

## ARTICLE 5

### Resource Management

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## **CHAPTER 9.50 - AGRICULTURAL PRESERVATION - RIGHT-TO-FARM**

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### **Sections:**

- 9.50.010 - Purpose
- 9.50.020 - Relationship to Nuisance
- 9.50.030 - Disclosure Requirement

### **9.50.010 - Purpose**

It is the policy of the City of Arcata to support agricultural uses within and around the City. Urban development adjoining agricultural uses often leads to restrictions on agricultural uses to the detriment of the agricultural uses and the economic viability of agriculture. The purposes of this Chapter are to support any current or future State law to:

- A. Preserve and protect agricultural land within the City zoned to allow agriculture;
- B. Support and encourage continued agricultural operations in the City; and
- C. Disclose to prospective purchasers, residents, and tenants of property adjoining or near agricultural uses of the inherent conflicts associated with the purchase of the residence including, but not limited to, chemicals, dust, light, noise, odors, and traffic that may accompany nearby agricultural uses.

### **9.50.020 - Relationship to Nuisance**

- A. No existing or future agricultural use or any of its appurtenances, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, and all applicable City requirements, shall become a nuisance to adjacent land uses, when the action was not a nuisance at the time it began. The provisions of this Chapter shall not apply whenever a nuisance results from the negligent or improper action of any agricultural use or its appurtenances.
- B. This Chapter shall not be construed as modifying existing law relative to nuisances, but only to be utilized in the interpretation and enforcement of the provisions of this Land Use Code.

**9.50.030 - Disclosure Requirement**

- A. Disclosure by subdivider or seller.** The subdivider or seller of any property located within 1,000 feet of land zoned for agricultural use shall disclose, through a notation on the Final Map, within Conditions, Covenants and Restrictions (CC&Rs), if prepared, and through the recordation of a separate acknowledgment statement, the presence of agricultural and appurtenant uses in the proximity through the following, or similar statement:

“The property you are purchasing or developing is located within 1000 feet of agricultural lands or uses, and you may be subject to inconvenience or discomfort from the following, or other similar agricultural uses: cultivation and tillage of the soil; burning of agricultural waste products; lawful and proper use of agricultural chemicals including, but not limited to, the application of pesticides and fertilizers; and production, irrigation, pruning, growing, harvesting and processing of any agricultural commodity, including horticulture, timber, apiculture, the raising of livestock, dairying, fish, poultry, and commercial practices performed as incidental to or in conjunction with such agricultural operations, including preparation for market, delivery to storage or market, or to carriers for transportation to market. These operations may generate, among other things, dust, smoke, noise and odor. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in a city with a strong rural character and a healthy agricultural sector.”

- B. Disclosure prior to issuance of a Building Permit.** Where a new structure intended for human occupancy is to be located on property which is located within 1,000 feet of land zoned for agricultural use, the owner of the property shall, prior to issuance of a Building Permit, sign and record a statement in a form equivalent to that specified in Subsection A. In lieu of signing the statement required above, the owner may submit evidence that the statement in Subsection A. has been made a part of subdivision documents creating the parcel on which the structure is proposed.

## CHAPTER 9.52 - HILLSIDE DEVELOPMENT

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### Sections:

- 9.52.010 - Purpose
- 9.52.020 - Applicability
- 9.52.030 - Permit Requirements
- 9.52.040 - Hillside Subdivision Standards
- 9.52.050 - Site Planning and Development Standards
- 9.52.060 - Building Design Standards
- 9.52.070 - Hillside Development Permit

### 9.52.010 - Purpose

The purposes of this Chapter are to:

- A. Preserve the City's environmental and scenic resources by encouraging the retention of natural topographic features and vegetation;
- B. Recognize that as the slope of a development site increases so does the potential for environmental degradation including slope failure, and increased storm water runoff that will also increase the potential for erosion, and waterway sedimentation;
- C. Encourage appropriate road construction and grading practices in hillside areas;
- D. Encourage structures on hillside parcels to be designed with scale, massing, architectural design and detailing appropriate to maintain the visual character of hillsides as natural and open; and
- E. Recognize that commercial timber operations are allowed only in the AE, AR, and NR-TP zone districts.

### 9.52.020 - Applicability

- A. **Applicability.** The requirements and guidelines in this Chapter apply to new construction or remodeling, subdivisions, new land uses, and all other proposed development on a site in the areas subject to hillside development standards as mapped in the General Plan, Figure PS-a, Hazards Map.
- B. **Limitation on hillside development.** No new grading, construction or development shall occur on a slope of more than 25 percent, except that:
  1. Each new lot created in areas subject to this Chapter shall contain a contiguous buildable area of at least 4,000 square feet, with a natural slope of 15 percent or less.
  2. Each existing, legally created lot which cannot meet the 15 percent slope standard may develop a buildable area of 1,500 square feet if the City determines that there is no alternative building site.

### 9.52.030 - Permit Requirements

A proposed project that is subject to this Chapter shall be authorized by a Hillside Development Permit in compliance with Section 9.52.070 (Hillside Development Permit), in addition to any other permit required by this Land Use Code.

### 9.52.040 - Hillside Subdivision Standards

Any proposed subdivision and any existing, legally created, undeveloped lot shall comply with the following standards.

#### A. Parcel and building site.

1. Each parcel and building site shall comply with the Section 9.52.020.B and shall adhere to the hillside development standards found in Policy PS-3c of the Arcata General Plan: 2020.
2. A minimum of 50 percent of the area of each lot shall be designated as a natural area. All slopes greater than 25 percent shall be included in the natural area. This area shall be identified on each map that accompanies a development proposal. No grading or development shall be permitted in the natural area.
3. Areas with slopes greater than 25 percent shall not be included in the acreage used to calculate allowable density.

**B. Roads.** Each new road shall follow natural terrain contours to the maximum extent feasible to minimize grading and shall adhere to the hillside development standards found in Policy PS-3c of the Arcata General Plan 2020. Proposed driveways shall comply with the requirements of Section 9.52.050 (Site Planning and Development Standards).

### 9.52.050 - Site Planning and Development Standards

Each structure shall be located in the most accessible, least visually prominent, most geologically stable, portion or portions of the site. Siting structures in the least prominent locations is especially important on open hillsides where the high visibility of construction as viewed from public access points (e.g., Highway 101, the Arcata Marsh, or the Arcata Plaza) should be minimized by placing structures so that they will be screened by existing vegetation, depressions in topography, or other natural features.

**A. Site access.** Each driveway shall follow natural terrain contours to minimize grading, and also shall comply with the following standards.

1. Common driveways and easements that serve more than one parcel are encouraged, and may be required in new subdivisions, to reduce the total amount of grading and pavement.
2. Driveway drainage facilities shall be subject to the approval of the City Engineer.
3. A driveway shall not have a grade steeper than five percent within 10 feet of a garage or carport entry or the street. Driveway finished grades shall not exceed an average of 17 percent.
4. Driveways shall be designed to minimize grading and disruption of vegetation.

- B. Site coverage.** Total site coverage by structures and other non-permeable surfaces shall match the zoning district standards.
- C. Setbacks.** Building setbacks for any proposed structure shall comply with the requirements of the applicable zoning district, or shall be determined as a Condition of Approval of a Hillside Development Permit. Residential development adjacent to the Community Forest Boundary shall be governed by the following standards:
1. No new lots shall be created which would require a residential unit to be located within 150 feet of the Community Forest Boundary; and
  2. For a lot in existence prior to the adoption of this Land Use Code, the construction of any new structure will provide the maximum building setback from the Community Forest Boundary with a reasonable building footprint as determined by the Zoning Administrator.
- D. Structure placement.** Each proposed structure shall comply with the following standards:
1. **Placement of structures.** Proposed structures shall comply with the following standards, to maintain the natural appearance of hillsides and ridgelines.
    - a. Each structure shall be located as follows (see Figures 5-1 and 5-2): No part of a proposed structure shall appear silhouetted against the sky above the nearest ridge or knoll when viewed from the nearest downhill street, except as provided for in Subsection 9.52.050 D(2).
    - b. Each structure shall be located to take advantage of existing vegetation for screening, and should include the installation of additional native plant materials to augment existing vegetation.

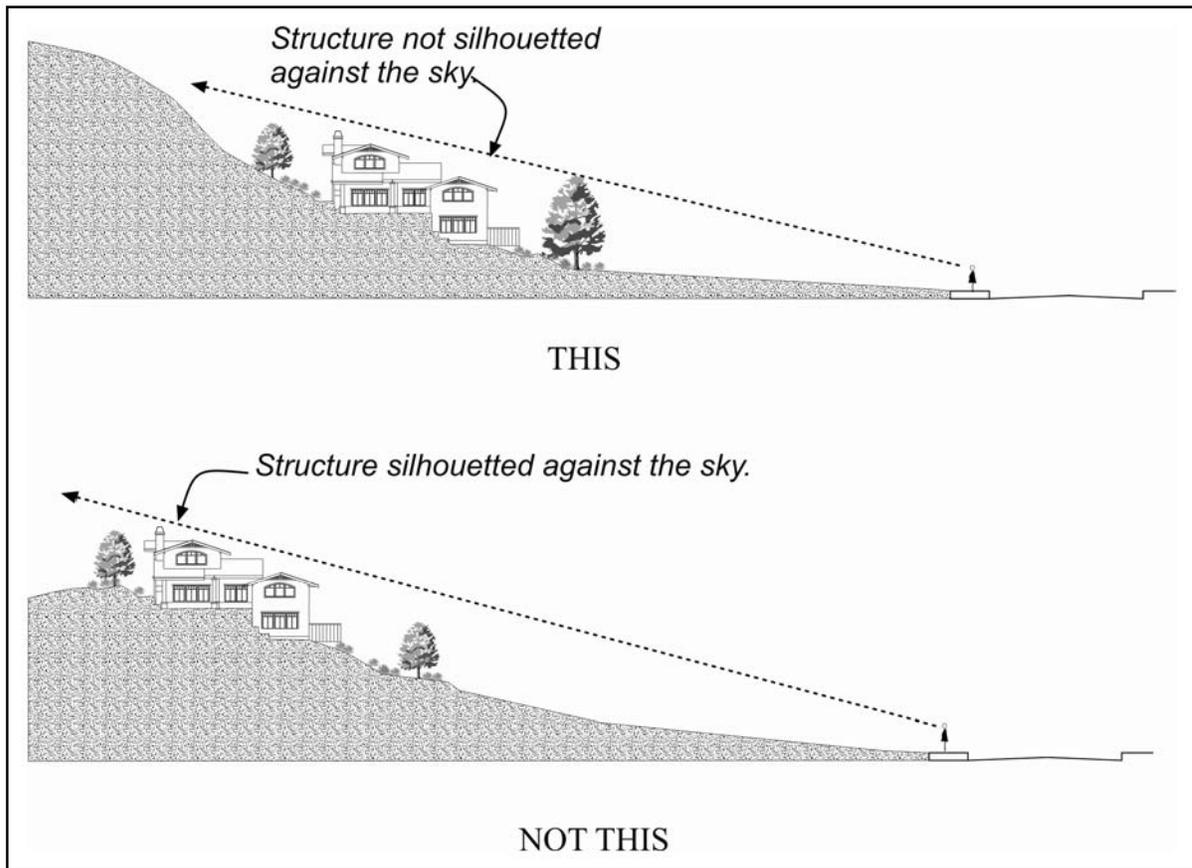


Figure 5-1 - Silhouetted Structure

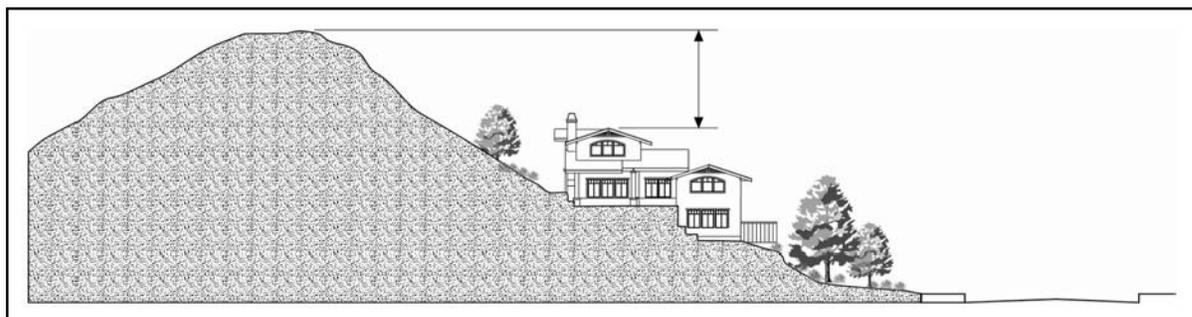


Figure 5-2 - Location of Structure Below Ridgeline

2. **Height limit above ridgeline.** Where the City determines that a legal lot existing prior to the effective date of this Section contains no feasible building site other than where a structure will extend above the ridgeline, proposed structures shall not exceed a height of 16 feet above the highest point on the ridgeline or hilltop within 100 feet of the proposed structure. See Figure 5-3.

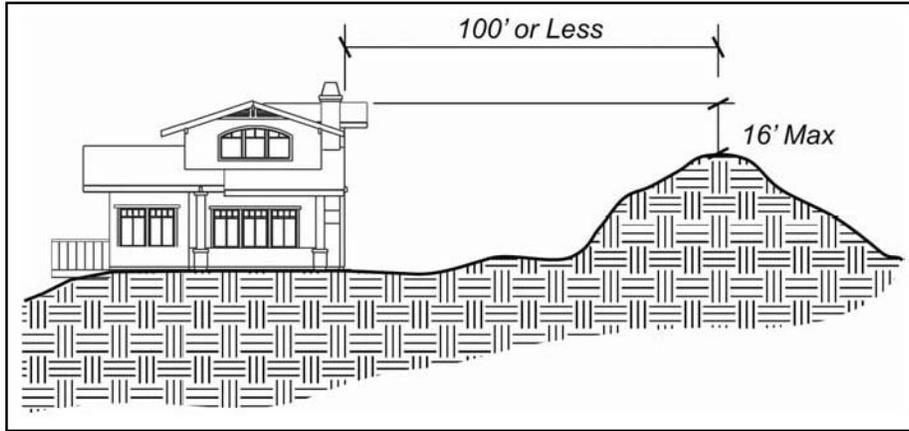


Figure 5-3 - Highest Point Within 100 Feet of Structure

- E. **View protection.** A proposed structure or addition to an existing structure shall be designed and located so that it avoids blocking views from other properties to the maximum extent feasible, as follows.
  1. New structures and tall landscaping shall not be placed directly in the view of the primary living areas on a neighboring parcel unless no other location is feasible. See Figure 5-4.

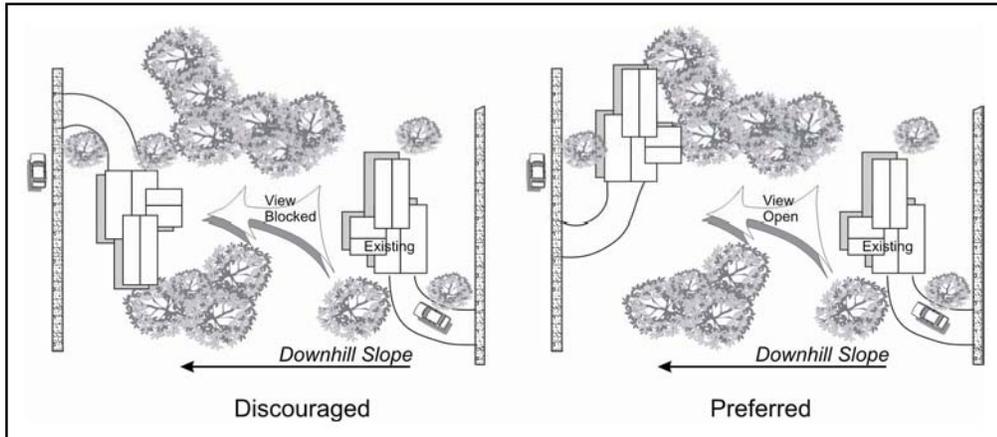


Figure 5-4 - View Protection

2. Mechanical equipment may be placed on rooftops or below a deck only if the equipment is not visible from off the site, except for unobtrusive solar collectors that are compatible with the roof line and architecturally integrated with the structure. Equipment shall also comply with the height limits in Chapter 9.44, except that satellite dishes shall be limited to 3 feet in height and television antennas to 7 feet in height for hillside developments.
  3. Story poles shall be placed prior to any new construction and prior to any notification requirements.
- F. **Exterior lighting.** Exterior lighting shall be properly shielded to avoid glare and the spill of light to surrounding areas. Low-level lighting and the use of multiple low profile fixtures is encouraged, as opposed to the use of fewer, but taller fixtures.
- G. **Other Standards.** Site planning and development for hillside areas shall also cross-reference with chapter 9.58 (Tree Preservation and Hazardous Tree Removal).

### 9.52.060 - Building Design Standards

Building and site design shall generally utilize varying setbacks and structure heights, split-level foundations, and low retaining walls to blend structures into the terrain.

- A. **Floor area ratio.** The gross floor area ratio (FAR) of all structures on a parcel in the RVL or RL zone district shall comply with the requirements of the applicable zoning district, or shall be determined as a condition of approval of a Hillside Development Permit.
- B. **Windows - Infill lots.** Windows, balconies, and outdoor living areas generally shall be located to protect the privacy of adjacent homes and yards.

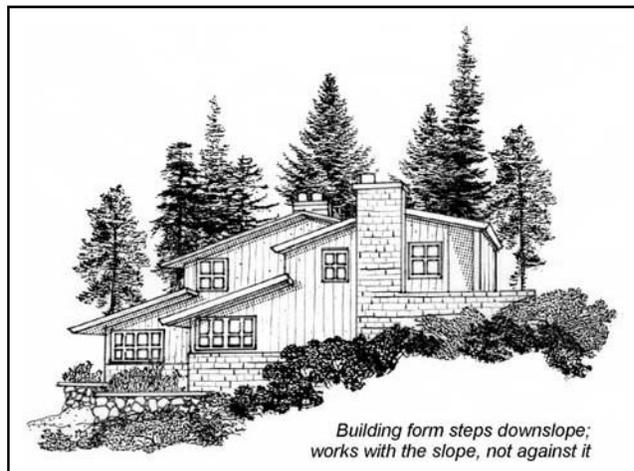


Figure 5-5 - Design Sensitive to Terrain (an example of building form, not intended to show preferred architectural style)

- C. **Exterior wall surfaces.** The apparent size of exterior wall surfaces visible from off the site shall be minimized through the use of single story elements, setbacks, overhangs, roof pitches, landscaping, and/or other means of horizontal and vertical articulation to create changing shadow lines and break up massive forms.
- D. **Colors and materials.** A mixture of materials and color shall be used to blend structures with the natural appearance of the hillside.
- E. **Roofs.** Roof pitches shall generally be placed to follow the angle of the slope; but with variations to avoid a monotonous appearance.
- F. **Support structures.** Support structures (for example, columns, pilings, etc.) below the lowest floor on the downhill side of a house, shall be enclosed unless visible structural members are an integral feature of the architectural design. Support structure wall surfaces shall not exceed six feet in height.

G. **Landscaping.** See Chapter 9.34 (Landscaping Standards).

#### 9.52.070 - Hillside Development Permit

- A. **Purpose.** The Hillside Development Permit provides a review process for proposed development on hillside parcels, to ensure that a proposed project minimizes its visual and environmental impact. A Hillside Development Permit is conducted similar to that of a Minor Use Permit.
- B. **Applicability.** A Hillside Development Permit is required to authorize any proposed development that is subject to the requirements of this Chapter. Per Subsection 9.24.060 A.1 of this Land Use Code, development and grading on slopes greater than 15 percent in the Residential - Very Low (RVL) zoning district may be allowed only with Hillside Development Permit approval.
- C. **Application filing and processing.** An application for a Hillside Development Permit shall be filed and processed in compliance with Chapter 9.70 (Permit Application Filing and Processing). A Hillside Development Permit application shall include all information and materials required by Section 9.70.030 (Application Preparation and Filing), and the following additional information.
1. **Site topography.** A topographic map covering the entire site, and areas on surrounding parcels within 50 feet of the site boundary. The map shall be prepared with a contour interval of two feet, and shall include:
    - a. The proposed building site;
    - b. Slopes less than or equal to 10 percent;
    - c. Slopes greater than 10 percent and less than 15 percent;
    - d. Slopes greater than 15 percent and less than 20 percent;
    - e. Slopes greater than 20 percent and less than 25 percent; and
    - f. Slopes greater than 25 percent.
  2. **Geotechnical report.** A preliminary geotechnical report that identifies and proposes mitigation measures for any soils or geological problems that may affect site stability or structural integrity. Depending upon the site characteristics and project design, a final geotechnical report may also be required.
  3. **Constraints analysis.** For properties determined by the City to potentially have sensitive environmental resources including endangered plants or animals or a wildlife corridor, a qualified professional approved by the City shall prepare a site constraints analysis. The report shall include proposed mitigation measures to effectively protect identified important biological features.
- D. **Project review and notice.** A Hillside Development Permit shall be reviewed, have public notice provided, and be decided in the same manner as a Minor Use Permit in compliance with Section 9.72.080 (Use Permit and Minor Use Permit).

- E. Required findings.** The City may approve, conditionally approve, or disapprove a Hillside Development Permit application, and shall record the decision and the findings upon which the decision is based. The City may approve a Hillside Development Permit only after first finding all of the following:
1. The proposed project complies with the requirements of this Chapter and all other applicable provisions of this Land Use Code;
  2. The proposed project is consistent with the General Plan and any applicable specific plan;
  3. The establishment, maintenance, or operation of the use will not be detrimental to the public health, safety, or general welfare;
  4. The design, location, and size of proposed structures will be compatible with the existing and future land uses in the vicinity, in terms of aesthetics, character, scale, and view protection; and
  5. The placement of proposed structures on the site avoids slopes over 15 percent to the maximum extent feasible.
- F. Exceptions to standards.** The review authority may grant an exception to the standards of this Chapter as part of Hillside Development Permit approval only where it first finds that:
1. The exception is either necessary to allow a house with floor area of at least 1500 square feet on a site with excessive slope, Community Forest Boundary setback constraints, or other environmental constraints; or
  2. The exception will result in less visual impact than would development in compliance with the standard being adjusted.
- G. Conditions of approval.** In approving a Hillside Development Permit, the City may impose any conditions it deems reasonable and necessary to ensure that the approval will comply with the findings required by Subsection E.
- H. Post approval procedures.** The procedures and requirements in Chapter 9.79 (Permit Implementation, Time Limits, and Extensions), and those related to appeals in Chapter 9.76 (Appeals), shall apply following the decision on a Hillside Development Permit.

## CHAPTER 9.53 - HISTORICAL RESOURCE PRESERVATION

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### Sections:

- 9.53.010 - Purpose
- 9.53.020 - Applicability
- 9.53.030 - Review Authority
- 9.53.040 - Historical Resources Eligibility, Listing and Management
- 9.53.050 - Alteration of Historic Structures, Districts and Neighborhoods
- 9.53.060 - Demolition or Removal
- 9.53.070 - Rehabilitation Incentives
- 9.53.080 - Duty to Maintain and Repair
- 9.53.090 - Unsafe or Dangerous Condition
- 9.53.100 - Inadvertent Archaeological Discoveries

### 9.53.010 - Purpose

The provisions of this Chapter are intended to:

- A. Protect and Preserve Historical Resources listed on or eligible for listing on the California Register of Historical Resources, including all manner of properties: buildings, structures, sites (prehistoric, historic, traditional ethnic and Native American), objects, districts, and cultural landscapes.
- B. Implement the process of designation and preservation of property within the :HL combining zone (Section 9.28.040) by protecting sites and structures identified by the City as culturally, architecturally, and/or historically significant, that contribute to Arcata's historical character and identity, and that should be preserved and/or restored.
- C. Prevent the demolition of any existing building or portion of a building without first evaluating whether it contributes significantly to the historical or architectural character of the City or neighborhood, and to ensure consideration of the potential for preservation of buildings found to contribute significantly to that character, in compliance with General Plan Policy H-5a. Identify and encourage the retention of structures that could qualify as historical resources but are not currently designated.
- D. Implement the California State Historic Building Code (SHBC) for qualified historical buildings.
- E. Promote the stabilization of neighborhoods and areas of the City, promote the increase in economic and financial benefits to the City and its inhabitants, and the growth of tourist trade and interest.
- F. Ensure development that respects, complements and enhances historic architectural styles, maintains the scale and character, and thereby stabilizes neighborhoods, districts, and areas of cultural importance. Protect and preserve the Arcata Plaza and the older structures that border the adjacent streets that help define the Plaza's character. Assure that new construction, modifications or alterations of noteworthy structures, and significant changes to other structures are harmonious with the existing character of Neighborhood Conservation Areas (NCA).

- G. Conserve valuable building materials, historic fabric and energy resources by promoting preservation and adaptive use of historical resources.
- H. Promote historical and architectural reviews by the Historic and Design Review Commission on projects affecting historical resources.

### 9.53.020 - Applicability

This section identifies the various projects that may be subject to historic reviews in addition to all of the other planning permit or approval requirements of this Land Use Code and the Municipal Code.

#### A. Affected activities.

1. **Period of Significance.** Any historical resource that is at least 50 years old shall be subject to the requirements of this chapter.
2. **Construction or alteration within the :HL combining zone.** No person shall alter the exterior of, construct, or construct improvements to, relocate structures or demolish any structures that are designated within a :HL combining zone (Section 9.28.040), except in compliance with this Chapter.
3. **Noteworthy Structures.** Structures that could qualify as historical resources shall be identified and processed as outlined in the Arcata General Plan: 2020 Policies H-2a through H-2f.
4. **Arcata Plaza Area Historic District.** The Arcata Plaza Historic District, as identified in Figure HP-a from the Arcata General Plan: 2020, shall be protected and preserved as outlined in General Plan Policies H-3a through H-3g.
5. **Neighborhood Conservation Areas.** No person shall construct, modify or relocate any historic structure within a Neighborhood Conservation Area except in compliance with this chapter.
6. **Demolition of any structure in the City.** No person shall demolish any structure within the City, except in compliance with this Chapter.
7. **Ground Disturbing Projects.** All ground disturbing projects including those by the City will be subject to review in compliance with this chapter.
8. **Adoption of or amendments to the General Plan or to specific plans, and designation of Open Space.** In compliance with Senate Bill 18 (SB18) of 2004, such actions shall involve consultations with pertinent Tribal Governments.

- B. **Relationship to CEQA.** Decisions by the City in compliance with this Chapter are "discretionary" and relate to "discretionary projects" as these terms are used in the California Environmental Quality Act (CEQA). See Section 9.78 (Environmental Impact Assessment) for a listing of "ministerial" projects that are statutorily exempt from CEQA review. CEQA requires analysis by the City as the lead agency under CEQA to determine if a proposed project will cause significant impacts to historical resources including archaeological and Native American Traditional Cultural Places.

**9.53.030 - Review Authority**

This Section assigns responsibilities for review, recommendations, and decisions on the approvals required by this Chapter to the following bodies, in addition to the responsibilities of the Planning Commission and Council.

- A. Historic and Design Review Commission.** The Historic and Design Review Commission (HDRC), as established by the Council for the purposes of this Chapter, shall conduct historic reviews; review and make recommendations on historical resource designations and historical resource reports; and implement Policy H1-I (Historical Landmarks Commission) of General Plan: 2020.

Duties of the HDRC shall include but not be limited to:

1. Recommendations for designation of historical resources, and conducting or facilitating historical resource inventories and surveys.
  2. Review of demolition applications.
  3. Review of any changes to a :HL designated historical resource including:
    - a. Any exterior alterations including changes in materials.
    - b. Interior alterations that would affect the exterior appearance.
    - c. Any addition to a :HL designated structure.
    - d. Construction of a new structure on a :HL designated site.
  4. Review of all exterior alterations that require building permits to Noteworthy Structures, and possible review of buildings constructed within the Period of Significance including changes in types of materials and additions.
  5. Review of all development, exterior alterations, and additions to structures located within the Plaza Historic District.
  6. Review of all development, exterior alterations, and additions to structures proposed within a NCA to determine that the design will be compatible with and does not destroy the historical or architectural character of the property and the surrounding NCA.
  7. Develop historic preservation design guidelines.
- B. Historical Sites Society.** The Historical Sites Society of Arcata (HSSA) is hereby recognized as a non-profit membership organization interested in historic preservation and local history.

- C. North Coastal Information Center (NCIC).** The NCIC of the California Historical Resources Information System and the City of Arcata will enter into a Memorandum of Agreement (MOA) no later than six months from the finalization of this land use code. The duties of the NCIC and the City will be established in the MOA and may include:
1. Providing pertinent records of recorded historical resources on file to the City.
  2. Drafting and providing pertinent, current sensitivity historical resource base maps to the City.
  3. Expediting NCIC record searches for City ground disturbing projects and activities that have the potential to cause significant impacts to historical resources.
  4. Providing the NCIC pertinent data and surveys from the City.
- D. Native American Tribal Governments.** Within six months of the finalization of this land use code, the City will enter into agreements with, at a minimum, the Wiyot Tribe and the Blue Lake Rancheria for consultations. The duties of the Native American Tribal Governments will be established in the MOA and may include:
1. Review of, adoption of, or amendments to the General Plan and to Specific Plans, and designation of open space which contains Native American traditional cultural places.
  2. Review of the MOA between the City and the NCIC.
  3. Review of City projects and discretionary projects within the City that have the potential to cause significant impacts to historical resources.
  4. Review of the preservation of, or the mitigation of impacts to, places, features and objects described in Sections 5097.9 and 5097.995 of the Public Resources Code (cultural places).
  5. Establishing a protocol for notification of post-review of Native American discoveries per Subsection 9.53.100.C.
- E. City of Arcata, Department of Community Development.**
1. The City shall assign the responsibility of historical resources review in compliance with this chapter to the Department of Community Development.
  2. The City shall obtain and update every six months, listings within the City on the Sacred Lands Inventory maintained by the State of California Native American Heritage Commission.
- F. Appeals.** The decisions of the HDRC shall be appealable to the Planning Commission and/or Council in accordance with Section 9.76 (Appeals).

**9.53.040 - Historical Resources Eligibility, Listing and Management**

- A. Purpose and applicability.** The Council shall have the authority to approve the designation of buildings, structures, sites (prehistoric, historic, traditional ethnic and Native American), objects, districts, and cultural landscapes as eligible for listing at the local, State or National level.
- B. Procedure for designation of a Historic Landmark, Historic District, Cultural Landscape or Neighborhood Conservation Area.** The application for the designation of a district, site, area, or structure may be initiated by the owner, HSSA, Council, Planning Commission or HDRC. If initiated by the HSSA or the City, the owner shall be notified and will be able to contest the process.
- 1. Significance Criteria for listing.** In order to be eligible for listing, a district, site, area or structure should retain historical integrity and meet one or more of the following criteria:
    - a. The building, site or area is a significant representative of a distinct architectural period, type, style, or way of life.
    - b. The building, site or area is at least 50 years old, or in rare cases has achieved architectural or cultural significance in less than 50 years.
    - c. The building, site or area is connected with a person or event important to local, state or national history.
    - d. The architect or builder is famous or well-recognized.
    - e. The building's style, construction method, materials, or finishes are unusual or significant.
    - f. The building contains original materials or craftsmanship of high or unusual value.
    - g. The building or site's unique location or singular physical characteristic(s) represent an established and familiar visual feature or landmark of a neighborhood, community, or the City.
  - 2. Referral.** The City shall refer a proposed :HL combining zone, district, Neighborhood Conservation Area, or cultural landscape designation for review and comment to the HSSA.
  - 3. Notice and hearing.** Public notice shall be provided, and public hearings on a proposed rezoning to designate a :HL combining zone, historic district, Neighborhood Conservation Area, or cultural landscape shall be conducted by the HDRC, Planning Commission, and Council in compliance with Chapter 9.92 Amendments and 9.74 Public Hearings. In addition, notice of the hearings shall be provided to the HSSA, property owners, and adjacent property owners.
  - 4. Notice of designation.** When a historical resource has been designated by the Council, the City Clerk shall promptly notify the owners of the affected property and record notification of the designation with the County Recorder's office in compliance with State law, per Public Resource Code 5029(b).

5. **Content of ordinance.** Each designating ordinance shall include:
    - a. A description of the characteristics of the historical resource that justify the designation as identified in Section 9.53.040.B.1, a list of any particular features that should be preserved or restored, and the location and boundaries of the resource site;
    - b. In the case of the application of the :HL combining zone to multiple sites, the designating ordinance shall specify which structures within the combining zone are to be protected by the designation; and
    - c. The designating ordinance may also require the review of proposed changes in major architectural features of a publicly owned historical resource.
  6. **Pending Applications.** No application for a permit to construct, alter, demolish, or relocate a structure that is proposed for historical resource designation, filed after the designation process has been initiated in compliance with Section 9.53.040.B, shall be approved without compliance with this Chapter while the proceedings are pending.
  7. **Removal of designation.** The Council may amend or rescind the application of the :HL combining zone to property only through rezoning in compliance with Chapter 9.92 (Amendments).
- C. **Procedure for designation of a Noteworthy Structure.** HDRC shall recommend to the Council by resolution the inclusion of specified structures to the City's "Noteworthy Structures" list, to encourage their retention. Noteworthy Structures are those that may be eligible for Historic Landmark designation and may not have complete documentation as to their historical or architectural merit. Owners of properties listed as having Noteworthy Structures are encouraged to apply for designation within the :HL combining zone.
1. **Criteria for listing.** In order to be eligible for listing, a structure should have at least one of the following attributes:
    - a. Significant representative of a particular architectural style;
    - b. Significant representative of a period in the City's historical development;
    - c. Associated with the social history of the City;
    - d. Of unusual or special design character, as determined by the HDRC; or
    - e. Contributing structure to a Neighborhood Conservation Area.
  2. **Notification.** The HDRC shall notify the owners of property being considered for placement on the list, and shall provide notice and conduct a public hearing in compliance with Chapter 9.74 (Public Hearings) prior to listing a structure, so that the owners shall be given the opportunity to contest and appeal the proposed listing.

3. **Effect of listing.** HDRC approval shall be required for any exterior alteration of a Noteworthy Structure, when or if alterations require a Building Permit, including changes in types of materials and additions. Rehabilitation incentives for Noteworthy Structures are listed in Section 9.53.070.C.1. No application for a permit to construct, alter, demolish or relocate a structure that is proposed for Noteworthy Structure designation, filed after the listing process has been initiated in compliance with Section 9.53.040.C, shall be approved without compliance with this Chapter while proceedings are pending.
  4. **Removal from list.** The HDRC may recommend to the Council to remove a structure from the City's Noteworthy Structures List through the same process as described by this Section for including a structure on the list. The property owner may also initiate this process through the HDRC.
- D. **Procedure for the identification, recordation, evaluation and management of an archaeological site or Native American Traditional Cultural Property (TCP).**
1. **Screening Process (to determine if a focused study will be required):** The City of Arcata will screen discretionary project applications (per CEQA) and those actions or projects proposed by the City to determine if the project may have a significant impact on an archaeological site(s) and/or Native American TCP(s) that qualify for inclusion, or are listed on the California Register of Historical Resources. Because the inventory of these types of historical properties is incomplete, the City shall take into consideration the comments and recommendations from knowledgeable information sources to determine (1) if a project falls within a sensitive location, and (2) a cultural resources study will be required for CEQA review and/or project planning. The screening process shall involve the following information sources:
    - a. **North Coastal Information Center (NCIC):** Recommendations from the NCIC based on project specific record searches conducted under a Memorandum of Agreement (MOA) between NCIC and the City;
    - b. **Tribal Review:** Comments and recommendations from culturally affiliated Native American Tribes, including but not necessarily limited to, the Wiyot Tribe and the Blue Lake Rancheria (the Tribal Historic Preservation Officer (THPO) for each Tribe will have the opportunity for review and comment on proposed projects via circulation of the CEQA Checklist distributed to agencies);
    - c. **Native American Heritage Commission (NAHC):** Report of a Native American culturally sensitive location by the NAHC based on its confidential Sacred Lands File records;
    - d. **Sensitivity Maps:** Archaeological and/or Native American culturally sensitive locations compiled for the City by NCIC and/or other reputable sources; and
    - e. **Historic and Design Review Commission (HDRC):** Comments received from HDRC member(s).

2. **Cultural Resource Study Phases Under CEQA.** If project screening concludes that the project location is sensitive for potentially significant archaeological sites and/or Native American TCP's and the project has potential to cause significant impacts to historical resources, then the City shall require the applicant to retain a qualified professional to conduct one or more phased studies as follows:
  - a. **Phase I - Identify Cultural Resources.** This phase generally involves four steps as follows:
    - (1) A formal records search at the NCIC and background research about the area of study (e.g., ethnography, land-use history);
    - (2) An archaeological field survey guided by a research design;
    - (3) Consultations with knowledgeable persons having heritage ties to the cultural resources, including the updated list of Native American tribes and organizations recommended by the NAHC; and
    - (4) A written report that meets professional standards of the California Office of Historic Preservation.
  - b. **Phase II - Evaluate the Significance of Cultural Resources.** If Cultural Resources are identified in Phase I, only impacts to significant cultural resources determined eligible for inclusion on the California Register of Historical Resources (or eligible for or listed in the National Register of Historic Places) will be considered under the CEQA environmental review process. For a cultural resource (i.e., building, site, structure, object, or district) to qualify for the California Register, it must have integrity and meet one or more of the following criteria:
    - (1) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
    - (2) Is associated with the lives of persons important in our past;
    - (3) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
    - (4) Has yielded, or may be likely to yield, information important in prehistory or history.

- c. **Phase III - Management of Archaeological Resources and Native American Traditional Cultural Places.** If the results of the Phase I and II research show that the project area contains a significant cultural resource and it is determined by the City that the project will cause damage to such a resource, any number of the following may be recommended or required by the City, in conjunction with consultation with tribal governments and possibly with the California Office of Historic Preservation:
- (1) Modification of the project to avoid impacts to the cultural resources.
  - (2) Development of easements or other deed restrictions.
  - (3) After appropriate archaeological testing, capping or covering the cultural resources with a soil layer before construction.
  - (4) Designation of Open Space to incorporate cultural resources.
  - (5) Mitigation of adverse impacts through archaeological excavations that meet professional standards to salvage data that would otherwise be lost during construction activities.
  - (6) Professional monitors during construction activities.
3. **Confidentiality.** Certain archaeological site information, including specific site locations, is considered confidential information excluded from public disclosure. Access to this information is specified in Appendix 6, Record Management and Access Policy Historical Resources Records, of the Information Procedural Manual of the California Historic Resources Information System.

### 9.53.050 - Alteration of Historic Structures, Districts and Neighborhoods

- A. **Purpose.** The requirements of this Section are intended to protect historical resources including but not limited to buildings constructed within the Period of Significance, Historic Landmarks, Noteworthy Structures, Historic Districts, or Neighborhood Conservation Areas from unnecessary and/or inappropriate alterations, including reconstruction, new construction, additions, repairs, restoration, rehabilitation, or replacement not in compliance with the Secretary of the Interior's Standards. General Plan: 2020 Policies H-1e, H-1f, H-2d, H-2e, H-3d, H-3e, H4c, and H-4e shall guide proposed alterations where applicable.
- B. **Applicability.**
1. **Activities requiring review by HDRC.** The following activities will require review by HDRC:
    - a. The exterior alteration of any structure within the :HL combining zone, Neighborhood Conservation Area, or Historic District, and any Noteworthy Structure, building constructed within the Period of Significance, or other historical resources whether previously identified or not as per CEQA (Section 15064.5 (a)(4) requiring a building permit or other discretionary permit.
    - b. Construction of a new building on a parcel with a designated Historic Landmark, Noteworthy Structure, building or other historical resource that dates within the Period of Significance, or located in a Neighborhood Conservation Area and/or Historic District.

2. **Relationship to other City approvals.** HDRC approval shall be required in addition to any other permits required by this Land Use Code, and shall accompany any permit or any work otherwise altering the architectural features or appearance of the historical resource.
- C. **Review authority and CEQA.** Alterations shall be reviewed, and approved or disapproved by the HDRC in compliance with CEQA, per Sections 15064.5(a)(4) or Section 15331.
- D. **Notification of the Historical Sites Society of Arcata.** The City shall notify the Historical Sites Society of Arcata of all HDRC meetings considering alterations.
- E. **Application Requirements and Procedures.** An application for HDRC review shall be filed with the Department. The application shall include the information and materials required by Community Development Department (CDD) handouts. Once CDD determines that the application is complete and there is a project involving resources as identified in Subsection 9.53.050.B.1.a. above, the CDD shall request that the HDRC examine the application and conduct a historic review of the property.
- F. **Project Review and decision.** A HDRC review shall be completed and acted upon in the same manner as specified by Section 9.72.040 (Design Review).
  1. **Standards for review.** In evaluating alteration applications, the HDRC shall consider the applicable eligibility criteria in Section 9.72.040, as well as any features to be preserved or other conditions specified in a consultant's historical resources report and/or recommendations from the HSSA. Proposed solar heating and cooling devices, energy collecting devices, windmills, or other similar structures shall be subject to Design Review guidelines.
  2. **Required findings.** The approval of an application to alter buildings constructed within the Period of Significance, Historic Landmarks, Noteworthy Structures, Historic Districts, or Neighborhood Conservation Areas shall require that the HDRC first find that all development and exterior alterations maintain the historical integrity of the resource, and that the change is compatible with and does not destroy the historical or architectural character of the property and the immediate neighborhood.
  3. **Substantial hardship.** The HDRC may approve an application for an alteration that may have a negative impact to a resource if an owner can present the following facts to the HDRC:
    - a. That failure to approve an application will result in immediate and substantial hardship because of conditions peculiar to the historical resource;
    - b. That the conditions have not been created by an act of the owner; and
    - c. That damage to the owner of the property is unreasonable in comparison to the benefit conferred to the community.

In the approval process for an alteration based on a substantial hardship, the HDRC shall not consider personal, family, or financial difficulties, loss of reasonable prospective profits, and neighboring violations as justifiable hardships.

**9.53.060 - Demolition or Removal**

Any demolition or removal of a structure within the City shall first require HDRC to review a demolition or moving permit, as applicable, and in compliance with the requirements of this Section and CEQA.

- A. Notification of application.** When an application is filed for a demolition or moving permit, the Director shall notify the HDRC at their next regularly scheduled meeting, and by mail to all property owners within a 300-foot radius (500-foot radius for projects not subject to CEQA exemptions), and to the Historical Sites Society of Arcata.
- B. Required delay of action.** The demolition or removal of a structure designated with the :HL is prohibited during the 180 days following the date that an application for demolition or moving is approved by the HDRC, unless the delay time period is waived by the HDRC in compliance with Subsection B.2. The purpose of this automatic delay is to provide sufficient time for steps necessary to preserve the structure.
- 1. Extension of time period.** The Council may require that the delay period for demolition or removal for a structure designated :HL be extended for up to an additional 180 days after first finding that it is extremely probable that, within the additional time period:
    - a. Satisfactory arrangements can be made to relocate the structure to an acceptable site, or
    - b. A qualified public or private buyer will be found to purchase the structure.

The Council shall take action to extend the delay period at a public hearing, no later than 30 days prior to the expiration of the original 180 day time period. The total delay period shall be no more than 12 months from the date the application for a demolition or moving permit for a structure designated :HL is filed with the Department.

- 2. Waiver of time period.** The owner of a designated Historic Landmark may request that the HDRC issue a waiver of any or all of the time period delaying demolition or removal. The HDRC may grant a waiver only after first finding that:
  - a. Only in rare cases, satisfactory arrangements have been made to relocate the structure to an acceptable site after it has gone through the permitting process for a demolition or removal;
  - b. The structure has been substantially destroyed by fire, wind, flood, earthquake, or other calamity as identified through Section 9.72.050 (Emergency Permit) so that it is of no further historic or architectural value to the community;
  - c. The demolition or removal is of an outbuilding or other structure that does not contribute to the historic resource or;
  - d. The action is the demolition of a portion of the structure that does not contribute to the historic resource.

- C. Findings for Demolition.** Prior to its decision, the HDRC shall consider the recommendations of the Historical Sites Society of Arcata or its designated representative. The applicant shall be required to submit a demolition plan showing those portions to be demolished. The following findings shall be required to approve the demolition permit:
1. The building does not contribute to the historical or architectural character of the neighborhood or the City.
  2. Although the building does have historical or architectural merit, it:
    - a. Has sustained substantial damage to key structural components, and
    - b. There are no feasible alternatives to demolition of the building that will not cause unusual and extreme economic hardship.
- D. Economic Evidence.** In order to determine if unusual and extreme economic hardship exists, the HDRC shall evaluate such financial information as set below, which shall be submitted in any application to demolish a structure that dates within the Period of Significance:
1. For all property:
    - a. The amount paid for the property;
    - b. The date of purchase, the party from whom purchased, and a description of the business or family relationship, if any, between the owner and the person from whom the property was purchased;
    - c. The cost of any improvements since purchase by the applicant and date incurred;
    - d. The assessed value of the land, and improvements thereon, according to the most recent County assessments;
    - e. Real estate taxes for the previous two years;
    - f. Annual debt service, if any, for the previous two years;
    - g. All appraisals obtained within the previous five years by the owner or applicant in connection with his or her purchase, financing or ownership of the property;
    - h. Any listing of the property for sale or rent, price asked and offers received, if any;
    - i. Any consideration by the owner for profitable and adaptive uses for the property, including renovation studies, plans, and bids, if any; and

2. For income producing property:
  - a. Annual gross income from the property for the previous four years;
  - b. Record of itemized operating and maintenance expenses for the previous four years;
  - c. Annual cash flow for the previous four years.

### 9.53.070 - Rehabilitation Incentives

- A. **Purpose.** The rehabilitation incentives provided by this Section are intended to encourage the maintenance, preservation, and rehabilitation of designated Historic Landmarks and Noteworthy Structures in the City.
- B. **Applicability.** Upon the rezoning of a structure or site to the :HL combining zone, or listing as a Noteworthy Structure, the property owner shall be eligible for the incentives identified in Section 9.53.070.C.
- C. **Types of incentives allowed.**
  1. **General Incentives.** The following incentives, include but not limited to, shall be eligible for each site and structure designated within the :HL combining zone and for Noteworthy Structures.
    - a. Exemption from the requirements of this Land Use Code to provide any additional off-street parking, except for structural additions of 200 square feet or larger.
    - b. Exemption, for existing nonconforming uses, from the limitations of Chapter 9.90 (Nonconforming Uses, Structures, and Parcels) pertaining to non-conforming structures and site conditions.
    - c. Compliance with the State Historic Building Code and portions of the Uniform Code for Building Conservation, rather than the current edition of the Uniform Building Code.
    - d. At the option of the City, conservation easements for facades that may provide tax advantages to the donor, as approved by the City.
    - e. At the option of the City, facade rehabilitation grants or loans, through the Community Development Agency, for designated historic commercial structures, to the extent available and as approved by the City.
  2. **Specific incentives for structures and sites within the :HL district.** The Council may grant any or all of the following rehabilitation incentives to a site or structure that is designated within the :HL combining zone, in addition to the incentives in Subsection C.1.
    - a. **Adaptive reuse.** In order to encourage the economic viability and preservation of Landmark Structures in the residential zoning districts, this Section provides for the occupancy of Landmark Structures within the :HL combining zone by land uses that are not otherwise allowed within the primary residential zoning district.

- b. **Allowable land uses.** The following uses may be allowed if the proposed use and structure comply with all applicable requirements of Articles 2, 3, and 4 of this Land Use Code, and if the review authority makes the findings required by Subsection D.2.b.
    - (1) RVL zone: Multi-family housing.
    - (2) RL, RM, and RH zones: Multi-family housing; Medical services - Doctor Office (no private clinics, labs, pharmacies, or boutiques); Office - Business/Service; and Office - Professional.
  - c. **Fee waivers.** Permit fee waivers;
  - d. **State and Federal Incentives.** Other incentives include Federal Rehabilitation Tax Credits, California Heritage Fund Grant Program, and the Mills Act Property Tax Abatement Program. The HRA and Council do not have jurisdiction over all these funding sources. For instance, private parties and non-profits can apply for Federal Rehabilitation Tax Credits and/or funds from the California Heritage Fund Grant program without HRA or Council approval.
- D. **Review and approval of specific incentives for rehabilitation projects.**
- 1. **Hearing and action by HDRC and Council.**
    - a. The HDRC shall hold a public hearing to determine the eligibility of a property for any of the specific incentives for rehabilitation projects identified in Subsections C.1 and C.2, above and shall provide a written recommendation to the Council to approve or disapprove any specific incentives.
    - b. The Council shall hold a public hearing to consider the recommendation of the HDRC to approve or disapprove any incentives.
    - c. Notice of the public hearings shall be provided, and the hearings shall be conducted in compliance with Chapter 9.74 (Public Hearings) and include a notice to the Historical Sites Society of Arcata.
  - 2. **Required findings for approval.** The HDRC may recommend, and the Council may grant specific incentives for rehabilitation projects, only after first making all of the following findings:
    - a. **Findings for all incentives.**
      - (1) Each incentive to be granted compensates the property owner for the rehabilitation project;
      - (2) No approved incentive will impair the aesthetic, architectural, or historic integrity of the resource; and
      - (3) No proposed incentive will be detrimental to the public health, safety, or general welfare.

- b. **Findings for adaptive reuse.** In addition to the above findings, the HDRC and Council shall make the following findings for the approval of adaptive reuse:
- (1) The change of use will occupy no more floor area than the original use;
  - (2) The proposed use will not significantly impair the exterior architectural character of adjoining properties; and
  - (3) The change of use will result in:
    - (a) Substantial rehabilitation of significant architectural features if they have been altered;
    - (b) Substantial rehabilitation of the exterior appearance of the resource; and
    - (c) A maintenance plan that will ensure the upkeep and continued maintenance of the resource.
3. **Conditions of approval.** In approving adaptive reuse incentives, the Council may impose any conditions of approval deemed reasonable and necessary to ensure compatibility between the new use and the surrounding area.

#### 9.53.080 - Duty to Maintain and Repair

If periodic maintenance and upkeep is not performed and the historical resource falls into disrepair, the disrepair shall not be used as justification for demolition, or any other alteration inconsistent with the provisions of this Chapter. Lien procedures through the nuisance abatement process, as outlined in Section 9.90.070, may be considered by the City to address a demolition by neglect. The HDRC can provide recommendations to the Council on nuisance abatement requests.

#### 9.53.090 - Unsafe or Dangerous Condition

- A. **Correcting an Unsafe or Dangerous Condition.** The provisions of this Chapter shall not prevent measures of construction, alteration, or demolition that are necessary to correct an unsafe or dangerous condition of a structure, other feature or part of a historical resource where:
1. The condition has been declared unsafe or dangerous by the Chief Building Official or the Fire Marshal; and
  2. The proposed measures have been declared necessary by the official to correct the unsafe or dangerous condition; and
  3. The proposed measures are done with due regard for preservation of the appearance of the structure.
- B. **Removing a Damaged Resource.** If more than 75% of a historical resource or other feature is damaged by fire, or other calamity to an extent that, in the opinion of the Building Official it cannot be reasonably repaired and restored, it may be removed in compliance with all applicable provisions of this Land Use Code and the Municipal Code.

### 9.53.100 - Inadvertent Archaeological Discoveries

The following standard operating procedures (SOPs) for handling "post-review" of inadvertent archaeological discoveries shall be adopted for all phases and aspects of work carried out by or for the City of Arcata and at the discretion of the City Community Development Department, attached as a Condition to Permits approved pursuant to CEQA. The intent is to avoid or minimize direct or indirect impacts to significant archaeological or Native American discoveries that may qualify for inclusion in the California Register of Historical Resources and the National Register of Historic Places.

- A. **Notification of Discoveries.** The Director shall be notified immediately upon the inadvertent discovery of an archaeological find or the inadvertent discovery of Native American remains and /or grave goods.
- B. **Establish List of Qualified Professional Archaeologists.** For City of Arcata Projects, the City shall make arrangements for the on-call services of one or more qualified archaeologists, using the list of qualified archaeologists provided by the North Coastal Information Center. These professionals will provide services as needed by the City to conduct rapid assessments of potentially significant archaeological finds discovered during city projects. CEQA Project Applicants will be provided the North Coastal Information Center list of qualified professional consultants to contact in the event that archaeological materials are encountered in a "post-review" scenario.
- C. **Establish Protocol for Notifying Wiyot Tribal Representatives of Native American Discoveries.** A component of the agreement developed under 9.53.030.D will be the specification of a protocol for the notification of Wiyot tribal governments in cases of inadvertent discoveries of Native American cultural resources.
- D. **SOP for Inadvertent Archaeological Discovery (General).** Ground-disturbing activities shall be immediately stopped if potentially significant historic or archaeological materials are discovered. Examples include, but are not limited to, concentrations of historic artifacts (e.g., bottles, ceramics) or prehistoric artifacts (chipped chert or obsidian, arrow points, ground stone mortars and pestles), culturally altered ash-stained midden soils associated with pre-contact Native American habitation sites, concentrations of fire-altered rock and/or burned or charred organic materials, and historic structure remains such as stone-lined building foundations, wells or privy pits. Ground-disturbing project activities may continue in other areas that are outside the discovery locale.
  1. An "exclusion zone" where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area plus a reasonable buffer zone by the Contractor Foreman or authorized representative, or party who made the discovery and initiated these SOP, or if on-site at the time of discovery, by the Monitoring Archaeologist.
  2. The discovery locale shall be secured (e.g., 24-hour surveillance) as directed by the City if considered prudent to avoid further disturbances.
  3. The Contractor Foreman or authorized representative, or party who made the discovery and initiated these SOP, shall be responsible for immediately contacting by telephone the parties listed below to report the find and initiate the consultation process for its treatment and disposition:
    - a. The City's authorized Point-of-Contact (POC) and City Manager;
    - b. The Contractor's authorized POC;

- c. Authorized POC of applicable agencies
- d. Tribal representative

In addition, in cases where a known or suspected Native American burial or skeletal remains are uncovered, the SOPs under paragraph E shall also be followed and the following contacts shall be notified:

- a. The Coroner of the county where the discovery is made; and
  - b. The Native American Heritage Commission (NAHC) in Sacramento (916-653-4082).
4. Ground-disturbing project work at the find locality shall be suspended temporarily while the City, its Lead Archaeologist, State Office of Historic Preservation (OHP) staff, and other applicable parties consult about appropriate treatment and disposition of the find. Should Native American remains be encountered, the provisions of State laws shall apply (see below). The Treatment Plan shall reference appropriate laws and include provisions for analyses, reporting, and final disposition of data recovery documentation and any collected artifacts or other archaeological constituents.
  5. The City's officers, employees and agents, including Contractors, shall be obligated to protect significant cultural resource discoveries and may be subject to prosecution if applicable State or Federal laws are violated. In no event shall unauthorized persons collect artifacts.
  6. Any and all inadvertent discoveries shall be considered strictly confidential, with information about their location and nature being disclosed only to those with a need to know. The City's authorized representative shall be responsible for coordinating any requests by or contacts to the media about a discovery.
  7. SOPs shall be communicated to the City's field work force including its Contractors, employees, officers or agents, and such communications may be made through weekly tailgate safety briefings.
  8. Ground-disturbing work at a discovery locale may not be resumed until authorized by the City's POC.
- E. SOP for Inadvertent Discovery of Human Remains and Grave Goods.** The following policies and procedures for treatment and disposition of inadvertently discovered human remains shall apply:
1. If human remains are encountered, they shall be treated with dignity and respect as due to them. Discovery of Native American remains is a very sensitive issue and serious concern of affiliated Native Americans. Information about such a discovery shall be held in confidence by all project personnel on a need-to-know basis. The rights of Native Americans to practice ceremonial observances on sites, in labs and around artifacts shall be upheld.
  2. Violators of Section 7050.5 of the California Health and Safety Code may be subject to prosecution to the full extent of applicable law (felony offense).

3. In the event that known or suspected Native American remains are encountered, the above procedures of SOP paragraph D for Inadvertent Archaeological Discovery (General) shall be followed (including notifications to those identified in D.3, in addition to the provisions of California law (Section 7050.5 of the California Health and Safety Code and Section 5097.98 of the California Public Resources Code), as follows:
  - a. The Coroner has two working days to examine the remains after being notified of the discovery. If the remains are Native American, the Coroner has 24 hours to notify the NAHC.
  - b. The NAHC is responsible for identifying and immediately notifying the Most Likely Descendant (MLD) of the deceased Native American. (Note: NAHC policy holds that the Native American Monitor will not be designated the MLD.)
  - c. Within 24 hours of their notification by the NAHC, the MLD will be granted permission by NCRA to inspect the discovery site if they so choose.
  - d. Within 24 hours of their notification by the NAHC, the MLD may recommend to the City's POC means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The recommendation may include the scientific removal and non-destructive or destructive analysis of human remains and items associated with Native American burials. Only those osteological analyses (if any) recommended by the MLD may be considered and carried out.
  - e. Whenever the NAHC is unable to identify a MLD, or the MLD identified fails to make a recommendation, or the City's POC rejects the recommendation of the MLD and mediation between the parties by NAHC fails to provide measures acceptable to NCRA, NCRA shall cause the re-burial of the human remains and associated grave offerings with appropriate dignity on the property in a location not subject to further subsurface disturbance.

**F. Standard Operating Procedures (SOP) for Documenting Inadvertent Archaeological Discoveries.**

1. The Contractor Foreman or authorized representative, or party who made the discovery and initiated these SOP, shall make written notes available to the City describing: the circumstances, date, time, location and nature of the discovery; date and time each POC was informed about the discovery; and when and how security measures were implemented.
2. The City's POC shall prepare or authorize the preparation of a summary report which shall include: the time and nature of the discovery; who and when parties were notified; outcome of consultations with appropriate agencies and Native American representatives; how, when and by whom the approved Treatment Plan was carried out; and final disposition of any collected archaeological specimens.
3. The Contractor Foreman or authorized representative shall record how the discovery downtime affected the immediate and near-term contracted work schedule, for purposes of negotiating contract changes where applicable.
4. Monitoring Archaeologists and Native American Representatives shall maintain daily field notes.

5. Treatment Plans and corresponding Data Recovery Reports shall be authored by professionals who meet the Federal criteria for Principal Investigator Archaeologist and reference the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-44737).
  6. Final disposition of all collected archaeological materials shall be documented in the final Data Recovery Report. Long-term storage of collections may be housed at the facility nearest to the discovery locale that conforms to Federal guidelines for curation of archaeological collections (36 CFR 79).
- G. Filing with the California Historical Resources Information System (CHRIS).** Final Data Recovery Reports along with updated standard California site record forms (DPR 523 series) shall be filed at the appropriate Information Center of the California Historical Resources Information System (CHRIS).
- H. Sacred Sites Inventory.** Confidential information concerning the discovery location, treatment and final disposition of Native American remains shall be forwarded to the Sacred Sites Inventory maintained by the NAHC.



## CHAPTER 9.54 - RESOURCE CONSERVATION

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### Sections:

- 9.54.010 - Purpose
- 9.54.020 - Applicability
- 9.54.030 - Energy Conservation Standard
- 9.54.040 - References to Additional City Resource Conservation Standards
- 9.54.050 - Construction Materials Recycling

### 9.54.010 - Purpose

The purpose of this Chapter is to establish additional standards that improve energy conservation and minimize solid waste disposal in new development.

- A. This Chapter provides standards to assist new development in achieving the conservation of community resources. This Chapter also provides cross-references to other sections of this Land Use Code that address resource conservation issues in relation to the topics of those regulations (e.g., subdivision design, exterior lighting, etc.).
- B. This Land Use Code includes a variety of standards, in addition to those in, or referenced in this Chapter, that interact to implement resource conservation goals. These standards provide for: development that is mixed use and walkable; housing for diverse family types (including second units); and the preservation of habitat, wetlands, and other environmental resources.
- C. Collectively, the resource conservation standards of this Land Use Code are intended to reduce per capita energy consumption, and its contributions to global greenhouse gas production, potable water consumption and resulting wastewater production, and solid waste production.

### 9.54.020 - Applicability

The provisions of this Chapter apply to all proposed development including new construction and demolition projects.

### 9.54.030 - Energy Conservation Standard

Each new structure shall be designed and constructed to achieve a minimum of 15 percent greater energy efficiency than otherwise required by the current California Code of Regulations, Title 24. Remodeling or other alterations to an existing structure shall require that the entire structure be brought into compliance with this requirement only if the proposed extent of change to the existing structure is sufficient that the Building Code would otherwise require that the entire structure comply with all applicable current Building Code requirements.

**9.54.040 - References to Additional City Resource Conservation Standards**

The following table identifies standards established by other Chapters of the Municipal Code that provide for the conservation of energy and/or other community resources.

Resource Issue	Topic of Land Use Code Regulation	Code Section
Energy conservation	Outdoor lighting - General lighting standards	9.30.070
	Outdoor lighting - Service stations	9.42.180
	Sign lighting	9.38.070.H
	Subdivision design - Lot orientation	9.88.030.C
Recycling and solid waste source reduction	Recycling facility standards	9.42.160
	Solid waste/recyclable materials storage	9.30.100
Solar access protection	Landscaping - Selection and placement	9.34.060.A.3.b
	Solar siting and solar access	9.56
Energy conservation through reduced automobile travel	Bicycle parking	9.36.060
	Live/work units	9.42.100
	Mixed use projects	9.42.110
Use of wind energy	Windmills for electricity generation	9.42.190
Water conservation	Landscaping - water waste prohibited	9.34.070.B

**9.54.050 - Construction Materials Recycling**

- A. Applicability.** All construction and demolition projects shall provide for the reduction, reuse, and recycling of waste materials in compliance with this Section, except that alterations to an existing residential structure that do not require that the entire structure be brought up to current Building Code standards are exempt.
- B. Waste Management Plan required.** All Building, Grading, and Demolition Permit applications shall include a Construction Waste Management Plan. The plan shall include the following information.
- 1. Analysis of waste.** An analysis and estimate of the types and amount of waste to be generated.
  - 2. Landfill options.** The name and location of the landfills to be used for the disposal of the materials and the projected costs of landfill disposal.

3. **Alternatives to disposal.** A list of the materials to be salvaged, recycled, or reused during the project; the proposed market for each material; projected revenue from the sale of the materials, if any, and estimated costs. Materials to be recycled, reused, or salvaged should include asphalt, bricks, cardboard, concrete, dimensional wood, drywall, glass (windows, mirrors), green and wood waste from land clearing, metals (from banding, stud trim, ductwork, pipes, rebar, steel, iron, plumbing fittings, aluminum, zinc, copper, brass, and bronze), paint, plastics.
  4. **Materials handling procedures.** A description of the means by which materials to be recycled or reused will be handled, source separated, etc., in preparation for acceptance by the designated facilities.
  5. **Transportation.** A description of how materials will be transported, whether self-hauled to designated centers or collected by a waste hauler.
- C. **Timing of approval.** No Building, Grading, or Demolition Permit shall be issued by the City until the Director of Environmental Services has approved the Construction Waste Management Plan. The permittee may request and the Director may approve changes to the Waste Management Plan during the course of construction or demolition activities if unforeseen circumstances arise.
- D. **Final report.** Prior to final building inspection or issuance of a certificate of occupancy, the permittee shall submit to the City and receive approval of a final recycling report which documents to the satisfaction of the Director of Environmental Services that the construction and/or demolition waste materials generated by the project were recycled in compliance with the approved Waste Management Plan.



## CHAPTER 9.56 - SOLAR SITING AND SOLAR ACCESS

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### Sections:

- 9.56.010 - Purpose and Objectives
- 9.56.020 - Applicability
- 9.56.030 - Definitions
- 9.56.040 - Subdivision Design, Building Orientation, Easements, and Access
- 9.56.050 - Solar Access Easements
- 9.56.060 - Solar Shade Control Act
- 9.56.070 - Solar Rights Act

### 9.56.010 - Purpose and Objectives

- A. The City recognizes the importance of protecting the potential for solar energy use. The purpose of this Chapter is to maximize access to sunlight for City residents.
- B. This Chapter is intended to implement the *California Solar Rights Act* and the *California Solar Shade Control Act*, as well as to strive to meet the City's energy policy goals as outlined in the *Arcata General Plan 2020*. The provisions of this Chapter are intended to protect access to solar energy for future development in Arcata by serving as a guideline for new development. This is done by setting limits on the amount of shading permitted by new construction and requiring that new buildings be sited to maximize solar access. Proper building siting and orientation is required to fully utilize solar energy. These measures will benefit the citizens of Arcata by reducing dependence on non-renewable energy sources.
- C. The potential economic and environmental benefits of solar energy use are considered to be in the public interest; therefore, local governments are authorized to encourage and protect access to direct sunlight for solar energy systems. Solar easements are appropriate to assuring continued access to direct sunlight for solar energy systems, and may be created and privately negotiated.

### 9.56.020 - Applicability

The provisions of this Chapter shall apply to all development within the City, in all zoning districts, except for a condominium conversion in compliance with Section 9.84.040 (Condominium Conversions).

### 9.56.030 - Definitions

Definitions of the technical terms and phrases in this Chapter may be found in Article 10 (Glossary) under "Solar Access."

**9.56.040 - Subdivision Design, Building Orientation, Easements, and Access**

Design approaches that maximize natural heating and cooling opportunities and use of solar energy in development design shall be pursued whenever the energy conservation benefits and solar energy development potential are greater than the associated negative impacts. It is not intended that the requirements of this section result in reducing densities, reduced buildable lot area that may be occupied by a structure, precluding construction under the zoning regulations applicable at the time a Tentative Map is filed, or cause the unnecessary removal of trees.

- A. **Application requirements.** A plan-view, shade projection map, detailing shadows cast on the ground by all buildings, and all vegetation exceeding 10 feet in height, on December 21 between the hours of 10 a.m. and 2 p.m. shall be provided with each subdivision or planning permit application.
- B. **Minimum solar access requirement.** The lot size, orientation, and building configuration of Planned Developments, subdivisions, and all other development that requires City discretionary review, shall provide for each primary dwelling on at least 80 percent of the building sites to have adequate solar access.
  - 1. The lot size and configuration shall permit the short axis of primary dwellings to be aligned between 15 degrees east of south and 30 degrees west of south.
  - 2. A different orientation may be allowed where the review authority determines that more effective solar access can be accomplished. When adequate solar access is not feasible on one or more lots, those lots shall be designed to provide as much solar access as possible.
- C. **Protection of existing solar access.** The lot size, orientation, and building configuration of a proposed subdivision shall ensure that no primary dwelling on a lot adjacent the proposed project loses existing adequate solar access.
- D. **Street orientation.** To provide the greatest flexibility in satisfying the requirements of Subsections A., and B., streets shall be oriented within 15 degrees of east-west or north-south where feasible. A different orientation may be allowed where the review authority determines that more effective solar access can be accomplished through other means.
- E. **Exceptions.** An applicant may request exceptions to the requirements of this Section by including a written statement with sufficient supporting documentation with the application for City approval of the project. After review and a recommendation by the Director, the Planning Commission may grant the exception along with project approval only after first finding that:
  - 1. Compliance will result in reduced residential densities below that which would normally be allowed at the time the application is filed, or
  - 2. Compliance is otherwise not feasible.

**9.56.050 - Solar Access Easements****A. When required.**

1. When building configuration is specified on a Tentative Map or other development proposal, and upon finding that neither lot size, lot configuration, or applicable zoning is sufficient to reasonably protect solar access to a proposed south wall or south roof, the Planning Commission may require the preparation and dedication of solar access easements as a condition of Tentative Map approval for any subdivision application containing one or more lots under one acre.
2. No solar access easement shall be required where the lot that would be benefited is of one acre or more, and the applicable zoning requires single-family dwellings, or where solar access is not available because of existing vegetation, topography, surrounding development, or where other deed restrictions are sufficient to protect solar access.

**B. Easement design, dimensions.** A solar access easement shall be designed to protect solar access to proposed south roof and south wall areas. In establishing the dimensions of a solar access easement, consideration shall be given to contour, configuration of the parcel to be divided, existing vegetation, and the use of adjacent parcels.**C. Form of and content of easement document.** A solar access easement shall be prepared in compliance with the "Model Solar Easement Form" established by the Arcata Energy Committee, and all requirements of the City Attorney, and shall include, at minimum, all of the following:

1. A description of the solar access easement in terms of specific areas on benefited property to which solar access is to be protected and a statement specifying that no structure, vegetation, or land use, shall cast a shadow so as to obstruct the passage of direct sunlight to more than 10 percent of a protected area on a benefited property between 10 a.m. and 2 p.m. at any time throughout the year;
2. A statement that the burdens and benefits of the solar access easement are transferable and run with the land; and
3. A diagram of the burdened property prepared in a format acceptable to the County Recorder indicating, in a manner easily understood by non-technical persons, the approximate height restrictions on the property necessary to protect solar access to specific areas on benefited property.

**D. Recording.** A required solar access easement shall be recorded with the County Recorder. If the development involves a subdivision, the easement shall be recorded at the time of recording the Final Map or Parcel Map.

- E. Revision, termination.** A solar access easement may be revised or terminated as follows, or by a modification in writing that is signed by all benefited and burdened property owners and recorded with the County Recorder. The initial grantor of the easement shall not have a right to modify the easement.
1. To avoid unnecessary property burdens, no change in restrictions on structures, vegetation, and land uses shall be made unless a revised solar access easement signed by the owners of all affected benefited and burdened properties, in compliance with this Section has been recorded with the County Recorder.
  2. The easement shall include a statement that upon refusal by the owners of an affected property to sign the modified solar access easement, any other affected property owner may bring an action in Court to determine what modification, if any, should be made to the easement, and that costs of suit may be awarded to the prevailing party. This provision is not intended to, and shall not increase the area burdened by any solar access easement on any property.

#### **9.56.060 - Solar Shade Control Act**

The California Solar Shade Control Act (Public Resources Code 25982) states that no person owning, or in control of a property shall allow a tree or shrub to be placed, or, if placed to grow on such property, subsequent to the installation of a solar collector on the property of another so as to cast a shadow greater than 10 percent of the collector absorption area upon that solar collector surface on the property of another at any one time between the hours of 10 a.m. and 2.p.m., local standard time; provided that this section shall not apply to specific trees and shrubs which at the time of the installation of a solar collector or during the remainder of that annual solar cycle cast a shadow upon that solar collector. The City requires property owners or others in control of a property to abide by this Act, and any subsequent changes in the Act. Those seeking permits for solar systems are advised to establish documentation of vegetation existing at the time of their solar system construction or installation.

#### **9.56.070 - Solar Rights Act**

The City will enforce and abide by the California Solar Rights Act (Civil Code Section 714). Any deed restriction or covenant that unreasonably restricts or prohibits the installation or use of solar energy systems shall be made void and unenforceable. This includes any restriction of clotheslines for drying clothes outdoors. In addition, the City shall not enact any policy, ordinance or regulation that prohibits or unreasonably restricts the installation or use of solar energy systems. Unreasonable restrictions are defined as anything that increases cost by greater than 20 percent or decreases efficiency by greater than 20 percent.

## CHAPTER 9.58 - TREE PRESERVATION AND HAZARDOUS TREE REMOVAL

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### Sections:

- 9.58.010 - Purpose
- 9.58.020 - Applicability
- 9.58.030 - Tree Removal Permit Application Requirements
- 9.58.040 - Exemptions
- 9.58.050 - Tree Removal Permit Findings and Conditions
- 9.58.060 - Post Approval Procedures
- 9.58.070 - Tree Removal Without Permit

### 9.58.010 - Purpose

The trees of Arcata are significant community resources that play an important role in defining the character of the City, serve as wildlife habitat, and provide other environmental values. Certain hedgerows, windrows, groves of trees, and creekside riparian areas identified in the Design and Historical Preservation Element or the Resource Conservation and Management Element of the General Plan shall be left intact. Trees identified in the General Plan are considered important to the character of City of Arcata and its neighborhoods, and every effort shall be made to preserve such trees. The purpose of this Chapter is to preserve and protect trees which are considered important to the character of the City of Arcata and its neighborhoods, and which are not subject to commercial timber operations as allowed within the AE, AR, and NR-TP zone districts.

### 9.58.020 - Applicability

- A. Applicability of requirements.** The provisions of this Chapter shall apply in all zoning districts, except for the NR-TP zone district for:
1. The removal or relocation of any tree with a diameter of 16-inches or more, measured at 54-inches above natural grade, unless specifically exempted by Section 9.58.040; and
  2. The removal or relocation of a group (e.g., stump sprouts) of 30 or more trees with diameters more than 10-inches, measured at 54-inches above natural grade, unless specifically exempted by Section 9.58.040.
- B. Tree Removal Permit required.**
1. **Activities requiring a permit.** A Tree Removal Permit shall be required prior to:
    - a. The relocation, removal, cutting-down, topping or other act that causes the destruction of a tree;
    - b. The approval of a Hillside Development Permit, Grading Permit, Coastal Development Permit, Use Permit, Minor Use Permit, Variance, Planned Development or Subdivision, hereafter referred to as "discretionary projects."

## 2. Permit Issuance.

The procedure and review authority for a Tree Removal Permit are as follows:

- a. **Developed Parcel.** A Tree Removal Permit for the removal or relocation of any tree with a diameter of 16-inches or more (measured at 54-inches above natural grade) shall be reviewed as follows:
  - (1) If the request involves the removal of less than five trees in a 10-year period within an area less than three acres in size, then the City can act on the request as a ministerial project, or
  - (2) If the request involves the removal of five or more trees, within an area less than three acres in size, then the City shall review a complete Tree Removal Permit application in compliance with Section 9.58.030 (Tree Removal Permit Application Requirements) and Section 9.58.050 (Tree Removal Permit Findings and Conditions).
- b. **Vacant parcel.** A Tree Removal Permit for the removal or relocation of any tree with a diameter of 16-inches or more (measured at 54-inches above the natural grade) shall be reviewed as follows:
  - (1) If the request involves the removal of less than five trees within a proposed access road and buildable area (as defined by Section 9.52.020B of this Land Use Code) and it is done in conjunction with a Building Permit, then the City can act on the request as a ministerial project, or
  - (2) If the request involves the approval of a discretionary project for the same site (e.g. Major Subdivision/Planned Development), then the City shall review a complete Tree Removal Permit application in compliance with Sections 9.58.030 and 9.58.050 of this Land Use Code and with Policies D-3j and D-4d of the General Plan, or
  - (3) If the request involves the removal of vegetation within the natural area of a parcel, then the City shall review a complete Tree Removal Permit application in compliance with Sections 9.58.030 and 9.58.050 of this Land Use Code and with Policies D-3j and D-4d of the General Plan.
- C. **Timing of Removal of Large-Stature Trees.** A tree with a height of 150 feet or more may be evaluated by the Director to determine if active nesting or roosting sites for listed bird species or bird species of special concern are occurring within the subject tree (s) during the projected tree removal dates. If such active nesting or roosting activities are occurring during the projected tree removal dates, then the Director can deny the request or require further environmental review.
- D. **Emergencies.** The removal or relocation of a tree that would otherwise require a Tree Removal Permit is exempt from the provisions of this Chapter only in case of an emergency, where the Director, City Forester, a member of a law enforcement agency, or the Fire District determines that a tree presents an immediate danger of collapse and poses an imminent threat to the public safety, or general welfare. In case of an emergency, payment of any fees may be waived.

- E. **Topping of Trees.** Topping of trees is an injurious practice which may lead to stress, disease, and decay in trees. It should be avoided whenever an alternative exists. A Tree Removal Permit for topping may be issued only if the following apply:
1. **Hazardous trees.** When authorized as part of a Tree Removal Permit and verified in a report prepared by an arborist or a Registered Professional Forester (RPF), a hazardous tree may have its mass reduced to protect property values and to address safety concerns.
  2. **Solar access.** When authorized as part of a Tree Removal Permit and verified in a report prepared by an arborist or a RPF, a tree or trees that hinder direct sunlight for solar energy systems may have their mass reduced to provide solar access.
- F. **Relationship to CEQA.** All Tree Removal Permits are subject to the California Environmental Quality Act (CEQA). However, the scope of environmental review for a Tree Removal Permit depends upon the scope of the request, and the following shall provide direction for Tree Removal Permit reviews:
1. **Ministerial Projects.** Exemption from the CEQA review process may be allowed for an emergency situation, and for requests to remove four or fewer trees on a vacant or developed parcel.
  2. **Discretionary Projects.**
    - a. Categorical Exemptions may be allowed for minor alterations to land (Class 4 CEQA exemption) to remove five to ten unhealthy hazardous trees, for fuel management activities permitted by the California Department of Forestry and Fire Protection (CDF), or for the topping of trees.
    - b. A Functional Equivalent exemption may be allowed for Timber Harvest Plans (as described in Sections 15250 and 15251 (a) of the CEQA Guidelines) for Minor Use Permits in the AE and AR zone districts.
    - c. An Initial Study may be required for the consideration to remove healthy, mature, or scenic trees that are outside of AE, AR, and NR-TP zone districts.

#### 9.58.030 - Tree Removal Permit Application Requirements

- A. **Application contents.** Each Tree Removal Permit application shall include the application form, and other information and materials required by the Department, the application fee required by the City fee schedule, and the following additional information:
1. If not otherwise required for another City permit, a Plot Plan must be submitted that is drawn to the requirements of the City Plot Plan Checklist (parking, utility, and building detail is not required, other than to identify the footprint of existing structures). Plot Plans shall include the type, size, and location of trees to be topped, trees to be removed, trees to be retained, and trees to be planted. Any riparian corridor shall be identified on the Plot Plan and as per Chapter 9.59.
  2. The applicant shall state whether the project involves the clearing of vegetation around a house in order to establish defensible space as identified in California Department of Forestry and Fire Protection (CDF) Fire Safe Guidelines and shall state whether a CDF permit is required.

3. A plan of operation including: hours of operation, method of debris disposal, haul route, and erosion control methods (Best Management Practices).
  4. The application may be required to include an Arborist's or RPF's report, at the discretion of the Director or City Forester. The report may be required to include:
    - a. Location and type of tree protection measures to be installed for retained trees;
    - b. Aerial photograph(s) of the project site; and
    - c. A utility trenching pathway plan (if applicable).
  5. Identification of a contact person shall be available during hours of operation.
  6. If the site is subject to conditions, covenants, and restrictions (CC&Rs) that address tree removal and are administered by an active homeowners' association, the application shall include a letter from the homeowners' association authorizing the tree removal.
  7. If the project is considered discretionary, then the applicant shall submit the noticing requirements as identified in Subsection 9.74.020.B.(1) [Method of Notice Distribution - mailing].
- B. Application filing.** An application for a Tree Removal Permit involving a discretionary project shall be included as part of the application for the discretionary project. An application for a Tree Removal Permit not associated with a discretionary project shall be filed with the Department separately.
- C. On-site information.** The following information shall be on-site while any construction activity is on going for a project requiring a Tree Removal Permit:
1. Any applicable arborist's or RPF's report and any subsequent modifications to the arborist's report;
  2. Tree removal location map with a copy of the remaining tree(s) protection measures;
  3. Tree Removal Permit and approved construction plans;
  4. Approved planting and irrigation drawings; and
  5. A numbering system to identify trees proposed for removal.
- D. Information on standards.** The developer or applicant shall be responsible for informing, in writing, all subcontractors and individuals who will be performing work around protected trees of the requirements of this Section and conditions of approval for the project.
- E. Final certification of tree work.** All of the tree preservation measures required by the conditions of the discretionary project approval, and/or the Tree Removal Permit, as applicable, shall be completed, and certified by an arborist or RPF selected by the Director prior to City issuance of a Final Building Inspection or Certificate of Occupancy

### 9.58.040 - Exemptions

The following activities are hereby exempt from the requirement of this chapter:

1. Those activities associated with the establishment or alteration of any public park, Community Forest, and open space area that is under the review of the Parks and Recreation Committee, the Open Space Committee, or the Forest Management Committee.
2. Removal of 4 or fewer trees with diameters less than 16-inches, measured at 54-inches above natural grade.
3. Removal of any tree from public rights of way or public school lands.
4. Removal of any tree which complies with Conditions of Approval for an approved Landscaping Plan.
5. Emergency tree removals.
6. Any activity associated with tree trimming for safety reasons as mandated by the California Public Utilities Commission.
7. Removal of trees from the AE, AR, NR-TP zone district that are part of a CDF regulated timber harvesting operation.
8. Removal of a dead tree, except for large dead trees (snags) that are 30-inches or more in diameter, measured at 54-inches above natural grade.
9. Live and dead limb removal that does not involve topping the main trunk.
10. Removal of groups (e.g., stump sprouts) of trees (less than 30) with diameters 10-inches or less, measured at 54-inches above natural grade.

### 9.58.050 - Tree Removal Permit Findings and Conditions

Tree Removal Permits shall be reviewed and decided by the Zoning Administrator as follows.

- A. Required findings.** The approval of a Tree Removal Permit shall require that the review authority make all the following findings:
1. The approval of the Tree Removal Permit will not be detrimental to the public health, safety or welfare, and approval of the Tree Removal Permit is consistent with the provisions of this Chapter and in compliance with General Plan: 2020 and Chapter 9.59; and
  2. Measures have been incorporated into the project or permit to mitigate impacts to remaining trees or to replace the trees removed in compliance with this Chapter; and
  3. The removal of a healthy tree cannot be avoided by:
    - a. Reasonable redesign of the site plan prior to construction; or

- b. Trimming, thinning, tree surgery, or other reasonable treatment, as determined by the Director; and
  4. Adequate provisions for drainage, erosion control, land stability, windscreen, and buffers along any road and between neighbors have been made where these problems are anticipated as a result of the removal; and
  5. The tree(s) to be removed do not contain active nesting or roosting sites that have been identified through the review process or are otherwise known to the review authority as the nests of a listed bird species or bird species of special concern; and
  6. The tree(s) is not within any hedgerows, windrows, or rows of trees to be left intact as identified in the Arcata General Plan 2020 or other plans approved by the Council.
- B. Conditions of Approval.** The approval of a Tree Removal Permit shall include Conditions of Approval as necessary to ensure compliance with Section 9.58.050 (Tree Removal Permit Findings and Conditions), and all other applicable provisions of this Land Use Code. Conditions of Approval may include, but are not limited to:
1. Requiring removal of invasive or noxious vegetation (e.g. English Ivy) from other trees on the applicant's property.
  2. Allowing for the removal of non-native trees adjacent to natural areas if replaced with an appropriate native tree.
  3. Provision for forest stands in residentially zoned districts to not allow more than 25% of the stem basal area to be removed in any 10-year period.
  4. Requiring tree replacement(s) for any tree(s) removed through a tree removal permit.
  5. Weekday hours of operation.

**9.58.060 - Post Approval Procedures**

The following procedures apply after the approval of a Tree Removal Permit application.

- A. **Appeal.** A decision on a Tree Removal Permit application may be appealed in compliance with Chapter 9.76 (Appeals).
- B. **Expiration/extension.** Except where otherwise provided by this Chapter, the work authorized by a Tree Removal Permit shall commence within six months from the date of approval or other time limit established through a concurrent planning permit approval. Time extensions, for up to a total of two additional years, may be granted in compliance with Chapter 9.79 (Permit Implementation, Time Limits, and Extensions). A Tree Removal Permit not exercised within its time limits shall expire in compliance with Chapter 9.79 (Permit Implementation, Time Limits, and Extensions).
- C. **Performance guarantee.** The City may require that a security deposit be posted and maintained where deemed necessary to ensure:
  - 1. The preservation of protected trees during construction; and
  - 2. The successful completion of required mitigation measures within 3 years.

The deposit shall be posted in a form approved by the City Attorney prior to any grading or movement of heavy equipment onto the site or issuance of any permits. Each violation of any Tree Removal Permit condition regarding tree preservation shall result in forfeiture of a portion or the entirety of the deposit, at the discretion of the review authority, provided that this determination may be appealed in compliance with Chapter 9.76 (Appeals).

- D. **Construction monitoring.** Monitoring of tree protection and restoration measures specified as conditions of approval shall be performed by site inspection conducted by the City.
- E. **Revocation.** A Tree Removal Permit may be revoked or modified, as provided in Section 9.96.070 (Permit Revocation and Modification).
- F. **Stop work orders.** Whenever any construction or work is being performed contrary to the provisions of this Chapter or applicable conditions of approval, the Director may issue a written notice to the responsible party to stop work on the project on which the violation has occurred or upon which the danger exists. The notice shall state the nature of the violation and the risk to the trees. No further work shall be allowed until the violation has been corrected and approved by the Director.

**9.58.070 - Tree Removal Without Permit**

In the event of the removal of a tree without a permit in compliance with this Chapter, the City shall require the property owner to submit a Tree Removal Permit application, in compliance with this Chapter, pay a penalty fee of triple stumpage, staff costs, and to replant any tree removed.



## CHAPTER 9.59 - ENVIRONMENTALLY SENSITIVE HABITAT AREAS PROTECTION AND PRESERVATION

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### Sections:

- 9.59.010 - Purpose
- 9.59.020 - Applicability
- 9.59.030 - Definitions
- 9.59.040 - Application Requirements
- 9.59.050 - Stream Conservation and Management
- 9.59.060 - Wetland Conservation and Management
- 9.59.070 - Project Review Procedures
- 9.59.080 - Conservation Easements
- 9.59.090 - Findings Required for Project Approval
- 9.59.100 - Notice of Protection Combining Zone Overlay

### 9.59.010 - Purpose

Environmentally sensitive habitat areas (ESHA) (Arcata Bay, tidal sloughs, estuaries, creeks, ponds, salt marshes, riparian corridors, wetlands, bird rookeries, shorebird concentration sites, Arcata Marsh and Wildlife Sanctuary, and diked/reclaimed former tidelands-Public Trust Lands) within the City are important natural resources that provide ecological balance, ecosystem function, biological productivity, and values such as wildlife habitat, water quality, open space and scenic resources, flood control, and opportunities for scientific study and education. Therefore, the requirements of this Chapter are intended to:

- A. Protect the structure, composition, function and natural processes of ESHA to the same extent as occurs in the least-disturbed natural ecosystems in the City's Planning Area;
- B. Provide standards for development that will incorporate ESHA into the site design of proposed development without significant adverse impacts to these resources;
- C. Ensure that any proposed subdivision, land use or development adjacent (within 250 feet) to or capable of affecting ESHA will not degrade these resources or diminish their structure, composition, function and natural processes; and
- D. Ensure that legally created lots in ESHA contain a building site with minimum reduction necessary to the ESHA.

**9.59.020 - Applicability**

- A. The requirements of this Chapter apply to all ESHA and to adjoining properties (within 250 feet) whose proposed subdivision, land use or developments are capable of affecting these resources. No discretionary permit for development (within 250 feet) that may potentially affect ESHA will be issued except in compliance with all applicable requirements of this Chapter.
- B. The requirements of this Chapter also apply to Environmental Buffer Areas (EBA). An EBA shall separate all permitted development from adjacent ESHA. The purpose of EBA is to prevent any degradation of the ecological functions provided by the ESHA as a result of adjacent development. The following shall apply to EBA:
  - 1. The minimum width of the EBA for watercourses and wetlands shall be as provided in General Plan policies RC- 2 and RC-3, and Sections 9.59.050 and 060 respectfully.
  - 2. The minimum EBA width for all other ESHA shall be 100 feet, unless the designated setback would eliminate all reasonable use of property.
- C. The requirements of this Chapter shall apply in addition to the requirements of the primary zoning district and all other applicable provisions of this Land Use Code. Wherever these regulations conflict with or are inconsistent in application with any other regulation, the most protective of ESHA shall apply.

**9.59.030 - Definitions**

Definitions of the technical terms and phrases used in this Chapter may be found in Article 10 (Glossary), under "ESHA."

**9.59.040 - Application Requirements**

Where there is a question regarding the presence of an ESHA, its boundary location, or the applicable EBA dimensions in accordance with this Chapter, the public or private applicant shall provide the City with a Biological Assessment containing the following information:

- A. A base map sufficient in scope to cover the ESHA and its EBA that delineates topographic elevations in (1 to 5 foot) intervals, roads, and all other structures, as applicable;
- B. A vegetative map covering the base map area in sufficient detail to delineate all vegetative habitats present and to identify species that may indicate the presence and boundary of a ESHA as well as the occurrence of any listed species or species of concern;
- C. A soil map delineating the location of hydric and non-hydric soils;
- D. The top of bank for any protected watercourse (tidal water, estuary, stream or pond) will be located on the base topographic map and cross section(s) as identified by Figure 5-6, 5-7, or 5-8.

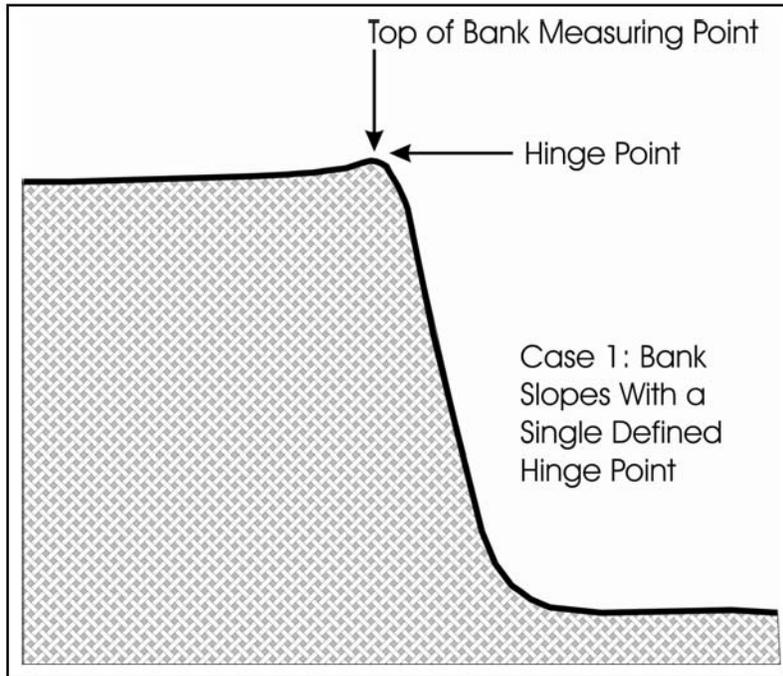


Figure 5-6 - Top of Bank Setback Measurement - Bank Slopes With a Single Defined Hinge Point

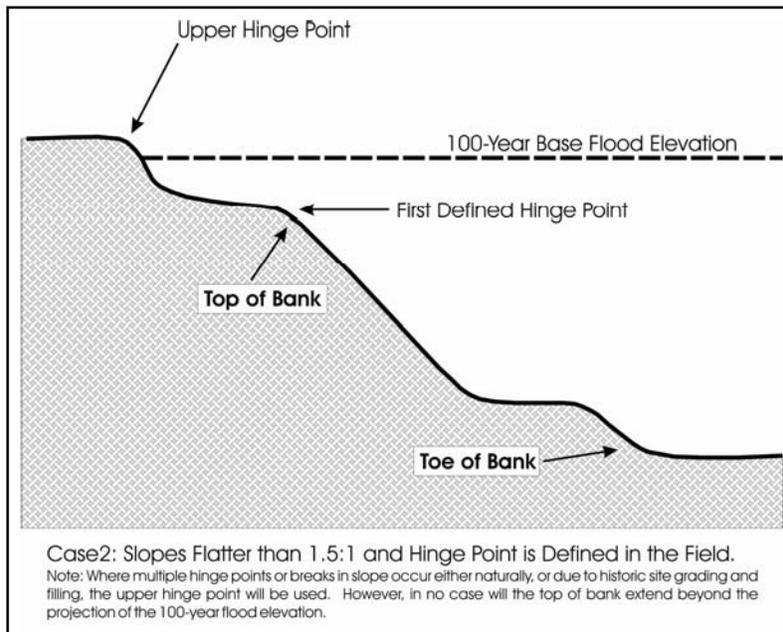


Figure 5-7 - Top of Bank Setback Measurement - Bank Slopes With Multiple Hinge Points

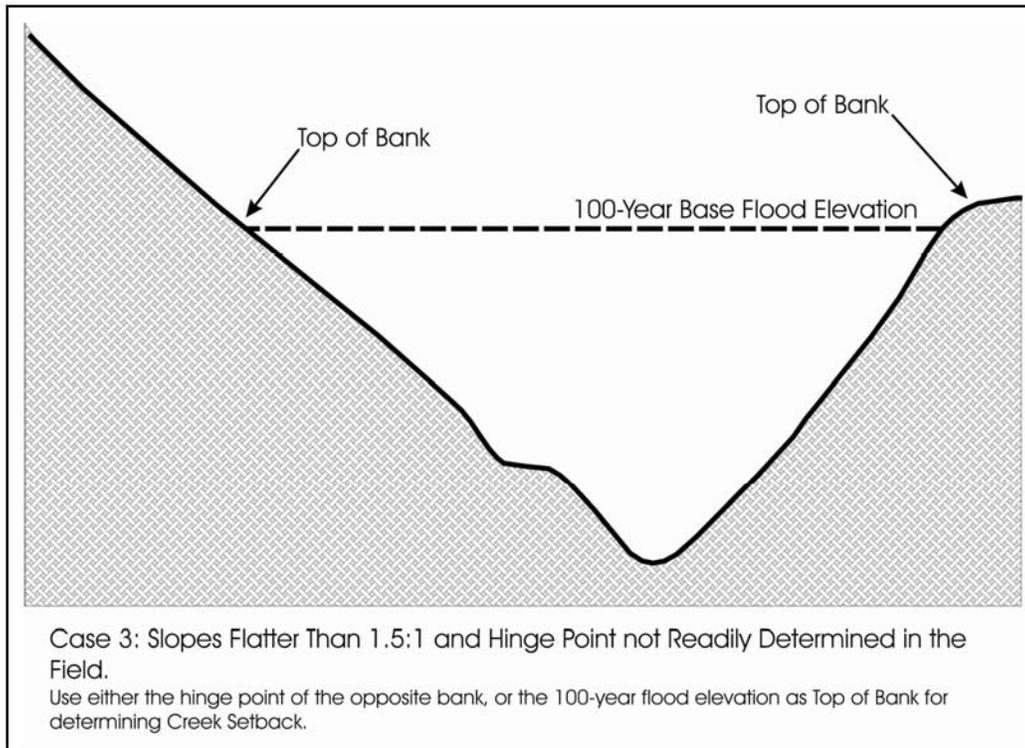


Figure 5-8 - Top of Bank Setback Measurement - Hinge Point Not Easily Defined

- E. Wetlands delineation shall be based upon detailed field investigation of hydrology, soils and biota conducted by a qualified professional. The procedures for delineating wetlands are specified in the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands, USACOE 1987." The City's definition of wetlands utilizes a two-parameter protocol; a wetland includes those lands where two or more of the following characteristics are present, where one is a source of water (surface or subsurface) that is present for sufficient periods, and the second is to promote either the formation of hydric soils or growth of hydrophytic plant species. In the Coastal Zone a wetland can be delineated in the absence of hydric soils or growth of hydrophytic plant species by locating the boundary between land that is flooded or saturated as some time during years of normal precipitation, and the land that is not (CCR 13577);
- F. Survey of wildlife species indicating the existence, or non existence, of an ESHA as well as the occurrence of any listed species or species of special concern;
- G. The outward limit of the applicable EBA shall be indicated on the base topographic map for each ESHA.
- H. An analysis of the ESHA's existing and potential functions (physical, chemical and biological processes that characterize that ESHA) or its values (wildlife, habitat, flood control, open space or recreation) shall be provided.

- I. An impact analysis of the proposed development shall be prepared that provides a mitigation and monitoring plan for all potential impacts to ESHA in compliance with Chapter 9.78 (Environmental Review Procedures) and include the following:
  1. Time of year that the project and mitigation measures will be implemented.
  2. Description of each component of the proposed activities; access, grading, fill, construction, mitigation, monitoring, etc.
  3. Description of proposed activities affect(s) to the ESHA.
  4. Statement of measurable mitigation goals.
  5. Description of a feasible mitigation measures to avoid or reduce any proposed activities' adverse affect(s).
  6. On-site ESHA mitigation shall be greater than a 1:1 ratio.
  7. Off-site ESHA mitigation ratio shall be a minimum of 4:1 in the Coastal Zone and minimum of 2:1 elsewhere.
  8. Description of the methods to be used to implement the mitigation measure, including drawings, maps, or illustrations necessary to adequately describe proposed mitigation.
  9. Description of a mitigation monitoring plan to document that each mitigation measure has been implemented and that on an annual basis reports whether the goal has been successfully achieved for five years.
  10. Description of remediation measures (contingency plan) that will be employed if at 3 years the mitigation has not achieved its goal.
  11. Identification of ESHA restoration opportunities.

### 9.59.050 - Stream Conservation and Management

Stream (to include all watercourses described in the General Plan Policy RC 1d and in Section 9.59.010) conservation and management shall enhance, maintain, and restore the biological integrity of entire watercourses (headwaters to mouth) and associated riparian habitat as natural features in the City's landscape. The following requirements will apply to proposed development and new land uses on property within the Stream Protection combining zone (:SP) which encompasses the ESHA and its EBA that is shown on the Protected Watercourse Map of the Resource Conservation and Management Element of the General Plan (Figure RC-a).

- A. The purpose of a :SP is for a watercourse and its EBA to remain in a natural state in order to protect watercourses and riparian habitat. Proposed development and new land use within a :SP may be restricted. The Director (Planning or Environmental Services) may authorize variable EBA widths as per General Plan Policy RC-2b to accommodate unique site conditions as long as the total EBA is greater than the area under a fixed EBA width (ex. 100' x 100' = 10,000 sq. ft. is the minimum EBA). Each :SP for a watercourse identified in the General Plan shall have the following dimensions, all measured perpendicular to the watercourse from the top of bank as defined in Article 10 (Glossary).
1. Existing developed areas. In stream reach areas (see amended exhibit RC-a, General Plan 2020) where existing development as defined in Article 10 (Glossary) is adjacent to a protected watercourse, the EBA shall extend a minimum of 25 feet outward on both sides of the watercourse, measured from the top of bank, or the area bounded by the FEMA Flood Zone A.
  2. Undeveloped areas. In stream reach areas with no development (see amended exhibit RC-a, General Plan 2020) adjacent to a protected watercourse the EBA shall extend a minimum of 100 feet outward on both sides of the stream, measured from the top of bank, or the area bounded by the FEMA Flood Zone A, whichever is greater. The review authority may grant a variance, pursuant to State law, to reduce the 100 foot EBA width based on substantial evidence in the Biological Assessment and supported by written findings of compliance with the General Plan Resource Conservation Element.
  3. Areas of significant riparian vegetation. On a site with significant areas of riparian vegetation exceeding 100 feet in width measured from the top of bank, the EBA shall be expanded to encompass all of the riparian vegetation, to a maximum of 250 feet from either side of the stream.
  4. The City Engineer and the Environmental Services Director may reduce the EBA to less than 25 feet in association with stream "day lighting" (restoration) projects.
- B. Allowable uses and activities within :SP shall sustain biological productivity (PRC 30230), protect against any significant disruption of habitat values (PRC 30240), and shall maintain or enhance the functional capacity (PRC 30233). Allowable land uses and activities within a :SP shall be limited to the following, in compliance with all other applicable requirements of this Chapter 9.59 and the General Plan policies RC-1 and RC-2. Any proposed land use, development, or removal of vegetation that is not listed below shall be prohibited.
1. Outside the Coastal Zone:
    - a. Agricultural uses (including community gardens) determined to be compatible with maintenance of watercourse and riparian resources shall not exceed 50 percent of the setback area and not within 25 feet of the top of bank;

- b. Fencing along property boundaries and along .SP boundaries to prevent bank erosion and degradation of natural riparian vegetation by livestock;
  - c. Maintenance of existing roads, driveways, and structures;
  - d. Construction of public road crossings;
  - e. Forest management practices as permitted by the State of California or Arcata's Forest Management Plan;
  - f. Construction and maintenance of foot trails for public access on public lands;
  - g. Construction and maintenance of utility lines;
  - h. ESHA restoration and enhancement projects;
  - i. Emergency or preventive (where there is no feasible less environmentally damaging alternative) and where feasible mitigation measures have been provided to minimize adverse environmental effects (PRC 30233) removal of sediment and vegetation for flood control purposes when authorized by the City Environmental Services Director; and
  - j. Construction of new detention basins shall not exceed 50 percent of the setback area and not within 25 feet of the top of bank.
2. In the Coastal Zone:
    - a. The uses and activities listed in Subsection B.1;
    - b. Public coastal access improvements; and
    - c. Boat launching facilities.
  3. Exceptions. If restriction(s) in this Subsection would result in an undeveloped legal parcel, not on Public Trust lands, created prior to the effective date of General Plan 2020, being made unusable in its entirety for any use allowed by the General Plan and this Land Use Code, exceptions to that restriction(s) may be granted through Use Permit approval to allow a reasonable economic use of the parcel, provided that there is no feasible less environmentally damaging alternative, and feasible mitigation measures have been provided to minimize adverse environmental effects (PRC 30233) of the proposed use.

### 9.59.060 - Wetland Conservation and Management

Wetland conservation and management shall protect existing wetlands areas and maintain a standard of "no net loss" in area, function and value, promote restoration of degraded wetland areas, enhancement of wetland functions, and creation of additional wetland areas to replace historic losses. The following requirements will apply to proposed development and new land uses on property within the Wetland Protection Combining zone (:WP) which encompasses the ESHA and its EBA.

- A. The purpose of the :WP is for a wetland and its EBA to remain in a natural state in order to protect wetland ecosystems by ensuring no net loss in area, function or value. Proposed development and new land uses within a :WP may be restricted. The Director (Planning or Environmental Services) may authorize variable EBA widths as per General Plan 2020 Policy RC-3c to accommodate unique site conditions as long as the total EBA area is greater than the area under a fixed EBA width (ex. 100' x 100' = 10,000 sq. ft. is the minimum EBA area). Each :WP shall have the following dimensions, all measured perpendicular to the wetland boundary as defined in Article 10 (Glossary).
1. **Existing developed areas.** In areas where existing development as defined in Article 10 (Glossary) is adjacent to a wetland that has been delineated in compliance with Section 9.59.040, the EBA shall extend a minimum of 50 feet upland of the wetland boundary.
  2. **Undeveloped areas.** In all other locations within the City, the EBA shall extend a minimum of 100 feet upland of the wetland boundary.
  3. **Artificial wetlands.** The EBA may range from zero to 50 feet for Stormwater Best Management Practices such as detention basins and treatment wetlands.
- B. Allowable uses and activities within :WP shall sustain biological productivity (PRC 30230), protect against any significant disruption of habitat values (PRC 30240), and shall maintain or enhance functional capacity (PRC 30233). Allowable land uses and activities within a :WP shall be limited to the following items enumerated below, in compliance with all other applicable requirements of Chapter 9.59 and the General Plan policies RC-1 and RC-3. Any proposed land use, development, or removal of vegetation that is not listed below shall be prohibited.
1. ESHA restoration or enhancement projects;
  2. Agricultural uses (including community gardens) determined compatible with maintenance of wetland resources and consistent with Resource Conservation Element policy RC-3I shall not exceed 50 percent of the setback area and not within 25 feet of the delineated wetland boundary;
  3. Fencing along :WP boundaries to prevent degradation of wetlands by livestock;
  4. Maintenance of existing roads, driveways, and structures;
  5. Construction and maintenance of foot trails for public access on public lands;
  6. Maintenance of drainage ditches when compatible with wetland function;
  7. Minor modification of existing, serviceable structures; and

8. Construction of new detention basins shall not exceed 50 percent of the setback area and not within 25 feet of the delineated wetland boundary.
  9. Exceptions. If restriction(s) in this Subsection would result in an undeveloped legal parcel, not on Public Trust lands, created prior to the effective date of General Plan 2020, being made unusable in its entirety for any use allowed by the General Plan and this Land Use Code, exceptions to that restriction(s) may be granted through Use Permit approval to allow a reasonable economic use of the parcel, provided that there is no feasible less environmentally damaging alternative, and feasible mitigation measures have been provided to minimize adverse environmental effects (PRC 30233) of the proposed use.
- C. Mitigation measures. Appropriate mitigation measures shall be determined during the applicable discretionary review process, except that the Zoning Administrator shall determine appropriate mitigation measures in the event a discretionary review process does not apply.
1. "Net loss." Mitigation measures must result in "no net loss" in area and value of wetlands, at a replacement ratio of from 1:1 to 10:1 as determined by the review authority. Mitigation may consist of creating and maintaining a new wetland of equal or greater biological function and value than the wetland proposed to be filled, restoration of previously degraded wetlands, or enhancement of existing wetland areas. Off site wetland mitigation shall require a higher replacement ratio. For the sole purpose of restoration or enhancement projects, no net loss of area may be acceptable if a net benefit and function in value is achieved at the discretion of Environmental Services.
  2. Minimum mitigation requirements. Diking, filling or dredging of a wetland that is otherwise in compliance with this Chapter, shall, at a minimum, require mitigation measures, a monitoring program, and adequate funding.
  3. Ongoing stewardship. Dedication of the land identified in the site plan to a public agency, purchase, or other stewardship method which permanently restricts the use of the site to habitat and open space purposes, shall be required. The site shall be dedicated, purchased, or other stewardship agreed upon, and mitigation agreed upon, and mitigation funding shall be provided, prior to any permitted diking or filling.

**9.59.070 - Project Review Procedures**

All development that may affect an ESHA shall be reviewed in compliance with Sections 9.59.020 "Applicability" and 9.59.040 "Application Requirements" as well as the following procedures, in addition to the other procedures required by this Land Use Code for any required discretionary permit.

- A. Initiation.** Upon receiving an application for an action subject to discretionary approval, the Zoning Administrator shall determine whether a Biological Assessment is required based on the location of the proposed action with respect to an ESHA.
1. For development outside the Coastal Zone and not requiring any permits other than Building Permits, this determination shall comply with Section 9.72.100 (Zoning Clearance).
  2. For development within the Coastal Zone, the determination shall occur as part of Coastal Development Permit approval in compliance with Section 9.72.030 (Coastal Development Permits), or in compliance with Section 9.72.100 (Zoning Clearance) if no Coastal Development Permit is required.
- B. Consultation.** Prior to approval of an action subject of discretionary review that has the potential to affect an ESHA; the Department shall refer the Biological Assessment to and consult with the following:
1. Environmental Services Department Director.
  2. California Coastal Commission (CCC), California Department of Fish and Game (CDFG), North Coast Regional Water Quality Control Board (NCRWQCB), U.S. Army Corps of Engineers (USACOE), U.S. Fish and Wildlife Service (USFWS), National Oceanic Atmospheric Administration (NOAA), or the National Resource Conservation Service (NRCS) as applicable and other affected agencies for review and comment.
  3. The City's Wetlands and Creeks Committee or its equivalent;
  4. The City shall ask the CCC, CDFG, and NCRWQCB, to review the proposed project's Biological Assessment and to recommend, within 21 days of the request, measures to mitigate ESHA disturbances. This time period may overlap with the environmental review process.
- C. Conditions of Approval.** The Department shall immediately forward any comments and recommendations to the applicant for their response.
1. A decision by the review authority concerning the boundary, location, current status (function and value) to the ESHA in question, and the proposed project's potential impacts and required mitigation measures shall be based on the substantial evidence in the record and supported by written findings of compliance with Chapter 9.59 of this Code and the General Plan Resource Conservation Element.
  2. The Department shall recommend an appropriate bond amount to ensure that the mitigation measures and monitoring are successfully carried out, or in the case of default the City will be able contract for their completion.

**9.59.080 - Conservation Easements**

The dedication of a conservation easement, or equivalent deed restriction, encompassing the area within an :SP or :WP, shall be required as a condition of approval of any discretionary planning permit, including Design Review, when any portion of the project site falls within an :SP or :WP. The easement may be conveyed to the City, to another governmental agency which shall manage the easement to protect the ESHA's functions, biological productivity, and values or to an appropriate non-profit entity approved by the review authority.

**9.59.090 - Findings Required for Project Approval**

Discretionary approval for a project affecting an ESHA shall require that the review authority first make the following findings in addition to any other applicable findings required by this Land Use Code.

- A. The proposed land use or development is in compliance with the policies of the General Plan, Local Coastal Program and regulations in the Land Use Code.
- B. The proposed land use or development will not impair the ecological balance, ecosystem function, biological productivity, and values of the ESHA.
  - 1. The proposed land use or development will not degrade the structure, composition, function or natural processes of ESHA to a level below that which occurs in the least-disturbed natural ecosystems in the City's Planning Area;
  - 2. The proposed land use or development has incorporated the ESHA into its site design and does not pose any significant adverse impacts to these resources.
  - 3. The EBA adopted is sufficient in width to maintain the structure, composition, function and natural processes of the affected ESHA.
  - 4. Where applicable, the development is a habitat enhancement project.
- C. The proposed land use or development is being approved, because there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects and that any affected ESHA shall be maintained, enhanced, and where feasible restored.

**9.59.100 - Notice of Protection Combining Zone Overlay**

Prior to the effective date of the discretionary approval for a project involving a ESHA, and prior to any action prerequisite to proceeding with a development, the applicant shall cause to be recorded, with the Humboldt County Recorder's Office, a notice declaring the presence of the :SP or :WP combining Zone as applicable on the property. The notice shall be in a form prescribed by the City and shall contain information regarding the location and nature of the :SP or :WP combining Zone overlay, and any applicable restrictions. The notice shall be recorded at the expense of the applicant.

