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PLANNING DEPARTMENT

Creating Solutions for Our Future

Scott Clark
Director

MEMORANDUM

TO: Thurston County Planning Commission

FROM: Andrew Deffobis, Associate Planner

DATE: September 28, 2011

SUBJECT: Critical Areas Ordinance (CAO) Update – New Draft Chapters and 2nd Draft Materials

The Planning Department has completed a draft chapter regarding Critical Area Tracts and Easements (proposed chapter 24.65 TCC, attached). The draft chapter discusses the creation of separate tracts or easements that contain conservation of sensitive or hazardous critical areas. Critical area tracts and easements may also include conservation lots exempted under Title 18 TCC.

The Planning Department has also completed second drafts of CAO chapters based on Planning Commission input and further review by County staff, including the following:

- Chapter 24.01 General Provisions
- Chapter 24.60 Critical Area Signs and Fencing
- Chapter 24.91 Amendments

DRAFT IN PROGRESS

**AMENDMENTS TO THE CRITICAL AREAS REGULATIONS
TCC 24.65
09/28/11**

CRITICAL AREA TRACTS AND EASEMENTS

Chapter 24.65

CRITICAL AREA TRACTS AND EASEMENTS

Sections:

- 24.65.010 Critical area tracts and easements – Generally.**
- 24.65.020 Critical area tracts and easements – when required.**
- 24.65.030 Critical area tracts and easements – maintenance.**
- 24.65.040 Recordation of restrictions and notices.**

24.65.010 Critical area tracts and easements – Conservation lots – Generally.

Critical area tracts and easements allow for conservation of sensitive habitat areas and for ensuring that hazardous areas are not developed with incompatible uses. These shall also include conservation lots exempted under Title 18 TCC.

24.65.020 Critical area tracts and easements – when required.

- A. Applicants for cluster developments, subdivisions under Title 18 TCC, and binding site plans shall create one or more critical area tracts containing all critical areas and associated buffers on the property proposed for development. The tract(s) shall be on separate lots owned in common by the owners of separate lots within the development, delineated on the face of the applicable plat map or binding site plan, and identified as critical areas. Critical areas 1,000 square feet or less that are not adjacent to or functionally connected to another critical area may be contained in an easement or tract as determined by the director. The director may waive this requirement for non-jurisdictional critical areas 1,000 square feet or less if, it is shown that the critical area is not adjacent to or functionally connected to another critical area, and where protection of the critical area can be adequately addressed through other methods consistent with this title, as determined by the director.
- B. Applicants for short plats and large lot subdivisions under Title 18 TCC, and development proposals subject to site plan review, special use, and other reviews not otherwise addressed in this chapter shall establish one or more critical area easements to contain critical areas and their associated buffers on the property under development. The easement shall be delineated on the face of the applicable plat map, and identified as

critical areas. The director may waive this requirement for non-jurisdictional critical areas 1,000 square feet or less if, it is shown that the critical area is not adjacent to or functionally connected to another critical area, or can be adequately protected through other methods consistent with this title, as determined by the director.

24.65.030 Critical area tracts and easements – maintenance.

Critical area tracts and easements containing critical areas and their buffers shall be maintained in their existing condition, except as provided for by this title.

24.65.040 Recordation of restrictions and notices.

- A. The following note shall appear on the face of all plats, short plats, large lot subdivisions, binding site plans, or lots created to protect critical areas as part of a cluster development containing critical area tracts, critical area easements, conservation areas, or conservation lots:

“Critical area tracts (or easements) and conservation lots containing critical areas and/or associated buffers shall not be altered except as provided for under the Critical Areas Ordinance (Title 24 of the Thurston County Code). The owner(s) of a critical area tract (or easement) is responsible for ensuring that no alterations occur within such tract and that all vegetation remains undisturbed unless the Thurston County Resource Stewardship Department provides express written authorization for such alteration.”

- B. A map shall be recorded depicting critical areas easements created through a site plan review permit, variance permit, special use permit, or approved site plans where critical areas may be impacted, with the following note appearing of the face of the map:

“Critical area easements containing critical areas and/or associated buffers shall not be altered except as provided for under the Critical Areas Ordinance (Title 24 of the Thurston County Code). The owner(s) of a critical area easement is responsible for ensuring that no alterations occur within such tract and that all vegetation remains undisturbed unless the Thurston County Resource Stewardship Department provides express written authorization for such alteration.”

- C. A restriction shall be recorded on the title of all critical area tracts and lots containing critical area easements created pursuant to this chapter. The restriction language shall be substantially similar to the following:

“Prior to and during the course of any grading, building construction or other development activity on a lot or development site containing or abutting a critical area tract (or easement) or conservation area, the area of development activity must be fenced or otherwise marked to the satisfaction of the Thurston County Resource Stewardship Department. The critical area tract (or easement) 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 on the tract (or easement).”

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AMENDMENTS TO THE CRITICAL AREAS REGULATIONS

CHAPTER 24.01

09/21/2011

GENERAL PROVISIONS

Chapter 24.01

GENERAL PROVISIONS

Sections:

24.01.005 Short Title.

24.01.010 Purpose – Statement of policy for critical areas.

24.01.015 Purpose – Statements for critical areas categories.

24.01.020 Critical areas designated.

24.01.025 Applicability of critical areas regulations.

24.01.030 Interpretations.

24.01.035 General requirements.

24.01.037 Mitigation sequencing.

24.01.040 Critical areas maps.

24.01.050 Best Available Science.

24.01.005 Short Title.

This title shall be known as the “Thurston County Critical Areas Ordinance.”

24.01.010 Purpose – Statement of policy for critical areas.

These regulations are intended to:

- A. Minimize loss of life, injury, and property damage due to natural hazards such as flooding, landslides, seismic events, and volcanic eruptions, minimize the need for emergency rescue, and avoid the cost of replacing public facilities;
- B. Identify and protect the functions and values of unique, fragile, and vulnerable elements of the environment such as fish and wildlife habitats, wetlands, and other ecosystems;
- C. Maintain water quality and quantity to meet human and wildlife needs;

- D. Recognize and address cumulative adverse impacts that could degrade or deplete water resources, wetlands or fish and wildlife habitat, or exacerbate flooding and landslide hazards;
- E. Alert the public to the development limitations and hazards associated with critical areas;
- F. Protect critical areas, associated buffers and their functions and values while allowing reasonable use of property by: directing activities not essential in such areas to other locations; providing for review of proposed uses and activities on properties containing critical areas or their buffers to achieve compliance with standards designed to minimize impacts to critical areas and associated buffers; and providing for mitigation of unavoidable impacts;
- G. Establish enforcement tools and processes designed to deter activities in violation of this chapter and provide for remedial action for unauthorized impacts to critical areas and their buffers;
- H. Implement the Washington State Growth Management Act (RCW 36.70A), including consideration of best available science in the designation, protection, and management of critical areas, with special consideration for the protection of anadromous fish; and
- I. Carry out the goals and policies of the Thurston County Comprehensive Plan.

24.01.015 Purpose – Statements for critical areas categories.

A specific purpose statement also begins each of the critical areas categories.

24.01.020 Critical areas designated.

To carry out the purposes of this title and the Growth Management Act (RCW 36.70A), the following critical areas further described in this title shall be designated in the unincorporated territory of Thurston County:

- A. Critical Aquifer Recharge Areas;
- B. Geologic Hazards;
- C. Frequently Flooded Areas;
- D. Fish and Wildlife Habitat Conservation Areas; and
- E. Wetlands.

24.01.025 Applicability of critical areas regulations.

The provisions of this title for regulating critical areas shall apply to all land, all water areas and all structures in the unincorporated territory of Thurston County, Washington, except for

agricultural uses and lands, uses and structures, irrespective of lot lines. Agricultural uses and lands shall be regulated by Chapter 17.15 TCC.

24.01.030 Interpretations.

For the purposes of this title, certain words and terms shall be interpreted as follows:

- A. The director shall review and resolve any questions involving the proper interpretation or application of the provisions of this title that may be requested by any property owner, tenant, government officer, department, or other person affected. The director's decision shall be in keeping with the intent of this title, the Thurston County Comprehensive Plan, the Growth Management Act, and other applicable federal, state and county regulations.
- B. Recognizing that there may be uses not specifically mentioned in this title, either because of advancing technology or any other reason, the director may permit or condition such use if it is clearly evident that the use is in conformity with the designated principal uses of the critical area in which it is to be located. The decision by the director shall be in writing, published on the county's web page, and can be appealed in accordance with this title.
- C. When interpreting and applying the regulations of this code, its provisions shall be the minimum requirements, unless otherwise stated.
- D. Where conflicts occur between the provisions of this title and between this title and other regulations, the more restrictive protective of critical areas shall apply except as otherwise provided for in this title. When conflicts occur between meeting minimum land use densities and the provisions of this title, the provisions of this title shall apply. The county may waive minimum density requirements to protect critical areas, as determined by the director.
- E. When the exact location of a critical area or buffer is in doubt, or where there appears to be a conflict between a mapped boundary and actual field conditions, County personnel shall determine the correct boundary. The approval authority may also require submittal of a report by a qualified professional, at the applicant's expense, as needed to make such determinations. The approval authority may, at the applicant's expense, require a third party review of a report. The approval authority shall determine the third party reviewer.
- F. In the event that a boundary on an official county critical areas map depicting critical areas conflicts with the application of the text of this chapter, the text shall control.
- G. Words used in the present tense can include the future; words used in the masculine gender can include the feminine and neuter; words in the singular number can include the plural; and words in the plural can include the singular, unless obvious construction of the wording indicates otherwise.

- H. The inclusion of the words “must” and “shall” in a regulation indicates the requirement is mandatory.
- I. Unless otherwise specified, all distances shall be measured horizontally and at right angles to the line from which the distance is specified.
- J. Unless otherwise specified, the term “day” shall mean calendar day.
- K. The word “building” includes the word “structure” and the word “structure” includes the word “building”; the word “lot” includes the word “plot”; the word “used” shall be deemed to also include “designed, intended, or arranged to be used”; the term “erected” shall be deemed also to include “constructed, reconstructed, altered, placed or relocated.”
- L. The terms “land use” and “use of land” shall be deemed also to include the building use and use of building.
- ~~M. The word “adjacent” means nearby and not necessarily contiguous; the words “contiguous” and “adjoins” mean sharing a common boundary of sufficient width to maintain vehicular access.~~
- M. The word “federal” means the federal government of the United States; the word “state” means the state of Washington. The word “county” means the county of Thurston, state of Washington, and the term “county boundary” means exterior boundary of the county or any boundary of unincorporated territory within the county.
- N. The terms “Board of Thurston County Commissioners,” “planning commission,” “hearing examiner,” “Resource Stewardship Director,” “health officer,” “building officer,” “building inspector” and other similar officers shall mean the respective boards, commissions, and officers of Thurston County and/or their authorized agents. The use of the term “board” or “Board” shall always mean the Board of Thurston County Commissioners. The use of the terms “planning commission” or “Planning Commission” shall always mean the Thurston County Planning Commission. The use of the terms “examiner” or “hearing examiner” shall always mean the Thurston County Hearings Examiner. The term “director” shall always mean the Resource Stewardship Director or designee.
- O. The term “title” means “the Thurston County Critical Areas Ordinance.”
- P. The abbreviation “TCC” means the “Thurston County Code.”
- Q. Unless otherwise specified in this title, the term “department” means the Resource Stewardship Department, or its designee.

24.01.035 General requirements.

- A. **Avoid Impacts.** All uses and activities on sites containing critical areas and/or associated buffers or riparian or marine shoreline management zones shall be located, designed and constructed to avoid or, where that is not possible, minimize all adverse impacts to critical areas, associated buffers and management zones. The County shall not authorize impacts to critical areas or buffers unless the applicant demonstrates an inability to avoid impacts and that there will be no net loss of critical area functions as required in Subsection B. Impacts to critical areas and associated buffers that cannot be avoided shall be minimized by sensitive site design and appropriate precautions during the permitted activity and as specifically provided for in this title.
- B. **No Net Loss of Critical Area Functions.** Uses and activities carried out pursuant to this title shall result in equivalent or, if the applicant chooses, greater critical area functions. Impacts to critical areas and associated buffers shall be repaired or mitigated through restoration, replacement, enhancement, or through purchase of credits at a mitigation bank consistent with the applicable provisions of this title.
- C. **Monitoring.** In addition to the specific monitoring requirements in this title, the approval authority may require that permitted uses and mitigation projects be reviewed at appropriate intervals as necessary to ensure that they are functioning consistent with the project approval and applicable provisions of this title. The approval authority may require remedial action as warranted to correct problems identified during monitoring to avoid degradation of critical areas and associated buffers and to ensure that any required mitigation is successful.
- D. **Access to enable administration.** Property owners shall grant access to the County, or designee, for the purpose of inspecting sites proposed for development and performing monitoring required pursuant to this title. County personnel shall present proper credentials and make a reasonable effort to contact the property owner before entering onto private property.
- E. **Forestry.** As required by state law, forestry and associated development subject to County approval under Chapter 17.25 TCC, Thurston County Forest Lands Conversion Ordinance, are subject to the provisions of this chapter. In the event that any provision of this chapter conflicts with state Forest Practices regulations, the County shall apply the more restrictive provision to uses subject to Chapter 17.25 TCC.
- F. **Property Assessment Relief.** The Thurston County Assessor shall consider the restrictions on property use imposed pursuant to this title, particularly on conservation areas and critical area tracts, when determining the fair market value of land.

- G. Construction Setbacks. Construction activity must occur outside of the critical area and associated buffer unless specifically authorized pursuant to this title. Structures requiring a permit shall be set back a minimum of fifteen feet from wetland buffers, riparian habitat areas, marine buffers, important habitat buffers, priority species conservation areas, and landslide hazards area buffers unless the applicant demonstrates to the approval authority's satisfaction that the proposed construction activity will not encroach into the protected area. Structures not requiring a building permit are required to observe the setbacks and other requirements of this title.

24.01.037 Mitigation sequencing.

Mitigation actions associated with development proposals impacting critical areas shall adhere to the following mitigation sequence:

- A. Avoiding the impact altogether by not taking a certain action or parts of an action;
- B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- D. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- E. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or
- F. Monitoring the impact and taking appropriate corrective measures.

24.01.040 Critical areas maps.

- A. Official Maps. The Resource Stewardship Department Director, or designee, shall maintain the official critical areas maps.
- B. Maps Submitted by Applicants. Applicants shall submit required maps delineating critical areas and/or associated buffers in a digital format acceptable to the County to enable incorporation of the data in the official critical areas maps.
- C. Map Omissions. The presence of critical areas or associated buffers on a parcel triggers the requirements of this chapter, regardless of whether or not a critical area or buffer is depicted on an official critical areas map.

24.01.050 Best Available Science.

- A. The Growth Management Act (RCW 36.70A) requires jurisdictions to consider the best available science in developing policies and development regulations to designate and

protect critical areas. Best available science guidance criteria are located in WAC 365-195-900 through 365-195-925, as amended, which have been incorporated in the definition for best available science in this title (Chapter 24.03).

- B. Thurston county has considered and included best available science in developing this title. This has been achieved through research and consultation with experts, including state and federal agencies. Relevant nonscientific information, including legal, social, policy, economic, and land uses issues has also been considered. The use of nonscientific information reflects the county's responsibility to balance the goals of the Growth Management Act (RCW 36.70A), and the need to address local circumstances. The county shall also use its authority under the State Environmental Policy Act (RCW 43.21C) to identify, consider, and mitigate where appropriate, significant adverse effects on critical areas not otherwise addressed by this title.

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AMENDMENTS TO THE CRITICAL AREAS REGULATIONS TCC 24.60 09/21/2011

CRITICAL AREA SIGNS AND FENCING

Chapter 24.60

CRITICAL AREA SIGNS AND FENCING

Sections:

24.60.010 Generally.

24.60.020 Allowed signage.

24.60.030 Required signage.

24.60.040 Fencing - Wetlands.

24.60.050 Fencing – Habitat area or buffer.

24.60.010 Generally.

To further the purposes and requirements of this title for protecting critical areas, signs and fencing may be necessary to mark the boundaries of certain designated critical areas. The purpose of critical areas signage and fencing is to note the location of the designated critical area and inform the general public and private land owners about wetlands, fish and wildlife habitat conservation areas, and special hazards designated as critical areas in this title.

24.60.020 Allowed signage

Within wetlands, fish and wildlife habitat conservation areas and their associated buffers, signs shall be limited to interpretive signage approved by the approval authority, street signs within rights-of-way, critical area identification signs, and survey markers and monuments. (Also see the signage requirements for the applicable zoning district).

24.60.030 Required signage.

Within wetlands, fish and wildlife habitat conservation areas, landslide hazard areas, marine bluffs and their associated buffers, signs are required as a condition of any permit or authorization issued pursuant to this chapter. Signs and their locations shall be inspected by the director, or designee, prior to commencement of any permitted activity. The applicant shall be required to install permanent signs along the boundary of a critical area tract or along the edge of the buffer. Permanent signs shall consist of an enamel-coated metal face attached to a metal post or another non-treated material of equal durability. The signs shall be worded as follows or with alternative language approved by the approval authority.

(Critical Area)
Do Not Disturb
Contact the Thurston County Resource Stewardship Department
Regarding Uses and Restrictions

These signs shall be located at the point where lot lines intersect with the buffer, at corners where the buffer makes a change of direction, and not less than every three hundred feet. The approval authority may allow the signage to be at larger intervals when the sign would be visible from an adjacent sign and installation of a sign at a shorter distance would interfere with reasonable use of the property. The property owner shall maintain the signs.

24.60.040 Fencing - Wetlands.

- A. Design. Fences shall be designed and placed to minimize impacts to wetlands, wildlife habitat, and wildlife travel. The fence type and height shall be subject to county approval unless superseded by Federal or State approvals.
- B. Fencing the perimeter of the buffer. Fences are permitted along the outer boundary of the wetland buffer.
- C. Fencing within the buffer. Fencing shall not encroach into wetlands or buffers except along the perimeter of lawful development within the wetland or buffer. The approval authority may allow fencing along property lines within the wetland and buffer if it would protect wetland functions.
- D. Required fencing/thorny shrubs. The approval authority shall require permanent fencing to be placed along the outer boundary of the buffer if it is determined that a proposed use adjoining the buffer poses a threat to wetland and buffer functions (e.g., when livestock or people would otherwise enter and damage the area or disturb sensitive wildlife or areas). If the approval authority determines that it would better protect wetland and buffer functions, planting of densely spaced, noninvasive, thorny shrubs to restrict access to the buffer may be required, rather than fencing.

24.60.050 Fencing – Habitat area or buffer.

- A. Fencing the perimeter of the habitat area/buffer. Fences are permitted along the outer boundary of the important habitat area, unless a buffer is required. In that case, the fence may only be located along the perimeter of the buffer, except as provided for by subsection (B) below.
- B. Fencing within the buffer. Fencing may encroach into the important habitat area along the perimeter of lawful development within the important habitat area and buffer. The approval authority may allow fencing along property lines within the important habitat areas if it would protect habitat functions.
- C. Design. Fences shall be designed and placed to minimize impacts to wildlife habitat, wildlife, and wildlife travel. The fence type and height shall be subject to county approval

unless superseded by Federal or State approvals. Signs identifying the important habitat area shall be attached to such fencing consistent with this chapter.

- D. Required fencing/thorny shrubs. The approval authority shall require permanent fencing to be placed along the outer boundary of the important habitat or the boundary of legally established development within the important habitat area if s/he determines that a proposed use adjoining the important habitat area poses a threat to the important habitat area (e.g., when livestock or people would otherwise enter and damage the habitat area or disturb sensitive wildlife). If the approval authority determines that it would better protect habitat functions, s/he may require planting of densely spaced, noninvasive, thorny shrubs to restrict access to the habitat/buffer, rather than fencing.

Figure 24.60-1 Buffer Sign Example



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**AMENDMENTS TO THE CRITICAL AREAS REGULATIONS
TCC 24.91
09/21/2011**

AMENDMENTS

Chapter 24.91

AMENDMENTS

Sections:

24.91.010 Initiation.

24.91.020 Text Amendments – Procedure.

24.91.030 Map Amendments - Procedure.

24.91.040 Amendments - Criteria.

24.91.010 Initiation.

- A. Amendments or modifications to the text of this title may be proposed through the legislative process described in Chapter 2.05 TCC for comprehensive plan or development code amendments.~~initiated as follows:~~
- ~~1. By the Board of county commissioners; or~~
 - ~~2. By the Planning Commission.~~
- B. Amendments or modifications to the critical areas maps may be initiated as follows:
1. By the Board of county commissioners; or
 2. By the Planning Commission; or
 3. By the Director
 4. By a member of the public.

24.91.020 Text amendments - Procedure.

Text amendments to this title follow the legislative process outlined in Chapter 2.05 TCC, Growth Management Public Participation.

24.91.030 Map amendments - Procedure.

- A. The Director of the Resource Stewardship Department maintains official critical areas maps. Timely amendments are necessary to critical areas maps as new information becomes available to ensure the highest degree of accuracy. The ~~Resource Stewardship Department~~ Director, or designee, shall periodically update and correct the maps administratively as warranted. Administrative decisions of the director may be appealed as set forth in section 24.05.050 TCC.
- B. The property(s) and adjacent owner(s) to any parcel subject to a map change ~~not involving a legislative amendment~~ shall be provided written notice of the map amendment. Map amendments shall be justified in writing, and shall be posted electronically to the County's internet page. The ~~Resource Stewardship Department Director~~ director or designee shall maintain records of map amendments.
- C. Maps may also be amended due to information provided through a development application involving notice to adjacent property owners (Type II and III), legislative text and comprehensive plan amendments. In each of these instances, maps may be amended by the director following the final decision on the development application involving notice to adjacent property owners (Type II and III), legislative text, and comprehensive plan amendments without further notification specified in Subsection 24.90.030(B).
- D. Notice regarding any proposed High Groundwater Flood Hazard Area Map amendment shall be sent to property owners within 500 feet of the subject site in urban growth areas and within 1,000 feet of the subject site outside of urban growth areas, and others that would be directly affected by the map amendment, as determined by the director. People receiving notice shall be given twenty days prior to a decision to provide relevant information for consideration by the approval authority.
- E. Map amendments not initiated by Thurston County shall follow the Type II review process in chapter 24.05 TCC. A fee may be charged for amendments.
- F. In addition to other notice requirements in this section, notice regarding any proposed Critical Aquifer Recharge Area map change or wellhead protection boundary change shall be sent to nearby water purveyors.
- G. Special reports and/or studies may be requested by the director prior to a decision on a map amendment. These may include but are not limited to, detailed topographic maps, surface drainage patterns including culvert and ditch locations, hydrogeological and hydraulic modeling, statistical or mathematical analysis, and other data necessary to evaluate the applicant's request. The department may consult, as necessary, with technical experts at the applicant's expense. The County shall provide the applicant with a cost estimate and obtain their approval prior to consulting with the experts. The

application shall be closed if the applicant chooses not to bear the cost of the evaluation. Prior to submitting an application for a map amendment, the proponent shall participate in a presubmission conference. Please see each critical area chapter for any other specific map amendment requirements.

24.91.040 Amendments – Criteria.

Critical areas text and map amendments are subject to the following criteria:

- A. Amendments shall be consistent with the best available science requirements of the Growth Management Act; and
- B. Amendments shall be consistent with the Growth Management Act (RCW 36.70A), and weighed against the specific goals and requirements therein; and
- C. Amendments shall be consistent with the Thurston County Comprehensive Plan, and weighed against the specific goals and policies therein; and
- D. Amendments shall be consistent with the stated purposes of this title.