

TUMWATER PLANNING COMMISSION

MINUTES OF MEETING

January 23, 2024 Page 1

CONVENE: 7:01 p.m.

PRESENT: Chair Elizabeth Robbins and Commissioners Grace Edwards, Terry Kirkpatrick, Michael Tobias, and Anthony Varela.

Absent: Commissioners Brandon Staff and Brian Schumacher.

Staff: Planning Manager Brad Medrud and Planner Erika Smith-Erickson.

CHANGES TO AGENDA: There were no changes to the agenda.

COMMISSIONER'S REPORTS: There were no reports.

MANAGER'S REPORT: Manager Medrud reported on the first open house for the Comprehensive Plan Periodic Update on Wednesday, January 31, 2024 from 7 p.m. to 9 p.m. at the Tumwater Fire Station Training Room both online and in-person. Staff has received positive responses from outreach efforts. Planner Smith-Erickson visited businesses in Tumwater and provided flyers advertising the open house.

PUBLIC COMMENT: There were no public comments.

PUBLIC HEARING:

RESOLUTION NO. R2024-001, FOURTH EDITION HAZARDS Chair Robbins reviewed the purpose and format of the public hearing on Resolution No. R 2024-001, Fourth Edition Hazards Mitigation Plan for the Thurston Region.

MITIGATION PLAN FOR THE THURSTON REGION: Chair Robbins opened the public hearing at 7:07 p.m.

Planner Smith-Erickson reported the Fourth Edition of the Hazards Mitigation Plan for the City of Tumwater outlines strategies to reduce the risk of the most destructive natural hazards such as floods, earthquakes, and wildfires that threaten the area. The Plan's goals, policies, and actions, if implemented, would minimize losses and protect the community and community assets from future disasters.

To manage risks, contain costs, and promote sustainable communities, the federal government enacted hazards mitigation planning requirements for states, tribes, and local government in the Disaster Mitigation Act of 2002. Local governments must adopt a federally approved Hazards Mitigation Plan to apply for and receive federal

TUMWATER PLANNING COMMISSION

MINUTES OF MEETING

January 23, 2024 Page 2

hazard mitigation assistance funding. Goals, policies, and actions, if implemented, would minimize losses and protect assets from future disasters. The Plan's mitigation strategy includes regional actions to improve multi-agency coordination, build mitigation capabilities, and strengthen resiliency across Thurston County. Each Plan participant produces an Annex with prioritized actions to minimize losses within each jurisdiction.

The Plan must demonstrate that the community's proposed mitigation measures are based on a sound planning process that accounts for risks and the capabilities of the jurisdiction. Local governments are required to conduct a planning process that satisfies FEMA requirements to receive FEMA Plan approval. The Plan must be updated every five years.

The City is susceptible to hazards of earthquakes, flooding, landslides, severe weather, and wildfires. Central to the City's Annex are recommended projects, programs, and activities planning partners within the City would implement to provide long-term sustained benefits to reduce losses from the impacts of hazards that are identified in the Plan and referred to as initiatives. The Plan includes 20 initiatives categorized by different types, such as public outreach and information, planned coordination and implementation, data collection and mapping, development regulations, critical areas ordinance, hazard preparedness, and critical facilities and replacement retrofits.

Planner Smith-Erickson shared and described a sample mitigation initiative. Staff developed initiatives by selecting initiatives from the last update, from example plans provided by FEMA, and from other planning documents in the City.

Planner Smith-Erickson described the structure of the Plan and its organization comprised of 144 pages divided into 12 sections. The City Annex development process includes the Hazards Mitigation Planning Team, Work Group, meetings, stakeholders, public outreach, work cited, monitoring and maintenance, and continued public outreach strategies. Risk assessment is an evaluation of each jurisdiction's hazards. Risk assessments identify areas of impact and the extent of the risk, previous incidents, probability of occurrence, the effect of climate change, impacts and changes from development, and vulnerability. Jurisdictions must have at least one mitigation action for each mapped hazard.

The section on mitigation strategy includes an introduction to City mitigation initiatives, a prioritization process, the initiative format, a sample, and the proposed initiatives. The benefit cost review assists in

TUMWATER PLANNING COMMISSION

MINUTES OF MEETING

January 23, 2024 Page 3

rating and prioritizing initiatives. The benefit cost review also assisted in naming conventions of the initiative. The City Hazard Mitigation Planning Team evaluated each proposed initiative project or action providing a high, medium, or low benefit using benefit review criteria.

Staff received one public comment expressing concerns about an existing development within liquefaction areas and whether residents living in those areas were notified. The comment pertained to an existing development and was not subject to the Tumwater development review process. Staff provided a response to the public comment.

Manager Medrud explained that liquefaction occurs when development is built on sand or other soft soils that can liquefy during an earthquake and undermine a structure.

Planner Smith-Erickson reported the Community Capability Assessment is a unique set of capabilities and tools that can be leveraged to support hazard mitigation and increase resilience. Examples include the City's Capital Facilities Plan, Comprehensive Plan, and building and land use codes.

The Plan must describe the City's participation in the National Flood Program and how the City meets regulatory requirements.

Staff will frequently review and track the status of initiatives throughout the Capital Facilities Plan update, Tree and Vegetation code updates, 2025 Development Code Periodic Update, Washington Wildland-Urban Interface Code adoption, and the 2025 Comprehensive Plan Periodic Update and annual amendment process. The Annex and the Regional Plan are a climate resiliency sub-element in the 2025 Comprehensive Plan Periodic Update.

TRPC facilitated the planning for updating the Plan over the last several years and serves as the lead for creation of the Regional Plan. The City's Annex was submitted in conjunction with the Regional Plan on November 27, 2023 to the Washington Department of Emergency Management Division for a 30-day review. On January 16, 2024, TRPC advised the City that the Washington Emergency Management Division and FEMA anticipate the review of the Plan to be completed within a week.

Following approval of the Plan by FEMA, the City will initiate the adoption process beginning with the public hearing. The Commission is requested to recommend approval of Resolution No. 2024-001, Fourth Edition Hazards Mitigation Plan for the Thurston Region, to the City Council following the public hearing.

TUMWATER PLANNING COMMISSION

MINUTES OF MEETING

January 23, 2024 Page 4

Commissioner Varela asked whether the City has experienced an event requiring FEMA to work with the City to address hazard mitigation. He cited the oil leak at the old brewery as an example. Manager Medrud said the response to the oil leak was provided by the State Department of Ecology.

Chair Robbins asked staff whether they explored potential outcomes if the City should receive little or no funding to implement initiatives. Planner Smith-Erickson explained that the capability assessments must document how the initiatives were created through work plans, through the CFP, the Water System Plan, and other City planning processes. The Plan must include initiatives but there is no requirement for completing implementation of any initiative as many previous initiatives continue to be ongoing. An explanation is included in each initiative as to why implementation is ongoing and highlights the need for any funding requirement. FEMA requires the City to demonstrate that the initiatives are in process and documented within work plans.

Chair Robbins asked whether the Plan addresses response awareness or public notification of natural disasters and response. Planner Smith-Erickson replied that in the event of an emergency, the Washington Emergency Management Division has implemented an alert system that the public can participate in to receive notifications. Staff is also working closely with Communications staff on public outreach to include some specific public outreach initiatives, as well as a mailing for property owners located in flood prone areas of the City. Additionally, the Tumwater Fire Department have plans in place to address emergencies. The initiatives are based on City projects and work programs. More public outreach could be considered during an emergency. The City's website also includes information on the Hazards Mitigation Plan, which is available to the public.

Commissioner Varela asked about efforts by staff to seek other sources of funding for some initiatives, such as seeking support from FEMA if the agency has some mechanisms to assist jurisdictions in moving initiatives forward. Planner Smith-Erickson said implementation of each initiative has an assigned lead. The initiatives are included in the City's work program. The Plan promotes more interdepartmental meetings between staff to monitor and track progress. City departments continually apply for different grants to help fund projects.

With there being no public testimony, Chair Robbins closed the public hearing at 7:35 p.m.

MOTION:

Commissioner Varela moved, seconded by Commissioner Edwards,

TUMWATER PLANNING COMMISSION

MINUTES OF MEETING

January 23, 2024 Page 5

to recommend the City Council approve Resolution No. R2024-001, Fourth Edition Hazards Mitigation Plan for the Thurston Region as presented. A voice vote approved the motion unanimously.

WORK SESSION:

ORDINANCE NO. O2023-017, TMC 18.38 FP FLOODPLAIN OVERLAY:

Planner Smith-Erickson briefed the Commission on proposed updates to the City's floodplain ordinance.

Approximately 300 towns, cities, and tribes participate in the FEMA National Flood Insurance Program in the state. Continued enforcement of the City's floodplain management regulations in TMC 18.38 enables FEMA to provide federally backed flood insurance to property owners in the City. As a condition of participation in the program, communities are required to adopt and enforce flood hazard reduction regulations meeting the minimum requirements of the National Flood Insurance Program.

In May 2023, staff participated in a FEMA floodplain community assistance visit with Department of Ecology staff to review the City's floodplain ordinance. The community assistance visit determined the ordinance was in good standing but required some minor updates to reflect current federal standards.

In November 2023, FEMA notified the City of final flood determinations for Thurston County and incorporated areas. The FEMA flood hazard determination for the City is considered final. The Flood Insurance Study Report and the Flood Insurance Rate Map covering the City are effective on May 8, 2024.

Prior to May 2024, the City is required to amend its existing floodplain regulations for consistency with the model ordinance for floodplain management, the Endangered Species Act, and the National Flood Insurance Program.

Planner Smith-Erickson advised that the staff report includes summaries of the 15 proposed amendments, code sections affected, and proposed amendment language. Three new sections were added for detached accessory structures, storage, materials, equipment, and penalties.

Planner Smith-Erickson reviewed the proposed changes to Tumwater Municipal Code (TMC).

TMC 18.38.017- Definitions was updated to clarify and add eight definitions to enhance correct interpretation of floodplain regulations. The definitions cover the following areas:

TUMWATER PLANNING COMMISSION
MINUTES OF MEETING
January 23, 2024 Page 6

- “*Alteration of watercourse*” is any action that will change the location of the channel occupied by water within the banks of any portion of a riverine waterbody.
- “*Area of special flood hazard*” is the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. It is shown on the flood insurance rate map (FIRM) as zone A, AO, AH, A1-30, AE, A99, AR (V, VO, V1-30, VE).
- “*Special flood hazard area*” is synonymous in meaning with the phrase “area of special flood hazard.”
- “*Flood elevation study (FES)*” is an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards. Also known as a flood insurance study (FIS).
- “*Floodplain administrator*” is the community official designated by title to administer and enforce the floodplain management regulations.
- “*Flood proofing*” is any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents. Flood proofed structures are those that have the structural integrity and design to be impervious to floodwater below the base flood elevation.
- “*Highest adjacent grade*” is the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
- “*Mean sea level*” for the purpose of the National Flood Insurance Program, is the vertical datum to which base flood elevations shown on a community's flood insurance rate map are referenced.
- “*Structure*” is a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Changes to TMC 8.38.090 – Special flood hazard areas includes updating language to reflect most current versions of the Flood Insurance Study (FIS) and Flood Insurance Rate Maps (FIRMs), and adding the acronym, “BFE” for Base Flood Elevation significance or non-significance during a SEPA review.

Changes to TMC 18.38.100 – Flood hazard data are intended to clarify how special flood hazard areas are identified using BFE and Flood

TUMWATER PLANNING COMMISSION
MINUTES OF MEETING
January 23, 2024 Page 7

Insurance Rate Maps and clarification of the process and instances where the base flood and floodway data were not provided or available in the Flood Insurance Study and Flood Insurance Rate Maps.

Changes to TMC 18.38.130 – Floodplain development permit required includes revision of section name to improve clarity, removal of passive language, and a requirement for a permit in special flood hazard areas (SFHAs) defined in TMC 18.39.090.

Changes to TMC 18.38.140 – Floodplain development permit application include updated acronyms for consistency with the definitions section, and the addition of five subsections:

- E. If a project will alter the base flood elevation data (BFE) or boundaries of the SFHA, the project applicant shall provide the floodplain administrator with engineering documentation and analysis regarding the proposed change. If the change to the BFE or boundaries of the SFHA would normally require a Letter of Map Change, the project approval shall be conditioned accordingly.
- J. The application shall include the elevation in relation to mean sea level, of the lowest floor (including basement) of all structures recorded on a current elevation certificate with section B completed by the floodplain administrator.
- K. The application shall include the elevation relation to mean sea level to which any structure has been flood proofed.
- L. The application shall include, where development is proposed in a floodway, an engineering analysis indicating no rise of the base flood elevation (BFE).
- M. The application shall include any other such information that may be reasonably required by the floodplain administrator in order to review the application.

Changes to TMC 18.38.180 – Records include:

- Updated acronyms
- Clarified information required to be obtained for record.
- Removed passive language.
- Provides a process for floodplain administrator to ensure proposed construction will be safe from flooding when elevation data is not available.
- Adds a list of information the floodplain administrator shall obtain and make available to the public.

Changes to TMC 18.38.210 – Development and subdivisions include:

- Clarifies short subdivisions, short plats, and binding site plans are subject to TMC 18.38.210.

TUMWATER PLANNING COMMISSION
MINUTES OF MEETING
January 23, 2024 Page 8

- Updated language to acronyms.
- Subdivisions or developments with over 50 lots or five acres must provide base flood elevation data with the application.

Changes to TMC 18.38.184 – Flood protection standards include:

- In areas where the base flood elevation (BFE) data has been determined or obtained (A zones), all new development must be elevated at least one-foot above BFE.
- Materials used shall be resistant to flood damage.
- Construction methods that minimize flood damage.
- All structures, including manufactured homes and substantial improvements, shall be anchored properly.
- New construction and substantial improvement of any residential structure in an Unnumbered A zone and BFE is not available shall be raised two feet above highest adjacent grade.
- An attached garage constructed with the floor slab below the BFE must be designed to allow for the automatic entry and exit of floodwaters.

TMC 18.38.270- Nonresidential construction section was reformatted. The proposed changes create clear standards for non-residential development. Within the AE and A1-30 zones or other A zoned areas, new construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall have the lowest floor, including basement, elevated one foot or more above the BFE. Information was added for unnumbered A zone when the BFE is not available, the lowest floor must be at least two feet above the highest adjacent grade.

Changes to TMC 18.38.280- Manufactured homes add clarifying requirements for anchoring of manufactured homes that minimize flood damage and other anchoring requirements throughout TMC 18.38 that are applicable.

TMC 18.38.285- Detached accessory structures is a new section and adds standards to allow for structures to be built below the BFE used solely for parking of vehicles or limited storage. Different flood zones have different requirements for detached structures, such as size, elevation, materials, and items stored, and anchoring.

TMC 18.38.325- Storage of materials and equipment is a new section adding that the storage or processing of materials that could be injurious to human, animal, or plant life if released due to damage from flooding is prohibited in special flood hazard areas. Storage of other material or equipment may be allowed if not subject to damage by floods and if

TUMWATER PLANNING COMMISSION
MINUTES OF MEETING
January 23, 2024 Page 9

firmly anchored to prevent flotation, or if readily removable from the area within the time available after flood warning.

Chair Robbins questioned the extent of outreach to property owners who might be affected by the proposed language. Of particular interest is whether any feedback from property owners was received regarding solutions that would be effective but not impossible to meet or other situations where the property is utilized differently and whether the proposed changes can accommodate those types of uses. Planner Smith-Erickson responded that the question speaks to whether property owners are aware of the update in regulations that are located in a flood area. Chair Robbins said she is interested in knowing whether a threshold is included for a smaller volume of material while the regulations might disallow larger quantities as they might present a greater hazard. She cited an example of the Department of Transportation storing a large volume of sand or de-icer required during inclement weather. She asked whether staff has reached out to property owners to receive input on how the new regulations would impact them.

Commissioner Varela commented on those situations where equipment or materials could be moved during a warning but were not moved because efforts were diverted to evacuate a family.

Chair Robbins encouraged staff to pursue some public outreach to property owners who would be subject to the proposed regulations.

Planner Smith-Erickson cited her work on the Hazards Mitigation Plan and data on the number of commercial and residential structures that were identified in the City's floodplains. She offered to follow up with more information. Staff can pursue whether public notification is provided when the floodplain maps change or when changes occur in the Flood Insurance Study and Flood Insurance Rate Maps.

Planner Smith-Erickson reported changes to TMC 18.38.360 – Floodway standards include:

- Clarifies encroachments, including fill, new construction, substantial improvements, and other development is prohibited unless a certification by a registered professional engineer demonstrating development would not result in any increase in flood levels during the occurrence of the base flood discharge.
- Clarifies that repairs, reconstruction, or improvements to a residential structure which do not increase the ground floor area may be allowed subject to outlined requirements.
- TMC 18.38.360(A)(1) is satisfied, or construction is allowed pursuant to TMC 18.38.360(A)(2), all new construction and substantial improvements in the floodway shall comply with all

TUMWATER PLANNING COMMISSION
MINUTES OF MEETING
January 23, 2024 Page 10

applicable flood hazard reduction provisions of TMC 18.38.

A new section, TMC 18.38.450- Penalties for noncompliance is proposed:

- A. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violations of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions), shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than ninety (90) days, or both for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the city of Tumwater from taking such other lawful action as is necessary to prevent or remedy any violation.
- B. Enforcement under this section is in addition to and does not preclude or limit any other forms of enforcement available to the city including, but not limited to, enforcement under any provision of TMC Chapter 1.10, nuisance actions, actions for injunctions, or any other civil or equitable actions to abate, discontinue, or correct, acts in violation of this code.

Commissioner Varela asked about the costs associated of jailing someone for 90 days, as violation of the penalty might be less expensive. It might be more beneficial for the individual to correct the violation of non-compliance as opposed to utilizing resources for imprisonment. Manager Medrud recommended the Commission consider adding a note within its recommendation to consider an alternative. He added that when the section was drafted, staff reviewed provisions from other jurisdictions. The draft language was based on the City of Olympia's plan, which may or may not be appropriate for the City of Tumwater.

Chair Robbins acknowledged the importance of reducing flooding risks but questioned how penalties would correct any situation. Manager Medrud explained that the provisions are intended to compel compliance rather than impose penalties.

Planner Smith-Erickson reported the City received a SEPA Determination of Non-Significance. Since the release of the notice, the City received some public comments. The next agenda packet will include those public comments. Next steps include scheduling a public

TUMWATER PLANNING COMMISSION
MINUTES OF MEETING
January 23, 2024 Page 11

hearing on February 13, 2024 or scheduling another work session.

Chair Robbins favored more discussion on the issues addressed by the Commission on Sections 13 and 15. Manager Medrud suggested staff could provide some additional information in response to the questions as part of the public hearing presentation because of the timeline associated with the ordinance.

MOTION: **Commissioner Varela moved, seconded by Commissioner Edwards, to schedule a public hearing on February 13, 2024 on Ordinance No. O2023-017, TMC 18.38 FP Floodplain Overlay. A voice vote approved the motion unanimously.**

**ATTORNEY
GENERAL'S
ADVISORY
MEMORANDUM:**

Manager Medrud reported the discussion pertains to the Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property. Under the Growth Management Act, the Office of the Attorney General is required to provide guidance to state agencies and local governments in an orderly, consistent process to evaluate proposed regulatory or administrative actions to assure that these actions do not result in unconstitutional takings of private property or raise substantive due process concerns. The process must be used by local governments that plan under the Growth Management Act. The Attorney General prepared guidance and reviews the laws each year to include federal case law to determine whether the guidance should be updated. The last update was issued in 2018 following some federal cases.

Staff uses the memorandum to guide the development of defensible policies and regulations that protect property rights. It is especially relevant as the Planning Commission considers new and amended policies and regulations that affect land use.

The three general constitutional principles include:

1. Police Power:

- 1) State governments have the authority and responsibility to protect public health, safety, and welfare.
- 2) This authority is an inherent attribute of state governmental sovereignty and is shared with local governments in Washington under the state constitution.
- 3) Pursuant to that authority, which is called the "police power," the government can regulate or limit the use of property.
- 4) Examples include abatement of public nuisances, the termination of illegal activities, and the establishment of building codes, safety standards, sanitary requirements,

TUMWATER PLANNING COMMISSION
MINUTES OF MEETING
January 23, 2024 Page 12

zoning regulations, or environmental protections.

2. Regulatory Takings:

- 1) Government regulation of property is a necessary and accepted aspect of modern society and compensation is not required for every decline in the value of a piece of private property.
- 2) However, if government regulations go “too far,” they can constitute a taking of property.
- 3) This does not necessarily mean that the regulatory activity is unlawful, but rather that the payment of just compensation may be required under the state or federal constitution.
- 4) The rationale is based upon the notion that some regulations are so severe in their impact that they are the functional equivalent of an exercise of the government’s power of eminent domain.

3. Substantive Due Process under the 14th Amendment:

- 1) Substantive due process is the constitutional doctrine that legislation must be fair and reasonable in content and designed so that it furthers a legitimate governmental objective.
- 2) Courts have determined that substantive due process is violated when a government action lacks any reasonable justification or fails to advance a legitimate governmental objective.
- 3) To withstand a claim that principles of substantive due process have been violated, a government action must (1) serve a legitimate governmental objective, (2) use means that are reasonably necessary to achieve that objective, and (3) not be unduly oppressive.

Under the U.S. Constitutional Provisions Takings Clause and Due Process Clauses:

1. The Fifth Amendment provides that private property shall not be taken for public use without the payment of just compensation.
2. Accordingly, the government may not take property except for public purposes within its constitutional authority and must provide just compensation for the property that has been taken.
3. The Fifth and Fourteenth Amendments also provide that no person shall be deprived of property without due process of law

TUMWATER PLANNING COMMISSION
MINUTES OF MEETING
January 23, 2024 Page 13

Under the Washington State Constitution, Article 1, Section 16, provides, in part:

1. That “[n]o private property shall be taken or damaged for public or private use without just compensation.”
2. In other words, the government may take private property, but must pay just compensation for the private property that is taken.

Warning Signals:

1. Does the Regulation or Action Result in a Permanent or Temporary Physical Occupation of Private Property? *An example is a New York City case involving the installation of a cable box on the building, which was deemed as a taking as it took a portion of the property without providing compensation.*
2. Does the Regulation or Action Deprive the Owner of All Economically Viable Uses of the Property? *An example is from the State of South Carolina where a property owner wanted to develop property off the ocean. The state recently passed regulations for preservation of beaches. In some cases, all development activity was precluded because of the nature of building on a beach in a hurricane area. The affect of the regulation prohibited property owners from using their property. Under Washington State law, property owners are allowed to develop at the lowest level of development on a property containing critical areas.*
3. Does the Regulation or Action Deny or Substantially Diminish a Fundamental Attribute of Property Ownership?
4. Does the Regulation or Action Require a Property Owner to Dedicate a Portion of Property, to Grant an Easement, or to Undertake Some Independent Financial Obligation?
5. Does the Regulatory Action Have a Severe Impact on the Landowner’s Economic Interest? Note: The presence of a warning signal means there could be a constitutional issue that government staff should review with legal counsel.

The review process to evaluate proposed regulatory or administrative actions to avoid unconstitutional takings of private property by the City include:

1. Review and distribution of the Advisory Memorandum.
2. Using “warning signals”, such as the examples in the Advisory Memorandum to evaluate proposed regulatory actions.
3. Application of an internal process to assess constitutional issues.
4. Incorporation of constitutional assessments into the City review process
5. Utilizing an internal process to respond to identified

TUMWATER PLANNING COMMISSION
MINUTES OF MEETING
January 23, 2024 Page 14

constitutional issues.

Commissioner Kirkpatrick asked how the process affects the City's efforts for mitigation for endangered species. Manager Medrud said the City's Habitat Conservation Plan is based on a payment of an impact fee to mitigate the impacts of a potential take of endangered species. The payment of a fee is somewhat different as the state process requires presence of the species on the property. The City's interim process requires an applicant to complete a study. If gophers are present, development activity ceases until an alternative is identified. However, the lack of gophers enables proceeding with the development activity. Staff has learned through working with the federal government that the interpretation is different, as the federal government has determined that under the Endangered Species Act, the presence of potential habitat (soils) for the gopher determines whether there would be any impacts. If the property contains gopher soils from the federal perspective, the property has gophers regardless of whether gophers are present.

The Thurston County Habitat Conservation Plan is based on soils and a payment of a fee. Manager Medrud said he is not aware of any challenges to the plan. The City continues to develop its HCP but has not determined its specific approach.

Commissioner Kirkpatrick asked whether the fee is collected from the population. Manager Medrud said the fee is collected from the individual who is developing the property. However, the fee speaks to the issue of whether property owners should bear the burden of the larger issue of the community. As staff explored funding models, other sources of contribution were considered through the general government fund (Citywide funds) to support the HCP rather than relying on funding from development. Currently, a legal and an economic consultant are assisting staff.

Chair Robbins cited the City's previous planned actions and whether the City has ever been challenged for utilizing a planned action. Manager Medrud explained that planned actions are typically completed to save time for the developer, or it is used as a way to quantify potential impacts prior to development. Planned actions are defensible because they are based on particular development scenarios of either square footage or level of use based on a set of factors.

Manager Medrud encouraged the Commission to review the memorandum and become familiar with the provisions.

NEXT MEETING
DATE:

The next meeting is scheduled on February 13, 2024.

TUMWATER PLANNING COMMISSION
MINUTES OF MEETING
January 23, 2024 Page 15

ADJOURNMENT: **Commissioner Tobias moved, seconded by Commissioner Edwards, to adjourn the meeting at 8:38 p.m. A voice vote approved the motion unanimously.**

Prepared by Valerie L. Gow, Recording Secretary/President
Puget Sound Meeting Services, psmsoly@earthlink.net