MEMORANDUM

TO: Thurston County Planning Commission
FROM: Andrew Deffobis, Associate Planner
DATE: April 11, 2012
SUBJECT: Critical Areas Ordinance (CAO) Update – Rebuilding Following Accidents and Natural Disasters

The Planning Department and Planning Commission have identified several issues in the draft CAO that require further review following testimony submitted for the public hearing. The following is a background and summary of comment regarding the draft CAO’s provisions for rebuilding structures after accidents and natural disasters.

Public Hearing Testimony
At least five written comments touched on rebuilding after accidents and natural disasters. Their comments are summarized as follows:

Comment 77A: Rebuilding in riparian areas (for example after a natural disaster) is not recommended; these buildings should be moved upland of the buffer.

Comment 94: Draft CAO appears to make rebuilding after a natural disaster more difficult. Please clarify standards.

Comment 97: CAO should discourage continual rebuilding of structures that are completely destroyed or severely damaged by natural disasters.

Comment 98B: Requirement to rebuild in an alternate location [following a natural disaster] affects insurability.

Comment 99B: Requirement to apply for building permit within 12 months of destruction may cause hardship.

Draft CAO Language
The draft CAO language that addresses rebuilding structures after accidents and natural disasters is below:

24.50.040 Destruction and restoration.
Restoration or rebuilding of legally established nonconforming structures and/or related appurtenances damaged or destroyed by accident, fire, explosion, act of God, or public enemy may be allowed pursuant the
applicable requirements of this chapter, and the Shoreline Master Program for the Thurston Region, as amended, provided that:

A. Restoration or replacement of legally established nonconforming structures and/or related appurtenances shall not be allowed in the floodway;

B. The structure may be restored or rebuilt in a nonconforming manner to the same extent (e.g. building footprint, impervious surface and square footage) that, but no more than, the pre-existing structure was nonconforming, as determined by the approval authority, unless the nonconforming structure is located in a 100-year floodplain, 100-year channel migration hazard area, or high groundwater flooding hazard area NDZ, where restoration or reconstruction of a nonconforming structure is only permitted in accordance with Chapter 14.38 TCC;

Staff Note: Chapter 14.38 requires anchoring, raising of structures, and other flood-proofing techniques to be used in flood-prone areas.

C. The building permit application for repair or reconstruction is submitted within twelve months of the occurrence of damage or destruction;

D. The building or structure is not voluntarily destroyed; and

E. If the building or structure is proposed to be relocated from the original building site, then the original building site and other degraded areas immediately adjacent to the building site shall be restored with native vegetation as a condition of the relocation, as required by the approval authority. Important wildlife habitats and areas regulated by the Shoreline Master Program, as amended, may have additional vegetation requirements.

Changes From Existing CAO Language
The draft language above was adapted and expanded from the existing CAO. The draft explains that structures in frequently flooded areas follow a different process (which is true in the current CAO), clarifies that structures voluntarily destroyed are not regulated by this language, and adds the requirement to restore original building site locations if a structure is moved to a new location. For reference and comparison, below is language from the existing CAO:

20.56.050 - Destruction and restoration.
A nonconforming structure which is damaged or destroyed by accident, fire, explosion, act of God or public enemy may be restored and used for the nonconforming use in existence at the time of destruction provided that:

1. The structure may be restored or rebuilt in a nonconforming manner to the same extent that, but no more than, the pre-existing structure was nonconforming.

2. The building permit application for repair or reconstruction is submitted within twelve months of the occurrence of damage or destruction.

Staff Recommendations

1. Staff has no specific recommended changes based on public comment.