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PLANNING DEPARTMENT

Creating Solutions for Our Future

Scott Clark
Director

MEMORANDUM

TO: Thurston County Planning Commission

FROM: Jeremy Davis, Senior Planner

DATE: July 6, 2011

SUBJECT: Critical Areas Ordinance Update – Chapter 24.40 TCC Critical Area Review Permit

The proposed Chapter 24.40 Critical Area Review Permit is intended to be the companion permit to other development permits required by the zoning ordinance, building codes, and other codes as well as a stand-alone permit for review of critical areas where there is no underlying development permit.

It will replace the current Critical Area Administrative Review (TCC 17.15.412), Administrative Variances (TCC 17.15.420), and provide the primary method for which critical areas are reviewed in Thurston County.

Critical Area Review Permits would not include the following:

- Review of critical areas where a reasonable use exception (Chapter 24.45) would be required
- Review of critical areas under a critical area determination in proposed TCC 24.05.070
- Code determinations
- Or where another permit or method of review is specified in the proposed CAO

The attached table provides a comparison between the proposed Chapter 24.40 and sections of the existing Chapter 17.15. More explanation of proposed changes is also provided in the table.

Chapter 24.40 – Critical Area Review Permit

This is the primary permit in the critical areas ordinance and is intended to be the companion permit to other development permits required by the zoning ordinance, building codes, and other codes. A critical area administrative review is currently required when no SEPA determination is required.

New Title 24	Chapter 17.15 & Title 20	Notes
24.40.010	New Subsection	This section outlines the applicability of the critical area review permit.
24.40.020	Section 17.15.412 and 17.15 Table 1-A	<p>The proposed ordinance keeps the same general processes in place. The review process will depend on the application type.</p> <p>The critical area administrative review is currently processed as a Type I review. However, these are only used for applications that do not require SEPA. SEPA determinations are made by the director/staff with an appeal to the Hearing Examiner. This is similar to a Type II application process.</p>
24.40.030	New Section	This section references the submittal requirements in Chapter 24.05.080. This is a similar set up used in Title 20 for variances, special use permits, and other applications to reference submittal requirements in Chapter 20.60.
24.40.040	17.15.412(C), 20.52.070	Subsection A is new. Findings of fact are required for decisions under the CAO, and provide a basis for the decision. Subsection B is from 17.15.412(C).
24.40.050	New Section	This section is intended to provide basic review criteria for critical area review permits. Decisions will likely require more findings depending on the critical area being reviewed.
24.40.060	17.15.412 (D), 20.52.040, 20.54.050	This section is a hybrid of several sections of the existing Thurston County Code. The existing subsection 17.15.412(D) is very general. The proposed section is more definitive.
24.40.070	20.52.030	This section is consistent with the same provision in the variance chapter in Title 20. State law requires the County to protect critical areas, and does not include a provision to allow profitability to override critical area protection.
24.40.080	17.15.355	<p>Authorized activity runs with the underlying permit. This is consistent with the existing CAO.</p> <p>Where there is no underlying permit, the proposed section adds a time limit/expiration date of 3 years,</p>

New Title 24	Chapter 17.15 & Title 20	Notes
		which is consistent with time limits associated with variances and special use permits in Title 20.
24.40.090	17.15.355	Extensions of time in Title 20 follow the same process as the initial approval.
24.40.100	New Section	

DRAFT IN PROGRESS

AMENDMENTS TO THE CRITICAL AREAS REGULATIONS

TCC 24.40

PLEASE SEE THE COMPARISON TABLE FOR A SUMMARY OF CHANGES FROM 17.15

07/06/11

CRITICAL AREA REVIEW PERMIT

Chapter 24.40

Critical Area Review Permit

Sections:

24.40.010 Critical area review permit - Generally.

24.40.020 Critical area review permit - Review process.

24.40.030 Critical area review permit - Application requirements.

24.40.040 Critical area review permit - Director decision - Required findings.

24.40.050 Critical area review permit – Review criteria.

24.40.060 Critical area review permit - Subject to conditions.

24.40.070 Critical area review permit - Limitation on review.

24.40.080 Critical area review permit - Time limits - Expiration.

24.40.090 Critical area review permit - Amendments.

24.40.010 Critical area review permit - Generally.

A critical area review permit is required for all development permits for properties that may be impacting critical areas and associated buffers or critical area evaluation areas on their property. A critical area review permit will not be required for reasonable use exceptions in Chapter 24.45 TCC, initial emergency authorizations in Chapter 24.90 TCC, critical area determinations in TCC 24.05.070, and county initiated amendments to this title or the Thurston County Comprehensive Plan (Type IV permits). The critical areas review permit shall comply with all provisions of this title.

24.40.020 Critical area review permit – Review process.

A. Type I critical area review permits shall include permits:

1. Where the underlying permit or application for review would be classified as a Type I permit as defined in Title 14 TCC, Title 20 TCC, Title 21 TCC, Title 22 TCC, and Title 23 TCC; and
2. Where there is no underlying permit for review and SEPA review under Chapter 17.09 TCC is not required.

- B. Type II critical area review permits shall include permits:
1. Where the underlying permit or application for review would be classified as a Type II or Type III permit as defined in, Title 14, Title 20 TCC, Title 21 TCC, Title 22 TCC, and Title 23 TCC; and
 2. Where there is no underlying permit for review and SEPA review under Chapter 17.09 TCC is required.
- C. Review processes and procedures are described in Chapter 24.05 TCC. Coordination requirements for critical area review permits are located in Section 24.05.030 TCC. Where there is no underlying permit, a Type I review process shall be used.

24.40.030 Critical area review permit – Application requirements.

The application for a critical area review permit shall be filed with the Resource Stewardship Department in accordance with Chapter 24.05 TCC.

24.40.040 Critical area review permit - Director decision - Required findings.

- A. The director shall enter a decision in conformance with this title. In making the decision, the director shall enter written findings of fact upon which the decision is based. The findings of fact shall address each critical area requirement separately and the review criteria in TCC 24.05.050.
- B. The director shall confirm the nature and type of the critical area by an on-site inspection and shall evaluate any special reports submitted by consultants who are professionals in the pertinent field.

24.40.050 Critical area review permit – Review criteria.

In addition to any review criteria required for State Environmental Policy Act reviews in Chapter 17.09 TCC, or any other required permit reviews, the approval authority shall approve, or approve with conditions, the critical area review permit if:

- A. The critical area review permit is consistent with the requirements, purposes, and intent of this title, and other requirements of the Thurston County Code; and
- B. The requested development activity is consistent with the goals and policies of the Thurston County Comprehensive Plan; and
- C. The requested development activity results in no net loss of the functions and values of critical areas as defined in this title. If the approval authority determines that it is necessary, the proposal shall include a mitigation plan consistent with this title and credible scientific evidence as determined by the director. Mitigation measures shall address any impacts and shall occur onsite first, or if necessary, offsite.

24.40.060 Critical area review permit - Subject to conditions.

The director may grant a critical area review permit subject to conditions and safeguards designed to ensure no net loss to critical area functions and values. The written conditions shall not violate the purpose and intent of this title and the Thurston County Comprehensive Plan. The conditions shall be included with the decision and findings required by Section 24.40.040.

24.40.070 Critical area review permit - Limitation on review.

The fact that property may be utilized more profitably than allowed based on strict interpretation of this title shall not be an element of consideration in any review of a critical area review permit. Except as authorized by this title, an approval for a critical area review permit shall not result a waiver or variance of the requirements of this title, and shall not permit a use variance.

24.40.080 Critical area review permit - Time limits - Expiration.

Knowledge of the time limits and expiration of a critical area review permit is the responsibility of the applicant. The duration of a critical area review permit within critical areas, which includes associated buffers, shall be as follows:

- A. Authorization to undertake regulated uses and activities shall be valid for the specific time period established in any associated development permit (e.g., building permit and special use authorization); or
- B. For permits not associated with any development permit, authorization shall expire to undertake regulated uses and activities if the use or activity for which it is granted is not completed within three (3) years of final approval. An extension of the three (3) year period shall not be permitted; and
- C. The critical area review permit shall also expire when the use or activity is vacated for a period of three years.

24.40.090 Critical area review permit - Amendments.

Any amendment or modification of the approved project shall require a new application and review following the same process as the initial approval unless the amendment or modification is minor in nature; and is within the scope of the original critical area review permit as determined by the director.

