MEMORANDUM

TO: Thurston County Planning Commission  
FROM: Jeremy Davis, Senior Planner  
DATE: April 4, 2012  
SUBJECT: Critical Areas Ordinance (CAO) Update – Chapter 24.50 Existing Lot 5,000 sq. ft. Buildable Area Exception

As part of the critical areas update, staff has proposed to add a 5,000 square foot development area exemptions specifically to allow single family residential homes on lots with less than 5,000 square feet of buildable area without going through a reasonable use exception. The proposed 5,000 square foot buildable area would be limited to the minimum extent necessary to construct the home, and must be outside of a critical area and outside of a significant portion of the critical area buffer.

Public Comments:

Comment numbers 79 and 34A were received in response to the above provisions. Comment number 79 indicated that the above encroachment is not supported by science. The comment reads as follows:

- Reasonable use exemptions should be allowed, however, the reasonable use should encourage (through incentives) using the green building techniques that are already being employed by some builders in the region. These do not adversely impact riparian function and require a significantly smaller footprint than the 5,000 square foot proposal, which is not based on science and allows for encroachment into the riparian area. The 5,000 square foot proposal should be reduced to 3,500 square feet, which allows ample space for green building techniques and Low Impact Development.

Comment 34A supports the inclusion of such provisions to add flexibility to the critical areas ordinance. The specific comment reads as follows:

- The draft CAO needs to allow for more alternative, innovated and flexible approaches. The draft CAO does have some additional flexibilities that are heading in the right direction, such as section 24.50.060 (F), concerning lots with less than 5,000 square feet
of buildable land. These types of alternatives should be integrated throughout the document as the backbone of the CAO.

Section 24.50.060 Development of Existing lots – critical areas excluding frequently flood areas subsection (F) reads as follows:

F. If the lot has less than 5,000 square feet of buildable area outside of the critical area and its associated buffer, to accommodate the primary structure, ordinary appurtenances, landscaping, and accessory structures, the approval authority may allow development to occupy a portion of the critical area and associated buffer to the minimum extent necessary to provide a building site totaling no more than 5,000 square feet provided:

1. The buildable area shall be located in the outer 50 percent of the standard critical area buffer, except for wetlands and riparian habitat areas, where the buildable area shall be located in the outer 25 percent of the standard buffer. Development in the critical area and the inner 50 percent of the associated critical area buffer—or inner 75 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 encroachment into the critical area or associated buffer shall be consistent with other requirements of this section for development on existing lots, and shall not have an adverse impact on species of concern, as determined by the approval authority;

4. The footprint of primary and accessory structures established pursuant to this subsection shall not be expanded in the future;

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 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;

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 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 Section 24.01.030 TCC; and

11. The approval authority may authorize use of additional area to the minimum extent necessary to accommodate an onsite sewage disposal system or well, consistent with other requirements of this title, only if there is no alternative;

Section 24.50.065 Development of existing lots – frequently flooded areas subjection (E) has a similar section for channel migration hazard areas that reads as follows:

E. New structures and related utilities and appurtenances may only be constructed outside of the 100-year channel migration hazard area, consistent with Chapter 24.20 TCC, Chapter 24.25 TCC, and Chapter 24.30 TCC. If the lot has less than 5,000 square feet of buildable area outside of the 100-year channel migration hazard area to accommodate the primary structure, ordinary appurtenances, landscaping and accessory structures, the approval authority may allow development to occupy the 100-year channel migration hazard area to the minimum extent necessary to provide a building site totaling no more than 5,000 square feet provided:

1. 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 100-year channel migration hazard area than the proposal;

2. A building or structure shall be located where it is least likely to be affected by channel migration;

3. The encroachment into the 100-year channel migration hazard area shall not have an adverse impact on species of concern, as determined by the approval authority;

4. The footprint of primary and accessory structures established pursuant to this subsection shall not be expanded in the future;

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 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;

8. Any new structures within a critical area shall be sited to avoid the creation of hazard trees;

9. The approval authority may establish a construction setback to avoid encroachment into portions of the 100-year channel migration hazard area not authorized for development, consistent with Section 24.01.030 TCC;

10. The approval authority may authorize use of additional space to the minimum extent necessary to accommodate an onsite sewage disposal system or well, consistent with other requirements of this title, only if there is no alternative;

**Basis for Buildable Area**

The 5,000 square foot buildable area is based on fairly standard urban lot sizes to permit an average size home. The average size home is currently approximately 2,200 to 2,500 square feet. The proposed area is not based on specific science, and science does not provide a particular size. It would be included in the CAO as a local circumstance to permit existing lot owners an administrative approval process in lieu of a reasonable use exception.

In staff's review of 20 of approximately 81 Reasonable Use Exceptions, it appears that a smaller size would likely work and provide relief to single family lot owners. Staff is still reviewing Hearings Examiner decisions from 1997 to present to discern usual areas, home sizes, and the reasons for the reasonable use exceptions. Not all decisions note specific permitted building envelopes. A table will be provided at the meeting with a summary of each decision.

Other jurisdictions provide for such exceptions in their CAO. However, none is as big as currently proposed for the Thurston County CAO. Snohomish County has the largest at 4,000 square feet in a critical area buffer consistent with conditions outlined in their code. The Snohomish County Code section is in Attachment A. Both the Department of Fish and Wildlife and Department of Ecology determined that this was excessive and inconsistent with the Growth Management Act. Lewis County permits 2,500 square feet of land disturbance without a reasonable use exception.

**Staff Recommendation**

Staff recommends that the Planning Commission consider lowering the proposed 5,000 square foot buildable area to a smaller size. Staff will propose a specific size at the meeting after completing a review of the Hearings Examiner decisions.
30.62A.520 Single family residential development exceptions in buffers.
New single family residential development, expansions of existing single family residences and ordinary residential improvements on lots existing prior to October 1, 2007 are allowed in buffers only as follows:

(1) New single family residential structures and ordinary residential improvements shall not disturb more than 4,000 square feet of the buffer;

(2) To the extent feasible, total effective impervious areas shall be limited to 10 percent within 300 feet of all waters and bogs containing salmonids;

(3) Expansion of an existing single family residence or accessory structure may be allowed within a buffer provided the footprint of the expansion does not exceed fifty percent of the existing structure, and the expansion is set back from the critical area a distance which is greater than or equal to the setback of the original structure;

(4) Development in the buffer shall be the minimum necessary to accomplish the uses described in this section;

(5) For new single family development, there must be no alternate location for the development outside of the buffer;

(6) Development in the buffer shall be located to avoid impacts to critical species;

(7) The buffer shall in no case be reduced to less than one half of the standard buffer as provided at 30.62A.320(1)(a) SCC or 25 feet, whichever is greater;

(8) To the maximum extent feasible, the development shall be designed to avoid the removal of existing native vegetation with emphasis on preservation of conifers greater than or equal to 24 inches diameter at breast height (dbh), and hardwoods greater than or equal to 20 inches dbh;

(9) New sewage distribution lines may be allowed in areas of the buffer containing native vegetation provided that the lines are installed without the aid of mechanical equipment, and the removal of any vegetation within the buffer shall be the minimum necessary to install the lines;

(10) A permanent fence shall be installed along the edge of the reduced buffer;

(11) Mitigation for any encroachment into the buffer shall include, where beneficial, enhancement of existing buffers on the site based on the following criteria:

(a) The enhanced buffer should be located between the residential structures and improvements and the aquatic critical area; and

(b) The ratio of the area of buffer enhanced to the area of the buffer encroached upon should be 2 to 1.

(Added Amended Ord. 06-061, Aug. 1, 2007, Eff date Oct. 1, 2007)