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Interim Protections Restrict Land Uses

Estimated 117,690 Acres Affected in Thurston County

Significant constraints have been imposed on development in Thurston County, including land clearing activities.

The interim Prairie and Oak Woodlands Conservation ordinance is the county's vehicle for protecting prairie species that are candidates for protection under the Endangered Species Act.

It is a subset of the Thurston County Critical Areas Ordinance.

In July, the ordinance was amended and renewed for another six months.

With the recent amendments to the interim ordinance, 117,690 acres in the county are restricted to protect prairie habitat and oak woodlands. The constraints protect threatened or endangered plants and animals, as well as species not yet protected, but being considered for these classifications.

Mazama pocket gophers, the golden paintbrush plant, Taylor's checkerspot butterfly and the streaked horned lark are protected by Thurston County.

*"Schools, fire stations, houses,
land clearing and other
development will be significantly
restricted or prohibited ..."*

Even within areas designated under the Growth Management Act to be served by public utilities like sewer and water, the restrictions will prohibit development. Schools, fire stations, houses, land clearing and other development will be significantly restricted or prohibited by the habitat and species protections.

Development activities within 600 feet of protected habitats now require the submission of a Habitat Management Plan (HMP) to

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Photo by Curtis Wambach, PE Consultants LLC

Many properties in the Tumwater Urban Growth Area and other parts of Thurston County will be undevelopable at any density or for any uses without special approvals. The recent amendment added an exemption for agricultural uses.

*For more information on land use issues,
contact Mick Phillips, rphillips@owensdavies.com*



Mike Mayberry

An Accomplished Litigator



Mike Mayberry

An experienced trial and appellate lawyer, Mike Mayberry represents clients in complex cases

involving millions of dollars.

"Mike is an accomplished litigator," reveals colleague and fellow attorney Richards Phillips. "He builds a case, one substantial brick at a time, until there's a high wall with no place for his opponent to go."

This skill in litigation has earned Mike success in many cases. He represented the Port of Olympia in seeking reimbursement from the Port's insurance carriers for costs at the Cascade Pole site. More than \$7 million was collected from insurers in this multi-year litigation.

In another example, Mike represented a person who contracted Legionnaires' Disease on a cruise ship in the Caribbean. Suit was required to be filed in London. Mike's meticulous approach

resulted in a successful settlement with the foreign-based ownership of the cruise line.

He has also collected millions in wrongful death cases for surviving family members.

Work History & Practice Areas

Mike's practice has always been devoted to civil litigation, as well as business and consumer advisory. It includes environmental contamination, insurance coverage, commercial disputes, construction and employment law.

He has represented families and individuals in numerous wrongful death and personal injury claims, covering everything from product defects to motor vehicle and industrial accidents to toxic exposure to pharmaceutical malpractice.

For nearly 25 years Mike has been plying his trade as a civil litigation lawyer at Owens Davies. Prior to that he was in Longview with Klingberg & Reitsch, P.S., where he began his career in 1983.

Education & Associations

Mike patronized both sides of the state in his educational pursuits. He did his undergraduate work at Washington State University, receiving a BA in Political Science and graduating Summa Cum Laude and Phi Beta Kappa.

He received his law degree from the University of Washington in 1983, passing the state bar that same year. Mike has been a member of the Thurston County Bar since 1987 and has been admitted to the U.S. Court of Appeals, Ninth Circuit and U.S. Supreme Court.

On a Personal Note

Mike attended Tumwater High School. He and wife Polly have been married 26 years. They have three grown children and three granddaughters. When not busy with law and family, Mike enjoys travel and making wine. Mike received his Enology Certificate from Washington State University in 2009. Mike and Polly, a caterer, enjoy hosting dinners and wine tastings for local charities.

Michael W. Mayberry
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Determining Waterfront Property Boundary Lines

One of the first questions to explore when evaluating a water boundary issue is if the waterbody has been determined in a court of law to be navigable or not.

If the waterbody is navigable, the boundary line issue usually will involve

the State of Washington as a party. This is because the State asserts ownership of the beds and shores of all waterbodies that were navigable at the time of statehood in 1889.

The WA Dept. of Natural Resources (DNR) manages state-owned

aquatic lands. DNR defines a navigable body of water as "capable or susceptible of having been or being used for the transport of useful commerce." Also if the waterbody has been meandered by government surveyors, DNR considers

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DID YOU KNOW?

Considerations for Selecting Your Best Fiduciaries in Estate Planning



Have you considered who will care for your minor children should you die before they come of age?

Being trustworthy, loyal and kind might be enough in some circumstances, but in choosing the best fiduciaries to manage your affairs other characteristics are also needed.

One of the most important steps in implementing an estate plan is selecting the people (and in some cases institutions) who will act as fiduciaries when you're unable to act on behalf of yourself.

A typical estate plan has a number of duties for fiduciaries, some of

which may need to be carried out while you're still alive.

Roles include:

- The personal representative (or executor) under a will.
- The trustee under any trust that may be established.
- The attorney-in-fact acting pursuant to health care documents.
- The attorney-in-fact acting pursuant to a financial power of attorney.
- The guardian(s) for minor children, who will care for your them if you should die before they come of age.

Each of these roles is different. It may or may not be appropriate to have the same person fill each role. A person with great skill in raising children may be a good guardian. However they may not have the skill or experience to handle your financial affairs under a power of attorney.

Carefully consider an individual's ability AND willingness to fill any of these roles.

You should be comfortable the person/institution is fair, trustworthy and organized. They should also be able to effectively deal with heirs, beneficiaries and others, as well as available and accessible.

There are significant differences in the effort required in each of these roles. For example, the personal representative's duties are typically completed within a year or two. On the other hand for a trustee or a guardian, the duties can last considerably longer.

To further discuss your best options for fiduciaries, contact Brent Dille, bdille@owensdavies.com



Owens Davies Sponsors Third Annual EDC Real Estate Forum



Showcasing Thurston County's commercial and industrial properties, Owens Davies partnered with the Thurston Economic Development Council (EDC) to help

sponsor Real Estate Forum 2011: "Why Thurston County" on September 29. The critical site selection drivers are looked at and addressed in today's environment and how these drivers have changed in the last 5-10 years. Additional event highlights include the

3rd quarter Thurston Economic Vitality Index results and opportunities for networking.

Creative, strategic partnerships with corporate leaders like Owens Davies are vital to the success of the EDC and community.

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avoid or minimize impacts on the protected species.

Preparing a plan for 117,690 acres on a case-by-case basis would be an incredibly expensive and frustrating process for land owners. Because of that a regional plan is being developed.

While not a substitute for a site-specific habitat management plan, it will outline a standard set of conditions to be met to comply with federal, state

and local habitat protections. This will provide certainty about the protections and, hopefully, a mitigation process which would allow some development of properties for both public and private purposes.

In late August, Thurston County received a \$450,000 grant from the US Fish & Wildlife Service (USFWS) to develop the regional habitat conservation plan. It will be done in conjunction with the Washington

Dept. of Fish & Wildlife (WDFW). The plan will be submitted to US Fish & Wildlife. It should result in a greater degree of certainty concerning restrictions.

Overall, the prognosis is for increased regulation and complexities in land uses as additional protections are added for prairie habitat, as well as for endangered and threatened species.

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it to be navigable unless determined otherwise by a court.

Determining whether a waterbody is navigable for title is always a question of fact. It can depend on a wide variety of factors including depth and size, geographic location and suitability for transportation of useful commerce.

In the vast majority of cases, if the waterbody is tidal, it will

be considered navigable. To complicate matters even further, navigability for title issues must evaluate whether the waterbody was navigable at the time of Washington statehood more than 120 years ago. Given the lack of living witnesses from that time period, combined with the state of the historical record, evaluating these claims can be a challenge.

Determining whether a waterbody is navigable is an important first step in determining exactly where a waterfront boundary may lie.

Matt Kernutt
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