

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 of Bear River City.

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9.1 Application and Analysis Requirements

Lands in or partially in the Sensitive Lands Overlay Zone(s) as depicted in the Zoning District Map, as well as other areas outside of the overlay zone as determined by the Planning Commission and City Council to possibly be sensitive, require the developer to perform the following application and environmental impact studies, consisting of an analysis of each of the elements of 9.1.1 and 9.1.2 listed below and as designated by the Planning Commission. Because of high water table the Airport soil type has been determined to be sensitive for dwelling construction and the Airport, Honeyville and Fielding soil types have been determined to be sensitive for septic tank use. Therefore, as shown on the Zoning Map in Appendix B. The developer in these soil types is subject to applicable elements of 9.1.1 and 9.1.2 as designated by the Planning Commission. . The study shall follow all standards that shall apply in this chapter and provide enough information to the City to be able to reasonably designate the sensitive lands areas as well as providing adequate treatment and mitigation alternatives for dealing with the development impacts.

Sensitive areas so designated contain lands that may have development suitability concerns as contained in 8D.1.5 of this code, and the conditions and impacts of the potential development must be critically evaluated as per this chapter.

The following analysis elements must be conducted to determine the exact boundaries of the Sensitive areas as well as mitigation measures necessary to eliminate or lessen the impacts of development. The studies do not in and of itself define the sensitive areas. (Amendment #1, Ordinance No. 2006-07-04)

9.1.1 Sensitive areas Analysis and Determination

Any applicant for any development approval must produce a sensitive areas analysis performed by qualified professionals as approved by the Town that identifies and delineates all the following features and conditions:

9.1.1.1 Slope/Topographic map

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

- (a) greater than fifteen (15) percent but less than or equal to thirty (30) percent;
- (b) greater than thirty (30) percent but less than or equal to forty (40) percent;
- (c) over forty (40) percent.

Steep slopes shall be defined as all areas within a parcel with a slope of greater than fifteen (15) percent. Very steep slopes shall be defined as all areas within a parcel with a slope of greater than thirty (30) percent.

9.1.1.2 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.

9.1.1.3 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.

9.1.1.4 Vegetative cover

Vegetative cover shall be denoted generally by type and density of vegetation, including: 1) deciduous trees, 2) coniferous trees, and 3) sage, grassland, and 4) agricultural crops. The Town shall have the discretion to require a more detailed tree/vegetation survey if the site has significant or unusual vegetation, stands of trees, or wooded areas.

9.1.1.5 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. This report must be made with the direction/cooperation and approval of the Box Elder County Fire District.

9.1.1.6 Wetlands

Wetlands as established by using the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, dated January 10, 1989 or more recent, whichever is stricter. Although the Federal Manual may change in the future, the Town will use this referenced manual as a basis for wetlands determination.

9.1.1.7 Stream Corridors

Stream corridors as defined by their ordinary high-water mark.

9.1.1.8 Wildlife Habitats

Delineate all critical or sensitive wildlife areas and habitats as defined by the State or other studies and designate which wildlife species inhabit the area and may be affected by the different types of land uses proposed in the area.

9.1.2 Additional Information and Study Requirements

In addition to the analysis required by the preceding subsection, the Town Planning Commission or 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:

9.1.2.1 Visual Assessment

Visual Assessments of the subject property from relevant designated vantage points as directed by the Town Planning Commission or Staff, depicting conditions before and after the proposed development, including the proposed location, size, design, 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 Planning Commission or Staff, including but not limited to sketches, models, Bear River City Land Management and Development

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.

9.1.2.2 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/tunnels, quarries and known snow avalanche paths.

9.1.2.3 Additional Slope Information

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

9.1.2.4 Wetland/stream Corridor Resource Evaluation

Wetland/stream corridor resource evaluation, including a delineation of wetland and stream corridor boundaries and a determination of resource significance pursuant to Section 9.2.3.

9.1.2.5 Agricultural Analysis

An Agricultural Analysis as per section 3.28 may be required to determine the impacts on important agricultural areas within or adjoining the area(s). 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 to name a few.

9.1.3 Waiver/Modification of Analysis and Study Requirements.

Based upon a preliminary assessment of the development proposal and a site field inspection, the Town Planning Commission or 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.

9.1.4 Sensitive areas Determination.

The Town Planning Commission or Staff shall delineate all sensitive lands or areas on the parcel, including steep slope areas, wetlands areas, stream corridors and other areas based on information submitted pursuant to this section, including any other information and data available to or acquired by the Town, and an analysis thereof. Such delineation shall be used as the basis for all calculations of open space, density, buffers, and setbacks, 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.

9.1.5 Annexations

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

9.2 Sensitive Lands Regulations

The following provisions shall apply to all areas contained in the Sensitive Lands Overlay Zone, or as delineated elsewhere as provided in section 9.1. Areas delineated as hazardous (geologic or natural hazards and high flooding potential) to development, where adequate measures can not be taken to remedy the problem, will be deemed as undevelopable. Areas where proper wildlife mitigation measures cannot be implemented to the satisfaction of the Town in the studies and analysis requirements of this chapter, will also be deemed as undevelopable. This section regulates development in the sensitive land areas.

9.2.1 Soil, Hydrologic and Fire Protection

9.2.1.1 Intent

It is the intent of these regulations to permit the widest possible latitude in the use of property, while at the same time requiring design solutions which will avoid detrimental impacts on sensitive natural areas, as well as provide protection from adverse natural forces and hazards. Of concern are use applications which might affect the structure or the land; the management of surface or subsurface water; safety of future land occupants due to increased fire, earthquake, or storm hazards from the proposed development; or, the uneconomic extension of public facilities and services. Of specific concern is development in flood-prone areas, earthquake zones, landslide areas, areas of steep slope or unstable soils, wetlands, and other sensitive areas requiring careful assessment prior to alteration.

9.2.1.2 Prohibitions

No development shall be allowed without the evaluation of the sensitive area analysis of 9.1.1 and 9.1.2 by the Town Engineer. The Town Engineer must determine the adequacy of the proposed use and construction to withstand hazards including the following:

- (a) Flood plain
- (b) Geological hazards including earthquakes, unstable soil conditions, slopes in excess of 15% and areas subject to flooding
- (c) High water table and ground water

Also no development shall be allowed without adequate fire protection being verified by the Box Elder County Fire District, and any proposed septic systems being approved by the Box Elder County Health Department.

9.2.1.3 Remedying Unsuitable Land Conditions

The development and land use may be made suitable if adequate methods are formulated by the developer and approved by the Town to solve or remedy the problems created by the unsuitable land conditions. The methods must be based upon the recommendation of a qualified planner or engineer hired by the developer and approval of the Town Engineer. The burden of the proof shall lie with the developer to establish the viability of development in these sensitive or

unsuitable areas.

9.2.2 Slope Protection Regulations

9.2.2.1 Intent

It is the intent of these regulations to protect Bear River City visual character and environmentally sensitive areas on hillsides and slopes. This shall be accomplished by minimizing the 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, and recognizes the need for water conservation. These regulations shall apply to all slopes in excess of fifteen (15) percent.

9.2.2.2 Prohibitions

No development shall be allowed on or within fifty (50) feet of slopes in excess of thirty (30) percent, lands subject to landsliding, 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 9.1 herein.

9.2.2.3 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 recontoured and revegetated to the natural, varied contour of surrounding terrain.

9.2.2.4 Benching or Terracing

Benching or terracing to provide additional or larger building sites is prohibited.

9.2.2.5 Streets and roads

Development in some areas may not be appropriate if roads cannot be constructed to access it with out causing significant impacts. The following applies where streets and roads, public and private, are proposed to be constructed on steep slopes:

- (a) Streets and roads 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 Planning Commission or Staff upon a favorable recommendation by the Town Engineer that such streets or roads will not have significant adverse visual, environmental, or safety impacts.
- (b) Where streets and roads, public and private, are proposed to cross slopes greater than fifteen (15) percent, the following standards shall apply:
 - (1) Evidence must be presented that such streets and roads will be built with acceptable public safety minimum environmental damage and within parameters.
 - (2) Such streets and roads shall, to the maximum extent feasible,

follow contour lines, preserve the natural character of the land, and be screened with trees or vegetation.

- (3) 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 road construction.

9.2.2.6 Retaining walls

Use of retaining walls is encouraged to reduce the steepness 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 Zoning Administrator based upon assessment of visual impact, compatibility with surrounding terrain and vegetation, and safety considerations.

9.2.2.7 Landscaping and Revegetation

In order to mitigate adverse environmental and visual effects, slopes exposed in new development shall be landscaped or revegetated in accordance with a revegetation/landscaping plan as provided in this Code, Chapter 8D.2.4 (Limits of Disturbance/Vegetation Protection) as amended, and enhanced by the requirements this chapter. 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.

9.2.2.8 Private Development Design Standards

All development on steep slopes shall comply with any design standards currently adopted by the Town.

9.2.2.9 Open space and density on delineated portions of sites with steep slopes greater than fifteen (15) percent but less than or equal to thirty (30) percent.

In addition to the specific development regulations set forth above, the following general open space and limits of disturbance regulations shall apply:

- (a) **Open space.** Seventy-five (75) percent of the steep slope areas shall remain in natural and permanent open space as defined in the Land Management Code. Twenty five (25) percent may be developed in accordance with the underlying zoning subject to the following conditions.

(1) **Maximum development density.** The maximum allowable density that may be developed on the portion of the steep slope areas not set aside for open space shall be governed by the underlying zoning. However, the maximum allowable density shall be permitted only by approval of the Town Council pursuant to the visual and environmental analysis provided for in Section 9.1, and a finding that development at that density will not have a significant adverse visual or environmental affect on the community.

(2) **Location of development within sensitive areas.** Any development permitted in steep slope areas pursuant to this section shall be located in such a manner to reduce environmental impacts to the maximum extent feasible. To

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determine the most appropriate location for development, the Zoning Administrator shall require that the applicant conduct an environmental analysis considering location of natural drainage channels, erosion potential, vegetation protection, access, and similar site design criteria. Based upon such analysis, the Town may require any one or a combination of the following measures:

**Clustering of development within the sensitive areas, or
Dispersal of development throughout the sensitive areas, or**

(b) Suitability determination. A suitability determination certifying that a development will have no significant adverse impact on adjacent properties or development shall be granted by the Planning Commission at the time of subdivision review if the following conditions are satisfied:

(1) The overall development density of the entire parcel is compatible with that of adjacent properties or developments. The fact that individual lot sizes in the receiving areas may vary from those of adjacent properties or developments shall not solely be determinative of incompatibility.

(2) The architecture, height, building materials, and other design features of the development in the receiving areas are compatible with adjacent properties or developments.

(3) The applicant has agreed to adopt appropriate mitigation measures such as landscaping, screening, illumination standards, and other design features as recommended by the Town Planning Commission or Staff to buffer the adjacent properties from the receiving areas.

(4) There are no adverse or unmitigated impacts on wildlife in the area.

9.2.2.10 Open space on portions of sites with very steep slopes (in excess of 30 percent)

One hundred (100) percent of the very steep slope areas shall remain in open space. No vegetation within fifty (50) feet of the very steep slope areas shall be disturbed.

9.2.3 Wetlands and Stream or River Corridors

9.2.3.1 Intent

Bear River City finds that the wetlands, stream(s) and Bear 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.

9.2.3.2 Jurisdiction

All significant Wetlands and stream corridors in the Sensitive Lands Overlay Zone and elsewhere in the Town are regulated as provided herein and are subject to the jurisdiction of this ordinance.

9.2.3.3 Prohibited Activities

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

9.2.3.4 Boundary Delineation's

Wetland and stream corridor delineation's 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 Planning Commission or Staff and shall perform the work on behalf of Bear River City through a third-party contract where all fees, costs and expenses are borne by the applicant. Delineation of Wetlands and stream corridors shall be subject to the approval of the Town Planning Commission or Staff.

- (a) Pursuant to Section 9.1.1.6, boundary delineation of Wetlands shall be established using the Federal Manual For Identifying and Delineating Jurisdictional Wetlands, dated January 10, 1989, and jointly published by the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers and the U.S. Soil conservation Service. Subsequent revisions to the Federal Manual shall not be incorporated as part of the methodology unless the methodology is stricter in application. Although the Federal Manual may change in the future, the Town will use this referenced manual as the main basis for Wetlands determination.
- (b) Stream corridors shall be delineated at the ordinary high water mark as defined herein.

9.2.3.5 Determination of Significance.

- (a) A wetland delineated pursuant to the 1989 Federal Manual shall be found significant based upon the following criteria:
 - (1) **Size.** All Wetlands that occupy a surface area greater than 1/10 acre or are associated with permanent surface water are significant.
 - (2) **Location.** All Wetlands that are adjacent to or contiguous with a stream corridor are significant.
- (b) All stream corridors are significant. Stream Corridors shall not include ditches which are commonly known to be irrigation ditches and do not contribute to the preservation or enhancement of fisheries or wildlife.

9.2.3.6 Setbacks

The following setbacks are considered minimum distances:

- (a) Setbacks from Wetlands shall extend a minimum of 100 feet outward from the delineated wetland edge.
- (b) Setbacks from stream corridors shall extend a minimum of 100 feet outward from the ordinary high water mark.
- (c) Setbacks from irrigation ditches shall extend a minimum of 50 feet from the ordinary high water mark.

9.2.3.7 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.

9.2.3.8 Habitat Restoration Projects

The Planning Commission and/or Town Staff 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.

9.3 Administrative Provisions**9.3.1 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 primary emphasis shall be on reasonable and practical reclamation and revegetation of areas disturbed by major public works and utility projects. In some situations, it may be necessary to encroach upon certain environmentally sensitive areas in order to maintain a desirable level of public service and safety. In those cases, an evaluation of alternatives and possible mitigation shall be required prior to such projects being submitted.

9.3.1.1 Consultation

- (a) **Public Utilities projects.** The project sponsor shall notify the Town Planning Commission or Staff of the proposed project. A project plan delineating the location, alignment, and scope of the undertaking shall be submitted with such notification. If the Town Planning Commission or Staff determines that the project may have significant visual and environmental impacts, a consultation meeting shall be scheduled. No development shall occur until after the

consultation meeting and compliance with the steps outlined in the following subsections, unless the Town Planning Commission or Staff has determined that no significant visual or environmental impact will result from the proposed project.

- (b) **Public Works and other public projects.** The department director shall notify the Town Planning Commission or Staff of all proposed projects which may have significant visual and environmental impacts and a consultation meeting shall be scheduled. No development shall occur until after the consultation meeting and compliance with the steps outlined in the following subsections. Minor projects which are determined by the Town Planning Commission or Staff to have no potential for significant visual or environmental impacts shall be exempt from the process outlined in Sections 9.3.1.2 through 9.3.1.6.

9.3.1.2 Mitigation

The Town Planning Commission or Staff shall review the proposed project and after the consultation meeting may request the project sponsor to prepare an environmental impact statement and/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.

9.3.1.3 Adoption of Recommendations

The project sponsor shall, before undertaking the project, to the maximum extent feasible, adopt the modifications and mitigation measures recommended by the Zoning Administrator or state in writing why adoption of such measures is not feasible before the project shall proceed.

9.3.1.4 Wetlands and Stream Corridors

All public utilities and public works, constructed or undertaken within significant wetlands and significant stream corridors and their respective setbacks, including but not limited to water and sewer projects, pipelines, electrical supply facilities and wires, roads, and trails, shall be governed pursuant to the procedures set forth in Section 9.3.1. They shall be exempted from the requirements of Section 9.2.3 providing that: (a) no practical alternative location exists outside the significant wetland and significant stream corridor and their respective setbacks; and (b) the project meets the technical guidelines defined below:

- (a) To the maximum extent feasible, disturbed areas within the setbacks shall be revegetated using appropriate vegetation.
- (b) Maintenance access shall be provided at specific access points rather than parallel access roads. To the extent that access roads must be located within a corridor, the roads shall be kept to a minimum width. Parallel access roads shall be sighted contiguous to the utility corridor to minimize disturbance and shall be sighted on the outside edge of the utility corridor away from the resource.
- (c) Surface materials used for trail construction and other access routes shall be approved by the Town.
- (d) Road construction techniques for stream crossings shall use appropriate methods demonstrated to provide fisheries protection.

9.3.1.5 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 Planning Commission or Staff. The Town Planning Commission or Staff shall be consulted at the earliest stage reasonably possible in the construction/repair phase.

9.3.1.6 Maintenance

Maintenance projects shall proceed only after notification of and approval by the Town Staff. 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 in Sections 9.3.1.1 through 9.3.1.5.

9.3.2 Substantial Compliance

To avoid unnecessary review by Town consultants and/or agencies and disputes over the application of the Sensitive Lands Overlay Zone provisions, whenever there are practical difficulties over the application of the provisions or whenever the aims of this ordinance can be better achieved through alternatives to strict compliance, the Town Planning Commission may make specific modifications to strict compliance with the Sensitive Lands Overlay Zone ordinance provisions.

9.3.3 Economic Hardship Relief Provisions.**9.3.3.1 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 Board of Adjustment 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 its property.

9.3.3.2 Affected Property Interest

The hardship relief petition must provide information sufficient for the Town Board of Adjustment 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.

9.3.3.3 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 Board of Adjustment may provide the petitioner with relief from certain of the overlay zone and/or sensitive lands regulations.

9.3.3.4 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 Notice of Petition, the applicant shall file a Hardship Relief Petition with the Town Recorder.

9.3.3.5 Information to be Submitted with Hardship Relief Petition.

The hardship relief petition must be submitted in letter form or on a form prepared by the Town Planning Commission or Staff, and must be accompanied at a minimum by the following information:

- (a) Name of the petitioner;
- (b) Name and business 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.
- (c) 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;
- (d) Nature of the protectable interest claimed to be affected, such as, but not limited to, fee simple ownership, leasehold interest;
- (e) 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;
- (f) 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;
- (g) The assessed value of and ad valorem taxes on the property for the previous three years;
- (h) 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;
- (i) All listings of the property for sale or rent, price asked and offers received, if any, within the previous three years;
- (j) 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;
- (k) For income producing property, itemized income and expense statements from the property for the previous three years; and
- (l) Information from a title policy or other source showing all recorded liens or encumbrances affecting the property;

The Town Staff or the Board of Adjustment 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
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economic hardship.

9.3.3.6 Failure to Submit Information

In the event that any of the information required to be submitted by the petitioner is not reasonably available, the petitioner shall file with the petition a statement of the information that cannot be obtained and shall describe the reasons why such information is unavailable.

9.3.3.7 Burden of Proof

The petitioner shall have the burden of proving that the denial of the application creates a substantial economic hardship under the standard provided in Section 9.3.3.3.

9.3.3.8 Findings of the Board of Adjustment

The Board of Adjustment shall, after receiving all the necessary information will hold a public hearing, pursuant to regulations as contained in Chapter 5 of this Code. The Board shall make their decision on the basis of the evidence and testimony presented, and address the following issues in its report or its findings:

- (a) Whether the petitioner has complied with the requirements for presenting the information to be submitted with a hardship relief petition;
- (b) Whether the petitioner has a protectable interest in property;
- (c) The market value of the property considering the Sensitive Lands Overlay Zone designation;
- (d) The market value of the property disregarding the Sensitive Lands Overlay Zone designation;
- (e) 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;
- (f) Whether, in the opinion of the Board of Adjustment, the denial of the application would create a substantial economic hardship as defined in Section 9.3.3.3.

9.4 Definitions

9.4.1 Definition 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 and in chapter 2 of the Bear River City Land Management and Development Code.

9.4.2 Definitions:

- (a) **Compatible.** A development is compatible with an existing development or property if its architectural features, building height and materials, approved uses, intensity of such use and other features are complementary and do not have a significant adverse economic and aesthetic impact on the existing

development or property, including agricultural properties.

- (b) **Substantial economic hardship.** Means denial of all reasonable economic use of the property.
- (c) **Development Approval Application.** Includes any application for any development approval including but not limited to grubbing, grading, conditional use permits, zoning or 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.
- (d) **Land Management and Development Code.** The official Bear River City Land Management and Development Code adopted March 5, 1998, and effective March 5, 1998, as amended of which this chapter is a part of.
- (e) **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."
- (f) **Open space.** Shall have the meaning set forth in Chapter 2 of the this Code.
- (g) **Ordinary high water mark.** Means 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.
- (h) **Qualified professional.** Means 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.
- (i) **Significant wetland.** All Wetlands which occupy a surface area greater than 1/10 acre or are associated with permanent surface water or which are adjacent to or contiguous with a stream corridor.
- (j) **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 fifty (50) feet horizontally.
- (k) **Steep slope.** Slopes greater than fifteen (15) percent but less than or equal to thirty (30) percent.
- (l) **Stream.** Means those streams, excluding ditches and canals constructed for irrigation and drainage purposes, that flow year around or intermittently during years of normal rainfall.
- (m) **Stream corridor.** Means the corridor defined by the stream's ordinary high water

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mark.

- (n) **Suitability determination.** A determination carried out by the Town Planning Commission or Staff to ascertain if a development is compatible with development on surrounding or adjacent property.

9.5 *Tree and Vegetation Protection Regulations*

9.5.1 *Additional Regulations*

The following provisions and mitigation measures are hereby adopted as enhancements to existing limits of disturbance regulations contained in chapter 8 of this code and must be adequately studied. 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.

- (a) Erosion prevention and control, including but not limited to protection of natural drainage channels.
- (b) Fire prevention and safety, including but not limited to location of trees and vegetation near structures.
- (c) Irrigation and water conservation.
- (d) Wildlife habitat, including but not limited to preservation of critical wildlife habitat and migration routes.
- (e) Stream and wetland protection and buffering.

9.5.2 *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 Planning Commission. 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 shall be used to provide breaks in manmade steep slopes exceeding fifteen (15) percent and to provide planting pockets.

9.5.3 *Violation/Replacement provision*

Any applicant who violates the provisions of this subsection by removing trees or vegetation or exceeding the prescribed limit of disturbance shall replace two for one in number all trees/vegetation illegally removed. Size of trees planted in replacement of illegally removed trees must be approved by the Town.

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