

Chapter 17.64

ENVIRONMENTALLY SENSITIVE HABITAT AREAS

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17.64.010 Purpose.

This chapter establishes standards to protect and preserve environmentally sensitive habitat areas in Capitola consistent with Capitola's general plan, local coastal program (LCP), and the requirements of the Coastal Act. (Ord. 1043 § 2 (Att. 2), 2020)

17.64.020 Applicability.

This chapter applies to the following environmentally sensitive habitat areas. Environmentally sensitive habitat areas (ESHA) are any areas 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. ESHA includes wetlands, coastal streams and riparian vegetation, and terrestrial ESHA, including habitats of plant and animal species listed under the federal or California Endangered Species Act. The ESHA map identifies properties in the general location of sensitive habitats. The precise location of sensitive habitats within a site shall be identified in the biological study as required within Section 17.64.030(G) (Biological Study). In addition, the following areas are categorically ESHA as identified in Capitola's LCP:

- A. Soquel Creek, Lagoon, and Riparian Corridor.
- B. Noble Gulch Riparian Corridor.
- C. Tannery Gulch Riparian Corridor.
- D. Monarch butterfly habitat – Rispin-Soquel Creek and Escalona Gulch. (Ord. 1043 § 2 (Att. 2), 2020)

17.64.030 General standards.

The following standards apply to all environmentally sensitive habitat areas:

A. Allowable Development within Sensitive Habitat Area. The only allowed development within the sensitive habitat areas as identified in the biological study required in subsection G of this section (Biological Study) shall be those uses dependent on the resource (e.g., low-intensity public access and recreation, nature study, restoration). The only new uses allowed in wetlands and streams/riparian areas shall be those specified in Coastal Act Sections 30233 and 30236, respectively.

B. Impact Prevention. Allowable development within an environmentally sensitive habitat area shall be sited and designed to prevent impacts which would significantly degrade the area.

C. Long-Term Protection. Allowable development shall be sited, designed, and maintained to achieve the long-term protection of the environmentally sensitive habitat areas.

D. Prohibited Areas for Development. With the exception of restoration and resource protection and enhancement activities and resource-dependent uses as set forth in A above, no new development may encroach into the waters of Soquel Creek or Lagoon, be sited within the root zone of riparian or butterfly host trees, or require the removal of trees in a monarch butterfly habitat area which provide roosting habitat or wind protection.

E. Minimum Setbacks.

1. Development may not encroach into required minimum setbacks from environmentally sensitive habitat areas as shown in Table 17.64-1 (Required Setbacks from Environmentally Sensitive Habitat Areas), except as allowed in subsection (E)(2) of this section. The setbacks listed below are minimums and may be increased depending on the findings of the biological study required in subsection G of this section.

Table 17.64-1: Required Setbacks from Environmentally Sensitive Habitat Areas

Environmentally Sensitive Habitat Area	Minimum Setback
Soquel Creek and Lagoon	35 feet from the western shoreline of Soquel Creek Lagoon [1]
Soquel Creek Riparian Corridor	25 feet from the outer edge of riparian vegetation. On the heavily developed east side of the lagoon and creek (from Stockton Avenue to Center Street) the setback requirement shall be measured from the bank of Soquel Creek. In no case may the setback be located on the west side of the pedestrian path.
Noble Gulch Riparian Corridor	35 feet from the outer edge of riparian vegetation
Tannery Gulch Riparian Corridor	50 feet from the outer edge of riparian vegetation
Other ESHA	A setback sufficient to ensure the protection of ESHA habitat values as identified in the biological study as required within subsection G of this section (Biological Study).

Note:

[1] Does not apply to public facilities outside the coastal zone. Within the coastal zone, applies to public facilities unless otherwise specified in Section 30233 of the Coastal Act.

2. To allow for a minimum level of development on a physically constrained lot, the city may allow a reduction to the required minimum setback; provided, that a biological study determines that the reduced setback does not have a significant adverse effect on the ESHA and its habitat value.

F. Setback Exceptions on Developed Lots.

1. The city may grant an exception to the minimum setbacks in subsection E of this section (Minimum Setbacks) for the following projects on developed lots:
 - a. An addition or modifications to an existing single-family home, or an accessory structure, that does not extend closer to the environmentally sensitive habitat area, and provided the addition or modification or accessory structure is compatible with, and will not significantly degrade, the ESHA and/or its habitat values.
2. A “developed lot” means a lot that is developed or utilized to its ultimate potential use according to the applicable zoning district. For example, an R-1 lot that contains a single-family home or a permitted public/quasi-public use is considered developed. A residential or commercial lot that is vacant or used periodically for temporary uses (e.g., seasonal holiday sales) is not considered developed.
3. The city may grant an exception with the approval of an administrative permit, or a coastal development permit for sites located within the coastal zone, upon finding that the project is:
 - a. Sited and designed to prevent impacts which would significantly degrade environmentally sensitive habitat areas;
 - b. Consistent with the recommendation of the biological study prepared for the proposed development; and
 - c. Compatible with the continuance of habitat and recreation activities within environmentally sensitive habitat areas.
4. The city may attach conditions to the administrative permit or coastal development permit to ensure compliance with all city policies and regulations pertaining to the protection of environmentally sensitive habitat areas.
5. City approval of an exception shall not require the applicant to prepare a biological study.

G. Biological Study. For any proposed development located on a parcel within the ESHA areas identified above, the city shall contract with a qualified biologist at the applicant's expense to prepare a biological study. Biological studies shall at a minimum include the following:

1. Field surveys to determine the presence and location of any sensitive habitats and sensitive plant and animal species; and
2. A biological report which includes vegetation maps, a list of all observed native plant and animal species, an evaluation of other sensitive species which were not observed but have the potential to occur on the site, an impact analysis, and recommendations for avoiding, minimizing, or mitigating impacts. The biological report shall identify appropriate building and other setbacks, appropriate use, restoration, and development standards within setbacks, wetland buffers, landscape recommendations, and mitigation monitoring and reporting requirements as appropriate.

H. Waiver of Biological Study. The city may waive the requirement of a biological study on a developed lot if a project is proposed in a previously developed area of the lot and the project will not degrade the ESHA and/or its habitat values.

I. Conservation Easements and/or Deed Restrictions. If necessary and appropriate to protect natural areas and ESHA, the city shall require a permanent conservation easement or deed restriction over any portion of the property containing environmentally sensitive habitat areas and their required setbacks.

J. Erosion Control and Water Quality.

1. All development shall conform to erosion control and water quality requirements consistent with federal, state, and local regulations. Within riparian areas, allowed grading shall be minimized within the riparian setback area. Grading shall not be permitted to damage the roots of riparian trees or trees within butterfly habitat areas. Grading shall only take place during the dry season.
2. During construction, erosion control measures shall be implemented, including limiting removal of vegetation, minimizing exposure of bare soils, replanting disturbed soils with suitable native species, controlling runoff, and preventing sedimentation from entering drainages. All areas outside the immediate construction areas shall not be disturbed. The city shall require measures for temporary drainage retention during construction, including mulching, erosion control seeding, and other measures as needed to prevent any sediment from reaching sensitive habitat areas.

K. Removal of Native Riparian Trees. Removal of native riparian trees within riparian corridors is prohibited unless it is determined by the community development director, on the basis of an arborist report, that such removal is in the public interest by reason of good forestry practice, disease of the tree, or safety considerations.

L. Dead Trees in Riparian Corridors. Snags, or standing dead trees, shall not be removed from riparian corridors unless in imminent danger of falling, where same would lead to a public safety issue. Removal shall be consistent with all applicable provisions of Chapter 12.12 (Community Tree and Forest Management). Any removed tree shall be replaced with a healthy young tree of an appropriate native riparian species or appropriate habitat for monarch butterflies.

M. Landscaping Plan. A landscaping plan shall be prepared for proposed developments that identifies the location and extent of any proposed modification to existing vegetation and the locations, kinds, and extent of new landscaping. The emphasis of such plans shall be on the maintenance and enhancement of native species, the removal of existing invasive species, and the enhancement of natural habitat. New invasive plant or tree species are prohibited, with the exception of species which positively contribute to monarch butterfly habitat.

N. Wood-Burning Fireplaces. Wood-burning fireplaces shall be prohibited in structures built on sites where monarch butterflies may be disturbed due to chimney smoke. The city discourages wood-burning fireplaces for residential uses in all other areas of Capitola. (Ord. 1043 § 2 (Att. 2), 2020)

17.64.040 Soquel Creek, Lagoon, and Riparian Corridor.

The following standards apply in the Soquel Creek, Lagoon, and Riparian Corridor in addition to the standards in Section 17.64.030 (General standards):

A. No New Development. No new development is permitted within the riparian corridor along Soquel Creek and Lagoon, except for restoration and resource protection and enhancement activities, and, outside the coastal zone only, public facilities.

B. Division of Land. New divisions of land may be approved only if each new parcel contains adequate area outside the riparian or stream bank setback to accommodate new development. (Ord. 1043 § 2 (Att. 2), 2020)

17.64.050 Monarch butterfly habitat – Rispin-Soquel Creek and Escalona Gulch.

The following standard applies to both the Rispin-Soquel Creek and the Escalona Gulch monarch butterfly habitat areas in addition to the standards in Section 17.64.030 (General standards):

A. Permitted Construction Periods. Construction for otherwise allowable development within or on properties contiguous to the designated butterfly groves shall be prohibited during fall and winter months when the monarch butterflies are present. Removal or modification of trees (including pruning) within the groves shall not be permitted during these periods except when determined by the community development director, on the basis of an arborist report, to be an emergency necessary to protect human life or property.

B. Tree Protection.

1. Development shall be sited and designed to avoid removal of large trees. New development located immediately adjacent to large trees shall be evaluated by an arborist to ensure that the development will not negatively impact the tree in the future.

2. Trees removed for construction shall be replaced based on a written tree replanting program developed in consultation with a qualified monarch butterfly expert. The trees shall be sited in strategic locations as identified by the replanting program.

3. Barrier fencing shall be installed around large trees, especially cluster trees, for protection during construction.

C. Structure Height. The city shall limit structure heights as needed to prevent shading of cluster sites.

D. Construction Involving Heavy Equipment. No construction involving heavy equipment that may bump into the cluster trees or produce heavy plumes of exhaust smoke is permitted during the months in which the monarch butterflies are in residence (October 1st to March 1st). (Ord. 1043 § 2 (Att. 2), 2020)