



Policy Options

Natural Resource Protections Update

11/3/17



The Land Development Regulations (LDRs) include regulations that protect natural resources such as wildlife 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.

Below are 10 questions that address the balance sought by the Comprehensive Plan. The answers to the questions represent the options for the policy behind the natural resource protections in the LDRs. On December 11, the Board of County Commissioners (Board) will provide direction on each of the questions based on public, Natural Resources Stakeholder Group, and Planning Commission analysis of the policy options. For a full schedule of the Policy Options Analysis, and/or to provide comment, please visit the project webpage at: <https://www.engage2017.jacksonetetonplan.com/naturalresourceprotections>.

Please note that the questions presented in this document for analysis by the public, stakeholder, Planning Commission, and Board differ from the 11 policy questions adopted by the Board on July 18, 2017. Staff found the 11 questions adopted in July to be too oriented toward the technical exercise of drafting updated regulations without really getting at the policy behind the regulations. Clarion Associates and Alder Environmental (Clarion/Alder), the consultants on natural resource protection regulations, did produce a number of potential natural resource regulation approaches based on the 11 questions adopted in July. That report titled, *Alternative Approaches/Solutions to Policy Questions: Natural Resources Land Development Regulations Update*, can be found at <https://www.engage2017.jacksonetetonplan.com/naturalresourceprotections>.

1. What does, “healthy wildlife populations,” mean? (select all that apply)

Principle 1.1 of the Comprehensive Plan is that the community, “maintain healthy populations of all native species.” However, in the context of natural resource protection regulations, “healthy wildlife populations” can mean different things to different people. A combination of options may be selected, but some options contradict others in certain cases. For example, increased elk inhabitation of river bottom subdivisions is viewed by some as good for wildlife, but not considered healthy for the elk population by Wyoming Game and Fish. Policy 1.1.a of the Comprehensive Plan is to protect habitat based on relative value. This question will inform how the regulations value various habitats and types of protections.

| Policy Option | Why Choose this Option? | Why Not? |
|--|---|---|
| 1.A Wildlife movement and habitat should be integrated into development (<i>close to status quo</i>) | <ul style="list-style-type: none"> • For a wildlife protection map and regulations focused on protecting areas where people see wildlife | <ul style="list-style-type: none"> ○ Wildlife living in development are not necessarily as healthy by scientific metrics |
| 1.B Local experts report wildlife population are healthy | <ul style="list-style-type: none"> • For a map and regulations focused on directing wildlife to natural habitats | <ul style="list-style-type: none"> ○ People may not see as much wildlife in the built environment |

| Policy Option | Why Choose this Option? | Why Not? |
|--|---|---|
| 1.C Few, if any, human wildlife conflicts occur (e.g. wildlife-vehicle collisions) | <ul style="list-style-type: none"> • For a map and regulations focused on separating wildlife/human interface that might harm wildlife | <ul style="list-style-type: none"> ○ Human wildlife conflicts do not necessarily represent a major threat to species |
| 1.D Wildlife are not reliant on humans (e.g. wildlife feeding, bears in trash) (<i>status quo</i>) | <ul style="list-style-type: none"> • For a map and regulations focused on avoiding a “zoo-like” interaction with wildlife | <ul style="list-style-type: none"> ○ Supplemental feeding is practiced by agencies in the community and helps wildlife |

2. How should the presence of wildlife habitat affect development rights on a property? (select all that apply)

Every property has development rights associated with it. The development rights are established by zoning, which is based on the communitywide vision in the Comprehensive Plan to direct 60% of growth into Town, Teton Village, Wilson, and the Aspens. That vision is intended to reduce development in wildlife habitat and open space while also making the places with existing infrastructure better through redevelopment. Wildlife habitat protections affect the development rights established by base zoning by further restricting where and/or how much you can build. The question is to what extent the presence of wildlife habitat on a property should limit the location and/or amount of development allowed by zoning.

The answer to this question will inform how the wildlife protections will be tiered. Comprehensive Plan Policy 1.1.b calls for different wildlife protections to apply in different places (tiers of protections). This question looks at what those requirements should be and how they might differ from location to location. The policy options for this question can be additive, you could select all of them.

| Policy Option | Why Choose this Option? | Why Not? |
|---|---|---|
| 2.A Wildlife habitat should limit the location of allowed development (e.g. a setback from an eagle nest) (<i>status quo</i>) | <ul style="list-style-type: none"> • To locate development in the place on the site with the least impact to wildlife | <ul style="list-style-type: none"> ○ Countywide, (at a landscape level) zoning already requires development to occur in the least impactful place (60% of growth in Town, Village, Wilson, Aspens) ○ Identifying the place of least impact can be time intensive and subjective, and the answer may be different in 2 years |
| 2.B Wildlife habitat should limit the amount of allowed development (height, size, scale, use, etc.) | <ul style="list-style-type: none"> • Wildlife are impacted by the amount of human activity, so human activity should be limited near habitat | <ul style="list-style-type: none"> ○ Countywide, (at a landscape level) zoning already directs human activity out of habitat areas ○ To protect property rights |
| 2.C Standards to protect wildlife habitat should vary by zoning district | <ul style="list-style-type: none"> • For example, Town has habitat, it is also where the community wants growth to occur • Zoning already applies one level of habitat protection, additional wildlife protections should build on that, not supersede it | <ul style="list-style-type: none"> ○ Wildlife do not recognize political boundaries ○ To prioritize wildlife protection over all other community goals |
| 2.D Standards should be more restrictive the more valuable the habitat is | <ul style="list-style-type: none"> • Habitat that is absolutely crucial and very rare needs more protection than habitat that is abundant | <ul style="list-style-type: none"> ○ Ranking value can be subjective and lead to complex regulations, that some view as unfair |

3. Why should we protect waterbodies and wetlands? (select all that apply)

Rivers, creeks, streams, ponds, and wetlands have numerous functions. They are wildlife habitat, our source of clean water, beautifully scenic, recreational assets, and corridors through Town. However, not all of those functions can be protected in all cases. One of the most effective ways to protect wetlands and waterbodies is to require a setback or buffer. In creating waterbody and wetland buffer regulations it is important to prioritize the functions being protected so the regulation allowances, incentives, and prohibition achieve the community’s goals. If multiple options are chosen, please prioritize your answers.

| Policy Option | Why Choose this Option? | Why Not? |
|---|--|--|
| 3.A Set waterbody and wetland buffers to protect their function as wildlife habitat (<i>status quo</i>) | <ul style="list-style-type: none"> • Water and adjacent areas are the most important habitat • To ensure manmade waterbodies enhance wildlife habitat | <ul style="list-style-type: none"> ○ Proximity to water is the most desirable place for development and recreation |
| 3.B Set waterbody and wetland buffers to protect water quality (<i>status quo</i>) | <ul style="list-style-type: none"> • Clean water is a basic requirement of healthy species • To ensure manmade waterbodies do not degrade water quality | <ul style="list-style-type: none"> ○ Proximity to water is the most desirable place for development ○ Filtration of runoff is costly |
| 3.C Set waterbody and wetland buffers to protect scenic values | <ul style="list-style-type: none"> • Water is part of the iconic scenery of the community | <ul style="list-style-type: none"> ○ May allow or require altering native vegetation that impacts wildlife habitat and water quality |
| 3.D Set waterbody and wetland buffers based on recreational values | <ul style="list-style-type: none"> • Recreation on the water is an important part of our culture and economy | <ul style="list-style-type: none"> ○ May allow or require impacts to the wildlife habitat, water quality, and scenic values of water |
| 3.E Emphasize waterbodies as corridors through Town | <ul style="list-style-type: none"> • Opportunity for walking, biking corridors through developed areas • Orient development toward water resources to improve livability | <ul style="list-style-type: none"> ○ Would allow some impacts to wildlife habitat, water quality, and scenic values of water |

4. When is a site specific study of natural resources needed? (select all that apply)

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 site specific study is the only way to know what natural resources actually exist on a property. The downside of site specific study is that it is costly and the outcome is unpredictable for a landowner. When it comes to requiring site specific study, when do the benefits to natural resource protection outweigh the costs to the applicant?

Site specific study can mean a full analysis of all vegetation, habitats, and potential development impacts – like the current Environmental Analysis (EA). Or, it can be as simple as a survey of the boundary of a wetland. Comprehensive Plan Policy 1.1.b calls for different levels (tiers) of site specific study. The answer to this question will inform how those tiers are created. The answer to this question may also affect how the habitat protection map is drawn. For example, a map to identify sites with multiple habitat types (Option 4.A) is different from a map to identify sites with the most habitat value (Option 4.B). Any combination of Options 4.A, 4.B, and 4.C may be selected. Option 4.D is the “all of the above” option, Option 4.E is the “none of the above” option.

| Policy Option | Why Choose this Option? | Why Not? |
|---|---|---|
| 4.A Study the site when many habitats exist | <ul style="list-style-type: none"> • Sites with multiple habitats require site specific alternatives analysis to determine which habitat to protect and which to develop • Delineates where a study will be required with a hard line map • Allows flexibility for creative site designs that improve protection | <ul style="list-style-type: none"> ○ Habitats can be ranked at a Countywide level ○ Site specific analysis is unpredictable ○ Alternatives analysis can be subjective and inconsistent |
| 4.B Study sites known to have very valuable habitat | <ul style="list-style-type: none"> • Habitat that is absolutely crucial and very rare needs maximum protection • Delineates where a study will be required with a hard line map • Allows for confirmation of habitat value before regulations are imposed | <ul style="list-style-type: none"> ○ If we already know its very valuable just impose the protections, no need to study |
| 4.C Only study the site to determine the exact location of a resource so a buffer can be applied (e.g. wetland delineation) | <ul style="list-style-type: none"> • Limits site specific study to the survey of objective boundaries rather than subjective habitat analysis • Buffers cannot be imposed without a location, and some locations must be determined on-site | <ul style="list-style-type: none"> ○ Delineations cannot be done year-round and can represent a major delay to development |
| 4.D Study any site where there might be valuable habitat (<i>status quo</i>) | <ul style="list-style-type: none"> • All habitats and potential impacts are identified • The extent of the study needed can only be estimated through an approximate map • Any requirements respect actual site conditions | <ul style="list-style-type: none"> ○ Site specific study is costly and unpredictable ○ Countywide data is adequate in many cases |
| 4.E Never | <ul style="list-style-type: none"> • Countywide studies (vegetation and focal species maps) are adequate to protect wildlife at an ecosystem level • Site conditions change | <ul style="list-style-type: none"> ○ Some impacts will be unidentified and unregulated ○ Some sites will be subject to stricter standards than fit the site |

5. What, if any, types of impacts should require mitigation? (select all that apply)

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. Replacement habitat and vegetation can offset the impacts of development, but replacement habitat and vegetation are expensive and do not always live. The policy options for this question can be additive, you could select all of them. The definition of wildlife habitat will be based on the answers to Questions 1 and 2.

| Policy Option | Why Choose this Option? | Why Not? |
|--|---|---|
| 5.A Mitigate impacts to wildlife habitat (<i>status quo</i>) | <ul style="list-style-type: none"> • Lost habitat should be replaced to retain overall wildlife protection | <ul style="list-style-type: none"> ○ Replacement habitat does not always live or function as designed ○ Replacement habitat is costly |

| Policy Option | Why Choose this Option? | Why Not? |
|--|---|--|
| 5.B Mitigate impacts to rivers, creeks, streams, ponds | <ul style="list-style-type: none"> • Water quality impacts need to be mitigated to keep water clean | <ul style="list-style-type: none"> ○ Water quality filtration can be costly |
| 5.C Mitigate impacts to wetlands (<i>status quo</i>) | <ul style="list-style-type: none"> • Lost wetland functions can be replicated elsewhere and are crucial to the ecosystem | <ul style="list-style-type: none"> ○ Replacement wetlands do not always live or function as designed ○ Replacement wetlands are costly |
| 5.D Mitigate impacts to the buffer areas around waterbodies and wetlands | <ul style="list-style-type: none"> • Whether or not the buffer area is habitat, it provides water filtration that should be replaced or artificially replicated | <ul style="list-style-type: none"> ○ The protective function of a buffer cannot be replaced away from the water it's protecting |
| 5.E Mitigate impacts from everyday use of a residential lot (e.g. tree cutting for firewood or improved views) | <ul style="list-style-type: none"> • Activities like clearing of vegetation have an impact even when not part of a development • A mitigation requirement will discourage these types of everyday impacts | <ul style="list-style-type: none"> ○ Difficult to enforce or costly to County to permit ○ Costly to landowners |

6. Should the County have a habitat restoration program to improve the success of mitigation? (select one)

As alluded to in Question 5, replacement habitat or vegetation that is not continually cared for can die before it provides any replacement function. Also, there is not always a place to provide required mitigation on the same property as the impact, but identifying an off-site location for habitat restoration is costly and takes time. When mitigation cannot be provided on the same site as the impact, or is unlikely to be successful on that site, the question is whether County resources should be used to facilitate off-site mitigation that is monitored to ensure success, and, if so, to what degree? Unlike the previous questions, the policy options for this question are mutually exclusive, only one can be selected.

| Policy Option | Why Choose this Option? | Why Not? |
|---|--|---|
| 6.A No, a developer should mitigate on-site or be responsible for coordinating off-site mitigation (<i>status quo</i>) | <ul style="list-style-type: none"> • A developer mitigation project usually provides more mitigation than a fee | <ul style="list-style-type: none"> ○ A private, unmonitored mitigation project may be less impactful or successful |
| 6.B Yes, the County should accept fees in-lieu of mitigation and use them to fund and monitor public restoration projects | <ul style="list-style-type: none"> • Mitigation fees would fund restoration that is more likely to be successful and in an identified location of high ecological benefit | <ul style="list-style-type: none"> ○ Fees rarely provide as much mitigation because of time and processing costs ○ Requires new County resources ○ Requires County land or County partnership with a landowner ○ Applicant may want to control mitigation |

| Policy Option | Why Choose this Option? | Why Not? |
|--|---|---|
| 6.C Yes, the County should accept fees in-lieu of mitigation and then direct those funds to the Land Trust, Conservation District, Game and Fish, or other entity for restoration projects that they are responsible for monitoring. | <ul style="list-style-type: none"> • Same as 6.B, except that The County does not have to staff the implementation of the mitigation | <ul style="list-style-type: none"> ○ Fees rarely provide as much mitigation because of time and processing costs ○ Mitigation success is not in full County control ○ Applicant may want to control mitigation |

7. What, if any, types of development should be allowed to impact natural resources? (select all that apply)

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. The question is whether any of the following development types should be exempt from natural resource protections to make sure those protections do not inadvertently prohibit the development.

The policy options for this question can be additive, you could select all of them. Whether or not the exemption should also exempt the development from mitigation requirements (see Question 5) should be specified for each option chosen. All of the exemptions in the policy options currently exist in some way.

| Policy Option | Why Choose this Option? | Why Not? |
|---|---|---|
| 7.A Exempt flood control and other public works projects to protect health and safety | <ul style="list-style-type: none"> • To protect public health and safety | <ul style="list-style-type: none"> ○ Public safety projects should still avoid, minimize and mitigate impacts |
| 7.B Exempt development on land under conservation easement | <ul style="list-style-type: none"> • Conservation easements provide permanent, more-restrictive, actively monitored protection | <ul style="list-style-type: none"> ○ Not all conservation easements are administered by the County |
| 7.C Exempt development on “grandfathered” properties that are not currently subject to natural resource protections | <ul style="list-style-type: none"> • The properties were configured prior to the protections so the protections are more restrictive • Continue current policy of exempting the NC zone | <ul style="list-style-type: none"> ○ There are a lot of NC properties with unprotected wildlife habitat ○ Option 2.C where standards are tiered based on zoning addresses the issue |
| 7.D Exempt agricultural operations | <ul style="list-style-type: none"> • Requiring ag to protect natural resources may preclude ag operations • Preservation of ag is a Comprehensive Plan policy | <ul style="list-style-type: none"> ○ Agriculture has impacts on natural resources |
| 7.E Exempt a driveway, waterline, sewerline, powerline, or other “essential” utility | <ul style="list-style-type: none"> • Allows basic realization of property rights | <ul style="list-style-type: none"> ○ Sites that cannot be developed without impacting natural resources should not be developed |
| 7.F Exempt development dependent on the natural resource, such as a boat ramp or stream restoration | <ul style="list-style-type: none"> • Some development, by its nature, must impact a resource, for example a boat ramp cannot be set back from the river, and a restoration must be in-stream | <ul style="list-style-type: none"> ○ Such uses are unique and should go through a Variance process to balance impact and protection |

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

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 proposed investment in an existing site through expansion of the existing development should trigger a requirement to remove, lessen, or mitigate the existing impact. The balance that has to be achieved is that some level of reinvestment in sites with aging development will improve those sites, and asking too much from such projects will discourage the reinvestment.

Multiple policy options may apply but some policy options do not work in combination. For example Options 8.A and 8.C cannot be simultaneously implemented.

| Policy Option | Why Choose this Option? | Why Not? |
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| 8.A Ensure an expansion does not make the existing impact worse. | <ul style="list-style-type: none"> To encourage consolidation of impact instead of new impact | <ul style="list-style-type: none"> Adds impact when a better location might be available |
| 8.B The location and amount of expansion should be reviewed against current natural resource protections as if the existing impact does not exist. (<i>status quo</i>) | <ul style="list-style-type: none"> An expansion should be subject to all standards regardless of the existing development | <ul style="list-style-type: none"> An addition may have less impact than a detached expansion that meets all standards |
| 8.C The expansion should only be allowed if the existing building is relocated so that the original impacted natural resource can be returned to its natural state. | <ul style="list-style-type: none"> Reinvestment in a site should include a requirement to minimize impacts to the site | <ul style="list-style-type: none"> Relocation and reclamation is costly and will discourage reinvestment in sites with aging development |
| 8.D The expansion must be designed to lessen the existing impact. | <ul style="list-style-type: none"> Reinvestment in the existing development should include measures to reduce its impact | <ul style="list-style-type: none"> Identifying what reductions are reasonable will be subjective and may discourage reinvestment The impact is likely years old and was legal when it occurred |
| 8.E The expansion proposal must include mitigation for the existing impact. | <ul style="list-style-type: none"> Regardless of how the expansion is regulated, investment in the site should include mitigation | <ul style="list-style-type: none"> Mitigation is costly and may discourage reinvestment The impact is likely years old and was legal when it occurred |

9. To what extent should we regulate wildlife-friendly fencing? (select one)

Since 2006 the County has regulated fencing to ensure that wildlife can jump over or crawl under the fencing. The fencing standards are broken into three categories: agricultural fencing, special purpose fencing, and all other fencing. In July, the Board directed staff to focus on clarifying the agricultural exemptions through this effort.

The current wildlife friendly-fencing standards allow a 42-inch high fence for livestock, where generally only a 38-inch fence is allowed. That allowance applies countywide regardless of property size. In addition, the current policy is that agricultural operations on sites over 70 acres are exempt from all wildlife-friendly fencing standards.

However, the current LDRs do not clearly state the current policy. The Board set the threshold for all agricultural exemptions, including wildlife-friendly fencing, at 70 acres in 2015 to discourage the sale of large sites as 35-acre ranchettes.

| Policy Option | Why Choose this Option? | Why Not? |
|--|---|---|
| 9.A Clarify current standards <i>(updated status quo)</i> | <ul style="list-style-type: none"> • Clarify that any agricultural fence (new, replaced or relocated) is exempt • Maintain 70-acre agricultural exemption threshold in place since 1994 | <ul style="list-style-type: none"> ○ Brand new fence on agricultural operations may not be wildlife-friendly |
| 9.B Option 9.A, except reduce the agricultural exemption threshold to 35 acres for fencing | <ul style="list-style-type: none"> • Sync the fencing exemption with the State tax definition of agriculture | <ul style="list-style-type: none"> ○ Agricultural exemption for fencing would be different from other ag exemptions ○ Potential increase in non-wildlife friendly fencing |
| 9.C Option 9.A or 9.B, except that the exemption would not apply if in a wildlife migration corridor | <ul style="list-style-type: none"> • Same as 8.B except protect permeability | <ul style="list-style-type: none"> ○ Same as 9.A ○ Some agricultural operations would have to implement wildlife-friendly fencing when fencing is repaired or replaced |
| 9.D Remove all exemptions and require any structural repair or replacement to come into compliance | <ul style="list-style-type: none"> • Align fencing standards with other nonconformity standards • Ensure all fencing is wildlife-friendly | <ul style="list-style-type: none"> ○ Burden on current fence owners as they repair and replace fence, including agriculture |

10. What incentives should be provided for natural resources protection? (select one)

In July, the Board directed staff to analyze incentives for natural resource protection in addition to regulations. Successful natural resource protection programs often include incentives in addition to requirements. Incentives grant landowners and developers additional development or money in exchange for greater protection of natural resources than can be achieved through regulations.

The LDRs currently include three primary incentives that address granting additional development in exchange for conservation of open space.

- The Complete Neighborhood Planned Residential Development (CN-PRD) – grants a significant bonus in density in exchange for permanent conservation of wildlife habitat, scenic vistas, or agricultural land, if the bonus density is built in a Complete Neighborhood identified by the Comprehensive Plan as appropriate for growth.
- The Rural-PRD – grants a lesser bonus in density in exchange for permanent conservation of wildlife habitat, scenic vistas, or agricultural land, for bonus density that is still built outside of a Complete Neighborhood.
- The Floor Area Option – grants a rural landowner additional floor area in exchange for permanent conservation of wildlife habitat, scenic vistas, or agricultural land.

| Policy Option | Why Choose this Option? | Why Not? |
|---|--|--|
| 10.A. Current incentives + provide bonus development to projects that provide additional natural resource restoration | <ul style="list-style-type: none"> • Give developer more floor area, expedited review, etc. in exchange for restoration beyond what is required • Example a Flat Creek Blueway | <ul style="list-style-type: none"> ○ Some will find the impact from the bonus greater than the benefit from the restoration |
| 10.B. Current incentives + create a fund to pay landowners for preservation or restoration | <ul style="list-style-type: none"> • Financial incentive to conserve land or restore natural resources beyond what is required | <ul style="list-style-type: none"> ○ Requires a source of funding |