

May 9, 2014

Via Certified Mail

Nick Abdelnour  
PNW Home Builders North, LLC  
11624 SE 5th Street, Suite 200  
Bellevue, WA 98005

**Re: MIS14-0003, Planning Director's Environmental Code Interpretation related to  
Alteration or Development of Geologic Hazard areas in Auburn City Code Section  
16.10.100(E)(2)(a)**

Dear Mr. Abdelnour:

This letter is in response to your application for a zoning code interpretation regarding the environmental code provisions for prohibiting alteration of Class IV landslide hazard areas (ACC 16.10.100). Specifically, applying threshold area for the prohibition of alterations for isolated Class IV landslide hazard area (Class IV slopes), when the code construction and context indicates this code section is to reduce "significant risks" to public and private property and to public health through measures to render a site with critical geologic hazards as safe as one not containing such hazards. As indicated in your application, the interpretation is requested in relation to the 34.35 acre Auburn Assemblage preliminary plat (City File No. PLT13-006-06), and associated SEPA Checklist (City File No. SEP13-0030), located on the south side of South 321st Street, between 46th Place South and 51st Avenue South (Parcel No's. 1521049017, 1521049157, 1521049001, 1521049019, 1521049020, 9262800194, 9262800201, 9262800203, 9262800271).

The written interpretation is attached. This letter constitutes an official administrative interpretation of the City code in accordance with Auburn City Code (ACC) Section 16.10.140. This decision is final subject to appeal to the Hearing Examiner. Should you disagree with this interpretation, administrative interpretations may be appealed to the Hearing Examiner as prescribed in ACC Section 18.70.050 within 14 days of the mailing of this decision, or May 16, 2014. If no appeals are received, then the decision is final.

May 9, 2014

Page 2

If you have any further questions, please feel free to contact David L. Jones, AICP, Senior Planner at 253-804-5031 or by e-mail at [dljones@auburnwa.gov](mailto:dljones@auburnwa.gov).

Sincerely,



Jeff Tate

Assistant Director, Community Development Services

DLJ/JT/tk

CORR14-0305

Enclosure:   Decision  
                  Attachment A - Excerpts of the City of Auburn Comprehensive Plan related to  
                  "Hazards"  
                  Attachment B - Auburn City Code (ACC) Chapter 16.10 Critical Areas  
                  Attachment C - King County Code (KCC) Section 21A.24.070  
                  Attachment D - Seattle Municipal Code (SMC) Section 25.09.180.B

cc:     Public Works Department  
          File # MIS14-0003  
          File # PLT13-0006  
          File # SEP13-0030  
          Interpretation File (hard file and electronic)

**Planning and Development Department  
Director's Administrative Zoning Code Interpretation**

File No. MIS14-0003

Date Issued: May 9, 2014

Subject: Interpretation of the critical areas code for prohibiting alteration of Class IV landslide hazard areas (ACC 16.10.100). Specifically, the establishment and application of a threshold area for isolated Class IV landslide hazard areas where it can be determined that the area is small enough in size and far enough away from adjacent properties or improvements to no longer pose a "significant risk" to public and private property.

Code References: Environment Code Sections  
ACC 16.10.100 Alteration or Development of Critical Areas –  
Standards and Criteria

Zoning Designation(s): The site which is the subject of this request, is located on the south side of South 321st Street, between 46th Place South and 51st Avenue South, Auburn, WA 98001. The site is identified as parcel numbers 1521049017, 1521049157, 1521049001, 1521049019, 1521049020, 9262800194, 9262800201, 9262800203, 9262800271; and is located within the northwest quarter of Section 2, Township 21 North, Range 4 East, W.M.

Applicants: Nick Abdelnour  
PNW Home Builders North, LLC  
11624 SE 5th Street, Suite 200  
Bellevue, WA 98005

### Background

This interpretation is requested in relation to the Auburn Assemblage preliminary plat (City File No. 13-0006). The proposed project is to rezone and subdivide approximately 34.35 acres into 154 single-family residential lot and 20 tracts. However, due to the overarching nature of this interpretation request, the interpretation is also of general applicability that can be used on other properties within the City.

As identified in the application, this interpretation request is in relation to the assembled properties located on the south side of South 321st Street, between 46th Place South and 51st Avenue South. According to the King County Assessor's website, the 9 parcels that comprise the 34.35-acre site contain two existing single-family residences, one vacant burned out single-family residence, one barn, and one accessory out building. The site is hilly, generally sloping in a southwestern direction, with an 880 square foot isolated Class IV slope, and is mainly forested. The site is irregular in shape and varies in elevation with a high elevation point of 500 feet and a low elevation point of 380 feet as identified in the Preliminary Geotechnical Report provided by Earth Solutions NW, LLC, June 26, 2013 (and subsequently revised). The City's inventory did not identify the site as potentially containing any geologic hazards, wetlands, or stream critical areas.

Based on City records, the assembled properties have not been subject to past applications other than those associated with this proposal. The current applications filed by PNW Home Builders North, LLC are a preliminary plat application (File No. PLT13-0006), a rezone application (File No. REZ13-0003), and the associated environmental checklist application (SEP13-0030). Collectively, the applications seek to rezone the properties from the current R5, Residential Zone (5 dwelling units per acre) to the R7, Residential Zone (7 dwelling units per acre) and to subdivide the 34.35 acre site into 154 single-family residential lots pursuant to the R7, Residential density standards. One home is existing on the site and is proposed to be retained.

### Discussion/Analysis

This application is a request for a zoning code administrative interpretation by the Planning Director - a Type I decision pursuant to ACC 14.03.101 - regarding the environmental code provisions prohibiting the alteration of Class IV landslide hazard areas (ACC 16.10.100). Specifically, applying a threshold area for the prohibition of alterations for isolated Class IV landslide hazard area when the code construction and context indicates this section is to reduce "significant risks" to public and private property and to public health through measures to render a site with critical geologic hazard as safe as one not containing such hazard. In other words, this standard is intended and designed to protect nearby properties and improvements from the hazard feature as opposed to protecting the feature itself.

In 2005, as part of a City code update by Ordinance No. 5894, the City adopted the environmental code provisions of Chapter 16.10 of Auburn City Code. The purpose of this code provision was to address the 1995 amendments to the Washington Growth Management Act (GMA) requiring counties and cities to include the best available science in developing policies and development regulations to protect the functions and values of critical areas as well as to comply with RWC 36.70A.130(4) that requires that counties and cities take action to review and,

if needed, revise their development regulations to ensure the development regulations meet the requirements of RCW Chapter 36.70A.

Specifically related to geologic hazard areas, ACC Section 16.10 provides:

- The stated primary goals of regulating geologic hazard areas are "...to avoid and minimize potential impacts to life and property by regulating and/or limiting land uses when necessary, and to conduct appropriate levels of analysis and ensure sound engineering and construction practices to address identified hazards. However, no specific area criteria is defined.
- Slopes will be measured as such: where the surface drops 10 feet or more vertically within a horizontal distance of 25 feet.
- Any slope greater than 40% is classified as a Class IV slope. However, no specific area criteria is defined.
- The City may approve, condition or deny proposals for the alteration of a geologic hazard area, as appropriate to the degree to which the significant risk posed by the critical hazard areas to the public and private property and to public health and safety can be mitigated. However, no specific area criteria is defined.
- Mitigation measures shall be to render a site containing a critical geologic hazard as safe as one not containing such hazard or one characterized by a low hazard. In appropriate cases, conditions may include limitations of proposed uses, modification of density, alteration of site layout and other appropriate changes to the proposal. However, no specific area criteria are defined.
- Alteration shall be prohibited subject to the reasonable use provision of Chapter 16.10. However, the reasonable use provisions do not address isolated slopes.
- That the proposal will not increase the risk of occurrence of the potential geologic hazard, and that measures to eliminate or reduce risks have been incorporated into its recommendations.

The purpose of these requirements is to protect people and property from geologic hazardous areas which differs from the purpose of other critical areas (e.g. wetlands, streams, groundwater protection areas, etc.) which is to protect the integrity, function, value, and resources of the critical area itself from development impacts.

As a result of this context, staff scheduled the topic for a discussion with subject matter experts in Planning Services, Environmental Services, and Development Engineering on April 17, 2014 and again on April 22, 2014. At these meetings, staff presented the attendees that the City had received an inquiry on behalf of the Applicant about whether the intent of the code section, ACC 16.10.100(E)(2)(a) was to prohibit alteration of all Class IV slopes regardless of isolation and area.

After describing the purpose and effect of the code section, as well as Staff's findings after researching both King County (KCC 21A.24.070) and City of Seattle (SMC 25.09.180.B) development regulations (Attachment C and D) for critical slopes, staff asked the attendees about their view of intent and purpose of the code section and asked the attendees about how it should be applied. The attendees indicated that they were comfortable with establishing threshold area criteria to clarify the intent of the code based on the following findings of fact:

1. Other jurisdictions within the immediate area with similar topography have defined criteria for establishment of isolated Class IV slopes.
2. Application of like threshold criteria from other jurisdictions, adjusted to fit the City of Auburn, are necessary and within the spirit and intent of the code section.
3. The strict interpretation of the code section would not diminish the spirit or intent of the code.
4. Strict interpretation of the code section would create unnecessary disjointed development of property and provide no further protection of people or private property as is the stated purpose of the code.
5. Strict interpretation could expose developed areas abutting the required buffer area of the critical slopes to increased risk.

Based on these findings of fact, the review team established the following 9 criteria that must be met for the allowance of alteration to isolated Class IV slopes:

1. Alteration of any isolated Class IV slope(s) shall not create or increase the potential of adverse impacts to adjacent properties.
2. Class IV slopes will only be categorized as isolated if the slope is not within 30 feet of another isolated slope. In the event Class IV slopes are within a 30-foot distance, their areas will be combined towards the threshold area of 2,500 square feet.
3. Any proposed alteration cannot increase the potential hazard, and shall be supported by a Geotechnical Engineer as required in ACC 16.10.100(E)(2)(c)(i).
4. Any proposed alteration shall not create or increase the potential for impacts to identified environmental, critical area, or open space resources.
5. The top and toe of an isolated Class IV slope must be undeveloped prior to alteration of the Class IV slope.
6. Any isolated Class IV slope, or the combined area of isolated Class IV slopes within a 30-foot distance shall not exceed 2,500 square feet in area.
7. Any isolated Class IV slope that has a vertical rise of 20 feet or greater, regardless of area, shall not be altered.
8. No alteration of Class IV slopes, regardless of area, will be allowed if the slope is within 100 feet of an adjacent property line where the adjacent property is under a separate ownership interest.
9. When determining the area of a slope for the purpose of threshold evaluation, the surface area shall be calculated along the face of the slope. A horizontal area will not be sufficient; slope width, length, and height shall be considered in the area estimate.

These criteria can be applied to other future projects in the City that have identified Class IV slopes on site. The Assistant Director of Community Development was consulted through the process and agreed that an application for a written interpretation would be the appropriate mechanism to address the applicability of the city environmental code (16.10.140 "Procedural provisions" is an appropriate process in this context).

### Decision

On the basis cited above, the Assistant Director of Community Development interprets the zoning code section regarding prohibition of alteration of Class IV slopes (ACC 16.10.100(E)(2))

to specifically allow alteration of isolated Class IV slopes that meet criteria items 1 through 9 listed previously in this decision as identified in the City.

#### Condition(s)

Any alteration to an isolated Class IV slope or landslide hazard area shall meet requirements 1 through 9 as detailed in this interpretation.

#### Appeals

Any person aggrieved of this decision may file an appeal with the Assistant Director of Community Development within fourteen (14) days of mailing of the City's written code interpretation. This decision was mailed on May 2, 2014. The appeal must be filed at the Planning and Development Department at second floor, 1 East Main Street, Auburn, WA 98001 prior to 5:00 PM on or before May 16, 2014. The appeal must be accompanied with justification for the appeal required per ACC 18.70.050.E and include the required filing fee payable to the City of Auburn. Once filed, a hearing on the appeal is scheduled with the Hearing Examiner as prescribed in ACC 18.70.050.B.

#### Other Code References

#### **16.10.140 Procedural provisions.**

A. Interpretation and Conflicts. The director shall have the authority to administer the provisions of this chapter, to make determinations with regard to the applicability of the regulations, to interpret the intent of unclear provisions, to require additional information, to determine the level of detail and appropriate methodologies for critical area reports and studies, to prepare application forms and informational materials as required, and to promulgate procedures and rules for unique circumstances not anticipated within standards and procedures contained in this section. Administrative interpretations may be appealed to the hearing examiner as prescribed in ACC 18.70.050.

B. Penalties and Enforcement. Compliance with these regulations and penalties for their violation shall be enforced pursuant to the procedures set forth in Chapter 1.25 ACC.

C. Appeals from Critical Area Review Decisions. Appeals of critical area review decisions shall be governed by the procedures set forth in ACC 18.70.050. (Ord. 5894 § 1, 2005.)

**Attachment A – Excerpts of the City's Comprehensive Plan  
Related to "Hazards"**

Chapter – "The Environment"

In the following discussion of the goals and objectives on "Hazards" it says:

**Goal 19.            "HAZARDS"**

"To minimize the risk from environmental and manmade hazards to present and future residents of the community."