CHAPTER 20.496
ENVIRONMENTALLY SENSITIVE HABITAT
AND OTHER RESOURCE AREAS

Sec. 20.496.005 Applicability.
This Chapter shall apply to all development proposed in the Coastal Zone unless and until it can be demonstrated to the approving authority that the projects will not degrade an environmentally sensitive habitat or resource area and shall be compatible with the continuance of such areas. While symbols denoting habitat and resource areas appear on the Land Use Maps, field investigations and review of the Department of Fish and Game Data Base may be required prior to a determination of the applicability of this Chapter. Additional information developed or obtained by the County as the result of future field investigation shall be added to the land use maps in future minor amendments or reviews of the Coastal Element of the General Plan of Mendocino County. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.496.010 Purpose.
The purpose of this Chapter is to ensure that environmentally sensitive habitat and other designated resource areas listed on Pages 39, 40 and 41 of the Coastal Element dated November 5, 1985, which constitute significant public resources are protected for both the wildlife inhabiting them as well as the enjoyment of present and future populations.

Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.496.015 ESHA - Development Application Procedures.

(A) Determining Extent of ESHA. The Coastal Permit Administrator shall review, with the assistance of land use maps, all permit applications for coastal developments to determine whether the project has the potential to impact an ESHA. A project has the potential to impact an ESHA if:
(1) The development is proposed to be located on a parcel or proximate to a parcel identified on the land use plan map with a rare and/or endangered species symbol;

(2) The development is proposed to be located within an ESHA, according to an on-site investigation, or documented resource information;

(3) The development is proposed to be located within one hundred (100) feet of an environmentally sensitive habitat and/or has potential to negatively impact the long-term maintenance of the habitat, as determined through the project review.

Development proposals in ESHA's including but not limited to those shown on the coastal land use maps, or which have the potential to impact an ESHA, shall be subject to a biological survey, prepared by a qualified biologist, to determine the extent of the sensitive resource, to document potential negative impacts, and to recommend appropriate mitigation measures. The biological survey shall be submitted for the review and approval of the Coastal Permit Administrator prior to a determination that the project application is complete. The biological survey shall be prepared as described in Section 20.532.060, "Environmentally Sensitive Habitat Area – Supplemental Application Procedures."

(B) Disagreement as to Extent of ESHA. Where the Coastal Permit Administrator and representatives of the California Department of Fish and Game, the California Coastal Commission, and the applicant are uncertain as to the extent of the sensitive habitat on any parcel, such disagreements shall be investigated by an on-site inspection by the landowner and/or agents, county staff member and representatives from Fish and Game and the Coastal Commission.

(C) On-Site Inspection. The on-site inspection shall be coordinated by the Coastal Permit Administrator and shall take place within three (3) weeks, weather and site conditions permitting, of the receipt of a written request for clarification of sensitive resource areas by the landowner or assigned agent.

(D) Development Approval. Such development shall only be approved if the following occurs:

(1) All members of the site inspection team agree to the boundaries of the sensitive resource area; and

(2) Findings are made by the approving authority that the resource will not be significantly degraded by the development as set forth in Section 20.532.100(A)(1).

(E) Denial of Development. If findings cannot be made pursuant to Section 20.532.100(A)(1), the development shall be denied. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.496.020 ESHA -- Development Criteria.
(A) Buffer Areas. A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.

(1) Width. The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.

Standards for determining the appropriate width of the buffer area are as follows:

(a) Biological Significance of Adjacent Lands. Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they are functionally related to these habitat areas. Functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance depends upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding, or resting).

Where a significant functional relationship exists, the land supporting this relationship shall also be considered to be part of the ESHA, and the buffer zone shall be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist, the buffer shall be measured from the edge of the wetland, stream, or riparian habitat that is adjacent to the proposed development.

(b) Sensitivity of Species to Disturbance. The width of the buffer zone shall be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development. Such a determination shall be based on the following after consultation with the Department of Fish and Game or others with similar expertise:

(i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;

(ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;

(iii) An assessment of the impact and activity levels of the proposed development on the resource.
(c) Susceptibility of Parcel to Erosion. The width of the buffer zone shall be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.

(d) Use of Natural Topographic Features to Locate Development. Hills and bluffs adjacent to ESHA's shall be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills away from ESHA's. Similarly, bluff faces should not be developed, but shall be included in the buffer zone.

(e) Use of Existing Cultural Features to Locate Buffer Zones. Cultural features (e.g., roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from the ESHA.

(f) Lot Configuration and Location of Existing Development. Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to ensure additional protection. Where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.

(g) Type and Scale of Development Proposed. The type and scale of the proposed development will, to a large degree, determine the size of the buffer zone necessary to protect the ESHA. Such evaluations shall be made on a case-by-case basis depending upon the resources involved, the degree to which adjacent lands are already developed, and the type of development already existing in the area.

(2) Configuration. The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).

(3) Land Division. New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.

(4) Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:

(a) Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.
(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.

(c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.

(d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.

(e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.

(f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.

(g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.

(h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.

(i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.

(j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system wherever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.
(k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats. *(Ord. No. 3785 (part), adopted 1991)*

**Sec. 20.496.025 Wetlands and Estuaries.**

(A) Development or activities within wetland and estuary areas shall be limited to the following:

1. Port facility expansion or construction.
2. Energy facility expansion or construction.
3. Coastal-dependent industrial facilities, such as commercial fishing facilities, expansion or construction.
4. Maintenance or restoration of dredged depths or previously dredged depths in navigation channels, turning basins, vessel berthing and mooring areas, and associated boat launching ramps.
5. In wetland areas, only entrance channels for new or expanded boating facilities may be constructed, except that, in a degraded wetland, other boating facilities may be permitted under special circumstances.
6. New or expanded boating facilities may be permitted in estuaries.
7. Incidental public service purposes which temporarily impact the resource including but not limited to burying cables and pipes, or inspection of piers, and maintenance of existing intake and outfall lines.
8. Restoration projects which are allowable pursuant to Section 30233(a)(7) of the Coastal Act are publicly or privately financed projects in which restoration is the sole purpose of the project. Restoration projects 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 pursuant to **Chapter 20.532**. All the following criteria must be satisfied before this exception is granted:
(a) The wetland to be filled is so small (e.g., less than one (1) acre) and so isolated (i.e., not contiguous or adjacent to a larger wetland) that it is not capable of recovering and maintaining a high level of biological productivity without major restoration activities.

(b) The wetland must not provide significant habitat value to wetland fish and wildlife species, and must not be used by any species that are rare or endangered.

(c) 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.

(d) Restoration of a parcel to mitigate for the fill must occur at a site that is next to a larger, contiguous wetland area providing significant habitat value to fish and wildlife that would benefit from the addition of more area. In addition, such restoration must occur in the same general region (e.g., within the general area surrounding the same stream, lake, or estuary where the fill occurred).

(e) The Department of Fish and Game and the U.S. Fish and Wildlife Service believe the proposed restoration project can be successfully carried out.

(9) Mineral extraction, including sand for restoring beaches, except in ESHA's.

(10) Nature study purposes and salmon restoration projects.

(11) Aquaculture, or similar resource dependent activities excluding ocean ranching.

(B) Requirements for permitted development in wetlands and estuaries.

(1) Any proposed development that is a permitted development in wetlands and estuaries must meet the following statutory requirements, and supplemental findings pursuant to Section 20.532.100:

(a) There is no feasible, less environmentally damaging alternative;

(b) Where there is no feasible, less environmentally damaging alternative, mitigation measures have been provided to minimize adverse environmental effects.

(2) Dredging. If the development involves dredging, the Coastal Permit Administrator shall request the Department of Fish and Game to review dredging plans for developments in or adjacent to wetlands or estuaries. The Department may recommend measures other than those listed in this Chapter to mitigate disruptions to habitats or to water circulation. Mitigation measures shall include at least the following:

(a) Dredging shall be limited to the smallest area feasible.
(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to habitats and to water circulation and shall maintain or enhance the functional capacity of any wetlands.

(c) Limitations on the timing of the operation, the type of operations, the quantity of dredged material removed, and the location of the spoil site.

(d) Dredging in breeding and nursery areas and during periods of fish migration and spawning shall incorporate all mitigation measures recommended by the California Department of Fish and Game to assure maximum protection of species and habitats.

(e) Dredge spoils suitable for beach replenishment shall, where feasible, be transported to appropriate beaches where public access would not be significantly adversely affected or into suitable long-shore current systems. Dredge spoils shall not be deposited in riparian areas or wetlands.

(f) Other mitigation measures may include opening up areas to tidal action, removing dikes, improving tidal flushing, or other restoration measures.

(g) Designs for dredging and excavation projects shall incorporate all mitigation measures recommended by the Regional Water Control Board and regulated to prevent unnecessary discharge of refuse, petroleum spills and disposal of silt materials.

(3) Diking or Filling. If a development involves diking or filling of a wetland, required minimum mitigation measures shall include the following:

(a) If an appropriate restoration site is available, the applicant shall acquire and restore an equivalent area of equal or greater biological productivity and dedicate the land to a public agency or otherwise permanently restrict its use for open space purposes. The site shall be purchased before the dike or fill development may occur and, at a minimum, restoration must occur simultaneously with project construction, or

(b) The applicant may, in some cases, be permitted to open equivalent areas to tidal action. This method of mitigation would be appropriate if the applicant already owned filled, diked areas which themselves were not environmentally sensitive but would become so, if such areas were opened to tidal action or provided with other sources of surface water.

(c) If no appropriate restoration sites under options (a) or (b) are available because the applicant is unable to find a willing seller, the applicant shall pay an in lieu fee of sufficient value to an appropriate public agency for the purchase and restoration of an area of equivalent productive value or equivalent surface area. Such replacement site shall be purchased before the dike or fill development permit is issued.

This option shall be allowed only if the applicant is unable to find a willing seller of a potential restoration site. The in lieu fee shall reflect the additional costs of acquisition,
including litigation, as well as the cost of restoration. If the public agency's restoration project is not already approved, the public agency may need to be a co-applicant for a Coastal Development Permit to provide adequate assurance that conditions can be imposed to ensure purchase and restoration of the mitigation site prior to issuance of the permit.

(d) Such mitigation measures shall not be required for temporary or short term fill or diking; provided that a bond or other evidence of financial responsibility is provided to assure that restoration will be accomplished in the shortest feasible time and that such activities will not cause permanent damage to wetland or estuarine ecosystems.

(4) Diking, filling, or dredging of a wetland or estuary shall maintain or enhance the functional capacity of the wetland or estuary. Functional capacity means the ability of the wetland or estuary to be self-sustaining and to maintain natural species diversity. In order to establish that the functional capacity is being maintained, the applicant shall demonstrate all of the following:

(a) That the development will not alter present 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) That the development will not harm or destroy a species or habitat that is rare or endangered;

(c) That the development will not harm a species or habitat that is essential to the natural biological functioning of the wetland or estuary;

(d) That the development will not significantly reduce consumptive (e.g., fishing, aquaculture, and hunting) or nonconsumptive (e.g., water quality and research opportunity) values of the wetland or estuarine ecosystem. (Ord. No. 3785 (part), adopted 1991)

**Sec. 20.496.030 Open Coastal Waters, Lakes, Streams, Rivers.**

(A) Development permitted in open coastal waters and lakes shall be limited to the following:

(1) All development permitted in wetlands and estuaries (Section 20.496.025).

(2) New or expanded boating facilities and the placement of structural pilings for public recreation piers that provide public access and recreational opportunities.

(3) Sand or gravel extraction in portions of open coastal waters that are not ESHA's.

(B) Requirements for Permitted Developments in Open Coastal Waters and Lakes.
(1) Diking, filling, or dredging of open coastal waters or lakes shall be permitted only if there is no feasible, less environmentally damaging alternative.

(2) If there is no feasible, less environmentally damaging alternative, mitigation measures shall be provided to minimize adverse environmental effects.

(C) Development permitted in streams and rivers shall be limited to the following:

(1) Necessary water supply projects.

(2) Flood control projects.

(3) Developments which have as the primary function the maintenance or improvement of fish and wildlife habitat.

(4) New or expanded boating facilities.

(5) Sand and gravel extraction.

(D) Requirements for Permitted Development in Streams and Rivers.

(1) All channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible to minimize adverse environmental effects.

(2) Flood control projects shall be subject to both of the following conditions:

(a) The project must be necessary for public safety or to protect the existing development.

(b) There must be no other feasible method for protecting existing structures in the floodplain. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.496.035 Riparian Corridors and other Riparian Resource Areas.

(A) No development or activity which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the riparian corridor or in any area of riparian vegetation except for the following:

(1) Channelizations, dams or other alterations of rivers and streams as permitted in Section 20.496.030(C);

(2) Pipelines, utility lines and road and trail crossings when no less environmentally damaging alternative route is feasible;

(3) Existing agricultural operations;
(4) Removal of trees for disease control, public safety purposes or personal use for firewood by property owner.

(B) Requirements for development in riparian habitat areas are as follows:

(1) The development shall not significantly disrupt the habitat area and shall minimize potential development impacts or changes to natural stream flow such as increased runoff, sedimentation, biochemical degradation, increased stream temperatures and loss of shade created by development;

(2) No other feasible, less environmentally sensitive alternative exists;

(3) Mitigation measures have been incorporated into the project to minimize adverse impacts upon the habitat;

(4) Where development activities caused the disruption or removal of riparian vegetation, replanting with appropriate native plants shall be required at a minimum ratio of one to one (1:1) and replaced if the survival rate is less than seventy-five (75) percent. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.496.040 Dunes.

(A) Development and activities permitted in dunes shall be limited to the following:

(1) Scientific, educational and passive recreational uses.

(2) One single-family dwelling where adequate access, water and sewage disposal capacity exist consistent with applicable Coastal Element policies and development standards of this division.

(3) Removal of sand, construction of fences or walls to impede sand movement and planting of vegetation for dune stabilization where necessary to protect existing structures. These projects shall be subject to provisions regarding sand extraction and shall be processed under conditional use permit procedures.

(4) Footpaths to direct use and minimize adverse impacts where public access is permitted.

(B) Requirements for development in dune areas are as follows:

(1) Motorized or non-motorized vehicle traffic is prohibited.

(2) New development on dune parcels shall be located in the least environmentally damaging location and shall minimize the removal of natural vegetation and alteration of natural landforms.
(3) No new parcels shall be created entirely in dune habitats.

(4) All sand removal shall be subject to a Coastal Development Use Permit but shall not be allowed on vegetated dunes. *(Ord. No. 3785 (part), adopted 1991)*

**Sec. 20.496.045 Pygmy Forests.**

**(A) General.**

(1) Pygmy forests are generally categorized as a unique ecosystem but if they contain a rare or endangered species they are categorized as an ESHA.

(2) New development on parcels which contain pygmy type vegetation shall be located in the least environmentally damaging locations and shall minimize the removal of native vegetation and alteration of soils and natural land forms.

(3) Where feasible, new development should only be permitted at the periphery of pygmy forest habitat where construction does not cause penetration of the hardpan, where septic systems do not drain into adjacent pygmy forest habitat, and where dwellings do not require that an access road be built through intact pygmy forest.

(4) Scientific, educational and passive recreational uses are permitted where trails result in minimal impact to surrounding vegetation. Boardwalks should be built where trails traverse terrain that is seasonally wet due to the presence of a perched water table, or areas with a fragile ground cover consisting of several species of lichen.

(5) Because the pygmy forest has a low carrying capacity for foot traffic, trails proposed by the applicant should be built around the forest perimeter, where possible.

(6) Parcels entirely within areas of pygmy vegetation shall be designated Planned Development (PD). Such parcels shall be allowed to develop consistent with all applicable provisions of this Division if mitigation measures are adopted and implemented to prevent or avoid impacts such as; erosion, surface/groundwater contamination, extensive vegetation removal and other related concerns.

**(B) Development Requirements in or adjacent to a pygmy forest categorized as ESHA.**

(1) Development permitted in or adjacent to pygmy forests categorized as ESHA are to be severely restricted and shall be limited to uses that do not interfere with the hydrologic regime, soil acidity or low nutrient status and shall not cause adverse impacts to this unique ecosystem or to water quality *(See ESHA Buffer Areas, Section 20.496.020)*.

(2) Any development on individual parcels entirely within areas of pygmy vegetation categorized as ESHA shall be developed consistent with Chapter 20.428, Planned Unit Development Combining District and all other applicable regulations of this Division.
(3) Parcels containing pygmy vegetation categorized as ESHA shall be allowed to divide only if each new parcel being created has an adequate area available for a residence with a conventional septic system allowing for a one hundred (100) percent back up area for an alternate leach field. New parcels created on soil types characterized by pygmy vegetation shall be limited to a low density (defined as two to five acres), consistent with the County Division of Environmental Health's recommendations. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.496.050 Other Resource Areas.

(A) General. Other designated resource areas as identified on Pages 39, 40 and 41 of the Coastal Element dated November 5, 1985 include: State parks and reserves, underwater parks and reserves, areas of special biological significance, natural areas, special treatment areas, fishing access points, areas of special biological importance, significant California ecosystems and coastal marine ecosystems.

(B) Development of Resource Areas. Any development within designated resource areas shall be reviewed and established in accord with conditions which could allow some development under mitigating conditions but which assures the continued protection of the resource area. (Ord. No. 3785 (part), adopted 1991)