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Redevelopment and Vegetated Buffer changes in response to S.L. 2018-145

ENGINEERING POLICY AND REQUIREMENTS

Session Law 2018-145 was approved by the North Carolina State Legislature and became effective on Dec 27th, 2018. Sections 26(a) and (b) of this law impact the City of Wilmington vegetated buffer and stormwater requirements. This memo will summarize the known changes that are necessary to remain consistent with North Carolina State Law. The Session Law can be found at the link below. The changes that impact vegetative buffer and stormwater requirements begin on page 18.

<https://www.ncleg.gov/Sessions/2017/Bills/Senate/PDF/S469v8.pdf>

The following changes will be observed immediately and will remain in effect until corresponding changes can be incorporated into the land development code. Impacts of the Session Law on a redevelopment project will be evaluated on a case by case basis and the changes outlined below should not be interpreted as an exhaustive list.

Section 26 (b) – Stormwater Controls for Redevelopment

- The statutory changes do not immediately affect the applicability criteria outlined in 18-735.
- When an existing development is redeveloped, either in whole or in part, increased stormwater controls (water quality and water quantity) shall only be required for the amount of impervious surface being created that exceeds the amount of impervious surface that existed before the redevelopment.
- 18-749 – Any project subject to a stormwater payment-in-lieu will only be responsible for payment for the percent increase in impervious surface.
- 18-761 (a) – The pre-development discharge rate may be calculated to reflect the existing conditions on site. They will not be required to be calculated as woods in good condition.
- 18-760 (a) – No direct changes to this section, but because the predevelopment discharge rate is permitted to reflect existing impervious, the project will only be responsible for pre/post attenuation of any net increase in impervious.
- A project should avoid drainage diversion – the redirection of runoff from one drainage area or discharge point in the predeveloped condition to another area or discharge point in the post-development condition. Pre/post attenuation must be evaluated at each offsite discharge point as well as overall for the site.
- The changes outlined in Section 26 (b) of Session Law 2018-145 will apply to any redevelopment project proposed after the effective date of the Session Law (12/27/2018). No project that has been permitted and constructed may retroactively apply for relief in response to the Session Law changes. However, a project that has been permitted, but not yet constructed, may apply for a permit modification in response to the new Session Law. Permit review fees outlined in the fee schedule would apply to any permit modification.

Section 26(a) – Requirements for development in Vegetative Buffers

- Vegetative buffers are addressed in 18-760 (d) & (e) of City code. The session law revision is a modification and expansion of an existing state rule allowing encroachment into vegetative buffers.
- Previously, this standard only applied to shellfish, outstanding resource waters and high-quality waters. With the session law revision, encroachment is permitted anywhere the vegetative buffer is required.
- There is no cap on the extent of encroachment, provided that all encroaching impervious area is collected and treated per applicable standards (water quality and water quantity).

- There is ambiguity associated with the requirement for treated runoff to be discharged through “a segment” of the buffer. After consultation with state staff, the City will generally expect this treated runoff to be released at a non-erosive velocity at the edge of the setback. Any reduction in the width of the buffer will be considered on a case-by-case basis considering the following criteria (no order of priority):
 - The extent to the encroachment
 - Site topography at the discharge point
 - Site constraints
- The discharge through the buffer may not be submerged. The designer must consider the tailwater condition when designing the outfall.

The discharge segment can be minimized if diffuse flow (level spreader) can be provided.