

Public Comments and Staff Responses Compilation

No.	Comment	Code Reference	Response
1	Add ESA acronym after Subchapter title		Staff will add the acronym to the Subchapter title.
2	It would be [beneficial] to include a definition of what qualifies as streams and/or water bodies. I would recommend following the U.S. Army Corps of Engineers standards for waters of the U.S. (i.e., defined ordinary high water mark or hydric soils, hydrophytic vegetation, & hydrology). I would also recommend excluding isolated stock ponds, upland ponds, isolated wetlands, drainage channels, etc. that do not meet the definition of waters of the U.S. and/or do not have a direct connection to downstream waters.	35.17.5.D	Soils, vegetation, and hydrology are the criteria used in determining the presence of riparian buffers and water-related habitats. ESAs field assessments forms follows for the most part the USACE methodology. See staff response for comment 24.
3	Please consider allowing for open trench construction methods within riparian buffers for water, sewer, gas, and other utilities line projects. In riparian areas, with no woody corridor, open trench construction methods would have little to no impact on herbaceous vegetation once the easement/right-of-way has been restored. Allowing open trench construction methods would mirror methods allowed by U.S. Army Corps of Engineers under Nationwide Permit 12 where disturbed areas are returned to pre-construction contours. Additionally, waters of the U.S. that are temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not considered a loss of waters of the U.S. by the U.S. Army Corps of Engineers. The City of Denton should consider the same standard for riparian buffers.	35.17.8.A.3	USACE Nationwide Permit 12 limits activities for utilities to a half acre of disturbance. Additional notification (pre-construction notification or PCN) is required. Disturbances exceeding half acre require the approval of individual permits (IP) and mitigation. Sections 35.17.8.A.3 and 35.17.8.A.7 allow encroaching by open trenching into riparian buffers and water-related habitats for repairing, replacing, and improving public utilities subject to restoration of the disturbed ESAs. Installation of new utilities would require boring under the riparian buffer to avoid disturbing the ESA.
4	35.17.1: “respective of property rights, while encouraging” ... is good guiding language.	35.17.1	<i>No comment</i>
5	Add ETJ acronym after extra territorial jurisdiction	35.17.2.B	Staff will add the acronym.
6	Yellow highlights on attached copy should be presented in the appropriate technical criteria manual and not in the DDC.	35.17.4.A.2 35.17.7.B.3 35.17.7.B.4	Technical requirements related to fill and engineering practices could be relocated to the ESA criteria manual.
7	35.17.4.B and 35.17.7.B.3: Allowed dirt work quantities are too small to be meaningful. 25 cubic yards is equivalent to less than 0.19 inches over one acre. 50 cubic yards is less than 17 parking spaces constructed of 6 inch concrete (this is for the concrete only, not the fill under the pavement).	35.17.4.B and 35.17.7.B.3	The 25 and 50 cubic yards thresholds for fill are limits established in Subchapter 18 for requiring clearing and grading (C&G) permits and the installations of protective fencing around ESAs.
8	35.17.11.A: Alternative Environmentally Sensitive Area Plans should not be processed as a zoning process. ESA’s are natural characteristics of the land and not land uses. AESA’s could be processed as a Subdivision Variance with the stipulation that ESA Subdivision Variance be recommended by P&Z and forwarded to CC for final consideration. The TLGC allows City Council’s to maintain final approval authority or to delegate certain land development approvals to the P&Z. The CC could keep all other approval processes the same and require SD Variances to go to CC.	35.17.11.A	Legal counsel is researching procedural options for approving alternative ESA plans.
9	Key, unique and specific terms should be included in a definitions section.	35.17.5	The definition section could be expanded to include any terms the Commission would like to add.
10	Definitions in a Definitions Subchapter should be applicable to all sections of the DDC unless specifically stated in the definition.	35.17.5	Staff would make sure definitions included in Subchapter 17 are also included in the Definition chapter (Subchapter 23).
11	Include a definitions section in Subchapter 17 that applies only to terms in Subchapter 17. Any definitions or descriptions in other subchapters shall not apply to Subchapter 17 if a specific definition is provided. There should only be on definition to any term unless that definitions is stated to only apply to a specific subchapter.	35.17.5	Staff would make sure definitions included in Subchapter 17 are also included in the Definition chapter (Subchapter 23).
12	As a zoning or a subdivision regulation it does not seem possible to apply the Flood Plain elements of a zoning (subdivision) ordinance in the ETJ.	35.17.2.B	Chapter 551 of the Texas Local Government Code allows cities to protect floodplains in the ETJ as a mean to protect water supply resources.
13	This is confusing or difficult to understand and apply. Is this saying that if regulations in this Subchapter conflict then the more stringent applies or is it in regards to other Subchapters? Not	35.17.2.C	Water-related habitats and riparian buffers are often found inside floodplain ESAs even though they are distinct types of habitats providing different environmental benefits. Regulations for riparian buffers and water-related habitats

		sure the “more stringent” should automatically apply. This is applicable to more than one agency have jurisdiction but not for an agency to address conflicts in its own rules.		are more stringent than floodplain ESAs. However, some of the revisions lessen the differences. See Sec.35.17.7.B.1.h and 35.17.8.A.8.
14		Is this necessary? If no ESA’s exist or if all are removed, then an AESA is not possible. Perhaps should reference section A above.	35.17.4.A.4 35.17.4.C.5	Sec. 35.17.4.A.4 is meant to lead applicants unfamiliar with ESA regulations into the option of ESA field assessments under Sec. 35.17.6.C. Sec. 35.17.4.C.5 could be deleted without changing the objectives for the criteria for approval.
15		Add the following language at the end of sentence: ‘...where Environmentally Sensitive areas are depicted on the City’s ESA map.’	35.17.4.A.4	Sec. 35.17.4.A.4 could be modified to read as follow: The applicant can demonstrate through an Environmentally Sensitive Area field assessment application the subject property contains no Environmentally Sensitive Areas or their location is not as depicted on the ESA map.
16		Are the formal Site Plan Process and Checklist going away?	35.17.4.B	Development Services is still working on the implementation of a site plan application.
17		[Statement about additional information deemed necessary may be required as part of the ESA review submittal is] very subjective.	35.17.4.B	Proposed language is consistent with current language used in other development applications.
18		This could be very subjective. The developer is required to protect and stay out of the ESA. Could the reviewer get caught up in how the altered environment outside of the ESA could impact the ESA? Further description or definition could help here.	35.17.4.C.2	Land disturbing activities without proper erosion and sediment controls could adversely impact adjacent ESAs by sedimentation, concentrated runoff, etc.
19		The permits allow work in the environmental. Does this statement indicate that if the USCOE, EPA, FEMA, etc. allows work in the environmental area then the City will all such permitted work in the ESA regardless of other City requirements?	35.17.4.C.4	Sec. 35.17.4.C.4 only applies on wetlands under the jurisdiction of USACE for which a professional opinion made by a wetland delineator has concluded that proposed encroachments would be permitted through a Nationwide Permit and no mitigation by USACE criteria is required, or when an applicant has met the conditions stated by a Letter of Permission issued for a general or individual permit (IP).
20		Will USACE issue a letter of permission? I know they will issue a determination of no jurisdictional waters/wetland, etc., but I haven’t received letter of permission. It is either permit or no permit required.	35.17.4.C.4	Letter of permissions are issued for individual permits (IPs), general permits, or Nationwide permits exceeding the thresholds for pre-construction notification (PCN).
21		How does Parkland Dedication incentive commercial? Commercial, etc. should receive some sort of meaningful credit for ESA preservation.	35.17.4.E.2	Parkland dedication is only required for residential development.
22		ESA to be dedicated [to the] City? This needs more detail. Is it Park Dept.’s decision? If you are required to preserve ESA why not get Park land credit.	35.17.4.E.2	Sites must meet specific criteria established by the Parkland dedication ordinance to be accepted as dedication. Sites could contain some ESAs; however, the sites must include areas free of ESAs for the construction of park amenities, installation of park equipment, construction of parking areas, etc.
23		How does preserving an ESA address drainage standard in SC 19 or provide relief?	35.17.4.E.3	Requirements for both Subchapters 17 and 19 could be met when establishing drainage easements for floodplains.
24		Elaborate or define “water bodies”, lakes, ponds, streams, standing water in streams, etc.	35.17.5.C	Staff would add the following definitions for streams and water bodies: Streams are linear geographic features that convey flowing waters. Headwater streams are the uppermost, low-order streams of a watershed and comprise the majority of streams in the United States, both in terms of number and length. Streams can be perennial, intermittent or ephemeral. Surface water bodies include streams, ponds, lakes, and freshwater wetlands.
25		Should stream be considered jurisdictional for areas less than one square mile? Might be a good benchmark.	35.17.5.C	The USACE criteria for jurisdictional water is based on hydrological connectivity to navigable waters that have been used or could be used for interstate commerce. USACE Jurisdictional waters designation is not used as a criterion for designating ESAs. Drainage areas (one square mile of drainage area) is used to determine the width of riparian buffers.
26		Add a (s) at the end or the word wetland.	35.17.5.D	Staff would make the correction.
27		Designated wetlands by Environmentalist, EPA, TCEQ, City of Denton? Who provides the official designation? Does the City designate, require a study or provide an official study?	35.17.5.D	Staff would add the following definition for wetlands in the City of Denton. Wetlands: Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Includes adjacent and isolated wetlands.
28		Revise definition of water-related habitat to encompass important water-related habitats not currently protected under the USACE wetland designation. Proposed language: Areas designated as wetlands, and trees and understory vegetation containing significant stands of predominately	35.17.5.D	Including bottomland hardwood as part of the water-related habitat would clarify current city practices when conducting ESA field assessments. Providing a definition for wetland (see staff response above) would also make the definition more clear. Staff would revise the water –related habitat definition as follow:

		native bottomland hardwood. It also includes any areas identified as special aquatic sites through any Army Corps of Engineers Section 404 Permit Process. Bottomland hardwoods occur on the first terrace of floodplains and flats along channels. Periodic inundation prevents establishment of upland species and maintains the functioning of this type of vegetation.		Water-related habitat: Areas designated as wetlands, and trees and understory vegetation containing significant stands of predominately native bottomland hardwood. Bottomland hardwoods occur on the first terrace of floodplains and flats along channels. Periodic inundation prevents establishment of upland species and maintains the functioning of this type of vegetation.
	29	Floodplain maps should be revised per FEMA maps and not require a Zoning Amendment. Also see Major Comment E regarding process. Does paragraph 3 imply that the City will allow modifications to the Floodplain ESA in accordance with FEMA requirements? FEMA allows a CLOMR-F for areas within the floodplain of Zones AE. City does not.	35.17.6.B.3	The proposed code language does not change the current process for FEMA revising floodplain maps. The proposed changes addresses the re-issuance of flood rate insurance maps (FIRMs). Proposed Sec. 35.17.6.B.3 could be revised as follow to add clarity. Substantial amendments of the map shall follow the Zoning Amendment Procedure detailed in Subchapter 3. Substantial amendment is defined as changes impacting the whole city, excepting changes caused by the publication of new flood insurance rate maps (FIRMs) by FEMA.
	30	Projects are on a site by site basis. What scenario would [substantial amendment impacting the whole city] apply?	35.17.6.B.3	Changes in city policy or the creation of a new ESA type are examples of changes that could substantially impact the ESA map for the entire city.
	31	Should [Section 35.17.6.C Environmental Sensitive Areas] Field Assessments be [after Section 35.17.4.A Environmentally Sensitive Areas Review]	35.17.6.C	Code language for ESA field assessments and ESA reviews were separated with the intent of eliminating confusion with the current language. ESA field assessment is a tool to correct the ESA map, and the ESA review is for confirming the physical protection of ESAs before grading activities start. The ESA review section could be renamed to add clarity if necessary.
	32	Add colon punctuations after Information Required, Expiration, and Appeals.	35.17.6.C 1 through 3	Staff would make the corrections.
	33	Altered by a permit activity or by natural causes such as floods, drought, lightening fires, etc.? All of these could destroy a Uplands Habitat or greatly alter a wetlands, stream bed, etc.	35.17.6.C.2	Both natural and man-made causes could impact ESAs. Performing a field assessment after such conditions could remove unnecessary ESA requirements for developers.
	34	Substitute word “areas” for ESAs, and add apostrophe (’s) after the word “City”.	35.17.6.D	Staff would make the corrections.
	35	Add the following statement at the end of the sentence: ‘Erosion control or protection fencing shall clearly mark and delineate ESAs to be protected and preserve.’	35.17.6.E	Staff would add the suggested language and combine Sections 35.17.4.A. and 35.17.6.E as follow. Environmentally Sensitive Area review for residential and non-residential development must be performed as part of final plat applications and site plan applications, respectively. Protective fencing shall clearly mark and delineate all ESAs to be protected and preserved for the duration of the land disturbing activities on the property.
	36	Specify use of silt fence or protection fencing? Otherwise marking could means stakes [and] flagging that doesn’t provide a barrier.	35.17.6.E	Specifications would be addressed in the ESA Criteria Manual.
	37	Who is going to mark these and how; signs, fences, etc.?	35.17.6.E	The site developer or his/her contractor is responsible for installing the protective fencing. Specifications would be addressed in the ESA Criteria Manual.
	38	Should reference Drainage TCM as well as Drainage Subchapter. SC 19: Drainage and the Drainage TCM should be updated at the same time to coordinate provisions. SC 19 appears to allow improvements to drainage ways unless specifically denied by P&Z. More work is needed regarding when flood plains and drainage ways can be improved. In general, DCDA is sympathetic to the desire to maintain channels and streams as vegetative and not concrete lined. Additionally it is good to preserve the tree canopy but not allow the proliferation of trees and vegetation to diminish the hydraulic capacity of the streams.	35.17.7.A.1	Updates to the Drainage Criteria Manual are underway. A P&Z work session was held on January 24.
	39	Somehow these sections of the code need to be better coordinated. It is almost impossible to work in a floodplain when a stream buffer is arbitrarily established. There needs to be a way to “mitigate” tree canopy and other environmental interest and allow the stream to be reasonably and responsibly altered.	35.17.7.A.2	The widths of riparian buffers (50 or 100 feet) are determined by the drainage area. One square mile of drainage is used as the threshold. ESA field assessments could be done for removing ESA designations if there is evidence that riparian habitats do not exist. Proposed changes better align Undeveloped floodplain and Riparian buffer ESA regulations. See Sections 35.17.7.B.1.h, 35.17.7.B.1.i, 35.17.8.A.2, and 35.17.8.A.8.
	40	In addition to what restrictions for floodplains? Are they not all listed here? The code may need some cleaning up in structure.	35.17.7.B	The last sentence could be deleted without changing the intent of Sec. 35.17.7.B.
	41	Planting trees, shrubs, bushes, tall grasses, may diminish the hydraulic capacity of the floodplain.	35.17.7.B.1.a	Planting of trees in the floodplain fringes would have a lesser effect in reducing the hydraulic capacity of the floodplain. Could also help developers with additional planting areas for meeting Tree Code mitigation.

42	Utilities should cross or parallel the edge of the floodplain (unless in a clear floodplain) and not go along the middle or meander in the floodplain, except when absolutely not avoidable.	35.17.7.B.1.c	Sec. 35.17.7.B.1.c does not dictate the alignment of utility facilities.
43	Will parking lots be allowed below the BFE? Not much will happen if fill is limited to 25 or 50 cy or an AESA is required for additional fill.	35.17.7.B.1.f	Per Subchapter 19, parking lots are required to be 12 inches above the base flood elevation (BFE). In very few instances Subchapter 19 would allow the construction of parking lots in floodplains if fill is required.
44	Do storm water controls include impoundments and other land disturbing activities such as infiltration beds? Can this also include detention facilities? It is good to use the FP for such purposes.	35.17.7.B.1.g	Yes, as long as the controls meet all drainage standards contained in Subchapter 19, Chapter 30, and the Drainage Criteria Manual.
45	Some staff approvals are Director of Development Services [and] some are Director of Environmental Services. Should they all be Environmental Services?	35.17.7.B.1.h	Subchapter 17 and the ESA map are part of the Denton Development Code. Approvals that cause changes in any of them are delegated to the Director of Development Services. Staff approvals related to mitigation/restoration activities is delegated to the Director of Environmental Services.
46	Does this mean that land disturbing activities allowed by USCOE, FEMA, TCEQ, etc. are allowed by the City of Denton?	35.17.7.B.2.b	Any activities for which USACE general permits (Nationwide permits follow under this category) or individual permits are issued would be considered a permitted activity.
47	Some of the permitted activities above allow removal of understory. In some cases understory needs to be cleared for drainage.	35.17.7.B.2.d	Sec. 35.17.7.B.2.d has two exceptions. Sec. 35.19.4.E.2.2 addresses removal of vegetation for removing drainage blockages. Staff could add a similar provision for riparian buffers and water-related habitats.
48	Does this conflict with [35.17.7.B.]1.d above?	35.17.7.B.2.d	The intent of Sec. 35.17.7.D.1.d is for abating nuisances or state of Federal violations. Sec. 35.17.7.B.2.d does not include abatement.
49	See Comment 7 above	35.17.7.B.3	The 25 and 50 cubic yards thresholds for fill are limits established in Subchapter 18 for requiring clearing and grading (C&G) permits and the installations of protective fencing around ESAs.
50	Define “Valley Storage”. Neither FEMA nor the USCOE have definitions that we can find. The only description of VS provided by the City comes from a report for Trinity River Corridor- Corridor Development Certificate Manual. Perhaps FEMA and others do not use VS because it is a redundant parameter. If there is no rise allowed upstream or downstream and the velocity cannot increase upstream or downstream then the results intended by also limiting VS are achieved. Other modeling factors such as Reynolds Number and Froude Numbers do more to reflect stream performance and modifications than the Valley Storage parameter. Should consider eliminating this requirement altogether. Also, 15% is a very small amount when working with very wide and very shallow flood plains.	35.17.7.B.3.b	The definition provided below is consistent with the proposed revisions to the City Drainage Criterial Manual and would be added to Subchapter 17. Valley storage refers to the water storage capacity of a stream and is a volume that is measured below the base flood elevation. The 15% loss of valley storage is consistent with requirements in Subchapter 19 and Drainage Criteria Manual.
51	Should excavation be on the same parcel or within the flood plain boundaries or both? Why not allow excavation on other parcels as long as the excavation is within the floodplain thereby preserving the valley storage.	35.17.7.B.3.d	Sec. 35.17.7.B.3 could be simplified as follow: <ul style="list-style-type: none"> a. 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. b. Fill and other material imported to the lot shall be limited to the following: <ul style="list-style-type: none"> i. Poured concrete and other materials necessary to build permitted structures on the lot. ii. Aggregate base and paving materials. iii. Pervious materials as allowed in Subchapter 13, Site Design Standards. iv. Plants and other landscaping material c. Fill to raise elevations for a building site shall not result in point flows, high runoff velocities, and/or significant changes in the drainage pattern that may cause erosion and loss of vegetation in environmentally sensitive areas located downstream of the fill. d. All disturbances to floodplains from fill activities shall be revegetated using appropriate native vegetation as listed in the City of Denton Native Plant list.
52	Adequate drainage or slope stabilization? What soils are permitted for fill; native, select, etc.?	35.17.7.B.3.f	See staff response for comment 51.
53	This could be arbitrarily enforced and it may extend the impact of the ESA far beyond its boundaries. Work on site should not result in point flows, high velocities, etc. that may cause unnecessary harm to the ESA, but the ESA should not arbitrarily impose additional limitations on site development.	35.17.7.B.3.g	See staff response for comment 51.

54	Is the 10% of the total lot or of the ESA area located within the lot? If in a multi-lot subdivision can the 10% be applied to the area within the developments ESA and conducted in what will be one of the lots? That way perhaps an entire lot can be recovered?	35.17.8.A.1	Sec. 35.17.8.A.1 applies on individual residential lots, and is calculated based on the total ESA area located within the lot.
55	Define nuisances.	35.17.8.A.9	A definition of nuisance could be added. Nuisance: Physical or environmental conditions resulting in regular and/or continuous problems affecting the health, safety, and quality of life of citizens.
56	Do the credits mentioned earlier apply here? Who will take care of these areas, P&R, HOA, etc.? Developer maintained areas should receive greater credits than areas dedicated to the City.	35.17.9.A.1	Yes, preserved upland habitats could be used to get credits under 35.17.4.E. Preserved upland habitats are usually privately owned or deeded by developers to HOAs as open space amenities. ESAs could be deeded to the city to meet parkland dedication if the site meets the criteria set in the parkland dedication ordinance and accepted by the Parks department.
57	Prohibitions seem unnecessary. How can any of the prohibited uses be constructed in a preserved Upland Habitat that is heavily treed? These can only be constructed after the trees have been essentially removed or greatly disturbed for the most part.	35.17.9.B.1	Language could be revised to clearly state: Septic tanks, septic tank drain fields, and other forms of on-site wastewater treatment are prohibited in areas set aside for required preservation.
58	The code does not accommodate clustering for tracts of land smaller than 2 acres. SC 5 must be revised to allow clustering in all situations. Can clustering be accomplished on smaller lots without requiring an ADP?	35.17.10	The proposed revisions eliminate the references about density, minimum project area, floor area ratios, and site design currently mentioned in Subchapter 17. Those topics are outside the scope of ESAs and could be better addressed in other subchapters. Instead, the revised language broadly states the use of clustering development as a tool for minimizing impacts to the natural environment. Unfortunately, staff could not answer if alternative development plans (ADP) would be the appropriate tool until guiding principles for clustering development and important standards (such as density, minimum project area, design standards, etc.) are developed. Staff would revisit Sec. 35.17.10 when standards for clustering development become available.
59	Define what mitigation goals are. An AESA does not require mitigation, it requires a quality development that meets the intent of the DCDA.	35.17.11.B.1 35.17.11.B.2	The goal of mitigation is to offset the loss of ecological services or functions (i.e. provide habitat, serve as a conduit, filter pollutants, be a source of resources, sink and sequester pollutants, and act as a barrier) by the complete or partial removal of ESAs.
60	Does citizen access not qualify as a park credit?	35.17.11.B.4	Access is one of the criterion for park site selection. The criteria for park site selection and characteristics of public parks is outlined in Chapter 22 of the Denton Code of Ordinances. Link to Section 22-41 https://library.municode.com/tx/denton/codes/code_of_ordinances?nodeId=SPACOR_CH22PARE_ARTIIPADE_S22-41SISECHPA
61	Why not just dedicate as a City Park?	35.17.11.B.5	The Parkland Dedication ordinance establishes the criteria for the dedication of land for developing public parks. The acceptance of parkland is also determined by the need for park services in specific areas.