

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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5-15-1427-REV (CALIFORNIA DEPT. OF FISH & WILDLIFE)

AUGUST 12, 2017

EXHIBITS

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JUN 27 2017



Ballona Wetlands Land Trust

CALIFORNIA
COASTAL COMMISSION

June 27, 2017

To: California Coastal Commission and Commission Staff

Re: Request for Revocation of Coastal Development Permit No. 5-15-1427

PURPOSE

Under Coastal Development Permit ("CDP") No. 5-15-1427, the Bay Foundation ("applicant") removed invasive Iceplant from approximately .88 acres within the Ballona Wetlands Ecological Reserve. Due to inadequate public discussion, inadequate contingency planning, and detrimental special conditions attached to the CDP, the project area is now largely overrun by non-native-invasive vegetation, including returning Iceplant, castor bean, euphorbia terracina and many other harmful species. This undesirable outcome will now require a substantial investment of limited resources to correct.

The purpose of this revocation request is to avoid a similar outcome for additional acreage remaining under the CDP by facilitating a more substantive public discussion, better contingency planning, and more appropriate special conditions. The purpose of this request is not to prevent further maintenance of the already impacted .88 acres or to prevent future removal of Iceplant or other invasive species from the ecological pursuant to more carefully considered management plans. Since the Land Trust cannot directly request amendments to the current CDP, a revocation request is the only mechanism available for achieving the Land Trust's goal of improved public discussion and planning. The Land Trust has outlined a modest set of project conditions, attached separately, that it hopes the applicant will adopt voluntarily or that the Commission will impose on the applicant. These conditions reflect basic project management principles, such as the creation of a multi-year, species specific management plan, budgetary estimates, more timely publishing of monitoring data, etc. Another of the conditions is to cap the amount of remaining acreage to be impacted until the currently impacted areas yield a greater degree of native habitat.

SUMMARY

On March 10, 2016 the Coastal Commission CDP No. 5-15-1427 by a narrow 6 – 4 vote. The applicant intentionally neglected to share highly relevant information with the Commission at the time of the hearing that would have almost certainly led to a different outcome, such as requiring different conditions for the CDP. These omissions constitute grounds for revocation of the CDP pursuant to Section 13105, paragraph (a) of Title 14 of the California Code of Regulations ("CCR"), which authorizes the Commission to a revoke a permit based on the "Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application."

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The applicant also neglected to ensure that known stakeholders of the Ballona Wetlands were notified of the CDP application, depriving those stakeholders of adequate time to review the application and prepare informed comments at the March 10, 2016 hearing. This is further grounds for revocation of the CDP pursuant to Section 13105, paragraph (b) of Title 14 of the CCR, which authorizes the Commission to revoke a permit based on the "[f]ailure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the commission and could have caused the commission to require additional or different conditions on a permit or deny an application." The notice provisions of section 13054 require, in part, that "the applicant shall provide the commission with a list of ... the names and addresses of all persons known to the applicant to be interested in the application, including those persons who testified at or submitted written comments for the local hearing(s)."

The failure of the applicant to share important information with the Commission and its failure to proactively notify known stakeholders about its proposed project contributed directly to an undesirable project outcome. The applicant's more recent request to amend the CDP, and this revocation request, provide the Commission with an opportunity to remedy these shortcomings and increase the likelihood of a beneficial project outcome on the public's behalf.

INTENTIONAL OMISSION OF INFORMATION (primary grounds for revocation)

In noting applicant's purposeful omission of important information in the application process, the Land Trust is not questioning the applicant's good intentions. The record shows that the applicant was convinced that its project was ecologically sound and was very eager to implement its project. The record also shows that the applicant was highly dismissive of any concerns raised about its project and felt that the Commission hearing was unnecessary. Accordingly, the applicant desired to prevent or minimize the Commission's exposure to information that could have caused further delay in approval and implementation of its funded project. This approach was very clearly demonstrated by the applicant's active solicitation of largely "cut and paste" letters of support, fifteen of which were included in the March 2016 Commission staff report, while making no similar effort to notify stakeholders that the applicant knew would have a strong interest in the project. Despite a wide range of stakeholder concerns about the project, no letters of concern were included in the Commission staff report.

While it is not unusual or untoward for a project applicant to seek to "stack the deck" in favor of approval of its project, such an approach creates grounds for revocation when it causes the Commission to base a decision on incomplete information, if more complete information would have resulted in a different decision, such as different conditions imposed on the project. That is clearly the case with the specific omissions outlined below.

2008 Iceplant Removal Project

At the March 10, 2016 hearing, three different Commission staff members cited a 2008 Iceplant removal project at the Ballona Wetlands that the applicant had led staff to believe had successfully eradicated Iceplant from the project site. This was a significant point made in support of approval of the CDP, but the applicant knew that no data or documentation existed to support that claim, which was later shown to be false and based on a faulty recollection of where in the Ballona Wetlands that project had actually been implemented.

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Had the Commission been made aware that no data or documentation had been offered in support of the 2008 project claims, it is highly likely that at least one Commissioner who voted to approve the project would have instead voted to continue the discussion until such time as more information was available on the 2008 project, as the Land Trust had requested, or to require additional or different conditions on the project.

Impact of Timing of Operations Restriction

The applicant's request for an amendment of the current CDP acknowledges that the Timing of Operations condition was unnecessarily restrictive and impeded the project. However, the applicant knew this to be true at the time of its application and prior to the CDP hearing, but neglected to make the Commission aware of this concern. The applicant has included a letter from the same ornithologist who wrote in support of the initial CDP which states that loosening the Timing of Operations condition would have no meaningful impact on breeding Belding's Savannah Sparrow's. This letter is based on surveys conducted in 2012 which could have, and should have been shared with the Commission in 2016. Likewise, applicant knew any restriction on spot removal of emergent invasive vegetation on the project site would prevent applicant from slowing the spread of such vegetation. The applicant should have communicated this knowledge to the Commission in 2016, but instead highlighted aspects of the project that applicant wrongly assumed would "minimize ... the likelihood of invasive annual vegetation germinating in the restored areas."

Had the applicant shared what it knew about the detrimental and unnecessarily restrictive nature of the Timing of Operations condition with the Commission in March 2016, it stands to reason that the Commission would have imposed a different Timing of Operations condition on the project. While simply granting the applicant's pending request for an amendment would rectify that particular issue, it would not cause the applicant to improve its contingency planning or public communications, which will likely result in additional unintended consequences in the future.

Risk of Invasive Species and Likelihood of Native Recruitment

The applicant neglected to share with the Commission data and scientific literature that would have illustrated the significant risk that new invasive species would take advantage of the Iceplant removal and that would have called into question the applicant's overly optimistic assertions regarding the natural recruitment of native species. For instance, the March 2016 Commission staff report made reference to "previous studies of the soils beneath the existing iceplant monoculture" which "demonstrate the presence of a native seed bank which will have a chance of growing once the iceplant is eliminated in these locations." There is no citation to these previous studies, but they are presumably the studies conducted by the applicant and published in the various baseline reports for the Ballona Wetlands. These seed bank studies appear to show wide variation between habitat types including the presence of numerous non-native species of vegetation, as illustrated in Figure 4.6 below.

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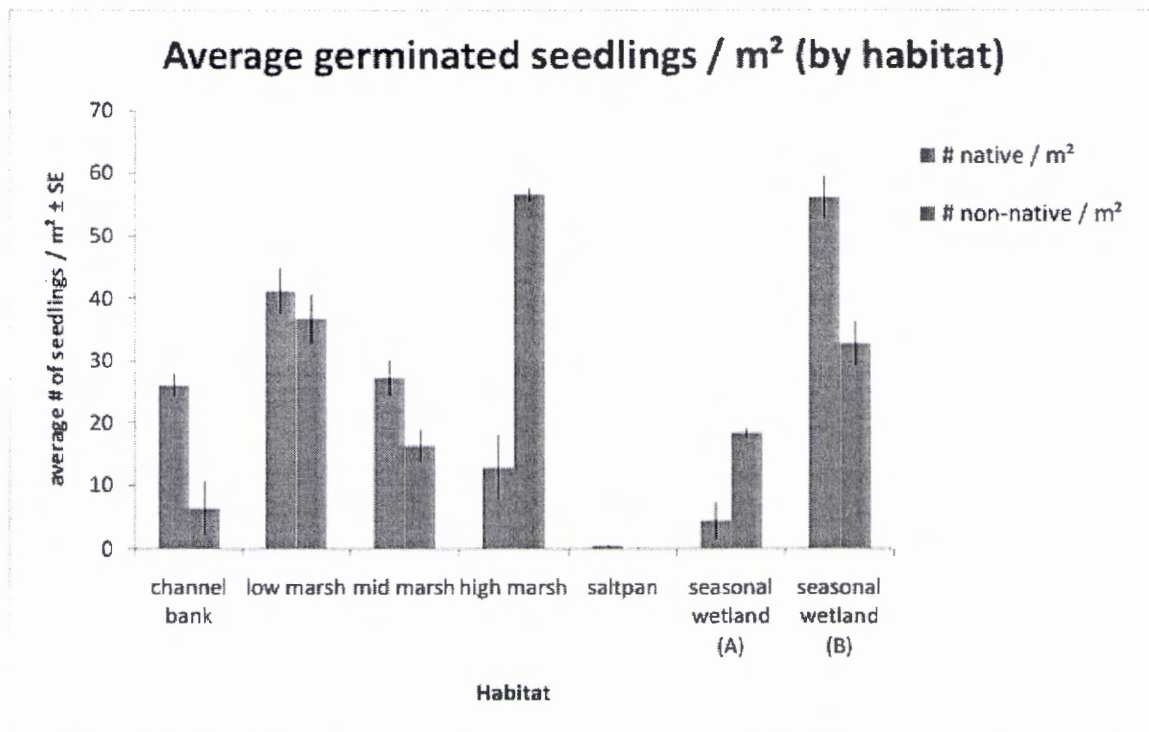


Figure 4.6. Number of germinated seedlings (\pm SE) averaged across each habitat.

Had the applicant presented the Commission with a more thorough and objective analysis of the risks of non-native invasion versus the likelihood of native species recruitment, it is highly likely that at least one Commissioner that voted to approve the CDP would have requested additional information and additional time for staff to weigh that information before granting approval, with the potential for different conditions being imposed on the project.

FAILURE TO NOTIFY STAKEHOLDERS (secondary grounds for revocation)

The applicant was well aware that numerous stakeholder groups would have a strong interest in its permit application, but neglected to inform the Commission about these stakeholder groups as required by 14 CCR 13054. While most, if not all of these groups ultimately learned of the application and expressed their views at the March 10, 2016 hearing, they were deprived of adequate time to analyze the application, research the available literature, ask and receive answers to questions, or conduct other types of basic due diligence. This failure to notify stakeholders in a timely manner contributed to important factors being overlooked in the public process.

CONCLUSION

Based on the facts outlines above, the Commission should give serious consideration to revoking the existing CDP and replacing or amending it in order to ensure a better project outcome on the public's behalf.

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South Coast Area Office
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**EXEMPTION LETTER**

Date: July 9, 2008
Reference Number:
Applicant Name: California Department of Fish and Game
Project Location: Western portion of Ballona Wetlands Area B, below Cabora Drive, Playa del Rey.
Project Description: Remove ice plant (*Carpobrotus edulis*) and other non-native plant species within an approximate area measuring 30' by 100' for preparation of a future test plot for planting of native species. Two methods will be employed for plant eradication: manual removal and solarization using plastic sheets. The biomass will be transported offsite to a municipal disposal site. The proposed work will be monitored by a restoration ecologist.

This is to certify that this location and/or proposed project has been reviewed by the staff of the Coastal Commission. A coastal development permit is not necessary for the reasons checked below:

___ The site is not located within the coastal zone as established by the California Coastal Act of 1976, as amended.

___ The proposed development is included in Categorical Exclusion No. _____ adopted by the California Coastal Commission.

___ The proposed development is judged to be repair or maintenance activity not resulting in an addition to or enlargement or expansion of the object of such activities and not involving any risk of substantial adverse environmental impact (Section 30610(d) of Coastal Act).

___ The proposed development is an improvement to an existing single family residence (Section 30610(a) of the Coastal Act) and not located in the area between the sea and the first public road or within 300 feet of the inland extent of any beach (whichever is greater) (Section 13250(b)(4) of 14 Cal. Admin. Code).

___ The proposed development is an improvement to an existing single family residence and is located in the area between the sea and the first public road or within 300 feet of the inland extent of any beach (whichever is greater) but is not a) an increase of 10% or more of internal floor area, b) an increase in height over 10%, or c) a significant non-attached structure (Sections 30610(d) of Coastal Act and Section 13250(b)(4) of Administrative Regulations).

___ The proposed development is an interior modification to an existing use with no change in the density or intensity of use (Section 30106 of Coastal Act).

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- _____ The proposed development involves the installation, testing and placement in service of a necessary utility connection between an existing service facility and development approved in accordance with coastal development permit requirements, pursuant to Coastal Act Section 30610(f).
- _____ The proposed development is an improvement to a structure other than a single family residence or public works facility and is not subject to a permit requirement (Section 13253 of Administrative Regulations).
- _____ The proposed development is the rebuilding of a structure, other than a public works facility, destroyed by natural disaster. The replacement conforms to all of the requirements of Coastal Act Section 30610(g).
- X Other: The activity is not development under the Coastal Act: The project will not impact wetlands and other sensitive areas and does not involve the removal of major vegetation, grading or landform alteration.

Please be advised that only the project described above is exempt from the permit requirements of the Coastal Act. Any change in the project may cause it to lose its exempt status. This certification is based on information provided by the recipient of this letter. If, at a later date, this information is found to be incorrect or incomplete, this letter will become invalid, and any development occurring at that time must cease until a coastal development permit is obtained.

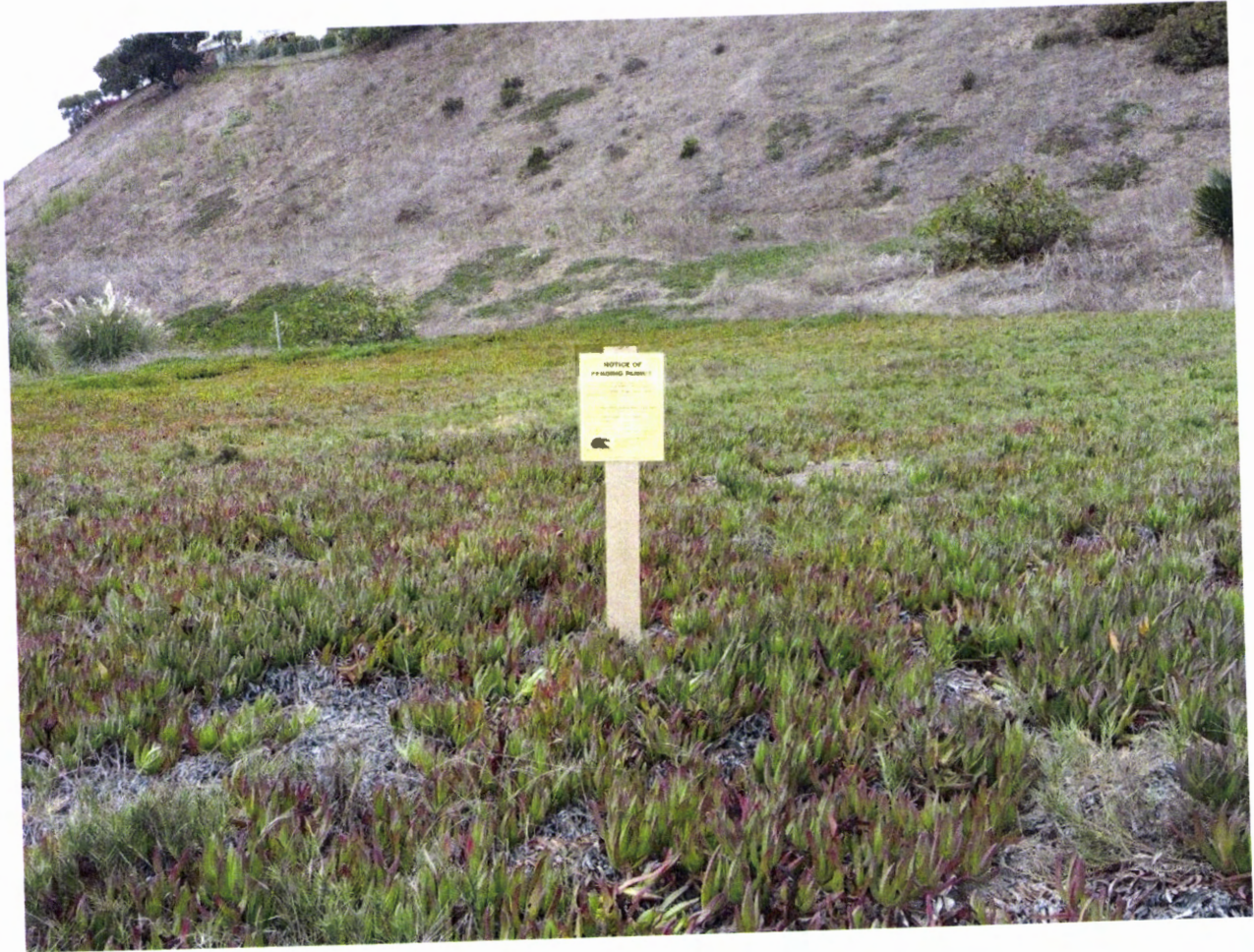
Sincerely,

PETER M. DOUGLAS
Executive Director

Al J. Padilla
Coastal Program Analyst

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SPECIAL CONDITIONS OF CDP 5-15-1427

This permit is granted subject to the following special conditions:

1. **Timing of Operations.** The project operations, including vegetation eradication and removal, hauling, annual maintenance and spot removal shall be prohibited from February 1 through August 30 to avoid impact to avian species during breeding season.

2. **Plan to Monitor the Disturbed Area and Remove Invasive Non-native Plants**

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant will submit, for the review and written approval of the Executive Director, a plan to monitor the area targeted for invasive removal. The plan shall include procedures for identification and removal of non-native invasive plants that may be found in the area. The plan shall be reviewed and approved by, the California Department of Fish and Game prior to being submitted to the Executive Director for review and approval. The plan shall include the following:

1. Vegetation planted on the site shall consist of native plants typically found in the Ballona Wetlands.
2. Invasive plants are those identified in the California Native Plant Society, Los Angeles -- Santa Monica Mountains Chapter handbook entitled Recommended List of Native Plants for Landscaping in the Santa Monica Mountains, January 20, 1992, those species listed by the California Invasive Plant Council on any of their watch lists as published in 2007, and those otherwise identified by the Department of Fish and Wildlife or the United States Fish and Wildlife Service. No non-native or invasive species shall be employed on the site.
3. All non-native invasive plants shall be removed with hand tools.
4. No herbicides or rodenticides shall be employed.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

C. Two years from the date of issuance of Coastal Development Permit No. 5-15-1427, the applicant shall submit for the review and approval of the Executive Director, a monitoring report, prepared by a licensed biologist or landscape architect with expertise in wetland restoration that indicates the progress of the natural revegetation of the impacted area. The monitoring report shall include photographic documentation of plant species, plant coverage and an evaluation of the natural restoration of the site.

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3. Disposal of Materials. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all material removed from the project site. All materials and debris shall be deposited at an approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive such material.

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