

## EXHIBIT 2

### Subchapter 17 – Environmentally Sensitive Areas.

#### **Sections:**

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- 35.17.10 General Design and Improvement Standards.
- 35.17.11 Clustering Standards
- 35.17.12 Alternative Environmentally Sensitive Area Plans.

#### **35.17.1 Purpose.**

This Subchapter is adopted for the following purposes:

- A. Manage and protect environmentally sensitive areas within the City as well as detail such areas that have been previously identified in The Denton Plan.
- B. Protect the natural and ecological resources that are essential elements of the City's health and community character and which provide irreplaceable plant and wildlife habitat;
- C. Establish a development framework for the City that is respectful of private property rights, while encouraging them to be used responsibly for the benefit of the entire community;
- D. Preserve and enhance the City's distinctive community character and quality of life by ensuring that its natural and built environments are consistent with the community vision and values embodied in The Denton Plan.
- E. Establish regulations that conform to the requirements of the state and federal government regarding air quality, water quality and environmental protection.
- F. This Subchapter is adopted pursuant to authority vested under the City's charter, and Texas Local Government Code, Chapters 211, 212, and 551.

#### **35.17.2 Application.**

- A. The standards of this Subchapter shall apply to all land and all development within the corporate limits of the City, except as otherwise specifically provided for in this Subchapter.
- B. The floodplain standards of this Subchapter shall apply to all land and all development within the extraterritorial jurisdiction of the City.
- C. The type of regulation applicable to the land depends upon the classification in which the land is placed, as provided in this Chapter. If those regulations conflict with other regulations of this Subchapter, the more stringent of the two regulations shall apply.

### **35.17.3 Environmentally Sensitive Areas Review.**

#### **A. Review Required.**

Environmentally Sensitive Area reviews for residential and non-residential developments must be performed as part of final plat applications and site plan applications, respectively. An Environmentally Sensitive Areas review is required for all development except for the following.

1. Property that does not contain any Environmentally Sensitive Areas as depicted on the City's Environmentally Sensitive Areas Map.
2. Grading, filling, cutting or other earth-moving activity on any lot involving less than fifty (50) cubic yards;
3. Activities such as ordinary maintenance and landscaping operations, individual home gardens, repairs, and additions or minor modifications of a single-family dwelling, except as prohibited by the Development Code.
4. The applicant can demonstrate through an Environmentally Sensitive Areas field assessment application that the subject property contains no Environmentally Sensitive Areas.

#### **B. Information Required.**

Information as required on the final plat and site plan checklists must be provided. Additional information deemed appropriate and necessary to process the application may also be required.

#### **C. Criteria for Approval.**

The requirements of an Environmentally Sensitive Areas review shall be deemed met when the Applicant demonstrates:

- a. The land development activity complies with the requirements of this Subchapter for floodplains, Riparian Buffers, Water Related Habitat, and Upland Habitat and all other federal, state or local laws as part of the final plat or site plan.
- b. The land disturbing activity will not cause damage to Environmentally Sensitive Areas located on property adjacent to the areas of disturbance.
- c. The land disturbing activity complies with the requirements of Subchapter 18.
- d. A Section 404 Nationwide Permit or a Letter of Permission from the U.S. Army Corps of Engineers has been obtained if encroachments into jurisdictional wetlands are proposed.
- e. An Environmentally Sensitive Areas field assessment has provided evidence the subject property contains no ESAs.
- f. An alternative Environmentally Sensitive Areas plan has been approved for the subject development.

#### **D. Expiration.**

The Environmentally Sensitive Area review shall expire when the final plat for a residential development approval expires, or when the site plan for a non-residential development approval expires.

#### **E. Credit.**

Any Environmentally Sensitive Area that is protected may be used towards meeting the Landscape and Tree Canopy requirements contained in Subchapter 13, the Parkland Dedication and drainage requirements.

### **35.17.4 Environmentally Sensitive Area Classifications.**

The following are used to define the classifications of land areas, their constraints to building and land disturbing activity on them, and that comprise the Environmentally Sensitive Areas Map:

#### **A. Developed Floodplain.**

Any area defined as a floodplain within the FEMA 100-year floodplain. These areas have typically been channelized or the land within these areas has been graded, filled, or otherwise disturbed.

#### **B. Undeveloped Floodplain.**

Areas within the FEMA 100-year floodplain, or other floodplain that is undeveloped and in its natural state.

#### **C. Riparian Buffers.**

Areas identified as 100 feet from the stream centerline for streams draining a basin of greater than one square mile, and 50 feet from any streams that drain areas of one square mile or less. It also includes any areas identified as riparian through any Army Corps of Engineers Section 404 Permit Process.

D. **Water Related Habitat.**

Areas designated for wetland, tree and understory preservation and including significant stands of predominately native water related habitat. These areas include wetlands.

E. **Upland Habitat.**

Areas, a minimum of ten acres in size, that contain remnants of the Eastern Cross Timbers Habitat.

### **35.17.5 Official Maps.**

A. **Environmentally Sensitive Areas Map.**

The official map that identifies areas identified as Environmentally Sensitive Areas.

B. **Environmentally Sensitive Areas Map Amendments.**

Substantial amendments of the map shall follow the Zoning Amendment Procedure detailed in Subchapter 3. The map may be updated administratively when specific information for a parcel is available delineating the areas and field verified by the Director of Development Services.

C. **Map Applicability.**

For any application for an Environmentally Sensitive Areas Review, the delineation of those areas on the site map, as approved by the Director of Planning and Development, shall supersede the Denton Environmentally Sensitive Areas Map in determining what areas are subject to the requirements of this Chapter as applied to a proposed development.

D. **Text Applicability.**

The text of this Subchapter, including definitions, describes and regulates the protected areas shown on the City Environmentally Sensitive Areas Map as a reference.

E. **Field Boundary Delineation.**

The boundaries of all environmental areas shall be clearly marked in the field for the duration of the land disturbing activities on the property. The boundaries shall be marked as identified in the Site Design Criteria Manual.

### **35.17.6 Developed Floodplain Development Standards.**

Development within the Developed Floodplains as identified on the Environmentally Sensitive Areas Map shall comply with Subchapter 35.19 Drainage. Gas well drilling and production within developed floodplains shall comply with Subchapter 35.22 Gas Well Drilling and Production.

### **35.17.7 Undeveloped Floodplain Development Standards.**

The following uses and activities are allowed in the Undeveloped Floodplain and are in addition to the restrictions for development of floodplains contained in this Subchapter. Site disturbance shall be delineated on the completed application for Environmentally Sensitive Areas review:

A. **Permitted Uses and Activities.**

The following permitted uses and activities are allowed if in compliance with Subchapter 19 Drainage code:

1. The planting of any new trees or vegetation.
2. Restoration or enhancement of floodplains, riparian buffers, water related habitats, upland habitats, wetlands and streams as required by federal and state standards.
3. The placement of public or private utility facilities such as sewer, storm water, water, electricity, gas, or other utilities as long as installation will not have a negative impact on Environmentally Sensitive Areas and when adequately flood proofed.
4. Measures to remove or abate nuisances, or any other violation of federal, state or local law.
5. Parking lots, subject to the limitations on fill and surface material and constructed of pervious materials.

6. Parks, open space, recreational uses, trails, walkways and bike paths.
7. New storm water pre-treatment facilities.
8. Routine repair and maintenance of existing structures, roadways, driveways, utilities, and accessory uses.
9. Agricultural activity permitted through Nationwide 40 (NWP 40), Agricultural Activities or any other permit as required by FEMA or Section 404 pursuant to the Clean Water Act.
10. Any action taken by federal, state, or local officials in an emergency to mitigate an existing or potential hazard.
11. The construction of a private driveway.
12. Gas well drilling and production shall comply with Subchapter 35.22 Gas Well Drilling and Production.

**B. Prohibited Uses and Activities.**

The following prohibited uses and activities are not allowed in Undeveloped floodplains:

1. Uncontained and contained areas of hazardous materials. Handling or processing areas for the receiving and storage of hazardous waste. Hazardous waste and solid waste landfills.
2. Land disturbing activity not authorized by a U.S. Army Corps of Engineers Section 404 Permit or Letter of Permission and by the Director as part of the environmentally sensitive area review.
3. Any new structures or additions, including garages and carports, and storage sheds located within the area mapped as Undeveloped Floodplain.
4. Tree and understory vegetation removal, except as allowed by Subsection 35.22.9.
5. Septic tanks, septic tank drain fields, and other forms of on-site wastewater treatment shall not be built within the Environmentally Sensitive Areas.

**C. Standards for Fill in Undeveloped Floodplains.**

The following are standards for fill in the Undeveloped floodplain:

1. Filling of any floodplain of a stream that drains more than one square mile is prohibited unless the fill on any lot is less than 50 cubic yards or 300 cubic feet per acre, whichever is greater. Up to 15% of the floodplain valley storage may be filled if the stream drains less than one square mile in area pursuant to this Subchapter and federal law.
2. Excavation to balance fill shall be located on the same parcel as the fill unless it is not reasonable or practicable to do so. In such cases, the excavation shall be located in the same drainage basin and as close as possible to the fill site, so long as the proposed excavation and fill will not increase flood impacts for surrounding properties as determined through hydrologic and hydraulic analysis.
3. Fill and other material imported to the lot shall be limited to the following:
  - a. Poured concrete and other materials necessary to build permitted structures on the lot.
  - b. Aggregate base and paving materials.
  - c. Pervious materials as allowed in Subchapter 13, Site Design Standards.
  - d. Plants and other landscaping material.
4. If additional fill is necessary beyond the permitted amounts in (1) above for sites with streams that drain an area greater than one square mile, then fill materials must be obtained from cutting or excavation only to the extent allowed to create an elevated site for permitted land disturbing activity.
5. Adequate drainage shall be provided for the stability of the fill.
6. Fill to raise elevations for a building site shall be located no closer than permitted to the Environmentally Sensitive Areas in order to reduce the impact of that fill on the adjacent areas.

**D. Culverts and Bridges.**

Culverts or bridges of any waterway or creek identified on the official maps adopted pursuant to this Subchapter must be designed by an engineer. Stream crossings shall be designed to the standards of the

Drainage Subchapter, or where no floodway has been identified, to pass a one-hundred (100) year flood without any increase in the upstream flood height elevation. The engineer shall consider in the design the probability that the culvert will be blocked by debris in a severe flood and accommodate expected overflow. Fill for culverts and bridges shall be kept to the minimum allowed, but is exempt from the limitations in section (A) above.

### **35.17.8 Riparian Buffer and Water Related Habitat Development Standards.**

The following uses and activities are allowed in the Riparian Buffer and Water Related Habitats and are in addition to the restrictions for development in this Subchapter, Site Disturbance and shall be delineated on the completed application for Environmentally Sensitive Areas review:

#### **A. Permitted Uses and Activities.**

The following uses and activities are allowed in Riparian Buffer and Water Related Habitats and shall be delineated on the completed application for Environmentally Sensitive Areas review:

1. Up to 10% of the area may be disturbed for private yard structures including but not limited to: gardens, yards, trails, and clearings, but which are no closer than 25 feet from the stream bank or riparian buffer. No disturbance is permitted in delineated wetlands.
2. Repair, replacement or improvement of utility facilities where:
  - a. The disturbed portion of the Environmentally Sensitive Area is restored; and,
  - b. Non-native vegetation is removed from the Environmentally Sensitive Area and replaced with vegetation from the City Native Plant List.
3. Additions, alterations, rehabilitation, or replacement of existing structures that do not increase the existing structural footprint in the Riparian Buffer or Water Related Habitat Area where the disturbed portion of the area is restored using native vegetative cover.
4. Stream, wetland, riparian and upland enhancement or restoration projects;
5. Agricultural activity, including buildings and structures is permitted outside of the environmentally sensitive areas, unless otherwise permitted through Nationwide Permit 40 (NWP 40), Agricultural Activities or any other permit as required by FEMA or Section 404 or as allowed in this Subchapter.
6. Routine repair and maintenance of existing structures, roadways, driveways, utility facilities, accessory uses and other development.
7. Measures to remove or abate nuisances, or any other violation of State statute, administrative rule, or City Code of Ordinances.
8. Any action taken by the City in an emergency to mitigate an existing or potential hazard.
9. Gas well drilling and production within riparian buffers and water related habitats shall comply with Subchapter 35.22 Gas Well Drilling and Production.

#### **B. Prohibited Uses and Activities.**

The following uses and activities are not allowed in Riparian Buffers and Water Related Habitats:

1. Land disturbing activity not authorized by a Corp Section 404 Permit of Letter of Permission and by the Director as part of the ESA review.
2. Uncontained and contained areas of hazardous materials handling areas for the receiving and storage of hazardous waste.
3. Any structures, including storage sheds, garages and carports, located within the area mapped as Riparian Buffer and Water Related Habitats.
4. Septic tanks, septic tank drain fields, and other forms of on-site wastewater treatment shall not be built within the Environmentally Sensitive Areas.

### **35.17.9 Upland Habitat Development Standards.**

The following uses and activities are allowed in the Upland Habitat and are in addition to the restrictions for development within this Subchapter. Site disturbance shall be delineated on the completed application for Environmentally Sensitive Areas review:

**A. Permitted Uses and Activities.**

The following uses and activities are allowed in Upland Habitats and shall be delineated on the completed application for Environmentally Sensitive Areas Review:

1. Residential development shall be designed to retain a contiguous fifty percent (50%) tree canopy, which shall remain predominantly in its natural state. Non-residential development may remove any or all of the Upland Habitat.
2. Selective pruning by a qualified and licensed tree surgeon is allowed to remove up to one-quarter of the canopy for the purposes of a trees health.
3. Clustering of development in these areas shall be utilized to minimize impact to the natural environment. Clustering shall be designed to maintain a contiguous forested area.
4. Agricultural activity, including buildings and structures is permitted outside of the environmentally sensitive areas, unless otherwise permitted through NWP 40, Agricultural Activities or any other permit as required by FEMA or Section 404, or as allowed in this Subchapter.
5. Septic tanks, septic tank drain fields, and other forms of on-site wastewater treatment shall not be built within the Environmentally Sensitive Areas.

### **35.17.10 General Design and Improvement Standards.**

The design and improvement of environmentally sensitive areas shall be in accordance with the following standards:

- A. These areas shall be linked to existing or planned open space or conserved areas to provide an overall open space system.
- B. These developments shall be arranged in order to maximize access and utilization of the Environmentally Sensitive Areas by residents of the development and the City.
- C. These developments shall comply with the open space plans and requirements of the City.
- D. The unbuildable site area shall be placed either in a lot or lots that incorporate a permanent conservation easement, restrictive covenants, or such other legal mechanism to allow for the long term conservation of said areas. Such legal mechanism shall limit any future land disturbing activity or construction within the environmentally sensitive areas and shall run with the land and be binding upon all successors and assigns of the current owner. The unbuildable site area may be incorporated into lots of over half (1/2) acre in size.

### **35.17.11 Clustering Standards.**

Residential units or non-residential floor area ratio of a site may be clustered within the buildable areas of that site provided the following standards are met:

- A. Clustered density or floor area intensity may be transferred to contiguous lots under common ownership. Clustering from one development site to another development site is prohibited.
  1. A general development plan shall be used to designate all areas of common ownership.
  2. A general development plan may be used to allocate the transfer of density between lots under common ownership prior to their being sold.
- B. The minimum two acre size requirement for clustering contained in Subchapter 5 is not applicable to properties impacted by an Environmentally Sensitive Area.

### **35.17.12 Alternative Environmentally Sensitive Area Plans.**

The Alternative Environmentally Sensitive Area Plan provides the option to address the regulations through a flexible discretionary process utilizing the Zoning Amendment Procedure outlined in Subchapter 35.3.4. The Alternative Environmentally Sensitive Area Plan shall demonstrate that the developer's alternative proposal results in a high quality development meeting the intent of the standards in the Denton Development Code.

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