Division II. Critical Areas

Chapter 16.20
GENERAL

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16.20.010 Finding.

The city finds that critical areas’ biological and physical functions benefit the city by protecting water quality, providing fish and wildlife habitat, supporting the food chain, storing and conveying flood waters, recharging groundwater, controlling erosion, and providing aesthetic values and recreation. (Ord. 1070 § 2, 2004).

16.20.020 Purpose.

The purpose of this critical areas code is to:

A. Protect the functions and values of ecologically sensitive areas while allowing for reasonable use of private property, through the application of the best available science;

B. Implement the Growth Management Act and the natural environment goals of the comprehensive plan; and

C. Protect the public from injury and loss due to slope failures, erosion, seismic events, volcanic eruptions, or flooding. (Ord. 1070 § 2, 2004).

16.20.030 Definitions.
“100-year flood” means a flood having a one percent chance of being equaled or exceeded in any
given year.

“Alter” means to change a critical area or its buffer, including grading, filling, dredging, clearing,
construction, compaction, excavation, and pollution.

“Anadromous” refers to fish that spawn and rear in freshwater and mature in saltwater.

“Applicant” means a person who applies for a development permit from the city.

“Aquifer” means a geological formation capable of yielding water to a well or spring.

“Best management practices” means those practices which provide the best available and reasonable
physical, structural, managerial, or behavioral activity to reduce or eliminate pollutant loads and/or
concentrations leaving the site.

“Buffer” means an area contiguous to and required for protection of a critical area.

“Channel migration zone” means the lateral extent of likely movement of a stream or river during the
next 100 years as evidenced by movement over the past 100 years.

“Conservation easement” means a legal agreement that the property owner enters into to restrict
uses of the land in a manner that conserves natural functions.

“Critical aquifer recharge area” means an area with a critical recharging effect on aquifers used for
potable water, as discussed in WAC 365-190-080(2). Within such areas, pollutants seeping into the
ground are likely to contaminate the water supply.

“Critical area” means those areas listed in BLMC 16.20.060.

“Critical areas variance” means the process through which an applicant may gain flexibility in the
application of specific regulations of the critical areas code to a specific proposal, when all the criteria
for a critical areas variance have been met.

“Development” means any land use or action that alters a critical area or its buffer, including city
approvals that establish patterns of use such as subdivisions, short subdivisions, rezones, and
conditional use permits.

“Fish habitat” means habitat used by fish at any life stage at any time of the year.

“Functions and values” means the benefits conferred by critical areas, including water quality
protection, fish and wildlife habitat, flood storage and conveyance, groundwater recharge, erosion
control, and protection from hazards.

“Hazardous substance” means a liquid, solid, or gas that exhibits any of the properties described in
WAC 173-303-090 or 173-303-100.

“Historic” means existing before the area was altered by human activity.
“Impact” means to adversely affect a natural system or increase the hazard which a natural system poses to human life and property.

“Impervious” refers to a hard surface area that retards the entry of water into the soil.

“Lowest floor” excludes unfinished enclosures usable only for parking, building access, or storage.

“Minor work” means work that is exempt from review under the State Environmental Policy Act, such as planting wetland-compatible indigenous plants, the removal of invasive or noxious weeds, or pruning trees, all using hand labor or hand-held equipment.

“Mitigation” means a requirement to replace or enhance critical areas destroyed or impacted by proposed land disturbances...

“Monitoring” means assessing the performance of mitigation measures by collection and analysis of data on changes in natural systems.

“Ordinary high water mark” means that mark on the bed or bank below which inundation is so common in ordinary years that the soil and/or vegetation are distinct from that of the abutting upland...

“Primary association” means a relationship between a species and a habitat area whereby the species regularly uses or otherwise needs the habitat area to thrive.

“Rill” means a small, steep-sided channel caused by erosion.

“Riparian habitat” means stream-side areas that influence the aquatic ecosystem by providing shade, debris, or insects and provide habitat for riparian wildlife.

“Species” means a group of animals commonly classified by the scientific community as a species or subspecies.

“Substantial improvement” means any repair, reconstruction, or improvement of a structure, the cost of which exceeds 50 percent of the structure’s market value before the improvement, or, if the structure was damaged, before the damage occurred.

“Watercourse” means flowing waters of the state, perennial or intermittent, excluding artificial waterways such as ditches or canals not created by human alteration of a natural watercourse.

“Wetland mitigation bank” means a site where wetlands are restored, created, or enhanced to mitigate in advance authorized impacts to similar resources. (Ord. 1325 § 6, 2009; Ord. 1301 § 1, 2009; Ord. 1070 § 2, 2004).

16.20.040 Critical areas code.

These Chapters 16.20 through 16.30 BLMC shall collectively be known as the critical areas code. This Chapter 16.20 BLMC shall establish the general framework for Chapters 16.22, 16.24, 16.28 and 16.30 BLMC. The director of planning and community development shall administer and interpret this critical areas code. (Ord. 1301 § 2, 2009; Ord. 1070 § 2, 2004).

16.20.050 Fees.
The city shall by resolution establish fees by which the city shall recover its cost of reviewing development proposals, including the cost of engineering review, planning review, inspections, and administration. The applicant shall be responsible for all required reports, assessments, studies, and plans. (Ord. 1070 § 2, 2004).

16.20.060 Applicability.

Unless exempted in BLMC 16.20.070, this critical areas code shall apply to all developments (see definition) within one or more of the following critical areas or their associated buffers or building setback areas, regardless of whether the site has been previously identified as a critical area.

A. Wetlands as designated in Chapter 16.22 BLMC;

B. Critical aquifer recharge areas as designated in Chapter 16.24 BLMC;

C. Geologically hazardous areas as designated in Chapter 16.28 BLMC; and

D. Fish and wildlife habitat conservation areas as designated in Chapter 16.30 BLMC. (Ord. 1301 § 3, 2009; Ord. 1070 § 2, 2004).

16.20.070 Exemptions.

The following shall be exempt from this critical areas code:

A. Emergency actions immediately necessary to prevent injury or property damage, provided the action minimizes impact to critical areas and buffers. The person undertaking the action shall notify the director(s) within one day following commencement of the emergency action. The director(s) shall determine if the action was allowable under this subsection and commence enforcement if not. Within one year of the date of the emergency, the person undertaking the action shall fully mitigate any resulting impacts to the critical area and buffers in accordance with an approved critical area report and mitigation plan;

B. Normal operation, maintenance, or repair of existing structures, utilities, roads, levees, drainage systems, or similar improvements, including vegetation management, if the action does not alter or increase the impact to or encroach upon the critical area or buffer, and if the action accords with best management practices and maintenance, and does not impact an endangered or threatened species;

C. Passive outdoor activities such as recreation, education, and scientific research that do not degrade the critical area;

D. Forest practices in accordance with Chapter 76.09 RCW and WAC Title 222, other than forest practice conversions;

E. Structural modifications of, additions to, or replacements of existing legal structures without altering or increasing the impact to the critical area; provided, that the city’s regulations regarding legal nonconforming uses are complied with. Includes most tenant improvements;

F. The following work within improved public rights-of-way or private street easements: construction, replacement, or modification of streets, utilities, lines, mains, equipment, or appurtenances, excluding electrical substations; provided, that actions that alter a wetland or watercourse, such as culverts or
bridges, or result in the transport of sediment or increased stormwater shall be subject to the following requirements wherever possible:

1. Critical area and/or buffer widths shall be increased equal to the width of the right-of-way improvement, including disturbed areas; and

2. Native vegetation shall be retained and replanted along the right-of-way improvement;

G. Minor utility projects such as placement of a utility pole, street sign, anchor, or vault, which do not significantly impact critical areas function or values, if constructed using best management practices;

H. Removal with hand labor and light equipment of invasive or noxious plants as designated by the director(s), including:

1. English Ivy (Hedera helix);

2. Himalayan blackberry (Rubus discolor, R. procerus); and

3. Evergreen blackberry (Rubus laciniatus);

I. Thinning or removal of trees which a qualified arborist, landscape architect, or forester has documented as posing a threat to public safety and which do not provide critical habitat such as eagle perches; provided, that removed trees and thinnings are left on-site, and for each tree removed, two replacement trees shall be planted in the same or nearly same location within one year in accordance with a plan approved by the director(s). The replacement trees shall be of species native and indigenous to the site. Deciduous trees shall be at least one inch in diameter at breast height. Evergreen trees shall be at least six feet in height measured from the top of the root ball;

J. Measures to control fire or halt the spread of disease or damaging insects consistent with the State Forest Practices Act; Chapter 76.09 RCW; provided, that the removed vegetation shall be replaced with the same or similar native species within one year in accordance with an approved plan;

K. Application of herbicides, pesticides, or fertilizers, if necessary; provided, that their use shall conform to Department of Fish and Wildlife Management Recommendations and the regulations of the Department of Agriculture and the U.S. Environmental Protection Agency;

L. Minor clearing or digging necessary for surveys, soil logs, percolation tests, and similar activities, provided critical area impacts are minimized and disturbed areas are immediately restored;

M. Navigational aids and boundary markers;

N. Proposed developments that have undergone critical area review at a previous stage of permit review provided the earlier permit has not expired;

O. Harvesting of wild crops without injuring their natural reproduction, tilling the soil, planting crops, applying chemicals, or altering the critical area;

P. Conservation measures of soil, water, vegetation, fish, and other wildlife that do not adversely impact ecosystems;
Q. Required environmental impact remediation;

R. Existing and ongoing agricultural activities where the land has not lain idle so long that modifications to the hydrological regime are necessary to resume operations; and

S. Development of Category IV wetlands less than 1,000 square feet in size if a critical area report demonstrates that (1) the wetland does not provide suitable habitat for amphibians and (2) the wetland does not possess unique characteristics that would be difficult to replicate. (Ord. 1070 § 2, 2004).

16.20.080 Review process.

The director(s)’s general sequence for administering this critical areas code shall be per the following table, which shows questions the director(s) shall answer, and actions he or she shall take depending on the answer.

<table>
<thead>
<tr>
<th>Step</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>Go to step</th>
<th>Go to step 4.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Step 1</td>
<td>Does the development proposal contain critical areas or critical area buffers?</td>
<td>Yes</td>
<td>No</td>
<td>Go to step 2.</td>
<td>Go to step 4.</td>
</tr>
</tbody>
</table>

The director(s) shall check maps, review the environmental checklist, visit the site, and/or require scientific determinations as necessary to make this determination.

| Step 2 | Is the development proposal exempt per BLMC 16.20.070?                   | Yes | No                          | Go to step 4. | Require a critical area report. Do not issue determination of completeness until critical area report is received. Reference critical area report in any public notice. |

| Step 3 | Does the proposal, with conditions of approval, conform to BLMC 16.20.130, Substantive requirements, the substantive requirements for the critical area type, e.g., wetlands, the permit type processing requirements, and the rest of Bonney Lake Municipal Code? | Yes | No                          | Go to step 4. | Go to step 4. |

| Step 4 | Document the review process in a manner appropriate to, and filed with, the permit (s) required for the proposed development, and act on the permit application in accordance with the findings. Approval or disapproval and notices of decision shall be issued as required by the appropriate permit type. | Yes | No                          | Go to step 4. | Go to step 4. |

(Ord. 1325 § 7, 2009; Ord. 1070 § 2, 2004).

16.20.090 Critical area reports.

Critical area reports shall be prepared for nonexempt proposed developments containing critical areas or their buffers. In addition to information required in specific critical area chapters, the critical area reports shall:

A. Be prepared by qualified experts as defined in WAC 365-195-905(4). The following list shows the type of critical area report and the related professional discipline:

1. Wetlands: wetland biologist.
2. Critical aquifer recharge areas: hydrogeologist, geologist, or engineer.
3. Floodplains: hydrologist or engineer.
4. Geologically hazardous areas: engineer or geologist.
5. Fish and wildlife habitats: biologist.

B. Incorporate best available science.

C. Cover a study area large enough to understand relationships with important off-site factors and identify any nearby critical area whose buffer extends onto the project site.

D. Contain the following:

1. Name and contact information of the applicant, description of the proposed development, and identification of required permits;
2. Site plan drawn to scale of no less than one inch equals 100 feet showing critical areas, buffers, existing structures, and proposed structures, clearing, grading, and stormwater management;
3. Characterization of critical areas and buffers;
4. Assessment of the probable impact of the development proposal on critical areas;
5. Analysis of site development alternatives;
6. Description of efforts to avoid, minimize, and mitigate impacts to critical areas pursuant to BLMC 16.20.130(E) (“sequencing”);
7. Mitigation plans as needed, in accordance with BLMC 16.20.110;
8. Evaluation of compliance with this critical areas code’s substantive requirements applicable to the proposed development;
9. Financial guarantees to ensure compliance, such as a performance bond or deposit, if necessary;
10. Additional information as required in the chapter corresponding to the type of critical area;
11. Documentation of who prepared the report and when, with fieldwork and data sheets;
12. Statement specifying the accuracy of the report and assumptions relied upon;

13. Additional information as required by the community development director;


16.20.100 Previous studies.

Critical area reports may rely upon, without duplication of effort, valid previous studies prepared for the site, taking into account any change in the site, the proposed development, or the surrounding area. (Ord. 1070 § 2, 2004).

16.20.110 Mitigation plan requirements.

If the city allows conformance with this critical areas code’s substantive requirements to be achieved by mitigation, the critical area report shall include a mitigation plan consisting of:

A. An analysis of the anticipated impacts on functions and values;

B. A strategy for mitigating the impacts, including site selection factors;

C. An analysis of the existing and anticipated functions and values at the mitigation site, including an assessment of risks;

D. A review of the best available science relative to the proposed mitigation;

E. Specific standards for evaluating whether the mitigation is successful;

F. Detailed construction plans, including:

   1. Construction timing;

   2. Grading and excavation details;

   3. Erosion and sediment control features;

   4. Planting plan including species and spacing; and

   5. Measures to protect plants until established and control invasive species;

G. A program for monitoring the mitigation over at least five years; and

H. Potential corrective measures should the monitoring indicate the standards set per subsection E of this section are not being met. (Ord. 1070 § 2, 2004).

16.20.120 Independent review of critical area report.

The director(s) may have the critical area report evaluated by an independent qualified professional and/or request consultation from an agency with expertise. If the report and evaluations disagree, the director(s) shall determine which to utilize. (Ord. 1070 § 2, 2004).
16.20.130 Substantive requirements.

A. All treatment of critical areas shall be in accordance with best available science as defined in WAC 365-195-900 through 365-195-925, which is hereby adopted by reference, along with the Washington State Department of Community Development’s “Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas.”

B. Critical areas and their buffers shall be left undisturbed except the following may be permitted if best management practices are used:

1. Authorized functional restoration;

2. In buffers: utility poles and utility lines which do not require excavation;

3. In the outer 50 percent of buffers or at least 50 feet from the critical area edge: permeable-surfaced walkways, trails, and minimal wildlife-viewing structures;

4. Developments for which mitigation is allowed per subsection E of this section; and

5. Other uses specifically authorized by this critical areas code.

C. No development shall occur which results in a net loss of the functions or values of any critical area except reasonable use variances per BLMC 16.20.140(B). The pre- and postdevelopment functional comparison shall be on a per function basis unless otherwise authorized by this critical areas code.

D. No development shall occur in critical areas and their buffers which results in an unreasonable hazard to the public health and safety.

E. These substantive requirements shall be met via one or more of the following methods, listed in preferential sequence (commonly known as “sequencing”). The methods used shall be those which are highest on the list yet consistent with the objectives of the proposed development.

1. Avoid the impact altogether by not taking the proposed action;

2. Minimize the impact by limiting the action’s magnitude or changing the project design, location, or timing;

3. Mitigate (compensate for) the impact on natural system functions and values by enhancing or replacing other natural systems and ensuring that the mitigation serves its purpose over time. Mitigation should provide equivalent or greater functions and values than those of the critical area it replaces. The mitigation shall be near the impact site unless it is more cost-effective to mitigate lost functions at a larger scale, such as at a wetland mitigation bank within the impacted wetland’s drainage basin. The city reserves the right to disallow mitigation that would be located outside the UGA.

F. As a condition of any permit approval, the city may require that:

1. The outer edge of the critical area or buffer be marked, signed, or fenced to protect the resource. Such protection may be temporary, during construction, or permanent such as to
protect the resource from livestock or people. The director(s) shall specify the design and sign.
message, if applicable, of such markers, signs, and fencing;

2. The applicant file a notice with the county records and elections division stating the presence.
of the critical area or buffer and the application of this critical areas code to the property, to
inform subsequent purchasers of the property;

3. The critical area and/or buffer be placed in a critical area tract or conservation easement, the.
purpose of which is to set aside and protect the critical area. The critical area tract or
conservation easement shall be:
   a. 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;
   b. Recorded on all documents of title of record for the affected parcels;
   c. Noted on the face of any plat or recorded drawing; and
   d. Delineated on the ground with permanent markers and/or signs in accordance with local
survey standards.

G. The city may allow averaging of standard wetland and stream buffer widths if a qualified.
professional demonstrates that:

1. Functions and values are not adversely affected;

2. The total buffer area is not reduced; and

3. At no location is the buffer width reduced more than 40 percent.

H. Unless otherwise provided, buildings and other structures shall be set back a distance of 10 feet.
from the edges of all critical areas and critical area buffers. The same protrusions into this setback.
area shall be allowed as the zoning code allows into property line setback areas.

I. Lots created through subdivisions or short plats may contain critical areas and buffers provided they
contain adequate buildable area to build upon. Subdivision and short plats shall show, on their face,.
any applicable critical area limitations.

J. When any existing regulation, easement, covenant, or deed restriction conflicts with this critical.
areas code, that which provides more protection to the critical areas shall apply.

K. When critical areas of two or more types coincide, the more restrictive buffer and requirements.
shall apply.

L. The substantive requirements peculiar to the type of critical area shall also be complied with. See.
following chapters. (Ord. 1252 § 1, 2007; Ord. 1070 § 2, 2004).

16.20.140 Buffer width averaging and minor work.

The city may permit activity within critical areas in one of the following ways:
A. A buffer width averaging may be granted in accordance with BLMC 16.20.130(G);

B. Native plants in critical areas may be installed; provided, that:

1. Installation of plants on potential landslide hazard areas shall be in accordance with this chapter and Chapter 16.28 BLMC, and may require a geotechnical report that addresses existing slope stability and a provide a statement that the proposed planting activity will not likely undermine existing stability;

2. Installation of native plants in wetlands or wetland buffers shall be in accordance with this chapter and Chapter 16.22 BLMC and may require biologists’ or other experts’ reports stating the appropriateness of the proposed plants for the proposed location;

C. Planting within wetlands or their buffers may be used as a future mitigation for other work on or adjacent to the wetland if the following criteria are met:

1. The required wetland report identifies the long-term benefits to the wetland system;

2. The proposed work improves the function and value of a wetland, a buffer, or its system as a natural ecosystem; and

3. The proposed work is carefully monitored with documentation as required in BLMC 16.20.110. (Ord. 1325 § 9, 2009; Ord. 1070 § 2, 2004).

16.20.145 Critical areas variances.

A. An applicant for a development approval may submit a request for a critical areas variance in accordance with Chapter 14.60 BLMC to the hearing examiner. A critical areas variance is a type 5 permit. Development may be allowed which is consistent with the purpose of this title; provided, the hearing examiner, after public hearing, enters the following written findings, upon which the applicant shall have the burden of proof:

1. The provisions of this title would deny all reasonable use of the property;

2. There is no other reasonable use with less impact on the critical area or its buffer than the use proposed by the applicant;

3. The variance is the minimum necessary to allow a reasonable use of the property;

4. The proposed development does not pose an unreasonable threat to the public health, safety, or welfare on or off the property;

5. The proposal conforms with all other applicable regulations and code provisions;

6. The applicant has proposed all reasonably possible mitigation pursuant to BLMC 16.20.130 (E)(3), or has shown that no mitigation is reasonably possible;

7. The need for the variance is not the result of the applicant’s deliberate actions;

8. The variance would not impact anadromous fish habitat; and
9. The application is sufficiently documented (for example, critical area report, mitigation plan, permit applications, and environmental documents) for the director or designee to make a determination regarding these criteria.

B. If the community development director or designee finds that impact to a critical area or its buffer would be reduced by encroaching into a zoning setback, the zoning setback up to half the minimum required may be reduced through the critical area variance process.

C. The hearing examiner shall impose all conditions necessary to minimize the impact on the critical area and its buffer and further the purpose and goals of this title. Full mitigation shall be required under the city’s environmental protection regulations adopted pursuant to SEPA. (Ord. 1325 § 10, 2009).

16.20.150 Enforcement and inspections.

A. In enforcing this critical areas code per Chapter 14.130 BLMC, the director(s) may require a restoration plan prepared by a qualified professional. Historic functions and values, soil configurations, and native vegetation shall be used as a guide for restoration. Flood and geological hazards shall be reduced to the predevelopment level.

B. Reasonable access to the development shall be provided to agents of the city for critical area inspections, monitoring, restoration, or emergency action. (Ord. 1070 § 2, 2004).

16.20.160 Record per WAC 365-195-915 and 365-195-920.

A. This critical areas code is designed to implement the city’s comprehensive plan’s natural environment element policies regarding protection functions and values of critical areas.

B. This critical areas code is based on best available science. See BLMC 16.20.130(A). This critical areas code largely derives from the “Example Code Provisions for Designating and Protecting Critical Areas” prepared in November 2003 by the Washington Department of Community, Trade, and Economic Development, which in turn is based on documented best available science. This critical areas code is also based on “Guidance Document for the Establishment of Critical Aquifer Recharge Areas Ordinances,” published in July 2000 by the Washington Department of Ecology.

C. The city took special consideration to preserve or enhance anadromous fisheries, as evidenced in BLMC 16.20.140(A), 16.30.030(E), and 16.30.050(H).

D. In addition to scientific information, economic, political, and legal factors were also considered in determining certain substantive requirements. Where this critical areas code’s buffer widths differ from those in the “Example Code Provisions for Designating and Protecting Critical Areas,” the purpose is to develop the economy and protect property rights. The city identifies no substantial risk to critical areas in enacting these alternative substantive requirements. (Ord. 1070 § 2, 2004).

16.20.170 Nonconforming uses.

Developments or uses that upon initiation were legally permitted but which do not conform with this critical areas code may continue; provided, that they:
A. Shall not be expanded or changed so as to increase the nonconformity;

B. Shall not be resumed if discontinued for 12 consecutive months; and

C. May be replaced or restored in the event of destruction by fire, explosion, or other casualty only if reconstruction is commenced within one year and completed within 18 months. (Ord. 1070 § 2, 2004).

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The Bonney Lake Municipal Code is current through
Ordinance 1474, passed December 10, 2013.
Disclaimer: The City Clerk's Office has the official version of the
Bonney Lake Municipal Code. Users should contact the City
Clerk's Office for ordinances passed subsequent to the ordinance
cited above.