

Part One – Administration

Alterations and Alteration Exceptions

Alterations

Reference CAO Section 5 (recodified from K.C.C. 21A.24.190) and 137

Alteration is a broadly defined term that includes almost any human activity that may affect a critical area or buffer. Whether the alteration is regulated or requires a permit to perform depends on the type of critical area and the type of activity.

Alterations are defined in the code as any human activity that results or is likely to result in an impact upon the existing condition of a critical area or its buffer.

Alteration specifically includes:

- Grading;
- Filling;
- Dredging;
- Channelizing;
- Applying herbicides or pesticides or any hazardous substance;
- Discharging pollutants except storm water;
- Grazing domestic animals;
- Paving;
- Constructing;
- Applying gravel;
- Modifying topography for surface water management purposes;
- Cutting;
- Pruning;
- Topping;
- Trimming;
- Relocating or removing vegetation; or
- Any other human activity that results or is likely to result in an impact to existing vegetation, hydrology, fish or wildlife or their habitats.

Alteration does not include passive recreation such as walking, fishing or any other similar activity.

The Critical Areas Ordinance divides critical areas into two basic categories. Those in which all alterations are allowed, and those where only specific alterations are allowed.

The critical areas in which all alterations are allowed, subject to compliance with development standards include:

- Critical aquifer recharge area;
- Coal mine hazard area;
- Erosion hazard area;
- Flood hazard area except in the severe channel migration hazard area;
- Landslide hazard area under 40% slope;
- Seismic hazard area; and
- Volcanic hazard area.

The critical areas where only specific alterations are allowed include:

- Severe channel migration hazard area;
- Landslide hazard area over 40% slope;
- Steep slope hazard area;
- Wetland and wetland buffers;
- Aquatic area and aquatic area buffers;
- Wildlife habitat conservation area; and
- Wildlife habitat network.

The allowed alterations are identified in a table in Section 137 of the ordinance, the alterations table discussed below. An allowed alteration may be subject to the permitting or approval requirements, such as a building, clearing or grading permit. Federal and state permits may also be required, particularly for alterations within wetlands and aquatic areas.

Alteration Table

Reference CAO Section 137

Alterations that are allowed in the critical areas that have "limited" alterations are set out in a table in Section 137 of the ordinance. The table includes a list of alteration activities grouped by subject matter under the following headings:

- Structures;
- Grading;
- Clearing;
- Forest practices;
- Roads;
- Bridges or culverts;
- Utilities and other infrastructure;
- Recreation areas;

- Habitat and science projects;
- Agriculture; and
- Other.

The definition section of the code should be consulted since many of the listed activities include terms that are defined in the code. If the activity has the letter "A" in the cell for a column headed by a critical area, the activity is allowed in that critical area. If there is no letter "A" in the cell, the activity is not allowed in the critical area unless an alteration exception is approved. If the cell also includes a number, then the corresponding numbered condition also applies to that activity.

Specific development standards apply to each critical area. The standards apply to all alterations. See the individual critical areas chapters of this manual for a discussion of the alteration conditions and development standards applicable to each critical area.

Alteration Exceptions

Reference K.C.C. 21A.24.070

If an alteration is not allowed in a critical area, the director of the Department of Development and Environmental Services may approve an alteration exception. An alteration exception may also be approved to modify a condition on the alteration table or to allow an alteration not included in the table. There are two types of alteration exceptions: linear alterations and non-linear alterations.

The director may also approve an alteration if the application of the critical areas ordinance denies all reasonable use of a property. If approved, a reasonable use exception may modify the alteration condition or development standard.

The Figure 1 depicts the critical area alteration exception and reasonable use process.

Linear Alteration Exceptions

Reference K.C.C. 21A.24.070.A.1

A linear alteration is infrastructure that supports development that is linear in nature and includes:

- Public and private roadways;
- Public trails;
- Private driveways;
- Railroads;
- Utility corridors; and
- Utility facilities.

For linear alterations, the director may approve alterations to critical areas, critical area buffers, and critical area setbacks.

All of the following criteria must be met for approval:

- There is no feasible alternative to the development proposal with less adverse impact on the critical area;
- The proposal minimizes the adverse impact on critical areas to the maximum extent practical;
- The approval does not require the modification of a critical area development standard;
- The development proposal does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this chapter and the public interest; and
- The linear alteration must:
 1. connect to a public roadway, public trail, utility corridor or utility facility or other public infrastructure owned or operated by a public utility;
 2. be an alteration to a public roadway, public trail, utility corridor or utility facility or other public infrastructure owned or operated by a public utility; or
 3. be required to overcome limitations due to gravity.

Non-linear alteration exceptions

Reference K.C.C. 21A.24.070.A.2

For non-linear alterations, the director may approve alterations to critical areas, except wetlands, aquatic areas and wildlife habitat conservation areas, critical area buffers, and critical area setbacks.

A non-linear alteration may be approved to Category II, III or IV wetlands for the development of a public school facility.

All of the following criteria must be met for approval:

- There is no feasible alternative to the development proposal with less adverse impact on the critical area;
- The alteration is the minimum necessary to accommodate the development proposal;
- The approval does not require the modification of a critical area development standard;
- The development proposal does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of the critical areas ordinance and the public interest;

- If the alteration is for a dwelling unit, no more than 3,000 square feet or 10% of the site, whichever is greater, may be disturbed by structures or other land alteration including, grading, utility installations, landscaping, but not including the area used for onsite sewage disposal system;
- To the maximum extent practical access is located to have the least adverse impact on the critical area and critical area buffer; and
- The critical area is not used as a salmonid spawning area.

Reasonable Use Exception

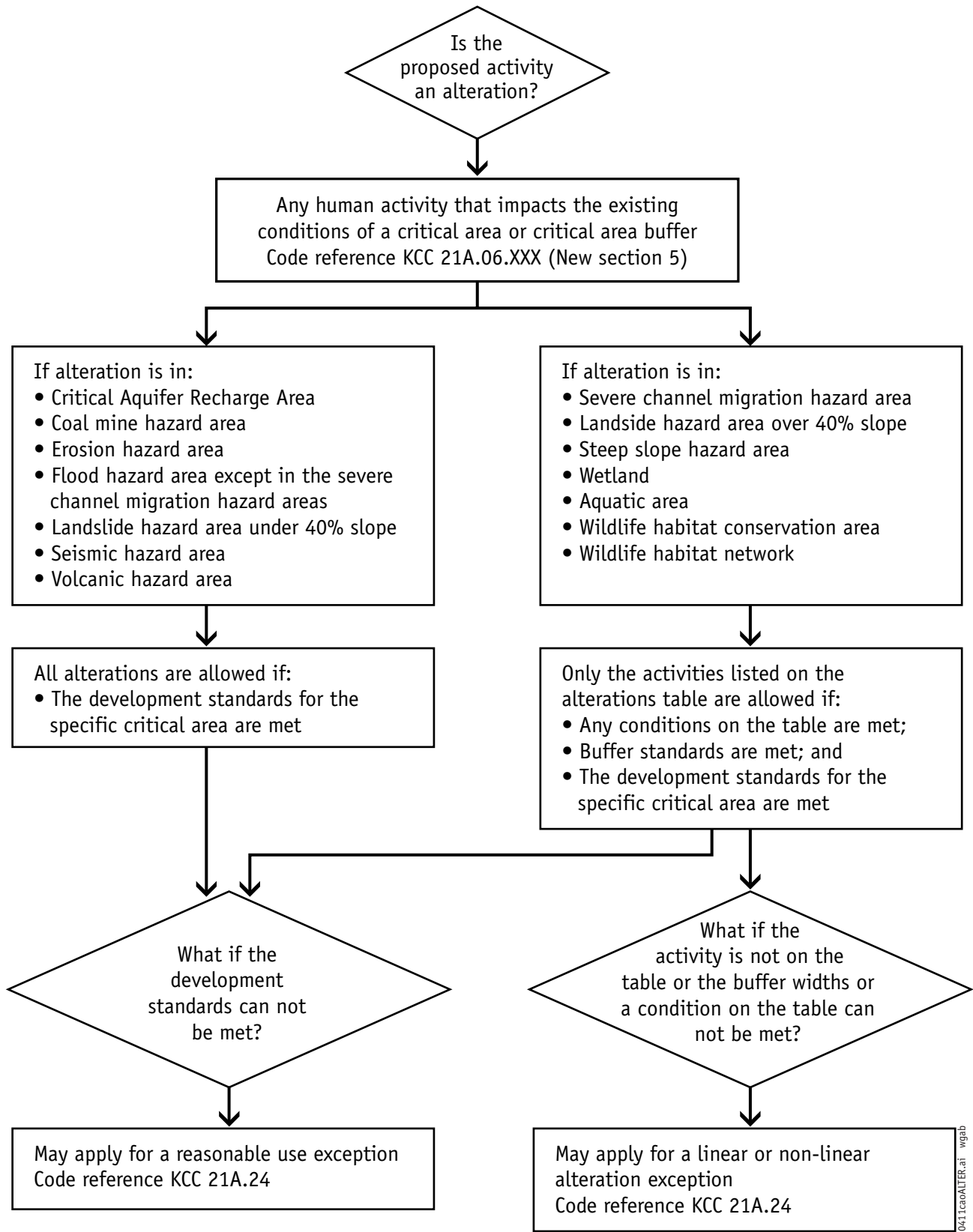
Reference K.C.C. 21A.24.070.B

If application of the Critical Areas Ordinance will leave no reasonable use of the property, the director may approve alterations to critical areas, critical area buffers, critical area setbacks, and critical area development standards.

All of the following criteria must be met for approval:

- There is no other reasonable use with less adverse impact on the critical area;
- The development proposal does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of the Critical Areas Ordinance and the public interest;
- Any authorized alteration to the critical area or critical area buffer is the minimum necessary to allow for reasonable use of the property; and
- If the reasonable use is for a dwelling unit, no more than 3,000 square feet or 10% of the site, whichever is greater, may be disturbed by structures or other land alteration including, grading, utility installations, and landscaping, but not including the area used for onsite sewage disposal system.

CRITICAL AREA ALTERATIONS



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