



Proposed Modifications & Staff Recommendations

Natural Resource Protection LDRs Update



10/19/18

The below list of proposed modifications is populated from Board of County Commissioner, Planning Commission, Natural Resource Stakeholder Group, staff, and public comment on the September 28, 2018 Public Review Draft. The table of proposed modifications has three components. First is the proposed modification itself. All proposed modifications reference the September 28, 2018 Public Review Draft of the Natural Resource Protection LDRs. The Draft and all materials that informed and explain the draft are available at www.engage2017.jacksonetetonplan.com/naturalresourceprotections.

To the right of the Proposed Modification is a column for Staff’s Recommendation, the Natural Resources Stakeholder Group’s recommendation, the Planning Commission’s Recommendation, and the Board of County Commissioners’ Direction on the modification. These columns are populated with a simple abbreviation: A = Approve, D = Deny, or T = Table for future consideration outside the scope of this project. At this time only the Staff Recommendation is populated, the other columns will be populated through the review process.

This last column is for discussion. The discussion column currently includes only the staff analysis, but will be augmented with Natural Resource Stakeholder Group, Planning Commission, and Board of County Commissioners analysis throughout the process. Where the discussion column is merged for multiple modifications it is because the modifications are related to the same issue and the discussion applies to all modifications and recommendations. The discussion is most understandable if the modification it is addressing is read first. Throughout the discussion “December policy direction” refers to the final policy direction provided by the Board of County Commissioners on December 11, 2017, which is attached and is available on the project webpage. “Stakeholder implementation direction” refers to the direction provided following December 2017 by the Natural Resource Stakeholder Group and subcommittees of the Natural Resource Stakeholder Group to assist staff in drafting the Natural Resource Protection LDRs Public Review Draft.

Where the Board has provided direction, the staff recommendation represents that past direction. Where the Board has not, but the NRSNG has, the staff recommendation represents that direction. If the topic has not been discussed, staff’s recommendation is based on the context of past discussion. The alternate consideration of topics on which direction has already been provided is presented for the benefit of those who were not privy to the conversation that led to the past direction. The primary modifications needed to implement the September 10 Framework referenced in many comments are the key issue, are organized to the front of the table (with topically related comments from other sources), and are designated with a K in front of the modification number.

Proposed Modification			Rec/Direction				Discussion
#	Sec.	Proposed Modification	Staff	NRSNG	PC	BCC	
K1	General	Redraft the proposed protections based on the framework presented by Aly Courtemanch dated September 10, 2018	D				The draft protections do not need to be discarded and redrafted in order to discuss the September 10, 2018 framework. The primary differences between that framework and the draft protections are called out as individual Key Issue modifications in the next few rows. Redrafting to reframe the conversation does not change the conversation that needs to be had, but does require additional time and resources.

Proposed Modification			Rec/Direction				Discussion
#	Sec.	Proposed Modification	Staff	NRSG	PC	BCC	
K2	8.2.2.C.2	Replace the “Field Verified Habitat Map” with a “Field Verified Inventory” that maps water, wetlands, protected species habitat, migration (when applicable), large overstory patches, and focal species habitats	A				<p>All of the habitat factors listed in the proposed modification are a part of the mid-level and high-level standards. An inventory of the habitat factors is necessary to implement the regulations themselves. Clarifying that the second step in the habitat valuation process is a field verification of all of the factors to be considered in the regulation is appropriate. The September 10 Framework developed by Aly Courtemanch contains more detail that can clarify inventory expectations between staff and qualified professionals.</p> <p>The Functional Assessment subcommittee developed additional details that will clarify expectations regarding Functional Assessment. A Functional Assessment is still a subjective professional opinion, but additional expectations will improve consistency of Functional Assessments.</p> <p>The proposed modification is to place more weight on the protection of large intact habitat patches than the focal species habitat valuation. The rationale is that large intact habitat patches provide a better ability for species to move and adapt than a series of smaller, fragmented patches. The argument is that for some species, patch size is less important and emphasis on large patch protection will favor larger species over the smaller species which may live in abundance in a smaller patch, and that the focal species habitat map is a better representation of where there are isolated, valuable habitats. The intent of the relative valuation in the focal species habitat study was to take into account the various factors that go into habitat value and develop a system that compares them all. Because the Stakeholder Group has not yet discussed this specific issue, Staff’s recommendation is not to elevate large patches over the valuation criteria developed in the focal species habitat study is out of respect for the work of the NRTAB to develop those criteria. The drafted protections start with the focal species habitat map as a starting point in the mid-tier, then apply the other factors as corrections. Staff’s understanding was that this was the intent of the NRTAB – the focal species habitat values provide a starting point from which water, wetlands, protected species, migration, and patch size need to refine the understanding of the site. Third party peer-review found the relationship of the standards complex necessarily, but clear and effective in achieving flexibility through objectively defined standards. That said, staff also does not recommend getting rid of the consideration altogether. It is an appropriate consideration to be applied in a Functional Assessment and when a mid-level habitat values need refinement.</p>
K3	8.2.2.C.2	Add detail from the September 10 Framework describing how to inventory habitat factors	A				
K4	8.2.2.C.3	Add detail from the September 10 Framework on how to minimize habitat impacts in the consideration of a Functional Assessment	A				
K5	5.1.6.C.3.f	Reframe the mid-level location standards as ordinal protection of water, wetlands, protected species habitat, and migration (when applicable), followed by a minimization of impact to large overstory patches, and focal species habitats	D				
K6	5.1.6.C.3.f 8.2.2.C.3.c 8.2.2.C.3.d	Deemphasize the value of patch size, small patches can be more valuable than large patches	D				
K7	5.1.5.B 5.1.6.C	Avoid fragmentation of forest, shrub, grassland overstory patches >0.5 acres in all protection levels	D				
K8	5.1.6.A	Also require a Functional Assessment and high-level protection if the habitat minimization standards conflict	D				

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K9	Tier Map	Rename the “Countywide Habitat Value Map” the “Tiered Habitat Value Map”	A				<p>Many comments requested referring to the “Countywide Habitat Value Map” as the “Tiered Habitat Value Map”. Many other comments just referred to it as the “Tiered Habitat Value Map” or “Tier Map”. The rationale for presenting the “Tier Map” as low and not-low is that the Tier Map is not representative of the anticipated boundary between the medium and high tier – that boundary is more accurately predicted by the Focal Species Habitat Map. A two color map, or single color map, would provide the relevant information without providing misleading information. The appropriate colors to use can be decided based on cartographic legibility.</p> <p>While the Focal Species Habitat Map could be used, and will be publicly available as a reference, the Stakeholder Group directed that the “Tier Map” be used in the initial step of habitat valuation. A countywide map that evaluates relative habitat value at a parcel scale (K13) is not possible to produce. As a result, countywide mapping of habitat valuation has to be done on based on a landscape level valuation matrix. The benefit of that matrix is that it assigns distinct habitat values to areas and gives a broad picture of the most valuable areas. The drawback is that nature is not often make a distinct transition from one value to another.</p> <p>The purpose of the “Tier Map” is to adjust the habitat value of an area based on the value of surrounding areas to “smooth” the map. The drawback is that the “smoothing” is not verifiable in the field, it is a mathematical representation of a relational concept.</p>
K10	Tier Map	Present the “Countywide Habitat Value Map” as two colors (low and not low) to avoid inaccurately depicting the likely break between mid and high value	A				
K11	Tier Map	Flip the colors so that red represents the highest value and green represents low value	A*				
K12	Tier Map	Use the Focal Species Habitat Map instead of the Tier Map.	D				
K13	Tier Map	The Tier Map and Focal Species Habitat Map need to be replaced by a parcel level map that accurately defines habitat value for the entire community	D				
K14	5.1.4.A	Add migration corridor protections proposed by WGFD	T				<p>Discussion of migration corridor protections without the WGFD maps of the migration corridors is premature. Maps cannot be adopted by reference until they are reviewable. A set of regulations adopted without any applicability will have to be reevaluated, and will likely be amended, once the maps that determine applicability are available for review. At such time as the maps are available, a holistic discussion can be had regarding the appropriate standards to apply to the areas mapped by WGFD.</p> <p>However, waiting to review the migration standards does not necessitate delay of review of the other standards. The other standards can be reviewed independently. The drawback to independent review is that some standards may have to be reevaluated once the WGFD maps are available.</p>
K15	Timing	Delay discussion until WGFD has completed migration mapping	D				
K16	5.1.5 5.1.6 8.2.2.C.3	Prioritize protection of WGFD crucial winter range for mule deer, elk, and moose	D				<p>Elevating crucial winter range out of the focal species habitat valuation is contrary to the intent of the focal species habitat valuation process to implement Policy 1.1.a of the Comprehensive Plan to create a system for quantifying the relative value of habitats without having to value various habitats on a case by case basis without greater context.</p>

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K17	5.1.5	Add federal protections	A				Making the relevant protection available in the same location as other protections (the LDRs) increased predictability for a landowner. The drawbacks is that as federal or state protections change, the LDRs have to be amended. At this least, reference should be made to the standards even if specific setbacks are not included.
18	General	Make content neutral editorial and clarifying changes as identified	A				As the draft LDRS are reviewed and updated, edits beyond those explicitly identified will be needed. Staff will make such edits when they do not affect the content of the protections.
19	General	Make any additional modifications required by legal review	A				While an initial legal review has been completed, any additional, legally necessary modifications identified as the protections are revised should be incorporated.
20	General	Add additional clarifying graphic representations throughout the protections	A				Throughout the regulations concepts related to required maps and relationships between different habitat characteristics can be better explained graphically than through words. Some examples of needed graphics have been suggested, others may be created as well. The need for graphic representation of the relations of the various pieces of the regulations was also highlighted in peer-review. The complexity is necessary to achieve everything the County want to do in an organized way, but the regulations should include assistance for users where possible.
21	8.2.2.C.3	Add graphic representation of how a Functional Assessment is created	A				
22	5.1.6.C.3.f	Add graphic representation of the options for developing outside the lowest value habitat	A				
23	8.2.2.C.2	Add graphic representation of how a Field Verified Habitat Map is created	A				
24	8.2.2.G	Add an approval process map to illustrate how the Habitat Valuation fits into the overall review process	A				
25	9.4	Add graphic representation of Limits of Disturbance vs. Development Area vs. Site Development	A				
26	General	Create countywide map of forest, shrub, grassland overstory patches >0.5 acres	A				The proposed map is a relatively easy map to create and will
27	General	Apply the same standards to the Town of Jackson	T				In March 2017, Town Council decided to let the County lead the update to the natural resource protections. Town will review the work of the County and adopt the portions relative to the Town once the County's work is complete. The current Work Plan calls for updates to the Town natural resource protections to begin in 2019.

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28	General	The Board should pursue active enforcement of wildlife protections	T				Active enforcement of wildlife protections is budget decision of the Board of County Commissioners that is outside of the scope of the update to the regulations itself and cannot be included because a Board cannot bind a future Board's budgetary discretion.
29	General	Add conservation incentives	D				The natural resource protections are about avoiding and minimizing natural resource impact. They work in concert with the conservation incentives already adopted in 2015 through the Rural zoning update. Reviewing and re-discussing the Rural zoning is outside the scope of this update.
30	Timing	The community should take extra time to consider the proposed protections	D				The process set up in March 2017 was for the Natural Resources Stakeholder Group to be lead content advisor on this update because of the technical nature of the standards. The Stakeholder Group met 7 times as a whole, in addition to holding over 30 subcommittee meetings to develop the draft regulations. Finalizing the draft may be technical, but that is why the Stakeholder Group was formed.
31	Timing	Slow down until these regulations are the best practice	D				
32	5.1.1	Add additional description to the purpose and intent section that describes the legacy of natural resource protection in the County and how the system works	A				Additional description of the County's legacy of natural resource protection will improve the justification of the regulations.
33	5.1.2.A.2	Add more of an introduction to the 3 level system in Sections 5.1.5 through 5.1.7. and how it relates to the 3-step analysis process in Section 8.2.2	A				The relationship between the habitat valuation process in Section 8.2.2 and the habitat protection standards of Sections 5.1.5 through 5.1.7 is complicated. Adding additional explanation, including the graphic depiction of the relationship, will clarify the intent and help the reader understand the relationships. The organization subsection was originally intended to achieve the purpose of 5.1.2.A.2, but is no longer needed.
34	5.1.2.C	Delete the Organization subsection from the Applicability Section, it does not add anything	A				
35	5.1.2.B.3.b	Clarify that the circumstances referenced are the site circumstances	A				The proposed modification is the intent of the provision, a clarification should be added.

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36	5.1.3.B.1	Designate major Snake tributaries (ie Fish Creek, Flat Creek, etc.) for 100' setback then apply 50' setback to other minor perennial streams	D				The December policy direction prioritized water quality protection as foundational to the health of the ecosystem and community. The subcommittee of the Stakeholder Group that developed the waterbody setback standards implemented that direction with an understanding of the waterbodies that exist in Teton County, the history of waterbody protection in Teton County, and the best available science on the appropriate setbacks needed to protect natural waterbodies. The modifications have various rationales, but the proposed draft strikes the balance between improving water quality protection and acknowledging historic waterbody setbacks.
37	5.1.3.B.1	Reduce the stream setback for minor perennial streams	D				
38	5.1.3.B.1	Increase the intermittent stream setback to 100'	D				
39	5.1.3.B.1	Go back to variable 50'-150' stream setback based on riparian vegetation	D				
40	5.1.3.B.1	Include consideration of physical development methods for protecting water quality such as rain gardens treatment wetland, etc.	D				The Stakeholder Group has directed that incentives should not include provisions to "buy your way out" of the requirements. Incentives that lessen requirements in order to make the "right decision easy" were the incentives discussed by the Stakeholder Group. Physical development protection of water quality is only appropriate where a natural buffer cannot be retained.
41	5.1.3.B.1	Make an allowance for platted building envelopes and PUDs that are based on a 50' stream setback	D				Section 1.8.2.C.1.a of the Current LDRs and proposed Section 5.1.3.C.4.b largely address the proposed modification already by deferring to a PUD when it establishes a stream setback and allowing for impact to a stream setback if it is essential to achieve a development area on a site. Where a platted building envelope allows for compliance with the stream setback, compliance will better protect water quality. The allowance that is needed is for the case (such as Melody Ranch) where the building envelope is small and 50' from a stream. The development is allowed, but 2:1 mitigation is disrespectful of prior approvals, the mitigation requirement should be limited to buffer establishment on site.
42	5.1.3.D	Reduce the mitigation requirement for development in a platted building envelope that is in the stream setback	A				
43	5.1.3.D.1	Clarify how water impact is mitigated 2:1 in-kind	A				The provision is clear with regard to buffer impact, but less clear with regard to an actual waterbody and the various types of impact that may occur.
44	5.1.3.B.1	Require buffer establishment for natural waterbodies where existing setback is non-native	A				The December policy direction prioritized water quality protection. Buffer establishment is important to water quality protection. On sites where the buffer of a waterbody or wetland is not native, the buffer should be established. This requirement may need to be limited in scope to scale with the size of the development proposed, but it is an important requirement toward improving the natural resource values within developed areas.
45	5.1.3.B.1.a	Remove definition that a natural channel must return to the thread of the river	A				End channels of the river should receive the protection of the river setback.

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46	5.1.3.B.1.a	Use USEPA and USACOE definition of stream	A				The Army Corps definition of stream is similar to the definition proposed and utilizing a federal definition will coordinate local and federal protections. This is already the approach taken for wetlands.
47	5.1.3.B.1.a	Remove ephemeral stream setback	D				Ephemeral streams in Teton County serve a wetland-like flood control and water quality protection function, which is why the setback proposed is the same as that for wetlands. Ephemeral streams are relatively rare, compared to the other waterbodies and wetlands in Teton County.
48	5.1.3.B.1.a	Define Lake/Pond	D				The definition proposed, “a body of standing water,” is the best definition that has been found at this point and is adequate.
49	5.1.3.B.1.a	Remove the 100 square foot minimum for a wetland not regulated by the Army Corps of Engineers	A				The purpose of the 100 square foot minimum is to avoid protecting a small wetland that is really just, for example, the depression left when a Cottonwood blows over. The downside to the requirement is that linear wetland features that may be significantly long, but not very wide, and are valuable, will lose protection.
50	5.1.3.B.1.a	Go back to the current definition of wetland	D				The concern with protecting agriculturally induced wetlands is that by doing so a landowner will be incentivized to turn off their water to dry up their wetlands if that is where they want to develop, and that it would be better to have an impacted wetland than no wetland. Agricultural operations are exempt from the setbacks, so the concern would only apply in the case of a non-agricultural landowner manipulating controlled water on the site. The downside of exempting agriculturally induced wetlands from protection is that it creates an administrative burden around proving agriculturally induced versus agriculturally supplemented wetlands. There is also a consideration of whether a landowner would ever actually cut off water in order to develop in a certain location. A landowner may move a ditch to manipulate a site, but location near water is a prime property value.
51	5.1.3.B.1.a	Exempt agriculturally induced wetlands from protection	D				
52	5.1.3.B.1.a	Makes sure wetland identification vs. delineation is clear	A				The intent of 5.1.3.B.1.vi.b) is that the setback be measured from a detailed delineation, but that a detailed delineation is only needed if the development is within twice the setback of an identified wetland. This needs to be clarified as various comments indicated that intent was not clear.
53	5.1.3.B.1.a	Define ditch as conveying only apportioned water, so that the definition is exclusive of other waterbodies	A				The primary purpose of the ditch setback is to protect the ability for ditch owners to maintain their water rights. It serves some water quality protection purposes incidentally. It is appropriate to define ditch in a way that is exclusive from other waterbodies to distinguish the differing purposes.
54	5.1.3.B.1.a	Remove ditch setback	D				

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55	5.1.3.C.2 8.2.2.B.2.e	Exempt private emergency flood control from the same standards as public emergency flood control	A				The flood control exemptions are from habitat valuation process and minimization standards because timing and the naturally dynamic nature of a flood make the provisions impractical to implement. The same rationale applies to a private flood fight. Not including the exemption would procedurally prohibit a landowner from fighting a flood.
56	5.1.3.C.3	Apply to all nonconforming physical development instead of just buildings	A				The provision allowing expansion of a building in the setback if unavoidable, as long as the expansion did not get any closer was originally written with manmade ponds and buildings in mind. In the broader application it is appropriate to apply it to all physical development and consistent with the December policy direction that development should occur adjacent to existing impact, rather than create a new impact.
57	5.1.3.C.4.b	Clarify that the intent is that only a single development area is allowed if the 'essential' designation is used	A				The proposed modification strengthens the intent of the provision.
58	5.1.3.C.4.c	Allow additional impact for public works	D				If a public works project cannot conform to the allowances of the zoning district the appropriate mechanism for allowing additional site development is rezoning the publicly owned land to the P/SP zone, which has not limit exactly because some public works require additional development.
59	5.1.3.D.1 5.1.9.B.4.c	Define "buffer establishment" in one place then use the term throughout the regulations	A				The proposed modifications will add clarity and consistency to the application of the buffer establishment requirement throughout the protections and avoid confusion between setbacks from resources and functioning buffers adjacent to resources.
60	5.1.3.D.1 5.1.9.B.4.c	Better distinguish "setback" from "buffer"	A				
61	5.1.4	Add "movement" to the title of Section 5.1.4	A				Addition of movement to the title of Section 5.1.4 and addition of movement provisions to the Section is consistent with the Comprehensive Plan. However, the December policy direction and Stakeholder Group have consistently focused the regulations on protection of habitat characteristics rather than wildlife themselves – wildlife management is the job of the Game and Fish.
62	5.1.4	Add wildlife movement and permeability protections in addition to wildlife migration protections	A				
63	5.1.4	Include movement along with migration throughout regulations	A				
64	5.1.4	Add support language for a "multi-stakeholder wildlife stewardship council"	A				The language proposed by the Jackson Hole Wildlife Foundation may be stronger than is appropriate for the LDRs, which are a regulatory document. However acknowledgement of the work is appropriate and is also addressed below relative to fee-in-lieu of mitigation.

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#	Sec.	Proposed Modification	Staff	NRSG	PC	BCC	
65	5.1.4	Add requirement that windows of a certain size be treated to reduce bird window collisions	A				The proposed modification would reduce human/bird conflicts. The requirement would be an additional cost and might be more appropriately located in the Teton County amendments to the building code, where architects would expect to find such a design requirement. How a fence or wall that meets the structure setback is treated under the LDRs is a question that come up a number of time over the years. The intent of the LDRs is not to allow a perimeter wall or exceptionally tall fence as long as it is setback from the property line, but allowances do need to be made for use of a fence to deter bears.
66	5.1.4.C	Prohibit construction of a security wall around a property	A				
67	6.4.9.D.4.b	Clarify the maximum fence height of 6' versus the minimum bear resistant fence height of 6'	A				
68	6.4.9.D.4.b	Increase the minimum height of a bear resistant fence to 8'	A				Based on the December policy direction to exempt all agricultural fencing from the wildlife friendly fencing standards, the agricultural exemption is not needed specific to fence replacement. Because of reorganization of standards through the Rural zoning, fences built for new riding arenas are most appropriately addressed through the special purpose fencing provision.
69	5.1.4.C.1	Exemptions section not needed	A				
70	5.1.4.C	Remove the 50% replacement allowance for non-ag fencing	T				
71	5.1.4.C	Clarify the 50% replacement rule	T				In the December policy direction, the Board asked that a working group be formed to, "identify a collaborative approach to allowing continued permeability and migration through development." Jackson Hole Wildlife Foundation has led the creation of such a group, which is looking first at non-regulatory options for improving the wildlife friendliness of fencing across the landscape. Staff recommends tabling discussion of the fencing regulations until the non-regulatory framework is in place. The fencing LDRs have proven on multiple occasions to be an issue that distracts from the bigger conversation of updating the other habitat protections in the LDRs. Fencing needs and deserves its own conversation. If that conversation is wrapped into this set of amendments it will almost certainly delay the Board's desire to complete the natural resource protections update in 2018.
72	5.1.4.C	Require gaps in non-agricultural decorative/boundary fencing					
73	5.1.4.C.3.d	Replace a "portion" of fencing must be laid down with a defined amount	T				
74	5.1.4.C.4	Add vegetable gardens as an example of special purpose fencing	T				
75	5.1.4.C	Prohibit metal bar fencing with spikes on top	T				
76	5.1.5 5.1.6 5.1.7	Use consistent subheadings in each level for ease of understanding	A				This modification was requested by a number of reviewers. The downside of sticking to a format even when a provision is not applicable is that it can create confusion when the reader is only reading the applicable section, rather than reading the Division as a whole as a reviewer does.
77	5.1.5.A	Require a "Natural Resources Inventory" for all properties over 3 acres or outside a Complete Neighborhood	D				There are few properties entirely within the low tier that are greater than 3 acres, but most of them are in Alta. The proposed modification would have little practical effect east of the Tetons and would simplify the regulations. West of the Tetons it would require Field verification in many situations where the Tiered Habitat Value Map does not call for it.

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78	5.1.5.A.4	Apply base level protections without a Field Verified Habitat Map if the proposed limits of disturbance (instead of entire property) are in low value	D				The Stakeholder Group had a full discussion of whether to apply the based-level break based on limits of disturbance or parcel and whether to limit the field verification to the area to be developed or the entire parcel. The rationale for the draft is that a field verification of the entire parcel whenever there is the possibility of higher value habitat is needed to ensure higher value habitat is not inadvertently impacted. The rationale for the proposed modifications is to limit the amount of study that is needed, creating a procedural incentive to “make the right decision easy” if getting the development into the low value area achieves most or all of the protection goals of the community.
79	8.2.2.C.2	On a property proposing to disturb low value only require Field Verified Habitat Map of the low value area to be disturbed	D				
80	8.2.2.C.2	The Field Verified Habitat Map should only have to extend 300’ from the development site	D				
81	5.1.5.B	List waterbody, wetland, federal/state protected habitat, and migration avoidance as base-level protections	A				Multiple comments indicate the need to clarify that the proposed protections apply in base-level (migration protections are anticipated to apply once they are available). A reorganization or explanation to clarify is needed.
82	5.1.6	Require a single development area in the mid-level protections (already in the high-level).	A				Practically the regulations will push applicants toward a single development area, making that the requirement will remove unneeded lack of clarity that might become contentious. The requirement that development be clustered protects fragmentation of habitat. During adoption of the current rural zoning in 2015, the County was concerned that such a requirement would be overly burdensome on property owners. However, that conversation may be different in the context of habitat valuation.
83	5.1.6.A.1	Reduce parcel size exemption from 10 to 6 acres	D				The Stakeholder Group discussed, but never provided direction on including an acreage threshold below which a Functional Assessment does not add proportional value to its cost. A 6 acre limit creates a patchwork within many subdivisions where half the neighborhood will have to do a Functional Assessment and half will not, without any difference in habitat. The reason for the patchwork is that density in many riparian areas varied between 3 acres and 6 acres based on groundwater depth, so property sizes vary from about 3 to 10 acres because that is what zoning allowed. The 10 acre threshold largely addresses the patchwork. The alternate rationale is that a Functional Assessment can have value even at 3 acres.
84	5.1.6.A.1	Remove the parcel size threshold for a Functional Assessment	D				
85	5.1.6.A.2 5.1.6.A.4	Clarify the distinction between the two provisions	A				The intent of 5.1.6.A.4 is that if only the access crosses high value habitat, and the access is minimized, a Functional Assessment is not required. This intent can be clarified.

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86	5.1.6.A.3	Only defer to existing conservation easement building envelopes	D				The December policy direction included direction to identify incentives as well as requirements. Deferring to a conservation easement does not necessarily represent a conservation incentive, but it removes a procedural barrier to conservation easement discussion. The proposed modification is intended to protect against allowing development of a higher value habitat because a conservation easement holder does not prioritize habitat value in the same way as the County. However, in many cases easement holders use local regulations in justifying easements. The issue is one of balance. If the County sacrifices some community control over development location and in doing so may get more conservation does the conservation benefit outweigh the loss of control in overall ecosystem stewardship?
87	5.1.6.C	Clarify provisions	A				Mid-level development location protections are one of the most complicated sections. The clearest possible language, augmented with graphics, should be used in this section to implement the policy decisions on the content of the section.
88	5.1.6.C.1	Require that any property subject to a Field Verified Habitat Map develop in the lowest value habitat, without allowance for an “off-ramp” to base level protection	D				The direction of the Stakeholder Group was to include confirm-or-correct evaluation points to ensure that valuable habitat is adequately protected and areas of lower value are not subjected to requirements that cannot achieve ecological benefit. Due to property configuration being independent from habitat valuation the effect of the proposed modification would vary widely. A parcel with very little mid value habitat in one corner could be treated differently from a neighbor with all low value habitat, allowing the neighbor do develop closer to the mid value habitat than the landowner.
89	5.1.6.C.3.d	Delete the deference to non-government regulations, conflicts can be handled through Variance	A				The intent of the provision is to acknowledge existing property constraints, even if they were not adopted by the County. As a general rule the protections of the community adopted in the LDRs are not subordinate to private agreements. The preference of the community and the law is that both standards be met. Where that is not possible relief procedures exist in the LDRs. A blanket deference may preclude protection that could have been achieved.
90	5.1.6.C.3 8.2.2.C.3.d	Add consideration of the SRO to the factors that allow flexibility in development location	A				Scenic protections are subordinate to natural resource protections in the Land Development Regulations, but when all other factors are being considered it other community goals such as scenic protections are an appropriate consideration.
91	5.1.6.C 5.1.7.B	Add a mechanism to allow variation from “lowest value” or “lowest impact” standards in exchange for additional enhancement	D				The Stakeholder Group has directed that incentives should not include provisions to “buy your way out” of the requirements. Incentives that lessen requirements in order to make the “right decision easy” were the incentives discussed by the Stakeholder Group. Allowing impact to gain more conservation or restoration is a difficult balance to achieve because of how hard it is to recreate a natural vegetation community once it is disturbed.

Proposed Modification			Rec/Direction				Discussion
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92	5.1.6.D	Site development exempt from mitigation should be limited to 3%	D				An exemption of 2% or 3% of the site area was discussed by a subcommittee of the Stakeholder Group in the context of a 35 acre site, which has an allowed site development of only 5%. The intent of the draft is to implement that intent to all zones through the exemption of ½ of the allowed site development rather than a fixed percentage.
93	5.1.6 5.1.7	Require restraint of domestic pets in the high-level protections	D				Domestic pet control can only be enforced through the LDRs related to requiring an enclosure. Regulating daily behavior is not the intent of the LDRs or enforceable through the LDRs. Such a protection would be more effectively pursued through homeowners associations and non-regulatory efforts.
94	5.1.7.D	Habitat protection should be “a” (not “the”) primary consideration for a CUP in the high-level protection	A				The intent of the proposed modification is to allow room for other natural resource protections and community protections to be considered. Habitat protection should certainly be a primary consideration, but should not be categorically elevated above all other natural resource and other considerations.
95	5.1.7.D	Apply the CUP prohibition to any parcel that has high focal species habitat value	D				The CUP prohibition keeps more intense uses out of the highest value habitat. The intent of the modification is to also protect the highest value habitat from incidental impacts of intense uses in proximity to the habitat. The downside to the proposal is that due to parcel configuration, the application of the intent varies widely. On a 35 acre site a CUP could be located ¼ mile away from the high value habitat in the opposite corner of the property. Conversely, in an example where a parcel boundary happens to be near the boundary between medium and high value habitat, a CUP on one parcel might be 30 feet away from high value habitat.
96	5.1.7.E	Require 3:1 mitigation in the high-level protections	D				The defensible purpose of 2:1 mitigation is that mitigation efforts are not always 100% effective and replacing habitat in another place does not have the same value as the habitat disturbed. These principles do not change with the value of the habitat and so the required mitigation cannot change. Avoiding impacts to higher value habitat is the purpose of other regulations, once the impact occurs the mitigation requirement must relate to the impact.
97	5.1.8	Add an overarching purpose statement for mitigation.	A				A purpose statement in the mitigation section would improve the clarity of the individual standards that may be subverted in the vacuum clear intent.
98	5.1.8.B	Reduce mitigation rate to 1:1 if a mitigation bank is established that is effective	T				The intent of the proposed modification is that if a successful mitigation bank is established, the 2:1 requirement will not be needed to address concerns about the need to protect against ineffective mitigation. This may be the case and should be reviewed at such time an effective mitigation bank or fee-in-lieu program is in place.
99	5.1.8.B	Clarify cut-off for already provided mitigation	A				The intent of the provision is to give credit only for mitigation provided for the impact being reviewed, not any prior impact. The provision should be clarified.

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100	5.1.8.B.3	Credit for reclamation should only be given if the reclamation is “in kind native habitat”	A				The intent of the proposed modification is that reclamation of disturbance only be credited toward mitigation if it is an attempt to reestablish the native condition. Planting native vegetation with no relation to the native condition is still a disturbance to the native condition that should require mitigation.
101	5.1.8.C	Clarify that the preferred method of mitigation is restoration, rather than trading one perfectly good habitat for another	A				The proposed modification aligns with the intent of 5.1.8.C.1, 5.1.8.C.2, 5.1.8.D.1. The provisions can be evaluated to identify additional clarity of the intent.
102	5.1.8.C	Require evaluation of prior mitigation efforts as a part of a redevelopment review	D				If a mitigation effort meets the requirements for monitoring and certification, reevaluation at a later date creates an ongoing evaluation of an approval which not consistent with the County’s approach to the LDRs. Such ongoing stewardship is one of the benefits achieve through conservation.
103	5.1.8.C.2	Clarify that introduction of new habitat is subject to Section 5.1.9 and not credited toward mitigation	A				The proposed modification aligns with the intent of the provision.
104	5.1.8.C.4	“Naturally viable” needs clarification for the requirement to work	A				The intent of the requirement is that the qualified professional will submit a mitigation plan including a maintenance and monitoring plan for how the mitigation will be temporarily supported until it has reached a state of natural regeneration. Monitoring will be expected until the professional certifies that the mitigation is naturally regenerating. Additional clarification is needed to flesh out the details of the intent.
105	5.1.8.C.4	Replace self-certification of mitigation viability with staff inspection	D				Staff inspection of mitigation requires significant resources. Requiring certification of mitigation as part of an approval will require that a qualified professional monitor and check-in on the mitigation on a timeline that makes sense for the mitigation design.
106	5.1.8.C.5	Delete the mitigation guarantee provision, it is more of an enforcement burden than it is worth	A				The mitigation guarantee would require a large amount of monitoring and administrative burden for a small amount of potential benefit, as enforcing the guarantee would be very difficult.
107	5.1.8.D	Add a fee-in-lieu of mitigation allowance based on the cost of mitigating the same habitat being disturbed	A				A fee-in-lieu of mitigation provision is needed to address situations where high value properties have no onsite mitigation options that would improve ecological value and do not have a large enough requirement to make finding an offsite project feasible. The implications of such a requirement would the establishment of a fund, which would then require staff resource to manage and allocate the funds to mitigation or conservation projects. If a fee-in-lieu provision were adopted, the program to administer the fees would have to be created, staff recommends the allocation occur through the Teton County Scenic Preserve Trust.

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108	5.1.8.D	Alternate mitigation methods should be considered on a case-by-case basis	D				Case-by-case review provides more flexibility and opens the door to more opportunities, but comes at the cost of subjectivity and need for staff resources to review and evaluate the proposals. Beyond the methods described the County may not have the ability to review and evaluate the proposed mitigation.
109	5.1.8.F	Enhancement needs to be more narrowly defined to avoid disturbance, alteration or conversion of perfectly good habitat	A				The intent of proposed enhancement definition aligns with the proposed modification. The language can be clarified to better represent that intent.
110	5.1.8.F	Enhancement definition needs to be revised to be a function of time to distinguish it from restoration	D				The intent of the proposed protections is to distinguish between a project that restores a degraded situation (restoration) versus a project that enhances a viable, but improvable situation (enhancement). The proposed modification is another way to approach the distinction.
111	5.1.9	Rename to “Artificial” rather than “Manmade”	D				The term manmade can be replaced, but the term artificial carries a connotation of permanent physical development rather than an anthropogenic feature of the landscape.
112	5.1.9.A.2	Make sure the manmade features Section allows a landowner to improve an existing pond without requiring complete compliance	A				In the months since adoption of the manmade landforms standards, staff has identified these standards as a needed clarifications.
113	5.1.9.B.4.c	Limit riparian access to a pond to a single access (per property) and require that it be natural pervious material	A				
114	5.1.9.B.4.c	Prohibit mowing of an established buffer	A				
115	6.4.9	Require bear-resistant trash storage in Town	T				Town will review the work of the County and adopt the portions relative to the Town once the County’s work is complete. The current Work Plan calls for updates to the Town natural resource protections to begin in 2019.
116	6.4.9	Add prohibition of hunting gut piles and any carcasses on private land	D				Such a prohibition would be contrary to the general approach taken to agricultural use in Teton County, which is acknowledge that such operations have a personal interest in avoiding conflict and continue to be the longest standing stewards of undeveloped open space in the community.
117	6.4.9.C	Remove agricultural exemption for bear-resistant trash storage	D				
118	6.4.9.C	Apply agricultural exemption to all agriculture uses, even those under 70 acres	D				The 70 acre standard is not invoked by the general definition of agriculture use cited in the standard. The additional specificity in the proposed modification is not needed because it is already covered by the definition of agriculture.
119	6.4.9.C	Bring back the garden exemption	D				

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120	6.4.9.D.1	Avoid use of what appears to be an exclusive list	A				The list is not intended to be exclusive. Clarifying that it is not, or removing it all together with an exemption for song birds at birdfeeders is appropriate.
121	6.4.9.D.2	Limit the landscaping prohibition to fruit bearing bear attractants	A				The Stakeholder Group direction was to limit the landscaping provision in this section to fruit bearing trees.
122	6.4.9.D.4.a	Align the applicability date with the County zero waste requirements.	A				Teton County is going to require “pay as you go” trash removal that will require replacement of trash cans throughout the County. The timing of the can replacement should match the applicability of the bear-resistant containers so that landowners do not have to pay twice in a short period.
123	6.4.9.D.4.a	Specifically require that bear proof containers be secured or latched as designed	A				This clarification is appropriate to define the expectation. Ultimately, enforceability of behavioral standards is difficult for the Planning Department, but the appropriate expectations should be set in order to effectively enforce violations when necessary.
124	6.4.9.D.4.a	Need to address construction dumpsters	A				A clarification of the requirement for construction sites is appropriate as they continue to be a high-conflict area.
125	6.4.9.D.4.b	Add swan rearing operations and bee hives to the list in i.	D				When the Stakeholder Group discussed what uses required an enclosure neither of bee hives were discuss as not significant enough an attractant to warrant regulation.
126	6.4.9.D.4.b	Add compost to the list in i.	D				The Stakeholder Group discussed whether to include compost in the list when it discussed this portion of the regulations and directed that it not be included.
127	8.2.2	Rename the Section from “Habitat Valuation”	D				The Comprehensive Plan calls for standards based on relative habitat value. Also using a completely different term from the current Environmental Analysis makes it more clear to people familiar with the current terminology that the system has changed.
128	8.2.2.B.1	A variance should require a habitat valuation	D				If a habitat valuation is required to make the findings for a variance the applicant will complete a habitat valuation. The Planning Director also has the ability to require consolidation of applications where the information from one application is necessary to review the compliance of another application (Sec. 8.2.4.D).
129	8.2.2B.2.f	Public pathways should not be exempt from habitat valuation	A				The exemption in only exempts essential utilities to an existing physical development or use, the intent is not that it would exempt a public pathway or road that was a project in and of itself. The distinction can be made clearer.
130	8.2.2.C	Clarify the definition of habitat patch, and how it is used to value habitat	A				The term habitat patch is used to mean multiple things in the draft, based on the direction above a definition should be developed and use of the term should be evaluated to ensure all uses are consistent with the definition.
131	8.2.2.C	The process for moving through the levels of habitat valuation should be introduced in non-regulatory terms	A				The proposed modification will increase understanding of the regulatory language that follows.

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132	8.2.2.C.1	List the best available countywide data source for water, wetlands, fed/state protections, migration, overstory patches, focal species habitats	A				Providing a list of the best available countywide data will clarify expectations regarding the information staff will be using to review the presence of natural resources without a site visit. Given the new habitat analysis system, landowners and qualified professionals will need all of the available data to understand where development is likely allowed on the property and to have a baseline for the required analysis.
133	8.2.2.C.1	Create a natural resources layer group on the webserver that contains all of the countywide data relevant to these regulations	A				
134	8.2.2.C.2	Make sure it is clear that the 2017 Focal Species Habitat Mapping methods be used to create the Field Verified Habitat map	A				The proposed modification aligns with the intent of the standard. Clarification of the intent is appropriate.
135	8.2.2.C.2	Add a minimum vegetation polygon size for vegetation map verification	A				One of the purposes for field verification is to evaluate the vegetation mapping against appropriate size minimums to distinguish one vegetation patch from another. The vegetation map established minimum map units for various vegetation types, which can be referenced as the basic standard, however there is also need for professional review in the context of the site. Clarification of this intent is needed.
136	8.2.2.C.3	Clarify how migration should be considered prior to the availability of WGFD mapping	A				Expectations should be set for consideration of migration, stopover, and movement until such time as the WGFD maps are adopted and migration standards are adopted.
137	8.2.2.C.3.d	Provide a quantifiable method for the valuation of a Functional Assessment	D				A quantifiable index for the Functional Assessment would improve the consistency and predictability of the findings of a Functional Assessment. However, at this time the only index available to the County is the valuation matrix developed in Focal Species Habitat Mapping (Alder, 2017). It would take a lot more work to generate a quantifiable Functional Assessment framework. Instead of generating an index the Stakeholder Group developed a tiered system of analysis that relied on the Focal Species Habitat Map index for the first two levels of protection, then addressed the subjectivity of the Functional Assessment by
138	8.2.2.D	Require either certification <u>OR</u> education and experience instead of both	D				The intent of the requirement is to provide consistency in habitat inventory and valuation per the December policy direction. Requirement of qualified professional preparation and review eliminates the need for the current County hired consultant process, which has been a difficult process for landowners, staff, and neighbors.
139	8.2.2.D	Remove the certification requirement	D				Requirement of certification and experience is important to achieve the intent of the standard. That said adding additional appropriate certifications to the list in provision 1 supports the purpose of the standard.
140	8.2.2.D.1	Add certified wetland delineator to the list	A				

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141	8.2.2.D.2	A masters degree in one of the listed subjects should qualify without any experience	D				Practical experience is an important part of the qualifications needed to implement complete the required habitat valuations in the context of a development application.
142	8.2.2D.2.a	Replace a degree in “agriculture” with a degree in “range management”	A				Range management is a more specific description of the type of agriculture degree that would provide the appropriate educational background. Some agriculture degrees may be completely irrelevant to habitat valuation in Teton County.
143	8.2.2.E	Appropriate PRC should be required for a Functional Assessment and some mid-tier reviews	D				Appropriate PRC is enabled by Section 8.2.6.B of the LDRs, the proposed modification is unnecessary and inconsistent with the overall amendment to the regulations.
144	8.2.2.E	Include PRC in the Functional Assessment pre-application conference	A				WGFD, TCD, and other peer-reviewers of a functional assessment can be invited to the pre-application conference to get them involved in project earlier in the conversation and provide additional predictability.
145	8.2.2.G	Require Planning Department decision at pre-application conference	D				The Functional Assessment is only one factor that goes into the overall review of an application for development or use of a property. No decisions can be rendered at the pre-application conference because staff has not fully reviewed the application. The purpose of the pre-application conference is to ensure submittal of a sufficient application, not pre-review the application.
146	Tier Map	Remap the area east of Nethercott from mid to high	D				The Tiered Habitat Map is based on replicable methodology. The appropriateness of the map will be evaluated through the habitat valuation process.
147	1.9.2.B	Add a cross-reference to 5.1.3.C.3 in the nonconformities section	A				An LDR user familiar with the organization of the LDRs would expect to find an answer regarding nonconforming waterbody or wetland setbacks in Division 1.9. There should be reference in that location to direct them instead to Section 5.1.3.C.3.
148	5.7.2.B.4	Add a standard for wire basket Gabion retaining walls that prohibits loose, exposed wire at the top of the wall	A				The proposed addition is a simple standard to improve wildlife permeability of the developed landscape.
149	7.1	Conservation incentives should vary by habitat value	T				Re-evaluation of the conservation incentives is outside the scope of this project. Once the conservation incentives and these incentives have been tested, evaluation of needed enhancements is appropriate.
150	8.3.1.C.2 8.3.2.C.2 8.5.2.C.2	Update the Sketch Plan, Development Plan, and Development Option Plan findings to align with the tiered system	A				The current findings refer to the NRO and need to be updated to reflect the proposed tiered system.

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151	8.5.5.D	Add a finding to the Boundary adjustment that requires minimization of impact by an Habitat Valuation	A				A boundary adjustment that impacts where development is located would require a Habitat Valuation under the proposed standards. If a Habitat Valuation is required, it should be part of the findings for approval of the proposed lot configuration under the Boundary Adjustment.