

**COMMUNITY PLANNING &  
ECONOMIC DEVELOPMENT DEPARTMENT**

Joshua Cummings, Director

*Creating Solutions for Our Future*

**MEMORANDUM**

**TO:** Thurston County Planning Commission

**FROM:** Ashley Arai, Associate Planner

**DATE:** June 1, 2022

**SUBJECT:** Follow-up Information on Development Code Docket #A-27 - Nonconforming Code Update – Critical Areas Ordinance (Title 24)

On May 18, 2022, a public hearing was held on the proposed amendments for the Nonconforming Code Update – Critical Areas Ordinance (Title 24). The public prompted questions about which the Planning Commissioners requested further information. Below are staff responses.

**Summary of Planning Commission Questions and Staff Response**

*The following three questions were raised about proposed TCC Section 24.50.020(D), Functional Isolation – Physical Separation:*

- 1. To clarify the intent of this section, can staff look for a term other than ‘functionally isolated’ that better encompasses riparian areas.*
- 2. In response to public testimony, can staff identify what constitutes a ‘small-scale’ project as it relates to nonfunctioning buffer areas?*
- 3. In response to written comments submitted from Washington Department of Fish and Wildlife (WDFW), can staff update the proposed code amendments to include concurrent review by WDFW?*

Based on this feedback, Staff has updated proposed TCC Section 24.50.020(D) to read:

“D. Nonfunctioning Buffer Areas. Riparian area, wetland and pond buffers 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 to determine whether the buffer performs any biological or hydrological function. The approval authority may require concurrent review by the Washington Department of Fish and Wildlife and / or technical review by a qualified professional, at the applicant's expense, to verify and evaluate the information submitted by the applicant. If concurrent review is required, the Washington Department of Fish and Wildlife shall be afforded a two-week comment period as part of the standard permit review process.”

As updated, this section is now titled ‘Nonfunctioning Buffer Areas’ to clarify the application of these provisions to nonfunctioning riparian area buffers, in addition to wetland and pond buffers. In keeping with this change, the definition of ‘Functionally Isolated Buffers’ has been updated to read:

“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.

To address comments relating to project size, language has been added to limit landward expansions in nonfunctioning buffer areas to the width of an existing primary structure. Lastly, regarding WDFW comments, the section has been updated to give the approval authority the option of requiring concurrent review via a two-week comment period, consistent with how concurrent reviews are integrated into other sections of the code. Any additional government

agencies will be afforded an opportunity to directly request concurrent review as part of the Non-Project SEPA review process.

*What is the basis for the two-year timeframe to complete work on the restoration or replacement of a legally established nonconforming structure?*

This timeframe was intended to reflect Thurston County building permit expiration provisions. Building permits expire if the work is not finished and inspected within a year of issuance. Extensions are allowed in one-year increments; however only one extension may be permitted in the event no inspections have been done for a maximum two-year timeframe. Based on Planning Commission feedback, the following section has been updated to remove any specific reference to work completion, leaving the building permit expiration provisions as the applicable timeline:

“CD. 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;”

*What is the basis in best available science for the proposed changes to the definition of alteration, as well as the addition of provisions for nonfunctioning buffer areas?*

Please refer to the updated Staff Report dated June 1, 2022 and attached hereto for a discussion about how best available science has been applied to the proposed code amendments.

#### **Attachments**

- Attachment A – Staff Report dated June 1, 2022 (UPDATED)
- Attachment B – Draft Ordinance dated June 1, 2022 (UPDATED)

**2022-2023 Development Code Docket  
Nonconforming Code Update – Critical Areas Ordinance  
Public Hearing Staff Report**

**Date:** June 1, 2022

**Prepared by:** Ashley Arai, Associate Planner

**Public Hearing Date:** May 18, 2022

**Proponent/Applicant:** Thurston County Community Planning and Economic Development

**Proposal Description:** Amend Thurston County’s Title 24 Critical Areas Ordinance to update regulations related to existing nonconforming uses, structures, and lots.

**Action Requested:** Amend Thurston County’s Title 24 Critical Areas Ordinance (Chapters 24.03 and 24.50) to allow expanded administrative review of small-scale projects involving existing nonconforming uses, structures, and lots.

**Location:** Rural Thurston County and Urban Growth Areas

- Comprehensive Plan Changes:  Map Changes  Text Changes  Both  
 Development Code Amendments (Title 24)  
 Affected Jurisdictions (\_\_\_\_\_)

1 **TOPIC**

2 Item (#A-27) on the “2022-23 OFFICIAL DOCKET OF PROPOSED DEVELOPMENT CODE  
3 AMENDMENTS” Nonconforming Code Update – Critical Areas Ordinance considers amendments to  
4 Title 24 to expand administrative review and approval of small-scale projects associated with existing  
5 nonconforming uses, structures and lots that have none to minimal impact on critical area function. This  
6 amendment would apply to all properties within unincorporated Thurston County and urban growth areas.

7  
8 This hearing is to consider amendments to Title 24, including amended definitions in Chapter 24.03 –  
9 *Definitions*, and new and revised code language in Chapter 24.50 *Existing Nonconforming Uses, Structures*  
10 *and Lots*.

11  
12 **BACKGROUND:**

13 The purpose of the nonconforming code chapter is to establish provisions for developing and  
14 redeveloping existing uses, structures, and lots affected by critical areas that do not conform to the  
15 Critical Areas Ordinance (Title 24). In accordance with this chapter, most expansions of non-conforming  
16 structures / uses in critical area buffers are subject to a review by the Hearings Examiner through the  
17 Reasonable Use Exception process. Development Services staff has determined that this level of scrutiny  
18 is not necessary for small-scale projects that have none to minimal impact on the functional performance  
19 of a critical area buffer.

1 The proposed updates to the nonconforming code chapter of the Critical Areas Ordinance will allow for  
2 expanded administrative review of projects such as:

- 3 • Alterations of single-family homes within existing building footprints, regardless of improvement  
4 value
- 5 • Additions to single-family homes on the landward side of the critical area when applicants can  
6 demonstrate the buffer area in question no longer performs any biological or hydrological  
7 function; and
- 8 • Providing flexibility in siting single-family homes and their related utilities, septic system,  
9 driveways and accessory buildings on existing non-conforming lots, while still ensuring the  
10 required level of buffer mitigation; and
- 11 • Streamlining when applicants are required to post a bond for restoration work.

12  
13 All remaining proposals that fall outside the purview of an administrative review would still have the  
14 option of applying for a Reasonable Use Exception.

### 15 16 **Scope of the Project**

17 Included with these amendments are revised definitions, updated references, and process improvement  
18 changes to simplify the overall review process for property owners and Development Services Staff.

### 19 20 **DEPARTMENT ANALYSIS:**

21  
22 **Amendment to Definitions (TCC 24.03.010) for Critical Areas Ordinance.** The proposal would  
23 amend definitions for “Alteration, structure”; “Alteration, use”; “Expansion”; “Functionally Isolated  
24 Buffers”; “Impervious Surface”; “Normal Residential Appurtenances”, and “Replacement” to reflect  
25 proposed changes to Chapter 24.50 – ‘Existing Nonconforming Uses, Structures and Lots’.

26  
27 **Amendment to Existing Nonconforming Uses, Structures and Lots (TCC 24.50).** Amendments to  
28 Chapter 24.50 – ‘Existing Nonconforming Uses, Structures and Lots’ would expand administrative review  
29 authority for small-scale projects, expand siting options within wetland buffers, clarify the distinction  
30 between alteration, expansion and replacement, identify when restoration and performance sureties are  
31 required, update standard wording, and reformat for new content hierarchy.

### 32 33 **CONSISTENCY WITH OTHER REGULATIONS, PLANS, AND POLICIES**

#### 34 35 **Chapter 2 - Environment Recreation and Open Space Goals, Objectives, and Policies:**

36  
37 ***Goal 3, Objective A: An effective system to ensure participation by individuals and groups in planning and***  
38 ***decision making should be maintained.***

- 39  
40 • (Policy 4) New land use policies and regulations should involve participation by the public and  
41 should reflect community interests and preferences for new development.
- 42  
43 • (Policy 6) Development permits should be processed in a timely and fair manner to ensure  
44 predictability.

45  
46 ***Goal 3, Objective C: Implement the Comprehensive Plan through county programs and regulations.***

- 47  
48 • (Policy 3) Certainty, understanding, and efficiency of the permitting process should be promoted.

- (Policy 5) Regulations should be monitored to determine whether they are accomplishing their intended purpose

**Staff Finding:** In accordance with Chapter 24.50 of the Critical Areas Ordinance, most expansions of non-conforming structures in critical area buffers are currently subject to a review by the Hearings Examiner through the Reasonable Use Exception (RUE) process. Development Services staff has determined that this level of discretion is not necessary for projects that have no impact on the functional performance of a critical area buffer, such as alterations within an existing building footprint and expansions within nonfunctioning buffer areas. Currently, alterations are limited to 50% of the home value, constraining property owners’ ability to maintain and upgrade their homes over time.

The *Washington State Department of Commerce Critical Areas Handbook, 2018, Chapter 3, Section Allowed Uses or Activities* states:

“Allowed uses or activities” are those uses or activities that are unlikely to result in a critical areas impact because of other regulations or previous reviews. These activities are subject to review by the city or county, but do not require a separate critical areas review or report. Since these activities are generally not “exempt,” the critical areas standards continue to apply and the underlying permit could be conditioned to ensure that the activity complies with critical areas protection. Some jurisdictions use the term “partial exemptions” to note that these activities are exempt from the critical areas review process, but not the protection standards. Allowed uses or activities that may not need to complete a new critical review might include: ... Modification of existing structures. Structural modifications or replacement of an existing legally constructed structure that doesn’t alter or increase impacts to a critical area or buffer and doesn’t increase risk to life or property.”

The proposed package of code amendments would recognize modifications to legally existing nonconforming structures as an allowed use and give property owners flexibility to alter these structures within the existing building footprint and expand these structures into nonfunctioning buffer areas without requiring a separate critical areas review.

In addition to recognizing the allowed uses referenced above, the package of code amendments includes provisions for an administrative review of nonconforming development within wetland buffers, specifically including:

- Permitted impervious surface expansions sited at a distance that is greater than or equal to the primary structure AND at least one hundred feet from wetland edge (TCC Section 24.050.025); and
- Siting new single-family residential dwellings on nonconforming lots in the outer 50% of the standard critical area buffer, or no closer than 100 feet from wetland edge, whichever provides the greater buffer (TCC Section 24.050.060).

Currently, these same nonconforming development proposals located in stream and riparian buffers are administratively reviewed through a Critical Areas Review Permit, while Reasonable Use Exceptions are required for wetland buffers (TCC Sections 24.50.025 & 24.050.060). Development Services staff has the expertise and experience to expand their administrative review of nonconforming development proposals located within wetland buffers. The administrative Critical Areas Review Permit would provide a streamlined process for the public while still affording the same level of critical areas protection by

1 requiring a finding of ‘no net loss’, mitigation of any identified impacts, and third party technical review if  
2 necessary.

### 3 4 **Chapter 4 - Housing Goals, Objectives, and Policies:**

5  
6 **Goal 2, Objective A:** *A variety of housing types should be available to address the changing needs and demographics*  
7 *of our community, within the framework of established urban-rural land use policies.*

- 8  
9 • (Policy 6) The county should support diverse housing alternatives and ways for older adults and people  
10 with disabilities to remain in their homes and community as their housing needs change.

11  
12 **Staff Finding:** The proposed package of code amendments would allow for more flexibility to alter  
13 nonconforming single-family homes within their existing building footprint, as well as expand these  
14 dwellings into nonfunctioning buffer areas. By doing so, the nonconforming structures may be modified to  
15 accommodate changing needs over time, i.e. a growing family, multigenerational living situation, or  
16 caregiver quarters.

### 17 18 **Chapter 9 - Environment Recreation and Open Space Goals, Objectives, and Policies:**

19  
20 **Goal 3, Objective 1:** *To manage surface water in a manner that will protect or improve the quality of water*  
21 *sustaining human use, wildlife, and aquatic life.*

- 22  
23 • (Policy 6) The county should prevent development and activities in streams, riparian areas, and  
24 wetlands and any associated buffers that would damage water quality or habitat functions, except to the  
25 minimum extent necessary when there is no reasonable alternative for accommodating an essential use  
26 (e.g., an essential road or utility crossing).  
27  
28 • (Policy 8) The county should require, to the extent legally permissible, restoration of degraded buffers  
29 and wetlands associated with lakes, streams, rivers, and Puget Sound as a part of new land uses and  
30 development activity.

31  
32 **Goal 5, Objective 1:** *Identify important fish, wildlife, and plant habitats and develop strategies for*  
33 *protecting or restoring important habitats, particularly if they are at risk of significant degradation.*

- 34  
35 • (Policy 4) The county should establish and protect riparian habitat areas to maintain or enhance the  
36 functions sustaining aquatic life and terrestrial wildlife, consistent with best available science.  
37  
38 • (Policy 15) The county should prevent development and activities in streams, riparian areas, wetlands,  
39 other protected wildlife habitats and any associated buffers that would damage their functions, except  
40 to the minimum extent necessary when there is no reasonable alternative for accommodating an  
41 essential use (e.g., an essential road or utility crossing).

42  
43 **Staff Finding:** Per WAC Section 365-195-915(1), the staff findings herein demonstrate how best available  
44 science has been included in the development of the proposed package of code amendments by addressing:

- 45 (a) The specific policies and development regulations adopted to protect the functions and values  
46 of the critical areas at issue.  
47 (b) The relevant sources of best available scientific information included in the decision-making.  
48 (c) Any nonscientific information—including legal, social, cultural, economic, and political  
49 information—used as a basis for critical area policies and regulations that depart from  
50 recommendations derived from the best available science.

1 Given that modifications of any improvement value do not pose an increased risk to critical area functions,  
2 the proposed package of code amendments would recognize alterations to legally existing nonconforming  
3 structures as an allowed use per *Chapter 3, Section - Allowed Uses or Activities* of the *Washington State*  
4 *Department of Commerce Critical Areas Handbook, 2018.*

5  
6 These amendments would also give property owners flexibility to expand existing nonconforming  
7 structures into nonfunctioning buffer areas without requiring a separate critical areas review. The scientific  
8 grounds for allowing expansion of existing nonconforming structures within nonfunctioning wetland and  
9 pond buffer areas can be found in the *Washington State Wetland Rating System for Western Washington,*  
10 *Appendix 8-C Guidance on Widths of Buffers and Ratios for Compensatory Mitigation (2014),* which states:

11  
12 “Where a legally established, non-conforming use of the buffer exists (e.g., a road or  
13 structure that lies within the width of buffer recommended for that wetland), proposed  
14 actions in the buffer may be permitted as long as they do not increase the degree of  
15 nonconformity. This means no increase in the impacts to the wetland from activities in the  
16 buffer.”

17  
18 For riparian area buffers, the approval authority may also require concurrent review from Washington  
19 Department of Fish and Wildlife to properly assess any evidence of critical area function. In all cases,  
20 applicants will be required to provide sufficient information to determine whether the affected buffer  
21 performs any biological or hydrological function to ensure conformance with provisions of ‘no net loss’.  
22 The approval authority may also require technical review from a qualified professional to verify information  
23 provided by the applicant. If any impacts are identified, a corresponding critical areas review (ie Critical  
24 Areas Review Permit or Reasonable Use Exception) will be required in accordance with Title 24.

25  
26 In addition to ensuring ‘no net loss’ and the protection of critical area functions, there may be opportunities  
27 for water resource improvements by requiring modern stormwater treatment and flow control on alterations  
28 to existing structures, as well as projects within nonfunctioning buffer areas. In many cases, these buffer  
29 areas were likely degraded by development that occurred under older regulations that provided less  
30 protection. Any new development activity would be required to conform to Thurston County’s Drainage  
31 Design and Erosion Control Manual, which includes stormwater best management practices and low impact  
32 development techniques.

33  
34 Finally, proposed package of code updates would provide for an administrative review of nonconforming  
35 development within outer wetland buffers, similar to current practices for stream and riparian area buffers.  
36 The administrative Critical Areas Review Permit would provide a streamlined process for the public while  
37 still affording the same level of critical areas protection by requiring a finding of ‘no net loss’, mitigation  
38 of any identified impacts and technical review by a third party if necessary.

#### 39 **PLANNING COMMISSION REVIEW:**

40  
41 The Planning Commission held two work sessions on April 6 and April 20, 2022, and a public hearing on  
42 May 18, 2022, to discuss the amendments to Title 24 to expand administrative review of small-scale projects  
43 associated with existing nonconforming uses, structures, and lots.

44  
45 Attachments and other supporting materials for these meetings can be viewed at:  
46 <https://www.thurstoncountywa.gov/planning/Pages/pc-meetings.aspx>

#### 47 **SEPA**

48  
49 An environmental determination for the proposed code amendment in unincorporated Thurston County is  
50 required pursuant to WAC 197-11-704; and will be completed prior to a public hearing on the amendments  
51 before the Board of County Commissioners.

1 **NOTIFICATION**  
2 Notification for the public hearing was posted online and published in *the Olympian* on April 26, 2022.  
3

4 **PUBLIC COMMENT**  
5 Eleven unique public comments have been received on this proposal. General themes include concern  
6 regarding any undermining of the use of best available science, increased human use within critical areas,  
7 and general support of the proposed amendments.  
8

9 **ATTACHMENTS:**  
10 ATTACHMENT B: Nonconforming Code Update – Critical Areas Ordinance

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

**THURSTON COUNTY  
PLANNING COMMISSIONERS**

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

June 1, 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 area, wetland and pond buffers 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 to determine whether the buffer performs any biological or hydrological function. The approval authority may require concurrent review by the Washington Department of Fish and Wildlife and / or technical review by a qualified professional, at the applicant's expense, to verify and evaluate the information submitted by the applicant. If concurrent review is required, the Washington Department of Fish and Wildlife shall be afforded a two-week comment period as part of the development review process.

~~€E. 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 provide 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;
- BC. 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.~~