



Memo

To: Board of County Commissioners

From: Alex Norton and Roby Hurley

Date: December 12, 2018

Subject: Natural Resource Protection LDRs Update



The purpose of this memo is to provide a summary of the current status of the update of the natural resource protection LDRs. The intent of this memo is to state the facts of what happened in order to inform future evaluation of how to move forward. The memo is composed of a brief summary of the current status of the project, followed by a more detailed description of the entire project process. This memo is a supplement to all of the materials produced during the project, which can be found at <https://wy-tetoncountyplanning.civicplus.com/155/Natural-Resource-Protections>.

Current Status Summary

On September 28, 2018 a Public Review Draft of the Natural Resource Protection LDRs was released. On October 23, 24, and 29, 2018 the Natural Resources Stakeholder Group (NRSNG) appointed by the Board and Town Council recommended that the environmental analysis and habitat protection standards be redrafted.

- The NRSNG does not believe that the focal species habitat mapping the County worked on from 2014-2017 can be used for parcel scale evaluation of the location of development. The Public Review Draft is based on the relative habitat values established in the focal species habitat mapping.
- The NRSNG recommends that the focal species habitat mapping be used as a hardline zoning overlay to determine certain allowed uses and whether the number of development areas is limited. The Public Review Draft proposes that the focal species habitat mapping be field verified before any uses are prohibited or the number of development areas is limited.
- The NRSNG recommends that location of development be determined by an environmental analysis on any property over 3 acres outside of a complete neighborhood (with the exception of some low value properties in Alta). The Public Review Draft proposes a vegetation verification on such properties but requires minimal analysis unless the development is proposed in high value habitat.
- The NRSNG recommends that the location of development be based on avoidance of water, wetlands, federal protections, and migration corridors, then minimization of fragmentation of large patches of vegetation overstory (patches of forest, shrub, and grass greater than 0.5 acres), then minimization of impact to Game and Fish Crucial Winter Range, then minimization of impact to Focal Species Habitat Values. The Public Review Draft proposes that the relative habitat values established in the focal species habitat mapping be used to determine the location of development in areas of low and mid-value habitat and that a site specific analysis of all habitat factors be used in areas of high value.

NRSNG Recommended Path Forward

The NRSNG recommends that the County provide a code-writer to rewrite the regulations. Aly Courtemanch, Wyoming Game and Fish Biologist, and the Stakeholder who proposed the approach recommended by the Stakeholder Group, will provide content direction to the code-writer with additional input from the Stakeholder Group. Once approved by the Stakeholder Group, the draft regulations will be released for public review and consideration for adoption.

Staff Recommended Path Forward

Staff recommends that a more detailed comparison of the Public Review Draft and NRSNG Recommendation be completed and presented to the Board for direction on the policy differences between the two approaches. A revised draft of the regulations will be produced based on the direction the Board provides and released for public review and consideration for adoption.

How We Got Here

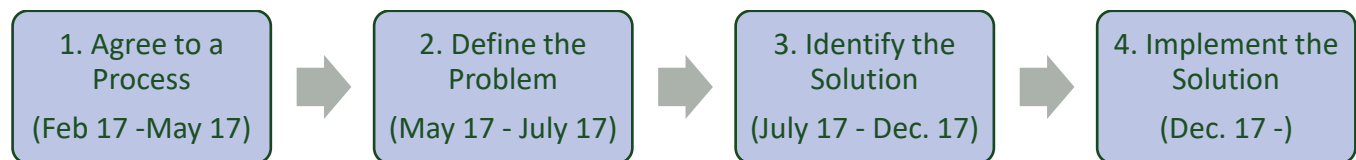
The Land Development Regulations (LDRs) include regulations that protect natural resources such as wildlife habitat and water quality. In 2012 the Town and County adopted the Comprehensive Plan, which commits to updating the natural resource protections in the LDRs. The update is supposed to balance two goals: better protection of the health of all species native to our area; while also respecting property rights by acknowledging that some natural resources are relatively more valuable than others.

Background

2012	Comprehensive Plan adopted by the County and Town establishing Principle 1.1 and 1.2 as the natural resource protection principles of the community.
2013	Vegetation Map completed by Cogan Technologies, contracted by Teton County, under the direction of the Natural Resources Technical Advisory Board (NRTAB).
2014-2015	Biota Research contracted by County, under the direction of the NRTAB to map focal species habitat and develop a system for relative valuation of focal species habitat. Product rejected by NRTAB on peer review as not replicable, transparent, and defensible.
2016-2017	Alder Environmental contracted by County, under the direction of the NRTAB to map focal species habitat and develop a system for relative valuation of focal species habitat. One author, Megan Smith, believes the relative valuation system delivered cannot be used to evaluate habitat value at the parcel scale. The other, Brian Remlinger, who is still with Alder, in his support of the Public Review Draft comments that it not only can, but should be the basis for parcel scale environmental analysis. (see respective public comment on Public Review Draft)

Project Timeline

The Natural Resource Protection LDRs Update is one of the 5, Engage 2017 projects begun in 2017 with the goal of completion in summer 2018. The intent of Engage 2017 was a coordinated 4-phase process. The goal of approaching these updates through a 4-phase process was to define the problems and identify the solutions prior to considering adoption of regulations so that the review of the draft LDRs would be the culmination, rather than the initiation, of months of public dialogue.



Phase 1 – Agree to Process

- The intent of the first phase was to set roles and agree to the process for the project.
- The approved process followed the Engage 2017 process and schedule
- The roles approved were:
 - Board – Final Adoption
 - Town Council – Input on process and Stakeholder selection
 - County Planning Commission – recommendation to Board
 - Staff – project management and Stakeholder Group facilitation
 - Stakeholder Group – primary content advisor
 - Only Engage 2017 project with stakeholder group
 - Intent was that staff and stakeholders would work together constructively toward draft LDRs rather than presenting alternative proposals to the Board during consideration of adoption

- In reality a subgroup of the Stakeholders presented an alternate approach (the September 10 Framework) to the one that was developed through the process set by the NRSRG
- The October Stakeholder Recommendation builds on and clarifies the September 10 Framework
 - Consultants – technical support and capacity

Phase 2 – Define the Problem

- The intent of the second phase was to identify the natural resource protection issues that needed to be addressed to make sure the key policy questions were clearly answered prior to drafting of regulations
- Staff was predominately responsible for designing Phase 2 and analyzing the public and Stakeholder input
- Consultant, Clarion/Alder had little involvement in Phase 2
- Looking back, Phase 2 was unsuccessful. The fact the current status of the project is a return to alternatives analysis after the regulations were drafted means that the right alternatives were not evaluated in Phase 3, which means the right policy issues were not identified in Phase 2.

Phase 3 – Identify the Solution

- The intent of the third phase was an analysis of the alternative policy solutions to the issues identified in Phase 2
- The alternatives analysis by Clarion/Alder was more of a recommendation than an alternatives analysis and was presented to the public as a technical recommendation
- The alternatives analysis presented to the public and reviewed by the NRSRG, PC, Board was developed by staff
- The alternatives analysis developed was intended to fill some of the gaps in the Phase 2 work, but was unsuccessful, as evident by the current status of the project

Phase 4 – Implement the Solution

- The intent of the final phase was to draft regulations around the policy direction from Phase 3
- The policy direction achieved in Phase 3 left many unanswered questions
- The County and Clarion/Alder decided to terminate contract prior to Phase 4 due to incompatibility in vision for completion of the project
- Below is timeline of the attempted implementation of Phase 4

February 14, 2018	NRSRG meeting to identify drafting approach. Staff provided the NRSRG with 3 high level habitat valuation approaches. Alder Environmental reviewed the approaches prior to their presentation to the NRSRG and was at the meeting. NRSRG direction was to use a tiered assessment approach.
March 22, 2018	NRSRG meeting to identify drafting approach. As a follow-up to the February meeting the NRSRG decided to develop an outline through the work of two subcommittees. First, a standards subcommittee was to create 3 distinct tiers of assessment and standards. Then, a mapping subcommittee was to create a methodology for applying those standards to property, EcoConnect Consulting contracted to provide technical assistance.
April, 2018	Based on request by Aly Courtemanch and EcoConnect Consulting mapping subcommittee work begun in parallel and independent from the standards subcommittee work, with the results to be stitched together once both subcommittees completed their individual work.

May 3, 2018	NRSG meeting on Ponds and Berms. The NRSG interrupted its subcommittee work to evaluate the manmade features standards proposed by staff in response to the moratorium placed on the construction or alternation of any pond or berm in the County.
May 11, 2018	First of 13 standards subcommittee meetings. Subcommittee ultimately produced two outlines, one for the mid-tier and one for the high-tier. The two were combined into the August 23 outline in the final meetings of the subcommittee.
May 18, 2018	First of 4 mapping subcommittee meetings. Subcommittee ultimately produced a map with a recommended low/mid breakpoint, but put the mid/high breakpoint to the full NRSG (who was never able to come to a recommendation).
June 11, 2018	NRSG meeting on wild animal feeding and natural resource mapping. The NRSG reviewed an outline of updates to the wild animal feeding regulations and provided comments and direction which was ultimately incorporated into the Public Review Draft. Megan Smith of EcoConnect Consulting presented the preliminary work of the mapping subcommittee and requested additional funding to clean up some data and complete the tier mapping. The NRSG recommended additional funding for EcoConnect.
July 17, 2018 & July 30, 2018 & August 7, 2018	BCC review and adoption of Ponds and Berms. The Board reviewed the proposed standards for manmade features with recommendation from the NRSG and Planning Commission and adopted Section 5.1.6, lifting the moratorium on construction of ponds and berms.
August 13, 2018	NRSG meeting on natural resource mapping. Megan Smith of EcoConnect Consulting presented her recommendation and the mapping subcommittee recommendation to the NRSG. The NRSG was asked to determine the low/mid and mid/high breakpoint values.
August 13, 2018	Mapping subcommittee and standards subcommittee meeting about the integration of the work of the two subcommittees. Outcome was the outline presented at the August 23 NRSG meeting.
August 23, 2018	NRSG meeting on natural resource mapping and LDR outline. Materials for the meeting, including a draft outline based on the standards subcommittee work were provided August 20. Alex Norton presented the outline. The NRSG identified 3 policy questions that needed to be answered with regard to the outline. The NRSG affirmed the mapping subcommittee low/mid breakpoint, but could not determine a mid/high breakpoint.
August 27, 2018	Update to the Board on NRSG progress. Board requests that staff present timeline options, including an option that would allow the current Board to consider adoption in 2018.
September 4, 2018	Board gave direction to release public review draft in time to allow Board consideration in 2018. Stakeholders provided comment in support of the timeline given the work done to date and relatively few outstanding issues.
September 10, 2018	NRSG meeting on LDR outline. Staff provided materials to NRSG on September 6 that outlined the Board's September 4 direction as well as the four outstanding policy questions from the August 23 NRSG meeting. The Group answered the first 3 of the 4 policy questions, leaving the forth (mid/high breakpoint) to be answered by staff in

	the Public Review Draft. Aly Courtemanch provided a flowchart/outline to the group on September 10 as an alternative discussion to the agenda for the meeting. Due to lack of time to review Aly's flowchart/outline, Staff and the Group were unclear how the direction provided on August 23 and September 10 related to Aly's flowchart/outline.
September 24, 2018	NRSG review of rough draft. Staff provided the NRSG with an internal draft of the natural resource protection LDRs on September 21. On September 24 staff presented the draft, answered questions, and the Stakeholders provided suggestions. Suggestions not included in the Public Review Draft were carried forward to the list of proposed modifications for consideration during the adoption process. The Stakeholder Group did not identify their lack of support for the draft.
September 28, 2018	Release of Public Review Draft.
October 10, 2018	Presentation of Public Review Draft to Board, followed by public open house.
October 18, 2018	Update provided to Board regarding the review schedule in response to concerns about the speed of the process conveyed to the Board by Stakeholders. Board requests any additional update sooner than later if the schedule cannot be met or more time is needed.
October 19, 2018	List of proposed modifications to the public review draft published with staff recommendation on each. List includes all comments submitted by the public, stakeholders, Planning Commissioners, County Commissioners, and staff.
October 23, 2018 & October 24, 2018 & October 29, 2018	NRSG meeting to review Public Review Draft. As summarized above, NRSG directs that the meat of the natural resource protection LDRs update be redrafted based on two different habitat valuation metrics. Stakeholder recommendation based on September 10 Framework.
October 29, 2018	Board updated on NRSG recommendation to redraft the natural resource protection LDRs. Board directs staff to cancel Planning Commission review of Public Review Draft. Decision on how to proceed delayed until the Board that will consider the natural resource protection LDRs is in place in January 2019.

Additional Description of the Public Review Draft and NRSG Recommendation

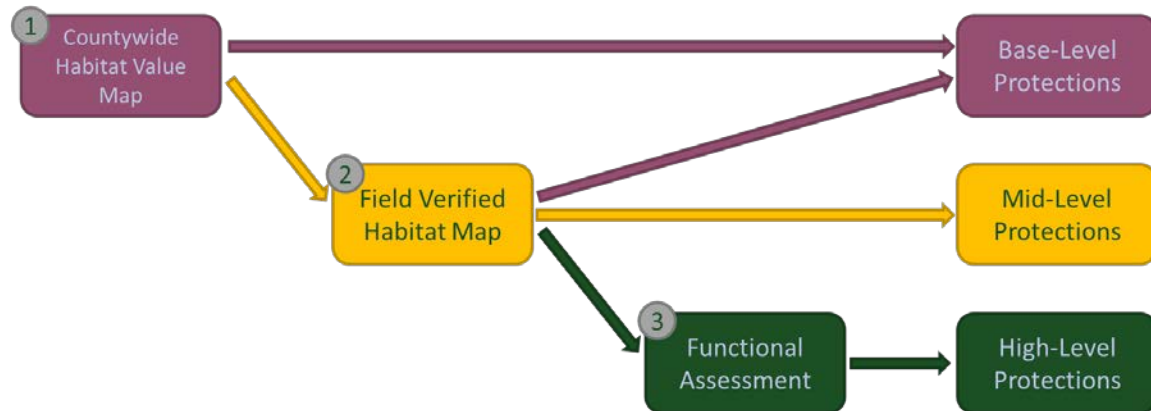
There are currently two approaches to the Natural Resource Protection LDRs Update that have been identified by the Natural Resources Stakeholder Group (NRSG) through the Natural Resource Protection LDRs Update process.

1. The September 28, 2018 Public Review Draft
 - Fully drafted LDRs that came out of NRSG process detailed below
 - Peer reviewed
 - Publicly reviewed
 - Rejected by the Stakeholder Group October 2018
2. October 2018 Stakeholder recommendation
 - High-level set of recommended concepts

A high-level comparison of the two approaches is provided on the first page of this memo. Below is a more detailed description of the two approaches. A more detailed comparison of the two approaches has not been completed

September 28, 2018 Public Review Draft

The September 28, 2018 draft and supporting material can be found on the project webpage. In summary, the applicable tier of environmental protection is determined through a 3-step analysis of habitat value as depicted below. The steps of habitat valuation are based on the relative habitat values developed in Focal Species Habitat Mapping (Alder, 2017). Each step of the analysis builds on the previous step, confirming the habitat valuation from the previous step through a more detailed analysis to ensure the most relatively valuable habitat receives the highest level of analysis and protection.



October 2018 Stakeholder Recommendation

The Stakeholder Group met on October 23, 24, and 29, 2018 to review the Public Review Draft. The NRSB does not believe the relative habitat valuation developed in Focal Species Habitat Mapping (Alder, 2017) can be used to determine parcel scale location of development. Instead, the Stakeholder Group recommends:

- Retain the requirement in the Public Review Draft that all protections for water, wetlands, migration corridors, and federally protected species apply to all properties (base-level protections)
- Require all properties that do not qualify for base-level protections to complete a full habitat inventory as described in the September 10 Framework submitted by Aly Courtemanch
- Require all inventories to include a three part analysis of:
 - Minimization of fragmentation of large patches of vegetation overstory (patches of forest, shrub, grass greater than 0.5 acres)
 - Minimization of impact to Game and Fish Crucial Winter Range
 - Minimization of impact to Focal Species Habitat Values
- If all 3 analyses direct development to the same location, development is required to be in that location
- If the 3 analyses conflict, an alternatives analysis is required to determine the least impactful location for development with minimization standards generally prioritized in the order listed above
- Use the mid/high breakpoint on the Tiered Habitat Value Map to apply high-level protections (certain CUP prohibitions and a limit of 1 development area) to any property that has any high tier mapped on the property (unless a property has already been identified for base level protections because of small size or zoning). The Tiered Habitat Value Map is static and cannot be modified based on field verification, it is a zoning designation.
- Allow multiple development areas in the high tier in the case of a Floor Area Option.
- Aly Courtemanch should work with a regulation drafter to develop an outline for the standards subcommittee to review and then present to the Stakeholder Group for affirmation

The Stakeholder Group recommendation has not been developed in further detail than the above.

Staff has one outstanding technical question, which is applicable to either approach.

- How were the pixel values derived for the Tiered Habitat Value Map? Staff's understanding of the methodology is that the tier value for each pixel was calculated using a moving window average of the

raw focal species values for that pixel and the 4 pixels bordering it (the 5-30m pixels with centroids within a 1 acre area centered on the pixel centroid). However, the average of 5 integers cannot have a decimal of greater than 1 digit, indicating that there must be some misunderstanding of the methodology.

Project Participants

- Board of County Commissioners
 - Paul Vogelheim – Commissioner 2008-2018
 - Mark Newcomb – Commissioner since January 2015
 - County Planning Commissioner during Comprehensive Plan adoption
 - Smokey Rhea – Commissioner 2015-2018
 - Natalia Macker – Commissioner since August 2015
 - Greg Epstein – Commissioner since January 2017
 - Mark Barron – elected to Board 2018
 - Town of Jackson Mayor during Comprehensive Plan adoption
 - Luther Propst – elected to Board 2018
- Stakeholder Group
 - Anna DiSanto – Environmental Consultant
 - Natural Resource Consultant, Pioneer Environmental Services
 - Member of the standards subcommittee
 - Scott Pierson – Developer
 - Senior Planning, Y2 Consultants
 - Member of the standards subcommittee
 - Cornelius Kinsey – Homeowner/Builder
 - Principal Architect, Kinsey Architecture
 - Rich Bloom – Neighbor
 - Kelly Lockhart – Agriculture
 - Member of the mapping subcommittee
 - Originally the Property Rights Advocate, but moved to Agriculture upon Bill Resor's resignation from the Group
 - Bill Rudd – Ecological Sciences Community
 - Little, if any, attendance
 - Skye Schell – Conservation Advocate
 - Executive Director, Conservation Alliance
 - Member of the standards subcommittee, but made few subcommittee meetings
 - Chris Colligan – Wildlife Advocate
 - Wildlife Program Coordinator, Greater Yellowstone Coalition
 - Hank Phibbs – Property Rights Advocate
 - Appointed to group in February 5, 2018 following Bill Resor's resignation
 - Member of the standards subcommittee
 - Also the policy representative on NRTAB
 - County Commissioner during Comprehensive Plan adoption
 - 1 of 2 Stakeholders who supported the Public Review Draft approach
 - Len Carlman – At Large
 - Member of the standards subcommittee
 - Sandy Shuptrine – At Large
 - Lorin Wilson – Alta
 - Little, if any, attendance
 - Tom Segerstrom – Teton Conservation District
 - Director, Teton Conservation District

- Member of the standards subcommittee
- Aly Courtemanch – Wyoming Game and Fish, Game Designee
 - Wildlife Biologist, Wyoming Game and Fish
 - Member of the mapping and standards subcommittees
 - Kept notes on high-tier process and standards for the standards subcommittee
 - Authored the September 10 flowchart/table with assistance from Megan Smith
 - Led presentation of alternate approach at October NRSNG meetings
- Anna Senecal – Wyoming Game and Fish, Fish Designee
 - Aquatic Habitat Biologist, Wyoming Game and Fish
- Roby Hurley – Project Manager and Comprehensive Plan Advocate
 - Member of the standards subcommittee
 - Kept notes on mid-tier process and standards for the standards subcommittee
 - 1 of 2 Stakeholders who supported the Public Review Draft approach
- Staff
 - Tyler Sinclair
 - Town Planning Director since 2008
 - Town/County Planning Director 2014 – September 2018
 - NRSNG Facilitator
 - Roby Hurley
 - County Principle Planner 2014-2018
 - Project Manager
 - Alex Norton
 - Town/County Long-Range Planner 2008-2018
 - Engage 2017 Manager, Assistant/Substitute NRSNG Facilitator
 - Public Review Draft Author
 - Member of the mapping subcommittee
 - Infrequent attendee of the standards subcommittee
 - Regan Kohlhardt
 - Town/County Associate Long-Range Planner since 2015
 - Engage 2017 Coordinator
- Consultants
 - Chris Duerksen – Clarion Associates
 - Clarion/Alder contracted to provide technical support
 - Alternatives delivered as Phase 3 product were more recommendation than alternative
 - The alternatives presented for public review were instead developed by staff
 - Following Phase 3 the County and Clarion concluded it was best to terminate the contract given the direction the project was headed
 - Alder Environmental
 - Delivered Focal Species Habitat Mapping in 2017
 - See above for summary of Clarion/Alder contract
 - Alder retained in January 2018 to provide comments on high level LDR outline options
 - Supports the Public Review Draft in public comment
 - Megan Smith – EcoConnect Consulting
 - Worked for Alder Environmental until February 2018
 - Primary author of Focal Species Habitat Mapping
 - Contracted as technical support to the mapping subcommittee due to familiarity with Focal Species Habitat Mapping
 - Assisted Aly Courtemanch in development of the September 10 flowchart/outline
 - Reviewed the Game and Fish comments on the Public Review Draft prior to their submittal

- Provided public comment that the Public Review Draft is not scientifically defensible
- Provided public comment that the September 10 Framework accurately represents the standards subcommittee discussions, none of which she attended
- Provided public comment prior to Stakeholder review of the Public Review Draft that the September 10 Framework was a better representation of Stakeholder opinion than the Public Review Draft.