

**A-16: Development Code  
Amendment  
Amend Title 24 Critical Area  
Ordinance Section 24.50.070**

**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       Text Changes       Both  
 Plans/documents       Affected Jurisdictions       Affects Comprehensive

1 **TOPIC**  
2 Increase the length of the validity period for Critical Area Determinations (CAD)  
3  
4 **WHAT IS THE ISSUE BEING ADDRESSED?**  
5 In our current code, the Critical Area Determination (CAD) is only valid for one year. This is  
6 inconsistent with other common permit applications, such as septic permits, residential site plan  
7 reviews, Land use approvals, and Critical Area Review permits, all of which have 3 year validity.  
8  
9 **BACKGROUND**  
10 Any person seeking to determine whether a proposed activity, property or an area is subject to  
11 the regulations of the Critical Area Ordinance (CAO) may apply for a Critical Area Determination  
12 (CAD).  
13  
14 The CAD process is an important tool for citizens to help determine feasibility. Thurston  
15 County’s population is growing. Property values are increasing. Most of the remaining  
16 undeveloped vacant property has critical area issues. Property owners, permit applicants,  
17 prospective real-estate professionals, and property buyers/sellers may use the results of a CAD  
18 to obtain some level of certainty before making a major financial commitment. Property or  
19 project feasibility is the most-asked question we receive.  
20  
21 During our research for proposed changes under Docket item A-16 (“Amend Zoning Ordinances  
22 to Add a Site Plan Review Process for Single Family Residential, Other Permits, and Review  
23 Vesting for All Other Permits”) this change emerged as an immediate need.  
24  
25 The proposed change would only modify the length of the validity. No other changes are  
26 proposed.

## 1 ANALYSIS

2 In the current Critical Area Ordinance, CADs are only valid for one year. The proposed code  
3 change to a 3 year CAD is necessary to be consistent with other common application types  
4 such as land use approvals and septic systems, which are valid for 3 years. This will help clarify  
5 the determination process for citizens and staff, and provides more time and flexibility for  
6 property owners to plan for future permitting.

7  
8 The industry standard for the validity of most critical area reports, such as wetland delineations  
9 and geotechnical assessments, is 3 to 5 years. Unless a major geological or flood event occurs,  
10 most critical areas do not change year-to-year.

11  
12 Thurston County evaluated the current validity periods for critical areas, gopher reviews, single  
13 family residential, land use approvals, septic permits and reviewed vesting for all permits. The  
14 current one validity for CADs does not match.

15

## 16 WHAT OTHERS ARE DOING

17 Staff reviewed codes from three counties. These three have 3 year periods of validity.

18

### 19 Lewis County: Land Use and Development Regulations Title 17

20 17.05.140 (1) Duration of Approval.(a) All project permit approvals shall be valid for a period of  
21 **three years**, after which they shall automatically expire, unless otherwise stated

22

### 23 Clark County Code 40.450 Wetland protection

#### 24 40.450.030 (B) Predetermination

25 Prior to submittal of a development permit application, a person may request from the  
26 responsible official a written predetermination of whether wetlands exist on any parcel less than  
27 forty (40) acres. An applicant may also choose to submit a digital file of delineated wetland  
28 boundaries consistent with Section [40.450.030\(D\)\(3\)](#) or request staff to digitize the information.

29 **The predetermination shall be binding on the responsible official for a period of three (3)**  
30 **years**; provided, that such predetermination shall be subject to administrative appeal upon its  
31 application in conjunction with a triggering application.

32

### 33 Pierce County: Title 18E Development Regulations – Critical Areas

#### 34 18E.10.070 E (1): Time Limitations.

##### 35 1. Expiration of Approval.

36 a. Approvals granted under this Title shall be valid for the same time period as the underlying  
37 permit (e.g., preliminary plat, site development, building permit). If the underlying permit does  
38 not contain a specified expiration date then approvals granted under this Title shall **be valid for**  
39 **a period of three years from the date of issue**, unless a longer or shorter period is specified  
40 by the Department.

41

## 42 CONSISTENCY WITH THE COMPREHENSIVE PLAN

43 Staff has reviewed the Comprehensive Plan for Thurston County and this proposal is consistent  
44 with the plan. Most relevant policies to this proposal are located in Chapter Two – Land Use,  
45 Chapter Nine - Natural Environment, and Thurston County's 'County-Wide Planning Policies'.

46

## 47 FINANCIAL IMPACT

48 No financial impacts have been identified at this time.

49

## 50 SUMMARY

51 Staff has three options for consideration. Option 2 was a suggestion from the Planning  
52 Commission discussed at the January 22, 2020 Planning Commission session.

1 The proposed code draft language can be found in (Attachment A).

2

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

4

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

6 **Pros:**

- 7 • Provides consistency with other permit application vesting and validity periods
- 8 • Provides consistency with the current Gopher Review Protocol developed with guidance
- 9 from the Board of County Commissioners which allow for a 3 year validity for gopher
- 10 reviews.
- 11 • Streamlines the process
- 12 • Gives citizens more clarity regarding regulations which may affect their projects
- 13 • Most critical areas do not change in a year's time. Industry standards for critical area
- 14 reports vary from 3-5 years.
- 15 • Reduces costs of permit fees for applicant
- 16 • Allows for a "feasibility" analysis for those not ready to build

17

18 **Cons:**

- 19 • None noted

20

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

22 Exception: Negative determinations following Thurston County's current Site

23 Inspection Protocol for Mazama Pocket Gophers are valid for 3 years.

24 **Pros:**

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

29

30 **Cons:**

- 31 • Does not match current 3 year validity of other related applications.
- 32 • Does not match the 3 year validity for gopher reviews

33

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

35 **Pros:**

- 36 • No further staff time incurred for this project.

37

38 **Cons:**

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

43

44

#### 45 **DEPARTMENT RECOMMENDATION**

46 Staff recommends Option 1, and requests the Planning Commission sign a letter of

47 recommendation for the Board of County Commissioners.

48

49

1 **SEPA**

2 An environmental determination for the proposed code amendment in unincorporated Thurston  
3 County is required pursuant to WAC 197-11-704; and, will be completed prior to a public  
4 hearing on the amendments before the Board of County Commissioners.  
5

6 **NOTIFICATION**

7 This staff report was posted online and sent to CPED's webmail subscribers, and interested  
8 parties on file with this action. Legal Notice for this public hearing was published in The  
9 Olympian 1/29/2020  
10

10

11 **PUBLIC COMMENT**

12 Public comment is being collected at this public hearing.  
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14 **SOURCES**

15 The following organizations were sourced for this report: Thurston Long Range Planning (LRP),  
16 Municipal Research Services Center (MRSC), and Various Local Jurisdictions in Western  
17 Washington.  
18

18

19 **ATTACHMENTS**

20 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:	<del>Strikethrough</del>	Proposed Changes:	<u>Underlined</u>
Staff Comments:	<i>Italics</i>	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

ID #	Date	Commenter Name	Summary of the comment
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No comments were received