



**SP-2021-0278C**  
**2428 W Ben White**  
**Mixed Use Development**  
**APPEAL OF ENVIRONMENTAL OFFICER**  
**INTERPRETATION**



# Appeal of Site Plan

## **25-5-112 DIRECTOR'S APPROVAL**

(C) If the director disapproves a site plan, the applicant may appeal the director's interpretation or application of a requirement of this title to the Land Use Commission by filing a written objection with the director. The applicant may appeal the Land Use Commission's decision on an appeal under this subsection to the council.

## **25-1-190 APPELLATE BURDEN**

The appellant must establish that the decision being appealed is contrary to applicable law or regulations.

## **25-1-192 POWER TO ACT ON APPEAL**

A body hearing an appeal may, in accordance with the requirements of this title, exercise the power of the official or body whose decision is appealed. A decision may be upheld, modified, or reversed.

# PROPERTY INFORMATION



**Case number:** SP-2021-0278C

**Project Name:** 2428 W Ben White Mixed Use Development

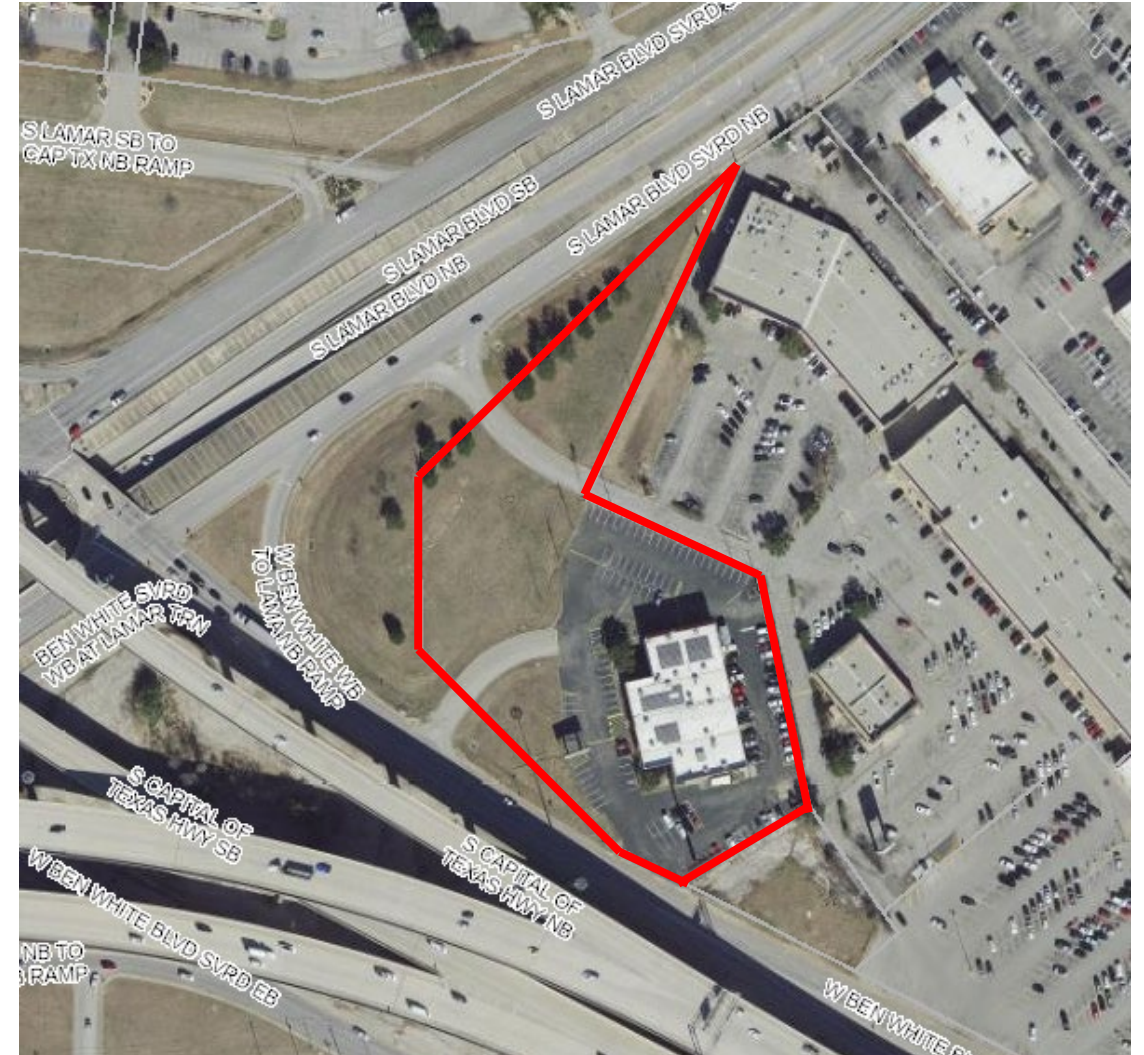
**Zoning:** CS-V

**Proposed Mixed Use Development**

**Watershed:** Barton Creek & Williamson Creek

**Watershed Regulation Area:** Barton Springs Zone & Suburban

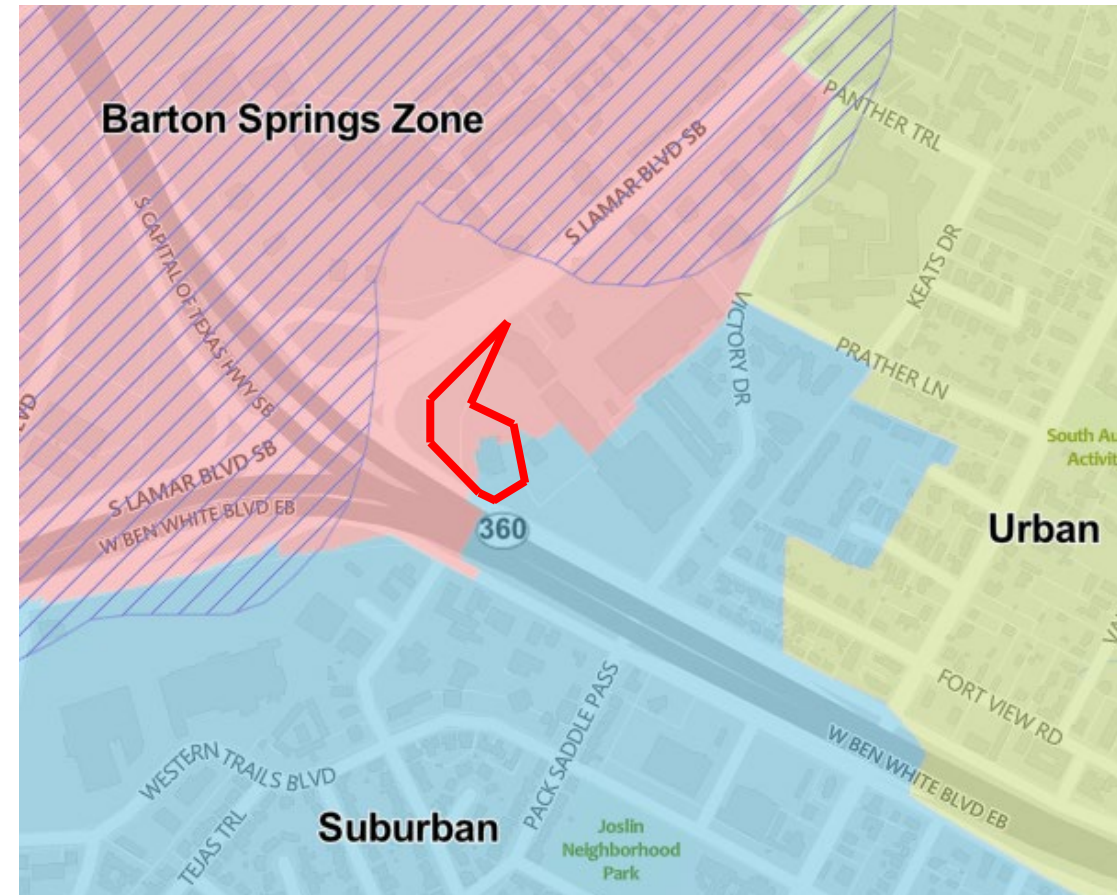
**Outside of Edwards Aquifer Recharge Zone**











# PROPERTY INFORMATION



-  Barton Springs Zone
-  Suburban Watershed Regulations
-  Urban Watershed Regulations
-  Edwards Aquifer Recharge Zone



# Watershed Regulations






## BARTON SPRINGS ZONE REGULATIONS

- **25- 8 Article 13 Save Our Springs Initiative**
  - 20% Impervious Cover (net) in Barton Creek Watershed outside of the Edwards Aquifer Recharge Zone
  - Non-Degradation Water Quality Treatment

## SUBURBAN WATERSHED REGULATIONS

- **25-8 Article 9 Watershed Protection Ordinance**
  - 60% Impervious Cover (gross) for Multi-family residential
  - 80% Impervious Cover (gross) for Commercial
  - Standard Water Quality Control Requirements

-  Barton Springs Zone
-  Suburban Watershed Regulations
-  Edwards Aquifer Recharge Zone







# Impervious Cover

Information below was provided by applicant separately at staff's request and is based on existing site conditions.  
Information contained within the plan set is based on post-development conditions.

## Barton Springs Zone Impervious Cover

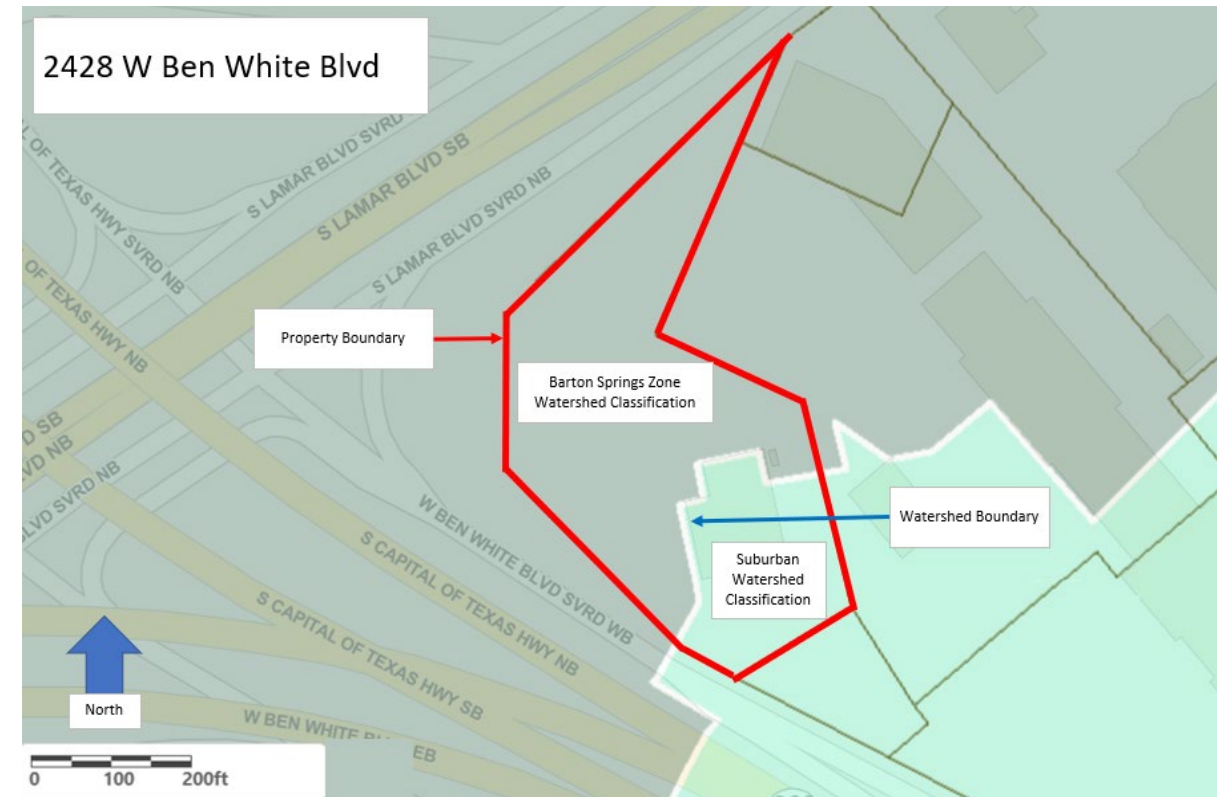
- Existing 50,009 s.f. or 41.09%
- **Proposed 55,004 or 45.20%**

## Suburban Impervious Cover

- Existing 43,669 s.f. or 99.76%
- Proposed 37,734 s.f. or 86.20%

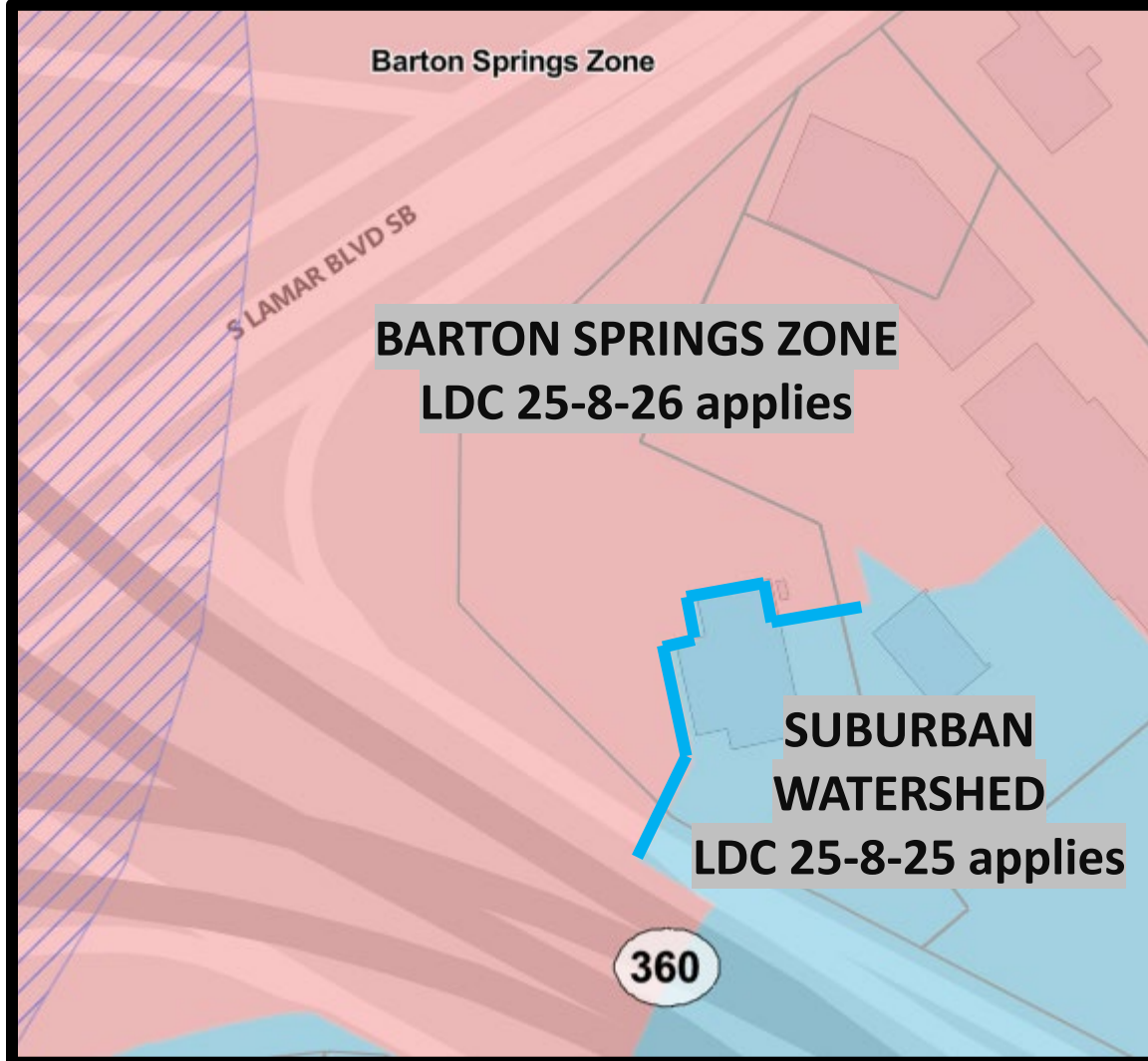
## Overall Impervious Cover

- Existing 93,678 s.f. or 56.61%
- Proposed 92,738 s.f. or 56.05%





# Redevelopment Exceptions



Qualifying projects with existing, non-compliant development may elect to fall under the Redevelopment Exception, which rescinds or adjusts many environmental requirements.

- To qualify for Redevelopment Exception, projects must meet certain conditions, which vary depending on watershed regulation areas.
- BSZ redevelopment exception [LDC 25-8-26] includes more conditions to qualify than the Suburban redevelopment exception [LDC 25-8-26].
- Each side of the watershed boundary must meet conditions separately per LDC requirements because code sections in one watershed regulation area does not apply outside of that area.



# Redevelopment Exceptions

## 25-8-25 REDEVELOPMENT EXCEPTION IN URBAN AND SUBURBAN WATERSHEDS

- (A) This section applies to property located in an urban or suburban watershed that has existing development if:
  - (1) no unpermitted development occurred on the site after January 1, 1992, and
  - (2) the property owner files a site plan application and an election for the property to be governed by this section.
- (B) The requirements of this subchapter do not apply to the subdivision of property if at the time of redevelopment under this section subdivision and site plan applications are filed concurrently.
- (C) The requirements of this subchapter do not apply to the redevelopment of the property if the redevelopment:
  - (1) does not increase the existing amount of impervious cover;
  - (2) provides the level of water quality treatment prescribed by current regulations for the redeveloped area or an equivalent area on the site;
  - (3) does not generate more than 2,000 vehicle trips a day above the estimated traffic level based on the most recent authorized use on the property;
  - (4) is consistent with the neighborhood plan adopted by council, if any;
  - (5) does not increase non-compliance, if any, with Article 7, Division 1 (*Critical Water Quality Zone Restrictions*), [Section 25-8-281](#) (*Critical Environmental Features*), or [Section 25-8-282](#) (*Wetland Protection*); and
  - (6) does not place redevelopment within the Erosion Hazard Zone, unless protective works are provided as prescribed in the Drainage Criteria Manual.
- (D) The redevelopment must comply with [Section 25-8-121](#) (*Environmental Resource Inventory Requirement*) and all construction phase environmental requirements in effect at the time of construction, including [Chapter 25-8](#), Article 5 (*Erosion and Sedimentation Control; Overland Flow*).





# Redevelopment Exceptions

## 25-8-26 REDEVELOPMENT EXCEPTION IN THE BARTON SPRINGS ZONE

(A) This section applies to property located in the Barton Springs Zone that has existing commercial development if:

- (1) no unpermitted development occurred on the site after January 1, 1992, and
- (2) the property owner files a site plan application and an election for the property to be governed by this section.

(B) For property governed by this section, this section supersedes Article 13 (*Save Our Springs Initiative*), to the extent of conflict.

(C) In this section:

- (1) SEDIMENTATION/FILTRATION POND means water quality controls that comply with [Section 25-8-213](#) (*Water Quality Control Standards*) or are approved under [Section 25-8-151](#) (*Innovative Management Practices*); and
- (2) SOS POND means water quality controls that comply with all requirements of [Section 25-8-213](#) (*Water Quality Control Standards*) and the pollutant removal requirements of [Section 25-8-514\(A\)](#) (*Pollution Prevention Required*).

(D) The requirements of this subchapter do not apply to the subdivision of property if at the time of redevelopment under this section subdivision and site plan applications are filed concurrently.

(E) The requirements of this subchapter do not apply to the redevelopment of property if the redevelopment meets all of the following conditions:

- (1) The redevelopment may not increase the existing amount of impervious cover on the site.

(2) The redevelopment may not increase non-compliance, if any, with Article 7, Division 1 (*Critical Water Quality Zone Restrictions*), [Section 25-8-281](#) (*Critical Environmental Features*), [Section 25-8-282](#) (*Wetland Protection*), or [Section 25-8-482](#) (*Water Quality Transition Zone*).

(3) The redevelopment must comply with [Section 25-8-121](#) (*Environmental Resource Inventory Requirement*) and all construction phase environmental requirements in effect at the time of construction, including [Chapter 25-8](#), Article 5 (*Erosion and Sedimentation Control; Overland Flow*) and [Section 25-8-234](#) (*Fiscal Security in the Barton Springs Zone*).

(4) The water quality controls on the redevelopment site must provide a level of water quality treatment that is equal to or greater than that which was previously provided.

(5) For a commercial or multifamily redevelopment, the owner or operator must obtain a permit under [Section 25-8-233](#) (*Barton Springs Zone Operating Permit*) for both sedimentation/filtration ponds and SOS ponds.

(6) For a site with more than 40 percent net site area impervious cover, the redevelopment must have:

- (a) sedimentation/filtration ponds for the entire site; or

(b) SOS ponds for a portion of the site, and sedimentation/filtration ponds for the remainder of the redeveloped site.

(7) For a site with 40 percent or less net site area impervious cover, the redevelopment must have SOS ponds for the entire site.

(8) The property owner must mitigate the effects of the redevelopment, if required by and in accordance with Subsection (H).

(9) Redevelopment may not be located within the Erosion Hazard Zone, unless protective works are provided as prescribed in the Drainage Criteria Manual.

(F) City Council approval of a redevelopment in accordance with Subsection (G) is required if the redevelopment:

- (1) includes more than 25 dwelling units;
- (2) is located outside the City's zoning jurisdiction;
- (3) is proposed on property with an existing industrial or civic use;
- (4) is inconsistent with a neighborhood plan; or
- (5) will generate more than 2,000 vehicle trips a day above the estimated traffic level based on the most recent authorized use on the property.

(G) City Council shall consider the following factors in determining whether to approve a proposed redevelopment:

- (1) benefits of the redevelopment to the community;
- (2) whether the proposed mitigation or manner of development offsets the potential environmental impact of the redevelopment;
- (3) the effects of offsite infrastructure requirements of the redevelopment; and
- (4) compatibility with the City's comprehensive plan.

(H) Redevelopment of property under this section requires the purchase or restriction of mitigation land if the site has a sedimentation/filtration pond.

(1) The combined gross site area impervious cover of the mitigation land and the portion of the redevelopment site treated by sedimentation/filtration ponds may not exceed 20 percent.

(2) The mitigation requirement may be satisfied by:

- (a) paying into the Barton Springs Zone Mitigation Fund a non-refundable amount established by ordinance;

(b) transferring to the City in accordance with Paragraph (3) mitigation land approved by the director of the Watershed Protection Department within a watershed that contributes recharge to Barton Springs, either inside or outside the City's jurisdiction;

(c) placing restrictions in accordance with Paragraph (3) on mitigation land approved by the director of the Watershed Protection Department within a watershed that contributes recharge to Barton Springs, either inside or outside the City's jurisdiction; or

(d) a combination of the mitigation methods described in Subparagraphs (a) - (c), if approved by the director of the Watershed Protection Department.

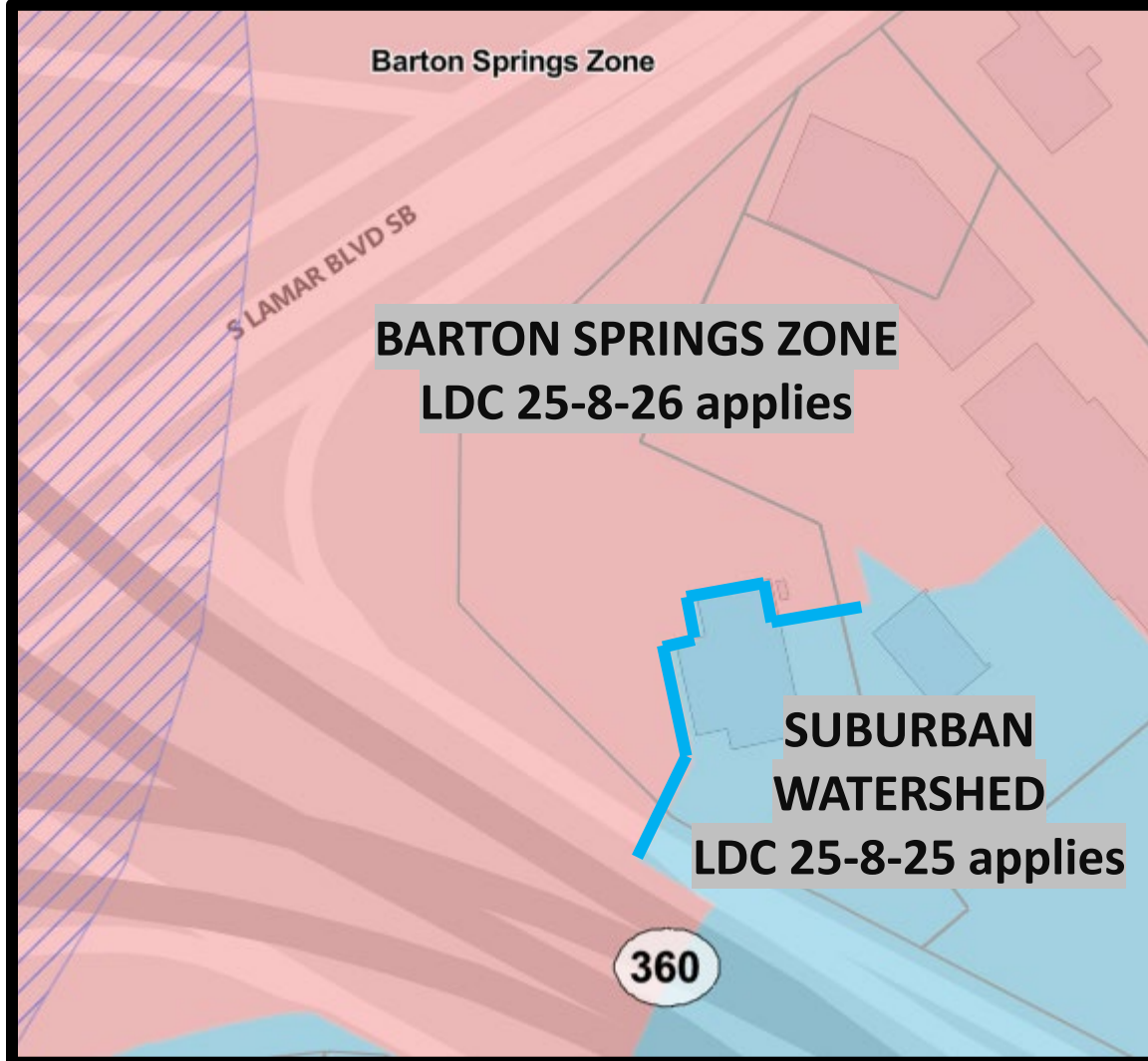
(3) A person redeveloping under this section shall pay all costs of restricting the mitigation land or transferring the mitigation land to the City, including the costs of:

- (a) an environmental site assessment without any recommendations for further clean-up, certified to the City not earlier than the 120th day before the closing date transferring land to the City;
- (b) a category 1(a) land title survey, certified to the City and the title company not earlier than the 120th day before the closing date transferring land to the City;
- (c) a title commitment with copies of all Schedules B and C documents, and an owner's title policy;
- (d) a fee simple deed, or, for a restriction, a restrictive covenant approved as to form by the city attorney;
- (e) taxes prorated to the closing date;
- (f) recording fees; and
- (g) charges or fees collected by the title company.

(I) The Watershed Protection Department shall adopt rules to identify criteria for director approval under this section to ensure that the proposed mitigation, manner of development, and water quality controls offset the potential environmental impact of the redevelopment.



# Redevelopment Exceptions



- **City Code Section 25-8-26(A)** says that the section **"applies to property in the Barton Springs Zone"** with existing development that meets certain other criteria.
- **City Code Section 25-8-25(A)** says that the section **"applies to property located in an urban or suburban watershed"** with existing development that meets certain other criteria.
- A portion of the applicant's property is in the Barton Springs Zone, so Section 25-8-26 applies to that portion of the property.
- A portion of the applicant's property is in a suburban watershed, so Section 25-8-25 applies to that portion of the property.
- Neither section says that it can be applied in any other location.



# Site Definition



## 25-1-21 DEFINITIONS

- (106) SITE means a contiguous area intended for development, or the area on which a building has been proposed to be built or has been built. A site may not cross a public street or right-of-way.
- (107) SITE PLAN means a plan for a development, other than a subdivision construction plan, submitted by an applicant to demonstrate that the development complies with the requirements of this title.





# Redevelopment Exceptions

- **Applicant asserts that the “site” in this case means the project boundaries.**
- **Staff interpret this to mean land within applicable watershed regulation area because the applicability of each section is clear in the code language.**
- **Applicant is proposing to increase impervious cover in area classified as Barton Springs Zone, but decrease impervious cover within Suburban Watershed.**
- **Staff do not find that the projects meets requirements of LDC 25-8-26, therefore the project is ineligible for the Barton Springs Zone Redevelopment Exception.**

§ 25-8-26 - REDEVELOPMENT EXCEPTION IN THE BARTON SPRINGS ZONE.

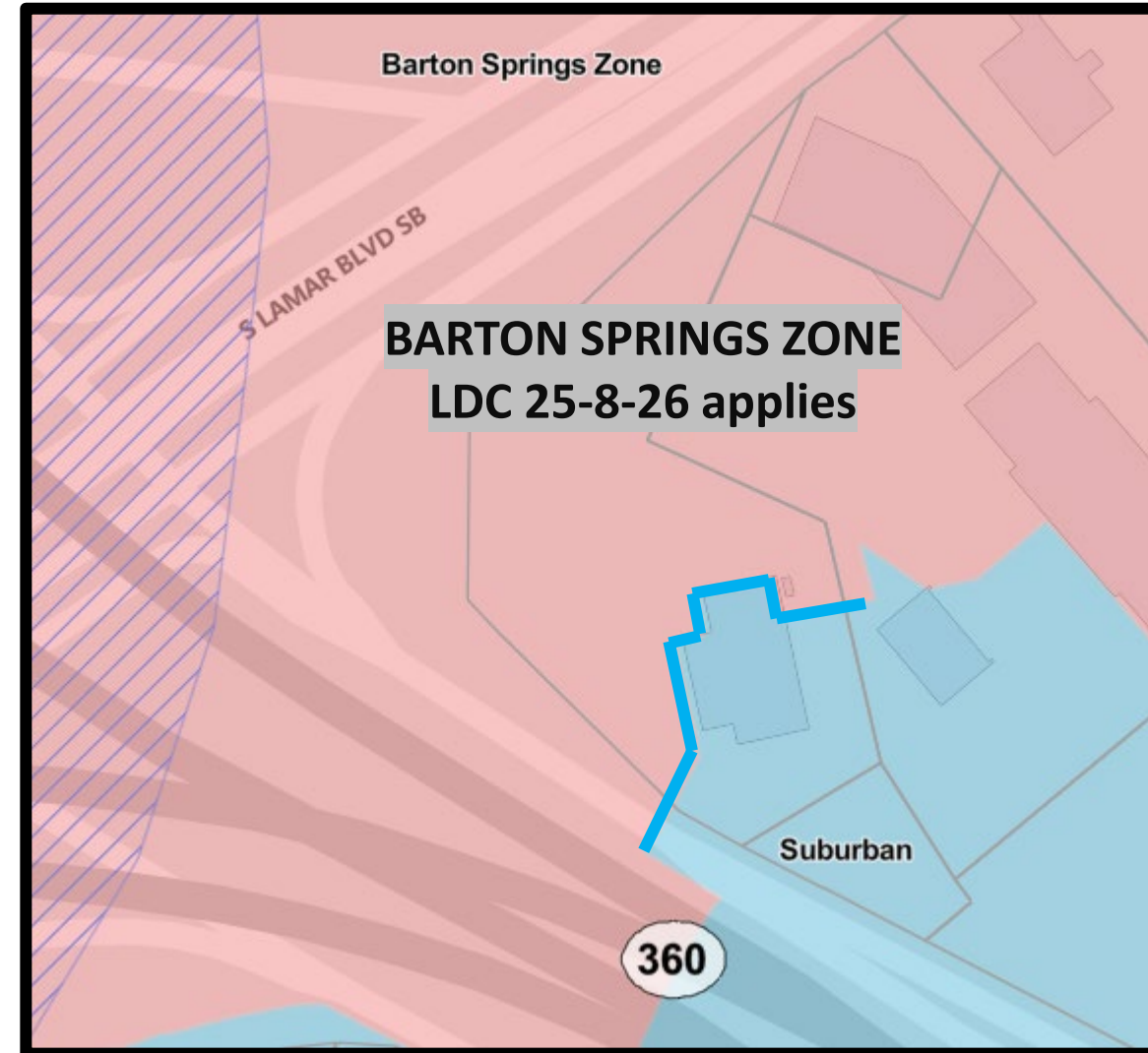
(A) This section applies to property located in the Barton Springs Zone that has existing commercial development if:



# INTERBASIN DIVERSION



- Applicant has proposed to divert water from Barton Springs Zone to a Suburban Watershed.
- Interbasin diversion is allowed in limited circumstances (20% of the site up to an acre) provided the project demonstrates that the diversion is:
  - The minimum amount necessary to allow development to occur on the watershed divide
  - No adverse environmental or drainage impact will occur from diverting water from one watershed to another





# INTERBASIN DIVERSION

- **Environmental Criteria Manual 1.2.3 says:**

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.

- **Applicant has provided impervious cover information based on proposed conditions, not existing conditions, on site plan.**





# Summary



- The applicant proposes to adjust the watershed boundary.
- Per ECM 1.2.3., proposing to adjust the watershed boundary does not change the applicable environmental regulations. That is, the environmental regulations do not adjust when a watershed boundary is proposed to shift until after construction is complete.
- The redevelopment exception requires that the project does not increase existing impervious cover.
- Each watershed regulation area within the site must meet the conditions of the redevelopment exception separately based on existing conditions.



# Conclusion



- **Save Our Springs Zone regulations do not allow staff discretion on variances or waivers. Intent of the ordinance is higher level of public input and City Council action.**
- **Applicant may redesign or request that City Council initiate a Site Specific Amendment to 25-8 Article 13 Save Our Springs Initiative.**
- **Environmental Officer code interpretation is based on:**
  - **Plain language of Barton Springs Zone Redevelopment Exception LDC 25-8-26**
  - **Past precedent**
  - **Clear Environmental Criteria Manual (ECM 1.2.3) guidance on applicable regulations when interbasin diversion is proposed**



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