

DURHAM



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NORTH CAROLINA

MEMORANDUM



Date: November 1, 2010
To: Thomas W. Bonfield, Durham City Manager
Through: Steven L. Medlin, AICP, City-County Planning Director
From: Aaron Cain, AICP, Acting Planning Supervisor, Durham City-County Planning Department
Julia Mullen, Planner, Durham City-County Planning Department
Chris Roberts, PE, Stormwater and Erosion Control Division Manager, Durham County Engineering Department
Sandra Wilbur, PE, Civil Engineer III, City of Durham Public Works Department
Subject: Amendment to the Unified Development Ordinance – Riparian Buffers (TC0900008)

Summary. On September 9, 2010, the North Carolina Environmental Management Commission (EMC) approved Durham's proposed buffer text amendment to the Unified Development Ordinance (UDO) that would bring Durham into compliance with the Jordan Water Supply Nutrient Management Strategy (Jordan Rules) (15A NCAC 02B.0262-0273, effective August 11, 2009, as amended by SL 2009-216 and SL 2009-484). This proposed amendment also includes related changes to riparian buffer regulation recommended by the Environmental Enhancements to the UDO (EEUDO) Steering Committee and changes recommended by staff to reorganize and clarify the relevant sections to make them more user-friendly and effective. The proposed text is shown in Attachments A and B.

Recommendations. Staff recommends approval of the proposed text amendment. The Planning Commission recommended approval on a vote of 10-2 at its April 13, 2010 meeting.

Background. In the summer of 2008, the Joint City-County Planning Committee (JCCPC) established a Steering Committee for the EEUDO project. This Steering Committee is made up of developers, neighborhood leaders, and environmental activists, and co-chaired by Commissioner Reckhow and Councilperson Woodard. This Steering Committee met regularly to provide input and recommendations regarding improvements to environmental regulations in the UDO. These improvements focused on four areas: sedimentation and erosion control, water quality and stream buffers, site preparation, and tree protection and preservation. The Steering Committee released its recommendations in May of 2009, and the JCCPC instructed staff to begin work on implementation of those recommendations in June of 2009.

A parallel effort has been underway through state regulators to restore and protect water quality in Jordan Lake, an important source of drinking water for Triangle communities.

On September 10, 2009, the EMC approved the *Model Local Riparian Buffer Protection Ordinance for Lands within the Jordan Watershed* (Model Ordinance) to provide guidance to local governments implementing the Jordan Rules and recent legislation adopted by the General Assembly to modify the Jordan Rules. Durham City and County already abide by the Neuse River Basin rules, which apply to the portion of the City and County within the Neuse River Basin. Though similar to the Jordan Rules, they are not completely alike, and much of this proposed text amendment addresses incorporating those differences into the UDO.

Some of the requirements of the Model Ordinance already exist in Durham's UDO, such as 50-foot stream buffers. However, changes that must be made include, but are not limited to, the following:

- Include wetlands that are adjacent to or within 50 feet of surface waters in the stream buffers;
- Require diffuse flow from man-made ditches or conveyances prior to water entering the stream buffer;
- Amend the table of allowed uses within stream buffers; and
- Implement process changes for permitting, exemptions, variances, mitigation, stream determinations, and enforcement.

In addition to the above requirements that are mandated by the State, the EEUDO Steering Committee recommended the following changes to improve water quality:

- Increase the stream buffer within the Suburban and Rural tiers from 50 feet to 100 feet, where applicable;
- Require wetlands that are less than one acre in size and that are contiguous to a stream buffer be buffered; and
- Increase the size of the wetland buffer from 25 feet to 50 feet and apply the ten-foot no-build zone currently required for stream buffers to wetland buffers.

Additionally, staff has included proposed changes in the draft text amendment to improve organization and clarify existing requirements within the pertinent sections of the UDO.

The JCCPC initiated this text amendment on November 4, 2009, and reviewed the draft text in February 2010. This draft text amendment was reviewed by the EEUDO Steering Committee in January 2010, and by both elected boards in March 2010 prior to submission to the North Carolina Division of Water Quality and the EMC. The Durham Planning Commission reviewed this draft in April 2010, and recommended approval on a 10-2 vote. Input from these reviews has been incorporated into the current draft.

Issues. Staff has attempted to merge the Jordan Rules and Neuse River Basin rules as much as possible in order to make the UDO clear for citizens, elected officials, and the development community, and to have consistent regulations apply across the County. However, there are instances where the Jordan Rules and Neuse River Basin rules differ, and in those cases, differentiation is necessary.

There are several new reporting requirements mandated by state legislation incorporated into this text amendment. These include, but are not limited to, reporting to state agencies on an annual basis on mitigation restoration or enhancement projects, annual reporting on activities regarding implementation of the Jordan Rules, and record keeping for state review on variances and stream determination. Such reporting and record keeping activities will incur staff costs not incorporated into current budgets.

Alternatives. The first set of proposed text changes outlined above, those required by the State, must be adopted by November 9, 2010. However, the City Council may choose not to adopt some or all of the UDO text changes recommended by the EEUDO Steering Committee or staff.

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Attachments

Attachment A, An Ordinance to Amend Provisions of the Unified Development Ordinance Regulating Riparian Buffers, Mark-Up Copy
Attachment B, An Ordinance to Amend Provisions of the Unified Development Ordinance Regulating Riparian Buffers, Clean Copy

Cc: Keith Luck, AICP, Assistant Director, Durham City-County Planning Department
Paul Wiebke, PE, Stormwater Division Manager, City of Durham Public Works Department
Glen Whisler, PE, Director, Durham County Engineering Department