



## MEMORANDUM

**TO:** Chair Todd Shaw and Planning Commissioners

**FROM:** Katie Coyne, AICP, Certified Ecologist - ESA  
City of Austin Environmental Officer  
Assistant Director, Watershed Protection Department

**DATE:** April 20, 2023

**SUBJECT:** Environmental Officer interpretation of the applicability of LDC 25-8-26; Redevelopment in the Barton Springs Zone for SP-2021-0278C, 2428 W Ben White Mixed-Use Development

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### Summary

This memo is intended to clarify the Environmental Officer's position related to the appeal of the Environmental Officer's denial of a site plan, as allowed in Land Development Code (LDC) § 25-5-112. The case is related to a proposed mixed-use development located on a platted lot that contains existing commercial development. The property is located on a watershed divide and is partially located within both the Barton Creek Watershed, which is classified as Barton Springs Zone, and Williamson Creek Watershed, which is classified as Suburban. Because of the existing watershed divide, the site contains differing watershed regulations per LDC Chapter 25-8 Subchapter A - Water Quality. The impervious cover limit in the Suburban Watershed portion of the site is 60% gross site area for multi-family use. The impervious cover limit in this portion of the Barton Springs Zone is 20% net site area within the Contributing Zone of Barton Springs Watershed, per 25-8 Article 13 Save Our Springs Initiative (SOS). Additionally, the SOS ordinance requires that stormwater from all development receive non-degradation water quality treatment.

The existing development located at this property does not comply with current water quality regulations. Specifically, the site does not contain compliant water quality treatment facilities and the impervious cover limit exceeds the allowable amount of impervious cover within the Barton Springs Zone portion of the property. The applicant has requested the ability to use the redevelopment exceptions found within the Land Development Code, which are intended to allow a site to keep the existing non-complying impervious cover, with certain conditions that vary depending upon the watershed regulation area. The key code provision at issue is related to the requirement that no increase in impervious cover shall occur.

### Environmental Officer Interpretation

The interpretation at issue is related to applicability of the two different redevelopment exception code sections.

- LDC §25-8-25 Redevelopment Exception in Urban and Suburban Watersheds
- LDC §25-8-26 Redevelopment Exception in the Barton Springs Zone

Both code sections are clear as to what property they can be applied. LDC §25-8-25 begins, "This section applies to property located in an urban or suburban watershed..." and LDC §25-8-26 similarly begins, "This section applies to property located in the Barton Springs Zone..." Therefore, when projects contain more than one watershed regulation area, the land falling within each watershed regulation area must meet the regulations specific to those areas separately based on existing conditions. Land that lies outside of the Barton Springs Zone are not subject to the SOS ordinance. Conversely, land that lies within the Barton Springs Zone cannot exceed the limits placed on the development by the SOS ordinance. In this case, the land that exists in the Barton Springs Zone must demonstrate compliance with LDC §25-

8-26, not LDC §25-8-25, because those sections of code do not apply outside of their respective watershed regulation areas.

The applicant has proposed a project that will place more impervious cover than exists today on the portion of the tract that lies within the Barton Springs Zone, but will not increase impervious cover within the entire tract. One of the conditions of the redevelopment exception is that the future development not increase impervious cover within the “site”. In this case, the Environmental Officer interprets “site” to mean “area subject to §25-8-26 Barton Springs Zone Redevelopment Exception.”

The applicant asserts that they are not increasing impervious cover on the entire tract and therefore they are compliant with LDC §25-8-26. However, in keeping with longstanding precedent, the Environmental Officer has required that applicants demonstrate that they meet each watershed regulation area separately. The area of the site located outside of the Barton Springs Zone must demonstrate full compliance with LDC §25-8-26. Therefore, the site should demonstrate separately that the site does not increase impervious cover on both sides of the watershed divide separately.

The applicant has also suggested that they will regrade the site so that future drainage will move the watershed boundary such that more of the site will be subject to Suburban Watershed Regulation requirements. The Environmental Criteria Manual ECM 1.2.3. is clear in this regard. “Regulations specific to a watershed classification (e.g., impervious cover limits, cut and fill requirements, construction on slopes requirements) shall apply to the watershed boundaries as they exist pre-development. Proposing to change the watershed boundary with a diversion of stormwater does not change the applicable environmental regulations, with the exception of water quality treatment. The development shall provide the level of water quality treatment required for the watershed that the stormwater drains to post-development.”

### **Conclusion**

In conclusion, the Environmental Officer’s interpretation that the site may not increase the amount of impervious cover on the portion of the site that lies within the Barton Springs Zone, not the entire property, is keeping with long standing precedent and clear guidance from the Environmental Criteria Manual. The Save Our Springs Initiative was not intended to allow staff the administrative ability to vary or modify code requirements, or loosely interpret code requirements to facilitate development. The applicant could instead request a Site-Specific Amendment to the Save Our Springs Initiative, as intended when the SOS ordinance was passed.

Thank you for your consideration on this important matter.



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(Her/She)

City of Austin Environmental Officer  
Assistant Director | Watershed Protection Department

cc: Christine Barton-Holmes, Program Manager III, Development Services Department  
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