MEMORANDUM

TO: Thurston County Planning Commission
FROM: Andrew Deffobis, Associate Planner
DATE: March 7, 2011
SUBJECT: Critical Areas Ordinance (CAO) Update – Third Party Review

The Planning Department and Planning Commission have identified several issues in the draft CAO that require revisiting based on testimony submitted for the Planning Commission’s public hearing. The following is a summary of testimony related to draft third party review standards:

- There must be standards that trigger third review (e.g. omissions, errors, incomplete review of available records) (35A, 64B)
- Using County-approved list to pick third party reviewer risks selection of reviewers who adhere to County’s perspective (35A)
- Language regarding third party review must be tightly constrained, very clear in application and with no arbitrary appearance (75)
- County should pay for third party review (75)
- Third party review should only be used if the applicant chooses; is not always necessary and is hurtful to company performing the study (85B)
- Vague references to a third party review should be clarified (101B)

Staff has reviewed and summarized portions of the draft that discuss third party review:

<table>
<thead>
<tr>
<th>Draft Section</th>
<th>Summary of Third Party Review Language</th>
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<tbody>
<tr>
<td>24.01.030(E) General Provisions</td>
<td>When critical area or buffer boundary is in doubt, or field conditions differ from mapping, County staff shall determine the boundary. County may require professional report, at applicant’s expense, to make determination. County may require third party review of reports.</td>
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<tr>
<td>24.10.030(F) Critical Aquifer Recharge Areas</td>
<td>County may require third party review of reports to determine whether new uses in Category I CARAs proposing to use quantities of hazardous materials exceeding thresholds in International Fire Code can be conducted without degrading water quality of affected aquifer.</td>
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<td>24.20.050(B) Frequently Flooded Areas</td>
<td>County may require third party review of proposed map amendments to channel migration hazard areas.</td>
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<td>24.35.020 Special Reports</td>
<td>The approval authority may, at the applicant’s expense, require third party review of a report. The approval authority shall determine the third party reviewer.</td>
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<td>24.35.140 Special Reports</td>
<td>County may require third party review of geologic assessments. If review is required, report will be available for property owners within 1,000 feet of the site to review. [Section also contains third party review report requirements.]</td>
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</table>

**Issues for Discussion**

Staff has attempted to address concerns regarding the perceived ambiguity and applicability of third party review. Language has been added to proposed section 24.05 TCC, which governs administrative procedures (see attached). Essentially, the proposed language describes scenarios when third party review could be utilized by the approval authority.

Staff has not addressed comments regarding payment for third party review; the Resource Stewardship is a cost-recovery department and, as such, must bill for its services or services developed under contract with the department. This includes general administrative review, any required reports or third party review.
Administrative Procedures

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.
24.05.022 Third party review.
24.05.025 Critical area approval authority and review processes.
24.05.030 Coordination with other application reviews.
24.05.040 Presubmission 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:

Page 24.05-1
3. Faulty analysis, faulty analytical procedures, or other findings made through the review of the proposal that support rejection.

24.05.022 Third party review.

A. The purposes of third party review are to maintain public safety and ensure that the nature and extent of critical areas and any associated buffers are correctly determined.

B. The approval authority may, at the applicant’s expense, require a third party review of any submission if there is substantial reason to determine that:

1. The submission contains factual errors, omissions, or incomplete analysis; or

2. Inconsistencies exist 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 support commissioning third party review.

C. The County shall attempt to resolve any issues with the original author(s) or applicant before requiring third party review.

D. The approval authority shall determine the third party reviewer.

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.
7. Monitoring reports for mitigation projects whose goals are other than vegetative restoration or enhancement are to be submitted to the department for a period of time, and upon a schedule, appropriate for the species or habitat of concern. The specifics of such mitigation projects will be determined on a project by project basis.

C. As a condition of approval for permits requiring monitoring, the County shall be provided the ability to enter property to verify monitoring reports and compliance with conditions of permit approval.

D. Failures in the mitigation project shall be corrected as required by the County, such as, but not limited to:
   1. Replace dead or undesirable vegetation with appropriate plantings.
   2. Repair damages caused by erosion, settling, or other geomorphological processes.
   3. If necessary, redesign mitigation project and implement the new design.

E. Correction procedures shall be approved by the fish or wildlife biologist and the Director or designee.

24.35.020 Third party review.
Any submission made to the County as part of an application subject to this title may be subject to third party review, as outlined in section 24.05.022 TCC. 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.

24.35.025 Critical aquifer recharge areas – Required reports.
Critical area review permits under Chapter 24.45 TCC, where the underlying permit application requires a Type III review process (See Chapter 20.60 TCC) within a CARA, shall provide the following special reports:

A. Drainage and erosion control plan; and

B. Hydrogeological report. In addition to the specific requirements for individual uses in Chapter 24.10 TCC, the approval authority may require a hydrogeological report as part of other applications if:
   1. There is insufficient information regarding ground water to perform an adequate review to assure aquifer protection;
   2. The project is likely to possess, store, use, transport, or dispose of hazardous materials; or