

Chapter 8: SENSITIVE LANDS REGULATIONS

This Chapter details the regulations associated with the assessment, treatment and management of sensitive lands designated by the Town during project specific impact studies or lying within the Sensitive Lands Overlay Zone as shown on the Official Zoning Maps of the Town.

SPECIAL NOTE: This Chapter is in addition to any existing ordinance regulating any sensitive lands in the Town of Francis. In no way is this Chapter meant to repeal or supersede those regulations. In the event of conflict of this Chapter and any other ordinance of the Town, the stricter of the two shall apply.

Contents of this chapter

8.1. SENSITIVE LANDS DEFINED	8-2
8.2. APPLICATION AND ANALYSIS REQUIREMENTS	8-3
8.3. SENSITIVE LANDS REGULATIONS	8-6
8.4. ADMINISTRATIVE PROVISIONS.....	8-11
8.5. TREE AND VEGETATION PROTECTION.....	8-11
8.6. LIMITS OF DISTURBANCE.....	8-12
8.7. ECONOMIC HARDSHIP RELIEF PROVISIONS.....	8-12

8.1. Sensitive Lands Defined

For the purposes of this Code, all areas located within the Sensitive Lands Overlay Zone are considered to be sensitive and must satisfy the requirements of this Chapter. There may be additional areas not located in the Sensitive Lands Overlay Zone which will be required to satisfy the requirements of this Chapter. These areas include, but are not limited to:

1. Drainage facilities, flood plains, and water shed and recharge zones.
2. Natural or environmentally hazardous areas.
3. Scenic areas, view sheds, foothills, slopes greater than twenty five (25) percent and ridge lines as determined by the Town Council.
4. Unique vegetation cover.
5. Water corridors.
6. Wetlands as determined by the Army Corps of Engineers.
7. Wildlife habitat or refuge areas.
8. Surface and subsurface water.

8.1.1. Sensitive Lands Definitions and Usage

For the purposes of this Chapter, certain unique terms and words used herein shall be used, interpreted, and defined as set forth in this Section.

1. Crest of Hill - The highest point on a hill or slope as measured continuously throughout the property. Any given property may have more than one hill crest.
2. Development Approval Application - Includes any application for any development approval including but not limited to conditional use permits, rezoning, subdivision, or annexation. The term "development approval application" shall not include any building permits associated with construction within an approved subdivision or on an existing platted lot unless otherwise specified.
3. Development Code - The Town of Francis Development Code, as adopted and amended.
4. Maximum Extent Feasible - Means no prudent, practical and feasible alternative exists, and all possible planning to minimize potential harm has been undertaken. Economic considerations may be taken into account but shall not be the overriding factor in determining "maximum extent feasible."
5. Open space - Shall have the meaning set forth in Chapter 2 of this Code.
6. Ordinary High Water Mark - The line on the bank to which the high water ordinarily rises annually in season as indicated by changes in the characteristics of soil, vegetation or other appropriate means which consider the characteristics of the surrounding areas. Where the ordinary high water mark cannot be found, the top of the channel bank shall be substituted. In braided channels, the ordinary high water mark or substitute shall be measured so as to include the entire stream feature.

7. Qualified Professional - A professionally trained person with the requisite academic degree, experience, and professional certification or license in the field or fields relating to the subject matter being studied or analyzed.
8. Ridge Line Areas - For the purposes of this Chapter, ridge lines shall be defined as the natural crest of a hill or mountain as viewed from Highway 32, Highway 35, or Spring Hollow Road. The roof line of any structure in the proposed development may not protrude above the ridge line.
9. Jurisdictional Wetland - Wetlands as defined by the Army Corps of Engineers.
10. Slope - The level of inclination of land from the horizontal determined by dividing the horizontal run of the slope into the vertical rise of the same slope and converting the resulting figure into a percentage value. For purposes of regulation and measurement, slopes must cover at least twenty five (25) feet vertically and one hundred (100) feet horizontally.
11. Steep Slope - Slopes greater than twenty five (25) percent.
12. Stream - Water courses, excluding ditches and canals constructed for irrigation and drainage purposes, that flow year around or intermittently during years of normal rainfall.
13. Stream Corridor - The corridor defined by the ordinary high water mark.
14. Flood plain - The area of land likely to be effected by flood waters during a one hundred year storm event.
15. Surface and Subsurface Water - Water bodies and courses above the surface of the ground and well, springs and other water sources below the surface of the ground.

8.2. Application and Analysis Requirements

Lands in or partially in the Sensitive Lands Overlay Zone(s) as depicted in the Land Use Map and Zoning District map(s), and other areas outside of the overlay zone determined to have sensitive lands as defined by this Chapter, require the developer to perform the following application and environmental studies, consisting of an analysis of each of the elements found in 8.2.1 and 8.2.2 listed below and as designated by the Planning Commission. The study shall follow all standards that shall apply in this Chapter and provide enough information to the Town to be able to reasonably designate the sensitive lands areas. No Final Plat approval will be granted to any project located in the sensitive lands overlay zone or having sensitive lands until adequate treatment and mitigation alternatives for dealing with the development impacts have been approved.

The following analysis elements must be conducted to determine the exact boundaries of any sensitive areas and the mitigation measures necessary to eliminate or lessen the impacts of development. The studies do not necessarily define all of the sensitive areas. In some cases, the studies may indicate areas of sensitive lands not identified prior to the study.

8.2.1. Sensitive Lands Identification

Any applicant for development approval which contains sensitive areas as defined in this Chapter must produce a sensitive areas analysis performed by

qualified professionals as approved by the Town that identifies and delineates all applicable features and conditions:

Some of these areas may include steep slope areas, ridge line areas, wetlands areas and stream corridors, surface and subsurface water and other areas based on information submitted pursuant to this section, including any other information and data available to or acquired by the Town. Delineation shall be used as the basis for all calculations of open space, density, buffers, setbacks, and density transfers permitted or required by this Chapter. The study performed by the developer may suggest areas for designation and/or various alternatives; however, the final designation must be made by the Town.

8.2.1.1. Topographic Map and Slope Analysis

A topographic map and slope analysis shall be prepared and based on a certified boundary survey and depict contours at an interval of five (5) feet or less. The map shall highlight areas of high geologic hazard, areas subject to landslides, and all slopes in the following categories:

1. Greater than twenty (20) percent but less than or equal to thirty (30) percent.
2. Over thirty (30) percent.

8.2.1.2. Ridge Line Areas

Ridge line areas shall be denoted including all crests of hills or steep slopes. For the purposes of this Chapter, ridge lines shall be defined as the natural crest of a hill or mountain as viewed from Highway 32, Highway 35, or Spring Hollow Road.

8.2.1.3. Vegetative Cover

Vegetative cover shall be denoted generally by type and density of vegetation. This description should include deciduous trees, coniferous trees, gamble oak or high shrub, sage, and grassland. The Town shall have the discretion to require a more detailed tree/vegetation survey if the site has significant or unique vegetation, stands of trees, or wooded areas.

8.2.1.4. Wetlands

Wetlands as delineated by the Army Corps of Engineers shall be indicated in the analysis. Likewise, Stream corridors as defined by their ordinary high-water mark shall be denoted. If wetlands are present they shall be delineated and if required the appropriate permits shall be obtained from the Army Corps of Engineers and submitted to the town.

8.2.1.5. Wildlife Habitats

Delineation all critical or sensitive wildlife areas and habitats as defined by the State or other studies and which wildlife specie inhabit the area

and may be affected by the different types of land uses proposed in the area.

8.2.2. Additional Information and Study Requirements

In addition to the analysis required by the preceding subsection, the Town Council, Planning Commission or Town Staff may require the applicant to undertake the following studies and submit the following information and assessments to ensure that the Town has adequate information to comprehensively assess all development proposals in or containing sensitive lands. Such information and studies may include, but are not limited to:

8.2.2.1. Visual Assessment

Visual Assessments of the subject property from relevant designated vantage points as directed by the Town Council, Planning Commission or Town Staff depicting conditions before and after the proposed development, including the proposed location, size, landscaping, and other visual features of the project to assist in analyzing the potential aesthetic impact and most advantageous location of structures and other improvements to reduce any adverse impact. The visual assessment shall be conducted using techniques as approved by the Town Council, Planning Commission or Town Staff including but not limited to sketches, models, drawings, renderings, hand-enhanced photographs, and computerized images. Selection of the appropriate technique will depend on the size of the development and the visual sensitivity of the proposed development site.

8.2.2.2. Soil Investigation Report

Soil investigation report, including but not limited to shrink-swell potential, elevation of water table, general soil classification and suitability for development, erosion potential, hazardous material analysis, and potential frost action.

8.2.2.3. Geotechnical Report

Geotechnical report, including but not limited to location of major geographic and geologic features, depth and types of bedrock, structural features (folds, fractures, faults, etc.), and historic and potential landslide and other high-hazard areas such as mine shafts, quarries and known snow avalanche paths.

8.2.2.4. Additional Slope Information

Additional Slope Information. If the size of the proposed development and visual sensitivity of the site dictate, the Town Council, Planning Commission or Town Staff may require the submission of a slope/topographic map depicting contours at an interval of two (2) feet.

8.2.2.5. Fire Protection Report

Fire protection report, including but not limited to identification of potential fire hazards, mitigation measures, access for fire protection equipment, existing and proposed fire flow capability.

8.2.2.6. Hydrologic Report

Hydrologic report, including but not limited to information on groundwater levels, natural and agricultural irrigation and drainage channels and systems, and base elevations in flood plains.

8.2.2.7. Agricultural Analysis

An Agricultural Analysis addressing issues found in Section 3.32 may be required to determine the impacts on important agricultural areas. This analysis must address the effects of changing land uses on vegetation, irrigation systems, range land quality, weed control, agricultural accesses and rights-of-way, and fire concerns.

8.2.2.8. Annexations

Whenever an Annexation Petition is presented to the Town, the applicant may be required to provide a Sensitive Lands Analysis according to this Code and may require varying levels of detail based upon existing conditions of the site. The Sensitive Lands will be determined based upon that analysis. The analysis may lead to the designation of additional sensitive areas, significant ridge lines, wetlands areas or vantage points which may not have been previously included as a part of this ordinance or of the accompanying maps.

8.2.3. Waiver/Modification of Analysis and Study Requirements.

Based upon a preliminary assessment of the development proposal and a site field inspection, the Town Council, Planning Commission or Town Staff may modify or waive any of the sensitive lands analysis requirements upon a determination that the information is not necessary for a full and adequate analysis of the development or is sufficient at a reduced level of detail.

8.3. Sensitive Lands Regulations

The following provisions shall apply to all delineated sensitive lands and areas contained in the Sensitive Lands Overlay Zone, or as delineated elsewhere as provided in section 8.2. Areas delineated as hazardous (geologic or natural hazards and high flooding potential) to development or areas where wildlife mitigation measures cannot be implemented to the satisfaction of the Town in the studies and analysis requirements of this Chapter, will be deemed as undevelopable. The following parts of this section regulate development in the sensitive lands which are located outside of the designated undevelopable areas.

8.3.1. Slope Protection Regulations

The requirements in the Section are in addition to the Hillside Protection Ordinance adopted by the Town of Francis. In the event of a conflict, the stricter of the two shall apply.

8.3.1.1. Intent

It is the intent of these regulations to protect visual character and environmentally sensitive areas on hillsides and slopes. This shall be accomplished by minimizing the visual and environmental impacts of development through careful site planning that maintains the maximum amount of open space, protects existing vegetation, avoids sensitive natural areas, minimizes erosion, recognizes the need for water conservation and locates structures in the least visually sensitive location. These regulations shall apply to all slopes in excess of fifteen (15) percent.

8.3.1.2. Prohibitions

No development shall be allowed on or within fifty (50) feet of slopes in excess of thirty (30) percent, lands subject to landslide, regular flooding, soils deemed unsuitable as to safety, and other high-hazard geological areas, as determined by a geotechnical or soils report produced pursuant to Section 8.2 herein.

8.3.1.3. Graded or filled slopes

Cutting and filling to create additional or larger building sites shall be kept to a minimum and avoided to the maximum extent feasible. All proposed grading and filling shall be subject to review by the Town Engineer and Town Staff to ensure minimum visual impact and geotechnical safety. Graded or filled slopes shall be limited to a 3 to 1 slope or less. All graded slopes shall be contoured and revegetated to the natural, varied contour of surrounding terrain.

8.3.1.4. Streets

Street construction in hillsides can be the most visually disruptive portion of a development. Development in some areas may not be appropriate if roads cannot be constructed to access it without causing significant visual impacts. Where streets and roads, public and private, are proposed to be constructed on steep slopes:

1. Streets that cross slopes of thirty (30) percent or greater shall not be allowed, except that a short run of not more than one hundred (100) feet across slopes greater than thirty (30) percent may be allowed by the Town Council upon a favorable recommendation by the Town Engineer that such streets will not have significant adverse visual, environmental, or safety impacts.

2. Where streets are proposed to cross slopes greater than fifteen (15) percent, the following standards shall apply:
 - A. Evidence must be presented that such streets will be built with minimum environmental damage and within acceptable public safety parameters.
 - B. Streets shall, to the maximum extent feasible, follow contour lines, preserve the natural character of the land, and be screened with trees or vegetation.
 - C. Cutting and filling shall be held to a minimum and retaining walls employed to help provide planting areas conducive to revegetation. Revegetation plans will be required for all areas disturbed by and during street construction.

8.3.1.5. Retaining walls

Use of retaining walls may be encouraged to reduce the angle of man-made slopes and provide planting pockets conducive to revegetation. The use, design, and construction of all retaining walls shall be subject to the approval of the Town Engineer based upon assessment of visual impact, compatibility with surrounding terrain and vegetation, and safety considerations.

8.3.1.6. Landscaping and Revegetation

In order to mitigate adverse environmental and visual effects, slopes exposed in new development shall be landscaped or revegetated in a manner acceptable to the Town Council and Town Engineer. Topsoil from any disturbed portion of a steep slope shall be preserved and utilized in revegetation. Fill soil must be of a quality to support native plant growth.

8.3.1.7. Location of Development with Steep Slopes

Any development permitted in steep slope areas pursuant to this Section shall be located in such a manner to reduce visual and environmental impacts to the maximum extent feasible. To determine the most appropriate location for development, the Town shall require the applicant to conduct a visual and environmental analysis considering visual impact from key vantage points, potential for screening, location of natural drainage channels, erosion potential, vegetation protection, access, and similar site design criteria. Based upon the analysis, the Town may require any one or a combination of the following measures:

1. Clustering of development.
2. Dispersal of development.

8.3.2. Ridge Line Area Protection Regulations**8.3.2.1. Intent**

The intent of these provisions is to protect the unique visual and environmental character of all designated ridge line areas within the Sensitive Lands Overlay Zone and to ensure that development near ridge line areas blends in with rather than interrupts or modifies the natural contour elevations of these landforms. Significant ridge line areas should be retained in a natural state, and development should be sighted in such a manner so as not to create a silhouette against the skyline or mountain backdrop as viewed from the designated vantage points.

8.3.2.2. Minimum setback

No building, roof or other appurtenant device, including mechanical equipment, on any building may visually intrude on the ridge line areas from any of the designated vantage points as described herein, and determined by a visual assessment.

8.3.3. Sensitive Lands Entry Corridor Protection**8.3.3.1. Intent**

The intent of these provisions is to protect the visual image of Francis as people enter the community. The Town would like to maintain the visual character of all designated entry corridors by eliminating or mitigating visually obtrusive development and ensuring that significant portions of open space remains intact.

8.3.3.2. Applicability to future annexed properties

Upon submission of an annexation petition, the Planning Commission shall identify relevant sensitive lands entry corridors for designation by the Town Council.

8.3.3.3. Landscaping

A landscaping plan shall be required for all entry corridor developments.

8.3.4. Wetlands and Stream or River Corridors**8.3.4.1. Intent**

Wetlands, stream(s) and Provo River channel corridors provide important hydrologic, biological and ecological, aesthetic, recreational, and educational functions. Important functional values of wetlands and streams can be lost or significantly impaired as a result of various development activities and additional functional values of these important resources may be lost. The following requirements and standards have been developed to promote, preserve and enhance these valuable resources and to protect them from adverse effects and potentially irreversible impacts.

8.3.4.2. Approval of the Army Corps of Engineers

The Town Council may require an approval letter from the Army Corps of Engineers for any development suspected of having jurisdictional wetlands.

8.3.4.3. Prohibited Activities

No person shall engage in any activity that will disturb, remove, fill, dredge, clear, destroy or alter any areas, including vegetation, within significant Wetlands and significant stream or river corridors and their respective setbacks, except as may be expressly allowed herein.

8.3.4.4. Boundary Delineation

Wetland and stream corridor delineation shall be performed by a qualified professional that has demonstrated experience necessary to conduct site analysis. The qualified professional shall be approved by the Town Council or Engineer. Delineation of Wetlands shall be established using the Federal Manual For Identifying and Delineating Jurisdictional Wetlands. Stream corridors shall be delineated at the ordinary high water mark as defined herein.

8.3.4.5. Setbacks

Setbacks from Wetlands shall extend a minimum of twenty-five(25) feet outward from the delineated wetland edge. Setbacks from stream corridors shall extend a minimum of one hundred (100) feet outward from the ordinary high water mark. Setbacks from irrigation ditches shall extend a minimum of fifty (50) feet from the ordinary high water mark.

8.3.4.6. Runoff Control

All projects adjacent to wetlands will provide appropriate temporary (straw bail berms) and permanent runoff control to minimize sediment and other contaminants to the maximum extent feasible. These control systems must be approved by the Town Engineer.

8.3.4.7. Habitat Restoration Projects

The Town Council may approve wetland and stream restoration and enhancement projects providing that the project plan has been reviewed by a qualified professional and approved by the appropriate State and Federal agencies with jurisdiction. All habitat restoration work shall be performed under the direct supervision of a qualified professional.

8.4. Administrative Provisions

8.4.1. Development Approvals For Public Projects/Public Works/Public Utilities

All public development projects and public works that visually impact or otherwise adversely impact sensitive areas, and all public utility installations including but not limited to water and sewer projects, pipelines, electrical supply facilities and wires, roads, and trails, constructed or undertaken within the Sensitive Lands Overlay Zone shall be reviewed according to the following process and guidelines. It is the intent of this section that the proposed public utilities projects, both private and public, make all reasonable attempts to comply with the standards and guidelines of the Sensitive Lands regulations.

The project sponsor shall notify the Town Council of the proposed project. A project plan delineating the location, alignment, and scope of the undertaking shall also be submitted. Minor projects which are determined by the Town Council to have no potential for significant visual or environmental impacts shall be exempt from the process.

8.4.1.1. Mitigation

The Town Council, Planning Commission and Town Staff shall review the proposed project and may request the project sponsor to prepare an environmental impact statement or mitigation plan that modifies the project to mitigate the environmental and visual impact of the project. To the maximum extent feasible, the project sponsor shall design the public works to preserve the natural character of the sensitive areas and locate it in areas not visible from major public rights-of-way or public property such as parks.

8.4.1.2. Emergency Repairs

In the event of an emergency that requires immediate action to protect the health and safety of the general public, such action may go forward without the immediate consent of the Town Council. The Town Council shall be consulted at the earliest stage reasonably possible in the construction/repair phase.

8.4.1.3. Maintenance

Maintenance projects shall proceed only after notification and approval by the Town Council. If the Town, due to the size or nature of the maintenance activity, determines that it may have a significant adverse impact on the sensitive areas, the project shall proceed through the review procedures set forth herein.

8.5. Tree and Vegetation Protection

The following provisions and mitigation measures are hereby adopted as enhancements to existing regulations contained in this Code. These regulations will apply to new and existing platted subdivisions in the Sensitive Lands Overlay Zone, including the following criteria to be used in establishing limits of disturbance.

8.6. Limits of Disturbance

8.6.1. Establishing Limits of Disturbance

Limits of disturbance may be required of any development having ridge lines, or any property found to contain sensitive lands. The limits of disturbance will be established using the following criteria:

1. Visual impacts of the development, including but not limited to screening from adjacent properties, ridge line areas protection, and protection of critical view sheds as defined in the Sensitive Lands Regulations.
2. Erosion prevention and control, including but not limited to protection of natural drainage channels.
3. Fire prevention and safety, including but not limited to location of trees and vegetation near structures.
4. Irrigation and water conservation.
5. Wildlife habitat, including but not limited to, preservation of critical wildlife habitat and migration routes, in accordance with the Department of Wildlife Resources.
6. Stream and wetland protection and buffering.

8.6.2. Revegetation Plan

All applicants for developments on land subject to Sensitive Lands regulations involving cut and fill and graded slopes shall submit a revegetation and landscaping plan for approval by the Town Council. The plan shall depict the type, size, and location of any vegetation and trees being planted and illustrate how the site will be recontoured in such a fashion and with sufficient topsoil to ensure that revegetation is feasible. The plan shall also indicate a time frame for revegetation which is acceptable to the Town. Retaining walls may also be required to provide breaks in manmade steep slopes exceeding fifteen (15) percent and to provide planting pockets.

8.7. Economic Hardship Relief Provisions

8.7.1. Hardship Relief Petition

Any applicant for development, after a final decision on its development application is taken by the Town Council, may file a hardship relief petition with the Town Council seeking relief from certain of the sensitive lands regulations on the basis that the denial of the application has created a substantial economic hardship, depriving the applicant of all reasonable use of the property.

8.7.2. Affected Property Interest

The hardship relief petition must provide information sufficient for the Town Council and the Town Attorney to determine that the petitioner possesses a protectable interest in property under Article I, Section 22 of the Constitution of Utah and the Fifth Amendment to the United States Constitution.

8.7.3. Economic Hardship Standard

For purposes of this ordinance, a substantial economic hardship shall be defined as a denial of all reasonable use of the property. Upon a finding that the denial of the application has resulted in a denial of all reasonable use of the property, the Town Council may provide the petitioner relief from certain provisions of the overlay zone or sensitive lands regulations.

8.7.4. Time for Filing Notice of Petition and Petition

No later than ten (10) calendar days from final action by the Town Council on any development application, the applicant shall file a notice of petition in writing with the Town Recorder. Within thirty (30) days of filing of a petition, the applicant shall file a Hardship Relief Petition with the Town Recorder.

8.7.5. Information to be Submitted with Hardship Relief Petition

The hardship relief petition must be submitted in letter form and must be accompanied at a minimum by the following information:

1. Name of the petitioner.
2. Name and address of current owner of the property, form of ownership, whether sole proprietorship, for-profit or not-for-profit corporation, partnership, joint venture or other, and if owned by a corporation, partnership, or joint venture, name and address of all principal shareholders or partners.
3. Price paid and other terms of sale of the property, the date of purchase, and the name of the party from whom purchased, including the relationship, if any, between the petitioner and the party from whom the property was acquired.
4. Nature of the protectable interest claimed to be affected, such as, but not limited to, fee simple ownership, leasehold interest.
5. Terms (including sale price) of any previous purchase or sale of a full or partial interest in the property in the three years prior to the date of application.
6. All appraisals of the property prepared for any purpose, including financing, offering for sale, or ad valorem taxation, within the three years prior to the date of application.
7. The assessed value of and ad valorem taxes on the property for the previous three years.
8. All information concerning current mortgages or other loans secured by the property, including name of the mortgagee or lender, current interest rate, remaining loan balance and term of the loan and other significant provisions, including but not limited to, right of purchasers to assume the loan.
9. All listings of the property for sale or rent, price asked and offers received, if any, within the previous three years.

10. All studies commissioned by the petitioner or agents of the petitioner within the previous three years concerning feasibility of development or utilization of the property.
11. For income producing property, itemized income and expense statements from the property for the previous three years.
12. Information from a title policy or other source showing all recorded liens or encumbrances affecting the property.

The Town Council may request additional information reasonably necessary, in their opinion, to arrive at a final conclusion concerning whether there has been a denial of all reasonable use constituting a substantial economic hardship. The petitioner shall have the burden of proving that the denial of the application creates a substantial economic hardship.

8.7.6. Findings of the Town Council

The Town Council shall, after receiving all the necessary information, hold a Public Hearing in accordance with Chapter 1 herein. The Town Council shall make their decision on the basis of the evidence and testimony presented, and address the following issues in its report or findings:

1. Whether the petitioner has complied with the requirements for presenting the information to be submitted with a hardship relief petition.
2. Whether the petitioner has a protectable interest in property.
3. The market value of the property considering the Sensitive Lands Overlay Zone designation.
4. The market value of the property disregarding the Sensitive Lands Overlay Zone designation.
5. Whether it was feasible to undertake construction on or development of the property as of the date of the application, or in the reasonably near future thereafter.
6. Whether, in the opinion of the Town Council, the denial of the application would create a substantial economic hardship.