

Chapter 20.46 – Resource Protection Outside the Coastal Zone [New]

Sections:

- 20.46.010 – Purpose
- 20.46.020 – Applicability
- 20.46.030 – Determination of Sensitive Areas and Buffer Areas
- 20.46.040 – Allowed Activities and Uses
- 20.46.050 – Development Standards
- 20.46.060 – Permit Requirements

20.46.010 – Purpose

This Chapter regulates development in and adjacent to areas outside the Coastal Zone where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem that could easily be disturbed or degraded by human activities and developments.

20.46.020 – Applicability

- A. Development outside the Coastal Zone.** This Chapter applies to development outside the Coastal Zone on lots that abut or include Environmental Study Areas, as identified in General Plan Figure NR-2 (Environmental Study Areas). This Chapter does not apply to existing legal development on lots that abut or include wildland fire hazard areas, as identified on General Plan Figure S-4 (Wildfire Hazards), and fuel modification areas required by the City of Newport Beach Fire Department or the Orange County Fire Authority, as regulated by Section 20.48.080 (Fuel Modification).
- B. Conflict.** In the event of a conflict between this Chapter and another provision in this Zoning Code or the Municipal Code, the more restrictive regulation shall control.
- C. Development defined.** For the purposes of this Chapter, development shall mean “Development” as defined in Part 7 (Definitions).

20.46.030 – Determination of Sensitive Areas and Buffer Areas

This Section provides procedures for identifying sensitive areas and buffer areas.

- A. Initial biological resources survey.** An applicant shall submit an initial biological resources survey in compliance with Section 20.46.030 (Determination of Sensitive Areas and Buffer Areas). The Director, at the Director’s discretion, may waive this requirement for developed lots.
- B. Biological resources impact report.** If the initial biological resources survey indicates the presence or potential for sensitive habitat or species on the site, an applicant shall submit a detailed biological resources impact report in compliance with Section 20.46.030 (Determination of Sensitive Areas and Buffer Areas).

- C. Wetland delineation.** If the initial biological resources survey and/or the biological resources impact report indicate(s) the presence or potential for wetland species or indicators on the site, an applicant shall submit a delineation of wetland areas on the site. The delineation shall be prepared by a qualified biologist and shall be based on the guidelines established by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency.

20.46.040 – Allowed Activities and Uses

This Section lists uses that may be allowed in sensitive areas and buffer areas.

- A. Sensitive areas.** The following uses may be allowed in sensitive areas, provided that they are consistent with the preservation of animal or plant life:

1. Biology-related educational, interpretive, or scientific research uses (e.g., bird-watching, noncommercial fishing, nature study, etc.) that do not significantly impair plant and animal life;
2. Wildlife refuge;
3. Habitat restoration projects where the purpose is restoration of the habitat;
4. Open space;
5. Passive recreation;
6. Public access boardwalks, paths, and trails; and
7. Diking, dredging, and filling activities that comply with Subsection C, below.

- B. Buffer areas.** All of the activities and uses allowed in sensitive areas listed in Subsection A, above, and any of the following shall be allowed in buffer areas:

1. Fences;
2. Road and bridge replacements;
3. Incidental public facilities when there is no other feasible, environmentally less damaging alternative;
4. Signs and small information kiosks; and
5. Other improvements necessary to protect habitat resources.

- C. Diking, dredging, and filling.** Diking, dredging, and filling of wetlands shall be limited to the following:

1. Incidental public service activities that temporarily impact the resources of the area (e.g., burying cables and pipes, inspection of piers, maintenance of existing intake and outfall pipes, etc.);

2. Restoration activities in compliance with Subsection 20.46.050.B. (Development Standards – Diking dredging, and filling), below; and
3. Nature study or similar resource-dependent activities.

20.46.050 – Development Standards

This Section provides standards applicable to sensitive areas and buffer areas.

A. Buffer areas. Development shall provide the following minimum buffer areas as measured from the boundary of the sensitive area, unless a greater or lesser width is required or allowed by the review authority:

1. Adjacent to an Environmentally Sensitive Area – 50-foot wide buffer area; and
2. Adjacent to a Wetland – 100-foot wide buffer area.

B. Diking, dredging, and filling.

1. Diking, dredging, and filling of a wetland shall avoid significant disruption of wildlife habitats and water circulation.
2. Activities shall maintain functional capacity of habitat areas. For the purposes of this Section, functional capacity means the ability of the wetland to be self-sustaining and to maintain natural species diversity. In order to establish that the functional capacity is being maintained, the development shall not:
 - a. 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);
 - b. Harm or destroy a species or habitat that is rare or endangered;
 - c. Harm a species or habitat that is essential to the natural biological functioning of the wetland or estuary; or
 - d. Significantly reduce consumptive (e.g., fishing, etc.) or non-consumptive (e.g., water quality, research opportunity, etc.) values of the wetland ecosystem.
3. Restoration activities listed in Subsection 20.46.040.C.2, above, may include some fill 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 the 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 of the following criteria shall be satisfied before the filling may be allowed:
 - a. The area of the wetland to be filled is less than 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; and
- 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.

C. Fencing.

- 1. During and after construction, fencing shall be installed to minimize adverse impacts on sensitive areas.
- 2. Fencing shall not impact public views or the free passage of native wildlife and shall employ design and materials determined by the review authority to be compatible with the visual and biological character of the habitat.

D. Vegetation.

- 1. Buffer areas shall be planted and maintained exclusively with vegetation that is consistent with the adjacent habitat values and indigenous native plants. Invasive plant species shall be prohibited.
- 2. Fuel modification zones shall comply with Section 20.48.080 (Fuel Modification).

E. Lighting. Lighting fixtures shall shield and direct exterior lighting away from sensitive habitat areas in compliance with Section 20.30.060 (Outdoor Lighting).

F. Site planning and design.

- 1. Development shall be designed and sited to protect against any significant disruption of habitat values and to avoid the need to extend fuel modification zones into sensitive areas.

2. Development shall be compatible with the continued viability of sensitive resources.
3. Land divisions, including lot line adjustments, shall be designed to avoid new development within sensitive areas and to minimize adverse impacts to sensitive resources.
4. Structures that are allowed to encroach into wetlands shall be sited and designed to be consistent with the natural appearance of the surrounding area.

G. Erosion and sediment control. Erosion and sediment controls, including best management practices (BMPs) to minimize siltation, sedimentation, and erosion, shall be installed before and during construction and shall be left in place until the site is stabilized with permanent vegetation.

H. Removal of unauthorized structures. Unauthorized structures shall be removed before issuance of any permit.

I. No net loss. Wetland areas shall sustain "no net loss."

20.46.060 – Permit Requirements

A. Application requirements. Permit applications for new development shall include the:

1. Initial biological resources survey required in Section 20.46.030 (Determination of Sensitive Areas and Buffer Areas); and/or the
2. Biological resources impact report required in Section 20.46.030 (Determination of Sensitive Areas and Buffer Areas).

B. Subdivisions. If a sensitive area is within the boundaries of a proposed subdivision, the sensitive area shall be shown on the Tentative Map and offered for dedication to the City. When a sensitive area is already in existence at the time a Tentative Map is filed, the status of the sensitive area, whether public or private, shall be identified on the Tentative Map.

C. Habitat restoration or creation. As a condition of permit approval, the review authority may require habitat restoration or creation.

1. **Timing.** The restoration or creation of habitat may be required before completion of a development, unless a performance guarantee is provided in compliance with Section 20.68.060 (Performance Guarantees) to ensure restoration and monitoring of the effort.
2. **Restoration and monitoring plan.** A restoration and monitoring plan may be required that includes the information identified in Subsection 20.44.060.C. (Habitat Restoration or Creation)

D. Evidence of other permits. Before any construction, alteration, or other improvement in areas designated as wetlands, the applicant shall submit the following:

1. **Section 404 permit.** A Section 404 permit from the U.S. Army Corps of Engineers;
 2. **Letter from CDFG.** Letter from the California Department of Fish and Game confirming compliance with Section 1602 of the California Fish and Game Code; and
 3. **Waiver/certificate from RWQCB.** A waiver or certificate of conformance with water quality standards issued by the Santa Ana Regional Water Quality Control Board, if applicable.
- E. Mitigation measures.** If a project involves diking, dredging, or filling of a wetland, the review authority may require as a condition of approval any of the minimum mitigation measures identified in Subsection 20.44.060.E (Mitigation measures).