

## Organization:

1. Text to be replaced delineated with strikethrough (~~abc de fghi jk lmn op qrstuv w xyz~~).
2. New text delineated with underline (abc de fghi jk lmn op qrstuv w xyz).
3. Revisions have been organized sequentially by chapter and section.

## CHAPTER 7. GENERAL DEVELOPMENT STANDARDS

### § 7.8 WILDLIFE HABITAT PROTECTION

- A. **Purpose.** To maintain ~~and enhance~~ the diversity of wildlife species and habitat that occur in the Estes Valley, and to plan and design land uses to ~~be harmonious with~~ minimize adverse development impacts to wildlife habitat and the species that depend on this habitat. ~~for the economic, recreational and environmental benefit of the residents of and visitors to the Estes Valley.~~
- B. **Applicability.** This Section shall apply to all applications for review of development plans, subdivision plats, planned unit developments, special review uses and rezonings. ~~This Section shall not apply to development on lots of record that were approved for single-family residential use prior to the effective date of this Code. (Ord. 18-02 #1)~~
- C. **Exemptions.** The procedures and regulations contained in this Section shall not apply to:
1. Development in the CD Commercial Downtown zoning district.
  2. Development of a single-family residence on lots of record that were created for single-family residential use prior to the effective date of this Code. (Ord. 18-02 #1)
  1. ~~Agricultural activities such as soil preparation, irrigation, planting, harvesting, grazing and farm ponds;~~
  2. ~~Maintenance and repair of existing public roads, utilities and other public facilities within an existing right-of-way or easement;~~
  3. ~~Maintenance and repair of flood control structures and activities in response to a flood emergency;~~
  4. ~~Maintenance and repair of existing residential or nonresidential structures; or~~
  5. ~~Wildlife habitat enhancement and restoration activities undertaken pursuant to a wildlife conservation plan approved under this Section.~~
- D. **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.
- E. **Wildlife Habitat Data Base.** The following sources shall be used to identify ~~important~~ wildlife habitat areas for purposes of review under this Section:
1. ~~Wildlife Habitat map (dated December 1996),~~ Estes Valley Habitat Assessment (2008), as set forth in Appendix A and in the Estes Valley Comprehensive Plan, as amended from time to time. specifically including, but not limited to, the Priorities for an Ecological Network map, the Composite Analysis Map, and the related Vegetation

Communities Map (subject to site-specific verification as set forth below in Section G, Wildlife Conservation Plans and Related Review Procedures).

- ~~2. Colorado Division of Wildlife habitat maps for Larimer County, as amended from time to time.~~
- ~~3. Colorado Natural Heritage Program Maps dated December 1996, or as amended from time to time.~~
- 42. Other information and maps as ~~Staff or~~ the Estes Valley Planning Commission may, at its sole discretion, identify from time to time ~~identify~~ in cooperation with qualified public agencies such as the Colorado Division of Wildlife, the National Park Service, or the Colorado Natural Heritage Program. ~~such as wildlife maps produced specifically for the Estes Valley.~~ Said maps shall be applicable only ~~following~~ upon adoption of as an amendment to this Code.
- 53. Site-specific investigations, such as wildlife conservation plans, performed by qualified professionals with demonstrated experience and expertise in the field of wildlife biology and in the identification of natural habitats and vegetative communities in the Rocky Mountains. ~~Wildlife habitat information required by this Section is intended for general planning purposes. Obvious errors or omissions may be corrected by the Staff after consultation with the Division of Wildlife.~~

~~F. Review Procedures.~~ (former Section F, *Review Procedures*, has been incorporated into Section F, *Review Standards*, and Section G, *Wildlife Conservation Plans and Related Review Procedures*, as shown below.)

~~G.E. Review Standards.~~ The following review standards shall apply to all development applications as specified, unless Staff determines that a specific standard may be waived pursuant to subsection F.2 below. ~~F.5. above. It is the intent of this Section that these standards be applied in a flexible fashion to protect wildlife habitat and wildlife species in a cost-effective fashion.~~

1. *Review Standards.*

- a. Buffers. All new development and associated limits of disturbance shall provide a required minimum setback from any identified ~~important wildlife habitat area, as specified by the Division of Wildlife~~ critical habitat, as set forth in Table 7-1a below. ~~to the maximum extent feasible.~~

<u>Critical Habitat</u>	<u>Required Minimum Setback</u>
<u>Aquatic Habitat (springs, seeps, streams, rivers, open water)</u>	<u>50 feet</u>
<u>Riparian Vegetation, characterized by hydrophilic plants</u>	<u>50 feet</u>
<u>Wetlands</u>	<u>50 feet</u>
<u>Bighorn Sheep Critical Winter Habitat</u>	<u>As recommended in a site-specific wildlife conservation plan</u>

Table 7-1a

- b. Non-Native Vegetation. There shall be no introduction of plant species that are not on the approved landscaping list in Appendix C on any site containing any important or critical wildlife habitat area. To the maximum extent feasible, existing herbaceous and woody cover on the site shall be maintained and removal of native vegetation shall be minimized.
  - c. Fencing.
    - (1) No fencing on a site containing important or critical wildlife habitat shall exceed forty (40) inches in height, except to the extent that such fencing is approved by Staff to confine permitted domestic animals or to protect permitted ornamental landscaping or gardens.
    - (2) Fences higher than forty (40) inches may be allowed if adequate openings are provided for the passage of deer, elk or other identified wildlife. These openings shall be at least six (6) feet wide and spaced a maximum of fifty (50) feet apart along continuous fence lines exceeding this length.
    - (3) No fencing using barbed wire shall be allowed.
    - (4) The type of fencing (materials, opacity, etc.) shall be determined by Staff or the Decision-Making Body, ~~as appropriate for the wildlife species on the site~~ This determination may be based on advice from the Colorado Division of Wildlife.
  - d. Exterior Lighting. Use of exterior lighting shall be minimized in areas of important or critical wildlife habitat, and lighting shall be designed so that it does not spill over or onto such important or critical habitat. See also §7.9 below.
  - e. Refuse Disposal. Developments on sites containing important or critical wildlife habitat, such as black bear, must use approved animal-proof refuse disposal containers. With Division of Wildlife approval, refuse disposal containers and enclosures may be electrified. (Ord. 8-05 #1)
  - f. Domestic Animals. Development applications for property that includes important or critical wildlife habitat must include a plan with specified enforcement measures for the control of domestic animals and household pets. The plan must include provisions to prevent the harassment, disturbance and killing of wildlife and to prevent the destruction of important or critical wildlife habitat.
52. Waivers. Staff may waive or approve minor modifications of any development standard or review criteria contained in this Section upon a finding that ~~such waiver or modification~~:
- a. Such waiver or modification is consistent with the stated purposes of this Section;
  - ~~b. Will have no significant adverse impacts on wildlife species or habitat;~~
  - ~~c. Any potential adverse impacts will be mitigated or offset to the maximum extent practicable; and~~
  - ~~eb.~~ Application of the standard or criteria is not warranted based on the location of the development, or the absence of a particular species or habitat on the site, ~~or other relevant factors.~~

**HG. Wildlife Conservation Plans and Related Review Procedures.** The following procedures shall apply to all applications for development that contain areas identified as Critical Habitat on the Priorities for an Ecological Network exhibit found in the Estes Valley Habitat Assessment in Appendix A and in the Estes Valley Comprehensive Plan:

1. *Application.* The Applicant shall submit a development plan, subdivision plat or sketch plan, as applicable, depicting the general location of the property, location of structures on the site, prominent natural areas such as streams and wetlands, and other features that Staff may require for review pursuant to this Section.
2. *Preliminary Review.* Staff ~~shall~~ may refer the submitted plan or plat to the Colorado Division of Wildlife for review. Applicants are also advised to meet with the Division of Wildlife and other agencies as determined appropriate by Staff to ensure compliance with the requirements of this Section.
3. *DOW Review.* For applications referred to it, the Division of Wildlife ~~will determine whether the proposal will result in significant~~ may provide general comment regarding potential adverse impact ~~on wildlife or to~~ wildlife habitat and recommendations for site-specific mitigation of those impacts. ~~only if the development adversely impacts the following:~~
  - a. ~~An endangered or threatened species,~~
  - b. ~~A calving, lambing or fawning area,~~
  - c. ~~Big Horn sheep or Big Horn sheep habitat,~~
  - d. ~~Raptor nest site, or~~
  - e. ~~Riparian areas and wetlands.~~
4. *Planning Commission Review Determination.* Based on site-specific confirmation of the presence of critical habitat as defined in the Estes Valley Habitat Assessment, ~~recommendations from the Division of Wildlife, the Staff will determine whether the Applicant must submit~~ a wildlife habitat conservation plan ~~prior to approval of any development application. The conservation plan should~~ shall be submitted to the ~~Division of Wildlife~~ Estes Valley Planning Commission for review, ~~and recommendation~~ The Planning Commission shall review the required site-specific wildlife habitat conservation plan and shall issue a finding as to whether or not the conservation plan adequately addresses the adverse impacts. Conservation plans found to be adequate shall become binding upon the applicant as a condition of approval. ~~identified by the Division of Wildlife pursuant to subsection F.3 above. (See §7.8.H below.)~~
15. *Plan Preparation.* A wildlife conservation plan required by this Section shall be prepared for the Applicant, at the Applicant's expense, under the responsible direction of a qualified ~~person~~ professional who ~~has demonstrated expertise in the field and~~ is acceptable to the Staff as having demonstrated experience and expertise in the field of wildlife biology and in the identification of natural habitats and vegetative communities in the Rocky Mountains.
26. *Plan Content.* Any wildlife conservation plan required to be prepared pursuant to this Section shall include the following information at a minimum. Specific requirements may be waived by Staff due to the location of the development, the previous use of the site, the size and potential impact of the development, the absence of particular species on a site, the prohibition of a reasonable use of the site and other relevant factors.

- a. A ~~description~~ site-specific delineation of the ~~ownership~~, location, type, size, quality, and other attributes of the critical wildlife habitat on the site.
- b. A description of the populations of wildlife species that inhabit or use the site, including a qualitative description of their spatial distribution and abundance.
- c. An analysis of the potential adverse impacts of the proposed development on wildlife and wildlife habitat on or off site.
- d. A list of proposed mitigation measures and an analysis of the probability of success of such measures, including, but not limited to, delineation of a site-specific limits of disturbance.
- e. A plan for implementation, maintenance and monitoring of mitigation measures, including cost estimates for the implementation of the plan.
- f. A plan for any relevant enhancement or restoration measures.
- ~~g. A demonstration of fiscal, administrative and technical competence of the Applicant or other relevant entity to successfully execute the plan.~~

(Ord. 18-02 #1, 12/10/02; Ord. 8-05 #1, 6/14/05)