
Chapter 21.30B – Habitat Protection

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21.30B.010 – Purpose

This Chapter is intended to:

- A. Protect environmentally sensitive habitat areas against any significant disruption of habitat values.
- B. Maintain and, where feasible, restore the biological productivity and the overall quality of coastal waters, streams, wetlands, estuaries, and lakes.
- C. Protect wetlands for their commercial, recreational, water quality, and habitat value.

21.30B.020 – Initial Site Resource Survey

Applicability. An initial site resource survey identifying the presence or potential for wetlands or sensitive habitat or species on the site shall be required for coastal development permit applications on a development site that:

- A. Is located within or within fifty (50) feet of an Environmental Study Areas (ESA) indicated in Map 4-1 (Environmental Study Areas) in the Coastal Land Use Plan; or
- B. Contains southern coastal foredune or southern dune scrub habitats; or
- C. Contains or is located within one hundred (100) feet of a delineated wetland, designated Environmentally Sensitive Habitat Area (ESHA), ESHA buffer, or wetland buffer; or
- D. Contains or is located within one hundred (100) feet of a habitat area where there is substantial evidence of the presence of a wetland or ESHA.

21.30B.030 – Environmentally Sensitive Habitat Areas

- A. **ESHA Designation.** Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments shall be designated as an environmentally sensitive habitat area (ESHA).

1. **Exceptions.** ESHAs do not include the following areas:
 - a. Existing developed areas; and
 - b. Existing fuel modification areas required by the City of Newport Beach Fire Department or the Orange County Fire Authority for existing, legal structures.
- B. **Protection Required.** ESHAs shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed. Development in areas adjacent to ESHAs shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of the ESHA.
- C. **ESHA Report.** If the initial site resources survey indicates the presence or potential for sensitive habitat or species on the site, a report shall be required with recommendations as to whether a habitat area constitutes an ESHA.
 1. **Evaluation.** Using a site-specific survey and analysis, the ESHA report shall evaluate the following attributes when recommending whether a habitat area constitutes an ESHA:
 - a. The presence of natural communities that have been identified as rare by the California Department of Fish and Game.
 - b. The recorded or potential presence of plant or animal species designated as rare, threatened, or endangered under State or Federal law.
 - c. The presence or potential presence of plant or animal species that are not listed under State or Federal law, but for which there is other compelling evidence of rarity, such as designation as a 1B or 2 species by the California Native Plant Society.
 - d. The presence of coastal streams.
 - e. The degree of habitat integrity and connectivity to other natural areas.

Attributes to be evaluated when determining a habitat's integrity/connectivity include the habitat's patch size and connectivity, dominance by invasive/non-native species, the level of disturbance, the proximity to development, and the level of fragmentation and isolation.
 2. **Recommendation.** If an area is recommended as an ESHA, the boundaries of the ESHA and the appropriate buffers shall be made to the review authority.
- D. **ESHA Buffers.** A protective open space buffer shall be required to horizontally separate ESHA from development areas and provide distance and physical barriers to human and domestic pet intrusion.

1. **Size.** ESHA buffers shall be of a sufficient size to ensure the biological integrity and preservation of the habitat they are designed to protect. Terrestrial ESHA shall have a minimum buffer width of fifty (50) feet wherever possible.
 - a. **Exceptions:** Smaller ESHA buffers may be allowed only where it can be demonstrated that:
 - (1) A fifty (50) foot wide buffer is not possible due to site-specific constraints; and
 - (2) The proposed narrower buffer would be amply protective of the biological integrity of the ESHA given the site-specific characteristics of the resource and of the type and intensity of disturbance.

2. **Vegetation.**

- a. ESHA buffers shall be maintained exclusively with native vegetation to serve as transitional habitat.
- b. Fuel modification zones abutting sensitive habitats shall consist of fire-resistive, native plant species from the City-approved plant list.
- c. Invasive plant species shall be prohibited.

E. **Design and Siting.** Development within one hundred (100) feet of an ESHA shall incorporate the following design and site characteristics:

1. Development within or adjacent to an ESHA shall be designed and sited to protect ESHA resources against any significant disruption of habitat values.
2. Development shall be compatible with the continuance of ESHA habitat areas.
3. Development adjacent to an ESHA shall be limited to low impact land uses, such as open space and passive recreation whenever feasible.
4. Development shall not necessitate fuel modification in an ESHA.
5. Development lighting shall minimize impacts to wildlife.
 - a. All outdoor lighting fixtures shall be designed, shielded, aimed, located, and maintained to direct lighting away from environmentally sensitive habitat areas (ESHA) and ESHA buffers and to minimize glare, sky glow, and light trespass.
 - b. Buildings shall be designed to minimize light trespass from interior lighting.
 - c. The lowest intensity lighting shall be used that is appropriate to the intended use of the lighting.

6. Unauthorized structures that impact, or encroach into, ESHA shall be removed.
- F. **Limits On Land Uses.** Uses within ESHA shall be limited to only those uses that are dependent on such resources. Limited public access improvements and minor educational, interpretative and research activities and development may be considered resource dependent uses. Measures, including, but not limited to, trail creation, signage, placement of boardwalks, and fencing, shall be implemented as necessary to protect ESHA.
1. **Exception to Protect Private Property.** If the application of ESHA land use limitations would likely constitute an unconstitutional taking of private property, then a non-resource dependent use shall be allowed on the property, provided development is limited to the minimum amount necessary to avoid an unconstitutional taking and the development is consistent with all other applicable resource protection policies.
- G. **Required Findings.** No development shall be allowed in an ESHA or ESHA buffer area unless the following findings are made:
1. The resource as identified will not be significantly degraded by the proposed development.
 2. There is no feasible less environmentally damaging alternative.
 3. All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

21.30B.040 – Wetlands, Deepwater Areas, and Other Water Areas

- A. **Protection Required.**
1. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes shall be protected, maintained and, where feasible, restored.
 2. All uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.
 3. Marine resources shall be maintained, enhanced, and, where feasible, restored.
 4. Special protection shall be provided to marine resource areas and species of special biological or economic significance.
- B. **Wetland Delineation.** When the initial site resources survey indicates the presence or potential for wetland species or indicators, coastal development permit applications shall include a survey and analysis with the delineation of all wetland areas.

1. **Methodology.** Wetland delineations shall be conducted in accordance with the definitions of wetland boundaries contained in Section 13577(b) of the California Code of Regulations and Statewide Interpretive Guidelines for Wetlands and Other Environmentally Sensitive Habitat Areas published by the California Coastal Commission.
 2. **Other Factors.** Although vegetation is often the most readily observed parameter, sole reliance on vegetation or either of the other parameters as the determinant of wetlands can sometimes be misleading. Many plant species can grow successfully in both wetlands and non-wetlands, and hydrophytic vegetation and hydric soils may persist for decades following alteration of hydrology that will render an area a non-wetland. Where ambiguities in wetland delineation exist due to the demonstrated presence of both upland and wetland characteristics, factors other than the standard field indicators of wetland hydrology, wetland vegetation and wetland soils may be analyzed as part of the delineation. Such factors may include topography, soil permeability, drainage patterns, adjacency to identified wetlands, and comparisons of hydrology at the ambiguous site and at nearby upland and wetland reference sites following significant rainfall events. The simple lack of field indicators of hydrology during a routine delineation is not strong evidence of upland characteristics (Coastal Commission findings for approval of the Coastal Land Use Plan, October 13, 2005).
 3. **Recommendation.** The recommended wetland delineation and the appropriate buffers shall be made to the review authority.
- C. **Wetland Buffers.** A protective open space buffer shall be required to horizontally separate wetlands from development areas. Wetland buffers shall be of a sufficient size to ensure the biological integrity and preservation of the wetland. Wetlands shall have a minimum buffer width of one hundred (100) feet wherever possible.
1. **Exception:** Smaller wetland buffers may be allowed only where it can be demonstrated that:
 - a. A one hundred (100) foot wide buffer is not possible due to site-specific constraints; and
 - b. The proposed narrower buffer would be amply protective of the biological integrity of the wetland given the site-specific characteristics of the resource and of the type and intensity of disturbance.
- D. **Channelizations.** Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to:
1. Necessary water supply projects.

2. Flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development
 3. Developments where the primary function is the improvement of fish and wildlife habitat.
- F. **Removal of Unauthorized Structures.** All unauthorized structures that impact, or encroach into, wetlands, deepwater areas, or other water areas shall be removed.
- E. **Diking, Filling, and Dredging Projects.**
1. **Limits on Development.** Development involving the diking, filling, or dredging of open coastal waters, wetlands, or estuaries shall only be permitted under the following circumstances:
 - a. Only if there is no feasible, less environmentally damaging alternative.
 - b. If there is no feasible, less environmentally damaging alternative, mitigation measures shall be provided to minimize adverse environmental effects.
 - c. Diking, filling or dredging projects shall sustain the functional capacity of the wetland, or estuary. In order to establish that the functional capacity is being maintained, the applicant must demonstrate all of the following:
 - (1) That the project does not alter presently occurring plant and animal populations in the ecosystem in a manner that would impair the long-term stability of the ecosystem; i.e., natural species diversity, abundance, and composition are essentially unchanged as a result of the project.
 - (2) That the project does not harm or destroy a species or habitat that is rare or endangered.
 - (3) That the project does not harm a species or habitat that is essential to the natural biological functioning of the wetland or estuary.
 - (4) That the project does not significantly reduce consumptive (e.g., fishing, aquaculture and hunting) or non-consumptive (e.g., water quality and research opportunity) values of the wetland or estuarine ecosystem.
 2. **Limits On Uses.** Development involving diking, filling, or dredging of open coastal waters, wetlands, and estuaries shall be limited to the following:
 - a. Construction or expansion of port/marine facilities.
 - b. Construction or expansion of coastal-dependent industrial facilities, including commercial fishing facilities, and commercial ferry facilities.

- c. In open coastal waters, other than wetlands, including estuaries and streams, new or expanded boating facilities, including slips, access ramps, piers, marinas, recreational boating, launching ramps, and pleasure ferries, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
 - d. Recreational docks and piers within the intertidal areas, including wetlands, in Newport Harbor.
 - e. Maintenance or replacement of existing bulkheads when expansion or encroachment into coastal waters is limited to the minimum extent necessary to repair, maintain, or replace an existing bulkhead and the backfill is not used to create new usable residential land areas.
 - f. Maintenance of existing and restoration of previously dredged depths in navigational channels, turning basins, vessel berthing, anchorage, and mooring areas, and boat launching ramps. The most recently updated U.S. Army Corps of Engineers maps shall be used to establish existing Newport Bay depths.
 - g. Incidental public service purposes which temporarily impact the resources of the area, such as burying cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines.
 - h. Sand extraction for restoring beaches, except in environmentally sensitive areas.
 - i. Restoration purposes.
 - j. Nature study, aquaculture, or similar resource-dependent activities.
 - k. In the Upper Newport Bay Marine Park, permit dredging, diking, or filling only for the purposes of wetland restoration, nature study, or to enhance the habitat values of environmentally sensitive areas.
3. **Exception for Restoration Projects.** Restoration projects permitted pursuant to subsection (E)(2) may include some fill for non-permitted uses if the wetlands are small, extremely isolated, and incapable of being restored. Small, extremely isolated parcels that are incapable of being restored to biologically productive systems may be filled and developed for uses not ordinarily allowed only if such actions establish stable and logical boundaries between urban and wetland areas and if the applicant provides funds sufficient to accomplish an approved restoration program in the same general region. All the following criteria must be satisfied before this exception is granted:
- a. The area of the wetland to be filled is less than one (1) acre.
 - b. The wetland to be filled is not contiguous or adjacent to a larger wetland.

- c. The wetland to be filled is so small and isolated that it is not capable of recovering and maintaining a high level of biological productivity without major restoration activities.
 - d. The wetland does not provide significant habitat value to marine and wildlife species, and is not used by any species that are rare or endangered.
 - e. Restoration of another wetland to mitigate for fill can most feasibly be achieved in conjunction with filling a small wetland. The mitigation measure shall be carried out in a manner that would result in no net loss of either wetland acreage or habitat value.
 - f. Restoration site is abutting or adjacent to a larger, contiguous wetland area providing significant habitat value to fish and wildlife that would benefit from the addition of more area.
 - g. The restoration site is within the general area surrounding the wetland where the fill occurred.
 - h. The California Department of Fish and Game and the U.S. Fish and Wildlife Service has determined that the proposed restoration project can be successfully carried out.
4. **Dredge Material Disposal.**
- a. Dredged material disposal shall to be planned and carried out to limit turbidity and to avoid significant disruption to marine and wildlife habitats and water circulation.
 - b. Dredged material suitable for beneficial reuse shall be transported for such purposes to appropriate areas and placed in a manner that minimizes adverse effects on the environment.
 - c. Dredge material suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

21.30B.050 – Coastal Dunes

- A. **Purpose.** This section provides requirements for development in areas with coastal dunes. The intent of this section is to protect coastal dune as natural habitats and for shoreline protection.
- B. **Applicability.** The requirements of this section shall apply to coastal development permit applications in areas with southern coastal foredune and southern dune scrub habitats.

- C. **Earthmoving.** Earthmoving of beach sand in dune habitat areas shall be limited to projects necessary for the protection of coastal resources and existing development. The use of temporary sand dunes to protect buildings and infrastructure from wave uprush during storm events shall be permitted.
- D. **Public Access and Recreation.** Public access improvements shall be designed, sited, and maintained in a manner to avoid or minimize impacts to dune habitats through the use of well-defined footpaths, boardwalks, protective fencing, signage, and similar methods. Recreation improvements shall be designed and sited to avoid impacts to dune habitats.
- E. **Landscaping.** Plant materials in southern coastal foredune and southern dune scrub habitat areas shall be restricted to native plant species. All exotic vegetation shall be removed.

21.30B.060 – Mitigation and Monitoring

- A. **When Required.** Mitigation and monitoring programs, including restoration plans and management programs, shall be submitted with the coastal development permit application.
 - 1. **ESHA.** Mitigation shall be required for allowable impacts to ESHA and other sensitive resources that cannot be avoided through the implementation of siting and design alternatives. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA.
 - 2. **Wetlands.** Feasible mitigation measures shall be required to minimize adverse environmental effects of diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes where there is no feasible less environmentally damaging alternative.
- B. **Mitigation Programs.** Mitigation programs shall include the following components:
 - 1. Specific mitigation objectives and performance standards designed to measure the success of the restoration and/or enhancement.
 - 2. Provisions for acquiring title to the mitigation site.
 - 3. Provisions for the dedication of the restored or created habitat or wetland and associated buffer areas to a public agency, or permanent restriction of their use to open space purposes.
 - 4. A monitoring and management program with mitigation objectives and performance standards.
- C. **Habitat Creation/Restoration.**
 - 1. **ESHA.** Mitigation for impacts to ESHA and other sensitive resources shall be in the form of habitat creation or substantial restoration. The mitigation shall occur

on-site wherever possible. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site.

2. **Wetlands.** Mitigation shall occur in the same watershed and in the form of in-kind wetland restoration or creation whenever possible. Where out-of-kind mitigation is necessary, restoration or creation of wetlands shall be of equal or greater biological productivity to the wetland that was filled or dredged. Mitigation may be permitted through opening equivalent areas to tidal action or provide other sources of surface water in place of creating or restoring wetlands.

- D. **Mitigation Ratios.** Table 21.30B-1 provides required mitigation ratios of acreage restored/created to acreage impacted.

Table 21.30B-1 Required Mitigation Ratios	
HABITAT	RATIO
Scrub	
Diegan Coastal sage scrub	2:1
A ratio of 3:1 shall be required for coastal sage scrub that is occupied by California gnatcatchers or significant populations of other rare species.	
Maritime succulent scrub	3:1
Chaparral	
Southern mixed chaparral	1:1
Southern maritime chaparral	3:1
Native grassland	
Southern coastal needlegrass grassland.	3:1
Wetland	
Seasonal wetlands (other than vernal pools)	3:1
Coastal freshwater marsh	3:1
Riparian habitats	3:1
Southern hardpan vernal pools	4:1
Coastal brackish marsh	4:1
Southern coastal salt marsh	4:1
Eelgrass	
A mitigation ratio of 2:1 may be allowed upon evidence establishing that restoration or creation of a lesser area of wetlands will fully mitigate the adverse impacts of the project. A mitigation ratio less than 2:1 may be allowed provided, prior to the development impacts, the mitigation is completed and is empirically demonstrated to meet performance criteria that establish that the created or restored wetlands are functionally equivalent or superior to the impacted wetlands.	
Other for rare community types	3:1

- E. **Timing.** Any off-site mitigation site shall be purchased and legally restricted and/or dedicated before impacts to the project site can proceed. Restoration plans shall to be reviewed and approved by a qualified professional pursuant to Section 21.50.070 (Environmental Review) prior to accepting sites for mitigation.

- F. **In-lieu Fee.** An in-lieu fee may be paid to an appropriate public agency to mitigate habitat or wetland impacts, if no appropriate mitigation site can be acquired. The fee shall be based on the following factors:

1. The habitat type.

2. The costs of acquisition, including litigation.
3. The cost per acre to restore or create a comparable habitat type or wetland within the region.
4. The acreage of the habitat affected, based on the final approved project. For wetlands, the acreage shall be the area of equivalent productive value or equivalent surface area.

G. **Upper Newport Bay Marine Park.** The following mitigation measures are required for dredging projects in the Upper Newport Bay Marine Park:

1. Dredging and spoils disposal must be planned and carried out to limit turbidity and to avoid significant disruption to marine and wildlife habitats and water circulation.
2. Maintenance dredging shall be encouraged where the dredging provides habitat protection or enhances commercial or recreational use of the Bay. When dredged material is of an appropriate grain size and grain percentage, this material may be used to restore or replace natural sandy sloping beaches in order to retain the current profiles of Newport Bay. Maintenance dredging activity shall have the approval of the U.S. Army Corps of Engineers and shall meet applicable U.S. Environmental Protection Agency standards.
3. Dredged material not suitable for beach nourishment or other permitted beneficial reuse shall be disposed of offshore at a designated U.S. Environmental Protection Agency disposal site or at an appropriate upland location.
4. Temporary dewatering of dredged spoils may be authorized within the Bay's drainage if adequate erosion controls are provided and the spoils are removed. A bond or a contractual arrangement shall be a precondition to dredging of the material, and final disposal of the dewatered material on the approved dump site shall be accomplished within the time period specified in the permit.
5. Dredged spoils shall not be used to fill riparian areas, wetlands, or natural canyons.
6. Other mitigation measures may include opening areas to tidal action, removing dikes, improving tidal flushing, restoring salt marsh or eelgrass vegetation, or other restoration measures.
7. Dredge spoils suitable for beach nourishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems provided that the placement is permitted by a Section 404 permit.

H. **Monitoring.** Monitoring of mitigation measures shall be for a period of sufficient time to determine if mitigation objectives and performance standards are being met. Mid-course corrections shall be implemented if necessary to meet the objectives or performance standards.

1. **Period.** Monitoring shall be conducted a period of not less than 5 years following completion, unless the Director determines that a differing mitigation monitoring schedule is appropriate. If performance standards are not met by the specified monitoring period, the monitoring period shall be extended until the standards are met or the applicant shall submit an amendment application proposing alternative mitigation measures and implement the approved changes.
 2. **Reports.** Monitoring reports that document the success or failure of the mitigation shall be provided to the Department annually and at the conclusion of the monitoring period.
 3. **Completion.** The restoration shall be considered successful after the success criteria have been met for a period of at least 3 years with no remediation or maintenance activities other than weeding.
- I. **Review and Approval.** Mitigation programs, restoration plans, and monitoring programs shall to be reviewed and approved by a qualified professional pursuant to Section 21.50.070 (Environmental Review).
- J. **Easements and Dedications.** Where onsite or offsite preservation of an ESHA, ESHA buffer, or mitigation area is required as a condition of approval of a coastal development permit or other authorization, a guarantee of protection through direct dedication, offer to dedicate, or conservation easement shall be required. The protection guarantee shall identify the precise location and area to be set aside for preservation.
1. **Timing.** Prior to the approval of a coastal development permit, the method and form of the protection guarantee shall be approved by City Attorney. The protection guarantee shall be recorded in the office of the County Recorder prior to the issuance of any development permits.
 2. **Management and Funding.** A management plan and funding plan shall be required to ensure appropriate management of the habitat area in perpetuity.
 3. **Method of Protection Guarantee.** A method of access guarantee shall be chosen according to the following criteria:
 - a. **Deed Restriction.** A deed restriction shall be used only where an owner, association or corporation agrees to assume responsibility for maintenance of and liability for the habitat area, subject to approval by the Director.
 - b. **Grant of Fee Interest or Easement.** A grant of fee interest or easement shall be used when a public agency or private organization approved by the City Council is willing to assume ownership, maintenance and liability for the habitat.
 - c. **Offer of Dedication.** An offer of dedication shall be used when no public agency, private organization or individual is willing to accept fee interest or easement for habitat maintenance and liability. These offers shall not be accepted until maintenance responsibility and liability is established.

4. **Inventory.** The City shall maintain an inventory of open space dedications or offers to dedicate to ensure such areas are known to the public and are protected through the coastal development permit process.