Planning Commission discussion some months and perhaps years back that the context was given county rezone and an increase in buffers due to the new CAO, they felt it was a reasonable request to allow for the 5,000 square foot intrusion for the buildable site. What has come out of this recent discussion is the observation that different types of resource buffers are more sensitive and may or may not require different levels of protection. Again there could be the RUE (Reasonable Use Exception) that’s applied instead of just a blanket wide buffer however the RUE process is an expensive process where the application alone starts at $6,900. What the PC is looking at right now is a GMA (Growth Management Act) balancing issue where you have science that suggest perhaps 5,000 square feet is too much however the PC has a community value saying that they would like to be able to see to build in that. The PC would like staff to look into the different types of buffers and/or vulnerabilities into intrusion and are there recommendations for reducing those vulnerabilities which may include reducing the foot print from 5,000 square feet down to something lower.

The PC asked staff to take a look at other counties lessons from implementation of similar provisions in similar places like Snohomish County or maybe old County records to see how frequently they would be implemented. Staff will see if a report can be run in Amanda to tell the frequency. The RUE applications had about 150-160 applied for with 70 or so going before the hearing examiner for decision. Those numbers do not include pre 1997. This is about 15 years of information. Currently the county allows administrative buffer reductions but the new policy would take the place of that.

Commissioner Fleisher brought up some concerns in having this kind of exception and that it can potentially conflict with best available science for critical areas protection. The conflict depends upon the type of critical area that you’re affecting and the way that you’re affecting it. With regard to the way that your affecting it the principal things are what kind of permanent vegetation removal is occurring and what kind of new impervious surfaces is being created. Commissioner Fleisher would like to see a revised proposal that takes these concerns into account and proposes square footages that minimize potential impact based on this kind of criteria. Staff will be going back and looking at their proposed reasonable use criteria and see about including some of the recommendations/ideas from the PC. Again this is more or less taking the place of the administrative variance process.

In summary the discussion involved different sizes of site development (as opposed to building footprint) involving different uses such as vegetation clearing, impervious surface areas and potentially looking at the different critical areas and whether staff and the PC want to do something different with each critical area. Again the discussion
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.

Scott Nelson, Commissioner

Prepared by Carrie Toebbe, Recording Secretary