



COUNTY COMMISSIONERS

Carolina Mejia-Barahona
District One

Gary Edwards
District Two

Tye Menser
District Three

COMMUNITY PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT

Creating Solutions for Our Future

Joshua Cummings, Director

June 15, 2022

Thurston County Board of Commissioners
2000 Lakeridge Drive SW
Olympia, WA 98502

Subject: Planning Commission recommendation to amend the Nonconforming Uses, Structures and Lots Chapter of the Critical Areas Ordinance (Title 24)

The Thurston County Planning Commission has completed its review of the updates to the Existing Nonconforming Uses, Structures and Lots Chapter of the Critical Areas Ordinance (Title 24). This item is on the 2022-2023 Development Code Docket as item A-27.

The Planning Commission held four (4) work sessions on April 6, April 20, June 1, and June 15, 2022 to consider the amendments to Thurston County's Title 24 Critical Areas Ordinance (Chapters 24.03 and 24.50) that allow expanded administrative review of small-scale projects involving existing nonconforming uses, structures, and lots. A public hearing and follow-up work session were held on May 18, 2022. Eleven unique public comments were received on this proposal, as well as testimony from ten people at the public hearing. General themes included concern regarding any undermining of the use of best available science, increased human use within critical areas, and general support of the proposed amendments.

After thoughtful consideration of public comments, staff analysis, and Department of Commerce's guidance on critical areas, the Planning Commission recommends approval of the amendments by majority vote (5-3), with the following findings:

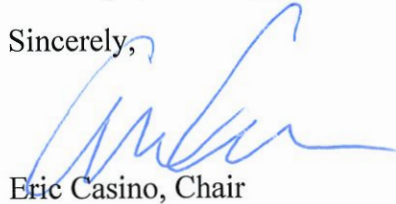
Findings:

1. The proposed amendment is consistent with the Growth Management Act 36.70A RCW.
2. The proposed amendment is consistent with the Thurston County County-Wide Planning Policies.
3. The Thurston County Planning Commission held a duly noticed public hearing on May 18, as required by Thurston County Code Chapter 2.05 Growth Management Public Participation

In addition, a Minority Report was submitted on June 23, 2022 (provided as Attachment B) to explain why three of the dissenting members of the Planning Commission felt this request should not be approved.

Thank you for the opportunity to review and comment on the proposed amendments. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Eric Casino", is written over the word "Sincerely,".

Eric Casino, Chair

cc: Thurston County Planning Commission
 Ramiro Chavez, County Manager
 Joshua Cummings, Director
 Travis Burns, Deputy Prosecuting Attorney

Attachments:

- A. Majority Recommendation – Amended Code Chapters 24.03 and 24.50
- B. Minority Report dated June 23, 2022



COUNTY COMMISSIONERS

Carolina Mejia-Barahona
District One

Gary Edwards
District Two

Tye Menser
District Three

COMMUNITY PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT

Joshua Cummings, Director

Creating Solutions for Our Future

TO: Thurston County Board of Commissioners

FROM: Thurston County Planning Commissioners Wheatley and Pestinger

DATE: June 23, 2022

SUBJECT: **Development Code Docket #A-27 – Nonconforming Code Update – Critical Areas (Title 24)**

Honorable Commissioners:

The Planning Commission recently considered a request to amend the Nonconforming Code of the Critical Areas Ordinance, Sections 24.03 Definitions, and 24.50.020(D) Existing Nonconforming Uses, Structures and Lots. A public hearing was held on May 18, 2022.

At our June 15, 2022, work session, the Planning Commission voted **5-3** to recommend approval. This minority report is respectfully submitted to explain why some members of the Planning Commission feel this request should not be approved.

- 1) **Match Code Amendments to Current and Future Needs.** The signatories to this report support amendments that increase the protectiveness of Title 24 to Critical Areas. The Thurston County Climate Adaptation Plan, Climate Mitigation Plan and Thurston Regional Planning Council Sustainable Thurston Report Card and 2021 Basin Condition Report all support the need for enhancing protectiveness beyond the current status quo. However, the package of proposed amendments for nonconforming structures and uses provides no enhancements to protectiveness and seeks to meet a standard of no net loss at best.

We appreciate concerns that the requirement for a Reasonable Use Exception (RUE) can be unfair to those who feel that they would be granted an Exception but cannot afford to engage in the process. However, the proposed amendments go considerably beyond this equity goal and introduce a fundamental change away from meeting Reasonable Use requirements and toward what could, at worst, become an intensification and expansion of use.

To help us to understand the scale of the issues that the proposed code amendments seek to redress, Community Planning Staff provided an historical permit analysis with the finding that an average of approximately one permit request per year has been of the small scale to fit with the proposed amendments to TCC Section 24.50 (*Existing Nonconforming Uses, Structures and Lots*). We determined that the intended outcome of the proposed code amendments, if successful, would be to increase the number of permit requests, but that there has been no estimation of how many applications would be submitted and approved with the proposed changes. It is

reasonable to conclude that the current code is reasonably protective, while the revised code increases uncertainty.

While the current package of proposed amendments contains elements that cannot be supported, we are optimistic that there may be further opportunity to address expansion of administrative review for nonconforming structures under certain clearly specified circumstances, and some of the proposed amendments could carry over to that effort. The current periodic Comprehensive Plan review process under the Growth Management Act is generating the production of excellent Critical Areas Ordinance review tools by the Departments of Commerce, Ecology and Fish and Wildlife. Utilization of those tools, along with incorporation of County-based climate adaptation and mitigation elements, should contribute a clearer policy context for addressing nonconforming uses and structures looking toward future needs.

As part of this broader revision process that will serve to inform the policy goals for nonconforming structures as well as other elements of Title 24, we encourage government to government dialogue with Tribes as well as proactive engagement with the TRPC and the Departments of Commerce, Ecology, and Fish and Wildlife.

2) ***Definitions and revised code requirements should meet standards of Best Available Science (BAS).***

Of greatest concern, the definition of “Nonfunctioning Buffer Area” fails to meet BAS requirements of the Growth Management Act, specified under WACs 365-195-900 through 365-195-925.

The proposed code amendments are structured upon a heavy reliance upon Ecology sources developed exclusively for Wetlands, and/or in specific reference to the Shoreline Management Act rather than the requirements of the Growth Management Act. We are concerned that the current approach relies heavily upon subjective scientific judgment as part of administrative review, while the available expertise may not extend beyond wetlands to incorporate all applicable BAS to be protective of Fish and Wildlife.

The proposed amendment **24.50.020 D** (*Alteration or expansion of legally established nonconforming structures – General Rules*). specifically applies the proposed definition of “Nonfunctioning Buffer Areas” to “**Riparian area**, wetland and pond buffers” (emphasis added). Therefore, the proposed changes would expand application of “Nonfunctioning Buffer Areas” to riparian as well as wetland buffers. Department of Ecology guidance on Wetlands provides no basis for applying the proposed definition of Nonfunctioning Buffer Areas to Riparian Areas.

The Washington Department of Fish and Wildlife, not the Department of Ecology, has provided BAS-based guidance for Riparian Areas. As of 2020, WDFW’s *Riparian Ecosystems, Vol. 2: Management Recommendations* recommends the concept of Riparian Management Zones (RMZs), and “designating riparian areas as Fish and Wildlife Habitat Conservation Areas (FWHCAs) and protecting them for their inherent value, rather than just as buffers for rivers and streams.”

It is concerning that a review by a WDFW habitat biologist, provided to the Commission on the date of the public hearing (May 18 2022), advises “that the County include language in the CAO requiring concurrence from the Department of Fish and Wildlife, Department of Ecology, and Tribes when the County has determined that a ‘Functionally Isolated Buffer’ or ‘Functional Isolation’ exists, before approving the proposed land use.”

June 23, 2022

This can be interpreted as a lack of confidence that the standards established in the proposed code revisions are sufficient to prevent potential loss of Critical Area habitat. If concurrence is needed, it also calls into the question the effectiveness of the proposed Code Revisions in achieving streamlining while remaining fully protective of Critical Areas.

3) ***More clarity is needed regarding equity goals and the differences between Reasonable Use Exceptions and Administrative Review.***

One of the science-based references provided to the Planning Commission is the DRAFT Wetland Guidance for Critical Areas Ordinance (CAO) Updates, May 2022, Publication #22-06-005, for which the Public Comment period closed on June 24. This is one of the sources utilized to develop language on "Nonfunctioning Buffer Areas." That same document contains model language for nonconforming uses and structures as an allowed use in *Wetland* buffers: "Repair and maintenance of legally established non-conforming uses or structures, provided they do not increase the degree of nonconformity." We note the mention of repair and maintenance only.

The current Thurston County code currently utilizes the Reasonable Use Exception process, along with definitions and requirements that often employ the (FEMA-based) 50% rule and other restrictions as the means to achieve this objective to "not increase the degree of nonconformity." It is consistent with the "Precautionary or no risk approach" advised in WAC 365-195-920, "in which development and land use activities are strictly limited until the uncertainty is sufficiently resolved." The concept behind the Reasonable Use Exception is that the applicant must prove that a project is necessary and can only be done in a way that impacts the Critical Area, and that not being allowed to do so would violate constitutional property rights. As the historical permit analysis shows, there is low chance that requests for permits that increase the "degree of nonconformity" will be increased under the current code with its reliance on Reasonable Use.

Under certain circumstances, and so long as the "degree of nonconformity" is not increased, expansion of administrative review and changing the framework of restrictions is possible and may even be preferable in order to achieve greater equity for those – such as individuals who wish to age in place -- who find the present system too financially burdensome. However, when the Reasonable Use Exception is removed, so is the principle that other remedies should be sought first before placing present and future Critical Area function at greater risk. We suggest that the specific equity goals for expanding administrative review should be identified, so that code revision can better balance those specific goals against the risks of cumulative expansion, intensification, and changes to Critical Area functionality in the future.

Thank you for your consideration. We are happy to speak with you further if you have any questions about our concerns.

Sincerely,
Helen Wheatley
Kevin Pestinger
Joel Hansen

**Thurston County Community Planning and Economic Development
Department
Community Planning Division**

**THURSTON COUNTY
PLANNING COMMISSIONERS**

**PLANNING COMMISSION BRIEFING
ATTACHMENT A – DRAFT ORDINANCE**

June 15, 2022

**Nonconforming Code Update – Critical
Areas Ordinance
Code Amendment**

Section I: Title 24, Chapter 24.03 Definitions

Section II: Title 24, Chapter 24.50 Existing Nonconforming Uses, Structures and Lots

Deleted Text: ~~Strikethrough~~
Staff Comments: *Italics*

Proposed Changes: Underlined
Unaffected Omitted Text: ...

The proposed amendments contained herein are included on the 2022/2023 Official Development Code Docket as Item A-27. Development Code Docket Item A-27 is a legislative proposal to expand administrative review and approval of small-scale projects associated with existing nonconforming uses, structures and lots that have minimal to no functional impact to the critical area. This proposal is comprised of two (2) chapters that would be amended, including revised definitions, references, and revisions to existing regulations.

I. Thurston County Code Chapter 24.03 TCC (DEFINITIONS) shall be amended to read as follows:

...

24.03.010 – Definitions.

...

"Alteration, structure" means change to, ~~addition to,~~ or modification of an existing physical structure beyond routine repair and maintenance, but not amounting to complete replacement. This includes changes to the supporting members of a building such as bare walls, columns, beams, floor joists, roof joists, girders, rafters, or changes in roof. An alteration also includes activity that requires a building permit. ~~The cost of an alteration shall not exceed fifty percent of the structure's current market value as determined by an accredited appraisal or the assessor's valuation, at the owner's option. The value shall be determined based the value of the structure either before the repair, maintenance, alternation, or expansion is started, or if the structure has been damaged, and is being restored, before the damage occurred.~~

...

"Alteration, use" means change to, ~~addition to,~~ or modification of an existing use, including any human activity that results or is likely to result in an adverse impact upon the existing condition of a critical area or its buffer. "Alteration" does not include passive recreation such as walking, fishing or similar low impact activities.

...

"Expansion" means alteration of, or addition to, a structure beyond the existing building footprint, or the alteration of a use beyond the existing use area. ~~Also see definition of "alteration."~~

...

"Nonfunctioning Buffer Area" means that a significant development exists that creates a complete barrier to the biological and hydrological functions of the buffer area. Significant development includes built public infrastructure like paved roads and railroads, or private developments like houses or commercial structures.

...

Updated to ensure consistency with definition of impervious surface found in Drainage, Design and Erosion Control Manual

"Impervious surface" As defined in the Thurston County Drainage Design and Erosions Control Manual (DDECM) ~~means pavement (compacted gravel, asphalt and concrete), roofs, revetments, or any other human-made surface which substantially impedes the infiltration of precipitation and other surface water that had entered the soil under natural conditions prior to development; and/or that hard surface area that causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions prior to development. Common impervious surfaces include, but are not limited to: roof tops, walkways, patios, driveways, parking lots, concrete or asphalt paving, gravel roads, and packed earthen materials.~~

...

"~~Related Normal residential~~ appurtenances" means those improvements or structures which are connected to the use and enjoyment of the primary structures~~single-family residence~~ and are located landward of the ordinary high-water mark and includes a garage, deck, driveway, on-site septic system, and utilities.

...

As amended in 24.50.040, replacement of nonconforming structures permitted outright.

~~"Replacement" or "total replacement" of a structure involves the removal of more than fifty percent of the lineal footage of existing exterior ground floor walls or the cost of repairs exceeds fifty percent of the structure's current market value as determined by an accredited appraisal or the assessor's valuation, at the owner's option. The value shall be determined based the value of the structure either before the repair, maintenance, alternation, or expansion is started, or if the structure has been damaged, and is being restored, before the damage occurred.~~

II. **Thurston County Code Chapter 24.50 TCC (EXISTING NONCONFORMING USES, STRUCTURES AND LOTS) shall be amended to read as follows:**

The purpose of the non-conforming code chapter is to establish provisions for developing and redeveloping existing uses, structures and lots affected by critical areas that do not conform to the Critical Areas Ordinance (Title 24).

...

24.50.020 - Alteration or expansion of legally established nonconforming structures—General rules.

Alteration or expansion of legally established nonconforming structures or uses, including structures or uses that do not require a permit, is allowed subject to all of the following:

A. Maintenance. All legally established, nonconforming structures can be maintained (e.g., painting and repairs);

B. Alteration. Interior and exterior remodels and the addition of upper stories to legally established nonconforming structures are permitted. Except as provided below, such additions shall not be cantilevered into or extend beyond the existing or approved building footprint into a critical area or associated buffer;~~Legally established nonconforming structures may be altered within their existing building footprint. Additionally, attached decks, porches, and patios may be altered in their existing footprint, excluding the addition of permanent roof structures. If applicable, also see Chapter 24.20 TCC regarding limitations in frequently flooded areas. Legally established, attached nonconforming decks, porches, or patios shall not be enclosed for use as livable space, unless the deck, porch, or patio is already covered by an existing permanent roof structure as determined by the approval authority;~~

CD. Vertical Additions. Alterations to legally established nonconforming structures shall be allowed for the addition of height consistent with applicable height regulations in

the underlying zoning district. Within marine bluff or landslide hazard areas, or their buffers, vertical additions are only allowed if a geological assessment demonstrates that it will not negatively impact slope stability. Expansion of the established nonconforming portion of the structure is prohibited, except for vertical additions consistent with applicable height regulations in the zoning district. Additions shall not be cantilevered to extend beyond the existing structure's footprint (outside wall at the foundation) into a critical area or associated buffer. Vertical additions to legally established portions of a nonconforming structure are only allowed within marine bluff or landslide hazard areas, or their buffers, if a geological assessment demonstrates that it will not negatively impact slope stability.

D. Nonfunctioning Buffer Areas. Riparian, wetland, and pond buffers or portions of the buffer areas that are both physically separated from a critical area by a legally established development and not protecting the critical area from adverse impacts shall be excluded from critical area buffers otherwise required by TCC Chapter 24.50 provided:

1. The nonfunctioning buffer areas occurred due to topographic breaks (e.g., bluffs) or a legally established road (not including logging roads), railroad or other lineal facility, primary structure, or barrier established prior to July 24, 2012, that physically separates and impedes the biological and hydrological functions of a portion of the buffer.

2. Where physical separation is caused by a primary structure established prior to July 24, 2012, any proposed expansions into a nonfunctioning buffer area shall be limited to the width of the primary structure, extending away from the critical area.

3. The applicant provides the approval authority with sufficient information pursuant to Chapter 24.40, Critical Area Review Permit, to determine whether the buffer performs any biological or hydrological function. The approval authority may require concurrent technical review by a state or federal agency, or applicable tribe. If concurrent review is required, the agency or tribe shall be afforded a two-week comment period as part of the Critical Area Review Permit process.

~~EE.~~ Expansion of conforming portions of a legally established nonconforming structure. If only a portion of the structure is nonconforming (e.g., lies within an important habitat area), expansion of the conforming portion of the structure is permitted provided the expansion does not extend into the critical area or associated buffer.; and

~~E.—~~ Cantilevered alterations, expansions or additions to nonconforming portions of structures shall not extend beyond the existing building footprint into the critical area or its associated buffer.

24.50.025 - Expansion of impervious surfaces in riparian areas, wetland buffers and pond buffers.

The approval authority may allow up to a five hundred square foot expansion of impervious surface, ~~including an existing structure's footprint,~~ within a riparian ~~habitat~~ area, wetland buffer or pond buffer if it is determined that:

- A. All new impervious surfaces, which include structures, will be sited at a distance that is greater than or equal to the primary~~original~~ structure(s) setback from the water body;
- B. The expansion would occur at least one hundred feet from a Type "S" or "F" stream and Type "N" stream draining to a Type "S" or "F" stream, wetland edge, or marine waters;
- C. ~~The area proposed for the expansion was~~primary use associated with the development proposal ~~was lawfully established~~developed prior to July 24, 2012 ~~or, if not, the unlawful development was not caused by the present landowner or did not occur within the past seven years;~~
- D. If the riparian ~~habitat~~ area, ~~the outer 25% of~~ wetland buffer or pond buffer located on the site between the water body and the primary structure has been degraded on the site, the degraded area, or a portion of the degraded area equal to the size of the expansion, whichever is less, will be restored with native trees and vegetation. The degraded area chosen for restoration must be located~~the area~~ nearest the most sensitive habitat as determined by the approval authority;
- E. The expansion, coupled with any proposed mitigation, would be at least as effective in protecting all of the riparian ~~area~~habitat, wetland buffer, or pond buffer's functions as under current conditions;
- F. The proposed expansion would be consistent with the shoreline master program for the Thurston Region, as amended, the impervious surface limits in the applicable zoning district, and other applicable provisions of this title;
- G. If final inspection shall occur prior to restoration being complete, ~~t~~The applicant shall provides a performance surety consistent with Chapter 24.70 TCC to ensure survival or replacement of plants used in the restoration;
- H. No previous expansion has been allowed pursuant to this subsection; and
- I. Prior to final inspection, ~~t~~The applicant shall~~will~~ record a document with the subject property's title indicating that no further expansion of the structure's footprint or impervious surface is allowed within the riparian ~~habitat~~ area, wetland buffer or pond buffer on the site~~property~~.

24.50.035 - Intensification.

An intensification of a legally established nonconforming use is permitted provided that it is consistent with all of the following:

- A. The use is contained within the existing or expanded structure as set forth in this title (~~per this title for nonconforming structures and uses~~) structure, or an area that has been legally used to accommodate the use;
- B. It is not different in kind from the legally existing nonconforming use; and it would not cause increased harm to the critical area, or increase the risk associated with the hazard, as determined by the approval authority;
- C. Intensification of a legally established nonconforming use shall not exacerbate flood or channel migration hazards, or pose an increased risk of water contamination in the event the site is inundated with flood waters, as determined by the approval authority;
- D. Intensification of legally established nonconforming uses shall not increase the net amount of impervious surface within a critical area and its associated buffer except as provided for in this title; and
- E. The approval authority may require use of best management practices to avoid potential impacts associated with the more intensive use.

24.50.040 — Destruction, restoration and replacement ~~restoration~~.

Restoration or ~~rebuilding~~ replacement 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 to 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. Restoration or replacement of legally established nonconforming structures and/or related appurtenances is only permitted in a one-hundred-year floodplain, one-hundred-year channel migration hazard area, or high groundwater flood hazard area NDZ, in accordance with Chapter 14.38 TCC. The cumulative value of all past known restorations or replacements conducted on or after July 24, 2012, shall be included when determining the cost of a proposed project;
- ~~B.C.~~ Restoration or replacement of legally established nonconforming structures and/or related appurtenances may be permitted subject to configurations existing immediately prior to the time the structure(s) was damaged or destroyed. 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 one-hundred-year floodplain, one-hundred-year channel migration hazard area, or high groundwater flood hazard area NDZ, where restoration or reconstruction of a nonconforming structure is only permitted in accordance with Chapter

~~14.38 TCC. The cumulative value of all past known restorations or replacements conducted on or after July 24, 2012, shall be included when determining the cost of a proposed project;~~

~~ED.~~ The building permit necessary applications to restore or replace any legally established nonconforming structures and/or normal residential appurtenances for repair or reconstruction shall be submitted within twenty-four months of the occurrence of damage or destruction;

~~ED.~~ The building or structure is not voluntarily destroyed, including that resulting from neglect of maintenance or repair; and

~~FE.~~ If the building or structure is proposed to be relocated from the original building site, a structure and/or related appurtenance is relocated, 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. The applicant shall submit a restoration plan that employs native trees and vegetation. If final inspection shall occur prior to restoration being complete, the applicant shall provide a performance surety consistent with Chapter 24.70 TCC to ensure survival or replacement of plants used in the restoration.

24.50.050 - Discretionary replacement or relocation of nonconforming structures.

Discretionary replacement of legally established nonconforming structures and/or related appurtenances may be allowed pursuant to the applicable requirements of this chapter, and the shoreline master program for the Thurston Region, as amended, provided that:

A. Discretionary replacement of legally established nonconforming structures within frequently flooded areas, one-hundred-year channel migration hazard areas, and high groundwater flood hazard area NDZ is prohibited;

B. There is no alternative outside of the critical area and associated buffer, or there is not minimally sufficient buildable area (not to exceed three thousand five hundred square feet) on the property outside the critical area and associated buffer to accommodate the building/structure, as determined by the approval authority;

C. The replacement of a nonconforming structure and/or related appurtenances shall be prohibited if located within the shoreline management jurisdiction, unless otherwise permitted by the conform to the provisions of the shoreline master program, as amended;

D. If there is no alternative location outside of the critical area and associated buffer to accommodate the structure, then replacement/relocation would occur consistent with this section and provisions for the development of existing lots in TCC Section 24.50.060 and TCC Section 24.50.065, if applicable;

E. When possible and practical, driveways, patios, and walkways located within a critical area buffer shall be made of pervious materials and roof top runoff shall be dispersed and directed into bioretention facilities. See Chapter 15.05 TCC for additional requirements. In geologic hazard areas, the approval authority may require stormwater to be treated, tight lined and/or infiltrated, as warranted, to avoid destabilizing a slope or bluff (See TCC Section 24.15.170); and

F. If a structure is relocated, the original building site and other degraded habitat immediately adjacent to the original building site shall be restored. The applicant shall submit a restoration plan that employs native trees and vegetation. If final inspection shall occur prior to restoration being complete, the applicant shall provide a performance surety consistent with Chapter 24.70 TCC to ensure survival or replacement of plants used in the restoration~~The applicant shall provide a performance surety consistent with Chapter 24.70 TCC to insure that the vegetation used in the restoration project survives or is replaced.~~

24.50.060 - Development of existing lots—Critical areas excluding frequently flooded areas.

Existing lots with critical areas and their associated buffers, excluding frequently flooded areas, for which a complete application for a short plat, large lot subdivision, or subdivision, as defined in Chapter 18.08 TCC, was submitted before July 24, 2012, and other legally existing lots may be developed as follows with a critical area review permit:

A. Except for seismic, volcanic, and mine hazard areas, all new construction of structures, facilities, utilities, access driveways and related appurtenances shall be located outside of the critical area and the associated buffer unless otherwise permitted in this title;

B. New development may be permitted on legal lots containing wetlands or buffers, consistent with other applicable provisions of this title.

C. No new development or construction of structures, facilities, utilities, access driveways and related appurtenances shall create a public safety risk, as determined by the approval authority;

D. Enhancement or restoration (mitigation) of the affected critical area or associated buffer shall be required to offset the impacts of the proposed development, as approved by the approval authority;

E. If a legal lot has less than three thousand five hundred square feet of buildable area outside of the critical area and its associated buffer, to accommodate ~~at the~~ single family residential development including the primary structure, related~~ordinary normal residential~~ appurtenances, landscaping, and accessory structures, the approval authority may, ~~with a critical area review permit, allow~~ permit development to occupy a portion of the critical area buffer to the minimum extent necessary to provide a development site totaling no more than three thousand five hundred square feet provided:

1. The development site shall be located in the outer fifty percent of the standard critical area buffer, or no closer than 100 feet from wetland and / or stream edge for wetland and riparian area buffers, whichever provides the greater buffer. ~~except for wetlands and riparian habitat areas, where the development site shall be located in the outer twenty-five percent of the standard buffer. Development in the critical area and the inner fifty percent of the associated critical area buffer or inner seventy-five percent of wetland and riparian area buffers will require a reasonable use exception;~~
2. The applicant shall demonstrate that due to physical constraints (e.g., topography, soil conditions, or the site's configuration), another configuration would not allow the development to occur without intrusion or with less intrusion into the critical area or buffer than the proposal;
3. The location and scale of existing development on surrounding properties shall not be the basis for granting or determining the location, scale and impact of a single family use allowed under this section;
4. The encroachment into the critical area buffer shall be consistent with other requirements of this section for development on existing lots, requirements for a critical area review permit, and shall not have an adverse impact on species of concern, as determined by the approval authority;
5. Site development, including clearing, grading, construction of structures, utilities, related appurtenances, and landscaping shall occupy the minimum area necessary to accommodate the use;
6. Native tree and vegetation removal shall only be permitted to the minimum extent necessary to accommodate the proposed development, and shall not create a public safety risk;
7. A ~~restoration revegetation~~ plan consistent with this title for disturbed areas shall be submitted with the development application, and shall be completed prior to final occupancy or use. If final inspection shall occur prior to restoration being complete, the applicant shall provide a performance surety consistent with Chapter 24.70 TCC to ensure survival or replacement of plants used in the restoration;
8. Landscaping shall not extend more than fifteen feet from the primary structure toward the important habitat or wetland;
9. Any new structures within a critical area buffer shall be sited to avoid the creation of hazard trees;

10. The approval authority may establish a construction setback to avoid encroachment into portions of the buffer not authorized for development, consistent with TCC Section 24.01.030;

11. The approval authority may authorize use of additional area to the minimum extent necessary in a critical area buffer to accommodate a driveway, associated utilities, and / or an onsite sewage disposal system or well, consistent with other requirements of this title, only if there is no alternative. Mitigation shall be required for any associated impacts to critical area buffers;

12. The use of this single-family residential exception shall not be a result of a self-created hardship such as subdividing the property, adjusting a boundary line, or other actions thereby creating the undevelopable conditions after July 24, 2012, or a self-created hardship created under the applicable standards of Chapter 17.15 TCC after February 1, 1994; and

F. All other development or construction of primary structures, accessory structures, and related appurtenances in the critical area and associated buffer shall conform to the provisions set forth herein~~is prohibited~~.