

## § 7.8 WILDLIFE AND HABITAT PROTECTION

**A. Purpose.** To plan and design land uses so that when property is developed:

1. Habitat and the wildlife species that depend on this habitat are protected from significant adverse impacts of development; and
2. The diversity of wildlife species and habitat that occur in the Estes Valley is protected.

**B. Applicability.** This Section shall apply to all applications for review of development plans, subdivision plats, planned unit developments, special review uses, and rezoning on property that contains critical habitat as defined below.

1. Aquatic Habitat;
2. Wetlands;
3. Riparian Vegetation;
4. Potential Conservation Areas as defined by the Colorado Natural Heritage Program;
5. Big Horn Sheep Winter Concentration Area as defined by the Colorado Division of Wildlife;
6. Raptor nests and a one-half mile area surrounding the nest;
7. Severe Winter Range for elk; and
8. Severe Winter Range for mule deer.

**C. Other Regulations.** This Section of the Code does not repeal or supersede any existing federal, state, or local laws, easements, covenants, or deed restrictions pertaining to wildlife. When this Section imposes a higher or more restrictive standard, this Section shall apply.

**D. Qualified Professional.** All maps and reports required by this Section shall be prepared by or under the responsible direction of a qualified biologist. The qualified biologist shall sign and date these submitted maps and reports.

**E. Wildlife and Habitat Database.**

1. *Adopted Map.* The adopted Wildlife and Habitat Map is set forth in Appendix A of this Code and is incorporated by reference. This map, as amended from time to time, shall be used as the basis for review under this Section of the Code. The Wildlife and Habitat Map is intended as an indicator of areas where further study is necessary.
2. *Unmapped Habitat.* Review of an application may reveal potential critical habitat that is not reflected on the Wildlife and Habitat Map. In such instances, the Review- or Decision-Making body shall have the discretion to require review under this Section of the Code.
3. *Revisions to Adopted Map.* In the event a property owner questions the presence critical habitat on their property, the property owner may submit evidence with respect thereto

from a qualified biologist. This evidence shall be reviewed, together with all other applicable evidence, by the Estes Valley Planning Commission, and Board of Trustees or Board of County Commissioners. The Board of Trustees or the Board of County Commissioners is the entity with final approval of Wildlife and Habitat Map revisions, depending on the location of the property. If the Board of Trustees or the Board of County Commissioners determines that the property does not contain critical habitat, the Community Development Director shall update the Wildlife and Habitat Map and remove the critical habitat designation.

The Community Development Director may also update the map, with Board of Trustees or Board of County Commissioners approval, when unmapped habitat map may also be updated to the Board of Trustees or the Board of County Commissioners determines that property does contain critical habitat, that is not reflected on the Wildlife and Habitat Map, the Community Development Director shall update the map and add the critical habitat designation.

#### **F. Review Procedures.**

1. *Wildlife and Habitat Impact Assessment Submittal.*
  - a. A Wildlife and Habitat Impact Assessment shall be submitted for sites containing critical habitat. The assessment shall be prepared by a qualified biologist mutually agreed to by the Community Development Director and the applicant. The cost of the study shall be paid for by the applicant. The Community Development Department shall maintain a list of qualified biologists.
  - b. The Community Development Director, Planning Commission, Board of Trustees, and the Board of County Commissioners have the discretion to waive submittal of the Wildlife and Habitat Impact Assessment upon review of a signed and dated document from a qualified biologist stating that there is no critical habitat present on the property. The applicant shall have the option to request a determination about a waiver prior to submittal of a development application.
2. *Colorado Division of Wildlife.* Staff shall refer the submitted application and Wildlife and Habitat Impact Assessment to the Colorado Division of Wildlife for review. The Division of Wildlife may comment on the submitted application and assessment and may provide an evaluation of whether the application and assessment complies with the requirements of this Section.
3. *Other Agencies.* Applicants are advised to consult with the Colorado Division of Wildlife and other agencies responsible for regulation of wildlife and habitat, such as the US Fish and Wildlife Service, US Department of the Interior–Rocky Mountain National Park, US Forest Service, and Colorado Natural Heritage Program. These agencies may maintain maps and databases that can aid in the site-specific confirmation of the presence or absence of wildlife and habitat on a specific site.
4. *Review-Body and Decision-Making Body.*
  - a. The Review and Decision-Making Bodies shall give consideration to whether the proposal protects wildlife habitats and wildlife species from the significant adverse impacts of development.

- b. The Review and Decision-Making Bodies may give consideration to specific measures in the proposal that meaningfully mitigate adverse impacts on wildlife habitat and species.
- c. In cases where the significant adverse impacts of a development is not adequately mitigated resulting in a significant adverse impact on wildlife habitat and/or wildlife species in the Estes Valley:
  - (1) The Review Body may recommend, and the Decision-Making Body may require, special conditions or modifications of a proposal; or
  - (2) The Review Body may recommend denial of an application, and the Decision-Making Body deny an application.

**G. Review Criteria to Assess Significant Adverse Impacts.**

In determining if a development will or may have a significant adverse impact on wildlife and wildlife habitat or that such adverse impacts have been avoided or mitigated to the maximum extent feasible, the review and decision-making bodies shall, as applicable, consider the following factors:

- 1. **Wildlife Species Impact.** Impacts on wildlife species, including but not limited to human-related activities (including impacts from domestic pets) that disrupt necessary life cycle functions of wildlife or cause stress on wildlife to the extent that the health or viability of a species is threatened in the Estes Valley [note: emphasis for discussion purposes]. Assessment of significant impacts will be based on the following:
  - a. Activities in previously undisturbed areas involving any combination of humans, pets, and machines or equipment that disturb or harass an individual animal, group of animals or wildlife species;
  - b. Site development or activities that disrupt necessary lifecycle functions, resulting in stress to the extent that physiological damage is done to an individual animal, group of animals or wildlife species. Examples include, but are not limited to, introduction of non-native vegetation; excessive use of fertilizers and other chemicals; placement of structures in close proximity to nesting and feeding areas; and excessive exterior lighting;
  - c. Species reliance on specific, unique habitat features, such as riparian areas, that may be affected;
  - d. Mitigation efforts that directly address the potential adverse impacts of the proposed land use on wildlife species, including, but not limited to, controls on domestic animals and household pets; restrictions on types and intensity of lighting; clustering of development to avoid intrusion into or fragmentation of habitat; and creation of buffers around critical areas.
- 2. **Wildlife Habitat Impact.** Impacts on wildlife habitat, including but not limited to elimination, reduction, or fragmentation of wildlife habitat to the extent that the viability of an individual species is threatened in the Estes Valley and the diversity of wildlife species occurring in the Estes Valley is reduced. Assessment of significant impacts will be based on the following:

- a. The amount of vegetation/habitat removal or alteration within the development site;
  - b. The amount of habitat of similar type and quality within the development site that remains contiguous;
  - c. The existing and proposed amount of lot coverage;
  - d. The existence of contiguous habitat of similar type and quality on adjoining land; and
  - e. Mitigation efforts that directly address the potential adverse impacts of the proposed land use on wildlife species, including, but not limited to clustering of development to avoid intrusion into or fragmentation of habitat; creation of buffers around critical areas; limits on the amount of disturbance on a site; restrictions on vegetation removal; and enhancement or restoration of equivalent habitat on or adjacent to the site.
3. ***Impact on Wildlife Movement Patterns/Displacement and Adaptation of Wildlife Populations.*** **Impact on wildlife movement patterns/displacement and adaptation of wildlife populations**, including but not limited to disruption of necessary migration or movement patterns that keep wildlife from using their entire habitat to the extent that the health and viability of a species is threatened in the county; displacement of wildlife species into areas that cannot support or sustain the species over the long term to the extent that the health and viability of a species is threatened in the Estes Valley; and the inability of wildlife species living within or in close proximity to development to adapt and thrive **to the extent that the health or viability of the species is threatened in the Estes Valley**. Assessment of significant impacts will be based on the following:
- a. Preventing wildlife from using a habitat they would normally use, such as blocking migration patterns from summer to winter range;
  - b. Causing wildlife to find new routes that expose them to significantly increased predation, interaction with motor vehicles, intense human activity or more severe topography and climatic conditions;
  - c. The size of the affected habitat and availability of similarly sized and quality habitat within the surrounding area;
  - d. The human activity and development that would result in the inability of a single or multiple species to adapt to the new conditions;
  - e. Inability of the specie, or species, to adapt to significant alteration of their current habitats;
  - f. Inability of the specie, or species, to find a new habitat that is sufficient to sustain the species over the long term; and
  - g. Mitigation efforts that directly address the potential adverse impacts of the proposed land use on wildlife species, including, but not limited to clustering or location of development to avoid intrusion into migration or movement areas; creation of buffers around critical areas; limits on fencing that might interfere with migration and

movement patterns; and enhancement or restoration of equivalent habitat on or adjacent to the site.

4. **Habitat and Species Significance.** Uniqueness of habitat and species to the Estes Valley, including but not limited to elimination, reduction, or fragmentation of important wildlife habitat that is identified as unique to the Estes Valley in that it supports wildlife species that do not commonly occur outside the Estes Valley to the extent that the health or viability of a species is threatened in the Estes Valley and impacts on wildlife species that do not commonly occur outside the Estes Valley to the extent that the health or viability of a species is threatened in the Estes Valley. Assessment of significant adverse impacts will be based on the following:

- a. The extent that habitat similar to that affected by the submitted application exists in the Estes Valley
- b. Whether the species does not commonly occur outside the Estes Valley, as determined by listing by state or federal agencies as threatened or endangered or as determined by Decision-Making Body in conjunction with the Colorado Division of Wildlife;
- c. Whether the habitat does not commonly occur outside of the Estes Valley as determined by the Decision-Making Body in conjunction with the Colorado Division of Wildlife;
- d. The extent of the threat to the viability of the species;
- e. The extent of the reduction of the diversity of wildlife species in the Estes Valley; and
- f. Mitigation efforts that directly address the potential adverse impacts of the proposed land use on wildlife species, including, but not limited to clustering of development to avoid intrusion into or fragmentation of habitat; creation of buffers around critical areas; limits on the amount of disturbance on a site; and enhancement or restoration of equivalent habitat on the site or elsewhere in the Estes Valley.

5. **Cumulative Impacts.** Cumulative impacts, including but not limited to cumulative impacts beyond the boundaries of the proposed site such that the wildlife habitat in the county is eliminated, reduced, or fragmented to the point that the viability of individual species is threatened and the diversity of species occurring in the Larimer County is reduced. Assessment of significant adverse impacts will be based on the following:

- a. The area, including land outside the project site, in which effects of the proposed project will occur and the impacts of the proposed project that are expected to occur in that area; and
- b. The incremental impact on wildlife habitat and wildlife species of the proposed development added to the past and present impact of other activities and developments.

## H. Wildlife and Habitat Impact Assessment.

Any Wildlife and Habitat Impact Assessment required to be prepared pursuant to this Section shall include the following information at a minimum.

1. *Existing Conditions.* An analysis of existing site conditions. Including, but not limited to:
  - a. *Habitat.* A description of the location, type, size, quality, and other attributes of the habitat on the site, including the total acres of each species' habitat on the site.
  - b. *Wildlife.* A description of the wildlife species that inhabit or use the site, including a description:
    - (1) The species spatial distribution and abundance;
    - (2) Use patterns of wildlife habitat within the site, including, but not limited to movement corridors and feeding areas; and
    - (3) Critical connections or relationships with adjoining habitats outside the site.
2. *Assessment of Potential Development Impacts.* An analysis of the potential impacts of the project on habitat and wildlife using the review criteria in Section 7.8.H.
3. *Mitigation of Development Impacts.* A list of proposed mitigation measures for each wildlife habitat, wildlife species, and/or wildlife movement patterns/displacement of wildlife populations and an analysis of the probability of success of such measures in pre-construction, construction, and post-construction phases.
4. *Implementation, Monitoring, and Enforcement Plan.* A plan for implementation, maintenance and monitoring, and enforcement of mitigation measures, including cost estimates for the implementation of the plan. Describe the role of a homeowners association, if applicable.
5. *Enhancement or Restoration.* A plan for any relevant enhancement or restoration measures.
6. *Additional Information.* Any other information deemed necessary by the Review or Decision-Making Bodies to adequately assess the impact of the proposal.

## § 13.3 DEFINITIONS OF WORDS, TERMS AND PHRASES

*Habitat, Aquatic* shall mean a water body in which communities of organisms that are dependent on each other and on their environment live. Examples include lakes, ponds, rivers, streams, marshes, springs, seeps, and bogs.

*Qualified Biologist* shall mean a biologist with at least two (2) years of demonstrated experience and expertise in identification of natural habitats and vegetative communities in the Colorado Rocky Mountains. The Community Development Director at his sole discretion shall have discretion to approve biologist with at least two (2) years experience in habitats comparable to the Colorado Rocky Mountains.

*Vegetation, Riparian* shall mean terrestrial vegetation that is contiguous to and affected by surface and subsurface hydrologic features of perennial or intermittent lotic and lentic water bodies (for example, rivers, streams, lakes, or drainage ways). Riparian areas have one or both of the following characteristics: 1) distinctly different vegetative species than adjacent areas, and 2) species similar to adjacent areas but exhibiting more vigorous or robust growth forms.

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