

Subchapter 17 – Environmentally Sensitive Areas (ESAs)

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35.17.1 Purpose

This Subchapter is adopted for the following purposes:

- A. Manage and protect environmentally sensitive areas within the City.
- 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 (ETJ) 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 Criteria Manual

In addition to meeting the requirements expressly established in this Subchapter, all environmentally sensitive areas shall comply with the Environmentally Sensitive Areas Criteria Manual. Where there is conflict between a provision set forth in this Subchapter and a provision of the Environmentally Sensitive Areas Criteria Manual, the provisions of this Subchapter shall apply.

35.17.4 Environmentally Sensitive Areas Compliance Review

A. Review Required

Environmentally Sensitive Area compliance review for residential and non-residential development must be performed as part of a 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. An Environmentally Sensitive Area 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 25 cubic yards for residential projects or 50 cubic yards for non-residential projects;

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 Area field assessment application the subject property contains no Environmentally Sensitive Areas or their location is not as depicted on the ESA map.

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:

1. 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.
2. The land disturbing activity will not cause damage to Environmentally Sensitive Areas adjacent to the areas to be disturbed.
3. The land disturbing activity complies with the requirements of Subchapter 18.
4. A wetland delineation by a trained scientist has been performed if encroachments into jurisdictional wetlands are proposed, and a Section 404 Nationwide Permit or a Letter of Permission from the U.S. Army Corps of Engineers has been obtained.
5. An alternative Environmentally Sensitive Area plan has been approved for the subject development.

D. Expiration

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

E. Credit

Any Environmentally Sensitive Area that is preserved may be used towards meeting:

1. Landscape and Tree Canopy requirements contained in Subchapter 13
 - a. One square foot of tree canopy will be given for every square foot of preserved ESA tree canopy (1:1).
 - b. Two square feet of landscape credits will be given for every square foot of preserved ESA tree canopy (2:1).
 - c. One square foot of landscape credits will be given for every square foot of non-wooded preserved ESA (1:1)
2. Parkland dedication in accordance with the Parkland Dedication Ordinance
3. Drainage standards in accordance with Subchapter 19.

35.17.5 Definitions

The following are used to define the classifications of Environmentally Sensitive Areas comprising the Environmentally Sensitive Areas Map and other related terms used throughout this Subchapter:

A. Developed Floodplain

Area within the FEMA 1% Annual Chance Floodplain (a.k.a. 100-year floodplain) for which the natural stream has been redesigned and no longer exhibits characteristics of a natural channel and/or its floodplain has been significantly modified, graded, filled, or otherwise disturbed.

B. Nuisance

Physical or environmental conditions resulting in regular and/or continuous problems affecting the health, safety, and quality of life of citizens.

C. Riparian Buffer

Areas within 100 feet, measured from both sides of the stream centerline, with drainage areas greater than one square mile, and 50 feet from both sides of any streams centerline that drain areas of one square mile or less. This also applies to the outer edges of surface water bodies.

D. Stream

Linear geographic feature that conveys 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.

E. Surface Water Body

Term to include streams, ponds, lakes, and freshwater wetlands.

F. Undeveloped Floodplain

Areas within the FEMA 1% Annual Chance Floodplain (a.k.a. 100-year floodplain), that are undeveloped and in their natural state.

G. Upland Habitat

Contiguous areas ten acres or larger of Cross Timbers habitat.

H. Valley Storage

Water storage capacity of a stream and is a volume that is measured below the base flood elevation.

I. Water Related Habitat

Areas designated as wetlands, and trees and understory vegetation containing 50 percent or more 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.

J. Wetland

Area that is 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.

35.17.6 Official Map

A. Environmentally Sensitive Areas Map

The official map that identifies areas designated as Environmentally Sensitive Areas (ESAs).

B. Environmentally Sensitive Areas Map Amendments

1. The map may be updated administratively when an ESA field assessment is conducted for a property and approved by the Director of Development Services.
2. Revisions and amendments to FEMA 1% Annual Chance Floodplain maps shall cause the boundaries of Floodplain ESAs to be readjusted accordingly.
3. 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.

C. Environmentally Sensitive Areas Field Assessments.

Field assessments are required prior to platting of property when there is reasonable evidence that Environmentally Sensitive Areas, as depicted on the official ESA Map, may not be accurate. ESA field assessments, as approved by the Director of Development Services, shall supersede the official ESA Map in determining what areas are subject to the requirements of this Subchapter as applied to a proposed development.

1. Information Required;

Information as required on the Environmentally Sensitive Area Assessment application and checklist must be provided. Additional information deemed appropriate and necessary to process the application may be required.

2. Expiration;

An Environmentally Sensitive Areas field assessment shall expire after two years of its approval, or if the natural conditions of the ESA have been significantly altered.

3. Appeals;

Appeals to staff determinations shall follow the Staff Review Procedure detailed in Section 35.3.7.

D. Text Applicability

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

35.17.7 Floodplain Development Standards

Upon field verification areas designated as FEMA 1% Annual Chance Floodplain would be classified according to the existing conditions as Developed or Undeveloped floodplains.

A. Developed Floodplain

1. Development within the Developed Floodplains shall comply with Subchapter 35.19 Drainage Standards.
2. Section 35.17.8 applies when Riparian buffers and Water-related habitats are nested, partially or wholly, inside Developed floodplain ESAs.
3. Gas well drilling and production within developed floodplains shall comply with Subchapter 35.22 (Gas Well Drilling and Production).

B. Undeveloped Floodplain

The following uses and activities are regulated in the Undeveloped Floodplain.

1. Permitted Uses and Activities

The following permitted uses and activities are allowed if in compliance with the Subchapter 19 Drainage Standards and Chapter 30 of the Code of Ordinances:

- a. The planting of any new trees or vegetation.
- b. Restoration or enhancement of floodplains, riparian buffers, water related habitats, upland habitats, wetlands and streams as required by federal and state standards.
- c. The placement of public or private utility facilities such as sewer, storm water, water, electricity, gas, or other utilities as long as the disturbed area is restored to minimized erosion and promote the recovery of the Environmentally Sensitive Areas, and when adequately flood proofed.
- d. Measures to remove or abate nuisances, the removal of invasive plant species, or any other violation of federal, state or local law, with the approval of the Director of Environmental Services.
- e. Parking lots, subject to the limitations on fill as specified in Section 35.17.7.B.3 and constructed of pervious materials.
- f. Parks, open space, recreational uses, trails, walkways and bike paths.
- g. Storm water quality controls.
- h. Construction of roadways identified on the Mobility Plan as long as the disturbed areas are restored to minimize erosion and promote the recovery of the Environmentally Sensitive Area subject to the Director of Environmental Services approval.
- i. Routine repair and maintenance of existing structures, roadways, driveways, utilities, and accessory uses.
- j. Agricultural activity permitted through Nationwide Permit 40 (NWP 40), Agricultural Activities pursuant Section 404 of the Clean Water Act or any other federal permits.
- k. Any action taken by federal, state, or local officials in an emergency to mitigate an existing or potential hazard.
- l. The construction of a private driveway, as long as the disturbed areas are restored to minimize erosion and promote the recovery of the Environmentally Sensitive Area subject to the Director of Environmental Services approval.
- m. Gas well drilling and production shall comply with Subchapter 35.22 Gas Well Drilling and Production.
- n. Fill activities subject to limitations as outlined in Section 35.17.7.B.3.
- o. Culverts and bridges as long as the disturbed areas are restored to minimize erosion and promote the recovery of the Environmentally Sensitive Area subject to the Director of Environmental Services approval. Culverts and bridges are exempt from the limitations in fill set in Section 35.17.7.B.3.

2. Prohibited Uses and Activities

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

- a. Placement, handling, processing areas, and/or storage of hazardous waste. Hazardous waste and solid waste landfills.

- b. Land disturbing activity not authorized by a U.S. Army Corps of Engineers Section 404 Permit or Letter of Permission.
- c. Any new structures or additions, including garages and carports, and storage sheds located within the area mapped as Undeveloped Floodplain.
- d. Tree and understory vegetation removal, except as allowed by Subsection 35.22.9 and 35.19.4.E.2.
- e. Septic tanks, septic tank drain fields, and other forms of on-site wastewater treatment.

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

The following are standards for fill in the Undeveloped floodplain:

- 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. Up to 15% of the floodplain valley storage may be filled if the stream drains less than one square mile.
- c. In addition to meeting the requirement for fill set above, all fill activities in the Undeveloped floodplain shall comply with the Environmental Sensitive Area Criteria Manual, Subchapter 19 Drainage Standards, and federal law.

35.17.8 Riparian Buffer and Water Related Habitat Development Standards

The following uses and activities are regulated in the Riparian Buffers and Water Related Habitats and are in addition to the regulations for development in this Subchapter,

A. **Permitted Uses and Activities**

- 1. Placement of private residential yard amenities, including but not limited to: gardens, yards, trails, and clearings, that would result in disturbing up to 10% of the area, but in no instance shall the protective buffer width be decreased below 25 feet measured each direction from the centerline of the existing channel or the outer edge of surface water bodies. No disturbance is permitted in delineated wetlands.
- 2. Riparian buffers nested, partially or wholly, inside Developed floodplains may be disturbed up to 10% of the area but in no instance shall the protective buffer width be decreased below 25 feet measured each direction from the centerline of the existing channel or the outer edge of surface water bodies. No disturbance is permitted in delineated wetlands.
- 3. Repair, replacement or improvement of public utility facilities where the disturbed portion of the Environmentally Sensitive Area is restored, and vegetation listed as invasive is removed and replaced with vegetation from the City Native Plant List.
- 4. Additions, alterations, rehabilitation, or replacement of existing structures that do not increase the existing structural footprint in the Riparian Buffer or Water Related Habitat. Any disturbed areas must be restored using native vegetative cover.
- 5. Stream, wetland, riparian and upland enhancement or restoration projects;
- 6. 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 pursuant Section 404 of the Clean Water Act or any other federal permit.
- 7. Routine repair and maintenance of existing structures, roadways, driveways, utility facilities, accessory uses and other development.
- 8. Construction of roadways identified on the city Mobility Plan as long as the disturbed areas are restored to minimize erosion and promote the recovery of the Environmentally Sensitive Area and subject to the Director of Environmental Services approval, and as outlined in Section 35.17.7.B.4.
- 9. Measures to remove or abate nuisances, or any other violation of State statute, administrative rule, or City Code of Ordinances.
- 10. Any action taken by the City in an emergency to mitigate an existing or potential hazard.
- 11. 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 US Army Corps of Engineers Section 404 Permit Letter of Permission.
- 2. Tree and understory vegetation removal, except as allowed by Subsection 35.19.4.E.2.

3. Placement, handling, processing, or storage of hazardous waste.
4. Any structures, including storage sheds, garages and carports.
5. Septic tanks, septic tank drain fields, and other forms of on-site wastewater treatment.

35.17.9 Upland Habitat Development Standards

The following uses and activities are regulated in the Upland Habitat and are in addition to the restrictions for development within this Subchapter.

A. Permitted Uses and Activities

1. Residential development shall be designed to retain a contiguous fifty percent (50%) tree canopy, which shall remain predominantly in its natural state. Preservation of upland habitat contiguous to forested areas on adjacent properties or parcels is strongly encouraged.
2. Non-residential development shall be designed to retain thirty percent (30%) tree canopy which shall remain predominantly in its natural state. Preservation of upland habitat contiguous to forested areas on adjacent properties or parcels is strongly encouraged.
3. Selective pruning conducted by or under the supervision of an International Society of Arboriculture (ISA) certified arborist is allowed to remove up to one-quarter of the canopy for the purposes of a trees health.
4. Enhancement or restoration projects as approved by the Director of Environmental Services.

B. Prohibited Uses and Activities

1. Septic tanks, septic tank drain fields, and other forms of on-site wastewater treatment are prohibited in areas set aside for required preservation.

35.17.10 Clustering Design Standards

Clustering of development shall be utilized to minimize impact to the natural environment. Clustering shall be designed to maintain a contiguous forested area.

35.17.11 Alternative Environmentally Sensitive Area Plans

A. Approval Process

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.

B. Criteria for Approval

The goals and objectives which must be met, and by which the proposal will be judged are:

1. Mitigation goals are obtained by creating, expanding, and/or improving environmentally sensitive areas.
2. Mitigation goals are obtained by preserving environmentally sensitive areas above the minimum requirements, exchanges between different types of ESAs, installing pollution prevention controls, and/or implementing best management practices or any other approaches that result in the improvement of the environment being impacted.
3. Areas offered as mitigation are linked to existing or planned open space or conserved areas to provide an overall open space system.
4. Development is arranged for maximizing access and utilization of the environmentally sensitive areas by citizens.
5. Areas offered as mitigation are 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.
6. 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.

C. Information Required

Information as required on the alternative environmentally sensitive areas plan checklist must be provided. Additional information deemed appropriate and necessary to process the application may also be required.

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(Amended Ord. No. 2005-366, 12/06/2005)

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