

§ 7.2 GRADING AND SITE DISTURBANCE STANDARDS

D. Limitations on Site Disturbance.

2. *Criteria for Establishing LOD.* In establishing the LOD, which may be multiple and noncontiguous on a site, the following criteria shall be taken into account:
 - h. ~~Significant wildlife habitat areas.~~ [Wildlife and Habitat Conservation Plan Recommendations.](#)

§ 1.9.D SETBACKS – BUILDING AND STRUCTURE SETBACKS.

2. *Development Setbacks from River and Stream Corridors and Wetlands.*

- a. *Stream and River Corridors.* Development setbacks shall be measured as the distance between the delineated stream or river corridor, 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.

DEFINE HOW MEASURE AQUATIC AND RIPARIAN SETBACKS

§ 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.
 - d. ~~Wildlife Migration Corridors.~~ [Wildlife and Habitat Conservation Plan Recommendations.](#)
 - 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 may only be used in conjunction with a permitted agricultural use or in conjunction with the permitted keeping of horses or livestock. No fencing using barbed wire shall be used in mapped critical wildlife habitat.
 4. *Fences and Walls* ~~In Critical Wildlife Habitat. See §7.8.G.1.c below for standards.~~
 - (1) In important and critical wildlife habitat, no fencing shall exceed forty (40) inches in height, except service area fencing and fencing is approved by Staff to confine permitted domestic animals or to protect permitted ornamental landscaping or gardens.
 - (2) 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 exceeding this length and shall be unobstructed from the ground to the sky.

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

preserve and **enhance** the important hydrologic, biological, ecological, aesthetic, recreational and educational functions that aquatic and riparian habitat, including stream and river corridors, ~~associated riparian areas~~ and wetlands provide.

D. Boundary Delineation.

1. *Qualified Professional.* ~~Stream/river corridor and wetland area~~ Aquatic and riparian habitat 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. Boundary delineation of riparian vegetation shall be established by a qualified biologist as defined in Chapter 13 of this Code.
2. *Stream and River Corridor 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.
3. *Wetland Boundaries.* **NO CHANGES PROPOSED.**
4. Other Aquatic Habitat Boundaries. Boundaries of other unmapped aquatic habitat, such as springs, seeps, and open waters.
5. Riparian Vegetation Boundaries. Boundary delineation of riparian vegetation shall be established by a qualified biologist as defined in Chapter 13. See Chapter 13 for a definition of riparian vegetation.
- 6.

	Required Minimum Setback
Critical Habitat	
Aquatic Habitat (springs, seeps, streams, rivers, open water)	50 feet
Riparian Vegetation, characterized by hydrophilic plants	50 feet

Is the 50 foot buffer for aquatic habitat measured off the 100 foot buffer described as the aquatic habitat in the Assessment?

E. Buffer/Setback Areas.

1. *Stream or River Corridors.*
 - a. Building/Structure Setbacks.
 - (1) Stream or River Corridors (except in the CD zoning district). All buildings and accessory structures shall be set back at least ~~thirty (30)~~ **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. For streams, where defined banks are not readily discernible, the setback shall be measured from the thread of the stream. See Figure 7-10.

~~(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.~~

(3) Stream and River Corridors 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. 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, the setback may be reduced to ten (10) feet with the approval of the Decision-Making Body.

§ 7.8 WILDLIFE AND 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 minimize to the maximum extent feasible negative impacts to habitat and the wildlife that depend on this habitat.
- B. **Applicability.** This Section shall apply to all applications for review of development plans, subdivision plats, planned unit developments, special review uses, and rezoning.
- 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. Removal of noxious weeds.
 4. Maintenance and repair of flood control structures and activities in response to a flood emergency;
 5. Maintenance and repair of existing residential or nonresidential structures; or
 6. 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. **Qualified Professional.** All maps and reports required by this Section shall be prepared by or under the responsible direction of a qualified biologist as defined in Chapter 13. The qualified biologist shall sign and date these submitted maps and reports.
- F. **Wildlife and Habitat Data Base.** The following sources shall be used to identify wildlife and habitat for purposes of review under this Section:
1. Estes Valley Habitat Assessment prepared in 2008 and adopted by the Town Board by Ordinance **NUMBER** on **DATE** and County Commissioners by Resolution on **DATE**.
 2. Review of an application may reveal potential Critical, Important, or Other Valuable Habitat defined in Estes Valley Habitat Assessment Chapter 4, *Priorities for an Ecological Network* that is not reflected on the *Priorities for an Ecological Network* map found in this Assessment. In such instances, the Review- or Decision-Making body shall have the discretion to require the Applicant to retain a qualified biologist to assess the habitat.
- The following agencies maintain maps and databases that can aid in the site-specific confirmation of the presence or absence of wildlife and habitat, the US Department of the Interior (Rocky Mountain National Park, and Fish and Wildlife Service), Colorado Division of Wildlife, and the Colorado Natural Heritage Program.
- F. **Review Procedures.**
1. *Submittal of Wildlife and Habitat Conservation Plans.* A Wildlife and Habitat Conservation Plan shall be submitted for sites containing important or critical habitat as defined in Chapter 4 *Priorities for an Ecological Network* of the Estes Valley Habitat Assessment.

For all applications, a biologist shall submit an assessment stating whether rare vegetation communities or vegetation communities with rare or endemic plant species exists on a property. A **preliminary assessment of the presence of this habitat.**

2. *Colorado Division of Wildlife Review.* Staff shall refer the submitted application and wildlife and habitat conservation plan to the Colorado Division of Wildlife for review. The Division of Wildlife may comment on the submitted application and plan and may provide an assessment of whether the application and plan complies with the requirements of this Section, including adequately mitigating adverse impacts.
3. *Other Review Agencies.* Applicants are also advised to meet/utilize the services of, with other review agencies responsible for regulation of wildlife and habitat as appropriate for this site, such as the US Fish and Wildlife Service, US Department of the Interior (Rocky Mountain National Park, Colorado Natural Heritage Program. These agencies maintain maps and databases that should be used to 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 Review.* The Review Bodies and Decision-Making Bodies shall review the submitted application and the wildlife and habitat conservation plan. The Decision-Making Body shall issue a finding as to whether the application and plan complies with the requirements of this Section, including adequately mitigating adverse impacts. Plans found to be adequate by the Decision-Making Body shall become binding upon the Applicant.
5. *Waivers.* Staff may waive submittal of a wildlife conservation and habitat plan, upon review of a signed and dated letter from a qualified biologist stating that there is no important or critical habitat on the site. Or

In the event an Applicant questions the existence of a critical or important habitat, the applicant may submit evidence with respect thereto from a qualified biologist. This evidence may be considered by the Decision-Making Body together with all other applicable evidence, in determining whether or not critical or important habitat exists.

F. Wildlife and Habitat Conservation Plan Content.

Any wildlife and habitat conservation plan 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 site-specific delineation of the location, type, size, quality, and other attributes of the critical, important, and other valuable habitat on the site as defined in Chapter 4 *Priorities for an Ecological Network* of the Estes Valley Habitat Assessment.
 - b. *Wildlife.* A description of the populations of wildlife species that inhabit or use the site, including a qualitative description of their spatial distribution and abundance. This shall include, but not be limited to endangered, threatened and species of concern (,including plant and animal species)
2. *Assessment of Development Impacts/Potential Negative Impacts.* An analysis of the potential negative impacts of the proposed development on wildlife on or off-site, and to on-site habitat.

3. *Mitigation of Development Impacts.* A list of proposed mitigation measures and an analysis of the probability of success of such measures in pre-construction, construction, and post-construction phases.

Connectivity. Evaluate the principals of landscape ecology as it related to the proposed development, e.g., address connectivity, habitat fragmentation, corridors, patch sizes.

Limits of Disturbance. Delineate of site-specific limits of disturbance.

Open Space. Recommendation open-space boundaries.

Wildlife Movement Corridors (Established Game Trails). Evaluate wildlife movement corridors taking into account frequency of use of established game trails and recommend setbacks off movement corridors, if applicable.

Migratory Bird Nests. Recommend if and when to conduct bird nest surveyors.

Fencing. Submit a plan for whether and where to permit fencing. If fencing is permitted make recommendations about the type of fencing (materials, opacity, etc.) as appropriate for the wildlife species on the site

Exterior lighting. Evaluate the impacts of proposed lighting, including minimizing to the maximum extent feasible any spill over of exterior lighting into critical habitat.

Domestic Animals. Submit a plan for control of domestic animals and household pets, including provisions to prevent the harassment, disturbance and killing of wildlife and to prevent the destruction of wildlife habitat. Minimize conflicts between wildlife and domestic animals.

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.

§ 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.** **NO CHANGES**

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.**

§ 13.3 DEFINITIONS OF WORDS, TERMS AND PHRASES

Aquatic Habitat shall mean

Below are some options.

Fresh water habitat, as in creeks, rivers, sloughs.

Habitat where a variety of freshwater flora and fauna occur for long periods throughout the year. Examples include seeps, open water, ponds, and lakes.

Aquatic Environment – The components related to, living in, or located in or on water or the beds or shores of a water body, including but not limited to all organic and inorganic matter, and living organisms and their habitat, including fish habitat, and their interacting natural systems. (As defined in *Alberta's Water Act*)

An aquatic ecosystem is an ecosystem located in water bodies. Communities of organisms that are dependent on each other and on their environment live in aquatic ecosystems. The two main types of aquatic ecosystems are marine ecosystems and freshwater ecosystems.

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.

Vegetation, Riparian shall mean

Below are some options:

1. Any vegetation characterized by hydrophilic (correct word) plants.
2. Any vegetation on land that adjoins, directly influences or is influenced by a body of water.
3. Plants that grow adjacent to a body of water and that rely upon the hydrology of the associated water body.
4. Vegetation growing on or near the banks of a stream or other body of water on soils that exhibit some wetness characteristics during some portion of the growing season; and

Vegetation which occurs along watercourses, and is structurally or floristically distinct from nearby, non-streamside vegetation; and

Riparian vegetation is terrestrial vegetation that grows beside rivers, streams, and other freshwater bodies and that depends on these water sources for soil moisture greater than would otherwise be available from local precipitation.

5. (BACKGROUND ONLY) - In 1997, the western Regions of the Service developed a classification system to identify riparian areas that fell outside of the Cowardin et al. (1979) system. Since that time, "A System for Mapping Riparian Areas in The Western United States" (USFWS 1997) has also been adopted by the Service and is a national standard for riparian mapping, monitoring and data reporting as determined by the Federal Geographic Data Committee.

The definition is indicated below: Riparian areas are plant communities contiguous to and affected by surface and subsurface hydrologic features of perennial or

intermittent lotic and lentic water bodies (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. Riparian areas are usually transitional between wetland and upland.

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 conservation plans.