Date: February 19, 2020
Public Hearing Date: February 19, 2020
Prepared by: Brett Bures, Building and Planning Manager
Proponent/Applicant: Thurston County Community Planning and Economic Development (CPED)
Action Requested: Amend Section 24.50.070 of the Thurston County Critical Area Ordinance to increase the validity period of Critical Area Determinations

[ ] Map Changes  [x] Text Changes  [ ] Both  
[ ] Plans/documents  [ ] Affected Jurisdictions  [ ] Affects Comprehensive

**TOPIC**
Increase the length of the validity period for Critical Area Determinations (CAD)

**WHAT IS THE ISSUE BEING ADDRESSED?**
In our current code, the Critical Area Determination (CAD) is only valid for one year. This is inconsistent with other common permit applications, such as septic permits, residential site plan reviews, Land use approvals, and Critical Area Review permits, all of which have 3 year validity.

**BACKGROUND**
Any person seeking to determine whether a proposed activity, property or an area is subject to the regulations of the Critical Area Ordinance (CAO) may apply for a Critical Area Determination (CAD).

The CAD process is an important tool for citizens to help determine feasibility. Thurston County’s population is growing. Property values are increasing. Most of the remaining undeveloped vacant property has critical area issues. Property owners, permit applicants, prospective real-estate professionals, and property buyers/sellers may use the results of a CAD to obtain some level of certainty before making a major financial commitment. Property or project feasibility is the most-asked question we receive.

During our research for proposed changes under Docket item A-16 (“Amend Zoning Ordinances to Add a Site Plan Review Process for Single Family Residential, Other Permits, and Review Vesting for All Other Permits”) this change emerged as an immediate need.

The proposed change would only modify the length of the validity. No other changes are proposed.
ANALYSIS
In the current Critical Area Ordinance, CADs are only valid for one year. The proposed code change to a 3 year CAD is necessary to be consistent with other common application types such as land use approvals and septic systems, which are valid for 3 years. This will help clarify the determination process for citizens and staff, and provides more time and flexibility for property owners to plan for future permitting.

The industry standard for the validity of most critical area reports, such as wetland delineations and geotechnical assessments, is 3 to 5 years. Unless a major geological or flood event occurs, most critical areas do not change year-to-year.

Thurston County evaluated the current validity periods for critical areas, gopher reviews, single family residential, land use approvals, septic permits and reviewed vesting for all permits. The current one validity for CADs does not match.

WHAT OTHERS ARE DOING
Staff reviewed codes from three counties. These three have 3 year periods of validity.

Lewis County: Land Use and Development Regulations Title 17
17.05.140 (1) Duration of Approval.(a) All project permit approvals shall be valid for a period of three years, after which they shall automatically expire, unless otherwise stated

Clark County Code 40.450 Wetland protection
40.450.030 (B) Predetermination
Prior to submittal of a development permit application, a person may request from the responsible official a written predetermination of whether wetlands exist on any parcel less than forty (40) acres. An applicant may also choose to submit a digital file of delineated wetland boundaries consistent with Section 40.450.030(D)(3) or request staff to digitize the information. The predetermination shall be binding on the responsible official for a period of three (3) years; provided, that such predetermination shall be subject to administrative appeal upon its application in conjunction with a triggering application.

Pierce County: Title 18E Development Regulations – Critical Areas
1. Expiration of Approval.
a. Approvals granted under this Title shall be valid for the same time period as the underlying permit (e.g., preliminary plat, site development, building permit). If the underlying permit does not contain a specified expiration date then approvals granted under this Title shall be valid for a period of three years from the date of issue, unless a longer or shorter period is specified by the Department.

CONSISTENCY WITH THE COMPREHENSIVE PLAN
Staff has reviewed the Comprehensive Plan for Thurston County and this proposal is consistent with the plan. Most relevant policies to this proposal are located in Chapter Two – Land Use, Chapter Nine - Natural Environment, and Thurston County’s ‘County-Wide Planning Policies’.

FINANCIAL IMPACT
No financial impacts have been identified at this time.

SUMMARY
Staff has three options for consideration. Option 2 was a suggestion from the Planning Commission discussed at the January 22, 2020 Planning Commission session.
The proposed code draft language can be found in (Attachment A).

The following are pros and cons for the proposed three options.

**Option 1:** Increase validity of a critical area determination to **three years**.

**Pros:**
- Provides consistency with other permit application vesting and validity periods
- Provides consistency with the current Gopher Review Protocol developed with guidance from the Board of County Commissioners which allow for a 3 year validity for gopher reviews.
- Streamlines the process
- Gives citizens more clarity regarding regulations which may affect their projects
- Most critical areas do not change in a year’s time. Industry standards for critical area reports vary from 3-5 years.
- Reduces costs of permit fees for applicant
- Allows for a “feasibility” analysis for those not ready to build

**Cons:**
- None noted

**Option 2:** Increase the validity of a critical area determination to **five years**.

Exception: Negative determinations following Thurston County’s current Site Inspection Protocol for Mazama Pocket Gophers are valid for 3 years.

**Pros:**
- Gives citizens a longer time and even more clarity regarding regulations which may affect their future projects
- Extends all validity periods for CADs to 5 years except negative gopher determinations remain at 3 years.

**Cons:**
- Does not match current 3 year validity of other related applications.
- Does not match the 3 year validity for gopher reviews

**Option 3:** Do not change the validity period. Keep CAD’s valid for one year.

**Pros:**
- No further staff time incurred for this project.

**Cons:**
- Inconsistency with other vesting and validity periods for related applications will continue to cause confusion.
- Larger projects may not be able to be submitted within the current timeframes allowed.
- Maintains existing costs associated with permit fees.

**DEPARTMENT RECOMMENDATION**

Staff recommends Option 1, and requests the Planning Commission sign a letter of recommendation for the Board of County Commissioners.
SEPA
An environmental determination for the proposed code amendment in unincorporated Thurston County is required pursuant to WAC 197-11-704; and, will be completed prior to a public hearing on the amendments before the Board of County Commissioners.

NOTIFICATION
This staff report was posted online and sent to CPED’s webmail subscribers, and interested parties on file with this action. Legal Notice for this public hearing was published in The Olympian 1/29/2020.

PUBLIC COMMENT
Public comment is being collected at this public hearing.

SOURCES
The following organizations were sourced for this report: Thurston Long Range Planning (LRP), Municipal Research Services Center (MRSC), and Various Local Jurisdictions in Western Washington.

ATTACHMENTS
Attachment A: Proposed Amendment Draft Code – Bill Format
Attachment A: Revised Code section 24.50.070 of the Thurston County Critical Area Ordinance (Title 24)

Deleted Text:  

Proposed Changes:  

Staff Comments:  

Unaffected Omitted Text  

Option 1:

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 complexity of the site, or the potential of the proposed use to impact critical areas or buffers, the approval authority may request additional information as necessary to make a determination regarding the site.

D. Director Findings. The director 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 the director cannot determine, based on available information or due to access limitations, whether the proposed development would encroach upon a critical area, the applicant shall be advised 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.

E. The critical area determination shall be valid for one year three years.

Option 2:

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 complexity of the site, or the potential of the proposed use to impact critical areas or buffers, the approval authority may request additional information as necessary to make a determination regarding the site.
D. Director Findings. The director 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 the director cannot determine, based on available information or due to access limitations, whether the proposed development would encroach upon a critical area, the applicant shall be advised 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.

E. The critical area determination shall be valid for one year five years.

Exception: Negative determinations following Thurston County’s current Site Inspection Protocol for Mazama Pocket Gophers are valid for 3 years.
### SUMMARY COMMENT SHEET

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<tr>
<th>ID #</th>
<th>Date</th>
<th>Commenter Name</th>
<th>Summary of the comment</th>
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No comments were received