

Proposed Unified Development Ordinance Amendment OA-01-19

To: Wake County Board of Commissioners

Project Name: Unified Development Ordinance Text Amendment - Article 9 Stormwater Management and Article 10 Erosion and Sedimentation Control

Case Number: OA-01-19

Date: October 21, 2019

Staff: Melinda Clark, Watershed Manager and Barney Blackburn, P.E., Plan Review Group Lead

Purpose: To amend Article 9 Stormwater Management and Article 10 Erosion and Sedimentation Control of the Unified Development Ordinance (UDO) to update related surface water rules for legislative changes, to provide clarity of provisions and to improve the effectiveness of the ordinance.

Background: The last comprehensive review of the surface water rules contained in UDO Articles 9 and 10 culminated in the adoption of a new Stormwater Ordinance in 2006 and the adoption of a substantially revised Article 10 Erosion and Sedimentation Control in 2007. In the fall of 2017, Watershed Management staff initiated a new comprehensive review of the stormwater and erosion control rules. A stakeholder group was formed to work with staff in reviewing and updating the rules. The stakeholder group met six times over the next 18 months. The stakeholder group concluded its work in February 2019. This process identified ten (10) proposed changes to Article 9 Stormwater Management and thirty-eight (38) proposed changes to Article 10 Erosion and Sedimentation Control.

Summary of proposed amendments:

Article 9 Stormwater Management Amendment Summary

1. **9-12** Added Applicability, **9-12-1** Exemptions.
2. **9-12-2** Minor and Minor-Limited Subdivisions - moved paragraph here from 9-20-3 and renumber as 9-12-2, added "Other applicable stormwater regulations are in addition to this requirement."
3. **9-20-3(C) (1) – (2)** Spelled out United States Department of Agriculture.
4. **9-20-4** Added Stormwater Control Measures (A) Location, (B) Easements and (C)Setback Requirements - Wastewater Systems.
5. **9-22** Added Downstream Impact Analysis requirements, **9-22-1** General Standards, **9-22-2** Policies and Procedures.
6. **9-31-2** Clarified as-built plans to be prepared by a licensed surveyor.
7. **9-32-2(A)** Added reference to Stormwater Agreement.
8. **9-32-5** Added Annual Maintenance Inspection and Report requirements.
9. **9-32-6** Added "Environmental Services".

10. **9-40** Added Illicit Discharges, 9-40-1 Illicit Discharge Definition, 9-40-2 Discharge Restrictions, 9-40-3 Prohibited substances.

Article 10 Erosion and Sedimentation Control

1. Throughout **Article 10** capitalized Article.
2. Throughout **Article 10** updated agency names to current.
3. **10-10-3** Added last sentence: "Whenever conflict exists between federal, state or local laws, ordinances or rules, the more restrictive provision shall apply".
4. **10-12 Definitions** - Added definitions per State Model Ordinance: Act, Commission, Department, Larger Common Plan of Development or Sale, Plan, and Undertaken. Modified definition of Director of North Carolina Division to update agency reference to Division of Energy, Mineral and Land Resources. Added to definition of NC Sedimentation Pollution Control Act "...regulations...also referred to as Act." Revised definition for "Working Days" to exclude state and federal holidays.
5. **10-13-1(A)** Revised to clarify regulations of Article 10 apply to land disturbances of one acre or more and to land disturbances that are less than one acre if part of a larger common plan of development or sale, added "including without limitation a subdivision".
6. **10-13-2(A)** Agricultural Activities – made language consistent w/recent changes to NC SPCA.
7. **10-13-2(B)** Forestland Activities – Revised section to clarify exemptions and that timbering toward development is not exempt from the requirements of Article 10 and that the N.C. Forest Service is the agency that determines if land disturbing activities undertaken on forestland are conducted in accordance with Forest Practice Guidelines Related to Water Quality. Updated agency name.
8. **10-20-5 (A)** Added ... "Plan and...", Struck "Greater Than One Acre of Disturbed Area"
9. **10-20-5 (A)(1)-(3)** Revised to clarify that a plan and permit are required for land disturbances one acre of more and to land disturbances less than acre that are part of a larger common plan of development, added "including without limitation a subdivision". **(2)** and added "...and maintain..."; and **(3)** added, "The person conducting the land disturbing activity", changed 15 and 21 days to 14 and struck unnecessary words.
10. **10-20-5(B)** Struck "One Acre or Less of Disturbed Area"
11. **10-20-5(B)(1) – (3)** Clarified when a plan and permit is not required; if the land disturbance is less than one acre and is not part of a larger common plan of development or sale, added "...and maintained...". **(2)** Struck "gravel pad" replaced with "construction entrance". **(3)** Made "side" plural by adding an s, now "sides".
12. **10-20-5(B)(7)** Clarified when a plan and permit is not required.
13. **10-20-6(A)** streamlined wording.
14. **10-20-8, 10-20-11, 10-20-12(J)** Updated agency names, spelled out United States Department of Agriculture, changed "Soil Conservation Service" to "Natural Resources Conservation Service".
15. **10-20-9 (B)** Referenced stabilization timeframes and added tables below paragraph: General Ground Stabilization Requirements and Falls Lake Watershed Ground Stabilization Requirements.
16. **10-20-10(A)** Updated agency name.
17. **10-20-10(c)** Added "...particle".
18. **10-20-10(E)** Ground Cover – changed to 7 days.
19. **10-20-11** Added standards specifics to Falls Lake Watershed (15A NCAC 04B).

0132), renumbered section that follows to 10-20-12 Standards for Landfills.

20. **10-22-2** Updated agency name, **10-22-2(B)(2)** changed to or and updated agency name.
21. **10-22-3(A)(2)(e)** Updated agency name.
22. **10-30-1(A)** Clarified a plan and permit is required for land disturbances of one acre of more and for land disturbances of less than acre that are part of a larger common plan of development or sale, added “including without limitation a subdivision”.
23. **10-30-1(B)** Clarified that the County may require a plan for land disturbances of less than acre that not part of a common plan of development if needed to protect against off-site damages.
24. **10-30-2(B)(2)(a)** Changed “his authorized agent” to “their Attorney in Fact”, changed “designated” to “registered”.
25. **10-30-3(A)** Updated agency name.
26. **10-30-3(G)** Added as last sentence: “Plan approval shall be conditioned upon the applicant’s compliance with federal and state water quality laws, regulations and rules”.
27. **10-30-4(C)(5)** Updated agency name.
28. **10-30-9(A)** Updated section reference.
29. **10-30-9(B)** Revised to allow for multiple extensions of the land disturbance permit in increments of either one or two years.
30. **10-30-9(C)** struck *Commentary: The phasing of large and/or complex projects should be considered when it is anticipated that the maximum permit validity period of 4 years (the original permit has a 2 year validity, plus the maximum renewal period of 2 years) may be insufficient to complete all work or in instances where it may be desirable to obtain certificates of completion for phases, rather than one certificate of completion for the entire project.*
31. **10-31-2(A)(2)** Added stabilization requirements per NC General Permit for Construction.
32. **10-32-1(D) (1) – (2)** Updated agency name.
33. **10-40-2** Added “...and the land disturbance permit requirements of this Article.”
34. **10-42-3(A)-(B)** Made first paragraph (A). Under (B) Clarified violator must either pay assessment, appeal assessment or request a remission of the penalty within certain timeframes.
35. **10-42-4 (A)-(B)** Made first paragraph (A), added “...in determining whether to uphold, reduce or waive the civil penalty.”. Added paragraph (B) State Remission of Civil Penalties per NCGS, 113A-64.2
36. **10-42-6** added “...in accordance with G.S. 115C – 457.2.”
37. **10-46-1(B)** Struck comma after article at end of paragraph; added a period.
38. **10-20-5(B)** Added (8) “Notwithstanding the provisions of subsection (B)(1) herein, a permit is not required for land disturbing activities that disturb less than one acre upon a lot for which a certificate of occupancy for a single-family dwelling previously has been issued.”

Analysis

The proposed text amendments were developed following a comprehensive review of the surface water rules contained in Article 9 Stormwater Management and Article 10 Erosion and Sedimentation Control of the Unified Development Ordinance. Stakeholder interests represented on the Rule Review Committee included: Wake County Homebuilders Association, developers, designers, municipal and multiple County departments. Proposed texts amendments update the rules for legislative changes, to provide clarity of provisions and to improve the effectiveness of the ordinance.

Staff Findings

The proposed amendments:

- 1) Support the Board of Commissioners' goal to promote growth and sustainability efforts throughout the county.

MOTION FOR CONSISTENCY (1ST MOTION)

MOTION IF TEXT AMENDMENT IS CONSISTENT WITH THE LAND USE PLAN AND

UDO

In the matter of OA-01-19, I move that the Board of Commissioners adopts the following recommended statement finding that these proposed text amendments are consistent with the Wake County Land Use Plan and Wake County Unified Development Ordinance because:

- 1) The purpose of the Wake County Land Use Plan, and of the Unified Development Ordinance as seen in Article 1-11, is to provide a guide for the physical development of the County, preserve and enhance the overall quality of life of residents, and establish clear and efficient development review procedures. These purposes are advanced by these text amendments to Article 9 Stormwater Management and Article 10 Erosion and Sedimentation Control, which will clarify regulations and include applicable legislative rule updates.
- 2) This Board finds and determines that it is reasonable and in the public interest to adopt the proposed text amendments in OA-01-19 because the amendments provide the regulatory framework for development review and permitting in Wake County for stormwater management and erosion and sedimentation control for land disturbing activities and advances user understanding of regulatory requirements.

MOTION FOR APPROVAL (2nd MOTION)

In the matter of OA-01-19, I move that the Board of Commissioners adopts the proposed text amendments as presented.