

## Chapter 216 CC Coastal Conservation District

(3326-5/96, 3833-7/09, 3903-12/10 must be certified by the California Coastal Commission)

### Sections:

216.02	Purpose
216.04	Definitions
216.06	Designation of the Project Area
216.08	Permitted Uses and Structures
216.10	Economically Viable Use Determination
216.12	Prohibited Principal Uses and Structures
216.14	Required Permits/Agreements
216.16	Required Consideration of Alternatives
216.18	Performance Standards
216.20	Required Findings

### 216.02 Purpose

The purpose of the CC Coastal Conservation District is to implement the General Plan and Local Coastal Program land use designation of Open Space: Conservation; and provide for the protection, maintenance, restoration and enhancement of wetlands and environmentally sensitive habitat areas located within the Coastal Zone while allowing for appropriate utilization to occur. (3326-5/96, 3833-7/09)

The CC District specifies permitted uses within areas with a CC zoning designation, consistent with the California Coastal Act of 1976 (Division 20 of the Public Resources Code), the General Plan and the Local Coastal Program Land Use Plan. (3833-7/09)

The application of the CC District is not intended to authorize, and shall not be construed as authorizing the City of Huntington Beach to exercise its power in a manner which will take or damage private property for public use. This zoning ordinance is not intended to increase or decrease the rights of any owner of property under the constitution of the State of California or the United States. (3326-5/96)

### 216.04 Definitions

- A. Energy Facility. Any public or private processing, producing, generating, storing, transmitting, or recovering facility for electricity, natural gas, petroleum, coal, or other source of energy. (3326-5/96)
- B. Environmentally Sensitive (Habitat) Area. A wetland or any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. (3326-5/96)

- C. Feasible. Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, social, and technological factors. (3326-5/96)
- D. Functional Capacity. The ability of an environmentally sensitive area to be self-sustaining and to maintain natural species diversity. (3326-5/96)
- E. Significant Disruption. Having a substantial adverse effect upon the functional capacity. (3326-5/96)
- F. Wetland. Lands within the Coastal Zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats and fens (3326-5/96)
- G. Coastal-dependent Development or Use. Any development or use which requires a site on, or adjacent to, the sea to be able to function at all. (3326-5/96)
- H. Resource Protection Area. Any area that consists of any of the following: wetlands, Environmentally Sensitive Habitat Areas, buffer areas (as these terms are defined in the Glossary of the City's certified Land Use Plan) and/or land that is zoned Coastal Conservation.  
(3833-7/09, 3903-12/10 must be certified by the California Coastal Commission)

**216.06 Designation of the Project Area**

Development or subdivision of any parcel in whole or in part within the CC District shall be permitted only pursuant to an overall development plan for the entirety of all parcels that are geographically contiguous and in common ownership at the time of application. For purposes of determining common ownership pursuant to this Chapter, parcels which are owned in fee, as well as parcels subject to existing purchase options, shall be treated as commonly owned. Consistent with Government Code Section 66424, property shall be considered as contiguous pursuant to this Chapter even if separated by roads, streets, utility easements or railroad rights-of-way. (3326-5/96)

**216.08 Permitted Uses and Structures**

- A. The following principal uses and structures shall be permitted in the CC District where no feasible, less environmentally damaging alternative exists and where feasible mitigation measures have been provided and are subject to issuance of a conditional use permit by the Zoning Administrator. Said permit shall insure that the uses are developed in a manner compatible with the purpose of this District. Such permitted uses are: (3326-5/96)
  - 1. Incidental public service projects such as, but not limited to, burying cables and pipes. (3326-5/96)
  - 2. Maintenance of existing streets and utility structures. (3326-5/96)
- B. The extension of Hamilton Avenue shall be permitted between Beach Boulevard and Newland Street. The precise alignment of Hamilton Avenue shall not be approved without documentation that the least environmentally

damaging feasible alternative is the chosen alternative. Before the precise alignment of Hamilton Avenue can be approved, an environmental impact report shall be certified which addresses the alternative alignments for Hamilton Avenue and the mitigation needs generated from each alternative. The alternatives analysis shall include, at a minimum, the following:

1. Placing the roadway in an alignment which is most protective of wetland habitats, including the construction of the road on pilings or bridging the road over the wetlands, and
2. Limiting the width of the roadway by narrowing lanes and eliminating shoulders, and
3. Requiring full mitigation for any impacted wetlands.

No net loss of wetland shall occur. Any wetland which is filled or reduced in productivity by the project will be replaced by restoring otherwise degraded or non-functioning wetland as close as feasible to the project site. (3326-5/96)

- C. The following uses and structures may be permitted in the CC District subject to Planning Commission approval of a conditional use permit where there is no feasible less environmentally damaging alternative and where feasible mitigation measures have been provided. (3326-5/96)

1. New or expanded energy and coastal-dependent industrial facilities where no feasible, less environmentally damaging alternative exists and where consistent with the study titled *Designation of Coastal Zone Areas Where Construction of an Electric Power Plant Would Prevent Achievement of the Objectives of the California Coastal Act of 1976* (re-adopted by the California Coastal Commission December 1985). (3326-5/96)
2. Diking, dredging and filling which are necessary for the protection, maintenance, restoration or enhancement of the environmentally sensitive habitat area's functional capacity. (3326-5/96)
3. Flood Control Facilities.
  - a. Maintenance of existing modified flood control facilities where the primary purpose is to maintain existing flood control capacity and where such maintenance is necessary for public safety or to protect existing development where there is no other feasible method for protecting structures in the flood plain. No maintenance activities shall be permitted which have the effect of draining wetlands. (3326-5/96)

Maintenance activities may include: Maintenance dredging of less than 100,000 cubic yards within a 12 month period; lining of existing in-place artificial channels; increasing the height of existing levees; or changes in the cross section of the interior channel to accommodate the design capacity of existing channels when no widening of the top dimensions or widening of the outer levees is required. (3326-5/96)

- b. Only in conjunction with restoration plans, new flood control facilities where necessary for public safety and to protect existing development where there is no other feasible method for protecting structures in the flood plain. (3326-5/96)
- 4. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas. (3326-5/96)
- 5. Pedestrian trails and observation platforms for passive nature study; i.e., bird watching and the study of flora and fauna native to the site. Such uses may be located within an environmentally sensitive habitat area provided that said use(s) are immediately adjacent to the area's peripheral edge. (3326-5/96)
- 6. Maintaining existing, or restoring previously dredged depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps. (3326-5/96)
- 7. Nature study, aquaculture, or similar resource dependent activities. (3326-5/96, 3833-7/09)
- 8. Habitat restoration projects. (3326-5/96, 3833-7/09)
- 9. For the portion of any parcel which is not designated Conservation under the certified land use plan, any use authorized by and in conformance with the CV District. (3326-5/96, 3833-7/09)
- 10. In addition to the above uses, coastal dependent industrial facilities shall also be allowed even where inconsistent with other provisions of the certified Local Coastal Program if: (3326-5/96, 3833-7/09)
  - a. To locate elsewhere is infeasible or causes greater environmental damage and, (3326-5/96)
  - b. To do otherwise would adversely affect the public welfare and, (3326-5/96)
  - c. Adverse environmental effects are mitigated to the maximum extent feasible and (3326-5/96)
  - d. Where findings consistent with Section 216.20 can be made. (3326-5/96)
- D. Permitted uses, development requirements and restrictions applicable to development within Subarea 4K as depicted in Figures C-6a and C-10 of the Coastal Element Land Use Plan are provided in the Coastal Element Land Use Plan, Table C-2. Subdivision design and development within Subarea 4K shall incorporate the information from the plans and studies required in Table C-2 for development of that Subarea. If there is a conflict between the requirements and restrictions of Table C-2 and other provisions of the Zoning and Subdivision Ordinance, the requirements and restrictions included in Table C-2 shall prevail. (3833-7/09)

## **216.10 Economically Viable Use Determination.**

- A. Any applicant that proposes a use other than one permitted in the CC District based on the contention that the uses permitted in this district will not provide an economically viable use of his or her property shall apply for an economic viability determination in conjunction with their coastal development permit application. The application for an economic viability determination shall include the entirety of all parcels that are geographically contiguous and held by the applicant in common ownership at the time of the application. Before any application for a coastal development permit and economic viability determination is accepted for processing, the applicant shall provide the following information: (3326-5/96)
1. The date the applicant purchased or otherwise acquired the property, and from whom. (3326-5/96)
  2. The purchase price paid by the applicant for the property. (3326-5/96)
  3. The fair market value of the property at the time the applicant acquired it, describing the basis upon which the fair market value is derived, including any appraisals done at the time. (3326-5/96)
  4. The general plan, zoning or similar land use designations applicable to the property at the time the applicant acquired it, as well as any changes to these designations that occurred after acquisition. (3326-5/96)
  5. Any development restrictions or other restrictions on use, other than government regulatory restrictions described in subsection 4 above, that applied to the property at the time the applicant acquired it, or which have been imposed after acquisition. (3326-5/96)
  6. Any change in the size of the property since the time the applicant acquired it, including a discussion of the nature of the change, the circumstances and the relevant dates. (3326-5/96)
  7. A discussion of whether the applicant has sold or leased a portion of, or interest in, the property since the time of purchase, indicating the relevant dates, sales prices, rents, and nature of the portion or interests in the property that were sold or leased. (3326-5/96)
  8. Any title reports, litigation guarantees or similar documents in connection with all or a portion of the property of which the applicant is aware. (3326-5/96)
  9. Any offers to buy all or a portion of the property which the applicant solicited or received, including the approximate date of the offer and offered price. (3326-5/96)
  10. The applicant's costs associated with the ownership of the property, annualized for each of the last five (5) calendar years, including property taxes, property assessments, debt service costs (such as mortgage and interest costs), and operation and management costs. (3326-5/96)

11. Apart from any rent received from the leasing of all or a portion of the property, any income generated by the use of all or a portion of the property over the last five (5) calendar years. If there is any such income to report it should be listed on an annualized basis along with a description of the uses that generate or has generated such income.

(3326-5/96)

- B. The decision-making authority shall hold a public hearing on any application for an economically viable use determination. Prior to approving a coastal development permit for a use other than one provided for in the CC District, the decision-making authority shall make the following findings: (3326-5/96)
  1. Based on the economic information provided by the applicant, as well as any other relevant evidence, each use provided for in the CC District would not provide an economically viable use of the applicant's property. (3326-5/96)
  2. Restricting the use of the applicant's property to the uses provided for in the CC District would interfere with the applicant's reasonable investment-backed expectations. (3326-5/96)

The findings adopted by the decision-making authority shall identify the evidence supporting the findings. (3326-5/96)

- C. Where the decision-making authority finds that the uses provided for in the CC District would not provide an economically viable use, and that restricting the use of the applicant's property to these uses would interfere with their reasonable investment backed expectations, the uses provided for in the visitor serving commercial zoning district may be allowed as a conditional use and in the area located west of Newland Street and north of the Orange County Flood Channel only, the uses provided for in the IL Limited Industrial District may be allowed as a conditional use. A specific development proposal for a visitor serving commercial use or limited industrial use, may be denied, however, if a feasible less environmentally damaging visitor serving commercial or limited industrial alternative also would provide the applicant with an economically viable use. In addition to the other Performance Standards of Section 216.18 applicable to projects in the CC District, such a visitor serving commercial or limited industrial use shall be subject to the following development standards:

(3326-5/96)

1. The area in which visitor serving commercial or limited industrial uses shall be permitted shall be the minimum amount necessary to provide the applicant with an economically viable use of his or her property. (3326-5/96)
2. The portion of the project involving visitor serving commercial or limited industrial uses shall also be subject to the standards of the CV District or the IL District. (3326-5/96)
3. Access through wetlands or environmentally sensitive habitat areas to an area proposed for visitor serving commercial or limited industrial uses shall only be allowed if necessary to provide an economically viable use of the overall development plan area. (3326-5/96)

## **216.12 Prohibited Principal Uses and Structures**

Any principal use or structure not expressly permitted is prohibited herein. (3326-5/96)

## **216.14 Required Permits/Agreements**

Before the application can be considered complete, the project shall receive the following state and federal regulatory permits/agreements or a statement from the regulatory body that said permit/agreement is inapplicable. The required regulatory permits/agreements shall be forwarded to the Director prior to the submittal of said project to a decision making body. (3326-5/96)

- A. United States Army Corps of Engineers Section 404 and Section 10 permits;  
(3326-5/96)
- B. California Department of Fish and Game 1601 - 1603 agreements; (3326-5/96)
- C. State Water Resource Control Board (permit depends on the operation);  
(3326-5/96)
- D. Regional Water Quality Control Board (permit depends on the operation);  
(3326-5/96)
- E. A permit from the California State Lands Commission may also be required.  
(3326-5/96)

## **216.16 Required Consideration of Alternatives**

Before any application is accepted for processing, the applicant shall provide topographic, vegetative, hydrologic and soil information prepared by a qualified professional which identifies the extent of the wetlands on the property. This submittal shall also include an analysis of alternatives to the proposed project and an assessment of how the proposed project is the least environmentally damaging alternative. The analysis of alternatives shall include an assessment of how the proposed project will impact all adjacent wetlands and environmentally sensitive habitat areas, including those within the overall development plan area. (3326-5/96)

## **216.18 Performance Standards**

Before the coastal development permit can be issued, the project shall comply with the following standards to the satisfaction of the Director: (3326-5/96)

- A. Wetlands and environmentally sensitive habitat areas that are designated for preservation after a permit hearing granting project approval on the property shall be preserved through a conservation easement, deed restriction or other similar mechanism consistent with Public Resources Code Section 30010. Such easements or restrictions need not authorize any public right of access or use. Exclusive use and possession of the area may remain with the applicant.  
(3326-5/96)

1. All feasible mitigation measures shall be incorporated into projects to minimize adverse environmental effects. (3326-5/96)
  - a. If the project involves dredging, mitigation measures must include the following: (3326-5/96)
    - (1) Dredging and spoils disposal must be planned and carried out to avoid significant disruption to wetland habitats and to water circulation; (3326-5/96)
    - (2) Limitations may be imposed on the timing of the operation, the type of operation, the quantity of dredged material removed, and the location of the spoil site; (3326-5/96)
    - (3) Dredge spoils suitable for beach replenishment shall, where feasible, be transported to appropriate beaches or into suitable longshore current systems; (3326-5/96)
    - (4) Other mitigation measures may include opening up areas to tidal action, removing dikes, improving tidal flushing, or other restoration measures. (3326-5/96)
  - b. If the project involves diking or filling of a wetland, the following minimum mitigation measures shall apply. These mitigation measures shall not be required for temporary or short-term fill or diking if a bond or other evidence of financial responsibility is provided to assure that restoration will be accomplished in the shortest feasible time. (3326-5/96)
    - (1) If an appropriate restoration site is available, the applicant shall submit a detailed restoration plan to the Director which includes provisions for purchase and restoration of an equivalent area of equal or greater biological productivity and dedication of the land to a public agency or otherwise permanently restricting its use for open space purposes. The site shall be purchased before the dike or fill development may proceed. (3326-5/96)
    - (2) The applicant may, in some cases, be permitted to open equivalent areas to tidal action or provide other sources of surface water. This method of mitigation is appropriate if the applicant already owns filled, diked areas which themselves are not environmentally sensitive habitat areas but may become so, if such areas were opened to tidal action or provided with other sources of surface water. (3326-5/96)
    - (3) If no appropriate restoration sites under options (1) and (2) are available, the applicant shall pay an in-lieu fee, determined by the City Council, which shall be of sufficient value to an appropriate public agency for the purchase and restoration of an area of equivalent productive value, or equivalent surface area. (3326-5/96)

- c. The third option above shall be allowed only if the applicant is unable to find a willing seller of a potential restoration site. Since the public agency may also face difficulties in acquiring appropriate sites, the in-lieu fee shall reflect the additional costs of acquisition, including litigation and attorney's fees, as well as the cost of restoration, relocation and other costs. If the public agency's restoration project is not already approved by the Coastal Commission, the public agency may need to be a co-applicant for a coastal development permit to provide adequate assurance that conditions can be imposed to assure that the purchase of the mitigation site shall occur prior to the issuance of the permit. In addition, such restoration shall occur in the same general region (e.g., within the same stream, lake, or estuary where the fill occurred). (3326-5/96)
2. Any areas where vegetation is temporarily removed shall be replanted with a native or non-invasive species in a quantity and quality equal to the vegetation removed. (3326-5/96, 3903-12/10 must be certified by the California Coastal Commission)
3. Pedestrian trails, observation platforms and other incidental structures shall be designed to reduce disturbance of wildlife and vegetation; examples of improvements so designed would be elevated walkways and viewing platforms, and vegetative and structural barriers to decrease disturbances from permitted uses and inhibit internal access. (3326-5/96)
4. Passive nature study uses shall include a program to control litter; examples include litter containers and "no littering" signs posted in the project area. (3326-5/96)
5. Environmentally sensitive habitat areas shall be restored and enhanced to lessen the risk of flood damage to adjacent properties. (3326-5/96)
6. Any construction, alteration or other improvement shall generally be carried out between September 15 and April 15 to avoid disturbing rare, threatened, or endangered species which utilize the area for nesting. This requirement shall not apply if it can be demonstrated to the satisfaction of the Director that no such disturbance would occur, in which case construction shall be timed to cause the least disturbance to wetland dependent species; e.g., migratory waterfowl and shorebirds. (3326-5/96)
7. Construction/maintenance activities shall be carried out in areas of minimal size. Preconstruction topography shall be restored subsequent to the conclusion of the project unless such topography is to be altered to conform with an approved restoration project. (3326-5/96)
8. A Habitat Management Plan shall be prepared and carried out for all ESHA, wetland and buffer areas and provide for restoration, enhancement, and perpetual conservation and management. Issues to be addressed include, but are not limited to, methods to assure continuance of a water source to feed all wetland areas, enhancement of habitats and required buffer areas, restoration and enhancement of wetlands and environmentally sensitive habitats and required buffer areas, and fuel

modification requirements to address fire hazard and avoid disruption of habitat values in buffers. (3833-7/09)

The Habitat Management Plan shall identify goals, objectives and performance standards; procedures and technical specifications for wetland and upland planting; methodology and specifications for removal of exotic species; soil engineering and soil amendment criteria; identification of plant species and density; maintenance measures and schedules; temporary irrigation measures; protective fencing both during construction and post-construction; restoration success criteria; measures to be implemented if success criteria are not met; and long-term adaptive management of the restored areas for a period of not less than 10 years.

(3833-7/09)

9. Protective fencing or barriers shall be installed along any interface with developed areas, to deter human and pet entrance into all restored and preserved wetland and ESHA buffer areas; however, access to designated passive public recreational use areas shall be protected and visual impact of any barriers from open space areas shall be minimized. (3833-7/09)
  10. Conservation easements (or other instruments) that serve to permanently protect the restored areas shall be recorded. (3833-7/09)
- B. The applicant shall demonstrate that the functional capacity is maintained or augmented through the criteria set out below unless relieved of any one or more of these requirements by the California Department of Fish and Game, and that the project does not significantly: (3326-5/96)
1. Alter existing plant and animal populations in a manner that would impair the long-term stability of the ecosystem; i.e., natural species diversity, abundance and composition are essentially unchanged as a result of the project; (3326-5/96)
  2. Harm or destroy a species or habitat that is rare or endangered; (3326-5/96)
  3. Harm a species or habitat that is essential to the natural biological function of a wetland or estuary; (3326-5/96)
  4. Reduce consumptive (e.g., fishing, aquaculture and hunting) or nonconsumptive (e.g., water quality and research opportunity) values of a wetland or estuarian ecosystem. (3326-5/96)
- C. If the proposed project involves restoration of a degraded wetland, the applicant shall comply with California Public Resources Code Sections 30411 and 30233 to the satisfaction of the Director. (3326-5/96)
- D. Any areas that constituted wetlands or ESHA that are removed, altered, filled or degraded as the result of activities carried out without compliance with Coastal Act requirements shall be protected as required by the City's Coastal Element Land Use Plan. (3833-7/09)

## 216.20 Required Findings

It is the intent of this section to ensure an environment which is suitable for the self-perpetuation of environmentally sensitive habitat areas. (3326-5/96)

- A. Prior to energy production facilities being approved, the approving authority shall make the following finding with statement of facts: (3326-5/96)
  - 1. Provision has been made for enhancement of a significant portion of the project area, to ensure preservation of plant and wildlife species. (3326-5/96)
  
- B. Prior to coastal dependent industrial facilities being approved, the approving authority shall make the following findings with statement of facts: (3326-5/96)
  - 1. Alternative locations are infeasible or more environmentally damaging. (3326-5/96)
  - 2. To locate the construction or expansion elsewhere would adversely affect the public welfare. (3326-5/96)
  - 3. Adverse environmental effects are mitigated to the maximum extent feasible consistent with Section 216.18. (3326-5/96)
  - 4. Siting is consistent with the study titled *Designation of Coastal Zone Areas Where Construction of an Electric Power Plant Would Prevent Achievement of the Objectives of the California Coastal Act of 1976* (re-adopted by the California Coastal Commission December 1985). (3326-5/96)
  - 5. For expansion of the Southern California Edison Plant within the area designated Industrial Energy Production/Conservation only: (3326-5/96)
    - a. Not less than two and one-half (2 1/2) acres of wetlands southeasterly of Magnolia Street are permanently protected by conservation easements, dedications or other similar mechanisms for each acre of wetlands filled, and a program acceptable to the Department of Fish and Game is implemented to assure long term habitat enhancement or restoration of these protected wetlands. Vehicular access shall be prohibited in the wetland mitigation area protected by conservation easement or similar mechanism, and (3326-5/96)
    - b. The infeasibility of expanding inland to the area known as the Rotary Mud Dump site (also known as the Ascon Landfill/NESI site), or other inland location, unless the Energy Commission has determined such expansion infeasible during or before the Notice of Intention proceedings. (3326-5/96)
  
- C. For any other project the applicant shall establish and the approving authority shall find that the functional capacity of the environmentally sensitive habitat area is being maintained. (3326-5/96)