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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, Agriculture Community Program Manager

**DATE:** October 5, 2022

**SUBJECT:** Development Code Docket Item A-18, Agricultural Activities Critical Areas

### **Purpose**

The purpose of this discussion will be to introduce draft code amendments based on the concepts shared at the July 20, 2022, Planning Commission meeting for updating the County's critical areas provisions for *new agricultural activities and facilities*.

### **Background**

Officially docketed by the Board in 2020, this project considers updates to Chapter 17.15 TCC, *Agricultural Activities Critical Areas*, and Title 24 TCC, *Critical Areas Ordinance (CAO)* to integrate with the County's approved Voluntary Stewardship Program (VSP) Work Plan and establish critical areas regulations for any *new agricultural activities and facilities* not covered by the plan.

### *What is the Voluntary Stewardship Program?*

The Voluntary Stewardship Program (VSP) was enacted by the Washington State Legislature in 2011 created a voluntary process to achieve Growth Management Act critical area protection and agricultural viability goals (RCW 36.70A.700-760). In enacting the Voluntary Stewardship Program, the state legislature allowed counties to "opt into" a voluntary, non-regulatory, and collaborative process to maintain and enhance agricultural viability while also protecting and enhancing the functions and values of critical areas, which are evaluated on a watershed basis.

The Thurston Board of County Commissioners opted into the Voluntary Stewardship Program on January 12, 2012, and on April 20, 2017, the Washington State Conservation Commission formally approved the county’s [VSP Work Plan](#). As approved, this plan covers all *existing and ongoing agricultural activities*, defined in RCW 90.58.065 as:

“(A)gricultural uses and practices including, but not limited to:  
Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation.”

*What constitutes a new agricultural activity or facility?*

The Voluntary Stewardship Program (VSP) Statewide Advisory Committee and Conservation Commission published a policy advisory in April 2021 to clarify the application of VSP to *new agricultural activities*. Following this advisory, agricultural activities that have not been conducted before or are proposed to take place on land not previously used for agriculture are considered new and are covered by the County’s Critical Areas Ordinance (Title 24 TCC). Once the use is established, and all impacts have been mitigated, then it is considered existing and ongoing, and would be governed by VSP.

*How does this get applied on the ground?*

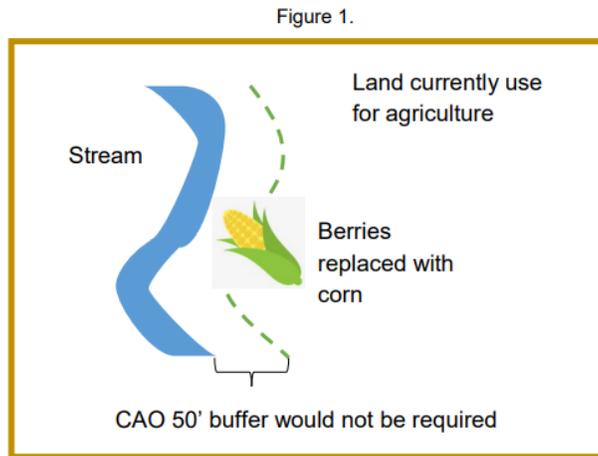
The following three scenarios were included in the policy advisory to help illustrate whether a project would fall within VSP or the County’s Critical Areas Ordinance (CAO):

**Scenario #1:** On land currently used for agriculture, a different or alternate agricultural activity is intended.

Narrative: A landowner has land presently in agriculture and now wishes to engage in a different or alternate agricultural activity, which in this case, means switching crops from berries to corn.

Result: The county VSP work plan would apply to the different or alternative agriculture activity, and therefore, the county CAO would not apply. Because the CAO does not apply, even though the county CAO required a 50’ buffer, the landowner would not have to establish that buffer. The landowner could put the different or alternate crop anywhere

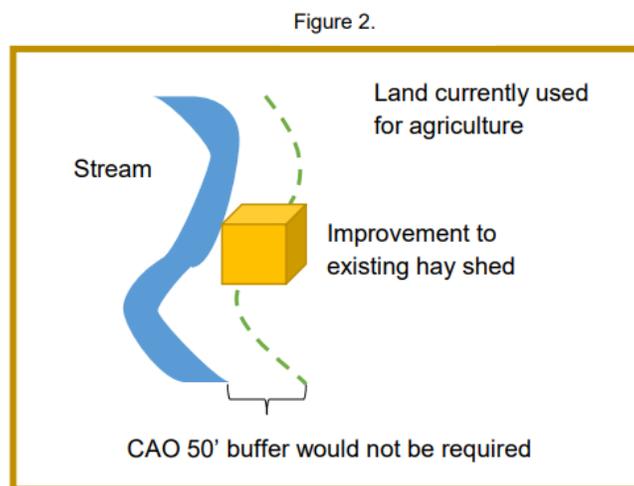
on the portion of that land that meets the definition of agricultural activity. See Figure 1, below.



**Scenario #2:** On land currently used for agriculture, a different or alternate agricultural activity is intended.

Narrative: A landowner has land presently in agriculture and now wishes to engage in a different or alternate agricultural activity, which in this case, means maintaining, repairing, and replacing an agricultural facility or structure. For example, improving a hay shed.

Result: As long as the improvements to the hay shed are within the existing building footprint, the county VSP work plan would apply to the different or alternative agriculture activity or structure, and therefore, the county CAO would not apply. If the improvements expand the footprint, then the county CAO would apply. See Figure 2, below.

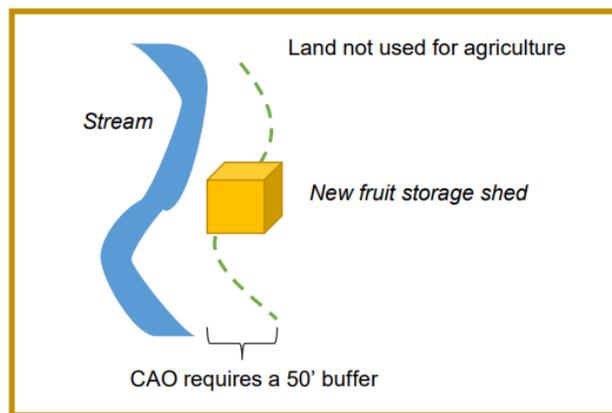


**Scenario #3:** On land not previously or currently used for agriculture, a “new” agricultural activity (construction of shed) is intended.

Narrative: A landowner wishes to install a “new” agricultural activity on non-agricultural land. For example, constructing a fruit storage structure. Before and during installation, the “new” agricultural activity that occurs on land not previously used for agriculture invokes the county CAO and is not governed by the VSP county work plan.

Result: The county CAO would apply to the initial installation and construction of the “new” agricultural activity. Moving forward, the county VSP work plan and not the county CAO would apply to subsequent agricultural activities within that same footprint. See Figure 3, below.

Figure 3.



*What is the State Guidance on Applying Critical Areas Regulations to New Agricultural Activities and Facilities?*

The Washington State Department of Commerce’s Critical Areas handbook encourages the use of conservation plans to protect and enhance critical areas while maintaining long-term viability of agricultural lands. Chapter 5, *Protecting Critical Areas in Natural Resource Lands* states:

*Conservation plans are intended to help agricultural operators maintain productive and economically viable agricultural land, while protecting and enhancing critical areas and water quality using best available science and effective mitigation measures. Conservation Plans can effectively reduce impacts from farm activities on natural resources with solutions unique to each farm to avoid or minimize adverse impacts with mitigation techniques.*

Of the ten other counties staff researched for the proposed code update, seven utilize a conservation planning approach to protect and enhance critical areas for new agricultural activities and facilities.

### **Conceptual Approach for Code Updates**

At the Planning Commission meeting on July 20, 2022, staff presented a concept for developing a conservation planning option for new agricultural uses that would serve to protect and enhance critical areas. This option would:

- Provide multiple pathways to CAO compliance – conservation plan *or* Title 24
- Balance protection of critical areas and working farmlands
- Provide more flexibility and opportunities to incentivize beneficial conservation projects and climate-smart activities
- Build on success of the VSP program
- Leverage partnerships with organizations like Thurston Conservation District and WSU Extension

Commissioners indicated their general support for this concept and asked staff to provide additional information on the following topics:

*Applicable date for when agricultural activity is considered ‘new’ and falls outside of the Voluntary Stewardship Program*

After researching other counties that have enrolled in VSP, it appears the CAO adoption date of July 24, 2012, would be the applicability date for whether an agricultural activity is considered ‘new.’

*Potential resource constraints if conservation plans are required to be prepared by a Technical Service Provider*

Staff met with the Thurston Conservation District (TCD) to better understand the potential demand for new Conservation Plans and their capacity for completing them. In most cases, this requirement will be triggered by an existing farm wanting to expand its footprint or build a new agricultural facility that isn’t covered under VSP. In this scenario, it is likely the farm would already have an Individual Stewardship Plan that could be used as a resource for meeting the requirements under the conservation planning approach.

The manager of Whatcom County’s Conservation Program on Agricultural Lands reiterated that there is limited demand for new agricultural activities and facilities that aren’t associated with an existing farm.

*Option for a farmer to complete a standardized conservation plan*

Staff found one example of a standardized conservation plan approach. Whatcom County offers a checklist-style farm conservation plan for existing/ongoing farms that maintain less than one animal-unit per acre. The plan must include basic information about the existing/ongoing agricultural activities on the farm, a map of the property, a standard checklist designed to protect critical areas and water quality, and an action plan describing Natural Resource Conservation Service (NRCS) best management practices to be implemented to protect critical areas.

Staff met with both the Manager of Whatcom County’s Conservation Program on Agricultural Lands and Thurston Conservation District to discuss how a standardized checklist works and whether it could be applied to new agricultural uses. It was agreed that it would be hard to adapt since a conservation plan for new agricultural activities and facilities must include an assessment of the critical areas being impacted, whereas the impacts from an existing/ongoing use have already occurred.

*Explanation of how agroforestry is integrated into conservation planning*

The definition for ‘agricultural activity’ includes a reference to agroforestry practices, and the following definition for agroforestry has also been added:

“Agroforestry” means the intentional integration of trees and shrubs into crop and animal farming systems to create environmental, economic, and social benefits, such as alley cropping, forest farming, silvopasture, riparian forest buffers, and windbreaks.  
(17.15.200)

*Information on how monitoring and compliance will be addressed in conservation plans*

Monitoring and compliance are key components of conservation planning. Since many agricultural activities are seasonal in nature, the selected conservation practices may be implemented over time rather than all up-front. To address this, conservation plans will be required to:

‘Provide for monitoring and adaptive management on a long-term basis to determine whether the selected conservation practices are successful. The length of time for monitoring and adaptive management should be sufficient to determine if benchmark conditions have been maintained.’ (Proposed 17.15.530(A)(5) TCC)

The proposed code amendment also includes provisions for self-assessment and certification by the farmer for a minimum of two years after permit issuance, and/or periodic inspections by the County. A minimum two-year monitoring timeframe was selected based on conversations with Thurston Conservation District regarding the time needed to reasonably implement best management practices. The ‘self-assessment’ approach reflects how Whatcom and Snohomish Counties currently conduct their monitoring for approved conservation plans. The Whatcom County staff member responsible for monitoring conservation plans shared that they’ve seen a very high success rate, with more than 90% of farmers submitting their annual self-assessments complete with photos and videos.

Once the initial monitoring period is over, and the impacts on critical areas have been mitigated, then the agricultural use is considered existing and ongoing, and would be monitored under VSP. Following the VSP Work Plan, quarterly monitoring reports are submitted to the state, and a five-year watershed basin monitoring report is due in 2024.

**Who has been engaged in this project?**

Staff engaged the Thurston Conservation District, Agricultural Advisory Committee, members of the VSP Workgroup, and other jurisdictional staff in the process of developing the proposed code amendments. Information about the project has been maintained on [Community Planning's website](#).

**Next Steps**

- Continued stakeholder engagement – Attending the October Agriculture Advisory Committee and VSP Workgroup meetings
- Schedule a Planning Commission public hearing on proposed code amendments to Chapter 17.15 and Title 24 TCC

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

**THURSTON COUNTY  
PLANNING COMMISSION**

**ATTACHMENT A – DRAFT CODE AMENDMENT**

October 5, 2022

**Agricultural Uses – Critical Areas  
Code Amendment**

- Section I: Title 17, Chapter 17.15 Agricultural Activities Critical Areas**
- Section II: Title 24, Chapter 24.01 General Provisions**
- Section III: Title 24, Chapter 24.03 Definitions**
  
- Section IV: Title 24, Chapter 24.10 Critical Aquifer Recharge Areas**
- Section V: Title 24, Chapter 24.15 Geologic Hazard Areas**
- Section VI: Title 24, Chapter 24.20 Frequently Flooded Areas**
- Section VII: Title 24, Chapter 24.25 Fish and Wildlife Habitat Conservation Areas**
- Section VIII: Title 24, Chapter 24.30 Wetlands**
- Section IX: Title 24, Chapter 24.45 Reasonable Use Exceptions**
- Section X: Title 24, Chapter 24.50 Nonconforming Uses, Structures, and Lots**

Deleted Text:           ~~Strikethrough~~           Proposed Changes:           Underlined  
Staff Comments:       *Italics*                           Unaffected Omitted Text       ...

*The proposed amendments contained herein are included on the 2022/2023 Official Development Code Docket as Item A-18. Development Code Docket Item A-18 is a legislative proposal to update Chapter 17.15 TCC, Agricultural Activities Critical Areas and Title 24 TCC, Critical Areas Ordinance to integrate with the County’s approved Voluntary Stewardship Program Work Plan. This proposal is comprised of one (1) chapter that would be repealed and replaced and one Title that would be amended, including updated definitions and references, and revisions to use tables.*

- I. **Thurston County Code Chapter 17.15 TCC (AGRICULTURAL ACTIVITIES AND CRITICAL AREAS) shall be repealed and replaced with the following:**

**Chapter 17.15**  
**Agricultural Uses and Critical Areas**

**17.15.100 - Purpose**

It is the policy of Thurston County to accomplish the following in relation to agricultural uses and critical areas:

- A. Minimize loss of life, injury, and property damage due to natural hazards such as flooding, landslides, seismic events, and volcanic eruptions, minimize the need for emergency rescue, and avoid the cost of replacing public facilities.
- B. Promote innovative programs to protect and enhance the functions and values of critical areas as identified in Title 24 TCC – Critical Areas while maintaining and improving the long-term viability of agriculture.
- C. Maintain water quality and quantity to meet human, agricultural, and wildlife needs.
- D. Recognize and address cumulative adverse impacts that could degrade or deplete water resources, wetlands or fish and wildlife habitat, or exacerbate flooding and landslide hazards.
- E. Establish enforcement tools and processes designed to deter activities in violation of this chapter and provide for remedial action for unauthorized impacts to critical area functions and values.
- F. Carry out the goals and policies of the Washington State Growth Management Act (RCW 36.70A) and Thurston County Comprehensive Plan.
- G. Ensure compliance and coordination with applicable federal and state protections.

**17.15.110 - Applicability**

The provisions of this chapter shall apply to agricultural uses, activities, and facilities where they intersect with critical areas in the unincorporated territory of Thurston County, Washington.

On July 1, 2022, the United States Fish and Wildlife Service (USFWS) approved the Thurston County Habitat Conservation Plan and issued a 30-year Incidental Take Permit that provides Endangered Species Act authorization for six species associated with prairie and wetland/riparian habitats across the County. The species covered include Olympia, Tenino and Yelm pocket gopher, Taylor’s checkerspot butterfly, Oregon spotted frog, and Oregon vesper sparrow. Potential impacts on any of these six species and their habitat shall be governed by Chapter 17.40 TCC. If or when Thurston County’s USFWS Incidental Take Permit is no longer valid, such impacts shall be regulated by Title 17 as necessary.

## **17.15.200 – Definitions**

The following definitions and those found in Section 20.03.040 and Chapter 24.03 TCC shall apply to this chapter.

“Adaptive management” means changing approaches for protecting and managing critical areas in response to monitoring and effectiveness results.

“Agricultural activity, existing/ongoing” as defined in RCW 90.58.065 means agricultural uses and practices that were commenced on or before July 24, 2012; including, but not limited to:

1. Producing, breeding, or increasing agricultural products;
2. Rotating and changing agricultural crops;
3. Allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded;
4. Allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions
5. Allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement
6. Conducting agricultural operations
7. Maintaining, repairing, and replacing agricultural equipment
8. Maintaining, repairing, and replacing agricultural facilities and structures, provided that the replacement facility is within the existing footprint and no closer to the critical area than the original facility; and
9. Maintaining agricultural lands under production or cultivation.

"Agricultural activity, new" means: (1) Any agricultural or agroforestry activity that was commenced after July 24, 2012; or (2) use of land for agricultural activities after a previously used wetland, critical fish or wildlife habitat area, or flood hazard area, and/or its associated buffer, has lain idle for more than 5 years, unless the idle land is registered in a federal or state soils conservation program; or (3) any actions that serve to expand the existing agricultural activity beyond the original geographic limits and/or causes greater impacts to the functions or values of a wetland, critical fish or wildlife habitat area, or flood hazard area and/or its associated buffer.

"Agricultural ditch maintenance" means the cleaning of a previously existing drainage system where the original outlet, size or elevation will not be changed. This shall also include the replacement of sections of previously existing tile drainage systems.

"Agricultural facilities" and "agricultural equipment" as defined in RCW 90.58.065 includes, but is not limited to: (1) The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains; (2) corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands; (3) farm residences

and associated equipment, lands, and facilities; and (4) roadside stands and on-farm markets for marketing fruit or vegetables.

“Agroforestry” means the intentional integration of trees and shrubs into crop and animal farming systems to create environmental, economic, and social benefits, such as alley cropping, forest farming, silvopasture, riparian forest buffers, and windbreaks.

"Animal unit" means one thousand pounds of live weight of any given livestock species or any combination of livestock species. Animal equivalents are calculated for each livestock and poultry sector according to estimated rates of manure production for each species. Common examples of livestock species include, but are not limited to, cattle (beef and dairy), horses, goats, pigs, and llamas. For additional information, refer to the U.S. Department of Agriculture Natural Resource Conservation Service Animal Waste Field Handbook.

“Conservation practices” means tools that agricultural operators can use to reduce soil and fertilizer runoff, properly manage animal waste, diversify habitat, and protect water and air quality on their farms.

“Climate-smart mitigation activities” means conservation practices that deliver quantifiable reductions in greenhouse gas emissions and/or increases in carbon sequestration.

“Farm Conservation Plan” is a site-specific plan for expanded and/or new agricultural activities or facilities that identifies farming or ranching activities and conservation practices to protect and/or enhance critical areas while improving agricultural viability. A Farm Conservation Plan must be developed in accordance with Natural Resource Conservation Service Best Management Practices or other applicable best management practices, and the provisions of TCC Chapter 17.15 TCC.

“Habitat conservation plans” (HCPs) are planning documents required as part of an application for an Incidental Take Permit. They describe the anticipated effects of the proposed taking, how those impacts will be minimized or mitigated; and how the HCP is to be funded. HCPs can apply to both listed and non-listed species, including those that are candidates or have been proposed for listing.

“Individual Stewardship Plan” is a site-specific plan prepared on behalf of existing/ongoing agricultural activities as part of the Voluntary Stewardship Program.

"Prior converted croplands" means wetlands that before December 23, 1985, were drained, dredged, filled, leveled, or otherwise manipulated including the removal of woody vegetation, for the purpose, or to have the effect, of making the production of an agricultural commodity possible and an agricultural commodity has been produced at least once before December 23, 1985. This determination is made by the Natural Resource Conservation Service.

“Technical Service Provider” means an individual, private business, nonprofit organization, tribe, and / or public agency that is certified by the Natural Resources Conservation Service to offer services to agricultural producers such as farmers, ranchers, and private forest landowners

to help plan, design, and implement conservation practices or develop conservation activity plans to improve agricultural operations.

“Thurston HCP” means the Thurston County Habitat Conservation Plan dated February 22, 2022, that covers the Olympia pocket gopher, Oregon spotted frog, Oregon vesper sparrow, Taylor’s checkerspot butterfly, Tenino pocket gopher, and Yelm pocket gopher. and may be revised from time to time.

“Voluntary Stewardship Plan (VSP)” means a non-regulatory, incentive-based approach to protecting critical areas for existing/ongoing agricultural activities, while maintaining agricultural viability; enabled under the state's Growth Management Act (RCW 36.70A.700) on July 22, 2011.

### **17.15.300 - General requirements.**

- A. No Net Loss of Critical Area Functions. All new agricultural activities and facilities carried out pursuant to this chapter shall result in equivalent or if the agricultural operator chooses, greater critical area functions and value.
- B. Mitigation Sequencing. All new agricultural activities and facilities shall be located, designed, and constructed to avoid, minimize to the greatest extent practicable and mitigate for unavoidable adverse impacts to critical areas and associated buffers using Natural Resource Conservation Service (NRCS) approved conservation practices or other applicable best management practices.
- C. Monitoring. In addition to the specific monitoring requirements in this chapter, the approval authority may require that permitted agricultural activities and facilities be reviewed at appropriate intervals as necessary to ensure they are functioning consistently with the plan approval and applicable provisions of this chapter. The approval authority may require adaptive management strategies to ensure no net loss of critical area functions.
- D. Access to Enable Administration. Property owners shall grant access to the county, or designee, for the purpose of inspecting sites proposed for new agricultural activities or facilities, and performing monitoring required pursuant to this chapter.
- E. Construction Setbacks. Construction activity must occur outside of critical areas and associated buffers unless specifically authorized pursuant to this chapter.
- F. Flood Hazards and Frequently Flooded Areas. Existing/ongoing and new agricultural activities and facilities shall comply with all applicable requirements of Chapter 14.38 TCC—Development in Flood Hazard Areas and Chapter 24.20 TCC—Frequently Flooded Areas.

### **17.15.400 - Existing/ongoing agricultural activities**

- A. Agricultural activities and facilities established on or before July 24, 2012, are exempt from the critical area requirements of this chapter. Where existing/ongoing agricultural activities intersect with critical areas, protection of critical areas is attained through the county's Voluntary Stewardship Program (VSP) as established under RCW 36.70A.705. This includes repair, maintenance, and replacement of agricultural facilities within the existing footprint.
- B. Thurston County opted into the Voluntary Stewardship Program (VSP) as an alternative to regulatory protection of critical areas on agricultural lands with existing/ongoing

agricultural activities. A working group comprised of agricultural groups, environmental groups, and tribes developed a work plan that identifies goals and benchmarks to protect critical areas while maintaining the viability of agriculture through voluntary, incentive-based measures (WAC 365-191-010). If the work plan, approved by the Washington State Conservation Commission on April 26, 2017, fails to meet goals, benchmarks, or receive adequate funding, the provisions and policies of this chapter will apply to existing agricultural activities (RCW 36.70A.735).

- C. Once a new agricultural activity or facility has been installed, constructed and mitigated for in accordance with the provisions of this chapter, any subsequent agricultural activities will be covered by the county's Voluntary Stewardship Program (VSP).
- D. Exemption from this chapter shall not be deemed to grant exemption from any other provisions of the Thurston County Code and all applicable state and federal laws including the Federal Clean Water Act, the Washington Water Pollution Control Act, the U.S. Endangered Species Act, and the Washington State Environmental Policy Act.

**17.15.500 - New agricultural activities and facilities**

A. New agricultural activities and facilities that affect the functions and values of critical areas as identified in Title 24 – Critical Areas, shall be permitted to do so either in accordance with:

- 1. Title 24 TCC - Critical Areas;
- 2. A Farm Conservation Plan voluntarily prepared on behalf of the agricultural operator and approved by the county pursuant to the provisions of this chapter; or
- 3. A written decision by the approval authority finding that the agricultural operator's compliance with other state or federal permits provides sufficient protection on the site to satisfy related critical areas requirements of this chapter.

B The approval authority may issue an administrative exemption from Section 17.15.510 TCC for new agricultural facilities listed below that are associated with an existing/ongoing agricultural activity enrolled in the Voluntary Stewardship Program. Requests for exemption shall be accompanied by all referenced documentation, such as a project sponsorship letter, grant award, and/or Individual Stewardship Plan. Any confidential or proprietary information contained in the exemption request shall be redacted prior to public disclosure.

- 1. New agricultural conservation projects that accomplish a net reduction in nutrient pollution to surface and groundwater resources, as applicable, provided that the project meets all the following criteria:
  - a. The project is sponsored by a conservation district, state, or federal agency, or identified through a grant program; and
  - b. The project is documented in an Individual Stewardship Plan as a conservation enhancement project that will improve benchmark conditions of critical area functions and values.

2. New agricultural climate mitigation activities that accomplish a net reduction in greenhouse gas emissions provided that the project meets all the following criteria:

- a. The project is sponsored by a conservation district, state, or federal agency, or identified through a grant program; and
- b. The project is documented in an Individual Stewardship Plan as an NRCS recognized climate mitigation activity designed to reduce greenhouse gas emissions and increase carbon sequestration.

3. New renewable energy projects that accomplish a net reduction in greenhouse gas emissions and air pollution provided that the project meets all the following criteria:

- a. The project is sponsored by a conservation district, state, or federal agency, or identified through a grant program; and
- b. The project is documented in an Individual Stewardship Plan as a climate mitigation activity to accomplish a net reduction in greenhouse gas emissions and offset reliance on non-renewables for agricultural operations.

D. Once a new agricultural activity or facility has been installed and constructed in accordance with the provisions of this chapter, any subsequent agricultural activities will be covered by the county's Voluntary Stewardship Program (VSP) as an existing/ongoing use.

#### **17.15.510 - Administration.**

A. Applicability. This section applies to any new agricultural activities or facilities for any property located within Thurston County.

B. Appeals. Any aggrieved person may appeal an administrative decision made under this chapter to the Thurston County hearing examiner. Such appeals are governed by Chapter 2.06 TCC of the Thurston County Code. The decision of the hearing examiner on an appeal under this chapter is final. The hearing examiner shall not entertain motions for reconsideration. The decision of the hearing examiner may only be appealed to Superior Court pursuant to the Land Use Petition Act, Chapter 36.70C RCW, or other applicable statute.

C. Application Review Procedures

- 1. It shall be the duty of the department to administer the provisions of this chapter.
- 2. The approval authority shall review applications, issue permits, impose conditions, and conduct inspections as necessary to assure compliance with the provisions of this chapter.
- 3. The director shall perform those other duties, as necessary, to implement the purposes and requirements of this chapter.
- 4. The director shall establish written administrative procedures to expedite the accurate and thorough review of any application made under authority of this chapter.
- 5. The director may approve alternative measures or procedures to the standards of this chapter on a case by case basis, provided such alternatives provide equal or better results in accomplishing the purposes of this chapter.

D. Application Requirements. Any application for a Farm Conservation Plan subject to review under this chapter will not be deemed complete unless it contains the following, where applicable:

1. A completed "Farm Conservation Plan" form as provided by the department; and
2. A Farm Conservation Plan completed in accordance with Section 17.15.530 TCC; and
3. A completed environmental checklist when required by the State Environmental Policy Act and Chapter 17.09 TCC; and
4. An application fee, as established by resolution from the Thurston County Board of County Commissioners.

E. Application Procedure and General Conditions. The application for a Farm Conservation Plan shall be processed according to the same permitting procedures described in Chapter 20.60 TCC. For purposes of this chapter:

1. A Type I process involves any proposed new agricultural activity or facility that requires a county permit but does not require an environmental checklist.
2. A Type II process involves any proposed new agricultural activity or facility that requires a county permit and an environmental checklist.
3. A Type III process involves any proposed new agricultural activity or facility associated with any other Type III process provided for by the Thurston County Code.
4. Certificates of Inclusion to the Thurston HCP, issued under Chapter 17.40 TCC, shall also be processed and consolidated in a manner consistent with how critical area review reports are addressed in this Section.
5. The department shall forward a copy of the Farm Conservation Plan to the Thurston County assessor for their use.
6. A Farm Conservation Plan approval by the county is valid for a period of three years or the duration of the associated development permit or approval. The county may authorize an extension of one year.
7. The director may approve an amendment to the county's approval if the amendment is consistent with Farm Conservation Plan standards. If granted, the department shall provide a written record of the amendment and will provide a copy of it to the agricultural operator.

**17.15.530 - Farm Conservation Plans – general standards and plan requirements**

A. Farm Conservation Plans shall identify the farming or ranching activities and the conservation practice(s) necessary to avoid, minimize, and/or mitigate their potential negative impacts, such as degradation of riparian areas, or pollution to surface / groundwater from nutrients, pathogens, or sediment. Conservation practice selection will depend upon the types of livestock raised and crops grown. At a minimum Farm Conservation Plans shall:

1. Be developed by an agricultural operator with the assistance of a technical service provider in accordance with the requirements of NRCS conservation practices and best management practices to ensure no net loss of critical area functions and values.

2. Identify and delineate all critical areas and critical area buffers, both on-site and on adjacent properties, including but not limited to shorelines, wetlands, streams, steep slopes, and special habitats. Off-site information obtained from available county mapping is sufficient.
  3. Include benchmark conditions of existing critical area functions and values at the time of application.
  4. Include all selected conservation practices to maintain benchmark conditions, including specification of when implementation will occur relative to project construction.
  5. Provide for monitoring and adaptive management on a long-term basis to determine whether the selected conservation practices are successful. The length of time for monitoring and adaptive management should be sufficient to determine if benchmark conditions have been maintained.
- B. Regulatory Differences. All uses and activities subject to this section shall meet the requirements that provide the most protection to the critical areas involved. Uses and activities located in the Permit Area of the Thurston HCP are prohibited if they are inconsistent with the Thurston HCP requirements.
- C. Other plans prepared for compliance with state or federal regulations (e.g. nutrient management plans), or to obtain an accredited private third-party certification (e.g., GLOBALG.A.P.), or similar plans may be used as part of or in lieu of a Custom Farm Conservation Plan if the approval authority determines they adequately address the requirements of this chapter.
- D. Any confidential or proprietary information contained in a Farm Conservation Plan shall be redacted prior to public disclosure.

**17.15.540 - Farm Conservation Plans - monitoring and compliance.**

- A. The Farm Conservation Plan shall include self-assessment and certification by the agricultural operator for the first two years after permit issuance, or periodic inspections by the county in accordance with Section 24.01.035(D) TCC. Prior to a site inspection, the county shall provide reasonable notice to the agricultural operator for entry onto private property and afford at least two weeks in selecting a date and time for the visit.
- B. The conservation practices described in an approved Farm Conservation Plan to maintain benchmark conditions will be deemed to comply with this chapter so long as the agricultural operator is properly and fully implementing said practices and responding to any adaptive management requirements according to the timeline in the plan. This will be verified through Farm Conservation Plan implementation and monitoring.
- C. Agricultural activities shall cease to comply with this chapter when the approval authority determines one of the following three conditions is met. In such an event, a new or revised Farm Conservation Plan may be required, or the noncompliance may be referred for formal compliance action in accordance with Title 26 TCC – Code Enforcement:
  1. When implementation of the Farm Conservation Plan fails to protect critical areas. If so, a new or revised plan shall be required to protect the values and functions of critical areas at the benchmark condition.
  2. When substantial changes in the proposal have occurred that render the approved Farm Conservation Plan ineffective. Substantial changes are those that degrade conditions

below the established benchmark or result either in a direct discharge or potential discharge of pollution to surface or groundwater.

3. When a new or revised Farm Conservation Plan is required, and the new plan has not been provided in the specified time period. After being advised in writing by the approval authority, agricultural operators will be given 90 days to submit a new Farm Conservation Plan with an option to request a 30-day extension. Refusal or inability to provide a new plan within the time period shall be sufficient grounds to revoke the approved Farm Conservation Plan and require compliance with the standard provisions of Title 24 TCC – Critical Areas.

**17.15.600 - Conversion of agricultural activities.**

A. The critical areas provisions of Title 24 TCC– Critical Areas shall apply when an existing/ongoing agricultural activity is being converted to a nonagricultural use.

1. Unless otherwise authorized by the county, any critical areas that were on the property prior to the agricultural activity being established shall be restored.
2. If restoration is not possible, onsite or offsite mitigation may be required.

B. Subdivision of land is not included in the definition of agricultural activities in RCW 36.70A. Lots created through subdivision of land, short plats, large lots, and binding site plans shall show buildable areas for each lot created that meet the requirements of this title. A notice shall be recorded on the plat map that conversions out of agricultural activities are subject to this title.

**II. Thurston County Code Chapter 24.01 TCC (GENERAL PROVISIONS) shall be amended to read as follows to recognize new agricultural activities and facilities as a use:**

**24.01.010 Purpose—Statement of policy for critical areas.**

These regulations are intended to:

- A. Minimize loss of life, injury, and property damage due to natural hazards such as flooding, landslides, seismic events, and volcanic eruptions, minimize the need for emergency rescue, and avoid the cost of replacing public facilities;
- B. Identify and protect the functions and values of unique, fragile, and vulnerable elements of the environment such as fish and wildlife habitats, wetlands, and other ecosystems;
- C. Maintain water quality and quantity to meet human and wildlife needs;
- D. Recognize and address cumulative adverse impacts that could degrade or deplete water resources, wetlands or fish and wildlife habitat, or exacerbate flooding and landslide hazards;
- E. Alert the public to the development limitations and hazards associated with critical areas;
- F. Protect critical areas, associated buffers designed to protect the functions of critical areas, and their functions and values while allowing reasonable use of property by: directing activities not essential in such areas to other locations; providing for review of proposed uses and activities on properties containing critical areas or their buffers to achieve compliance with standards designed to minimize impacts to critical areas and associated buffers; and providing for mitigation of unavoidable impacts;
- G. Establish enforcement tools and processes designed to deter activities in violation of this chapter and provide for remedial action for unauthorized impacts to critical areas and their buffers;
- H. Promote programs to protect and enhance critical areas where agricultural activities are conducted, while maintaining and improving the long-term viability of agriculture;
- HH. Implement the Washington State Growth Management Act (RCW 36.70A), including consideration of best available science in the designation, protection, and management of critical areas, with special consideration for the protection of anadromous fish; and
- JJ. Carry out the goals and policies of the Thurston County Comprehensive Plan.

...

**~~24.01.055 Discontinuation of agricultural uses/activities.~~**

~~A. The following shall apply to lands that were not considered lands with agricultural activities prior to July 24, 2012, but subsequently became lands with agricultural activities:~~

~~1. The critical area provisions of this title shall apply to new uses when the land use changes from an agricultural activity meeting the requirements of TCC Section 17.15.110 to a nonagricultural activity;~~

~~2. Any critical areas that were on the property prior to the agricultural activity shall be restored to the condition that the critical areas were in prior to the establishment of the agricultural activity; and~~

~~3. If restoration is not possible, onsite or offsite mitigation may be required.~~

~~B. Subdivision of land is not included in the definition of agricultural activities in Chapter 36.70A RCW. Lots created through subdivision of land, short plats, large lots, and binding site plans shall show buildable areas for each lot created that meet the requirements of this title. A notice shall be recorded on the plat map that conversions out of agricultural activities are subject to this title, and that agricultural activities can continue subject to the Thurston County Agricultural Activities Critical Areas Ordinance (Chapter 17.15), as amended.~~

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

**24.03.010 Definitions.**

The following definitions, as well as those found in Section 17.15.200 TCC shall apply to this title:

...

**IV. Thurston County Code Chapter 24.10 TCC (CRITICAL AQUIFER RECHARGE AREAS) shall be amended to read as follows:**

...

**24.10.020 Standards and restricted and prohibited uses.**

Table 24.10-1 identifies the new, expanded, and altered land uses and activities that are restricted or prohibited in the CARA depicted on the critical aquifer recharge areas map. These restricted and prohibited uses and activities are subject to the applicable standards in TCC 24.10.030-250 and all other applicable regulations. (See Article III of the Rules and Regulations of the Thurston County Board of Health Governing Water Supplies; Article IV, Rules and Regulations of the Thurston County Board of Health Governing Disposal of Sewage; and Article VI, Rules and Regulations of the Thurston County Board of Health Governing Nonpoint Pollution).

The general standards listed in TCC 24.10.030 apply to all uses in Table 24.10-1. Standards provided in TCC 24.10.040-250 apply to specific uses in CARAs, and are in addition to other requirements of this title. Table 24.10-1 contains the primary section references for each activity covered by this chapter.

**Table 24.10-1. Prohibited and Restricted Uses and Activities Within Critical Aquifer Recharge Areas**

RESTRICTED USES AND ACTIVITIES	AQUIFER RECHARGE AREA CATEGORY				
	I			II	III
	Wellhead Protection Areas		Other CARA I		
	1-year time of travel zone	5- and 10-year time of travel zones			
Abandoned wells (decommissioning of wells) (TCC 24.10.040)	A	A	A	A	A
<u>Agricultural activities that do not use hazardous materials or generate hazardous waste</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>
<u>Agricultural activities that use or generate less than two hundred twenty pounds of hazardous waste or materials per month as described in WAC 173-303 (TCC 24.10.100)</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

...

**LEGEND:**

A = Allowed without a critical area permit, subject to requirements of this title

P = Permitted, subject to critical area permit and requirements of this title

X = Prohibited

X/P = As determined by the approval authority, small scale uses or those using nonhazardous materials may be permitted when the quantity, nature of materials processed and mitigation methods are determined to contain no significant risk to groundwater.

...

#### **24.10.100 Agricultural, cCommercial and industrial uses—General standards.**

Agricultural, cCommercial and industrial uses and activities are allowed in CARAs as specified in Table 24.10-1, subject to Article VI of the Thurston County Sanitary Code, as amended, and the following standards, as applicable:

- A. Where floor drains are allowed, any floor drains in areas where hazardous materials are used, stored or otherwise present shall have a removable lip or barrier that will prevent spilled hazardous material from entering the drain, consistent with Chapter 14.28 TCC, Uniform Plumbing Code. The approval authority may require that a sump or other device be used to ensure that hazardous material does not drain to the soil, sewage disposal system, or a water body.
- B. Areas where hazardous materials are used or stored shall not drain to the soil, a stormwater system, water body, or a sewage disposal system. The approval authority may require that a sump or other device, as appropriate to address the contaminants of concern, be used to ensure protection of ground water quality.
- C. All vehicle and equipment washing must be done in a self contained area (e.g., with recycling system) designed to ensure that hazardous materials do not reach the soil, a water body or a sewage disposal system. This does not apply to discharges to a sewer that were approved by the sewer utility, consistent with Chapter 14.28 TCC. Water used in wash down areas shall be treated to remove contaminants prior to discharge. (See Chapter 173-216 WAC and the BMPs for Vehicle and Equipment Discharges, Department of Ecology WQR 95-56, as amended).
- D. An integrated pest management plan shall be drafted to be consistent with the integrated pest management policies approved by the health officer. The plan shall be implemented upon approval by the department. The county may periodically verify compliance with the approved plan.
- E. All new agricultural, commercial and industrial land uses that involve the use, handling, storage, disposal, or transportation of hazardous materials or dangerous/extremely dangerous wastes, as defined in Chapter 173-303 WAC, shall be required to prevent contact between the aforementioned materials and stormwater. This may not apply to materials applied in an outdoor setting as part of an approved activity's landscaping maintenance plan. This includes, but is not limited to, gas stations, fuel distributors, car/truck washes, trucking companies, asphalt plants and paint shops. The generation of hazardous materials or dangerous waste is separated into two categories:

1. A small quantity generator can generate up to two hundred twenty pounds of dangerous waste, or up to 2.2 pounds of certain pesticides or poisons, each month. Small quantity generators can accumulate up to two thousand two hundred pounds of dangerous waste, or 2.2 pounds of certain pesticides or poisons, at their site before sending the waste off-site for proper disposal or recycling.
2. Businesses that generate more than two hundred twenty pounds of hazardous wastes during any month must comply with the Washington State Dangerous Waste Regulations, Chapter 173-303 WAC.

...

#### **24.10.135 Greenhouse/nursery.**

Wholesale and retail greenhouses and nurseries (~~excluding facilities defined as agricultural activities in Chapter 17.15 TCC~~) shall comply with integrated pest management standards established in TCC 24.10.100. Any fertilizers shall be applied at an agronomic rate in accordance with the timing and amount of crop demand for nitrate, unless the approval authority determines that a lower rate of application is appropriate to protect surface and groundwater quality.

...

**V. Thurston County Code Chapter 24.15 TCC (GEOLOGIC HAZARD AREAS) shall be amended to read as follows:**

...

**24.15.025 Standards and allowable uses and activities within geologic hazard areas and associated buffers.**

- A. Those uses and activities listed in Table 24.15-1 are only allowed in geologic hazard areas or their buffers as set forth in that table, subject to the performance standards set forth in TCC 24.15.030-240;
- B. All other land uses and activities not allowed pursuant to Table 24.15-1, or not mentioned in Table 24.15-1, are prohibited, unless determined otherwise pursuant to TCC 24.01.030(B);
- C. Differences in regulations because of the overlap of two or more critical areas are governed by Chapter 24.01 TCC.

The general standards listed in TCC 24.15.030 apply to all uses in Table 24.15-1. The standards provided in TCC 24.15.040—24.15.240 apply only to those uses and activities in Table 24.15-1 when carried out within a geologic hazard area (i.e., landslide, marine bluff, erosion) or buffer. Where no specific performance standards are specified for the uses and activities in Table 24.15-1, the approval authority shall review projects based upon the purposes and provisions of this chapter. Table 24.15-1 contains the primary section references for each activity covered by this chapter.

**Table 24.15-1. Restricted Uses and Activities in Geologic Hazard Areas and Associated Buffers**

RESTRICTED USES AND ACTIVITIES	Landslide Hazards	Marine Bluff Hazards	Erosion Hazards
<u>Agricultural activity, new</u>	<u>P</u>	<u>X</u>	<u>P</u>
<u>Agricultural facility, new</u>	<u>X</u>	<u>X</u>	<u>X</u>

...

**LEGEND:**

- A = Allowed without a critical area review permit, subject to requirements of this title
- P = Permitted, subject to critical area review permit and requirements of this title
- X = Prohibited

**VI. Thurston County Code Chapter 24.20 TCC (FREQUENTLY FLOODED AREAS) shall be amended to read as follows:**

...

**24.20.070 Frequently flooded areas—Standards and allowable uses and activities.**

Table 24.20-1 identifies the land uses and activities that are allowable in frequently flooded areas (i.e., one-hundred-year floodplains, one-hundred-year flood zone (one percent flood zone), floodways, high ground water hazard areas/restricted development zones, channel migration hazard areas, and coastal flood hazard areas) and one-hundred-year channel migration hazard areas. All land uses and activities not allowed by or not mentioned in Table 24.20-1, except water dependent uses allowed under the Shoreline Master Program for Thurston Region, are prohibited within the flood and channel migration hazard areas regulated by this section, except as otherwise provided in Chapter 24.01 TCC. In addition to this chapter, these allowable uses and activities may be subject to the following:

- A. Other applicable provisions of this title and requirements of the applicable zoning district;
- B. The provisions of Chapter 14.38 TCC, Development in Flood Hazard Areas;
- C. The Shoreline Master Program for the Thurston Region;
- D. The Drainage Design and Erosion Control Manual for Thurston County, as amended (Chapter 15.05 TCC); and
- E. All other applicable county, state, and federal regulations.

**Table 24.20-1. Allowable Uses and Activities in Flood and Channel Migration Hazard Areas**

Uses and Activities	Floodways	Frequently Flooded Areas (except floodways and high groundwater hazard areas)	Channel Migration Hazard Areas	High Ground Water Hazard Areas/RDZ	Coastal Flood Hazard Areas
Accessory structures - Construction TCC 24.20.080	X	P	P	P	P
<u>Agricultural activity, new</u>	<u>P</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>P</u>
<u>Agricultural facility, new</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>

**LEGEND:**

A = Allowed, subject to applicable standards

P = Allowed, subject to applicable standards and Critical Areas Review Permit

X = Prohibited

**VII. Thurston County Code Chapter 24.25 TCC (FISH AND WILDLIFE HABITAT CONSERVATION AREAS) shall be amended to read as follows:**

...

**24.25.080 - Standards and approvable uses and activities within important habitats.**

The land uses and activities listed in Table 24.25-3 are allowed in important habitats (i.e., streams; riparian habitat areas; lakes, ponds and associated buffers; priority habitats, habitats and species of local importance; priority species conservation areas, and important marine habitats) and associated buffers and management zones subject to the standards in TCC 24.25.090—24.25.420, the applicable zoning district and the Shoreline Master Program for the Thurston Region. Water dependent uses allowed by the Shoreline Master Program are permitted subject to the requirements of that program and this chapter. All other land uses and activities not allowed by Table 24.25-3 are prohibited within the important habitats regulated by this chapter.

The general standards listed in TCC 24.25.090 apply to all uses in Table 24.25-3. Standards provided in TCC 24.25.100—24.25.420 apply to specific uses in areas where important habitats and species exist, and are in addition to other requirements of this title. Table 24.25-3 contains the primary section references for each activity covered by this chapter.

**Table 24.25-3. Approvable Uses and Restrictions Within Fish and Wildlife Habitat Conservation Areas**

Uses and Activities	Riparian Habitat Areas	Riparian and Marine Management Zones	Streams	Ponds and Buffers	Marine Habitat Areas and Buffers	Important Species and Habitats
<u>Agricultural activity, new</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>
<u>Agricultural facility, new</u>	<u>P</u>	<u>P</u>	<u>P</u> <u>(BUFFER ONLY)</u>	<u>P</u>	<u>P</u>	<u>P</u>

**LEGEND:**

A = Allowed without a Critical Area Review Permit, subject to requirements of this title

P = Permitted, subject to Critical Area Review Permit and requirements of this title

X = Prohibited

...

**VIII. Thurston County Code Chapter 24.30 TCC (WETLANDS) shall be amended to read as follows:**

...

**24.30.085 Wetlands—Standards and allowable uses and activities within wetlands and associated buffers.**

The land uses and activities listed in Table 24.30-4 are allowable in wetlands and associated buffers as specified in that table, subject to the standards of this title, the applicable zoning district, and the shoreline master program, as amended. Water dependent uses allowed by the shoreline master program are permitted subject to the requirements of that program and this chapter. Uses and activities inconsistent with the shoreline master program and all land uses and activities not allowed or addressed by Table 24.30-4 are prohibited within wetlands and associated buffers. The general standards listed in TCC 24.30.090 apply to all uses in Table 24.30-4. Standards provided in TCC 24.30.100—24.30.420 apply to specific uses in wetlands and their buffers, and are in addition to other requirements of this title. Table 24.30-4 contains the primary section references for each activity covered by this chapter.

**Table 24.30-4. Allowable Uses in Wetlands and Buffers and Related Restrictions**

	Wetland Category			
	I	II	III	IV
Asphalt batch plants	X	X	P	P
<u>Agricultural activity, new</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Agricultural facility, new</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>

**LEGEND:**

A = Allowed without a Critical Area Review Permit, subject to requirements of this title

P = Permitted, subject to Critical Area Review Permit and requirements of this title

X = Prohibited

...

**24.30.280 Wetlands—Roads/streets, railroads, bridges and culverts—New and expanded.**

Proposed road and railroad crossings of wetlands and/or associated buffers shall be avoided unless the approval authority determines that it is not possible. Proposed road or railroad crossings of wetlands and buffers and expansion of existing roads exceeding the limitations of TCC Section 24.30.270 shall follow all applicable local, state, and federal laws and the applicable requirements listed below. These requirements also apply to private access roads and driveways. (Also see TCC Section 24.25.280).

- A. Public Safety. Expansion of existing roads is allowed in all wetlands and buffers to the minimum extent necessary to protect public safety, consistent with subsection

(D) below. This provision does not apply to expansion for capacity. Expansion for additional capacity shall comply with the criteria for new or expanded roads.

B. Criteria for Allowing Crossings. The approval authority may authorize new and expanded road crossings in wetlands and buffers as follows:

1. Category I and II Wetlands and Buffers. Category I and II wetlands shall not be crossed unless it is necessary to accommodate public safety improvements to an existing road. Category I and II wetlands and the inner seventy-five percent of their standard buffers may only be crossed by roads through a Reasonable Use Exception and by meeting all of the criteria in this section.
2. Category III—IV Wetlands and Buffers. The most suitable type of new crossing shall be determined by the approval authority on a case-by-case basis. New and expanded roads are permitted in Category III and IV wetlands and their buffers that meet the criteria for replacement under TCC 24.30.090(C). New and expanded roads may be permitted in Category III-IV wetlands and buffers not meeting the criteria in TCC 24.30.090(C), if:
  - a. The wetland is not a functional part of a mosaic wetland (as described in Ecology's Wetland Rating System for Western Washington);
  - b. The road complies with subsection (D) below.

C. Access roads and driveways shall be subject to the following requirements, as well as subsection D below.

1. Utility Maintenance Access. The director may allow maintenance roads for utility corridors accommodating transmission lines, pipelines, and similar major utilities when the applicant demonstrates to the director's satisfaction that the road is necessary. Maintenance roads shall not be allowed where they would adversely impact bogs, wetlands of high conservation value, or wetlands with a score for habitat of eight or more points under Ecology's Wetland Rating System for Western Washington.

If allowed, maintenance roads shall be located in the least impactful location in the outer twenty-five percent of the buffer contiguous to the utility corridor, on the side away from the wetland. To the maximum extent practicable, access for utility maintenance within wetland buffers shall be limited to access points rather than by a continuous access road extending through the buffer. The width of the maintenance road shall be minimized; in no event shall it be wider than fifteen feet.

- ~~2. Agricultural Access. Refer to chapter 17.15 TCC for regulations on agricultural activities.~~

**IX. Thurston County Code Chapter 24.45 TCC (REASONABLE USE EXCEPTION) shall be amended to read as follows:**

**24.45.020 Certain properties not eligible.**

The inability of an applicant to derive reasonable use 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.~~

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

**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 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 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 the single family residential development including the primary structure, ordinary appurtenances, landscaping, and accessory structures, the approval authority may, with a critical area review permit, allow 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:

...

- 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~~