

# Variance Conditions

Briefing to the Environmental Commission

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## Condition: Plant at least 800 trees on-site

- What size of tree?
- What kind of tree? Shade or ornamental?
- Irrigation required?
- Maintenance plan?
- Can these trees count towards other landscape code requirements?

# Condition: Demonstrate a black land prairie land restoration

- Where?
- How many acres?
- Irrigation required?
- Maintenance plan?
- Can this count towards required mitigation on site?

## Condition: Investigate the restoration of the riparian area of Dry Creek

- What is the product of the investigation?
- This condition doesn't require the applicant to produce plans, obtain a permit, or ultimately restore the creek

# Condition: Perform restoration of the riparian area of Dry Creek by working with partners such as Texas A&M

- This condition is adding a complicating factor for the applicant.
- What if partners aren't readily available or don't want to work on this project?
- Requiring applicant to work with staff is a more reliable scenario that will produce the same or better results.

## Unenforceable conditions:

- Consider amenities near the trails such as water fountains
- The tree care plan shall be increased to five years
- Reuse the wood from the removed trees on the site in the form of something other than mulch as a public benefit

# Tips for Success:

Ask yourself:

1. What are you trying to accomplish?
2. Is the goal related to the variance?
3. Has the condition been clearly identified?
4. Is the condition specific?
5. Is the condition enforceable?

Ask staff if you need help or want us to review for the condition to meet the five items listed above.

# Questions?

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# VARIANCE REQUESTS & ASSOCIATED CONDITIONS

## Appropriateness (Findings of Fact)

### *Findings for Land Commission Variances:*

- (A)(1) the requirement will deprive the applicant of a privilege available to owners of other similarly situated property with approximately contemporaneous development subject to similar code requirements;
- (2) the variance:
  - (a) is not necessitated by the scale, layout, construction method, or other design decision made by the applicant, unless the design decision provides greater overall environmental protection than is achievable without the variance;
  - (b) is the minimum deviation from the code requirement necessary to allow a reasonable use of the property; and
  - (c) does not create a significant probability of harmful environmental consequences; and
- (3) development with the variance will result in water quality that is at least equal to the water quality achievable without the variance.

### *Additional Findings for Stream Buffers:*

- (1) the criteria for granting a variance in Subsection (A) are met;
- (2) the requirement for which a variance is requested prevents a reasonable, economic use of the entire property; and
- (3) the variance is the minimum deviation from the code requirement necessary to allow a reasonable, economic use of the entire property.

## GLOSSARY

<b>BSZ</b>	Barton Springs Zone	<b>NSA</b>	Net Site Area
<b>CEF</b>	Critical Environmental Feature	<b>NSA</b>	Net Site Area
<b>CWQZ</b>	Critical Water Quality Zone	<b>ROW</b>	Right of Way
<b>DDZ</b>	Desired Development Zone	<b>SFR</b>	Single Family Residential
<b>Dev't</b>	Development	<b>SOS</b>	Save Our Springs
<b>ERM</b>	Environmental Resource Management (WPD)	<b>WQ</b>	Water Quality
<b>ETJ</b>	Extra Territorial Jurisdiction	<b>WQTZ</b>	Water Quality Transition Zone
<b>IC</b>	Impervious Cover	<b>WS Rural</b>	Water Supply Rural
<b>IPM</b>	Integrated Pest Management	<b>WS Suburban</b>	Water Supply Suburban
<b>MFR</b>	Multifamily Residential	<b>Wshed</b>	Watershed

# VARIANCE REQUESTS & ASSOCIATED CONDITIONS

Variance Request	Code Requirements	Intent of Code	Suggested Conditions	Examples
<b>Cut &amp; Fill</b> 25-8-341 25-8-342	<ul style="list-style-type: none"> <li>• Max 4 feet cut &amp; fill allowed (except unlimited under buildings, when constructing a WQ pond, or within a ROW)</li> <li>• Must restore &amp; stabilize cut &amp; fill areas</li> <li>• Up to 8 ft. administrative variance allowed in DDZ if not located on a slope gradient &gt;15% or &lt;100 feet of classified waterway</li> </ul>	<ul style="list-style-type: none"> <li>• Encourage design within the land constraints</li> <li>• Maintain slope stability</li> <li>• Prevent loss of site character</li> <li>• Minimize site disturbance</li> <li>• Protect surface &amp; groundwater quality by eliminating sediment discharges</li> </ul>	<ul style="list-style-type: none"> <li>• Structural containment (retaining walls)</li> <li>• Restoration and revegetation</li> <li>• Terracing (expands footprint, disturbance, and tree removal)</li> <li>• Increased setback from significant features</li> <li>• Preserve trees and/or natural areas not already required to preserve (ETJ)</li> <li>• Apply Landscaping Ordinance for projects in the ETJ</li> <li>• Increase tree mitigation inches</li> </ul>	<ul style="list-style-type: none"> <li>• Roadways</li> <li>• Driveways</li> <li>• Parking</li> <li>• Level Building Slab, check to see if terrace slab would work</li> <li>• Floodplain &amp; Drainage Modifications</li> </ul>
<b>Construction on Slopes</b> 25-8-301 25-8-302	<ul style="list-style-type: none"> <li>• No roadway or driveway on slope &gt;15% unless necessary for primary access to &gt;2 acres with gradient of &lt;15% or building sites for at least 5 residential units</li> <li>• No buildings/parking structures on slope &gt;25% or parking areas on slope &gt;15%</li> <li>• Building/parking structure OK on slope 15-25% if terraced, vegetation restored, &lt;10% footprint on slopes &gt;15%</li> </ul>	<ul style="list-style-type: none"> <li>• Maintain slope stability</li> <li>• Protect fragile environments</li> <li>• Prevent concentration of runoff</li> <li>• Reduce erosion &amp; sedimentation</li> </ul>	<ul style="list-style-type: none"> <li>• Structural containment (retaining walls) – <i>REQUIRED</i> condition if slope exceeds 33% (3:1 slope)</li> <li>• Restoration &amp; revegetation</li> <li>• Terracing (expands footprint, disturbance, and tree removal)</li> <li>• Preserve trees and/or natural areas not already required to preserve</li> <li>• Apply Landscaping Ordinance for projects in the ETJ</li> <li>• Increased tree mitigation inches</li> </ul>	<ul style="list-style-type: none"> <li>• Similar to Cut &amp; Fill (buildings and parking)</li> <li>• More common in western watersheds with steep slopes</li> </ul>
<b>Creek Buffers (CWQZ &amp; WQTZ)</b> 25-8-261 25-8-322 25-8-452 25-8-483	<ul style="list-style-type: none"> <li>• CWQZ: dev't prohibited (except fences, parks, trails, docks, etc.). Utility lines may cross CWQZ with direct crossing, DDZ allows utility to run parallel if in outer half of CWQZ. Street crossings in CWQZ limited, limits vary with wshed. No variances to CWQZ in BSZ (SOS).</li> <li>• WQTZ: Does not apply to DDZ, 18% in WS Sub. Wsheds. In BSZ &amp; WS Rural wsheds, WQTZ same as CWQZ (except SFR OK if min. lot size 2 ac. &amp; max. density 1 unit/3 ac.); WQTZ variances possible in BSZ (is not SOS).</li> </ul>	<ul style="list-style-type: none"> <li>• Preserve function &amp; character of riparian zones</li> <li>• Filter pollutants (esp. effective in undisturbed land in riparian soils)</li> </ul>	<ul style="list-style-type: none"> <li>• Additional public open space area designation</li> <li>• Provide an ERM-approved restoration or enhancement plan for native vegetation/invasive plant management (IPM) plan with limited irrigation</li> <li>• Pervious pavers for sidewalks within the CWQZ</li> <li>• Ensure infiltration volume is maintained (compensate on other areas of site for lost buffers)</li> <li>• Preserve trees and/or natural areas not already required to preserve through conservation easement</li> <li>• Increase the CWQZ / WQTZ buffer to compensate or exceed for CWQZ / WQTZ encroachment</li> </ul>	<ul style="list-style-type: none"> <li>• CWQZ variances occasional for driveway crossings or encroachments to allow "reasonable use", utility lines, reduction of floodplain area, redirect drainage ways.</li> </ul>

# VARIANCE REQUESTS & ASSOCIATED CONDITIONS

Variance Request	Code Requirements	Intent of Code	Suggested Conditions	Examples
<p><b>Critical Environmental Features (CEFs) and CEF Buffers</b>  <b>25-8-281</b>  <b>25-8-282</b></p>	<ul style="list-style-type: none"> <li>• CEFs include: bluffs, canyon rimrocks, caves, sinkholes, springs, &amp; wetlands</li> <li>• Caves and sinkholes protected by 150-300 ft. buffer</li> <li>• Wetland buffer 150', may be administratively mitigated depending on quality of wetland and extent of disturbance without a variance</li> <li>• No development allowed within buffer</li> <li>• SFR lots may not include or be within 50 ft. of CEF</li> <li>• Administrative variances are allowed if all characteristics of the CEF and related water quality/quantity functions are preserved.</li> <li>• Preservation/setbacks/mitigation is described in ECM 1.10</li> <li>• Administrative variance allowed to reduce buffer under certain circumstances</li> <li>• Spring and karst feature buffers reductions of less than 50-ft require a formal land commission variance.</li> </ul>	<ul style="list-style-type: none"> <li>• Preserve biologic and hydrogeologic integrity and the water quality/quantity for sensitive environmental resources</li> </ul>	<ul style="list-style-type: none"> <li>• Increased CEF buffer area from standard requirement, and apply to unprotected areas that provide additional benefits to water quality/quantity</li> <li>• Exceed water quality requirements by providing enhanced stormwater treatment such as green infrastructure (e.g., raingardens, rain harvesting, constructed wetlands, enhanced infiltration/recharge)</li> <li>• Provide an ERM-approved restoration or enhancement plan for native vegetation/invasive plant management (IPM) plan with limited irrigation</li> <li>• Preserve trees and/or natural areas not already required to preserve (e.g., meet tree protection ordinance standards, including projects in the ETJ)</li> <li>• For caves, install an ERM-approved cave gate</li> <li>• For non-point recharge features, require a perimeter fence and gate</li> <li>• For wetlands, mitigation may include enhancement of existing wetland through plantings, soil amendments, removal of existing land use (i.e. ranching, mowing, etc), invasive species removal, protection of upstream drainages, or similar improvements of other wetland features on site.</li> </ul>	<ul style="list-style-type: none"> <li>• Subdivisions</li> <li>• Site Plans</li> <li>• Trams</li> <li>• Boat Docks</li> <li>• Driveways</li> <li>• Utility Lines</li> <li>• Drainage Modifications</li> </ul>
<p><b>Impervious Cover (IC)</b>  <b>25-8-63</b>  <b>25-8-64</b>  <b>25-8-65</b></p> <p><b>Net Site Area (NSA)</b>  <b>25-8-62</b></p>	<ul style="list-style-type: none"> <li>• Based on gross site area within DDZ</li> <li>• Based on net site area within WS and BSZ</li> <li>• Urban wsheds use Zoning IC limits only</li> <li>• IC allowed in WQTZ WS Suburban (18%)</li> <li>• Variances not allowed for SOS IC limits</li> <li>• WS Rural and BSZ also have density limits</li> </ul>	<ul style="list-style-type: none"> <li>• Minimize runoff &amp; maximize infiltration to protect quality &amp; quantity of surface &amp; groundwater</li> <li>• Limits established based on sensitivity of watershed and impact on drinking water</li> <li>• Conserve open space</li> </ul>	<ul style="list-style-type: none"> <li>• Increase capacity/size and/or upgrade type of structural controls, GSI ECM 1.6.7</li> <li>• Treat previously untreated off-site areas</li> <li>• Prohibit harmful land uses (e.g., service stations, auto repair, etc.)</li> <li>• Increase creek setbacks</li> <li>• Pervious pavement for sidewalks within CWQZ</li> <li>• Clustered development to limit disturbance</li> <li>• Preserve trees and/or natural areas not already required to be preserve</li> <li>• Apply Landscaping Ordinance for projects in the ETJ</li> </ul>	<ul style="list-style-type: none"> <li>• Increased amount of impervious cover or density</li> <li>• Sites with little or no NSA</li> </ul>

# VARIANCE REQUESTS & ASSOCIATED CONDITIONS

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<b>Placement of Fill in a Lake 25-8-368(B), (C), and (D)</b>	<ul style="list-style-type: none"> <li>Placement of fill in a lake is prohibited, unless necessary to restore an eroding shoreline as it existed 10 years prior to the date of the application</li> </ul>	<ul style="list-style-type: none"> <li>Prevent land capture, which converts CoA resources to private land</li> <li>Preserve water volume of the reservoir</li> <li>Preserve wetlands</li> <li>Prevent ability of land owners to increase their land development rights through capture of land</li> <li>Prevent sediment plumes in water</li> <li>Prevent contamination of water from sediments</li> </ul>	<ul style="list-style-type: none"> <li>Ensure no net loss of lake surface area through shoreline modifications elsewhere on the property where existing land becomes lake</li> <li>Increase shoreline/riparian plantings by 25% over what is ordinarily required</li> <li>Bring existing non-compliant bulkheads to current code, with wave abatement and aquatic plantings</li> </ul>	<ul style="list-style-type: none"> <li>Add fill to an existing cut-in slip</li> <li>Previously unpermitted land capture under environmental enforcement action</li> </ul>
<b>Dredging in Excess of 25 Cubic Yards 25-8-368(B) and (E)</b>	<ul style="list-style-type: none"> <li>Staff cannot administratively approve dredging in excess of 25 cubic yards</li> <li>Requires <a href="#">Section 404 of the Clean Water Act</a> (CWA) Permit reviewed by U.S. Army Corps of Engineers</li> </ul>	<ul style="list-style-type: none"> <li>Prevent sediment discharge</li> <li>Preserve shallow aquatic vegetation</li> <li>Prevent destabilization of lakebed</li> <li>Preserve benthic macroinvertebrate community near shoreline</li> </ul>	<ul style="list-style-type: none"> <li>Ensure that spoils disposal is effectively dealt with and that there is adequate construction access off site</li> <li>Mitigate potential damage to aquatic plants through additional wetland restoration</li> <li>Limit amount of dredging for what is necessary for a standard size boat</li> <li>Enhanced inspection of silt curtains to prevent sediment plumes</li> </ul>	Dock cannot extend more than 30' from the shoreline, but existing shallow conditions prevent ability of a boat to enter a slip, or a boat lift to be installed within a slip
<b>Shoreline Access</b>	<ul style="list-style-type: none"> <li>For single family residences, necessary access is limited to the minimum area of disturbance necessary to construct a single means of access</li> </ul>	<ul style="list-style-type: none"> <li>Prevent excess development in CWQZ buffer and floodplain</li> <li>Prevent erosion from destabilized banks</li> <li>Preserve existing vegetation and ecosystem function of the riparian corridor</li> </ul>	<ul style="list-style-type: none"> <li>Ensure run-off from development is adequately controlled and that the proposed access won't cause additional erosion</li> <li>Remove existing development from the lake CWQZ</li> <li>Restore bank to excellent condition, as determined by functional assessment</li> <li>Demonstrate how stormwater will be controlled to prevent bank erosion</li> </ul>	Applicant has existing stairs and wants to add a tram, ramp, etc.