



Amendments to the Estes Valley Development Code, Section 7.8 *Habitat and Wildlife Protection*

Estes Park Community Development Department

Town Hall, 170 MacGregor Avenue

PO Box 1200

Estes Park, CO 80517

Phone: 970-577-3721

Fax: 970-586-0249

www.estesnet.com

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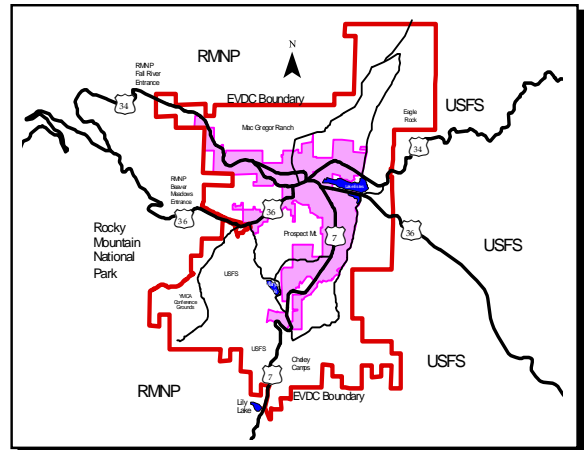
TITLE: Amendments to the Estes Valley Development Code

REQUEST: To make a number of revisions to Section 7.8 "Wildlife Habitat Protection"

LOCATION: Estes Park (incorporated and unincorporated)

APPLICANT: Estes Valley Planning Commission

STAFF CONTACT: Bob Joseph and Alison Chilcott



APPLICABLE LAND USE CODE: Estes Valley Development Code

Memo Format: This memo begins with a discussion of the background, process, and a summary of the proposed changes; the memo concludes with Staff and Estes Valley Planning Commission recommendations, Town Board action, and a suggested motion. Following the suggested motion is the proposed code language, minutes from public meeting minutes, and submitted written comments.

DISCUSSION:

Background: The Estes Valley Development Code was jointly adopted by the Town of Estes Park and Larimer County in December 1999. This development code includes Section 7.8 "Wildlife Habitat Protection."

The current regulations came into question by members of the public in 2008-09 during the review of a multi-family residential development proposal within the Town of Estes Park. Review of that application revealed flaws in the current code regulations, primarily:

- 1) Requires the Colorado Division of Wildlife make a specific finding “the proposal will result in significant adverse impact” before a wildlife conservation plan is required;
- 2) Included elk calving areas as a potential “trigger” for significant impact; and
- 3) Did not require wildlife conservation plans be implemented.

Process: Staff made an initial presentation to the Estes Valley Planning Commission in October 2008, with six additional presentations since then. The proposed code language has evolved over the course of the Planning Commission public review process. For example, the original proposal included increased stream and river corridor setbacks and a wildlife habitat map.

Written comments that have been submitted are attached, and public comment taken during the public hearing are included in the attached minutes.

Following seven public hearings, the Planning Commission has recommended approval of the attached code language, and the Town Board has voted to approve it.

The proposal is now before the Board of County Commissioners for final approval.

Proposed Changes: The proposed changes, attached in full, are summarized as follows:

1. Removed the CDOW as a determining agency for wildlife conservation plans, but retained as a reviewing agency.
2. Removes elk calving as a potential wildlife conservation plan “trigger”
3. Specifies when a conservation plan is required.
4. Requires the Planning Commission find a wildlife conservation plan complies with the requirements of Section 7.8, requires that conservation plans become binding, and requires that applications that do not comply with Section 7.8 be denied.

RECOMMENDATIONS AND ACTION:

Staff Recommendation: Staff recommends approval of the attached revisions to Section 7.8 “Wildlife Habitat Protection” of the Estes Valley Development Code.

Estes Valley Planning Commission Recommendation: On Tuesday, June 16, 2009 the Estes Valley Planning Commission unanimously voted (7-0) to recommend approval of the attached revisions to Section 7.8 “Wildlife Habitat Protection” of the Estes Valley Development Code.

Estes Park Town Board Action: On Tuesday August 25, 2009, the Town Board held an initial public hearing, and voted to continue the proposed changes until the September meeting (standard protocol for changes to the development code is to hold two public hearings to allow those viewing at home an opportunity to attend the next meeting and voice an opinion).

On Tuesday September 22, 2009, the Town Board of the Town of Estes Park unanimously voted (5-0, one absent) to approve the attached revisions to Section 7.8 “Wildlife Habitat Protection” of the Estes Valley Development Code.

SUGGESTED MOTION: I move approval of the revisions to Section 7.8 “Wildlife Habitat Protection” of the Estes Valley Development Code, as outlined in the Staff memo.

Proposed Amendments to the Estes Valley Development Code below. Text to be removed is ~~crossed-out~~; text to be added is underlined.

§ 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 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 that were approved for single-family residential use prior to the effective date of this Code.
- C. **Exemptions.** The procedures and regulations contained in this Section shall not apply to:
 - 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 a~~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), as set forth in the Estes Valley Comprehensive Plan, as amended from time to time
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.
4. Other information and maps as Staff or the Estes Valley Planning Commission may from time to time identify in cooperation with the Colorado Division of Wildlife, such as wildlife maps produced specifically for the Estes Valley. Said maps shall be applicable only following adoption of an amendment to this Code.
5. 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.** The following procedures shall apply to all applications for development:

- ~~1.~~ 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.

A Wildlife Conservation Plan shall be submitted for sites containing

- a. An endangered or threatened species.
- b. Big Horn sheep or Big Horn sheep habitat, or
- c. Riparian areas adjacent to rivers and streams, and wetlands identified on the maps set forth in Appendix A of this Code.

- ~~2.~~ 2. *Preliminary Review.* Staff shall 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. 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.~~

~~3. *DOW Review.* For applications referred to it, the Division of Wildlife will determine whether the proposal will result in significant adverse impact on wildlife or wildlife habitat 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, or~~
- ~~d. Raptor nest site, or~~
- ~~e. Riparian areas and wetlands.~~

~~4. 3. Review Determination. Based on recommendations from the Division of Wildlife, the Staff will determine whether the Applicant must submit a wildlife conservation plan prior to approval of any development application. The conservation plan should be submitted to the Division of Wildlife for review and recommendation as to whether the plan adequately addresses the adverse impacts identified by the Division of Wildlife pursuant to subsection F.3 above. (See §7.8.H below.)~~

- ~~a. The Review and Decision-Making Bodies shall issue a finding as to whether the application, including the wildlife conservation plan, complies with the requirements of this Section.~~
- ~~b. Wildlife studies and mitigation plans found to be adequate by the Decision-Making Body shall become binding upon the Applicant.~~
- ~~c. Applications that do not comply with Section 7.8 of this code shall be denied.~~

~~5. 4. 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. 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~~
- ~~d. practicable; and~~
- ~~e. Application of the standard or criteria is not warranted based on the location of the development, the absence of a particular species on the site or other relevant factors.~~

G. 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.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 development subject to a wildlife conservation plan shall provide a setback from any identified important wildlife habitat area, ~~as specified by the Division of Wildlife, to the maximum extent feasible~~ in accordance with any recommendations in the wildlife conservation plan.
- 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 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 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 ~~based on advice from the Colorado Division of Wildlife.~~
- d. Exterior Lighting. Use of exterior lighting shall be minimized in areas of important wildlife habitat, and lighting shall be designed so that it does not spill over or onto such critical habitat. See also §7.9 below.
- e. Refuse Disposal. Developments on sites containing important 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.
- f. Domestic Animals. Development applications for property that includes important 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 wildlife habitat.

H. Wildlife Conservation Plans.

1. *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 who has demonstrated expertise in the field ~~and is acceptable to the Staff.~~

2. *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 of the ownership, location, type, size and other attributes of the 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.
 - e. A plan for implementation, maintenance and monitoring of mitigation measures.
 - 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.