



# Policy Direction

## Natural Resource Protections Update



12/11/17

The Land Development Regulations (LDRs) include regulations that protect natural resources such as wildlife habitat and water quality. In 2012 the Town and County adopted the Comprehensive Plan, which commits to updating the natural resource protections in the LDRs. The update is supposed to balance two goals.

1. Better protection of the health of all species native to our area, while also
2. Respecting property right by acknowledging that some natural resources are relatively more valuable than others.

This document is the preliminary County direction on how to update the natural resource protection LDRs. This direction is informed by the Comprehensive Plan and 5 months of community input.

- In late May and early June, the public identified issues regarding natural resource protections through an online survey (220 responses), open house (75 attendees, and in-person discussions (17 attendees in Spanish, 75 attendees in English).
- On July 18, the Board of County Commissioners (Board) committed to answering policy questions in order to inform an update of the natural resource protection LDRs.
- On November 3, policy options were released for public analysis.
- From October 27 to November 12, the public analyzed the policy options through an online survey (177 responses) and in-person discussions (26 attendees in Spanish, 41 in English).
- On November 14 and 15, the Natural Resource Stakeholder Group analyzed and made a recommendation on the policy options.
- On November 15 and 16, the County Planning Commission analyzed and made a recommendation on the policy options.
- On November 28 and 29, the Board considered the analyses and recommendations from the public, Natural Resources Stakeholder Group, and Planning Commission in order to provide the below preliminary policy direction.
- On December 11, the Board finalized the direction below.

Based on the final direction below, updated natural resource protection regulations will be drafted over the winter for review in the spring. For all background, documents, meetings, and workshops that inform the direction, please visit the project webpage at:

<https://www.engage2017.jackstetonplan.com/naturalresourceprotections>.

The direction is provided as a response to ten policy questions. The one or two sentences presented as the, "Direction:" is the summary of the direction. The additional text provides more detail on the general direction. For background, each direction also references which of the policy options released November 3 informed the direction. In most cases the direction modifies the policy options as they were stated November 3. The updated natural resources LDRs will be based on the direction, not the original policy option.

## 1. What does, "healthy wildlife populations," mean?

Direction: Use the best available science to permit development in a way that protects sufficient habitat and connectivity to reduce human wildlife conflicts and promote native species resiliency. (*Option 1.E+1.B*)

Principle 1.1 of the Comprehensive Plan is that the community, "maintain healthy populations of all native species." The County does not manage wildlife, the County manages habitat through land development regulations. It is important for the County to protect habitat in a way that preserves as much flexibility for future habitat needs as possible. This will allow wildlife to adapt to changes in climate, development patterns, and other pressures. This concept of protecting habitat function to accommodate change is the idea of "resiliency." Resiliency is the ability to recover from or adjust to change. A focus on resiliency means looking through the long lens of time to protect habitat in a way that will allow wildlife to respond to change. While avoiding conflict between wildlife and humans is a part of the concept of "resiliency," it goes beyond habitat protection and is important enough that conflict avoidance is called out in the direction. While conflict can never be avoided entirely it can be reduced through natural resource protections.

Resiliency focused protections still rely on expert opinion and science. This direction prioritizes the science focused on resiliency over that looking at current conditions. A study of the long-term impacts on wildlife from development of habitat is more important than an accounting of the current health of a wildlife population. Yet, at the same time, it is also important to acknowledge that habitat protections are not intended to prohibit development, they are intended to shape it to protect habitat in a way that is predictable and consistent.

Policy 1.1.a of the Comprehensive Plan is to protect habitat based on relative value. How habitat is valued to reflect the concept of resiliency will be determined through the drafting of updated natural resource protection standards over the winter, which will be reviewed in the spring. Whether the County has or needs the staff and/or fiscal resources to implement the best available science on resiliency will be discussed as part the drafting of the updated natural resource protections.

## 2. How should the presence of wildlife habitat affect development rights on a property?

Direction: The presence of wildlife habitat on a property should affect the location of allowed development and the allowance for Conditional Uses. The extent of the effect should depend on how valuable the habitat is and the intent of the underlying zoning district; in some instances incentives may be more appropriate than restrictions. (*Options 2.A, 2.B, 2.C, and 2.D*)

Every property has development rights associated with it. The development rights are established by zoning. Wildlife habitat protections affect the development rights established by base zoning by further restricting how a property can be used and built.

The location and intensity of human use of habitat is what impacts wildlife. As a result standards restricting the location of development and the allowance for Conditional Uses are the types of protections that are appropriate. Specifically, protections and incentives need to be developed to ensure that Conditional Uses dependent upon water are designed and operated to protect or enhance water quality and habitat function. A larger building does not represent nearly as much additional impact to wildlife as more people in an area. The presence of habitat should not limit the physical size of development beyond the limitations of base zoning because physical size does not represent an impact to wildlife.

Protections should vary by zone because the reality is that there are some zones that have been identified for certain community needs and therefore development. For example, the Business Park south of Town was mule deer winter habitat, now it is an industrial park. The potential habitat value of that area should not be entirely ignored, but the habitat protections should acknowledge the existing and future development allowed in that

area. In such cases, incentives may be more appropriate than restrictions for achieving habitat protection. Conversely, there are some habitats with greater relative value. As discussed in Question 1, these are the habitats and habitat connections that are most important to the resiliency of native species. Those habitats that are most important for resiliency should have the greatest level of protection.

Comprehensive Plan Policy 1.1.b calls for different wildlife protections to apply in different places (tiers of protections). This direction (in combination with the direction from Questions 1 and 7) will inform how wildlife protections will be tiered.

### 3. Why should we protect waterbodies and wetlands?

Direction: Waterbody, groundwater, and wetland protections should focus on water quality and habitat function (*Options 3.A and 3.B*). Protection of water quality and habitat function in the context of water dependent recreation should be achieved through a combination of these standards and the limitations on Conditional Uses directed in Question 2 (*Option 2.B*).

Rivers, creeks, streams, ponds, and wetlands have numerous functions. However, the purposes of waterbody and wetland protections are two priorities – first to protect water quality, then to protect wildlife habitat. Without clean water the other functions of waterbodies and wetlands are degraded. Wildlife habitat protection is the close second priority, because of the importance of water and wetlands for wildlife resiliency. Surface water quality and habitat function is impacted if groundwater is not also protected. Septic system impacts to groundwater quality can become impacts to surface water quality, and conversion of groundwater to surface water can impact surface water quality and habitat function.

While waterbodies and wetlands also provide scenic vistas, recreational opportunities, and corridors for human travel through Town, those functions are not the purpose of the protections. The scenic value of waterbodies and wetlands will be a byproduct of protecting water quality and habitat function. While recreation on water is an important part of our character it has to be permitted with respect to water quality and habitat function. The waterbody and wetland protections are not intended to regulate the behavior of an individual angler or boater. As a result, the Conditional Use standards discussed in Question 2, in addition to the allowed uses established through zoning, are sufficient to limit the impacts from water-based recreation and do not need to be supplemented by additional direction related to this question.

### 4. When is a site specific study of natural resources needed?

Direction: The Focal Species Habitat Map, and/or other best available science, should be the basis of any evaluation of a site's natural resources. In addition, a boots-on-the-ground, site-specific study of varying level of detail is needed when multiple habitat values need to be compared, relatively valuable habitat exists, or when a specific natural resource boundary needs to be identified. Site-specific, boots-on-the-ground studies should be as consistent as possible. (*Options 4.A, 4.B, and 4.C*)

Since 2013 the County has completed a countywide vegetation map and a countywide map of wildlife habitat (the Focal Species Habitat Map). That public information paints a countywide picture of our natural resources, but boots-on-the-ground, site-specific study is the only way to know what natural resources actually exist on a property.

Boots-on-the-ground, site-specific study is needed anytime there are multiple habitat values that need to be compared, habitat that is known to have great value in promoting resiliency, or if there is a natural resource that needs delineation such as a wetland. In such cases, landscape level studies like the Focal Species Habitat Map are too coarse to answer the fine-grained question of where development should occur relative to wildlife

habitat. Boots-on-the-ground, site-specific study to prioritize multiple habitats or have the best possible knowledge of an important habitat is the only way to know the unique habitat characteristics of a site.

However, boots-on-the-ground, site-specific study is not needed for all development proposals or all sites. Any evaluation of a site's natural resources is going to be based on the Focal Species Habitat Map. In some cases the Focal Species Habitat Map may provide all the information that is needed to implement natural resource protections. As additional science becomes available to supplement the Focal Species Habitat Map it may also be incorporated into the process for consideration of a site's natural resources.

The level of detail required in the study would vary. Sites with multiple habitat values or high habitat value would need a more in depth study, similar to the current Environmental Analysis (EA). Comprehensive Plan Policy 1.1.b calls for different levels (tiers) of site specific study. The 3 levels of an EA proposed by consultants Clarion/Alder should be implemented based on this direction and the direction in Question 2. Other sites without significant habitat value might only need a survey of the boundary of a wetland or waterbody and no further analysis.

Who completes the additional site-specific study is an issue that will be addressed through the drafting of updated natural resource protections through the winter, which will be reviewed in the spring. The goal is consistent studies that avoid the need for the County to choose between dueling consultants. When the amount of development, and therefore money, is at stake, the independence of the environmental professional (whether on staff or a consultant) completing the analysis becomes more important.

## 5. What, if any, types of impacts should require mitigation?

**Direction:** Impacts to habitat, water, wetlands, and setbacks around water and wetlands should be mitigated. *(Options 5.A, 5.B, 5.C, and 5.D)*

The goal of the natural resource protections discussed in the previous questions is to avoid impacts to natural resources. When impacts do occur, mitigation can be required. Mitigation ensures that the impacted habitat or vegetation is replaced. Sometimes impacts cannot be avoided because the purpose of the natural resource protections is not to prohibit development. However, unavoidable impacts should be mitigated in order to promote resiliency.

Mitigation should be required for impacts to habitat, water, wetlands, and setbacks around water and wetlands. The impacts to habitat and impacts to water overlap in the context of aquatic habitat. However, mitigating for impacts to water also includes mitigation for impacts to water quality. Mitigating for impacts to wetlands is an important part of natural resource protection and already required by the Army Corp of Engineers for some wetlands. Mitigation required by the Army Corp of Engineers should count toward County required mitigation so that a landowner is not required to mitigate an impact multiple times. Mitigating for impacts to the setback from waterbodies and wetlands is important to maintaining water quality and the function of the wetland. However, the degree of mitigation required for an impact to a setback maybe less than the mitigation required for an impact to the waterbody or wetland itself.

Mitigation requirements should also consider the direction on Questions 1, 2, 3, and 4 that protections vary by the value of the habitat and zoning districts.

## 6. Should the County have a habitat restoration program to improve the success of mitigation?

**Direction:** The County should have a habitat restoration and mitigation bank program, but still prioritize onsite mitigation. The preference is for a third party program that does not require County administration. *(Option 6.C)*

There is not always a place to provide required mitigation on the same property as the impact, but identifying an appropriate off-site location for habitat restoration can be difficult. Off-site mitigation is often most successful when many small mitigation efforts are combined to create a significant restoration project. Also, replacement habitat or vegetation must be stewarded over time to ensure it provides the intended replacement function. A County habitat restoration program or mitigation bank represents another tool in the toolbox to ensure that mitigation is permanently stewarded and to help restore degraded sites.

The County should be involved in facilitating offsite mitigation through a mitigation bank or fee-in-lieu-granting program, but should continue to prioritize onsite mitigation when it is likely to better promote resiliency than offsite mitigation. The drawbacks of government involvement in mitigation can be addressed through the design of the program, and the potential ecosystem benefits of improved mitigation function outweigh the potential drawbacks.

While a reference to the program may be included as a placeholder in the update natural resource protection LDRs, the details of the program will be developed outside of this LDR update. Legal issues with regard to the collection and disbursement of any fees will need to be addressed through development of the program.

## 7. What, if any, types of development should be allowed to impact natural resources?

**Direction:** Agricultural operations and bona fide habitat restoration should be exempt from all natural resource protection standards including environmental analysis and mitigation. Partial exemptions for other types of development discussed by the Natural Resources Stakeholder Group should be used as direction to inform the tiered system of regulations. *(Options 7.D and part of 7.F)*

Some types of development are important to the community or essential to the use of a property and imposing natural resource protections might effectively prohibit them. Agricultural operations and natural resource restoration projects should be exempt from all natural resource protections. Agricultural operations already work with many agencies, such as the Game and Fish and Conservation District, to study the wildlife values of the agricultural land and manage the agricultural operation to minimize and mitigate impacts. The best protection of natural resources can be achieved through those existing partnerships and County intervention is not needed. Resource restoration projects, such as rehabilitation of a degraded wetland or fuels mitigation in the Wildland-Urban Interface, should be encouraged and not be subject to County processes and review, but only once they have been found to be bona fide projects. The natural resource protections should include criteria the County can evaluate to ensure a restoration project is bona fide. Once those criteria are met the project should be exempt from further County review.

The Natural Resources Stakeholder Group broke this question into three parts and broke a number of the options into parts as well. The NRSG looked at whether a certain type of development should be exempt from Environmental Analysis (EA), protection standards to avoid and minimize impact, and mitigation. The NRSG made these distinctions to help convey the nuance in its recommendation. Below is a table of the NRSG's specific recommendations. The Board finds the discussion of the various levels of exemption to be more informative for the formation of tiered protections as discussed in Question 2. Just because a development type is not fully exempt does not mean that all developments will be treated the same. As directed in Question 2, all standards for environmental analysis, avoidance, and mitigation will vary by habitat value and zoning district.

Development Type	EA?	Protection Standards? (Avoid/Minimize)	Mitigation?
7.A(1) Emergency public works	Exempt	Exempt	Not Exempt
7.A(2) Planned public works	Not Exempt	Not Exempt	Not Exempt
7.B Property under conservation easement	Exempt	Not Exempt	Not Exempt
7.C(1) Platted “Grandfathered” Lot	Not Exempt	Not Exempt	Not Exempt
7.C(2) Unplatted “Grandfathered” parcel	Not Exempt	Not Exempt	Not Exempt
7.D Ag operations	Exempt	Exempt	Exempt
7.E Private “essential” utilities	Exempt	Not Exempt	Not Exempt
7.F(1) Recreation dependent on resource	Not Exempt	Not Exempt	Not Exempt
7.F(2) Restoration of resource	Exempt	Exempt	Exempt

8. What standards should apply when a building (or other development) that is already impacting a natural resource, proposes expansion?

**Direction:** Natural resource protections should acknowledge existing impacts and allow for by-right expansion that does not increase the existing impact, including intensity of use. There should be some consideration and/or incentive that the expansion be designed to reduce the existing impact when possible, especially related to water quality. *(Options 8.A and 8.D)*

Development exists that predates the current natural resource protections but is located in areas where development would now be prohibited if it were proposed today. When these existing developments propose remodels or expansions, two questions arise. The first is whether the presence of an existing natural resource impact should affect the protections applied to the expansion. The second question is whether the proposed expansion of the existing development should trigger a requirement to remove, lessen, or mitigate the existing impact.

By-right expansion of existing development that impacts natural resources should be allowed. As discussed in Question 2, increasing the size of a structure is less of an issue than increasing the number of development sites or the number of people in an area. An expansion that increases the intensity of an existing impact should not necessarily be allowed. The level of expansion allowed will be determined through the drafting of the updated natural resource protections.

Allowing for the expansion also creates an opportunity to lessen the existing impact through design of the expansion. For example, the drainage off of an existing roof that is in a stream setback could be redesigned through an addition to be directed further away from the stream. The updated natural resources protections should encourage expansions that lessen the existing impact, especially related to water quality. This encouragement is should not be a requirement to mitigate the existing impact, nor should it be a requirement that the existing impact is lessened.

9. To what extent should we regulate wildlife-friendly fencing?

**Direction:** Sites classified as “agricultural” by the Assessor that are at least 70 acres should be exempt from wildlife friendly fencing standards. *(modified Option 9.A)* Create a working group to identify a collaborative approach to allowing continued permeability and migration through development.

The current policy is that agricultural operations on sites over 70 acres are exempt from all wildlife-friendly fencing standards. Wildlife friendly-fencing ensures that wildlife can jump over or crawl under the fencing. In the updated natural resource protections the agricultural exemption should be clarified to apply to sites of over 70 acres that are classified as agricultural by the Assessor.

It is in the best interest of an agricultural operation to let migrating wildlife move through, because replacing fence costs time and money. And, the majority of existing agricultural operations are friendly to wildlife migration and movement. However, as the community works on wildlife crossings and continues to subdivide ranches and build structures, wildlife migration corridors through private land will become more defined and it will be more important to ensure fencing is wildlife-friendly in those corridors. By the time the community knows wildlife movement is obstructed, it may be too late to do anything about it. Because wildlife movement is variable, a one size fits all regulation is not possible. Instead, the stakeholder group or alternate working group should identify a collaborative approach to ensuring that wildlife can migrate and move through development without upsetting the ability of ranchers to continue their operations.

## 10. What incentives should be provided for natural resources protection?

**Direction:** In addition to the existing conservation incentives (PRDs and Floor Area Option), development flexibility should be provided to projects that provide additional natural resource protection. A fund should also be created to pay landowners for preservation and restoration of natural resources. (*Options 10.A and 10.B*)

Successful natural resource protection programs often include incentives in addition to requirements. Incentives grant landowners and developers additional development flexibility or money in exchange for greater protection of natural resources than can be achieved through regulations. The County already incentivizes open space conservation through the PRD and Floor Area Option tools. In addition, the natural resource protections should include development flexibility incentives for additional natural resource protection that would apply in existing subdivisions and Complete Neighborhoods. While open space cannot be preserved in many areas because of existing development, the Comprehensive Plan still envisions that habitat value and habitat connections could be improved. As discussed in Question 2, in such cases, incentives are more likely to achieve that improvement than requirements.

The federal and state governments each fund natural resource protection. The local government should too. Using public money to provide the public benefit of improved natural resource protection or restoration allows the community to avoid overregulation. It also creates a mechanism for the County to respond to changing conditions more quickly than it can through regulation. By creating a pool into which everyone pays a small amount, we can avoid the high cost of regulations. A fund for preservation and restoration could be coordinated with the mitigation bank direction from Question 6. The Teton County Scenic Preserve Trust might be the right entity to look at creating and administering the fund.