



CITY COUNCIL WORKSESSION MEETING AGENDA

Online via Zoom

**Tuesday, January 25, 2022
5:30 PM**

1. Roll Call
2. Public Records and Open Government Training (Karen Kirkpatrick, Morgan Damerow, Washington State Office of the Attorney General Lead Attorney and Lucy Collis, Local Government Public Records Consultant)
3. Bush Prairie Habitat Conservation Plan (HCP) – Status Update (Brad Medrud)
4. Golf Course Update (Chuck Denney)
5. Mayor/City Administrator's Report
6. Adjourn

Remote Meeting Information

To comply with Governor Inslee's Proclamation 20-28, the Tumwater City Council meetings will be conducted remotely, not in-person, using a web-based platform. The public will have telephone and online access to all meetings.

The City of Tumwater broadcasts and livestreams City Council meetings on cable television and the internet. Council meetings can be viewed on Comcast Channel 26 or on the TCMedia website.

Watch Online

<https://us02web.zoom.us/j/83643529151?pwd=dIJzTnpiZGtoS1lzSTBGaCt4RUdQZz09>

Listen by Telephone

Call (253) 215-8782, listen for the prompts and enter the Webinar ID 836 4352 9151 and Passcode 567461.

Post Meeting

Video recording of this meeting will be available within 24 hours of the meeting.

<https://tcmedia.org/channels.php>

Accommodations

The City of Tumwater takes pride in ensuring that people with disabilities are able to take part in, and benefit from, the range of public programs, services, and activities offered by the City. To request an accommodation or alternate format of communication, please contact the City Clerk by calling (360) 252-5488 or email CityClerk@ci.tumwater.wa.us. For vision or hearing impaired services, please contact the Washington State Relay Services at 7-1-1 or 1-(800)-833-6384. To contact the City's ADA Coordinator directly, call (360) 754-4128 or email ADACoordinator@ci.tumwater.wa.us

TO: City Council
FROM: Karen Kirkpatrick, City Attorney
DATE: January 25, 2022
SUBJECT: Public Records and Open Government Training

1) Recommended Action:

This is a briefing only.

2) Background:

Lead Attorney Morgan Damerow and Local Government Public Records Consultant Lucy Collis of the Washington State Office of the Attorney General will provide public records and open government training. The presentation will also cover the use of private devices and social media while in office for elected officials. Morgan and Lucy will take questions during the presentation.

Washington's open government requirements are in state law. Open public records laws are in the Public Records Act at RCW 42.56. Open public meetings laws are in the Open Public Meetings Act at RCW 42.30. This presentation meets the training requirements and those in attendance will be in compliance with state law for the next four years.

3) Policy Support:

Not only will this training keep us compliant, but as part of our strategic priorities and goals, the City wants to refine and sustain a great organization, which includes ongoing and new training programs and opportunities. This also falls in line with being a learning organization and will enhance and improve City operations and services.

4) Alternatives:

This is a briefing only.

5) Fiscal Notes:

There are no cost associated with this training.

6) Attachments:

A. PRA & OPMA Training Presentation



Open Government Training

City of Tumwater Elected Officials

January 25, 2022

Training Prepared by Washington State Attorney General's Office



Local Government Public Records Consultation Program



*Assisting local
governments with
PRA best practices.*

Morgan Damerow (360) 570-3418
Lucy Collis (360) 664-8756
PRAConsultation@atg.wa.gov

Technical Assistance – Training – Risk Mitigation – Best Practices

Overview

- Significance of Open Government & Transparency
- Open Public Meetings Act
- Public Records Act

This presentation is educational only and is not legal advice or a legal opinion. The OPMA and PRA change over time. Later court decisions or changes in statutes can impact these laws and an agency's obligations.

Training is your path through the forest.



[The] “proper training and supervision of the agency’s personnel” was a mitigating factor ... “[T]he evidence demonstrates an on-going and consistent process of education, supervision, and access to legal counsel to seek assistance,” with “both internal and external training available to employees.”

Hoffman v. Kittitas County, Decided Sept. 26, 2019

Why You Should Care About Transparency Laws

"Sunlight is the best disinfectant."



U.S. Supreme Court Justice
Louis Brandeis

The Leader PTSD settles lawsuit over public records

School district is latest hit by legal action from chronically litigious Whidbey resident

ACLU
Washington

Judge fines Tacoma Police Department for withholding public records about invasive surveillance device

THE SPOKESMAN-REVIEW

Justices uphold \$502,000 public records fine against state

PRA Penalties & Judgments

\$2.6 M – City of Tacoma



\$14.00 – Office of the Governor

Part 1

Open Public Meetings Act

Chapter 42.30 RCW

The purpose of the OPMA is to allow the public to view the “decision making process.”

Washington State Supreme Court



All meetings of the **GOVERNING BODY** of a **PUBLIC AGENCY** shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in RCW 42.30.

RCW 42.30.030

What is a Governing Body?

The multimember board or other policy or rule-making body of a public agency.

OR

Any committee of such public agency *when*:

- ☐ the committee acts on behalf of the governing body,
- ☐ conducts hearings, or
- ☐ takes testimony or public comment.

RCW 42.30.020

Public Agency

- Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature.
- Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of Washington State.
- Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies.
- Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

Meeting

- Meeting means meetings at which the public agency takes “action.”

- Requires a majority of its members (quorum).

No quorum → No meeting

Physical presence not required – a meeting can occur by phone or email.



- Does not need to be titled “meeting” – may be a “retreat,” “workshop,” “study session,” etc.
- Simply receiving information without comment is not a meeting.

Action


- “Action” means the transaction of the official business of the public agency and includes but is not limited to:
 - Public testimony
 - All deliberations
 - Discussions
 - Considerations
 - Reviews
 - Evaluations
 - Final actions*



* The requirements of the OPMA are triggered whether or not “final” action is taken.
(See upcoming slide on “final action.”)

Public Attendance

- A public agency can't place conditions on public to **attend** meetings subject to OPMA.
- Reasonable rules of conduct can be set.
- Cameras and tape recorders are permitted unless disruptive.



Proclamation
20-28.15

Public Comment

- No “public comment” period required by OPMA.
- Agency specific statute may require “public comment.”

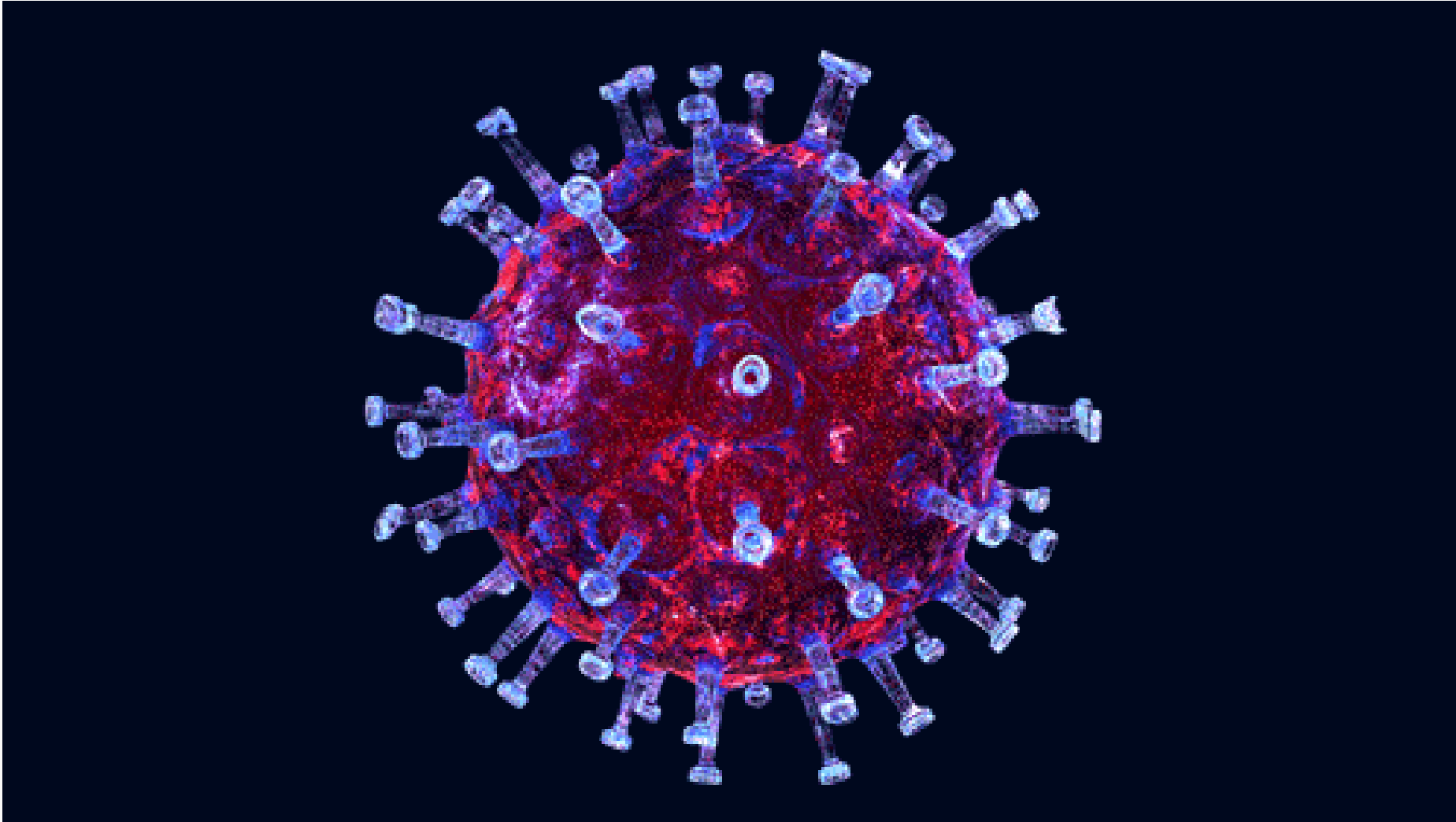
Final Action

- “**Final action**” is a collective positive or negative decision, or an actual vote, by a majority of the governing body, or by the “committee thereof.”
- Must be taken in public, even if deliberations were in closed session.
- Secret ballots are not allowed.

VOTE



COVID-19 Shifted the Landscape



Minutes

- Minutes of public meetings must be promptly recorded and open to public inspection.
- Minutes of an executive session are not required.
- No format specified in law.
- With meetings going remote, consider adding relevant information to the minutes about how you have satisfied the remote participation requirement.
 - Links & phone numbers.
 - Number of viewers.





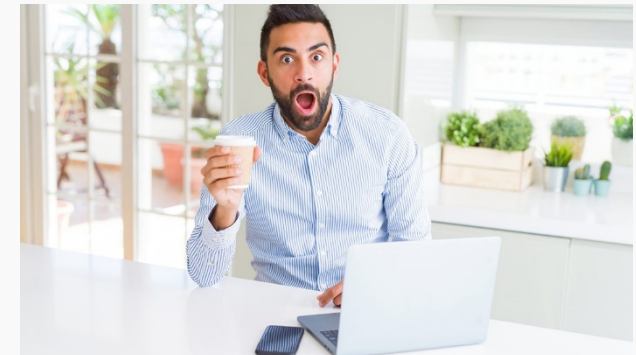
Proclamation 20-28.15

Open Public Meetings Act and Public Records Act

- First issued March 24, 2020. Current version Proclamation 20-28.15. See Proclamation 20.28-14 for operative language.
- Focus is on reducing in-person contact.
- Prohibition on conducting a public meeting subject to RCW 42.30 unless:
 - (a) the meeting is not conducted in-person and instead provides an option(s) for the public to attend the proceedings through, at minimum, telephonic access, and may also include other electronic, internet or other means of remote access, and
 - (b) provides the ability for all persons attending the meeting to hear each other at the same time.
- Counties Safe Start phase in Safe Start plan may impact the ability for governments to resume some public meetings.
- Proclamation will remain in effect until either the termination of the state of emergency pursuant to RCW 43.06.210 or until rescinded, whichever occurs first.

Interruptions and Disruptions

- The OPMA provides a procedure for dealing with situations where a meeting is being interrupted, the orderly conduct of the meeting is unfeasible, and order cannot be restored by removal of the disruptive persons.
- Meeting room can be cleared and meeting can continue, or meeting can be moved to another location, but final disposition can occur only on matters appearing on the agenda. More details set out in the OPMA.



OPMA MEETING TYPES



Regular

Special

Emergency

Notice and agenda requirements vary based on the type of meeting.

Regular Meetings



- Recurring meetings held in accordance with a periodic schedule by ordinance, resolution, bylaws or other rule.
- Must have an agenda available online at least 24 hours in advance.
 - You can modifying an agenda.
 - Invalidate otherwise legal actions taken at a regular meeting where agenda was not posted 24 hours in advance.
- Include information for public access - links and phone numbers.



Special Meetings

Called by presiding officer OR majority of the members.

Notice:

- ☐ 24 hours before the meeting
- ☐ Written
- ☐ Time
- ☐ Place
- ☐ Business to be transacted (agenda)



How:

- ☐ To each member of the governing body (unless waived).
- ☐ To each local newspaper of general circulation, radio, and TV station which has a notice request on file.
- ☐ Posted on the agency's website [with certain exceptions in RCW 42.30.080(2)(b), for example, if the agency does not have a website].
- ☐ Prominently displayed at the main entrance of the agency's principal location and the meeting site (if not that same location).

Include links and phone numbers for public attendance.

Emergency Meetings

- Notice is not required when special meeting called to deal with an emergency.
- Emergency involves injury or damage to persons or property or the likelihood of such injury or damage.
- Where time requirements of notice make notice impractical and increase likelihood of such injury or damage.



Executive Session

**MEETING
IN PROGRESS**

- Part of a regular or special meeting that is closed to the public.
- Limited to specific purposes set out in the OPMA, RCW 42.30.110.
- Purpose of the executive session and the time it will end must be announced by the presiding officer before it begins.
- Time may be extended by further announcement.
- If going into executive session, have a plan for ensuring only invited people are allowed access.
 - Unique “meeting” for this part of the meeting.
 - Utilize waiting room feature and admit participants.

Executive Session



- Real estate
- Sale or lease
- Publicly bid contracts
- Evaluate qualifications of applicant for public employment

- Discuss Agency Enforcement Actions, Litigation or Potential Litigation
 1. Legal counsel representing the agency is present;
 2. For purpose of discussing agency enforcement action, litigation or potential litigation to which the agency, governing body, or a member acting in official capacity is, or is likely to become, a party; and
 3. Public knowledge regarding discussion is likely to result in an adverse legal or financial consequence to the agency.

OPMA Penalties

- A court can impose a \$500 civil penalty against each member (personal liability) who knowingly attends a meeting in violation of OPMA; and \$1000 for a subsequent knowing violation.
- Court will award costs and attorneys fees to a successful party seeking the remedy.
- Action taken at meeting can be declared null and void.



OPMA Assistance

- Consult your Attorney.
- The Washington State Attorney General's Office.
- The Attorney General's Open Government webpage.



Part 2

The Public Records Act

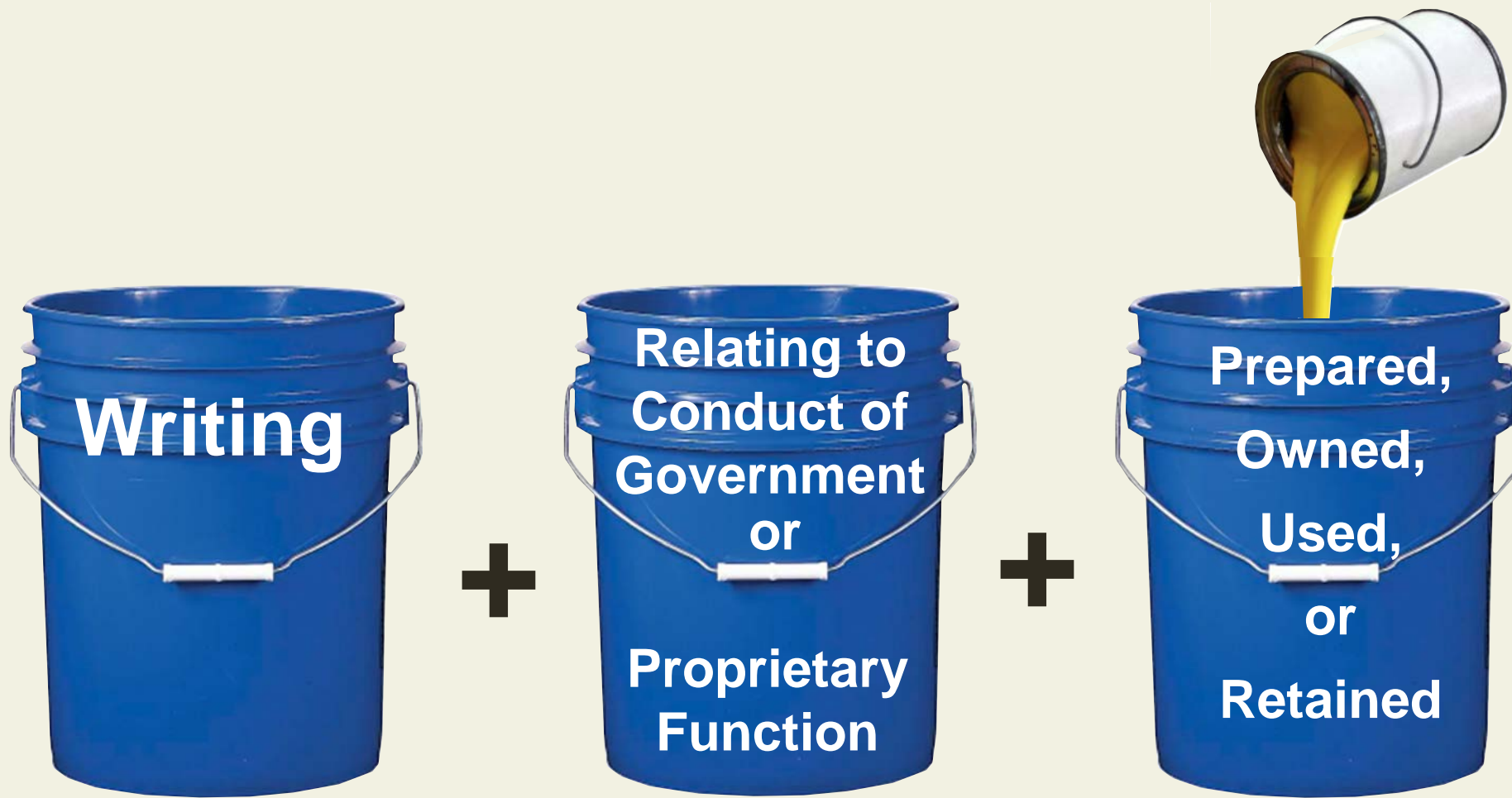
Chapter 42.56 RCW

Item 2. Under PRA, agencies must:

- ✓ Appoint a public records officer.
- ✓ Publish procedures describing agency organization, operations, rules of procedure, and adopt/enforce rules/regulations.
- ✓ Publish fee schedule. No fee to inspect records.
- ✓ Maintain a list of laws the agency believes exempts or prohibits disclosure.
- ✓ Provide indexes of records.
- ✓ Make non-exempt records available for inspection and copying during customary business hours for a minimum of 30 hours per week, excluding holidays.
- ✓ Post customary business hours on the agency's website.
- ✓ Maintain a Public Records Request Tracking Log.

Public Records Defined

Private Devices
Scope of Employment



Regardless of physical form or characteristics.

Personal Devices & Accounts

Includes - personal cell phone logs, text messages, email accounts, social media accounts.

Scope of Employment



The job requires
it



The employer
directs it



It furthers the
employer's interests

Bottom Line

Records belong to the agency. They are not personal records.

Records Retention

KEEP PUBLIC RECORDS FOR
MINIMUM RETENTION

then

**INTENTIONAL
RETENTION**

DESTROY

TRANSFER



The Bottom Line – They are agency records, not personal records.

What does a PRA Request Look Like?

- Did you receive one? Test: “FAIR NOTICE”
Says “I am making a **public records request** for....”
On the agency’s **Public Records Request form**
Says it is a “**Public Records Act**” or “**PRA**” request
Cites PRA - **RCW 42.56**, “**Freedom of Information Act**” or “**FOIA**”
Says “Attention: **Public Records Officer**”
- No specific format or form required. Must accept in person requests made during normal office hours.
- Must request identifiable public records.
- A request for “information” is not a request for “records” under the PRA.



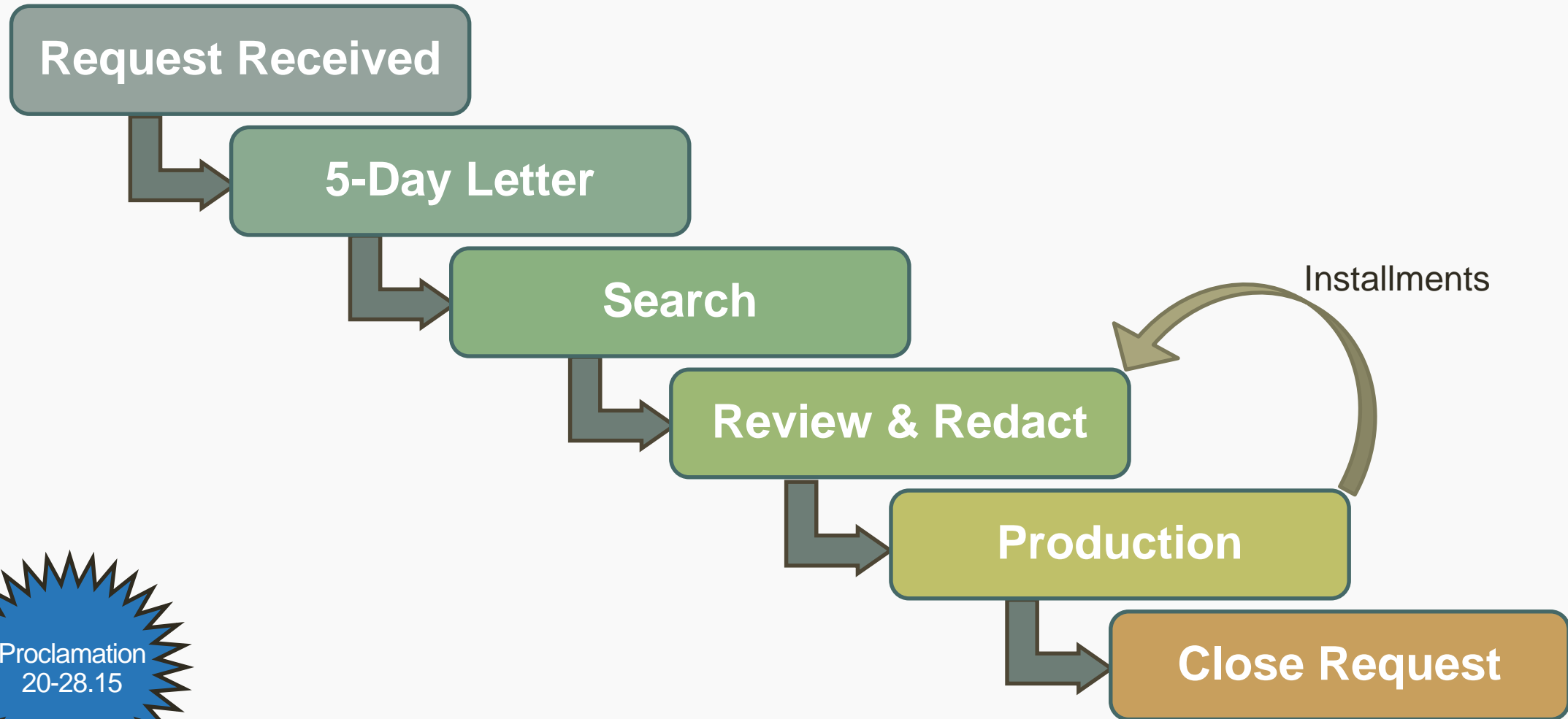
BEST PRACTICE

REFER PERSONS TO PUBLIC RECORDS OFFICER.



IF YOU RECEIVE A COMMUNICATION SUCH AS THOSE ABOVE, GET IT TO PUBLIC RECORDS OFFICER ASAP.

The Public Records Production Process



Proclamation
20-28.15

Records Search Responsibilities

“The adequacy of a search is judged by a standard of reasonableness, that is, the search must be reasonably calculated to uncover all relevant documents.”

Duty: To search for records in locations where it is reasonably anticipated there may be records.

Plan searches:

- What records will be searched centrally?
- What records will be searched by a designated division representative?
- What records are individuals responsible for?

Cast a wide net and document all of your search efforts including:

- Search terms used.
- Locations searched.
- Description of records produced & how.
- Description of records not produced.



Some Basics About Exemptions

- Records are presumed open.
- An exemption must exist in law (state or federal; PRA or other laws).
- The agency bears the burden of proof to justify the exemption.
- Exemptions are narrowly construed.
 - There is no PRA general exemption for a “draft.”
- An agency must, in writing, cite the exemption for the requester and provide a brief explanation. Typically agencies provide an “Exemption Log.”
- No “silent withholding.”

Item 2.

Privacy as an Exemption

There is **no general “privacy”** exemption.

If privacy is an express element of another exemption, privacy is invaded only if disclosure would be:

**Highly offensive to the reasonable person, and
Not of legitimate concern to the public.**

This means that if information does not satisfy both these factors, it cannot be withheld as “private” information under other statutes. RCW 42.56.050

Example: RCW 42.56.230(3)

Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their **right to privacy** (information regarding misconduct is not exempt).

Production of Records



- If requestor asks to inspect records:
 - Notify requestor of records availability and how long they will be available. (30 days per WAC 44-14-040.)
 - The PRA prohibits any charge for inspection of records.
- If records are to be produced:
 - Inform requestor of fee (if any) and provide timeline for requestor to pay.
 - Provide records to requestor.
 - Agencies can produce records in installments, particularly for larger requests.
 - Agencies can provide an installment by providing links to records on its website.

Enforcement & Penalties



- PRA enforced by **courts** for claims listed in PRA.
- A court can impose **civil penalties: \$0.00 to \$100 per day per document.** No proof of “damages” required.
- Penalties imposed to encourage PRA compliance.
- Plus, a court will award the prevailing requester’s **attorneys fees and costs.**
- Special penalty provisions and court procedures apply to lawsuits involving inmate requests.

Touchstone



- Public records of government agencies are presumed open.
- Records or information in records can be withheld only by legal exemption.
- Exemptions must be “narrowly construed.”
- Non-exempt public records must be disclosed.
- Location does not matter.
- Public records must be retained pursuant to records retention laws.

Local Government Public Records Consultation Program



*Assisting local
governments with
PRA best practices.*



OPMA Training



PRA Training

Morgan Damerow (360) 570-3418
Lucy Collis (360) 664-8756
PRAConsultation@atg.wa.gov

TO: City Council
FROM: Brad Medrud, Planning Manager
DATE: January 25, 2022
SUBJECT: Bush Prairie Habitat Conservation Plan (HCP) – Status Update

1) Recommended Action:

Review the attached materials and be prepared to ask questions of staff.

2) Background:

Working together with the Port of Olympia and large group of stakeholders, the City is in Phase 2 of the process of preparing the Bush Prairie Habitat Conservation Plan (HCP) with consultant assistance to identify appropriate mitigation for take of the Mazama Pocket Gopher, the Streak-Horned Lark, the Oregon Spotted Frog, and the Oregon Vesper Sparrow.

3) Policy Support:

Comprehensive Plan Conservation Element Goal C-1: Recognize the significant role played by natural features and systems in determining the overall environmental quality and livability of Tumwater.

Comprehensive Plan Conservation Element Policy C-2.16: Protect and preserve habitats for species, which have been identified as endangered, threatened, or sensitive by the state or federal government, giving “special consideration: to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

4) Alternatives:

☐ None

5) Fiscal Notes:

This is a federal grant and an internally funded work program task.

6) Attachments:

- A. Memorandum
- B. Presentation



City Hall
555 Israel Road SW
Tumwater, WA 98501-6515
Phone: 360-754-5855
Fax: 360-754-4138

BUSH PRAIRIE HABITAT CONSERVATION PLAN

STATUS MEMORANDUM

CITY COUNCIL WORKSESSION – JANUARY 25, 2022

Introduction

The intent of the Bush Prairie Habitat Conservation Plan (HCP) is to provide a comprehensive citywide permit that would allow development, operations, and activities to occur in compliance with state and federal endangered and threatened species protections while also providing the foundation for a coordinated conservation system that supports the preservation of the endangered and threatened species. Currently, USFWS and WDFW are reviewing a complete draft of the HCP that was submitted in November 2021.

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Background

The City of Tumwater and the Port of Olympia's Olympia Regional Airport and New Market Industrial Campus are located on the site of a glacial prairie historically called Bush Prairie after early resident, George Washington Bush, who settled here in 1845. Since then most of Bush Prairie has been converted to agriculture or forestry, residences, and businesses, but part of it still remains and provides a home for the unique flora and fauna of the South Puget Sound Prairie ecosystem.

Purpose

The HCP is being developed to balance growth and the preservation of endangered species within the City and its urban growth area. The HCP will conserve these species by providing long-term habitat protection across a system of managed reserve areas. The City and the Port are jointly developing the HCP through the terms of an Interlocal Agreement.

Benefits

The HCP will provide for long-term preservation and management of three species, protected under the federal Endangered Species Act, that occur in the City: Olympia pocket gopher, streaked horned lark, and Oregon spotted frog. Protection of habitat for these species will also mitigate for the impacts of ongoing development, maintenance, and other activities performed by the City or the Port, which have the potential to harm or “take” these species or their habitat.

The affected species will benefit from assured, long-term habitat protection. The people of the City and the customers of the Port will benefit from with a federal permit authorizing impacts to these species, which will facilitate ongoing development, maintenance, and operations. The HCP

BUSH PRAIRIE HABITAT CONSERVATION PLAN

is expected to reduce the costs and time that would otherwise be needed for individual landowners to comply with the provisions of the Endangered Species Act.

Habitat and Protected Species

The south Puget Sound prairies support many unique species while also being extensively developed, which create many potential conflicts between development and threatened or endangered species.

The Olympia subspecies of the Mazama pocket gopher is the most widespread of protected prairie species in the City. The Mazama pocket gopher was listed by the federal government under the Endangered Species Act in 2014. The range of the Olympia pocket gopher overlaps the City and its urban growth area. The Airport is prime habitat for the Mazama pocket gopher.

The streaked horned lark is another listed prairie species and the Oregon vesper sparrow is a prairie species that could potentially be listed. Both bird species are found primarily on the Airport.

Another species listed under the Endangered Species Act in the City is the Oregon spotted frog, which is found primarily in wetlands and streams in the western half of the City associated with the Black Lake drainage system.

Endangered Species Act Listing protects both the listed species and its habitat. Many activities occur in the City and on Port property have potential to impact gophers and other prairie species. Because of the potential for impacts, federal permits are needed for those projects. Federal permits, which allow the “take” of animals or habitat, require a complex, costly, slow U.S. Fish and Wildlife Service process that is especially difficult for individual landowners.

Habitat Conservation Plan (HCP)

The HCP is intended to replace the need for individual permits under the Endangered Species Act. The HCP would permits area wide “take” under Section 10 of the Endangered Species Act. In addition to reducing uncertainty, costs, and delays for new development and redevelopment and allowing for development envisioned by the City and Port to be built, as well as continued and ongoing maintenance of City and Port facilities, the HCP would provide for higher quality and more efficient long-term species protection than individual permits would produce.

The HCP will include a detailed description of the activities to be performed, both for development and for species protection, and their effects upon the species. The HCP will describe its governance structure and will provide assurances that the financial resources needed to make it work are available and committed to this task.

Funding for Preparation of the HCP

Federal Section 6 grant funds were approved in 2016 (Phase 1 – \$132,000) and 2018 (Phase 2 – \$846,000) to support the completion of the HCP. Federal funds are matched by City and Port

BUSH PRAIRIE HABITAT CONSERVATION PLAN

funds (\$44,000 each for Phase 1 and \$150,000 each for Phase 2). Section 6 grant funds come from the U.S. Fish and Wildlife Service (USFWS), but are administered by the Washington State Department of Fish and Wildlife (WDFW). Work began under the Phase 1 grant in June 2016 and under Phase 2 in October 2018 and continues to this day.

Species Covered in the HCP

Developed as part of Phase 1 of the HCP, the species that would be covered by the HCP include the following:

Covered Species	Federal Listing Status	State Listing Status
Olympia pocket gopher	Threatened	Threatened
Oregon spotted frog	Threatened	Endangered
Oregon vesper sparrow	Under Review	Species of Concern
Streaked horned lark	Threatened	Endangered

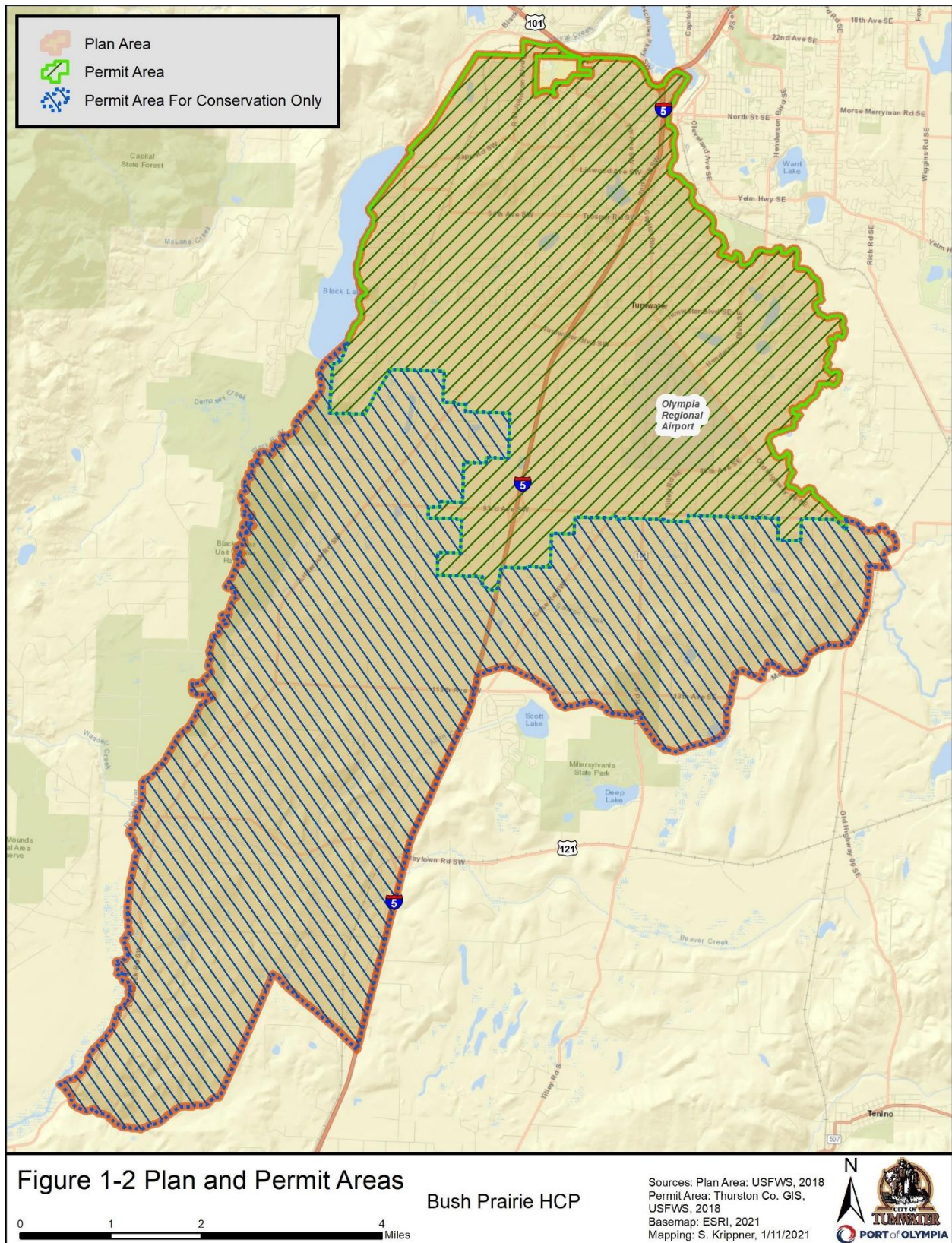
Term of the HCP

Developed as part of Phase 1 of the HCP, the term of the HCP will be 30-years.

Permit & Plan Areas

Developed as part of Phase 1 of the HCP, the permit area covered by the HCP includes the City and is urban growth area and Port controlled lands is 12,877 acres in size. The permit area is where activities can occur that have potential to impact the species covered by the HCP and that would be mitigated through the HCP.

The plan area is the Olympia pocket gopher range, which is approximately 44,009 acres in size, and is primarily where mitigation for impacts to the species covered by the HCP could occur. The City and Port are looking at potentially expanding the plan area for the streaked horned lark to allow for larger area available for mitigation.

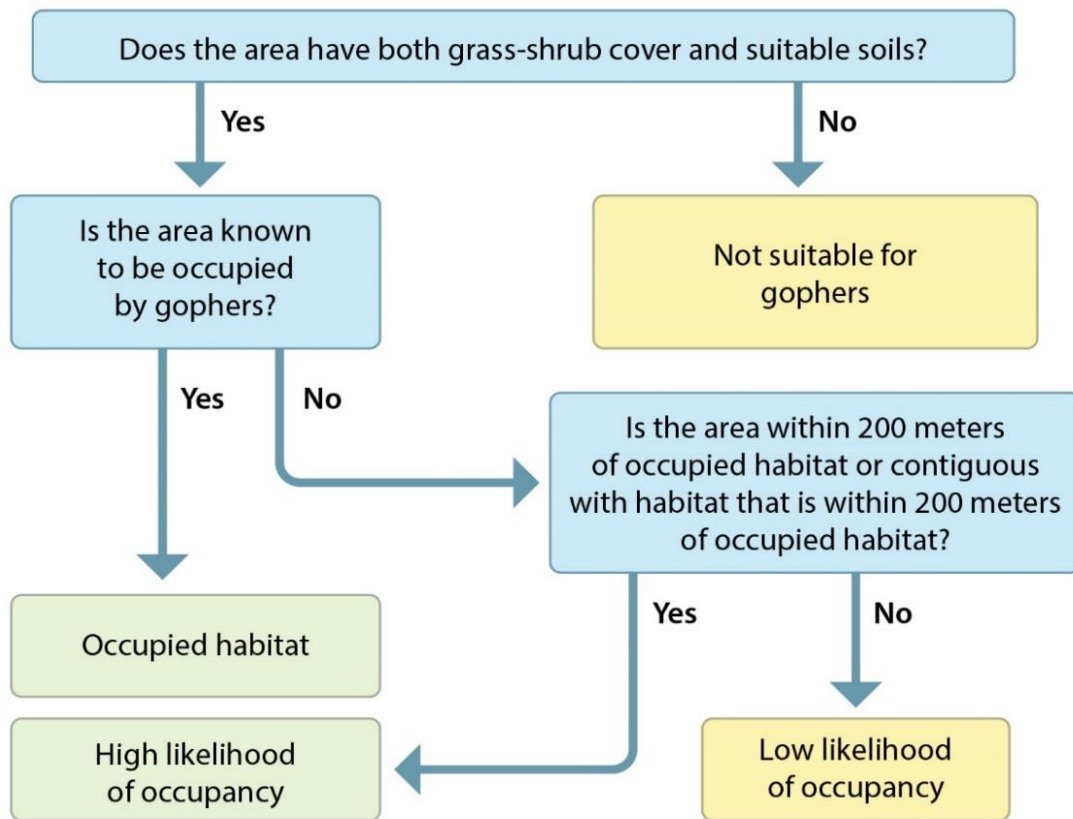


BUSH PRAIRIE HABITAT CONSERVATION PLAN

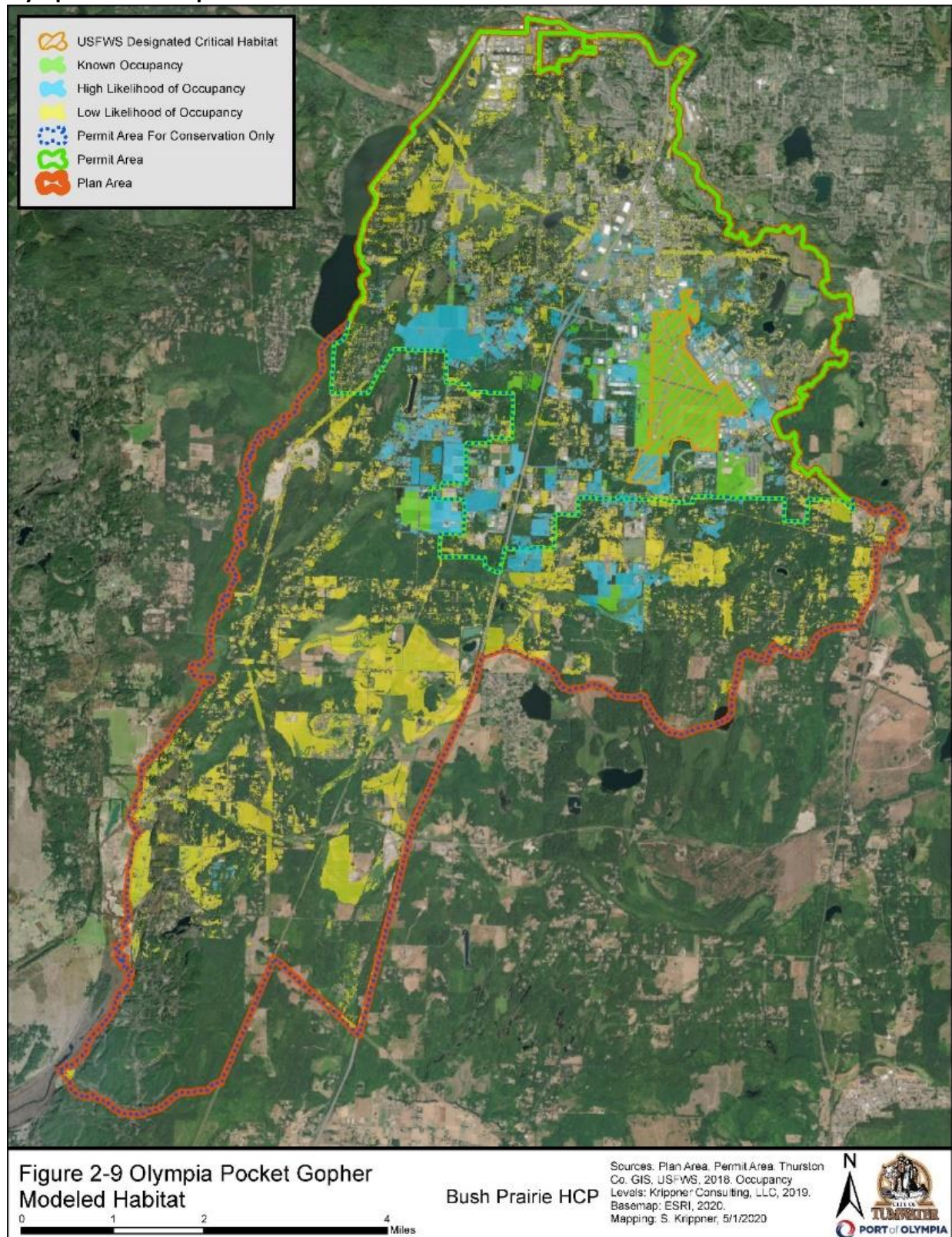
Habitat Models

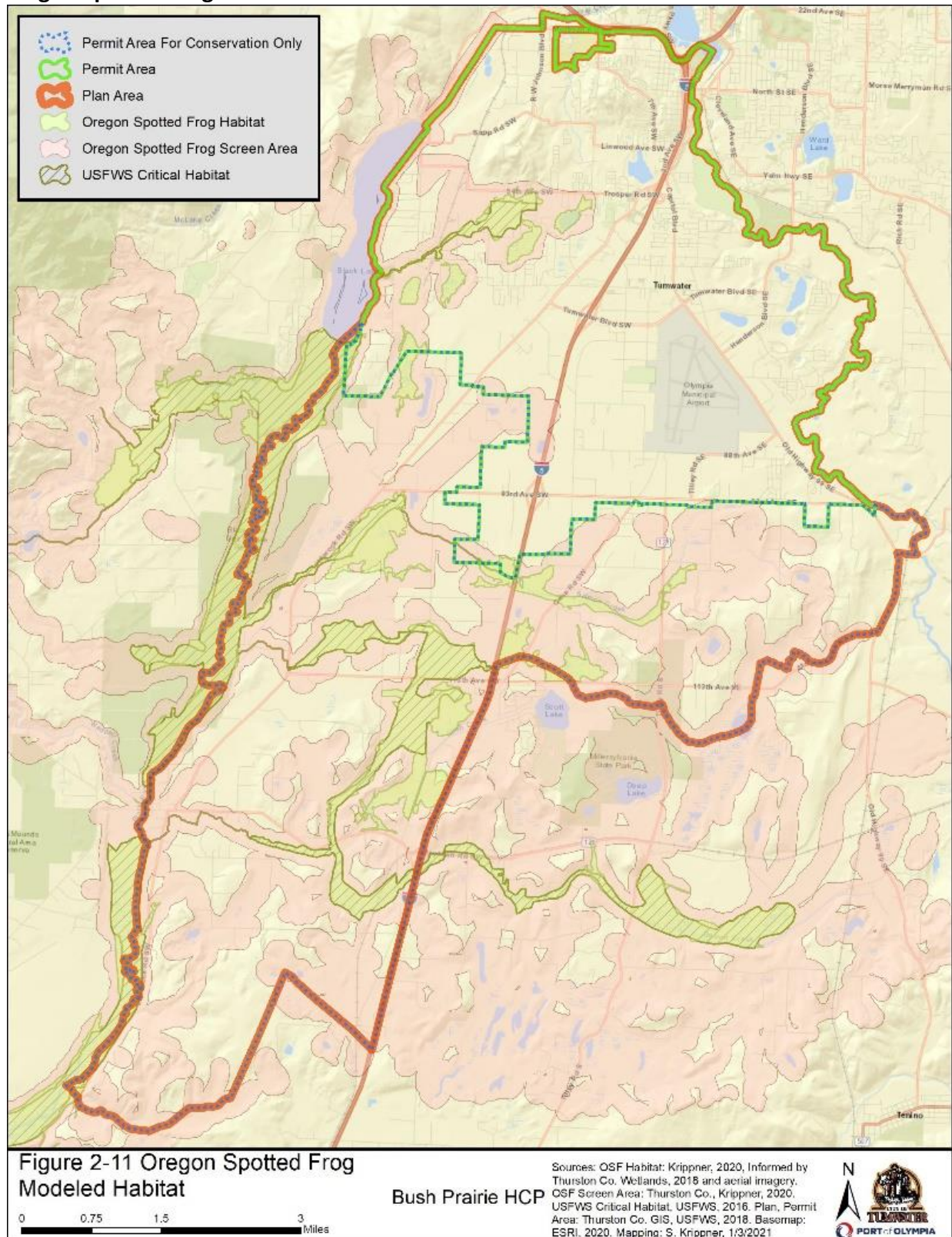
For each of the four species covered by the HCP, a habitat model was developed based on current species habitat information. This habitat model was used to determine the areas where the species and their habitat were most likely to be found and provided the basis for determining the effects of future development and ongoing operations on the species.

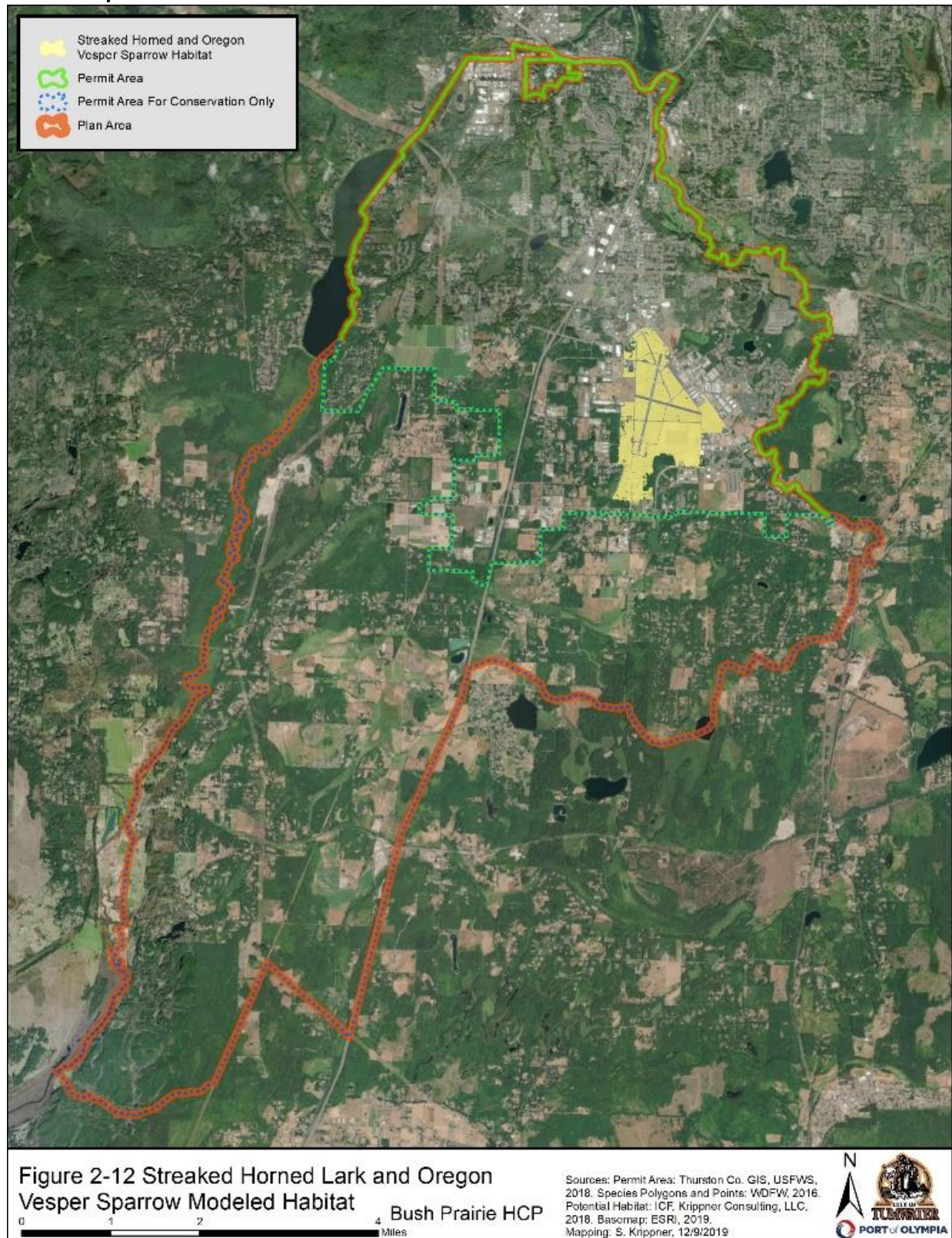
The following is the Olympia Pocket Gopher Model Flow Chart.



The maps on the next three pages depict the modeled habitat for the four species covered by the HCP.

Olympia Pocket Gopher Habitat**BUSH PRAIRIE HABITAT CONSERVATION PLAN**

Oregon Spotted Frog Habitat**BUSH PRAIRIE HABITAT CONSERVATION PLAN**

Lark and Sparrow Habitat**BUSH PRAIRIE HABITAT CONSERVATION PLAN**

Covered Activities in the HCP

Covered activities are those projects or recurring activities that would receive incidental take authorization under the HCP. Activities covered by the HCP must meet all six criteria:

1. Control: City or Port will perform or issue a permit for the activity
2. Location: Activity is within the permit area
3. Timing: Activity is during 30-year permit term
4. Impact: There is a reasonable risk of take/need for a permit
5. Definition: Activity is defined well enough to assess its impacts on the species
6. Practicable: More feasible to include the activity in the HCP than to not do so

The City covered activities include:

1. Urban development projects, anything that requires a permit to be issued by the City
2. Resource development projects such as agriculture and forestry that requires a permit to be issued by the City
3. Recurring Activities, such as the Farmer's Market and public events such as the 4th of July Parade and Fireworks
4. HCP Conservation strategy implementation
5. City operations and maintenance:
 - a. Park and open space facilities
 - b. Public services, infrastructure, and utilities operations and maintenance
 - c. Transportation facilities operations and maintenance

The Port covered activities include:

1. Aeronautical activities are under the authority of Federal Aviation Administration (FAA)
2. Include capital improvements as well as operations and maintenance
3. Capital improvements identified in Olympia Regional Airport Master Plan (ORAMP)
4. Recurring Activities, such as the airshow

Activities not described above or that do not require a City permit would not be covered.

Effects Analysis

The effects analysis identifies activities that may result in incidental take of covered species. It encompasses the immediate effect of an activity on a species or its habitat as well as effects that occur later in time, but are still reasonably certain to take place. This includes direct mortality or injury to individuals or the removal or degradation of suitable habitat. The effects analysis establishes a base level for these potential effects prior to avoidance, minimization, or mitigation measures.

Estimates of urban growth in the City were determined by models run by TRPC and estimates of Port development were determined by the Port of Olympia Master Plan. Areas were removed that are unlikely to develop, such as where high intensity development has already occurred, mitigated development is underway, or lands already set aside for mitigation. Areas that were likely to develop were compared with assumptions about species habitat potential.

Olympia Pocket Gopher Estimated Effects

Modeled Habitat Type	Total Amount of Modeled Habitat in Permit Area (acres)	Proportion of Habitat in Permit Area	Maximum Amount Removed by Covered Activities (acres)	Modeled Habitat Remaining in Permit Area Following Loss from Covered Activities (acres)	Percent Lost During Permit Term
Occupied	1,014	2%	277	737	27
Higher Likelihood of Occupancy	1,630	4%	635	995	39
Lower Likelihood of Occupancy	4,360	10%	597	3,763	14
Total	7,004	16%	1,509	5,495	21

BUSH PRAIRIE HABITAT CONSERVATION PLAN

STATUS MEMORANDUM

January 25, 2022

Oregon Spotted Frog Estimated Effects

Modeled Habitat Type	Total Modeled Habitat in Permit Area (acres)	Maximum Loss of Modeled Habitat in Permit Area (acres)	Total Habitat Remaining Following Modeled Habitat Loss from Covered Activities (acres)	Percent Lost During Permit Term
Occupied Wetlands	2,654	20	2,634	0.7

Streaked Horned Lark/Oregon Vesper Sparrow Estimated Effects

Modeled Habitat Type	Total Amount of Modeled Habitat in Permit Area (acres)	Maximum Amount of Modeled Habitat Lost in Permit Area (acres)^a	Amount of Modeled Habitat Remaining Following Habitat Loss under HCP (acres)	Percent of Habitat Lost During Permit Term
<i>Suitable Habitat</i>	814	345	469	42

Conservation Strategy

The HCP's conservation strategy is designed to address the requirement in the Endangered Species Act to minimize and mitigate the impacts of the taking on the covered species to the maximum extent practicable (16 USC 1539). The conservation strategy describes a mitigation program that will fully offset the impacts of the taking on each of the covered species that may result from covered activities. The conservation strategy mitigates the impacts discussed in the effects analysis, including direct, indirect, temporary, and permanent effects. The conservation strategy is based on the best scientific data available at the time of its preparation and it considers the limitations of the baseline data available for the plan area.

BUSH PRAIRIE HABITAT CONSERVATION PLAN

STATUS MEMORANDUM

January 25, 2022

The conservation strategy identifies the amount of mitigation land needed, the criteria for selecting it, and the location requirements. The conservation strategy creates biological goals and objectives for covered species, outlines the management activities on mitigation lands that will improve habitat conditions, and describes a monitoring program to track progress.

The following table shows the land acquisition goals for each of the four covered species in acres, assuming maximum impacts.

Modeled Habitat	Total Maximum Permanent Impacts	Mitigation Ratio for Permanent Impacts	Estimated Protected Habitat for Permanent Impacts	Total Maximum Temporary Impacts	Mitigation Ratio for Temporary Impacts	Estimated Protected Habitat for Temporary Impacts	Total Permanently Protected Habitat if Maximum Impacts Occur
Olympia pocket gopher	1,509	1:1	1,509	191	0.5:1	96	1,351–1,605
Oregon spotted frog	20	1:1	20	20	1:1	20	40
Streaked horned lark	345	1:1	345	45	0.5:1	23	368
Oregon vesper sparrow	537	1:1	537	45	0.5:1	23	560

Monitoring and Adaptive Management

The monitoring and adaptive management framework for the HCP includes guidelines and specific recommendations that will help the City and Port develop a detailed program during the initial years of implementation. The purposes of this framework and the monitoring program are to ensure compliance with the HCP, to assess the status of covered species habitat within the Reserve System, and to evaluate the effects of management actions on species as the conservation strategy is implemented over time.

Adaptive management and monitoring are integrated processes in the HCP, and monitoring will inform changes to management actions to improve outcomes continually for covered species.

Implementation

The Implementation chapter of the HCP includes a description of the City and the Port's roles and responsibilities as HCP Permittees, the covered activity application process, the process for assembling the Reserve System and other mitigation options, and annual compliance and

BUSH PRAIRIE HABITAT CONSERVATION PLAN

reporting. The City will be the primary responsible party for HCP implementation, with the Port as a close partner. The Implementation chapter also outlines the regulatory assurances sought by the HCP Permittees and the changed and unforeseen circumstances that define those assurances.

The HCP takes into account a number of uncertainties regarding covered activities that will need to be addressed during implementation of the HCP, such as the total amount of development that will ultimately occur, frequency of operations and maintenance activities, amount of onsite mitigation, and location within the City.

Another uncertainty is the number of project proponents who elect to seek federal ESA coverage through the HCP. The HCP assumes that project proponents for all covered activities in modeled covered species habitat will seek coverage under the HCP rather than obtaining their own ESA permits. However, based on site-specific circumstances, there may be project proponents who work directly with USFWS. The HCP does not preclude project proponents electing to seek ESA compliance on their own.

Costs and Funding

The HCP estimates the costs to implement the HCP and describes the methods used to estimate the costs and funding needed for the permit term and to continue management after the permit term. The HCP identifies fees and other funding sources that support implementation of the HCP, the funding needed to support ongoing management of Reserve System lands after the permit term ends, and funding adequacy.

Estimating the full costs of the HCP is an essential step in demonstrating adequate funding to meet regulatory standards. The City has primary responsibility for overall and day-to-day implementation of the HCP. For Plan implementation, the City will annually prepare and approve a budget, based on current information and projections regarding Plan assets, revenues, and expenses.

HCP Cost Centers

Cost centers for the HCP include the following:

1. Plan administration
2. Conservation land acquisition
3. Land management and habitat restoration
4. Monitoring and adaptive management
5. An endowment to fund to manage mitigation lands in perpetuity
6. Contingency funds to cover uncertainties
7. Olympia Pocket Gopher Research

BUSH PRAIRIE HABITAT CONSERVATION PLAN

Habitat Conversion Fee

A habitat conversion fee will be used to fund the implementation of the HCP. The habitat conversion fee would be due at the first applicable step in the project approval process that authorizes ground disturbance, such as:

- Grading permit issuance
- Building permit issuance
- Any other final action for a covered activity that authorizes an action that will result in an impact on a covered species or its habitat

For development projects such as parks subject to mitigation fees but not subject to future building permit issuance, the entire fee obligation associated with this acreage will be due at grading permit or improvement plan approval

For projects with multiple phases, the fee for each phase is due at the time of issuance of grading permits, improvement plans, or building permits

Infrastructure improvements that serve more than one phase on multi-phase projects will pay fees at grading permit issuance or improvement plan approval regardless of the number of future phases served by the infrastructure

Habitat Conversion Fee – Examples

Any project (residential, commercial, institutional, or industrial) disturbing 10 acres of habitat:

10 acres X \$51,364 (Habitat Conversion Fee) per acre = \$513,640 in Habitat Conversion Fees

Adding a 20 foot by 30-foot patio to a backyard of an existing house disturbing habitat:

20 feet X 30 feet = 600 square feet

600 square feet / 43,560 square feet = 0.014 acres

0.014 acres X \$51,364 (Habitat Conversion Fee) per acre = \$707.49 in Habitat Conversion Fees

Any project not disturbing habitat

No Habitat Conversion Fee

Public Engagement

Staff has met with the project team and USFWS on a monthly basis. Three stakeholder meetings have been held to date and two more are planned. Staff has held numerous meetings with small groups of stakeholders and has done special coordination with WDFW and FAA.

BUSH PRAIRIE HABITAT CONSERVATION PLAN

A community meeting was held on November 14, 2019 and a second community meeting is planned for 2022.

NEPA and SEPA Review Process

National Environmental Policy Act (NEPA) and State Environmental Policy Act (SEPA) review will be required by the project and it is expected that a Notice of Intent and Public Scoping will start this year, which will involve public review and comment. It is expected that NEPA and SEPA review can be accomplished using a single document.

Timeline 2021

- January 15, 2021: Submitted first Administrative Draft HCP to USFWS
- July 12, 2021: Held workshop with USFWS
- November 12, 2021: Submitted second Administrative Draft HCP to USFWS and WDFW
- Held ten USFWS meetings and one WDFW meeting during the year

Timeline 2022/23

- Complete HCP: Public Draft expected late summer 2022, Final HCP and approvals 2023
- Prepare EIS: Scoping meeting in spring 2022 with draft EIS expected in 2022 and completed in 2023

Next Steps

- USFWS and WDFW completes review of Administrative Draft of the HCP
- HCP Administrative Draft made available to the public
- Next stakeholder meeting early-2022
- Start of the NEPA/SEPA scoping and review process

Project Website

<http://www.bushprairiehcp.org/>

Applicable Comprehensive Plan Goals and Policies

From the Conservation Element of the Comprehensive Plan:

Goal C-1: Recognize the significant role played by natural features and systems in determining the overall environmental quality and livability of Tumwater.

Policy C-1.1 Protect the ecological integrity of the natural environment while allowing for compatible growth and development.

Policy C-1.2 Promote conservation of natural resources and the environment in cooperation with residents, business owners, schools, affected jurisdictions, and tribes.

Goal C-2: Designate and protect critical areas including wetlands, critical aquifer recharge areas, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas in accordance with the Growth Management Act to protect the functions and values of these areas as well as to protect against threats to health, safety, and property.

Policy C-2.16 Protect and preserve habitats for species, which have been identified as endangered, threatened, or sensitive by the state or federal government, giving special consideration: to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

Staff Contacts

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Brad Medrud, Planning Manager

City of Tumwater

Community Development Department

360-754-4180

mmatlock@ci.tumwater.wa.us

bmedrud@ci.tumwater.wa.us

Bush Prairie Habitat Conservation Plan



Habitat Conservation Plan 101

City Council Worksession, January 25, 2022



- **Habitat and Protected Species**
- **Endangered Species Act Listing**
- **Need for Habitat Conservation Plan**
- **Overview of Bush Prairie HCP**
- **Public Engagement Opportunities**
- **Questions & Comments**

Agenda



Habitat and Protected Species

- **South Puget Sound Prairies**
 - Support many unique species
 - Extensively developed
 - Many potential conflicts between development and endangered species

- **Mazama Pocket Gopher**
 - Endangered Species Act listing in 2014
 - Most widespread of protected prairie species in the City



- **Other Listed Prairie Species**
 - Streaked Horned Lark
 - Oregon Vesper Sparrow
 - Both on Olympia Regional Airport

- **Oregon Spotted Frog**

- Found primarily in wetlands and streams in the western half of the City associated with the Black Lake drainage system

Habitat and Protected Species



Endangered Species Act Listing

■ ESA Listing

- Protects species and habitat
- The range of the Olympia pocket gopher overlaps with the City of Tumwater UGA
- Oregon spotted frog habitat in City
- Many activities occur in the City and on Port property potentially impact gophers and other species
- Permits are needed for those projects
- City and Port ILA 2016



- **ESA Listing**
 - “Take” of animals or habitat requires a complex, costly, slow USFWS process
 - Especially difficult for individual landowners

Endangered Species Act Listing



HCP – Benefits

- **Habitat Conservation Plan (HCP)**
 - Permits area wide “take” (ESA Section 10)
 - Allows for higher quality and more efficient long-term species protection
 - Reduces uncertainty, costs, and delays for new development and redevelopment
 - Allows development envisioned by the City and Port to be built
 - Allows continued and ongoing maintenance of City and Port facilities



HCP – Funding to Prepare HCP

- **Funding to Prepare HCP**
 - Federal Section 6 grant funds received in 2016 (Phase 1) and 2018 (Phase 2) to support the completion of an HCP
 - Matched by City and Port funds
 - Section 6 grant funds from the U.S. Fish and Wildlife Service, but administered by the Washington Department of Fish and Wildlife
 - Work began under the Phase 1 grant in June 2016 and under Phase 2 in October 2018



Covered Species	Federal Listing Status	State Listing Status
Olympia pocket gopher	Threatened	Threatened
Oregon spotted frog	Threatened	Endangered
Oregon vesper sparrow	Under Review	Species of Concern
Streaked horned lark	Threatened	Endangered

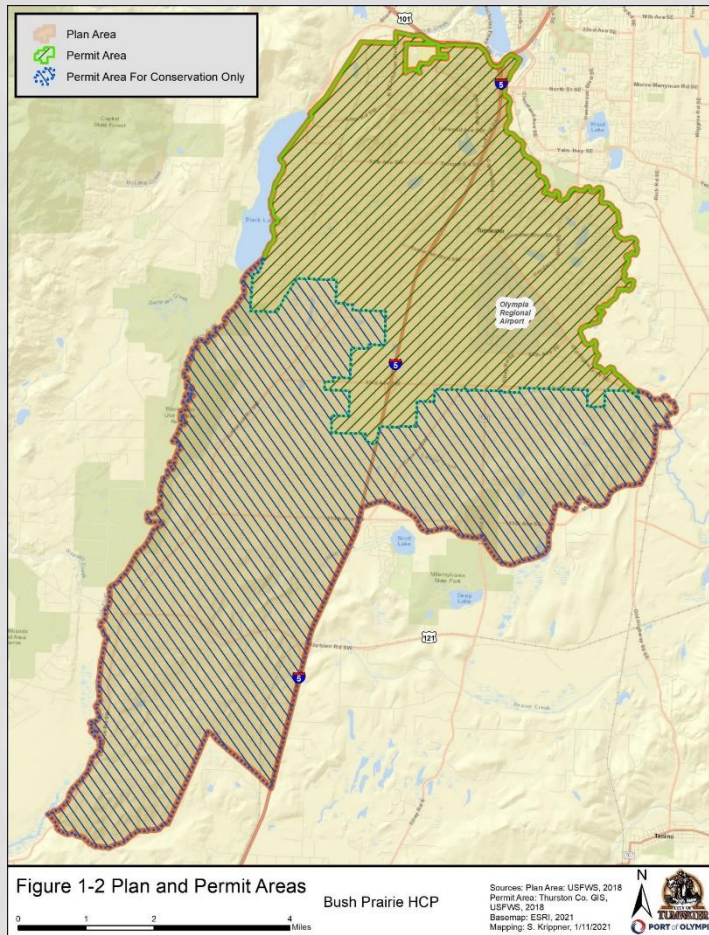


HCP – Covered Species



- **Permit Area**
 - Covers City and Port Controlled Lands
- **Term**
 - 30-year Term

HCP – Permit Area and Term

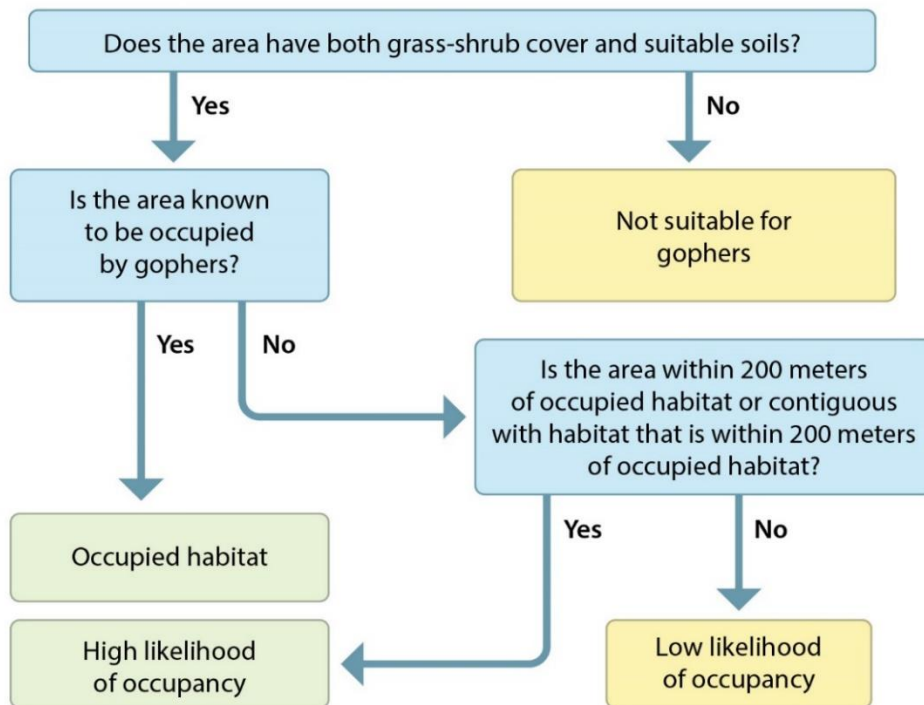


- **Permit Area**
City of Tumwater urban growth area, west of the Deschutes River
- **Plan Area**
Olympia pocket gopher range

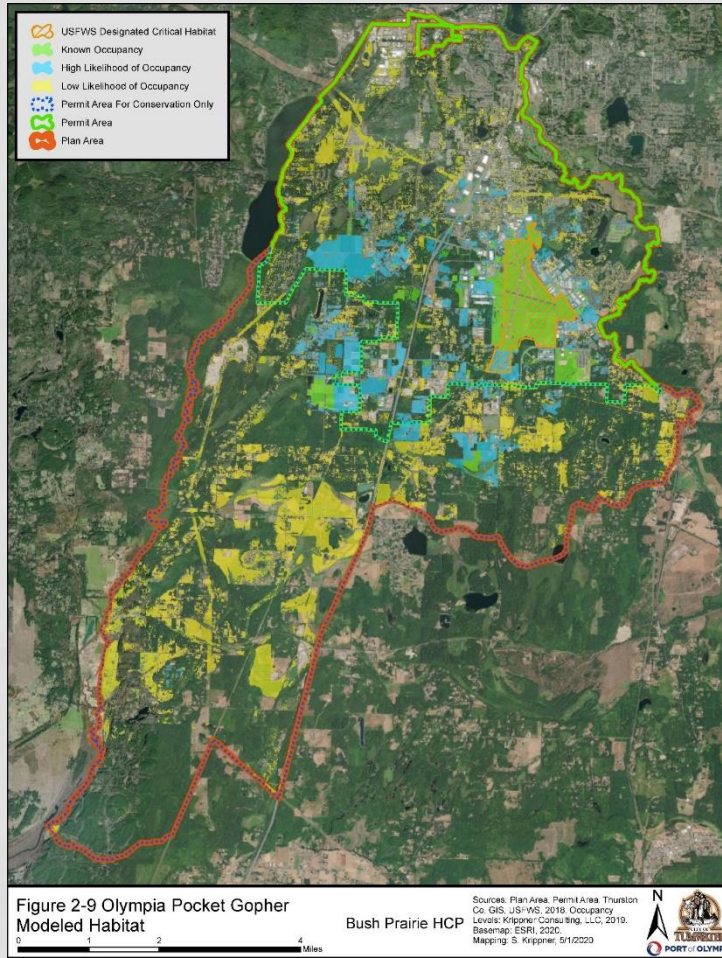
HCP – Permit & Plan Areas



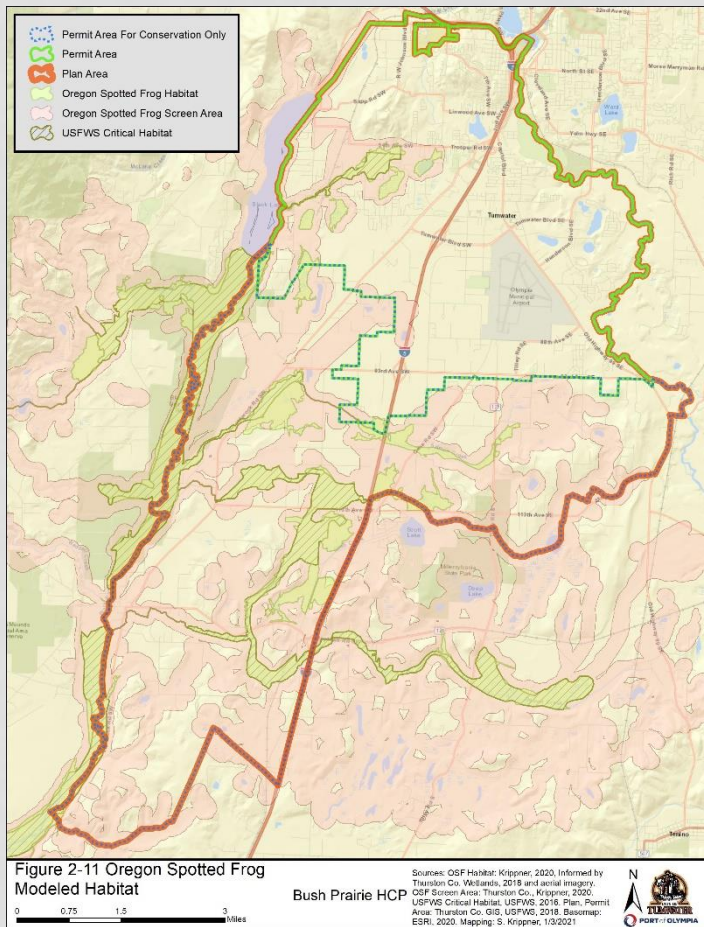
■ Olympia Pocket Gopher Model



HCP –
Habitat
Models



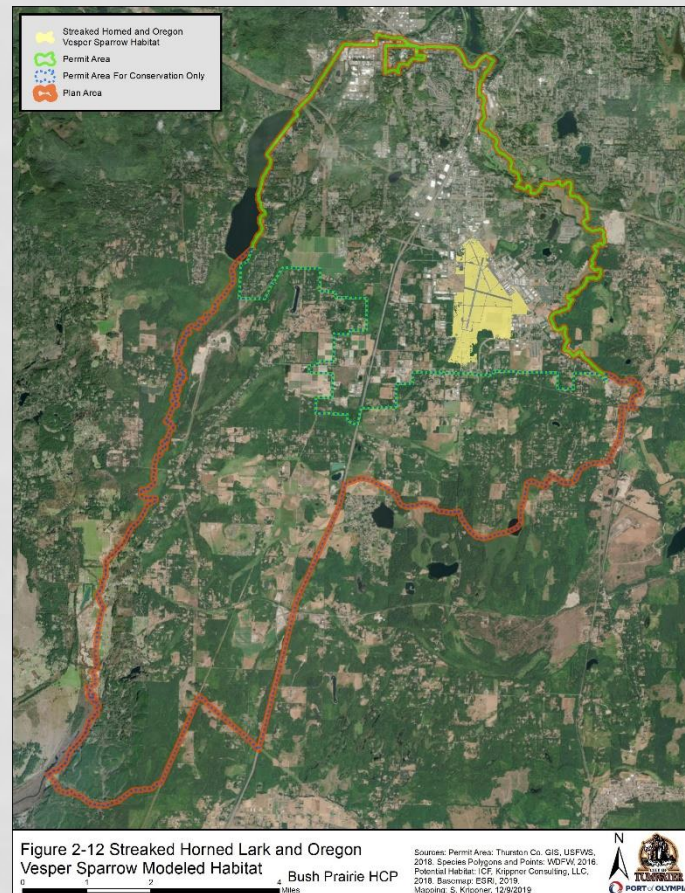
HCP — Olympia Pocket Gopher Habitat



HCP – Oregon Spotted Frog Habitat



- Used known occurrences
- Included adjacent lands with short grassland vegetation



HCP – Lark and Sparrow Habitat



HCP – Covered Activities Criteria

■ Activities Covered

- Activities must meet all six criteria:
 1. Control: City or Port will perform or issue a permit for the activity
 2. Location: Activity is within Permit Area
 3. Timing: Activity is during 30-year permit term
 4. Impact: There is a reasonable risk of take
 5. Definition: Activity is defined well enough to assess its impacts on the species
 6. Practicable: More feasible to include the activity in the HCP than to not do so



- **City Activities Covered**
 1. Urban development projects
 2. Recurring activities (public events)
 3. Facilities operations and maintenance
 4. Conservation strategy implementation

**HCP – City
Covered
Activities**



■ Port Activities Covered

1. Aeronautical activities under the authority of Federal Aviation Administration (FAA)
2. Operations and maintenance
3. Capital improvements identified in Olympia Regional Airport Master Plan

**HCP – Port
Covered
Activities**



- **Effects Analysis**
 - Identifies activities that may result in incidental take of covered species
 - Encompasses the immediate effect of an activity on a species or its habitat as well as effects that occur later in time, but are still reasonably certain to take place
 - Includes direct mortality or injury to individuals or the removal or degradation of suitable habitat

HCP – Effects Analysis



■ Development Effects

- Estimates of urban growth from the Thurston Regional Planning Council
- Estimates of development under the Port of Olympia Master Plan
- Removed areas that are unlikely to develop (e.g., development underway, mitigation lands)
- Compared areas likely to develop with assumptions about species habitat potential

HCP – Effects Analysis



HCP – Estimated Effects Olympia Pocket Gopher

Modeled Habitat Type	Total Amount of Modeled Habitat in Permit Area (acres)	Proportion of Habitat in Permit Area	Maximum Amount Removed by Covered Activities (acres)	Modeled Habitat Remaining in Permit Area Following Loss from Covered Activities (acres)	Percent Lost During Permit Term
Occupied	1,014	2%	277	737	27
Higher Likelihood of Occupancy	1,630	4%	635	995	39
Lower Likelihood of Occupancy	4,360	10%	597	3,763	14
Total	7,004	16%	1,509	5,495	21

*Acreages are estimates and may change prior to completion of the HCP



HCP – Estimated Effects Oregon Spotted Frog

Modeled Habitat Type	Total Modeled Habitat in Permit Area (acres)	Maximum Loss of Modeled Habitat in Permit Area (acres)	Total Habitat Remaining Following Modeled Habitat Loss from Covered Activities (acres)	Percent Lost During Permit Term
Occupied Wetlands	2,654	20	2,634	0.7

*Acreages are estimates and may change prior to completion of the HCP



HCP – Estimated Effects Streaked Horned Lark/Oregon Vesper Sparrow

Modeled Habitat Type	Total Amount of Modeled Habitat in Permit Area (acres)	Maximum Amount of Modeled Habitat Lost in Permit Area (acres) ^a	Amount of Modeled Habitat Remaining Following Habitat Loss under HCP (acres)	Percent of Habitat Lost During Permit Term
Suitable Habitat	814	345	469	42

*Acreages are estimates and may change prior to completion of the HCP



HCP – Conservation Strategy

- **Conservation Strategy**
 - Designed to address ESA requirement to minimize and mitigate the impacts of the taking on the covered species to the maximum extent practicable
 - Mitigation program fully offsets the taking impacts of each of the covered species that may result from covered activities



HCP – Conservation Strategy

■ Conservation Strategy

- Mitigates the impacts in the effects analysis, including direct, indirect, temporary, and permanent effects
- Based on the best scientific data available at the time of its preparation
- Identifies the amount of mitigation land needed, the criteria for selecting it, and the location requirements



HCP – Conservation Strategy

- **Conservation Strategy**
 - Creates biological goals and objectives for covered species
 - Outlines the management activities on mitigation lands that will improve habitat conditions
 - Describes a monitoring program to track progress



■ Conservation Strategy

Modeled Habitat	Total Maximum Permanent Impacts	Mitigation Ratio for Permanent Impacts	Estimated Protected Habitat for Permanent Impacts	Total Maximum Temporary Impacts	Mitigation Ratio for Temporary Impacts	Estimated Protected Habitat for Temporary Impacts	Total Permanently Protected Habitat if Maximum Impacts Occur
Olympia pocket gopher	1,509	1:1	1,509	191	0.5:1	96	1,351–1,605
Oregon spotted frog	20	1:1	20	20	1:1	20	40
Streaked horned lark	345	1:1	345	45	0.5:1	23	368
Oregon vesper sparrow	537	1:1	537	45	0.5:1	23	560

HCP – Conservation Strategy – Land Acquisition Goals



HCP – Monitoring and Adaptive Management

- **Monitoring and Adaptive Management**
 - Includes guidelines to develop a detailed program during the initial years of implementation to:
 1. Ensure compliance with the HCP
 2. Assess the status of covered species habitat within the Reserve System
 3. Evaluate the effects of management actions on species as the conservation strategy is implemented over time



HCP – Implementation

- **Implementation**
 - City and the Port's roles and responsibilities as HCP Permittees
 - Covered activity application process
 - Process for assembling the Reserve System and other mitigation options
 - Annual compliance and reporting
 - The City will be the primary responsible party for HCP implementation



HCP – Implementation

- **Implementation**
 - The HCP takes into account a number of uncertainties:
 1. Total amount of development that occurs
 2. Frequency of operations and maintenance activities
 3. Amount of onsite mitigation
 4. Number of project proponents who seek ESA coverage through the HCP



HCP – Cost Centers

- **HCP Cost Centers**
 - Implementation of conservation strategy
 - Mitigation land acquisition
 - Land management, monitoring, and administration costs
 - Adaptive management
 - Funding to manage mitigation lands in perpetuity
 - Contingency funds to cover uncertainties



HCP – Cost Centers

■ HCP Costs – Habitat Conversion Fee

	Average Annual Costs	Cumulative 30-Year Costs
Plan Administration	\$55,000	\$1,732,500
Conservation Land Acquisition	\$1,561,636	\$46,849,076
Land Management and Habitat Restoration	\$317,117	\$9,513,507
Monitoring and Adaptive Management	\$267,916	\$8,037,487
Olympia Pocket Gopher Research	\$20,000	\$200,000
Endowment	\$406,765	\$12,202,935
Total	\$2,615,100	\$78,535,505
<i>Total Acres Impacted</i>		<i>1,529</i>
<i>Cost Per Acre of Impact (Habitat Conversion Fee)</i>		<i>\$51,364</i>



HCP – Habitat Conversion Fee

- **Habitat Conversion Fee – Timing**
 - The habitat conversion fee due at the first applicable step in the project approval process that authorizes ground disturbance, such as:
 - Grading permit issuance
 - Building permit issuance
 - Any other final action for a covered activity that authorizes an action that will result in an impact on a covered species or its habitat



HCP – Habitat Conversion Fee

- **Habitat Conversion Fee – Timing**
 - For development projects such as parks subject to mitigation fees but not subject to future building permit issuance, the entire fee obligation associated with this acreage will be due at grading permit or improvement plan approval



HCP – Habitat Conversion Fee

- **Habitat Conversion Fee – Timing**
 - For projects with multiple phases, the fee for each phase is due at the time of issuance of grading permits, improvement plans, or building permits
 - Infrastructure improvements serving more than one phase on multi-phase projects will pay fees at grading permit issuance or improvement plan approval regardless of the number of future phases served by the infrastructure



- **Habitat Conversion Fee – Examples**
 - Any project (residential, commercial, institutional, or industrial) disturbing 10 acres of habitat:

10 acres X \$51,364 (Habitat Conversion Fee) per acre =
\$513,640 in Habitat Conversion Fees

HCP – Habitat Conversion Fee



■ Habitat Conversion Fee – Examples

- Adding a 20 foot by 30 foot patio to a backyard of an existing house disturbing habitat:

20 feet X 30 feet = 600 square feet

600 square feet / 43,560 square feet = 0.014 acres

0.014 acres X \$51,364 (Habitat Conversion Fee) per acre =
\$707.49 in Habitat Conversion Fees

**HCP –
Habitat
Conversion
Fee**



- **Habitat Conversion Fee – Examples**
 - Any project not disturbing habitat

No Habitat Conversion Fee

HCP – Habitat Conversion Fee



Public Engagement

- **Stakeholder Meetings**
 - Three full stakeholder meetings to date, several more planned
 - Numerous meetings with small groups of stakeholders
 - Special coordination with WDFW and FAA

- **Community Meetings**
 - November 14, 2019
 - Second Meeting planned for 2022



NEPA/SEPA Review

- **NEPA/SEPA Review Process**
 - Notice of Intent
 - Public Scoping
 - Public Review and Comment
 - National Environmental Policy Act (NEPA) and State Environmental Policy Act (SEPA) can be completed concurrently
 - NEPA and SEPA may be accomplished using a single document or separate documents



HCP – Timeline 2021

- **2021 HCP Activities**
 - **January 15, 2021:** Submitted first Administrative Draft HCP to USFWS
 - **July 12, 2021:** Held workshop with USFWS
 - **November 12, 2021:** Submitted second Administrative Draft HCP to USFWS and WDFW
 - Held ten USFWS meetings and one WDFW meeting during the year



- **2022-23 HCP Activities**
 - **Complete HCP:** Public Draft expected late summer 2022, Final HCP and approvals 2023
 - **Prepare EIS:** Scoping meeting in spring 2022 with draft EIS expected in 2022 and completed in 2023

HCP – Timeline 2022/23



■ What's Next

- USFWS and WDFW completes review of Administrative Draft of the HCP
- HCP Administrative Draft made available to the public
- Next stakeholder meeting early-2022
- Start of the NEPA/SEPA scoping and review process

What's Next



- **Questions and Discussion**
- **Project Website:**
<http://www.bushprairiehcp.org/>

Questions

TO: Council Worksession
FROM: Chuck Denney, Parks and Recreation Director
DATE: January 25, 2022
SUBJECT: Golf Course Update

1) Recommended Action:

Discussion Item

2) Background:

2022 is the 25th year that the City of Tumwater has been providing recreational golf, programs and events at the Tumwater Valley Golf Course. Staff will be updating the City Council on golf operations, maintenance, and the overall budget.

The COVID-19 pandemic has provided challenges and opportunities with the operation of the golf course. As an outdoor recreational activity, golf has been very popular during the pandemic. Staff creativity, planning, and management has positioned Tumwater Valley for success and participation numbers are at record levels.

Daily play, tournaments, lessons, youth programs, Special Olympics, and community events are all planned for 2022.

3) Policy Support:

Council Strategic Goals and Priorities

- Build a Community Recognized for Quality, Compassion and Humanity - Pursue "quality of life" (e.g., trails, trees, parks, community gardens, events) and aesthetic improvements (hanging baskets, public art, specialty and wayfinding signs, landscaping)
- Be a Leader in Environmental Sustainability

Vision-Mission-Beliefs

- Environment - We act to preserve and enhance the natural environment and the social fabric of our community.
-

4) Alternatives:

☐ Discussion Item

5) Fiscal Notes:

Staff will discuss golf revenue, expenditures, and trends.

6) Attachments:

None