

# Teton County & Town of Jackson

## Wyoming



## Alternative Approaches/ Solutions to Policy Questions: Natural Resources Land Development Regulations Update



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**CLARION**

In association with:  
ALDER ENVIRONMENTAL, LLC  
Water • Wetlands • Ecological Consulting



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## I. INTRODUCTION

Teton County (TC) has for decades been at the forefront nationally of wildlife habitat and natural resource protection efforts. Today, responding to evolving development pressures, new wildlife habitat mapping information, and current comprehensive plan goals, the county has undertaken an ambitious effort to update the natural resource provisions and associated processes of its land development regulations (LDRs). This effort is geared to better align the Town of Jackson (TOJ)/Teton County Comprehensive Plan's goals (2012) with the community's natural resources protection policies to better safeguard wildlife and wildlife habitat through the county. A central tenant of the comprehensive plan is to "preserve and protect the area's ecosystem in order to ensure a healthy environment, community and economy for current and future generations" (Comp Plan p. ES-2).

Specifically, the comprehensive plan strategies to be implemented by this LDR update project include:

- 1.1.S.4: Evaluate and amend wildlife protection standards for development density, intensity, location, clustering, permeability, and wildlife-human conflict.
- 1.1.S.5: Evaluate mitigation standards for impacts to critical habitat and habitat connections and update as needed.
- 1.1.S.6: Identify areas for appropriate ecological restoration efforts.
- 1.2.S.1: Evaluate and update natural resources protection standards for waterbodies, wetlands, and riparian areas.
- 1.2.S.2: Evaluate and update surface water filtration standards, focusing on developed areas near important waterbodies.

How the policies and strategies embodied in the comprehensive plan are to be achieved has been the focus of this project initiated in May 2017. The county retained a consulting team of Clarion Associates with Alder Environmental to advise them on the project. Detailed discussions began in June 2017 among elected and appointed officials, county staff, and a natural resources stakeholders group (NRSG) consisting of a diverse selection of local citizens with extensive knowledge and experience with natural resource protection efforts in the county. A public survey conducted in June 2017 further informed this effort (resources from this public engagement are available at <https://www.engage2017.jackontetonplan.com>). Based on these discussions, there is a general consensus that while the county's natural resources protection goals are achievable, it will require significant revisions of the LDRs supplemented by incentives and non-regulatory tools to be successful in the long run.

These initial discussions in June were followed by preparation of a memo submitted by the Clarion Associates team to staff identifying structural problems with the existing natural resources LDRs. Staff then developed a list of 11 major policy questions with input from the NRSG and Clarion and presented the list to the Teton County Board of County Commissioners (BCC) in early July. Those 11 policy questions are:

**Policy Question 1: What is the purpose of an Environmental Analysis (EA)?**

**Policy Question 2: What is the county/town and other agency role in environmental analysis (EA) review?**

**Policy Question 3: How should the next generation of natural resources protection measures vary by tier?**

**Policy Question 4: What is the purpose of wildlife habitat and movement corridor protection regulations?**

**Policy Question 5: How will mitigation standards offset development impacts?**

**Policy Question 6: How will the update achieve the comprehensive plan water quality goals?**

**Policy Question 7: To what extent should we protect wetlands and waterbodies?**

**Policy Question 8: To what extent should we regulate wildlife-friendly fencing?**

**Policy Question 9: What sorts of development should be exempt from natural resources regulations or EA?**

**Policy Question 10: How should the natural resources LDRs apply to redevelopment?**

**Policy Question 11: What incentives should be provided for natural resource protection?**

The BCC approved the policy direction, and staff then initiated the current Phase 3 of the project that involves identifying alternative approaches and solutions to the specific policy questions set forth above.

To assist the BCC in providing direction on options to address these key policy questions, the Clarion Associates team, with extensive input from staff and the NRSG and taking into account public comment from Phase 2, prepared this document, *Alternative Approaches/ Solutions To Policy Questions: Natural Resources LDR Updates*. This document sets forth the following information for each policy question:

**Current Requirements/Background:** A summary of the provisions of the comprehensive plan and LDRs and other information relevant to the policy question;

**Key Issues:** The key concerns about the current LDR provisions and other issues applicable to the policy question; and

**Alternative Approaches/Solutions:** An outline of two to four alternative approaches or solutions to the key issues raised by the policy question.

**Incentives:** Potential incentives to supplement and support applicable LDR provisions/ alternatives.

**Resources/References:** Where applicable and available, resources and reference to inform the reader about the subject of the policy question.

This document is being made available to the public for review in early October 2017. The public will have 30 days to review and comment, and then staff and the Clarion team will discuss preferred alternatives with the NRSG and Teton County Planning Commission in November. Based on those discussions, NRSG will make recommendations to the BCC in late November or early December. Drafting of updated natural resources LDRs based on BCC direction will begin in January 2017.

A more detailed schedule for review, analysis, and decision-making on a preferred alternative for each policy question is set forth below along with a list of materials available to assist in the review:

- Release: October 13, 2017
- Public Review: October 20-November 9
- Public Survey: October 17
- Summary of policy questions and alternative approaches (incorporated in this document)
- Detailed description of alternatives (this document)
- Presentation of alternatives on the project webpage  
(<https://www.engage2017.jackontetonplan.com/naturalresourceprotections>)
- Option from project web page to email questions to staff

Alternative Approaches/Solutions to Policy Questions:  
Natural Resources Land Development Regulations Update

- FAQ sheet maintained on the project webpage.
- Office hours to speak with a planner about the alternatives (October 17- November 3)
- Public comment event (November 9)
- Summary of public comments (November 13)
- Alternatives Analysis: November 14-November 30
- Natural Resources Stakeholder Group discussion/recommend alternative (November 14-15)
- Planning Commission review/recommendation (November 15-16)
- BCC discussion (November 28-30)
- BCC Final Direction: December 11

The following table summarizes the range of alternative approaches/solutions to the key policy questions that are discussed later in this document.

POLICY QUESTIONS AND ALTERNATIVE APPROACHES/SOLUTIONS	
Policy Questions	Alternative Approaches/Solutions
<p><b>1. What is the purpose of an Environmental Analysis (EA)?</b></p> <p><b>2. What is the county/town and other agency role in environmental analysis (EA) review?</b></p> <p><b>3. How should the next generation of natural resources protection measures vary by tier?</b></p> <p><b>4. What is the purpose of wildlife habitat and movement corridor protection regulations?</b></p>	<p>A. Continue with the current system based on updated Natural Resources Overlay District (NRO). Update NRO boundaries based on the recent Focal Species Relative Values Habitat Map (FSHM). The EA verifies the NRO and assesses impacts and directs mitigation. County and Agency role is the same as current.</p> <p>B. Use the recently completed Focal Species Habitat Map to create a revamped Natural Resources Overlay that delineates tiers based on importance of habitat identified in the FSHM (High, Medium, Low wildlife habitat- based tiers) per the comprehensive plan's directive. Natural Resources Analysis is based on tier and conducted to determine habitats present, development location and impacts and required mitigation. Development requirements determined by applicable LDR regulations (e.g., buffers, waterbody/wetland standards, wildlife permeability, zone district dimensional standards, etc.).</p> <p>C. Use zone districts from current LDRs and FSHM as the basis of a system that includes four tiers. The natural resources analysis process driven by the zone district provisions in combination with other factors such as lot size, redevelopment vs. development, and natural resources present. Natural Resources Analysis is conducted to assess habitat values based on the FSHM and other resource tools, and the location of development is guided by the Natural Resources Analysis. Analysis process to be followed is determined by tier and zone.</p>
<p><b>5. How will mitigation standards offset development impacts?</b></p>	<p>A. Extend current vegetation protection standards (2:1 mitigation rate) to apply to buffers wherever located, all single-family lot developments/construction in High and Medium Tiers, and removal of trees and vegetation independent of a development permit in High and Medium Tiers. Create a county administered off-site mitigation system.</p> <p>B. In addition to the requirements of Alternative 5.A, establish hierarchy of mitigation measures with options ranging from on-site mitigation to off-site mitigation, use of mitigation bank, in-lieu payment, stream restoration, and similar measures. County would have final decision-making authority on options. Restoration of previously damaged or disturbed habitat would be required in the High and Medium Tiers.</p>

POLICY QUESTIONS AND ALTERNATIVE APPROACHES/SOLUTIONS	
Policy Questions	Alternative Approaches/Solutions
<b>6. How will the update achieve the comprehensive plan water quality goals?</b>	<p>A. Continue with current system's focus on stormwater quantity, but address quality through techniques such as improved buffer and vegetation protection regulations instead of additional stormwater quality best management practices (BMPs).</p> <p>B. Require adoption of stormwater quality best management practices in Low and Middle Tiers and limit impervious surfaces for all development and redevelopment.</p> <p>C. Adopt a new system for stormwater quality management requiring stormwater quality BMPs and Environmental Site Design for all non-residential development over a specified acreage/size/impervious cover and for all large residential developments/subdivisions over a specified acreage or building size (e.g., greater than 2,500 square feet).</p> <p>D. Require stormwater quality BMPs for all new development. Focus attention on designated growth areas (Low Tier) where most stormwater pollution originates and the capacity of the land to absorb runoff is limited.</p>
<b>7. To what extent should we protect wetlands and waterbodies?</b>	<p>A. Retain the current system of buffers but expand coverage to protect native vegetation from removal. Clarify purposes of buffers and definitions of irrigation-induced wetlands and irrigation ditches and adopt appropriate standards to exempt or regulate.</p> <p>B. Adopt a minimum buffer of 100 feet that applies to all water bodies except rivers (Retain existing 150-foot setback for rivers.). Include administrative relief in LDRs from buffer regulation. Allow smaller buffers in designated growth areas/Low Tier (e.g., 25 feet), but require water quality BMPs and revegetation/ remedial steps if site is degraded.</p> <p>C. Same as 7.B above, but adopt sliding scale for buffer distances based on factors such as soil types, slope, etc., instead of uniform 100-foot setback. Retain existing 150-foot setback for rivers.</p>

POLICY QUESTIONS AND ALTERNATIVE APPROACHES/SOLUTIONS	
Policy Questions	Alternative Approaches/Solutions
<b>8. To what extent should we regulate wildlife-friendly fencing?</b>	<p>A. Continue current regulatory program. Clarify that all newly defined agricultural operations including greater than 35 acres are exempt from Section 5.1.2 fencing requirements.</p> <p>B. Same as 8.a, except no exemption for agricultural operations of any size from wildlife-friendly fencing regulations when crossed by a wildlife migration corridor designated by the county and confirmed by official mapping.</p> <p>C. All agricultural operations would be subject to Section 5.1.2. All fences, regardless of purpose would be required to be wildlife-friendly.</p>
<b>9. What sorts of development should be exempt from natural resources regulations or EA?</b>	<p>A. Allow current standards/exemptions (such as for the NC Zone, agriculture, land subject to conservation easements) to remain in place, but consolidate and reconcile NRO and EA exemptions into single list.</p> <p>B. Consolidate and reconcile NRO and EA exemptions. Adopt revisions to current exemptions involving agricultural operations, fencing, previous approvals, and conservation easements.</p> <p>C. No blanket exemption from all regulations for any development including agricultural operations. Some level of basic regulation or EA review based on applicable tier required for all development.</p> <p>D. Eliminate or reduce exemptions in specially designated sensitive areas where regulations are necessary to protect existing natural resources or help restore degraded areas. Create special incentives to offset additional regulatory requirements</p>
<b>10. How should the natural resources LDRs apply to redevelopment?</b>	<p>A. Continue current approach—existing/updated resource protection regulations would apply to all redevelopment projects just as they apply to new development.</p> <p>B. Adopt a sliding-scale approach to required rehabilitation. The more land that is disturbed or the costlier the project is in terms of dollar value, the more rehabilitation of past damage is required.</p> <p>C. Redevelopment projects required to meet all natural resource standards applicable to new developments, but site rehabilitation requirements for redevelopment would vary by tier.</p>

POLICY QUESTIONS AND ALTERNATIVE APPROACHES/SOLUTIONS	
Policy Questions	Alternative Approaches/Solutions
<b>11. What incentives should be provided for natural resource protection?</b>	A. Amend the LDRs to offer development bonuses increased floor-area ratios or expedited processing for projects that exceed regulatory requirements. B. Consider adopting regulatory supplements such as a land/development rights purchase/transfer program or payment to landowners for ecosystem services.

## II. ALTERNATIVE APPROACHES/SOLUTIONS TO POLICY QUESTIONS

### Approach to Policy Question #1, 2, 3, and 4

Policy Questions 1, 2, 3, and 4 are closely related and intertwined with each other and must be read and analyzed together. Taken collectively, they serve in a foundational capacity for the remaining Policy Questions and will function as the underpinnings of the next generation of Teton County's Natural Resources Land Development Regulations.

The four questions are described in the following pages, together with a discussion of current regulations/background and key issues. Three alternative approaches/solutions are offered that integrate and respond to the four questions in a comprehensive manner. These three alternatives are presented in detail in both text and table format in the pages that follow along with potential implications. They are summarized below:

- Alternative A: Continue with the current system based on the LDR Natural Resources Overlay District, but update its boundaries based on the recent Focal Species Relative Values Habitat Mapping (FSHM). Development review processes and Environmental Analysis scope and role stay the same as current.
- Alternative B: Use the recently completed Focal Species Habitat Map to create a revamped Natural Resources Overlay District that, as recommended in the comprehensive plan, delineates tiers based on importance of habitat identified in the FSHM (High, Medium, Low wildlife habitat-based tiers). A property's tier designation determines the process and level of natural resources review and applicable regulations (e.g., strongest in the High Tier which is mostly in rural areas, less stringent in Low Tier which is mostly in established growth areas). Natural resource protection generally takes priority over other community goals (e.g., housing) in High and Medium Tiers.
- Alternative C: This alternative envisions a system implemented through a combination of Focal Species Habitat Mapping and zone districts with four specific tier natural resource categories (Low, Mid, High, and Highest). The tiers would be based on the FSHM relative value with each zone district having different natural resource protection standards for each tier that would be set forth in the zone district provisions. The applicable natural resources analysis process will be determined by planning staff. Process determination and protection standards will be driven by the FSHM, but it will be implemented in conjunction with zone district provisions in combination

with other resource tools (e.g., migration layer, presence of wetlands, stormwater management, etc.).

The alternatives below introduce some new terminology relating to the information regarding natural resources on a site. This is necessary to distinguish the level of environmental review in the three alternatives from current practice and terminology. In prior documents, Environmental Analysis was used as an umbrella term for all levels of environmental review. In this document, we have employed the term “Natural Resources Analysis” to encompass all levels of environmental review. Within Natural Resources Analysis, there are three levels of review: Environmental Analysis, Environmental Review and Staff-Level Environmental Review. The top two processes assume applicant-hired environmental consultant while the lowest level process could be conducted by planning staff or an applicant-hired environmental consultant. These three levels are referred to in the material below and generally defined as follows. These definitions will be further defined through this process updating the LDRs.

- Environmental Analysis - Environmental Analysis (EA) is the full implementation of comprehensive plan Policy 1.1.b. that calls for the protection of wildlife, wildlife habitat and movement corridors. This is the most in-depth level of natural resources analysis process to ensure the maximum level of protection where the most significant natural resources are located. An EA will include a detailed inventory of the natural resources on the property and in the vicinity (Vicinity Analysis), applicable natural resource regulations and an Alternatives Analysis to provide the highest level of protection to “wildlife, wildlife habitat and movement corridors” (Comp Plan Policy 1.1.b). An Alternatives Analysis outlines options for development minimization, location, clustering, and mitigation areas. The planning department then determines which alternative best adheres to the natural resources regulations. EAs at this level will be conducted by an environmental consultant.
- Environmental Review - Topics covered are the same as an EA without an Alternatives Analysis. The Environmental Review process would be utilized to direct development on a site based on natural resources present on a property and a vicinity analysis based on applicable natural resource regulations. Environmental Reviews at this level will be conducted by an environmental consultant.
- Staff-Level Environmental Review - The Staff-Level Environmental Review covers the same natural resource topics as an Environmental Analysis or Review in a straight-forward, checklist format and should include very little subjectivity. If there is a significant amount of subjectivity involved in decision making, the planning staff may decide that an environmental review is more appropriate. This checklist format will be an analysis of the natural resources present on the site, the applicable natural resource protection standards, and resulting mitigation requirements. For instance, “Are wetlands present, yes or no? If yes than the applicable buffer requirements are X”. A Staff-Level Environmental Review could be conducted by planning staff without any input from outside consultants. This option could potentially require more time and effort by planning staff than the current process. Staff-Level Environmental Reviews could also be conducted by environmental professionals if requested by either planning staff or the applicant.

Topics to be covered at all levels of natural resource analysis may include, but are not limited to, Wetlands, Waterbodies, Buffers, Wildlife Permeability, Wild Animal Feeding, Bear Conflict Areas, Mitigation requirements, and Wildlife Species Habitat. Landowner involvement is included in all levels of environmental analysis or review.

## Policy Question 1:

### What Is The Purpose Of An Environmental Analysis (EA) [the Natural Resource Analysis] Process?

#### A. Current Regulations/Background

No specific comprehensive plan direction. The LDRs provide that “The purpose of an Environmental Analysis [aka Natural Resource Analysis Process] is to coordinate the application of natural resource protection standards through identification of the natural resources on a site. A [Natural Resource Analysis/] EA review does not result in application approval, it results in recommended natural resource protections for an application.” (LDR Section 8.2.2.A)<sup>1</sup> In practice, the EA functions to:

- To coordinate the application of natural resource protection standards through identification of the natural resources on a site.
- To inform where physical development should be located.
- To track and process impacts, alternative analyses, and mitigation.
- To determine if the property is located in the Natural Resources Overlay.

#### B. Key Issues

Currently, the EA is used to construct and govern the development review process rather than, as directed by the comprehensive plan, to focus on providing protection from the impacts of development. The [Natural Resource Analysis]/ EA is being used to address varying conditions and multiple levels of need—in effect, the same tool for markedly different situations. The key issue is how to best use the [Natural Resource Analysis process]/ EA in a tiered system based on the recently completed Focal Species Habitat Map as discussed in Question 3.<sup>2</sup>

Question 1 addresses the purpose of the Natural Resources Analysis process (formerly referred to as Environmental Analysis). In all three comprehensive alternatives below, the purpose of the natural resources analysis is to protect natural resources and balance this community goal with those of the property owner and other community goals. This balance is achieved through varying levels of natural resources analysis, natural resource protection standards, and zone district regulations. Alternatives for the purpose of an Environmental Analysis/Natural Resource Analysis (Question 1) are therefore woven through the entirety of the alternatives outlined below.

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<sup>1</sup> All references to “Sections” and “Divisions” in this document are to provisions of the January 3, 2017, version of the Teton County Land Development Regulations.

<sup>2</sup> Section 8.2.2.C *Professional Preparation* of the LDRs establishes the current practice of county-hired versus applicant-hired environmental consultants. This topic has not been addressed within this document and may be a feature of the EA system that should be eliminated.

## Policy Question 2:

# What Is The County/ Town And Other Agency Role In Environmental Analysis / [Natural Resource Analysis] Review?

## A. Current Regulations/Background

No specific comprehensive plan direction. Under the current LDRs, the role of Teton County/Town of Jackson in the Environmental Analysis/ [Natural Resource Analysis] process is:

- To supervise/ manage the county hired consultant, including contracting, invoicing, reviewing drafts and determine alternatives
- To update the list of qualified consultants every 3 years through a request for qualifications process.
- To coordinate the applicant-hired consultant EA processes
- To review the EA, confirm or refute the findings, and produce a review letter
- To solicit Plan Review Committee (PRC) input including comments
- To ensure EA review becomes a component of the physical development review

Outside Agency Role (e.g., Wyoming Fish and Game Department, Teton County Conservation District, Teton County Weed and Pest): The outside agency role in the EA process is to provide review comments in a timely manner from the perspective of their relative field of expertise. LDR Section 8.10.2 states the PRC is to advise and assist the planning director in reviewing, making recommendations, and deciding applications by providing technical assistance regarding compliance with the LDRs. Wyoming State Statute 18-5-306(c) requires the Teton Conservation District to review subdivision plats.

## B. Key Issues

- What is the optimal role for the Teton County/ Town of Jackson planning staff?
- Process timelines are ill-defined and often lengthy leading to uncertainty in the review process.
- Sometimes staff requests more information without an applicant understanding why the additional detail is needed.
- Outside agencies are not adequately informed and do not understand their function in the development review process and therefore have differing interpretations of what their role is in the process. Moreover, their involvement is not early in the review process which means their input may be received after key aspects of a development are settled.
- The PRC is made up of multiple area agency personnel who currently review development applications. PRC requests from the planning department require a substantial time commitment on the part of the agency personnel reviewing these applications. The desire for the future would be to develop a system by which agency personnel can more efficiently review and comment on development applications.

## Policy Question 3:

### How Should The Next Generation Of Natural Resource Protection Measures Vary By Tier?

#### A. Current Regulations/Background

The comprehensive plan Policy 1.1.b. calls for a tiered system to protect wildlife from the impacts of development: *“A tiered system of protection should be established so that the most critical habitat and movement corridors receive the highest level of protection and site specific study. Applicable tiers of protection should respect property rights, previous approvals, and community-wide clustering efforts”*.

Currently the LDRs Natural Resources Overlay (NRO) is defined by 10 different critical habitats. An estimate of the location of those habitats is mapped to let the public know what land may be in the NRO, but an Environmental Analysis (EA) is required to definitively establish whether a specific site is justified to be within the NRO.

#### B. Key Issues

- The current NRO and its boundaries are based on studies and information that are outdated.
- The NRO is meant to be a guideline (Section 5.2.1.B.2 *Map of the NRO*) but is sometimes implemented as a hard, definitive line.
- The comprehensive plan calls for both a tiered system with protections that would vary by tier (Policy 1.1.b) and more certainty in the development review process.
- A Focal Species Habitat Map (FSHM) was developed in 2017 to be the basis of a tiered landscape-scale system as recommended in the comprehensive plan.

## Policy Question 4:

# What Is The Purpose Of Wildlife Habitat And Movement Corridor Protection Regulations?

## A. Current Regulations/Background

The comprehensive plan Ecosystem Stewardship Value contains six policies and seven strategies aimed at maintaining healthy populations of all native species. Generally the order of priority in natural resource planning is first to inventory natural resources, second to avoid impacts, then minimize impacts, and finally to mitigate impacts. Comprehensive plan Policy 1.1.a directs protection of focal species habitat (Questions #3 and 7); Policy 1.1.b calls for protecting wildlife species from the impacts of development (all Questions); Policy 1.1.c. specifies design for wildlife permeability (Questions #3, 8 and this one); and Policy 1.1.f. recommends mitigation of unavoidable impacts to habitat (Question #5). In addition, the purpose of the current Natural Resources Overlay (NRO) is to provide protection to the most important and sensitive natural areas throughout the county and town that provide critical winter habitat and migration routes essential for survival of the named species.

The current LDRs contain numerous provisions to implement the comprehensive plan policies set forth above. For example, Division 5.1, General Environmental Standards, includes regulations related to protection of waterbody and wetland buffers, wildlife-friendly fencing, and wild animal feeding. Division 5.2, Environmental Standards Applicable In Specific Areas, includes Natural Resource Overlay (NRO) standards that cover a wide range of habitat protection measures. Section 8.2.2 requires a comprehensive Environmental Analysis (EA) that entails preparing a habitat inventory and development impact assessment for many development applications.

## B. Key Issues

- This policy question is multifaceted and the outcomes depend on the alternatives chosen for Questions #1, 3, and 8.
- Key issues related to the NRO, EA, and Wildlife-Friendly Fencing are addressed in Questions #1-#3 and #8.
- The current prohibitions on wild animal feeding in Section 5.1.3, are geared to preventing human-wildlife conflict and appear to be up-to-date and clear according to staff and other observers. The main challenge is enforcement which is done on a complaint basis. Reportedly there are certain parties in the county who are aware of the prohibitions but repeatedly violate them. Violators are typically not prosecuted but are visited by a member of county staff and provided educational materials informing them of county rules and the adverse impacts on wildlife if they are not followed. According to staff, most violators then adhere to the rules in the future.
- Potential bear conflict issues (e.g., placement/security of trash receptacles) are addressed in building permit reviews. Post-development enforcement is carried out on complaint basis.
- Wildlife permeability is specifically addressed in the comprehensive plan but is not defined and there are no regulations in the current land development regulations that provide for wildlife permeability through development. The development of a Migration/ Wildlife Movement Overlay based on information gathered during the Focal Species Relative Values Habitat

Mapping process would provide a tool allowing for different wildlife permeability standards within important areas.

- In the Alternatives below there is reference to a migration/ wildlife movement overlay. The Focal Species Relative Values Habitat Map (FSHM) currently includes a layer for delineating wildlife migration corridors. However, because migration and movement corridors are functionally different from habitat (the remaining layers), as this process has evolved, there is a consensus that the migration/ movement layer should be removed from the cumulative relative values map and become a stand-alone overlay. There is a tremendous amount of biological research being done on migration and movement corridors at present. Having the migration/ wildlife movement overlay be a stand-alone tool would furthermore allow it to be updated as new data becomes available. Additionally, natural resource regulations concerning wildlife permeability (a priority of the comprehensive plan Policy 1.1.c *Design for wildlife permeability*) are fundamentally different from those concerned with wildlife habitat. Having a separate overlay for wildlife permeability regulations allows these two topics to be handled in an efficient and effective manner.

## C. Alternative Approaches/Solutions

Updates to the LDRs are implicit in all alternatives, including but not limited to Wetlands, Waterbodies, Buffers, Wildlife Permeability and Habitats, Wild Animal Feeding, and Mitigation.

### ALTERNATIVE #1-4.A:

The Focal Species Relative Values Habitat Map is used to update the current Natural Resources Overlay (NRO) based on medium-to-high relative values. The NRO is used as a generalized line and is meant to “put landowners on notice” (existing conditions). This alternative envisions that applicants with properties within the NRO will verify the natural resources present on the property through a natural resources analysis process (See introductory section for further detail.). If a property is in the updated NRO, the natural resource analysis process would require an environmental analysis. If outside of the NRO, the natural resources analysis would not be required unless specific natural resources such as wetlands, waterbodies, threatened or endangered species or migration/ movement corridors were present. Some mitigation requirements such as tree/vegetation replacement will apply to all development regardless of whether in or out of NRO. Within the NRO, location of development on a site would be determined based on natural resources analysis. Mitigation would be required for all significant impacts. Outside of the NRO, location of development on a site could be determined by applicant regardless of natural resources present, but mitigation would be required for all impacts. If the development were located on a site based on the natural resources analysis, mitigation requirements could be reduced.

A variation on this alternative is a four-tiered model proposed by the Teton Conservation District that relies solely on planning staff to conduct all levels of Natural Resource Analyses. It involves setting a pre-determined level of conservation/maximum amount of allowed impacts requirement based on both the zone district (more impacts allowed for sites in designated growth areas) and the property size. Flexibility in these conservation/impact levels could potentially be provided by mitigation and restoration options. For example, a three-acre parcel in a high tier, rural zone could have a requirement of 2.5 acres of conservation with an allowance of 0.5 acres of impact. If site restoration or more mitigation than is required is completed, flexibility could allow for a greater level of impacts.

## Implications

This alternative represents an update of the current system incorporating information from the newly produced focal species relative values habitat map, but in a limited capacity. However, this “tiered” system (as called for in the comprehensive plan) has only two tiers - properties are either in or out of the NRO as under the existing system. The benefits of this approach could be that the current system is familiar to landowners, developers, and county staff. Moreover, the update of the NRO would represent a minimal shift in how development applications are processed for natural resource analysis (currently called environmental standards). Potential drawbacks of this alternative are that it does not provide for much flexibility nor does it add leeway for medium relative habitat value areas where opportunities may exist for enhancement and incentives. Another significant drawbacks is that utilizing the current system continues the uncertainty it causes for landowners since the NRO is not a hard line, but requires a time-consuming and expensive Environmental Analysis (EA) to be conducted to determine if a property lies within the NRO (Section 5.2.1.B.2 *Map of the NRO/ Site Specific Analysis Is Required*). Furthermore, an EA may still be required for sites in preferred growth areas (e.g. Complete Neighborhoods) where there may be little or no habitat value. As a result, adopting this alternative may end up continuing to impose a time-consuming and expensive natural resources analysis (complete EAs) on properties targeted for growth in the comprehensive plan.

## ALTERNATIVE #1-4.A

An update of the current NRO system based on limited use of the newly produced focal species relative values habitat map.

UPDATE CURRENT NRO BASED ON MEDIUM TO HIGH RELATIVE VALUES FROM FOCAL SPECIES RELATIVE VALUES HABITAT MAP - Tiers will be generalized line					
TIER (Question 3)	Natural Resources Analysis Process (Question 1 & 3)	Planning Staff Role (Question 2)	Agency Role (Question 2)	Wildlife Habitat and Permeability (Question 4)	Natural Resource Regulations
<b>IN NRO HIGH AND MEDIUM Relative Value Habitat</b>	Environmental Analysis (EA) with or without alternatives analysis. Staff has flexibility to elevate or decrease level of EA depending on special site factors.	Staff role would be similar to current. Alternatives analysis determination, coordination of PRC comments, and whether the EA and proposed development adhere to the natural resources land development regulations.	WGFD/ Other PRC agency as deemed appropriate by TC Planning will attend Pre-Application Conference and Alternatives Analysis meeting; PRC will provide directed comments based on comprehensive form	Movement corridors are to be protected and enhanced through project design and applicable regulations to uphold Comp Plan Policy 1.1.c <i>Design for Wildlife Permeability</i>	Applicable natural resource regulation requirements may differ by Rural or Complete Neighborhood Character Districts or zoning.
<b>OUT OF NRO LOW Relative Value Habitat</b>	Staff-Level Environmental Review - checklist review of natural resources present.	Planning staff would determine whether proposed development adheres to the natural resources land development regulations and mitigation requirements. Review would be done by planning department staff unless an environmental consultant is requested by staff, applicant, or PRC. Staff and applicant may have leeway for determining the location of on-site development.	None unless requested by planning staff or applicant or deemed necessary based on topics (Wildlife Permeability, SWM, Waterbodies, etc). Reduced subjectivity is goal. If subjectivity or interpretation is a variable then project should not be in the Low Tier. Data sources for checklist will be defined and available to the public.	When within the Migration/ Wildlife Movement Overlay. Comp Plan Policy 1.1.c will be implemented through applicable regulations such as wildlife-friendly fencing and wildlife feeding controls. Incentives will reward creative development design that enhances wildlife movement through the property and vicinity.	Applicable natural resource regulation requirements may differ by Rural or Complete Neighborhood Character Districts or zoning. Natural resource regulations applied outside of the NRO are expected to be straightforward (e.g. uniform setback from wetlands).

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## ALTERNATIVE #1-4.B:

In this alternative, the Focal Species Relative Values Habitat Map is used to create high, medium, and low tiers (hard lines) based on relative value habitats. The applicable tier (high, medium, or low) will reflect relative habitat value, and the primary function will be to determine the natural resources analysis process (EA, Environmental Review or Staff-Level Environmental Review) to be followed. If two or more tiers are represented on a parcel then the process for the higher tier will be followed. The natural resources analysis helps determine the preferred location of development on a site and applicability of regulations such as buffer widths, stormwater management (SWM) requirements, and mitigation measures. Updated natural resources LDRs would be applied in the development review process.

### Implications

This alternative sets the foundation for the LDR natural resources regulations, character districts, and zone districts to be mutually supportive “requiring the community to enhance our built environment into desirable places for residents, businesses, and visitors in order to protect wildlife habitat, habitat connections, scenery and open space” (Jackson/ TC Comprehensive Plan pg. ES-8) and to direct growth out of habitat, scenery and open space (Principle 3.1). This alternative achieves this balance through implementing the comprehensive plan directive that “preserving and protecting the area’s ecosystem is the core of our community character” (pg. CV-1-1). It also directly advances comprehensive plan Policies 1.1.a *Protect focal species habitat based on relative critical value* and 1.1.b. *Protect wildlife from the impacts of development through the use of a tiered system based on wildlife habitat relative values.*

Comprehensive plan Policy 1.1.a and 1.1.b were the reason behind the creation of the Focal Species Relative Values Habitat Map (FSHM) that is the central foundational pillar of this alternative. The FSHM was developed to be applied at the landscape (not property or neighborhood) level. The scientifically sound methodology used to create the Focal Species Relative Values Habitat Map also provides for the ability to update it relatively quickly and efficiently as new scientifically based wildlife habitat information becomes available or as new focal species are identified whose habitat Teton County desires to protect. Because this tiered system and revised natural resources LDRs would be tied directly to and reference the latest version of the FSHM, the updated map would, under this alternative, be automatically incorporated into the natural resource protection process and standards of the LDRs without requiring hearings and a formal update of the zone districts or LDRs, which can be time consuming and potentially controversial. This alternative can be implemented immediately employing the current zoning district boundaries and standards.

This alternative is more predictable than the current system and is a natural progression from the current system to one that is more easily understood and predictable in both process and regulations. A landowner will be able to determine what tier a property is located in and thereby the natural resources analysis process required simply by looking at the Teton County MapServer. For properties in the Low Tier, the applicable LDR regulations and mitigation requirements set forth by tier under each substantive natural resource regulation topic (e.g., buffers, wildlife-friendly fencing) will be clear and certain. Furthermore, this alternative will allow for independent updates to zone districts and the implementation of character districts without upsetting the system’s foundational underpinnings or processes. If this alternative is adopted, the existing zoning districts should be updated to align with the comprehensive plan’s Character Districts as well as the Focal Species Habitat Map Tiers. It should be emphasized that under this alternative the rezoning process can take place without disrupting the natural resource regulatory process. Once a rezoning process is

complete, the newly defined zone/ character district boundaries and accompanying development standards can be incorporated into this tier-based alternative.

Landowners and developers in higher tiers could potentially have less discretion in choosing a specific location for development on a site than in the lower tiers. In higher relative value tiers, development location will be determined primarily by assessing where impacts to natural resources and wildlife habitat will be minimized. However, landowners in lower tiers could potentially have more leeway and a simpler review process than is currently required. Finally, the FSHM can be methodically updated on a periodic basis so that decisions are based on the best available information. As stated earlier, an update to the tiers would automatically be incorporated into the system thereby implementing the comprehensive plan's goals of both Ecosystem Stewardship and Growth Management. Over the long-term, this alternative could lay the groundwork for a cumulative effects analysis of development, a central Growth Management goal.

This alternative is intended to function as an enhancement of the existing zoning to implement the union of the Ecosystem Stewardship and Growth Management comprehensive plan goals. This alternative will help to encourage development in the “the most ecologically suitable places” which is at the core of the Growth Management Common Value (Comp Plan pg. ES-7) through the use of streamlined natural resources analysis processes in more ecologically suitable areas. This tier-based system will identify where the most ecologically sensitive and most ecologically suitable places are for development and then the underlying zoning/ character districts and updated LDR natural resources regulations will fine-tune the development options dictating the types, density and dimension, etc. of the development. If it is found through the adaptive management programs established by the comprehensive plan that the growth management goals are not being met in terms of locating development away from the most sensitive areas and encouraging it in less sensitive ecological areas then the zoning/ character districts may need to be altered to achieve the desired densities and uses.

## ALTERNATIVE #1-4.B

An alternative that establishes high, medium, and low relative value habitat tiers based on the recently completed, FSHM as called for in the Jackson/ Teton County Comprehensive Plan. With this foundation, Alternative #1-4.B provides for the streamlining of future updates to incorporate the most scientifically accurate and relevant wildlife habitat information without the need to revise the LDRs' natural resource standards or zone/ character districts.

TIERS BASED ON FOCAL SPECIES RELATIVE VALUES HABITAT MAP - Tiers are hard lines. If two or more tiers are represented on a parcel then the process for the higher tier will be followed.					
TIER (Question 3)	Natural Resources Analysis Process (Question 1 & 3)	Planning Staff Role (Question 2)	Agency Role (Question 2)	Wildlife Habitat and Permeability (Question 4)	Natural Resource Regulations
<b>HIGH Relative Value Habitat</b>  Emphasis is on habitat protection	Environmental Analysis (EA) including Alternatives Analysis.	Staff role would be similar to current. Alternatives analysis determination, coordination of PRC comments and whether the EA and proposed development adhere to the natural resources land development regulations.	WGFD/ Other PRC agency as deemed appropriate by TC Planning will attend Pre-Application Conference and Alternatives Analysis meeting.	Movement corridors are to be protected and enhanced through design and applicable regulations to implement Comp Plan Policy 1.1.c	Applicable natural resource regulation requirements will differ by tier. High Relative Values Habitat should be primarily found in Rural Character Districts/zones and thus be subject to more stringent habitat protection regulations.
<b>MEDIUM Relative Value Habitat</b>  Emphasis is on both habitat protection and opportunities for habitat enhancement	Environmental Review - Topics covered are the same as an EA without the Alternatives Analysis.	Staff role would be similar to current ZCV review. Coordination of PRC comments and whether the Environmental Review is adequate and proposed development adheres to the natural resource regulations.	Planning staff or applicant can invite PRC assistance when appropriate particularly where enhancements are desired	When within the Migration/ Wildlife Movement Overlay Comp Plan Policy 1.1.c will be upheld through applicable regulations such as wildlife friendly fencing and wildlife feeding. Incentives will reward for development adjustments that enhance wildlife movement through the property and vicinity.	Applicable natural resource regulation requirements will differ by tier. Applicable natural resource regulations in medium tier will be less stringent and may allow for incentive-based habitat enhancement opportunities.
<b>LOW Relative Value Habitat &amp; Redevelopment</b>  Emphasis is on natural resources that connect to other areas such as water and wildlife permeability while easing the natural resource analysis process for higher density development areas	Staff-Level Environmental Review - checklist review of natural resources present. Information sources for checklist will be defined and publicly available	Planning staff would determine whether proposed development adheres to the natural resources land development regulations and mitigation requirement depending on the natural resources on the property. Review would be done by planning department staff.	None unless requested or deemed necessary based on topics (Wildlife Permeability, SWM, Waterbodies, etc). Reduced subjectivity is goal. If subjectivity or interpretation are a variable then project should not be in the Low Tier.	Within the Migration/ Wildlife Movement Overlay. Comp Plan Policy 1.1.c will be implemented through applicable regulations such as wildlife friendly fencing and wildlife feeding. Incentives will reward development that enhance wildlife movement through the property and vicinity.	Applicable natural resource regulation requirements will differ by tier. Natural resource regulations in the low tier are expected to be limited and straightforward. Low Relative Values Habitat should be primarily found in Complete Neighborhood areas and thus be subject to less stringent habitat protection regulations and a streamlined Natural Resource Analysis Process.

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## **ALTERNATIVE #1-4.C:**

This alternative envisions a system implemented through a combination of Focal Species Habitat Mapping and zone districts with four specific tier natural resource categories (Low, Mid, High, and Highest). The tiers would be based on the FSHM relative value with each zone having different standards for each tier. For example the highest tier in R1 would have different standards than the highest tier in BP (Business Park) zone. Natural resource process (Natural Resource Analysis) and regulations (e.g. buffers, mitigation, fencing, etc.) would each be regulated specific to the zone.

The applicable natural resources analysis process and protection standards will still be driven by the FSHM, but it will be implemented in conjunction with zone district provisions in combination with other resource tools (e.g., migration layer, presence of wetlands, stormwater management, etc.). Growth management goals are inherently considered with Ecosystem Stewardship goals because both are integrated into the standards for intensity, location, and other aspects of a proposed development through the zoning standards.

### **Implications**

In this alternative, FSHM-based tiers are mapped but applicable protection regulations are set forth in each zone district rather than in separate sections containing all development standards as is now the case. Using zone districts for purposes of natural resources analyses eliminates the need to rely on an overlay with a set of tiers and regulations based on the FSHM as with Alternative A. This alternative has a framework in place that regulates density, bulk, scale, setback, permitting process, etc. that should accommodate relatively easily most of the solutions to policy issue questions associated with this update. Because it is based on zoning districts, it represents a system that the public and staff are familiar with and may be more predictable.

Because Alternative #1-4 C is not based solely on the FSHM and takes into account growth management, it may not always give priority to natural resource values and ecosystem stewardship in reviewing development applications except in the higher tiers in rural zones.

Another potential drawback of this alternative is that many existing zone districts have not been updated to be in accord with the related character districts in the comprehensive plan nor have they been remapped since the plan was adopted. Additionally, setting forth all applicable natural resource regulations in each zone district instead of in a separate section on development standards will significantly increase the size of the development code and could make future updates more complicated.

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## ALTERNATIVE #1-4.C

The foundation of this alternative is existing zone districts and the FSHM. Natural resources regulations would be tailored to and incorporated in each zone district, not in an overlay.

TIERS BASED ON EXISTING ZONE DISTRICTS AND FSHM - Tiers will be hard lines based on FSHM. Analysis process is based on zones.					
TIER (Question 3)	Natural Resources Analysis Process (Question 1& 3)	Planning Staff Role (Question 2)	Agency Role (Question 2)	Wildlife Habitat and Permeability (Question 4)	Natural Resource Regulations
<b>HIGHEST Relative Value Habitat</b>	Environmental Analysis (EA), Environmental Review or Staff-Level Environmental Review (SR) based on zone district and tier.	Staff role would be similar to current. Alternatives analysis determination, coordination of PRC comments and whether the EA and proposed development adhere to the natural resources land development regulations.	WGFD/ Other PRC agency as deemed appropriate by TC Planning staff will be consulted as directed by zone standards	Wildlife Habitat and Movement corridors are to be protected based on FSHM and zone.	Applicable natural resource regulation requirements may differ by zone. Strictest environmental regulations may be associated with the rural zones
<b>HIGH Relative Value Habitat</b>	Environmental Analysis (EA), Environmental Review or Staff-Level Environmental Review (SR) based on zone district and tier.	Staff role would be similar to current - coordination of PRC comments and whether the natural resources analysis and proposed development adhere to the Zone natural resource regulations.	Planning staff or applicant can invite PRC assistance when appropriate as directed by zone standards	Wildlife Habitat and Movement corridors are to be protected based on FSHM and zone.	Applicable natural resource regulation requirements may differ by zone, infill or redevelopment. Strictest environmental regulations may be associated with the rural zones
<b>MEDIUM Relative Value Habitat</b>	Environmental Analysis (EA), Environmental Review or Staff-Level Environmental Review (SR) based on zone district and tier.	Staff role would be similar to current determining whether the natural resources analysis and proposed development adhere to the zone natural resource regulations.	None unless requested by planning staff or applicant as directed by zone standards.	Wildlife Habitat and Movement corridors are to be protected based on FSHM and zone.	Applicable natural resource regulations requirements for redevelopment may allow for incentive based opportunities for habitat enhancement and resource protection.
<b>LOW Relative Value Habitat</b>	Environmental Analysis (EA), Environmental Review or Staff-Level Environmental Review (SR) based on zone district and tier.	Review would be conducted by Planning Department staff.	None unless requested by planning staff or applicant as directed by zone standards.	Wildlife Habitat and Movement corridors are to be protected based on FSHM and zone.	Applicable natural resource regulations in high density zones or character districts are expected to be both limited and predictable.

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## **D. Incentives**

These alternatives describe a foundational process and applicable Incentives are contained within the associated natural resources regulations covered in Policy Questions #5-11.

## **E. References**

Not applicable - specific and unique to Teton County, WY.

## Policy Question 5: How Will Mitigation Standards Offset Development Impacts?

### A. Current Requirements/Background

Comprehensive plan Policy 1.1.f. calls for mitigation of unavoidable development impacts to wildlife habitat.

Section 5.2.1.E.2 of the Natural Resources Overlay regulations requires two acres of mitigation/ habitat enhancement for every one acre of land impact. A prioritized order of mitigation is established beginning with on-site mitigation of the same or higher cover type that was affected and progressing to off-site mitigation on private land of a different kind of habitat or vegetative cover that was affected. As an element of the mitigation, the applicant must submit a habitat enhancement plan that includes establishment methods, maintenance, weed control, monitoring and surety (Section 5.2.1.E.2.b). Section 5.1.1.D.3.b relating to wetlands requires development impacts on wetlands to be mitigated on a 2:1 basis.

### B. Key Issues

Preservation of trees and vegetation on a development site and avoidance of development impacts are key elements of effective natural resources protection programs. While the current natural resource LDRs provide for vegetation protection or mitigation (such as replacement of trees and vegetation removed) on a development site within the NRO and in wetlands as noted above, there appear to be significant gaps in the overall system. For example, protection of vegetation in buffer areas is weak (Section 5.1.D.f), removal of significant vegetation when not associated with a development permit is largely unregulated, and large single-family lots outside the NRO are not subject to vegetation protection standards. Moreover, current land development regulations prioritize on-site, in-kind mitigation/habitat enhancements. In many cases, this focus results in ineffective mitigation. While the NRO regulations require 2:1 mitigation of vegetation removed, both on- and off-site mitigation are challenging for smaller projects or properties. Several agencies have commented that on-site mitigation is rarely effective, especially on smaller sites. Currently, there is no formal county off-site mitigation system (e.g., a mitigation bank or in-lieu payment system) similar to ones adopted in other jurisdictions across the USA that could help restore degraded but critical wildlife habitat areas in other locations.

### C. Alternatives Approaches/Solutions

#### ALTERNATIVE 5.A:

This alternative would extend current vegetation protection standards to apply to buffers wherever located, all single-family lot developments/construction in High and Medium Tiers, and removal of trees and vegetation independent of a development permit in High and Medium Tiers. Mitigation would be required in the Low Tier only for stormwater quality management purposes and wildlife permeability or if development has an impact on high-value habitat. This alternative would also create a county administered off-site mitigation system (e.g., mitigation bank, in-lieu payment into county fund) that applicants could utilize rather than conducting costly, often ineffective on-site mitigation. Funds in any system would need to be managed but could be used by the county, for

example, to purchase critical parcels of land, WGFD habitat restoration projects on private lands, or for wildlife crossing projects.

### **Implications**

This would result in plugging the current gaps in the LDRs' protection of trees and vegetation on a development site outside of the current NRO. It would require additional site plan analysis by applicants to avoid development in areas that would involve vegetation/tree removal (e.g., use of clustering, permeability analysis, etc.). Additionally, it would begin to shift the focus from on-site mitigation to off-site options and would create a major new option with a government administered off-site mitigation system. Finally, it would require a tree/vegetation removal permit by any landowner whether or not any development was involved.

### **ALTERNATIVE 5.B:**

In addition to the requirements of alternative 5.A, establish a clear, objective, predictable hierarchy of mitigation measures with options ranging from on-site mitigation to off-site mitigation, use of mitigation bank, in-lieu payment, stream restoration, and similar measures. County would have final decision-making authority to direct use of whichever option that would be most effective. Restoration of previously damaged or disturbed habitat would be required in the High and Medium Tiers when seeking a development permit.

### **Implications**

In addition to the additional requirements of Alternative 5.A, an applicant would not have broad discretion to propose or choose a mitigation approach that might be the least expensive or easiest to implement as is now the case. Rather, the focus would be on the most effective mitigation approach from a perspective of preserving and enhancing functioning wildlife habitat in the county. County staff would have the final say in selecting the most effective mitigation approach.

## **D. Incentives:**

See Question 11 for discussion of incentives. Specific potential incentives include:

- Expand the current 2:1 mitigation standard county-wide in High and Medium Tiers to create disincentive for removal of important vegetation.
- Allow reduction in 2:1 mitigation to 1.5:1 where development applicant restores important previously disturbed/damaged habitat on a development site.
- Adopt a 1:1 mitigation standard county wide in Low Tier to maintain presence of vegetation in higher density residential areas.

## **E. Resources/References:**

- American Planning Association, Zoning Practice Tree Preservation  
<https://www.planning.org/media/document/9027803>
- U.S. EPA Mitigation Banking Fact Sheet <https://www.epa.gov/cwa-404/mitigation-banking-factsheet>

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- Fulton County, Georgia, tree preservation ordinance:  
[http://www.fultoncountyga.gov/images/stories/ECD/Permits/Tree\\_Protection\\_Ordinance\\_revised\\_Sept\\_2014.pdf](http://www.fultoncountyga.gov/images/stories/ECD/Permits/Tree_Protection_Ordinance_revised_Sept_2014.pdf)

## Policy Question 6:

# How Will The Update Achieve The Comprehensive Plan Water Quality Goals?

## A. Current Requirements/Background

Comprehensive plan Policy 1.2.c. directs monitoring and maintaining water quality and 1.2.b. recommends filtration of runoff. However, the LDRs do not contain direct water quality regulations. Some water quality management is realized through stormwater quantity controls, sediment and erosion controls, buffer regulations, and vegetation protection.

In addition to regulatory programs, both local governments and NGOs in Teton County and the Town of Jackson (TOJ) participate in water quality improvement projects. Examples are street sweeping by TOJ, treatment of snow storage by TOJ, Flat Creek at Karns Meadow stream rehabilitation by TOJ, the Teton Conservation District (TCD)/Wyoming Department of Environmental Quality (DEQ)/Friends of Fish Creek septic pump out grants, TCD Nutrient Reduction in Fish Creek study, and sediment and trash interceptors that fit below stormwater grates, to name a few.

## B. Key Issues:

The LDRs contain no direct stormwater quality standards or regulatory requirements; current stormwater regulations address quantity only. Other standards that get at the problem indirectly such as waterbody buffers and water quality improvement programs noted above are helpful, but runoff quality problems persist throughout county. Polluted stormwater contaminates streams, wetlands, and other water bodies, particularly in built-up areas and has a serious adverse impact on wildlife habitat for trout and other species. Additionally, thermal and nutrient runoff from landscape water features and other ponds also pollute streams and waterbodies.

## C. Alternatives Approaches/Solutions:

Policy Questions 6 and 7 are closely related and should be considered in tandem.

### ALTERNATIVE 6.A:

Continue with current system's focus on stormwater quantity, but address quality through techniques such as improved buffer regulations (e.g., limit vegetation removal in buffers) and site limits of disturbance to minimize soil disturbance and vegetation removal instead of additional stormwater quality best management practice (BMP) regulations such as filtration and permeable surfaces. In addition, adopt enhanced septic regulation including further limiting development near wetlands and waterbodies and requiring systems that exceed DEQ standards as well as lower nutrient septic systems in high groundwater areas.

### Implications

Using improved/enhanced indirect methods such as stronger buffer protection regulations would require updates to the LDRs that would likely increase costs for developers but would be

simpler and less expensive than adopting an entirely new regime of stormwater quality regulations. However, indirect methods may not be as effective as would adoption of a comprehensive system of stormwater quality management regulations.

### **ALTERNATIVE 6.B:**

Require adoption of specific stormwater quality best management practices such as stormwater wetlands, pervious pavement, bioswales, filters, and bottom drains for ponds) in Low and Middle Tiers and limit impervious surfaces for all development and redevelopment.

#### **Implications**

Requiring a limited number of specified stormwater quality BMPs would involve a new approach to addressing stormwater quality in the county and necessitate drafting a new regulatory regime that would likely increase costs for developers and require additional staff to administer. However, adoption of stormwater quality management regulations would likely improve stormwater quality management results over indirect methods such as enhanced buffers.

### **ALTERNATIVE 6.C:**

Adopt a completely new system for stormwater quality management requiring stormwater quality BMPs and Environmental Site Design (Environmental site design means using small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources) for all non-residential development over a specified acreage/size/impervious cover and for all large residential developments/subdivisions over a specified acreage or building size (e.g., greater than 2,500 square feet).

#### **Implications**

Requiring stormwater quality BMPs and Environmental Site Design would necessitate drafting an entirely new system of stormwater management regulations for the county that would likely increase costs for developers and necessitate hiring additional professional staff to implement and enforce. However, adoption of a comprehensive system of stormwater quality management regulations would likely improve stormwater quality management results over indirect methods such as enhanced buffers.

### **ALTERNATIVE 6.D:**

Require stormwater quality BMPs for all new development, not just non-residential and large residential developments. Focus attention on designated growth areas (Low Tier) where most stormwater pollution originates.

#### **Implications**

Similar to implications of Alternative 6.C.

## **D. Incentives:**

See Question 11 for discussion of incentives. Offer development bonuses (e.g., increased height, floor area) for expanded buffers, environmental site design, stormwater quality BMPs beyond basic standards.

## **E. Resources/References:**

- “National Menu of Best Management Practices For Stormwater,” U.S. EPA <https://www.epa.gov/npdes/national-menu-best-management-practices-bmps-stormwater#edu>
- “Water Quality Scorecard: Incorporating Green Infrastructure Practices Into Local Ordinances”, U.S. EPA <https://www.epa.gov/smartgrowth/water-quality-scorecard>
- U.S. EPA, “Protection of Water Resources With High-Density Development.” <https://www.epa.gov/smartgrowth/protecting-water-resources-higher-density-development>
- City of Aspen/Pitkin County, Colorado, stormwater best management practices summary: <http://www.aspenpitkin.com/Departments/Engineering/Stormwater/Best-Management-Practices/>
- Critical Area Commission for the Chesapeake and Atlantic Coastal Bays 10% Rule: <http://dnr.maryland.gov/criticalarea/Pages/stormwater.aspx>

## Policy Question 7:

### To What Extent Should We Protect Wetlands And Waterbodies?

#### A. Current Requirements/Background

Comprehensive plan Policy 1.2.a prescribes buffers for waterbodies, wetlands, and riparian areas to mitigate potential adverse development impacts. Comprehensive plan Policy 1.2.b. recommends filtration of runoff to protect surface water quality.

From a regulatory perspective, Section 5.1.1.D.1 of the LDRs prohibits physical development and use in waterbodies and wetlands except for essential facilities. Additionally, Section 5.1.1.D.2 requires developments to provide protective buffers for rivers, lakes, streams, and wetlands. Physical development and use on and within a certain distance of these resources is prohibited. The purpose of buffers is to protect the community as a whole from potential negative impacts caused by physical development and uses that may affect these resources or their functions.

#### B. Key Issues

Waterbody, wetland, and riparian buffer regulations are common features in most modern development codes. Such regulations have multiple and often complementary purposes and goals including, among others, protection of water quality and ecological functions, preservation of wildlife habitat, and provision of open space.

Currently, the LDRs do not define the purposes behind requiring buffers. Buffers are required for a variety of reasons ranging from improving water quality to protecting wildlife habitat to providing transitional areas between different types of development. Current required waterbody and wetland buffer distances are weaker in some instances when compared to accepted national standards of 100-150 feet (e.g., the LDRs require 30 feet minimum setback for wetlands and a 50-foot minimum for streams/natural lakes). No buffers are required for “water features,” which are not defined in the LDRs. Additionally, there is no control of vegetation clearing in buffers outside the NRO and wetlands or if not associated with a development permit. No mitigation is required for vegetation removal in a buffer. Buffer size is based only on distance from a waterbody, not other relevant factors such as soil types, permeability, type of vegetation (grasses, etc.), slope, or location (e.g., in designated growth area vs. critical natural area). Complicating matters is that LDR buffers differ from U.S. Army Corps of Engineers wetland protection standards.

Another problematic issue is the definition of a “stream” in the LDRs (Section 5.1.1.C.1.b) that excludes any stream with a flow of less than 3 cubic feet per second even though such waters that exist in Teton County can provide important wildlife habitat for trout and other species. Similarly, the applicability of buffer standards to irrigation ditches and irrigation-induced wetlands is uncertain due to lack of clear definitions and documentation of when and how they were created.

## C. Alternatives Approaches/Solutions:

### ALTERNATIVE 7.A:

Retain the current system of buffers, define buffer purpose or function but expand coverage beyond the NRO and wetlands to protect existing native vegetation in buffers from removal in most instances and require mitigation for any approved vegetation removal. Clarify definitions of irrigation-induced wetlands and irrigation ditches and adopt appropriate standards to exempt or regulate.

#### Implications

Expanding protection for native vegetation in buffers outside the NRO and wetlands would help protect water quality and wildlife habitat throughout the county by reducing land disturbance and preserving vegetative cover. Such restrictions might constrain landowner options to cut vegetation to open views from a property or to make buffers easier to use for recreational and other purposes.

### ALTERNATIVE 7.B:

Define buffer purpose or function, adopt a minimum buffer of 100 feet that applies to all water bodies except rivers regardless of vegetation types, soils, or slope (retain existing 150-foot setback for rivers). A 100-foot setback is a common, accepted standard adopted by many local governments that provides for adequate protection in most instances as well as offering ease of administration. Include administrative relief in LDRs from buffer regulations instead of forcing landowners to use time-consuming variance process where development site is too small to accommodate 100-foot buffer. Grant staff authority to increase buffer to 150 feet where information in a required natural resource analysis justifies increasing distance for critical areas. Allow smaller buffers in designated growth areas/Low Tier (e.g., 25 feet), but require water quality BMPs and revegetation/remedial steps if site is degraded. Clarify definitions of irrigated wetlands and irrigation ditches and adopt appropriate standards to exempt or regulate.

#### Implications

Expanded buffers would better protect water quality and wildlife habitat throughout the county. However, this would decrease the amount of land on a site that could be developed and restrict the location of development. Adopting an administrative relief provision would be particularly valuable for landowners on small sites that might be rendered undevelopable by expanded buffers. An administrative relief provision may also help reduce staff time that must be devoted to reviewing variance requests. Granting staff authority to increase buffers to 150 feet based on a natural resources analysis would give the county a tool to protect waterbodies and habitat that are particularly sensitive or valuable. Maintaining county waterbody and wetland protection standards independent from U.S. Army Corps of Engineer standards may create some confusion among landowners but would allow the county to tailor its protective standards to local conditions and offer better protection.

## **ALTERNATIVE 7.C:**

Same as 7.B above, but adopt sliding scale for buffer distances based on factors such as soil types, slope, etc., instead of uniform 100-foot setback. Retain existing 150-foot setback for rivers.

### **Implications**

Impacts similar to 7.B above, but while tailoring buffers based on additional factors would result in more accurate results, it would entail more staff time to calculate appropriate size/distances and create more uncertainty for landowners. Buffer size could be calculated by environmental consultant as a component of the natural resources analysis.

## **D. Incentives**

See Question 11 for discussion of incentives. Consider development bonuses (e.g., increased height, floor area or expedited processing) for expanded buffers, environmental site design, stormwater quality BMPs, remediation of damaged habitats/buffers beyond basic standards could help offset reduction in developable land due to expanded buffers.

## **E. Resources/References:**

- “Resources In Watercourse Protection: Riparian Setbacks,”  
<http://olentangywatershed.org/files/WAP/AppendixE.pdf>
- State of Washington Department of Ecology, “Irrigation-Influenced Wetlands.”  
<http://www.ecy.wa.gov/programs/sea/wetlands/irrigation.html>
- U.S. Army Corps of Engineers, Irrigation Ditches Regulatory Guidance Letter  
<http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl07-02.pdf>
- City of Aspen/Pitkin County, Colorado, stormwater best management practices summary:  
<http://www.aspenpitkin.com/Departments/Engineering/Stormwater/Best-Management-Practices/>
- Critical Area Commission for the Chesapeake and Atlantic Coastal Bays Green Book for the Buffer: [http://dnr.maryland.gov/criticalarea/Documents/GreenBook\\_Buffer.pdf](http://dnr.maryland.gov/criticalarea/Documents/GreenBook_Buffer.pdf)

## Policy Question 8: To What Extent Should We Regulate Wildlife-Friendly Fencing?

### A. Current Requirements/Background

Comprehensive plan Policy 1.1.c. suggests fences be designed for wildlife permeability/movement. The policy stresses the importance of insuring that wildlife can move between areas of habitat based on best practices such as wildlife-friendly fencing.

The current LDRs limit applicability of wildlife- friendly regulations to fences built after 2006 (Section 5.1.2.B), repair or replacement of prior existing fences associated with agriculture (Section 5.1.2.B.1), and new riding arena fences (Section 5.1.2.B.2). The regulations limit height, design, and materials while allowing for special purpose fences (Sections 5.1.2.C/D/E). Section 6.1.3.B.2.d exempts agricultural operations over 70 acres from complying with the wildlife-friendly fencing standard.

Wyoming is a “fence out” state which means landowners must erect fences to keep out ranging livestock.

The county fully vetted this subject during the Rural zoning update from 2013-2015, and the Board of County Commissioners (BCC) approved the current regulations. The current directive from the BCC is to better define agriculture exemptions.

### B. Key Issues:

Fencing for agricultural and other purposes is a sensitive, often-controversial issue in rural western jurisdictions with significant wildlife populations. In Teton County, there appears to be some confusion as to exactly which types of developments and operations the current regulations are applicable. An analysis of the agricultural operations definition in conjunction with an analysis of agricultural exemptions may be beneficial toward adding more clarity to the wildlife friendly fencing regulations.

A close reading of the current LDRs would suggest that a new agricultural fence built post-September 12, 2006, (or if more than 50% of any existing fence is replaced), should abide by the standards in Section 5.1.2 unless the agricultural operation is over 70 acres. Agricultural operations greater than 70 acres are exempt from both the NRO and the EA processes. These exempt agricultural operations are not required to be reviewed by the county. On agricultural parcels smaller than 70 acres, there is not a trigger for requiring a permit for a new agricultural fence.

Complicating the issue of wildlife-friendly fencing is key terms in the LDRs are not clear or are obsolete. For example, the current definition in the LDRs of “development” includes “physical development” without a specific reference to fencing. However, a careful reading of the definition of “physical development” does include “fencing”. Exemptions and requirements for fencing are then found elsewhere in the LDRs. These definitions are confusing and should be revised to be specific and easy to use.

Another issue relates to buck and rail fencing, which is discouraged but not prohibited. While not thoroughly documented, buck and rail fencing is considered not wildlife friendly by many wildlife professionals. Buck and rail fencing depends on conscientious management to be wildlife friendly and

must be let down during times of wildlife movement for it to be permeable by most wildlife species. In Teton County, we often see areas where wildlife have destroyed a buck and rail fence in their attempt to move through it.

Finally, staff report that in reviewing special purpose fencing requests, the majority of requests are from small parcels (between 35 and 70 acres) with livestock. The current definition of “agricultural operations” in the LDRs does not include a minimum acreage component. Landowners who conduct legitimate agricultural operations on less than 70 acres must request variances from wildlife-friendly requirements indicating the regulations are not well-adapted to conditions as they exist on the ground.

## **C. Alternatives Approaches/Solutions:**

All of the alternatives below assume that the LDR definitions related to fencing and agricultural operations would be updated and clarified as discussed in Question 9. Additionally, Alternatives 8.B and 8.C would require implementation of a permit system for erection of all fencing whether or not associated with a development permit or an agricultural operation. If the fence is not part of a larger development proposal, the application process would be a quick one (e.g., a one-day or less turn-around). The application process would focus on whether the applicant was meeting the fencing standards in Sections 5.1.2.C/D/E.

### **ALTERNATIVE 8.A:**

Continue current regulatory program. Clarify that all agricultural operations including greater than 35 acres are exempt from Section 5.1.2 requirements, including clarification of applicability to replacement and new fencing. (See discussion of LDR definitions in Question 9.)

#### **Implications**

Continuing current regulatory program with clarification that all agricultural operations over 35 acres are exempt from wildlife-friendly fencing regulations would ease regulatory burdens on farming and ranching operations in the county. However, doing so would make it very difficult if not impossible to achieve a key goal of the comprehensive plan to enhance wildlife permeability and migration in the county.

### **ALTERNATIVE 8.B:**

Same as 8.a, except no exemption for agricultural operations of any size from wildlife-friendly fencing regulations when crossed by a wildlife migration corridor designated by the county and confirmed by official mapping.

#### **Implications**

Removing the current agricultural operations exemption from fencing regulations may create a burden on current farming and ranching operations by requiring the installation of wildlife-friendly fencing that may not be as effective as four-strand barbed wire in protecting crops or containing livestock. Wildlife migration corridor mapping may not be accurate enough to give landowners sufficient notice of where wildlife-friendly fencing required and may shift over time creating uncertainty. However, requiring wildlife-friendly fencing in identified migration corridors would help achieve a key goal of the comprehensive

plan to enhance wildlife permeability and migration in the county. It would also help protect wildlife from injury.

### **ALTERNATIVE 8.C:**

All agricultural operations would be subject to Section 5.1.2 regulations (See discussion of establishing a minimum 35-acre size for agricultural operations instead of 70 acres in Question 9). All fences, regardless of purpose, new, replacement, or retrofitting, would be required to be wildlife-friendly and abide by the standards in Section 5.1.2. New regulations would be created to address existing non-conforming fences. New guidelines would also be created to allow agricultural operations the least burdensome wildlife-friendly design options (e.g. smooth-wire top and bottom strands rather than wooden top bar, etc.).

#### **Implications**

Removing the current agricultural operations exemption from fencing regulations would create a burden on current farming and ranching operations that would be required to install wildlife-friendly fencing that may not be as effective as four-strand barbed wire in protecting crops or containing livestock. However, expanding requirements for wildlife-friendly fencing will help achieve comprehensive plan's goal related to enhancing wildlife permeability as well as reducing injury to wildlife.

### **D. Incentives:**

See Question 11 for discussion of incentives. Specific incentives might include:

- Count retrofitting of an older, existing non-conforming fence to a wildlife-friendly fence towards overall site development mitigation requirements.
- On a redevelopment property, credit the removal of old, non-wildlife friendly fencing towards overall site development mitigation requirements.

### **E. Resources/References:**

- Paige, C. 2012. A Landowner's Guide to Fences and Wildlife: Practical Tips to Make Your Fences Wildlife Friendly. Wyoming Land Trust, Pinedale, WY. 52pp.  
[https://prod.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/nrcs144p2\\_045123.pdf](https://prod.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs144p2_045123.pdf)
- State of Montana Wildlife-Friendly Fencing Guide  
<https://www.mdt.mt.gov/publications/docs/brochures/friendlyfences.pdf>
- [WGFD. 2004. Fencing Guidelines for Wildlife, Habitat Extension Bulletin No. 53, Wyoming Game and Fish Department. Cheyenne, WY.](https://wgfd.wyo.gov/HabitatExtension/Bulletin53.pdf)

## Policy Question 9:

### What sorts of development should be exempt from natural resources regulations or EA?

#### A. Current Requirements/Background

The comprehensive plan does not directly address the issue of which developments should be exempt from natural resources regulations. The current LDRs contain a host of provisions exempting a variety of developments, agricultural operations, and other activities from regulation. The NRO and EA sections of the LDRs contain the most extensive sets of exemptions as summarized briefly below:

*NRO Exempt (Section 5.2.1.D):* (1) Alterations and Additions, (2) NC-TC Zoned Lands, (3) Agricultural Operations, (4) Land in Conservation Easement.

*EA Exempt (Section 8.2.2.B.1):* (1) Agriculture. Activities conducted for agricultural purposes meeting the standards for exemption in Section 6.1.3.B., (2) Previous Approval, (3) NC-TC zone development, (4) Detached Single-Family Dwelling (not in NRO, 35 acres plus, meets all setback and buffer requirements), (5) Expansion of an existing building or the addition of an accessory structure within the impact area of the existing building, (6) Conservation Easement, (7) Miscellaneous Other By Planning Director waiver.

In addition to these two major exemption sections, the LDRs contain other exemptions scattered throughout its provisions including water dependent uses/essential access in buffers (Section 5.1.1.D.3), already permitted development with subsequent building of an eagle nest (Section 5.2.1.G.6.c), repair/relocation of agricultural-related fencing (Section 5.1.2.B), 70-acre+ agricultural operations from many standards (Section 6.1.3.B), and certain wildlife/livestock feeding exemptions (Section 5.1.3.D).

#### B. Key Issues:

One of the most significant issues involving current exemptions is that the NRO and EA lists of exemptions differ. This has caused significant confusion for both applicants and staff. Reportedly interpretations of what is exempt can vary depending on staff review personnel.

An analysis of the exempt land uses in conjunction with the newly developed wildlife habitat information (FSHM) may be appropriate to determine which exemptions are in line with the community's comprehensive plan goals and which are counter. Some exemptions in the LDRs may be too broad and undermine effectiveness of the LDRs in implementing comprehensive plan goals (e.g., large agricultural operations from wildlife-friendly fencing standards in migration corridors).

While not strictly an exemption issue, another related recurring matter is that some county regulations (e.g., related to protection of wetlands and waterbodies) differ from current federal and state requirements.

## C. Alternatives Approaches/Solutions:

### ALTERNATIVE 9.A:

Allow current standards/exemptions to remain in place, but consolidate and reconcile NRO and EA exemptions into single list.

#### Implications

Consolidating and reconciling current NRO and EA exemptions should reduce confusion among applicants and staff and lead to more efficient, effective development reviews.

### ALTERNATIVE 9.B:

Consolidate and reconcile NRO and EA exemptions. Adopt revisions to current exemptions as set forth below:

- Agricultural Operations. Would remain generally exempt except required to comply with basic standards such as wildlife-friendly fencing in migration corridors through planning staff review (Low Tier process regardless of location).
- Fencing: Update definition of “development” to cover fencing so that it is consistent with definitions of “physical development” and “structures” that include fencing.
- Exempt previous approvals from the requirement to complete a full EA or Natural Resources ZCV but require completion of process applicable to Low Tier to demonstrate compliance with current LDRs and comprehensive plan (See discussion of Questions #1-4) Previous Approval means physical development, use, development options, and subdivision that has received approval within 3 years in accordance with past LDRs and can demonstrate compliance with current LDRs through planning staff review of natural resources (Low Tier process regardless of location).
- Exempt conservation easements from requirement of a full EA, if the applicant demonstrates that the review and study satisfies the objectives of the EA. Conservation Easement means land subject to a conservation easement held by a formal land trust that has a mandate to protect conservation values, for which a rigorous review and study of the conservation values of the land has been performed as a basis for establishing the easement. In such instances the review and study completed for the conservation easement may be substituted for the inventory portion of the EA. An alternatives analysis, factoring in the restrictions held in the conservation easement in combination with LDR regulations, and a habitat enhancement plan will still be required.

#### Implications

Consolidating and reconciling current NRO and EA exemptions and clarifying key definitions should reduce confusion among applicants and staff and lead to more efficient, effective development reviews.

### **ALTERNATIVE 9.C:**

No blanket exemption from all regulations for any development. Some level of basic regulation or EA review based on applicable tier required for all development. All agricultural operations and single-family development must comply with basic standards (e.g., wildlife-friendly fencing, buffers from water bodies and wetlands). Adopt new modern definition of agriculture operations as discussed in Question #8.

#### **Implications**

Reducing exemptions would likely increase the cost of development and complexity of reviews for most applicants as well as increasing demands on staff time. On the other hand, applying basic standards to all development such as those related to wildlife-friendly fencing and buffering will advance comprehensive plan goals related to natural resources protection.

### **ALTERNATIVE 9.D:**

Eliminate or reduce exemptions in specially designated sensitive areas where regulations are necessary to protect existing natural resources or help restore degraded areas. Create special incentives to offset additional regulatory requirements.

#### **Implications**

Reducing exemptions would likely increase the cost of development and complexity of reviews for most applicants as well as increasing demands on staff time. On the other hand, applying stronger standards such as those related to wildlife-friendly fencing and buffering will advance comprehensive plan goals related to natural resources protection.

## **D. Incentives:**

See discussion of incentives in Question #11.

## **E. References/Resources:**

- Modern definitions of “Agricultural Activity” [https://definedterm.com/agricultural\\_activity](https://definedterm.com/agricultural_activity)
- U.S. Department of Agriculture, Glossary of Farm Terms Related To Farm Income and Wealth <https://www.ers.usda.gov/topics/farm-economy/farm-household-well-being/glossary.aspx>

## Policy Question 10:

### How Should The Natural Resources LDRs Apply To Redevelopment?

#### A. Current Requirements/Background

No specific comprehensive plan direction. Similarly, there is no specific differentiation in the natural resources sections of the LDRs for redevelopment nor is redevelopment defined in the LDRs. The LDRs contain a variety of relief provisions that might apply to redevelopment, including:

- Administrative adjustments to certain requirements of the LDRs are permitted (Section 8.8.1) in all zones, except adjustments related to natural resource setbacks are explicitly prohibited.
- Adjustments to fencing are permitted as allowed in Section 5.1.2.E.
- Section 8.2.2.B.1.e of EA exemptions allows expansion of an existing building or addition of an accessory structure within the “impact area of the existing building.”
- Expansion and replacement of non-conforming physical development is permitted under certain circumstances in the non-conforming regulatory provisions of the LDRs (Section 1.9.2.B).
- Variances from all standards are permitted in accordance with the standards and process in Section 8.8.2.

#### B. Key Issues:

The question of redevelopment raises a number of important issues that would need to be addressed if such projects were to be afforded special treatment:

- The provision that provides an exemption from an environmental analysis for expansion of an existing building within the impact area of the existing building in Section 8.2.2.B.1.e does not define the key term of “impact area.”
- There is a need for a clear definition for redevelopment if different standards for redevelopment are desired (e.g., “Development that replaces existing infrastructure and buildings.”).
- Some prior developments in the county took place under different, weaker standards and consequently caused adverse impacts on natural resources (e.g., stream crossings, vegetation removal). When a site redevelops, should regulations require that these past impacts be addressed and ameliorated or the site rehabilitated/reclaimed?
- Should some natural resource regulations apply only to redevelopment that reaches a certain size, lot coverage, or value threshold? Should redevelopment in the Low Tier be held to lower or a limited number of natural resource standards to encourage growth in desired locations?
- Should provisions be made to provide streamlined review for public works redevelopment/replacement projects that involve health, safety, and essential access issues (such as a bridge replacement).

A general caveat is in order when considering each of these issues: Requiring redevelopment projects to meet newly adopted standards or requiring too much rehabilitation of degraded natural resources on a redevelopment site can create hurdles that slows or stops redevelopment in preferred growth areas. This is similar to the challenge of regulating nonconforming uses/structures: Local governments desire nonconforming uses/structures to become conforming when redeveloped (e.g., a vacant big-box store

on an older site that does not meet current off-street parking regulations), but if regulations are too stringent (e.g., redevelopment must add lots of additional parking), the developer/landowner may simply continue the existing nonconforming use/building to avoid the expense of upgrades. The challenge is to find a sweet spot that encourages redevelopment in preferred areas but achieves some rehabilitation/reclamation of areas degraded in past.

## **C. Alternatives Approaches/Solutions**

For all alternatives, the suggested approaches need to be coordinated and harmonized with necessary changes in the current LDR nonconformity regulations in Division 1.9 that are very detailed and quite restrictive and may hinder redevelopment proposals. All alternatives include creating streamlined review for all essential public works health, safety, and access projects. All alternatives include the option of creating greenways other district or overlay areas such as the conceptual Flat Creek Blueway that create incentives for redevelopment of sensitive areas resulting in improved water quality and/or habitat.

### **ALTERNATIVE 10.A:**

Continue current approach—existing/updated resource protection regulations would apply to all redevelopment projects just as they apply to new development. There would be no requirement for retroactive rehabilitation of past adverse impacts on natural resources. Incentives (See incentive section) would be utilized to promote rehabilitation of formerly degraded resources on site.

#### **Implications**

No major implications as this alternative reflects current practice except for streamlined review process for essential public works redevelopment/replacement projects. Use of incentives may help expedite rehabilitation of degraded site resources.

### **ALTERNATIVE 10.B:**

Adopt a sliding-scale approach to required rehabilitation for redevelopment projects. The more land that is disturbed by redevelopment or the costlier the project is in terms of dollar value, the more rehabilitation of past damage is required (e.g., revegetation in disturbed areas, improved stormwater runoff quality, etc.).

#### **Implications**

May create some level of disincentive to redevelop a site because of added expense of rehabilitating degraded natural areas. On the other hand, would be less expensive than requiring full rehabilitation and would advance comprehensive plan goal to improve natural resources/habitats in the county.

### **ALTERNATIVE 10.C:**

Redevelopment projects required to meet all natural resource standards applicable to new developments. However, site rehabilitation requirements for redevelopment would vary by tier. For example, only stormwater reduction/water quality improvement would be required of redevelopment in the Low and Middle Tiers. Unless related to improving stormwater quality, no

revegetation of previously disturbed or degraded area would be required. In High Tier, mandatory rehabilitation of disturbed/degraded areas. Developer must bring entire site up to current standards, not just the portion related to redevelopment.

### **Implications**

This alternative would likely create some level of disincentive to redevelop a site because of added expense of rehabilitation of degraded natural areas. On the other hand, it would advance the comprehensive plan goal to improve natural resources/habitats in the county.

### **ALTERNATIVE 10.D:**

Regulatory requirements for redevelopment would be based on tier classification. Redevelopment in High and Medium Tiers would be reviewed as Medium and Low respectively, thereby reducing review requirements and process detail. Increase exemptions and incentives in Low Tier.

### **Implications**

In all tiers, would provide an incentive to redevelop sites that might be degraded or creating adverse environmental impacts. However, review detail and natural resource analysis required would be reduced in addition to site restoration requirements.

## **D. Incentives**

See discussion of incentives in Question #11.

## **E. Resources/References**

- Definitions of redevelopment from the American Planning Association and other organizations: <http://www.completecommunitiesde.org/planning/landuse/what-is-infill/>
- Portland, OR, “Regulatory Improvement Plan: Thresholds For Upgrading Nonconforming Development.” <https://www.portlandoregon.gov/bps/article/142563>
- Denver Regional Council of Governments “Infill and Redevelopment Issues Paper:” <https://www.drcog.org/sites/drcog/files/resources/Infill%20and%20Redevelopment%20Issues%20Paper.pdf>

## Policy Question 11: What Incentives Should Be Provided For Natural Resources Protection?

### A. Current Requirements/Background

Comprehensive plan Policy 1.4.c. encourages rural development to include quality open space. The policy lists offering development incentives (clustering) as a tool to achieve a more functional web of wildlife habitat and connections. Comprehensive plan Policy 1.4.d recommends the community explore the establishment of a dedicated funding source for conservation easements and other measures that protect the wildlife habitat, habitat connections, and scenery valued by the community.

The current LDRs contain a very limited number of development incentives including:

- A Rural Planned Residential Development (PRD) option that grants more density in exchange for clustering development and permanently conserved open space (Section 7.1.2).
- Rural to Complete Neighborhood Exchanges (Section 7.1.6) that grant additional development in complete neighborhoods identified as appropriate for growth in exchange for preserving land and reducing potential development in rural areas.
- A Floor Area Option (Section 7.1.5) that grants additional floor area on a parcel to landowners willing to relinquish subdivision rights to conserve conservation values.

### B. Key Issues:

Most successful natural resource protection programs at the local level supplement regulations with techniques such as incentives (floor area bonuses, expedited review and processing) and land/development rights purchase or transfer programs. For example, Aspen/Pitkin County, Colorado, complements its land use regulations with an active land and development rights purchase program. These programs often feature a steady, dedicated, and adequate funding source for purchases of critical parcels drawn from local sales, real estate transfer, and meals/lodging taxes. Teton County does not appear to have such a dedicated stream of money that could fund a payment for ecosystem services or land/development rights purchase program, although it has potential sources such as an increase in sales or lodging taxes (which are not at their maximum-allowed levels).

All alternatives include the option of creating greenways other district or overlay areas such as the Flat Creek Blueway concept that create incentives for redevelopment of sensitive areas resulting in improved water quality and/ or habitat

### C. Alternatives Approaches/Solutions:

#### ALTERNATIVE 11.A:

Amend the LDRs to offer development bonuses to projects that exceed regulatory requirements (e.g., that preserve additional open space, exceed vegetation replacement mitigation standards, or restore already degraded important habitat on site). Bonuses might include, but not be limited to, incentives such as:

- increased floor area,
- fee waivers,
- expedited processing,
- mitigation requirement waivers,
- off-street parking reductions, and
- reduction in level of tier reviews (e.g., from High to Medium).

### **Implications**

Development bonuses and incentives have proven to be a useful supplement to regulatory approaches in other communities. However, any such incentives should be clear about the exact extent of bonuses that are available in exchange for specific and quantifiable community benefits.

### **ALTERNATIVE 11.B:**

Consider adopting regulatory supplements such as a land/development rights purchase/transfer program or payment to landowners for ecosystem services such as preservation of critical wildlife habitat identified in focal species mapping. (Payments for ecosystem services (PES), also known as payments for environmental services (or benefits), are incentives offered to ranchers or landowners in exchange for managing their land to provide some sort of ecological service.) These approaches have proven effective in some other jurisdictions, but would require a source of funding for the payments to landowners.

### **Implications**

Supplementary development rights purchase/transfer programs have proven to be successful in a number of jurisdictions throughout the United States, but can be complicated to create and require professional administration and sufficient funding.

## **D. Resources/References:**

- “Incentive Zoning As A Tool For Public Purposes” <http://www.useful-community-development.org/incentive-zoning.html>
- “Purchase Of Developments Rights: Preserving Farmland And Open Space” <http://plannersweb.com/2004/01/purchase-of-development-rights-preserving-farmland-and-open-space/>
- “Seven Keys To Successful TDR Programs” [https://www.pdx.edu/sites/www.pdx.edu.ims/files/ims\\_TDRsuccesskeys.pdf](https://www.pdx.edu/sites/www.pdx.edu.ims/files/ims_TDRsuccesskeys.pdf)
- The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs [https://books.google.com/books/about/The\\_TDR\\_Handbook.html?id=2VtU3KIWd1MC](https://books.google.com/books/about/The_TDR_Handbook.html?id=2VtU3KIWd1MC)