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**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: April 6, 2022

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

Background

Officially docketed by the Board in 2020, this project explores updates to language in the Critical Areas Ordinance (Title 24), specifically the Nonconforming Code chapter (TCC 24.50), to expand administrative review and approval of small-scale projects associated with existing nonconforming uses, structures and lots that have minimal impact on the functional performance of a critical area buffer.

Development Services staff have identified this as a priority update that would save applicants time and cost while ensuring no net loss of critical areas.

What public feedback have the proposed amendments received?

None to date.

What changes are proposed in Title 24 of the Thurston County Code?

- Chapter 24.03 Definitions – amending the definitions for Alteration, structure; Alteration, use; Expansion; Impervious Surface; Normal Residential Appurtenances, and Replacement to reflect proposed changes to Chapter 24.50
- Chapter 24.50 Existing Nonconforming Uses, Structures and Lots – amending sections:
 - 24.50.020 - Alteration or expansion of legally established nonconforming structures—General rules.
 - 24.50.025 - Expansion of impervious surfaces in riparian areas and pond buffers.
 - 24.50.035 - Intensification.

- 24.50.040 - Destruction and Restoration.
- 24.50.060 - Development of existing lots—Critical areas excluding frequently flooded areas.

What issues are being addressed with the proposed amendments?

The purpose of the nonconforming 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). In accordance with this chapter, most expansions of nonconforming structures / uses in critical area buffers are subject to review by the Hearings Examiner through the Reasonable Use Exception process. The Development Services staff has determined that this level of scrutiny is not necessary for small-scale projects that have minimal impact on the functional performance of a critical area buffer.

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

- Additions to single-family homes on the landward side of the critical area when applicants can demonstrate the buffer in question is physically separated and no longer performs any biological or hydrological function; and
- Clarifying what constitutes an expansion, alteration, or replacement of a nonconforming structure; and
- Providing flexibility in siting single-family homes and their related utilities, septic system, driveways and accessory buildings on existing nonconforming lots, while still ensuring the appropriate level of buffer mitigation; and
- Streamlining when applicants are required to post a bond for restoration work.

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

Who has reviewed the proposed changes?

To arrive at the proposed amendments, the following departments were involved in review:

- Development Services
- Growth Management Services
- Natural Resources Services

Attachments

- Attachment A – Draft Staff Report
- Attachment B – Draft Ordinance

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

Date: April 6, 2022

Prepared by: Ashley Arai, Associate Planner

Public Hearing Date: REQUESTING May 4, 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 minimal impact to the critical area. This amendment
6 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 minimal impact on the functional performance of a
19 critical area buffer.

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

- 3 • Additions to single-family homes on the landward side of the critical area when applicants can
4 demonstrate the buffer in question is physically separated and no longer performs any biological
5 or hydrological function; and
- 6 • Clarifying what constitutes an expansion, alteration, or replacement of a nonconforming
7 structure; 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 appropriate 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 will still have the option
14 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 that will simplify the overall review process for the property owner.

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”; “Impervious Surface”;
24 “Normal Residential Appurtenances”, and “Replacement” to reflect proposed changes to Chapter 24.50 –
25 ‘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 addition, 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 **Consistency with the Comprehensive Plan**

36
37 Chapter 2 - Land Use Goals, Objectives, and Policies, state:

38
39 *Goal 1, Objective A: County development requirements and programs provide for a balance between*
40 *human uses and the natural environment in rural and resource areas, the conservation of rural resources,*
41 *and for low levels of demand for public services and facilities.*

- 42
43 • (Policy 2) Residential development in rural areas should be allowed on lands that can physically support
44 it and at densities that will not require urban levels of service or significantly impact rural character or
45 environmental quality. Densities should be low enough to discourage leapfrogging of UGA
46 development, and not undermine the natural environment or natural resource management.

47
48 *Goal 3, Objective A: An effective system to ensure participation by individuals and groups in planning and*
49 *decision making should be maintained.*

- 1
2 • (Policy 5) The county should provide adequate staff support to help persons seeking development
3 permits and participating in permit review processes.
4
5 • (Policy 6) Development permits should be processed in a timely and fair manner to ensure
6 predictability.
7

8 **Chapter 9 - Environment Recreation and Open Space Goals, Objectives, and Policies:**
9

10 **Goal 3, Objective 1:** *To manage surface water in a manner that will protect or improve the quality of water*
11 *sustaining human use, wildlife, and aquatic life.*
12

- 13 • (Policy 6) The county should prevent development and activities in streams, riparian areas, and
14 wetlands and any associated buffers that would damage water quality or habitat functions, except to the
15 minimum extent necessary when there is no reasonable alternative for accommodating an essential use
16 (e.g., an essential road or utility crossing).
17
18 • (Policy 8) The county should require, to the extent legally permissible, restoration of degraded buffers
19 and wetlands associated with lakes, streams, rivers, and Puget Sound as a part of new land uses and
20 development activity.
21

22 **Goal 5, Objective 1:** *Identify important fish, wildlife, and plant habitats and develop strategies for*
23 *protecting or restoring important habitats, particularly if they are at risk of significant degradation.*
24

- 25 • (Policy 4) The county should establish and protect riparian habitat areas to maintain or enhance the
26 functions sustaining aquatic life and terrestrial wildlife, consistent with best available science.
27
28 • (Policy 15) The county should prevent development and activities in streams, riparian areas, wetlands,
29 other protected wildlife habitats and any associated buffers that would damage their functions, except
30 to the minimum extent necessary when there is no reasonable alternative for accommodating an
31 essential use (e.g., an essential road or utility crossing).
32

33 This amendment recognizes the needs of property owners to make small-scale alterations / expansions to
34 their existing nonconforming uses, structures or lots without going through a lengthy, cost prohibitive
35 Reasonable Use Exception process. Using best available science as a guide, this package of code
36 amendments allows for an expanded administrative review of projects where the critical area buffers have
37 been isolated and / or where any identified impacts can be appropriately mitigated to restore environmental
38 function.
39

40 **PLANNING COMMISSION REVIEW:**

41 The Planning Commission will hold one work session on April 6, 2022 and staff will request a public
42 hearing for May 4, 2022 to discuss the amendments to Title 24 to expand administrative review of small-
43 scale projects 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

48 **SEPA**

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
2 **NOTIFICATION**
3 Notification for this public hearing was posted online and published in *the Olympian* on [DATE] and sent
4 to webmail subscribers on _____ and a press release was issued on _____.

5
6 **PUBLIC COMMENT**
7 No public comment has been received at this time.

8
9 **ATTACHMENTS:**
10 ATTACHMENT A: 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**

April 6, 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 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 or exterior building footprint. 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."~~

...

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

"Impervious surface" A non-vegetated surface area, which either prevents or retards the entry of water into the soil mantle, as 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 which then causes water to run off the surface in greater quantities or at an increased rate of flow from the flow that present under natural conditions prior to development. Common impervious surfaces include, but are not limited to;: roof_tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, and packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater.

...

"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. Functional Isolation – Physical Separation. Riparian area, wetland and pond buffers that are both physically separated and functionally isolated from a critical area and do not protect the critical area from adverse impacts shall be excluded from critical area buffers otherwise required by TCC Chapter 24.50. Functional isolation can occur due to topographic breaks (e.g., bluffs) or a legally established road (not including logging roads), railroad or other lineal facility, structure, or barrier established prior to July 24, 2012, that physically separates and functionally isolates a portion of the buffer. The applicant shall provide the approval authority with sufficient information to determine whether the buffer performs any biological or hydrological function. The approval authority may require technical review by a qualified professional, at the applicant's expense, to verify and evaluate the information submitted by the applicant; and

~~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 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;

~~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;~~

CD. The building permit necessary applications to restore or replace any legally established nonconforming structures and/or normal residential appurtenances shall be made within twenty-four months of the date the damage or destruction occurred, and the work shall be completed within two years of permit issuance or the conclusion of any appeal on the permit; and for repair or reconstruction shall be submitted within twenty-four 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, 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 is 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~~.