MEMORANDUM

TO: Thurston County Planning Commission

FROM: Jeremy Davis, Senior Planner

DATE: July 6, 2011

SUBJECT: Critical Areas Ordinance Update – Chapter 24.05 TCC Administrative Procedures

The proposed Chapter 24.05 Administrative Procedures covers the following subject areas:

- Application types, review and appeal procedures, and public notice requirements
- Coordination with other development permits
- Approval authority for various actions under the Critical Areas Ordinance
- Code interpretations and critical area determinations
- Application submittal requirements
- Fees

Currently, administrative and review procedures are addressed in various sections of Chapter 17.15.300 and 17.15.400 of the Thurston County Code (TCC). Please see the attached matrix showing proposed sections of Chapter 24.05 TCC, corresponding sections of Chapter 17.15 TCC, and a short summary of general differences. New sections have been added to Chapter 24.05 when necessary.

Statutory Requirements and Internal Consistency:
Administrative procedures in the Critical Areas Ordinance must be consistent with RCW 36.70B Local Project Review. This chapter of the Revised Code of Washington was initially approved in 1995 and governs local project review processes. The three major findings of the chapter include the number of environmental laws and development regulations, the increasing number of permits and separate environmental review processes, and the burden placed on land use proposals that have multiple permits and separate environmental reviews. To meet the requirements of 36.70B RCW, the administrative chapter needs to at a minimum clearly define application types, review and appeal processes, deadlines, public notification, applicant notification, and provide for consolidated review. A copy of RCW 36.70B is attached.
To ensure internal consistency between the proposed Critical Areas Ordinance and other sections of the TCC that govern permit review, staff reviewed the following chapters of the TCC:

- Chapter 2.05 Growth Management Public Participation
- Title 14 Buildings and Construction: Chapter 14.48, Building Permit Process
- Chapter 17.09, State Environmental Policy Act (SEPA)
- Title 18 Platting and Subdivisions: Chapter 18.10, Administrative Procedures
- Title 20 (Rural) Zoning: Chapter 20.60 TCC, Administration, Fees, Violations and Penalties
- Title 21 Lacey UGA Zoning: Chapter 21.81, Administration and Enforcement
- Title 22 Tumwater UGA Zoning: Chapter 22.62, Administration and Appeals
- Title 23 Olympia UGA Zoning: Chapter 23.72, Administration

The draft chapter includes the following elements that are consistent with other development permit reviews, and to ensure consistency with RCW 36.70B:

- Application types used for the draft chapter match those used for other development permit applications.
- Review processes for each application type match those of Chapter 20.60 TCC in Title 20, with the exception of a Type IV process, which is a legislative process outlined in draft Chapter 24.91 TCC.
- The critical area permit review is consolidated with the SEPA review where SEPA review is required.
- Permit reviews under this title are to be coordinated with other permit reviews.
- A permit review matrix (Table 24.05-1) is included to ensure that the review, approval, and appeal authorities are clear.
- A section is included on the process for obtaining code interpretations and critical area determinations.

The application types included in draft Chapter 24.05 include the following:

A. A Type I Ministerial Decision process involves an application that is subject to clear, objective and nondiscretionary standards or standards that require the exercise of professional judgement about technical issues, and that is exempt from State Environmental Policy Act (SEPA) review.

B. A Type II Administrative Decision process involves an application that is subject to objective and subjective standards which require the exercise of limited discretion about nontechnical issues and about which there may be a limited public interest.

C. A Type III Quasi-Judicial Decision process involves an application that is subject to standards which require the exercise of substantial discretion and about which there may be a broad public interest.
D. A Type IV Legislative Decision process involves the creation, implementation or amendment of critical areas policies or regulations. It also includes critical areas analysis that would be required for a site-specific comprehensive plan or zoning amendment.

Table 24.05-1 shows the approval authority and review process type for each permit/review. The review process for critical area review permits follow the underlying permit review process. Type I permit reviews follow a Type I critical area review permit process as defined in Title 14 TCC, Title 20 TCC, Title 21 TCC, Title 22 TCC, and Title 23 TCC. Type II and III permit processes as defined in Title 14 TCC, Title 20 TCC, Title 21 TCC, Title 22 TCC, and Title 23 TCC, and other permit reviews, follow a Type II critical area permit review process as described in this chapter. Critical areas for Type IV decisions are reviewed as needed during the legislative review (Type IV) process. Coordination requirements for critical area review permits are located in Section 24.05.030 TCC.

Presubmission Conferences:
Presubmission conferences for critical area reviews are currently optional. The proposed text would continue that, however, depending on the nature of the action presubmission conferences may be required by the director or other sections of the Critical Areas Ordinance.

Appeals:
Appeals procedures are not generally changing with this draft ordinance. However, appeals of critical area review permits associated with an appeal to the Hearing Examiner of a SEPA determination will be appealed from the Hearing Examiner to the Board of County Commissioners. Currently appeals of Hearing Examiner decisions on critical areas go directly to Superior Court with the Hearing Examiner decision on the SEPA determination.

Critical Area Determinations:
A section has been added to address situations where property owners would like the County to identify if the critical area regulations will apply to a given property, potential critical areas, and studies that may be necessary. The critical area determination is not intended to be a final review or delineation of critical areas for a proposed development.

Submittal Requirements:
Application submittal requirements for critical area review permits and reasonable use exceptions are also included. If the Planning Commission deems it appropriate, these can be moved to their respective chapters. However, in the Thurston County Code, general submittal requirements are normally handled in the administrative chapters.

Fees:
The fees section is a new section, and has been added to clarify that fees may be assessed. Currently, permit reviews in Thurston County are funded by permit fees. The Board of County Commissioners will determine fees through an amendment to the permit fee schedule.

Attachments:
Draft Chapter 24.05 TCC
Chapter 20.60 TCC
Chapter 14.48 TCC
## Chapter 24.05 – Administrative Procedures

<table>
<thead>
<tr>
<th>New Title 24</th>
<th>Chapter 17.15 &amp; Title 20</th>
<th>Notes</th>
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<tbody>
<tr>
<td>Section 24.05.005</td>
<td>17.15.300</td>
<td>There are no differences between the proposed section 24.05.005 and 17.15.300.</td>
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<tr>
<td>Section 24.05.010</td>
<td>Subsection 17.15.315(B) &amp; Chapter 20.60</td>
<td>Subsection 17.15.315 (B) references Type I through IV applications with a reference to Chapter 20.60 in Title 20. The application descriptions in 24.05.010 mimic the descriptions in Chapter 20.60. A corresponding section is located in Chapter 14.58 as well.</td>
</tr>
<tr>
<td>Section 24.05.020</td>
<td>Subsections 17.15.315(B) &amp; (C), &amp; Chapter 20.60</td>
<td>Subsection 17.15.315 (B) references Chapter 20.60. Type IV (Legislative) decisions now follow proposed Chapter 24.91. Subsection 17.15.315 (C) has been reworded and included in proposed subsection 24.05.020(B).</td>
</tr>
<tr>
<td>Section 24.05.025</td>
<td>Subsection 17.15.315(E) &amp; Chapter 20.60</td>
<td>Section 24.05.025 requires that the county issue a decision, indicates that the review authority for each application are shown in Table 24.05-1, and references that hearing examiner decisions need to conform to other county regulations on hearing examiner decisions. There are no substantive changes from current requirements.</td>
</tr>
<tr>
<td>Section 24.05.030</td>
<td>Chapter 14.58, Sections 17.15.310 &amp; 20.60.025, and RCW 36.70B</td>
<td>State law requires consolidated permit review, however, it allows for approvals to take place in appropriate time frames. Currently, where SEPA is required, critical areas are reviewed with SEPA. Where SEPA is not required, critical areas are reviewed with the underlying permit. The critical area review permit is the new version of the critical area administrative review. The 15 day timeframe prior to any other action noted in subsection 24.05.030(A) reflects the 14 day appeal period on administrative decisions.</td>
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</table>

Draft Comparison Table Between Draft Title 24 and Chapter 17.15 TCC. 7/06/2011
<table>
<thead>
<tr>
<th>New Title 24</th>
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<th>Notes</th>
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<tbody>
<tr>
<td>Table 24.05-1</td>
<td>Chapter 17.15 Table 1A</td>
<td>Table 1A has been amended to reflect changes in the proposed critical area ordinance application names and actions. A note clarifying which process will be used to review a critical area review permit was added to the bottom. The review process used will depend on the underlying permit. Please see proposed Chapter 24.45.</td>
</tr>
<tr>
<td>Section 24.05.040</td>
<td>Subsection 17.15.315(D)</td>
<td>Meeting with the County prior to submitting an application is currently encouraged. This generally takes place over the counter in the PAC or through a presubmission conference. Some development review actions already require a presubmission conference, which is referenced in the proposed code language.</td>
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<tr>
<td>Section 24.05.050</td>
<td>Chapter 2.06, Section 17.15.410 &amp; 20.60.060</td>
<td>The current critical areas ordinance refers to Section 20.60.060 for appeals. The processes outlined in the proposed section are derived from Section 20.60.060 with modifications to customize the text for the CAO. Chapter 2.06 governs the Hearing Examiner system in Thurston County.</td>
</tr>
<tr>
<td>Section 24.05.060</td>
<td>Subsection 17.15.320(A) &amp; Section 20.60.070</td>
<td>Section 17.15.320 (A) covers code interpretations for the current CAO. For the proposed CAO, it has been split into two sections. The Proposed chapter 24.05.060 is based on Section 20.60.070. An avenue for a person to seek a code interpretation is also required by RCW 36.70B.</td>
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<td>Section 24.05.070</td>
<td>17.315.320 &amp; 17.15.412</td>
<td>Proposed Section 24.05.060 for Critical Area Determinations is a hybrid section intended to provide an avenue for reviewing critical areas that is a step below the Critical Area Review Permit. CADs typically involve preliminary review for critical areas and can assist applicants on existing critical areas and what special reports they may need.</td>
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<td>Section 24.05.080</td>
<td>Section 17.15.412</td>
<td>The current CAO only indicates that the applicant will need to submit an application for a critical area administrative review on a form provided by the county. Proposed Section 24.05.080 includes specific requirements for critical area review permit applications and generally what subjects need to be addressed.</td>
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<tr>
<td>New Title 24</td>
<td>Chapter 17.15 &amp; Title 20</td>
<td>Notes</td>
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<tr>
<td>Section 24.05.090</td>
<td>Subsection 17.15.415(B)</td>
<td>The current CAO only indicates that the applicant will need to submit for a reasonable use exception on a form provided by the county. Proposed Section 24.05.080 includes specific requirements for critical area review permit applications and generally what subjects need to be addressed.</td>
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<tr>
<td>Section 24.05.100</td>
<td>Section 17.15.350</td>
<td>The current CAO indicates that recordation of a notice on the title of a property may be required. The proposed section requires that a notice be recorded. The primary purpose is to inform future property owners of the presence of a critical area.</td>
</tr>
<tr>
<td>Section 24.05.110</td>
<td>Section 20.60.035</td>
<td>The Fees section is a new section based on Section 20.60.035. There are several subsections in the existing CAO that allow for fees to be assessed. This new section has been added to consolidate other sections and to clarify that fees may be assessed. Currently, permit reviews in Thurston County are funded by permit fees. The Board of County Commissioners will determine fees through an amendment to the permit fee schedule.</td>
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Chapter 24.05

ADMINISTRATIVE PROCEDURES

Sections:
24.05.005 General purposes.
24.05.010 Application types and classification.
24.05.020 Application review procedures and public notice requirements.
24.05.025 Critical area approval authority and review processes.
24.05.030 Coordination with other application reviews.
24.05.040 Preshubmission conference.
24.05.050 Appeals.
24.05.060 Code interpretations.
24.05.070 Critical area determinations.
24.05.080 Submittal requirements – Critical area review permit.
24.05.090 Submittal requirements – Reasonable use exception.
24.05.100 Recordation – Critical areas on property – Notice.
24.05.110 Fees.

24.05.005 General purposes.
It is the policy of Thurston County to accomplish the following:

A. To review developments which lie within a critical area, which includes its buffer;

B. To minimize the delays associated with multiple development reviews; and

C. To assist property owners in developing their property consistent with this title by promoting the use of innovative land use techniques to protect critical areas.

24.05.010 Application types and classification.
Applications for review of permit types or actions listed in Table 24.05-1 TCC shall be subject to a Type I, Type II, Type III, or Type IV review process. The application types are classified as follows:
A. A Type I process involves an application that is subject to clear, objective and 
nondiscretionary standards or standards that require the exercise of professional 
judgement about technical issues, and that is exempt from State Environmental Policy 
 Act (SEPA) review.

B. A Type II process involves an application that is subject to objective and subjective 
standards which require the exercise of limited discretion about nontechnical issues and 
about which there may be limited public interest.

C. A Type III process involves an application that is subject to standards which require the 
exterior of substantial discretion and about which there may be broad public interest.

D. A Type IV process involves the adoption or amendment of critical areas policies or 
regulations. It also includes critical areas analysis that would be required for a site-
specific comprehensive plan or zoning amendment.

24.05.020 Application review procedures and public notice requirements.
A. Applications for permits or approvals listed in Table 24.05-1 TCC shall be subject to the 
review procedures and public notice requirements specified below:

1. Type I review procedure – Ministerial Decision. The review procedure for a Type 
I review process shall follow the procedure specified in Section 20.60.020(1) 
TCC, except that critical areas map amendments shall follow the procedure and 
otice requirements in TCC 24.91.030.

2. Type II review procedure – Administrative Decision. The review procedure and 
public notice requirements for a Type II review process shall follow the procedure 
and public notice requirements specified in TCC 20.60.020(2).

3. Type III review procedure – Quasi-Judicial Decision. The review procedure and 
public notice requirements for a Type III review process shall follow the 
procedure and public notice requirements specified in TCC 20.60.020(3).

4. Type IV review procedure – Legislative Decision. The review procedure and 
public notice requirements for a Type IV review process shall follow the 
procedure and public notice requirements specified in chapter 24.91 TCC.

B. In addition to the requirements of TCC 24.05.020 (A) above, the director may reject all or 
part of an application and supporting information, including any required special report, 
based upon:

1. Any factual errors or omissions; or

2. Inconsistencies between the submitted materials and observable data and accepted 
scientific or technical criteria; or
3. Faulty analysis, faulty analytical procedures, or other findings made through the review of the proposal that support rejection.

24.05.025 Critical area approval authority review processes.

A. The approval authority for the various types of permits and actions involved in the administration of this title are shown in Table 24.05-1 TCC.

B. In making a decision under Table 24.05-1 TCC, the approval authority may approve, approve with conditions, or deny proposed uses and activities consistent with the applicable provisions of this title. The County shall issue a decision for each application involving a critical area, associated buffer, or riparian area in accordance with the applicable review process in TCC 24.05.020 and the sections of this title applicable to each decision.

C. Decisions by the hearing examiner shall conform to Chapter 2.06 TCC and TCC 20.60.060 (1).

24.05.030 Coordination with other application reviews.

A proposed project action involving a permit under this title shall be processed in a consolidated manner, as specified below:

A. Decisions on and review of critical area review permits under chapter 24.40 TCC associated with other related development applications shall occur at the same time as the State Environmental Policy Act review and determination required under chapter 17.09 TCC. However, the decision on the critical area review permit is a separate decision. If no State Environmental Policy Act determination is required, then:

1. The decision shall be issued such that the appeal period shall expire a minimum of fifteen (15) calendar days prior to a public hearing; or

2. Where no public hearing is required, the decision shall be issued a minimum of fifteen (15) calendar days prior to a decision on any associated development application.

B. Decisions on and review of reasonable use exceptions under Chapter 24.45 TCC associated with other related development applications that require a public hearing before the hearing examiner shall occur concurrent with the related development applications. Unless the applicant chooses to initiate the reasonable use exception first.

C. Decisions on reasonable use exceptions under Chapter 24.45 TCC associated with other related development applications that do not require a public hearing before the hearing examiner shall occur prior to a decision on the development applications.
### Table 24.05-1 Critical Area Review Authority and Review Processes

<table>
<thead>
<tr>
<th>PERMIT/REVIEW</th>
<th>APPROVAL AUTHORITY</th>
<th>REVIEW PROCESS TYPE (Section 24.05.010)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Staff/Director</td>
<td>Hearing Examiner (HE)</td>
</tr>
<tr>
<td>Administrative Action</td>
<td>D</td>
<td>A</td>
</tr>
<tr>
<td>Emergency Authorization (Chapter 24.90)</td>
<td>D</td>
<td>A</td>
</tr>
<tr>
<td>Critical Area Determination</td>
<td>D</td>
<td>A</td>
</tr>
<tr>
<td>Type I Critical Area Review Permit (Chapter 24.40) (Type I Application Review Process)*</td>
<td>D</td>
<td>A</td>
</tr>
<tr>
<td>Type II Critical Area Review Permit (Chapter 24.40) (All Other Application Review Processes)*</td>
<td>D*</td>
<td>A*</td>
</tr>
<tr>
<td>Critical Area Map Amendment**</td>
<td>D*</td>
<td>A*</td>
</tr>
<tr>
<td>Critical Area Ordinance Amendment</td>
<td>R</td>
<td>R</td>
</tr>
<tr>
<td>Code Interpretation</td>
<td>D</td>
<td>A</td>
</tr>
<tr>
<td>Reasonable Use Exception (Chapter 24.45)</td>
<td>R</td>
<td>D</td>
</tr>
<tr>
<td>Permit and Administrative Action Amendments</td>
<td>Same approval authority and review process as the original action being amended.</td>
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<tr>
<td>Time Extensions</td>
<td>Same approval authority and review process as original decision/approval.</td>
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</tbody>
</table>

LEGEND: A = Appeal  D = Decision  R = Recommendation

* See Section 24.40.020 for selecting the appropriate process for a critical area review permit
** Subject to TCC 24.05.050 and 24.91.030.

#### 24.05.040 Preshubmission conference.
Prior to applying for a critical area review permit (Chapter 24.40 TCC) or reasonable use exception (Chapter 24.45 TCC), prospective applicants are encouraged to participate in a presubmission conference. Depending on the nature of the action, presubmission conferences may be required by this title, or by the director. Applications for presubmission conferences shall be submitted to the department on forms provided by the department.

#### 24.05.050 Appeals.
A. Appeals of administrative decisions may be taken to the hearing examiner by any person aggrieved or by any officer, department, board or commission of the county affected by any order, requirement, permit, decision or determination made by an administrative official in the administration or enforcement of this title. Appeals shall be filed in writing with the department within fourteen calendar days of the date of the notice of the decision being appealed on a form provided by the department. Appeals shall be considered in the
manner prescribed by Chapter 2.06 TCC. Appeals of administrative map amendments may be subject to a public hearing if requested by any aggrieved party or the county. Map amendments by the director that are consistent with a critical area delineation prepared for an approved specific development application’s critical area review or a reasonable use exception are not subject to appeal of an administrative decision if the approved critical area review permit became final.

B. Appeals of hearing examiner decisions on Type III permits and on appeals of administrative decisions (Type I and II), as provided in Table 24.05-1 TCC, may be brought to the board of county commissioners by any aggrieved party. Appeals shall be filed in writing with the department within fourteen calendar days of the date of the notice of the decision being appealed on a form provided by the department. Appeals shall be considered in the manner prescribed by Chapter 2.06 TCC.

C. The final decision by the board of county commissioners for Type IV appeals is appealable in the manner proscribed by chapter 36.70A RCW and other applicable state laws.

24.05.060 Code interpretations.
Any person may request in writing an interpretation of any provision of this title. The department shall issue a written determination to the person requesting the interpretation in accordance with Type I procedures in TCC 20.60.020(1). The letter of request shall serve as the Type I application for code interpretations. A fee may be assessed for code interpretations consistent with TCC 24.05.110.

24.05.070 Critical area determinations.
A. Determining if critical areas are present. Any person seeking to determine whether a proposed activity or an area is subject to this chapter may request a Critical Area Determination (CAD) on an application provided by the department.

B. The CAD shall be processed as a Type I application.

C. Submission requirements. Applicants for a CAD shall submit all of the information requested on the application form provided by the department. Based on the quality and detail of information provided, the site’s complexity, or the proposed use’s potential to impact critical areas or buffers, the approval authority may request additional information as necessary to make a determination regarding the site.

D. Staff findings. County staff shall review the information submitted by the applicant and other relevant, available information and perform an on-site inspection to determine if a critical area, which includes the associated buffer, is located on the property. If staff cannot determine, based on available information or due to access limitations, whether the proposed development would encroach upon a critical area they shall advise the applicant as to what is needed to make the determination. This may include full delineation and analysis of the critical area by a qualified professional at the applicant’s expense.
24.05.080 Submittal requirements – Critical area review permit.
Applications for critical area review permits under chapter 24.40 TCC shall be filed with the department using the application form provided by the department. This information is in addition to any related State Environmental Policy Act requirements under chapter 17.09 TCC. The application and any supporting materials shall provide the following information, as applicable:

A. Information required for an associated Type I, II, III, or IV application as specified in chapters 14.48, 20.60, 21.81, 22.62, and 23.72 TCC, or if no associated application is required by the above chapters, then information required for a Type II application as specified in TCC 20.60.030;

B. If applicable, delineation of the minimum setbacks required by Title 20, 21, 22 or 23 TCC (zoning codes) relative to the critical area(s) and associated buffer(s);

C. Information required under chapter 24.40 TCC, including but not limited to the eligibility of the property for a reasonable use exception, the review criteria, and other matters required to be addressed in chapter 24.45 TCC;

D. Any special reports required pursuant to this title due to the critical areas present on the property;

E. Any deviations from the provisions and standards of this title that would be needed to accommodate the proposed development or activity permitted in Section 24.40.XXX TCC;

F. Identification and evaluation of the potential impacts of the proposed development on the critical area(s) which includes associated buffer(s), and their functions, and proposed measures to avoid or mitigate the identified impacts; and

G. Any other information the County deems necessary to make a determination regarding the request.

24.05.090 Submittal requirements – Reasonable use exception.
Applications for reasonable use exceptions under chapter 24.45 TCC shall be filed with the department using the application form provided by the department. The application and any supporting materials shall provide the following information, as applicable:

A. Information required for a Type III application specified in TCC 20.60.030;

B. If applicable, delineation of the minimum setbacks required by Title 20, 21, 22 or 23 TCC (zoning codes) relative to the critical area(s) and associated buffer(s);
C. Information required under chapter 24.45 TCC, including but not limited to the eligibility of the property for a reasonable use exception, the review criteria, and other matters required to be addressed in chapter 24.45 TCC;

D. Any special reports required pursuant to this title;

E. Any deviations from the provisions and standards of this title that would be needed to accommodate the proposed development or activity;

F. Identification and evaluation of the potential impacts of the proposed development on the critical area(s), which includes associated buffer(s), and their functions, and proposed measures to avoid or mitigate the identified impacts; and

G. Any other information the County deems necessary to make a determination regarding the request.

24.05.100 Recordation – Critical areas on property – Notice.
For a development proposal that does not involve the division of land where critical areas have been identified, the owner of a lot with a critical area and/or buffer shall record a notice on the title with the Thurston County Auditor that identifies the critical area location. This notice is not required if a preexisting notice has already been recorded. The applicant shall submit proof that any required notice has been filed for record as a prerequisite to permit approval. The notice shall be approved by the director prior to recordation, and, shall at a minimum, include a map and legal description of the critical area and, and a notice substantially similar to the following:

“Prior to and during the course of any grading, building construction or other development activity on this property containing or abutting a critical area, the area of development activity must be fenced or otherwise marked to the satisfaction of Thurston County. The critical area shall be maintained in its existing condition, except as provided for by Title 24 of the Thurston County Code, the Critical Areas Ordinance. Yard waste, debris, fill, equipment, vehicles, and materials shall not be placed in the critical area.”

24.05.110 Fees.
Applicants for permits or other approvals pursuant to this title shall the pay applicable fee identified on the county fee schedule.