



**ADMINISTRATIVE DETERMINATION ~~2020-02~~ 2020-03**  
**Providing Notice to Title of Undevelopable Environmental Critical Area**

**PURPOSE:**

The purpose of this Administrative Determination is to provide clarification related to the requirements of Bonney Lake Municipal Code (BLMC) 16.20.130(F), which provides that as a "... condition of any permit approval for properties with undevelopable critical areas the city shall require that the critical area(s) and/or buffer be placed in a conservation tract or conservation easement, the purpose of which is to set aside and protect the critical area ..."

**CONTEXT:**

In instances where a building permit is submitted for a lot that contains an undevelopable critical area that was previously identified on a plat/short plat but is not located within an easement or tract, is demonstrating compliance with the provisions of BLMC 16.20.130(F) by means of the identification on the plat/short plat.

**AUTHORITY:**

The authority to interpret the Development Code is provided for in BLMC 14.10.140. For consistent interpretations of the Development Code, the Director as defined in BLMC 14.10.030.M shall render code interpretations in writing. Such interpretations shall include at a minimum the BLMC citation, the context, the interpretation, and the reasoning for the interpretation.

**CITATIONS:**

**BLMC 16.20.130 Substantive requirements**

- E. Where a buffer has been previously established through city review, and is permanently recorded on title or placed within a separate tract, the buffer shall be as previously established, provided it is at least 50 percent of the required standard buffer distance.
- F. As a condition of any permit approval for properties with undevelopable critical areas the city shall require that the critical area(s) and/or buffer be placed in a conservation tract or conservation easement, the purpose of which is to set aside and protect the critical area. The conservation tract or conservation easement shall be:

1. Held by the city, a homeowner's association, a land trust or similar conservation organization, or by each lot owner within the development in an undivided interest;
2. Recorded on all documents of title of record for the affected parcels;
3. Noted on the face of any plat or recorded drawing; and
4. Delineated on the ground with permanent markers and signs in accordance with local survey standards. The outer edge of the critical area or buffer shall be signed and fenced to protect the resource. The director shall specify the design and sign message, if applicable, of such markers, signs, and fencing.

### **BLMC 16.20.030 Definitions**

“Undevelopable critical area” means designated wetlands, streams, fish and wildlife habitat conservation areas, Class 1 landslide hazardous areas, and associated buffers.

### **INTERPRETATION:**

Identification of an undevelopable critical area as defined in BLMC 16.20.030 on the plat/short plat is sufficient to demonstrate compliance with the requirements of BLMC 16.20.130(F) provided that the location, extent, and required buffers of the undevelopable critical area are clearly identified on the plat/short plat, the buffer shown is at least fifty percent (50%) of the standard buffer in effect at the time that the building permit was vested, and the plat/short plat contains a note or statement that the undevelopable critical area and associated buffer is required to remain undeveloped.

### **REASONING:**

The intent of BLMC 16.20.130(F) is to provide constructive notice to subsequent purchasers that an undevelopable critical area exists on the property with the purpose of ensuring that the undevelopable critical area is set aside and protected in perpetuity unless an alteration is approved by the City.

The recording of plats/short plats with the Pierce County Auditor provides subsequent purchasers constructive notice of the encumbrances contained within that document as provided in [RCW 65.08.030](#). The note or statement on the plat/short plat also creates a restrictive covenant in perpetuity that must be enforced by the City and in order to alter or remove this restrictive covenant a property owner would be required to submit a request to the City signed by all of the property owners within the plat/short plat and obtain approval from the City pursuant to [RCW 58.17.215](#)

Therefore, the purpose and intent of BLMC 16.20.130(F) is fulfilled in those instances when a plat/short plat identifies the location, extent, and required buffers of the undevelopable critical area along with a note or statement that prohibits development within the undevelopable critical area.

**PREPARED BY:** Jason Sullivan, Planning and Building Supervisor

**APPROVED:**



**August 20, 2020**

Ryan Johnstone, P.E., Director

Date

**APPEAL:**

All final actions of the Director, including code interpretations shall be final and conclusive unless the applicant, a department of the city or county, or other party of record or agency with jurisdiction files a written appeal with the Public Services Department within 15 days following the decision ([BLMC 14.120.020\(A\)](#)). Appeals shall contain all grounds on which error is assigned to the decision and shall be accompanied by the \$750 fee ([BLMC 14.120.020\(A\)\(5\)](#) and [BLMC 3.68.050](#)).

Following the timely filing of an appeal, notice of the date, time and place for the Hearing Examiner's consideration shall be mailed to the applicant and to all other parties of record ([BLMC 14.120.020\(C\)](#)).