

AQUATIC HABITAT SETBACKS: PREPARED 5-14-09 BY TOWN PLANNING STAFF

Habitat			Current Setbacks (In Feet)	Setbacks Presented to Planning Commission in April		Setbacks Requested in April
Streams						
Buildings and Accessory Structures	All Zoning Districts Except CD		30	In All Zoning Districts Except CD and I-1	50	Same as Current Stream Setbacks
				I-1 Zoning District	30 (Same as Current Stream Setbacks)	
	CD Zoning District	Principal Building ... <i>without</i> public access facing the stream	20	Same as Current Stream Setbacks		
		Principal Building ... <i>with</i> public access facing the stream	10 (With Decision-Making Body Approval)	Same as Current Stream Setbacks		
Parking Lot Setbacks	All Zoning Districts Except CD		50	Same as Current Stream Setbacks		
	CD Zoning District		12	Same as Current Stream Setbacks		
Rivers						
Buildings and Accessory Structures	All Zoning Districts Except CD	General Rule	50	In All Zoning Districts Except CD and I-1	50	Same as Current River Setbacks
				I-1 Zoning District	30 (No Rivers are Adjacent to I-1 property)	
		Exception for Lots Developed Prior to Code Adoption (2-1-2000)	30	Exception for Existing Buildings and Accessory Structures that are Conforming to the River Setback as of the Date of Adoption of this Supplement (N/A for horizontal expansions)	30	
	CD Zoning District	Principal Building ... <i>without</i> public access facing the stream	20	Same as Current River Setbacks		
		Principal Building ... <i>with</i> public access facing the stream	10 (With Decision-Making Body Approval)	Same as Current River Setbacks		
Parking Lot Setbacks	All Zoning Districts Except CD		50	Same as Current River Setbacks		
	CD Zoning District		12	Same as Current River Setbacks		
Wetlands						
Buildings and Accessory Structures	All Zoning Districts	All Development Except Single-Family Described Below	50	Same as Current Wetland Setbacks		Same as Current Wetlands Setbacks
Parking Lots		Development on Lots Approved for Single-Family Development Prior to Code Adoption (2-1-2000)	0 (Exempt)	Same as Current Wetland Setbacks		
All Other Aquatic Habitat, e.g., Lakes and Ponds						
Buildings and Accessory Structures			Not Addressed	Same Setbacks as Above River Setbacks		?
Parking Lots						



**Amendments to the Estes Valley
Development Code, Portion of
Block Twelve – *Habitat and Wildlife***

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PLANNING COMMISSION MEETING DATE: May 19, 2009

TITLE: Amendments to the Estes Valley Development Code, Portion of Block Twelve

REQUEST: To make a number of revisions to the habitat and wildlife protection regulations.

LOCATION: Estes Valley, inclusive of the Town of Estes Park.

APPLICANT: Estes Valley Planning Commission

STAFF CONTACT: Bob Joseph and Alison Chilcott

APPLICABLE LAND USE CODE: Estes Valley Development Code

PROJECT DESCRIPTION/BACKGROUND:

This is a complete packet of proposed code language addressing wildlife and habitat protection. Staff is continuing to refine the maps to accompany this code language. Information highlighted in yellow identifies revisions made after the April Planning Commission meeting.

§ 1.9.D SETBACKS – BUILDING AND STRUCTURE SETBACKS.

2. *Development Setbacks from ~~River and Stream Corridors~~ Aquatic Habitat, and Wetlands.*

- a. ~~Stream and River Corridors~~ Aquatic Habitat. Development setbacks shall be measured as the distance between the delineated ~~stream or river corridor~~ aquatic habitat edge, as set forth in §7.6.D.2, and the furthestmost projection of a building or structure along a line at right angles to the setback line. Setbacks shall be unobstructed from the ground to the sky except as otherwise specifically allowed in §7.6.D of this Code. See Figure 1-2.
- b. Wetlands. Development setbacks shall be measured as the distance between the delineated wetland edge, as set forth in §7.6.D.3, and the furthestmost projection of a building or structure along a line at right angles to the setback line. Setbacks shall be unobstructed from the ground to the sky except as otherwise specifically allowed in §7.6.D of this Code. See Figure 1-2.

§ 4.3.C.5. TABLE 4-2: BASE DENSITY AND DIMENSIONAL STANDARDS RESIDENTIAL ZONING DISTRICTS

Notes to Table 4-2:

[2] See Chapter 7, §7.6, for required setbacks from ~~stream/river corridors~~ aquatic habitat and wetlands.

§ 4.4.C.4 TABLE 4-5: BASE DENSITY AND DIMENSIONAL STANDARDS NONRESIDENTIAL ZONING DISTRICTS

Note to Table 4-5:

[4] See Chapter 7, §7.6 for required setbacks from ~~stream/river corridors~~ aquatic habitat and wetlands.

§ 7.4 PUBLIC TRAILS AND PRIVATE OPEN AREAS

C. Locational Criteria.

1. To the maximum extent feasible, where significant natural and scenic resource assets exist on a property, the Applicant shall give priority to their preservation through trail dedication or as private open areas. In reviewing the location of trails and private open areas, Staff and the Decision-Making Body shall use all applicable plans, maps and reports to determine whether significant resources exist on a proposed site that should be protected, with priority being given to the following areas (which are not listed in any particular priority order):
 - a. Wetlands.
 - b. Floodplains.
 - c. ~~Lakes, River, and Stream/Riparian Corridors~~ Aquatic and Riparian Habitat.
 - d. ~~Wildlife Migration Corridors.~~ Critical Wildlife Habitat.
 - e. Steep slope areas.
 - f. Ridgelines.
 - g. Geologic or Wildfire Hazard areas.

§ 7.5 LANDSCAPING AND BUFFERS

- B. **Applicability.** ~~These landscape and buffer standards shall apply to residential subdivisions created after the adoption of this Code, and to all development where development plan review is required by §3.8 of this Code.~~
1. These landscape and buffer standards shall apply to all applications for review of development plans, subdivision plats, planned unit developments, special review uses, and rezoning.
 2. Section 7.5.H Fences and Walls shall apply to all new fence and wall construction.
- H. **Fences and Walls.** Fences and walls are permitted as elements of a landscape plan and, in some locations, may be used to conceal storage or other unsightly or conflicting land uses. All fences or walls shall meet the following requirements:
1. *Materials.*
 - e. Barbed-wire and similar fence materials, and sharp pointed fences, may only be used in conjunction with a permitted agricultural use or in conjunction with the permitted keeping of horses or livestock on lots of five acres or more.
 4. *Fences and Walls* ~~In Critical Wildlife Habitat. See §7.8.G.1.c below for standards.~~
 - a. In critical wildlife habitat, no fencing shall exceed forty (40) inches in height, except service area fencing, fencing approved by Staff to confine permitted domestic animals, or fencing to protect landscaping in accordance with §7.5.I.2.
 - b. In all other areas, 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 forty (40) feet apart along continuous fence lines and shall be unobstructed from the ground to the sky.

§ 7.6 WETLANDS AND ~~STREAM CORRIDOR~~ AQUATIC HABITAT PROTECTION

A. **Purpose and Intent.** The following requirements and standards are intended to promote, preserve and enhance the important hydrological, biological, ecological, aesthetic, recreational and educational functions that aquatic habitat, including stream and river corridors, associated riparian areas, and wetlands habitat provide.

D. **Boundary Delineation.**

1. *Qualified Professional.* ~~Stream/river corridor~~ aquatic habitat and wetland area delineation shall be performed by a qualified professional that has demonstrated experience necessary to conduct site analysis. Delineations shall be subject to Staff's approval.
2. ~~Stream and River Corridor Boundaries~~ Aquatic Habitat Boundaries. ~~Stream and river corridors shall be delineated at the annual high-water mark, or if not readily discernible, the defined bank of the stream or river, as those terms are defined in Chapter 13 of this Code. Regulated stream and river corridors shall include only those streams and rivers as identified on the Stream and River Corridor Resource Map found in Appendix A. The rivers delineated on the Stream and River Corridor Resource Map are the Big Thompson and Fall River. Streams delineated on the Map include various named and unnamed streams and minor drainages, some of which are intermittent.~~
 - a. Mapped Aquatic Habitat. Boundary delineation of aquatic habitat shall be established by reference to the Aquatic Habitat Map found in Appendix A.
 - b. Unmapped Aquatic Habitat. The review of a development application may discover potential aquatic habitat that has not been mapped or for which the boundaries have not been clearly established. In such instances, the Applicant shall retain a qualified professional to delineate the aquatic habitat boundaries. The delineated edge of the aquatic habitat shall be the high water mark as defined in Chapter 13 of this Code.
 - c. Revisions to Adopted Map.
 - (1) In the event a property owner questions the presence of aquatic habitat on their property, the property owner may submit evidence with respect thereto from a qualified biologist/ecologist. This evidence shall be reviewed, together with all other applicable evidence, by the Estes Valley Planning Commission, and then by Board of Trustees or Board of Country Commissioners. The Board of Trustees or the Board of County Commissioners is the entity with final approval of Aquatic 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 aquatic habitat the Community Development Director shall update the Aquatic Habitat Map and remove the aquatic designation.
 - (2) Property may be re-designated as aquatic habitat if conditions change resulting in the renewed presence of aquatic habitat on the property.
 - (3) The Community Development Director and Estes Valley Planning Commission shall also have the authority to initiate proceedings to add or remove an aquatic

habitat designation from the Aquatic Habitat Map. The Board of Trustees or the Board of County Commissioners is the entity with final approval of Aquatic Habitat Map revisions, depending on the location of the property.

3. *Wetland Boundaries.*

- a. Mapped Wetlands. Boundary delineation of wetlands shall be established by reference to one (1) of the following wetland maps and identification documents, which are available for reference in the Town of Estes Park Community Development Department and which are hereby adopted and incorporated by reference into this Code:
 - (1) National Wetlands Inventory prepared by the U. S. Department of the Interior, Fish and Wildlife Service; and
 - (2) Colorado Natural Heritage Program maps.
- b. Unmapped Wetlands. The review of a development ~~proposal~~ application may discover a potential wetland that has not been mapped or for which the boundaries have not been clearly established. In such instances, the Applicant shall retain a qualified wetland expert to delineate the boundaries of the wetland according to accepted professional standards.

E. **Buffer/Setback Areas.**

1. ~~Stream or River Corridors~~ Aquatic Habitat.
 - a. Building/Structure Setbacks.

- (1) ~~Stream Corridors (except in the CD zoning district). All buildings and accessory structures shall be set back at least thirty (30) feet horizontally (plan view) from the annual high water mark of stream corridors, or if not readily discernible, from the defined bank of the stream. Where defined banks are not readily discernible, the setback shall be measured from the thread of the stream. See Figure 7-10.~~

Aquatic Habitat (except in the CD and I-1 district).

- a. General Rule. All buildings and accessory structures shall be set back at least fifty (50) feet horizontally (plan view) from the delineated edge of aquatic habitat, i.e., from the high water mark as defined in Chapter 13 of this Code.
- b. Exception for Buildings and Accessory Structures Constructed Prior to DATE (fill in the date these code revisions are adopted).

[NOTE: THE LANGUAGE BELOW IS INCLUDED BELOW FOR GENERAL DISCUSSION PURPOSES]

Existing buildings and structures that are conforming as to the prior stream or river setback as of the date of adoption of Supplement #TBD of this Code, and that are setback less than fifty (50) feet from the edge of the

aquatic habitat, shall be exempt from the fifty foot (50) setback requirements and shall be subject to a thirty foot setback. This exemption shall not apply to the horizontal (plan view) expansion of existing buildings and structures. Horizontal expansion shall be subject to the fifty (50) foot setback.

- (2) ~~River Corridors (except in the CD district).~~
- a. ~~General Rule. All buildings and accessory structures shall be set back at least fifty (50) feet horizontally (plan view) from the annual high-water mark of river corridors or, if not readily discernible, from the defined bank of the river.~~
- b. ~~Exception for Lots Developed Prior to the Adoption of this Code. All buildings and accessory structures shall be set back at least thirty (30) feet horizontally (plan view) from the annual high-water mark of river corridors or, if not readily discernible, from the defined bank of the river. See Figure 7-10.~~

Aquatic Habitat in the I-1 Zoning District. In the I-1 Zoning District, all buildings and accessory structures shall be set back at least thirty (30) feet horizontally (plan view) from the delineated edge of aquatic habitat, i.e., from the high water mark as defined in Chapter 13 of this Code. [Note: This retains the current setbacks for I-1 property along Fish Creek.]

- (3) ~~Stream and River Corridors~~ Aquatic Habitat in the CD Zoning District. In the CD district, all buildings and accessory structures shall be set back at least twenty (20) feet horizontally (plan view) from ~~the annual high-water mark of stream or river corridors or, if not readily discernible, from the defined bank of the stream or river. Where defined banks are not readily discernible, the setback shall be measured from the thread of the stream~~ the delineated edge of the aquatic habitat. Where a principal building in the CD district provides public access, including a primary entrance, on the side of the building facing ~~a stream or river corridor~~ aquatic habitat, the setback may be reduced to ten (10) feet with the approval of the Decision-Making Body.
- b. Parking Lot Setbacks. Except in the CD zoning district, parking lots shall be set back at least fifty (50) feet horizontally (plan view) from ~~the annual high-water mark of stream or river corridors, or if not readily discernible, from the defined bank of the stream or river~~ from the delineated edge of the aquatic habitat. In the CD district, parking lots shall be set back at least twelve (12) feet from the delineated edge of the ~~stream or river corridor~~ aquatic habitat.

2. *Wetlands.*
 - a. To the maximum extent feasible, wetlands shall not be included as part of a platted development lot.
 - b. All buildings, accessory structures and parking lots shall be set back at least fifty (50) feet horizontally (plan view) from the delineated edge of a wetland. See Figure 7-10 above. Development on lots that were approved for single-family residential use prior to the adoption of this Code shall be exempt.
3. *Private Open Areas and Landscaping Credit.* All ~~stream-corridor~~ aquatic habitat and wetland setback areas shall be credited toward any relevant private open areas requirements or landscaping and buffer requirements.

F. Development Standards.

1. *Prohibited Activities.* No person shall engage in any activity that will disturb, remove, fill, drain, dredge, clear, destroy or alter any area, including vegetation, within ~~stream-or-river corridors~~ aquatic habitat, wetlands and their associated buffer/setback areas, except as may be expressly allowed in this Section or Code.

§ 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 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. *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 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 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;~~
- ~~d. Raptor nest site, or~~
- ~~e. Riparian areas and wetlands.~~

~~4. *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.)~~

~~5. *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~~
- ~~f. 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 shall provide a setback from any identified important wildlife habitat area, as specified by the Division of Wildlife, to the maximum extent feasible.~~
- ~~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.~~

§ 7.8 WILDLIFE HABITAT PROTECTION

- A. **Purpose.** The purpose of this section is to plan and design land uses so that when property is developed:
1. Sufficient wildlife habitat is maintained to support viable native wildlife populations in the Estes Valley.
 2. The health and diversity of native wildlife habitat and native wildlife populations that occur in the Estes Valley is protected.
 3. Wildlife habitat and wildlife are protected from adverse impacts of development.
- 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 wildlife habitat.
- 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/ecologist. The qualified biologist/ecologist shall sign and date these submitted maps and reports. The Community Development Department shall maintain a list of biologists/ecologists who have established their qualifications to prepare reports under this section. The qualifications of any unlisted biologist/ecologist may be submitted for acceptance and inclusion on this list at anytime prior to preparation of the reports required under this section.
- E. **Wildlife and Habitat Database.**
1. *Adopted Map.* The adopted Critical Wildlife 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.
 2. *Unmapped Habitat.* Review of an application may reveal potential critical habitat that is not reflected on the Critical Wildlife 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.*
 - a. 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/ecologist. This evidence shall be reviewed, together with all other applicable evidence, by the Estes Valley Planning Commission, and then by the 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.
 - b. Property may be re-designated as critical habitat if conditions change resulting in the renewed presence of critical habitat on the property.

- c. The Community Development Director and Estes Valley Planning Commission shall also have the authority to initiate proceedings to add or remove a critical habitat designation from the Critical Habitat Map. 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.

F. Review Procedures for Sites Containing Critical Habitat.

Wildlife and Habitat Impact Assessment Submittal. A Wildlife and Habitat Impact Assessment shall be submitted for sites containing critical habitat. However, if a site is identified as urbanized on the Urbanized Area Map set forth in Appendix A, a Wildlife and Habitat Impact Assessment shall only be required if the site contains one or more of the following types of critical habitat: aquatic habitat; wetlands, or riparian vegetation

The study shall be paid for by the applicant.

1. Wildlife Habitat and Impact Assessment Waiver. The Community Development Director, has the discretion to waive submittal of the Wildlife and Habitat Impact Assessment in one or more of the following circumstances:
 - a. Upon review of a signed and dated document from a qualified biologist/ecologist stating that there is no critical habitat present on the property;
 - b. For applications that do not impact wildlife habitat and wildlife species. For example a special review application to permit a new use in an existing structure with no additional construction may not impact wildlife or wildlife habitat.
 - c. For rezoning applications that reduce development potential and are not accompanied by a development plan submittal; or
 - d. For single-family residential subdivision applications in mapped elk severe winter range or mule deer severe winter range habitat that are designed in accordance with the Section 11.3 Open Space Development, without requesting a density bonus for clustering.

The applicant shall have the option to request a determination about a waiver prior to submittal of a development application. Any review by the Board of Trustees or Board of County Commissioners shall be subsequent to review and recommendation by the Planning Commission.

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.
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 issue a finding as to whether the application, including the Wildlife and Habitat Impact Assessment, complies with the requirements of this Section.

- b. 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.

G. Wildlife Habitat Protection Standards for Sites Containing Critical Habitat.

- 1. all applications subject to review under this section shall be planned and designed, to the maximum extent feasible, to be:
 - a. Be compatible with and to protect natural habitats and features, including the plants and animals that inhabit them, and
 - b. To integrate the natural habitat and features, including the plants and animals, within the developed landscape.

Through means including, but not limited to:

- a. Directing development away from critical habitat;
 - b. Minimizing impacts and disturbance through the use of buffer zones; and/or
 - c. Enhancing existing conditions.
- 2. All applications shall be planned and designed to the maximum extent feasible to ensure that significant adverse impacts, as defined in 7.8.H. below, are avoided or mitigated.

H. Significant Adverse Impacts Defined.

- 1. Significant Adverse Impacts to Wildlife. Significant adverse impacts to wildlife shall mean impacts that threaten the health or viability of a native wildlife population in the Estes Valley.
- 2. Significant Adverse Impacts to Wildlife Habitat. Significant adverse impacts to wildlife habitat shall mean impacts that threaten the health or viability of native wildlife habitat or wildlife population in the Estes Valley.
- 3. Examples of Significant Adverse Impacts. The following are examples of significant adverse impacts:
 - a. Wildlife Impact. Impacts on wildlife that:
 - (1) Disrupt necessary life cycle functions of wildlife;
 - (2) Cause stress on wildlife; or
 - (3) Cause physiological damage to wildlife

To the extent that the health or viability of a wildlife population in the Estes Valley is threatened.

- b. Wildlife Habitat Impact. Impacts on wildlife habitat, including but not limited to elimination, reduction, or fragmentation of wildlife habitat to the extent that the health or viability of a wildlife population in the Estes Valley is threatened.
- c. Impact on Wildlife Movement Patterns/Displacement and Adaptation of Wildlife. Impacts on wildlife movement patterns/displacement and adaptation of wildlife, including but not limited to:

- (1) Disruption of wildlife migration or movement patterns that keep wildlife from using their entire habitat, such as blocking migration patterns from summer to winter range;
- (2) Displacement of wildlife into areas that cannot support or sustain the wildlife over the long term, such as 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; or
- (3) Inability of wildlife living within or in close proximity to development to adapt to the new conditions and thrive

To the extent that the health or viability of a wildlife population in the Estes Valley is threatened.

I. Wildlife and Habitat Impact Assessments for Sites Containing Critical Habitat.

Wildlife and Habitat Impact Assessments 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, but not limited to:
 - (1) The total acres of each species' habitat on the site;
 - (2) A description of any vegetation or natural communities that are ranked S1, S2, S3, G1, G2, or G3 by the Colorado Natural Heritage Program; and
 - (3) The health and viability of the habitat in the Estes Valley.
 - b. Wildlife. A description of the various types of wildlife that inhabit or use the site, including, but not limited to, 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.
 - (4) The health and viability of the wildlife population in the Estes Valley.

For sites that are within one half mile of a raptor nest and do not contain any other form of critical habitat, the assessment is only required to evaluate raptors.
2. Assessment of Potential Development Impacts. An analysis of the potential impacts of the project on habitat and wildlife using the criteria in Section 7.8.G and Section 7.8.H.
3. Avoidance and Mitigation of Development Impacts. A description of how development impacts will be avoided. And if not feasible to avoided, 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.

Mitigation efforts shall directly address the potential adverse impacts of the proposed land use. Examples of possible mitigation efforts include, but are not limited to:

- (1) Clustering or locating development to avoid intrusion into migration or movement areas and/or to avoid intrusion into or fragmentation of habitat;
- (2) Minimizing the development footprint or reducing density;
- (3) Creation of buffers around critical areas, with larger buffers for higher quality habitat;
- (4) Locating structures away from nesting, birthing, or feeding areas;
- (5) Limiting/prohibiting fencing that might interfere with migration and movement patterns;
- (6) Restricting location, hours of illumination, and intensity of lighting;
- (7) Controlling domestic animals and household pets;
- (8) Timing construction to minimize impacts such as reducing impacts from vehicles and construction equipment by limiting hours of operation and/or seasonal timing of construction.
- (9) Minimizing disturbance of native vegetation;
- (10) Eradicating existing noxious weeds on site and preventing of introduction of noxious weeds;
- (11) Avoiding or minimizing use of fertilizers and other chemicals;
- (12) Enhancing or restoring equivalent habitat on the site or elsewhere in the Estes Valley.

4. Implementation, Monitoring, and Enforcement Plan.
 - (1) 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.
 - (2) A demonstration of the competence of the entity responsible for successful implementation, monitoring, and enforcement of the plan.
5. Enhancement or Restoration. A plan for any relevant enhancement or restoration measures.
6. Professional Qualifications and Certification. A description the professional qualifications of the plan preparer and a certification that the plan preparer has the expertise to:
 - (1) Evaluate the proposed development application;
 - (2) Evaluate the impacts to wildlife populations and habitat on site, including aquatic populations and habitat; and
 - (3) Prepare a Wildlife and Habitat Impact Assessment in accordance with EVDC §7.8.
7. Additional Information. Any other information deemed necessary by the Review or Decision-Making Bodies to adequately assess the impact of the proposal.

§ 7.10 OPERATIONAL PERFORMANCE STANDARDS

In addition to any standards required in the underlying zoning districts, all development shall meet the following performance standards:

- A. **Noise.** *NOTE: NO CHANGES PROPOSED.*
- B. Refuse Disposal. All development shall use approved animal-proof refuse disposal containers. With Division of Wildlife approval, refuse disposal containers and enclosures may be electrified.
- ~~B.C.~~ **Operational/Physical Compatibility.** The following conditions may be imposed upon the approval of any development to ensure that it is compatible with existing uses, including but not limited to, restrictions on:
 1. Placement of trash receptacles;
 2. Location of loading and delivery areas;
 3. Location, intensity and hours of illumination; and
 4. Additional landscaping and buffering.

~~C.D.~~ Evidence of Compliance. *NOTE: NO CHANGES PROPOSED.*

§ 13.3 DEFINITIONS OF WORDS, TERMS AND PHRASES

TBD Aquatic Habitat 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.

122. *High Water Mark* shall mean the line on the bank of a stream, river, lake or impoundment to which the high water ordinarily rises annually in seasons, as indicated by changes in the characteristics of soil, vegetation or other appropriate means, taking into consideration the

characteristics of the surrounding areas. Where the ordinary high water mark cannot be found, it shall be presumed to be the edge of vegetation growing along the channel bank. In braided channels, the ordinary high water mark shall be measured so as to include the entire stream feature. For streams where the presumed edge of vegetation cannot be found setbacks shall be measured from the thread of the stream.

#TBD Qualified Biologist/Ecologist shall mean a person with at least two (2) years of demonstrated experience and expertise in evaluation of development impacts on wildlife habitat and species in the Colorado Rocky Mountains that:

- (1) Has a master's degree or higher from an accredited United States university in wildlife biology or ecology;
- (2) Is a Wildlife Society of America Certified Wildlife Biologist, or holds a higher certification from this society; or
- (3) Is an Ecological Society of America Certified Ecologist, or holds a higher certification from this society.

Or a person with at least five (5) years of demonstrated experience and expertise in evaluation of development impacts on wildlife habitat and species in the Colorado Rocky Mountains that:

- (1) Has an undergraduate degree or higher from an accredited United States university in wildlife biology or ecology.

209. *Setback* shall mean the distance between the nearest lot line and the furthestmost projection of a building or structure along a line at right angles to the lot line. Setback also refers to the horizontal distance (plan view) between the delineated edge of a wetlands, designated ridgeline protection area, ~~stream/river corridor~~ aquatic habitat or wildlife habitat and the furthestmost projection of a building or structure. Setbacks shall be unobstructed from the ground to the sky except as otherwise specifically allowed in §1.9.D of this Code.

#TBD 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.

#TBD Wildlife shall mean any animal life form, including but not limited to amphibians, birds, mammals, reptiles, and insects.

#TBD Wildlife Habitat shall mean the regions or environment containing those elements necessary for the survival and health of a wildlife species and consisting of principle feeding areas, winter range, summer range, shelter areas, concentration areas, production areas, movement corridors, buffer zones, areas providing essential minerals and water and special habitat needs. A particular area need not be occupied by a particular wildlife species in order to be considered habitat for that species. Wildlife

habitat may include those areas which were historically occupied and are still suitable for occupancy.

#TBD Wildlife Habitat, Critical shall mean aquatic habitat; wetlands, riparian vegetation; Potential Conservation Areas as defined by the Colorado Natural Heritage Program; Big Horn Sheep Winter Concentration Areas as defined by the Colorado Division of Wildlife; raptor nests and a one-half mile area surrounding the nest; Severe Winter Range for elk; and Severe Winter Range for mule deer; migratory bird habitat associated with riparian vegetation and aquatic habitat.

APPENDIX A. ESTES VALLEY DEVELOPMENT CODE BOUNDARY MAP – TABLE OF CONTENTS

Stream and River Corridor Map <u>Aquatic Habitat Map</u>	A-8
<u>Critical Wildlife Habitat Map</u>	A-9
<u>Urbanized Area Map</u>	A-10

APPENDIX B.III.C DEVELOPMENT PLAN SUBMITTAL REQUIREMENTS

- gg. Anticipated Phases of Development and Timing. A graphic phasing plan shall incorporate recommendations found in submitted Wildlife and Habitat Impact Assessment.