

**CALIFORNIA COASTAL COMMISSION**

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**F12a**

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**STAFF REPORT: REQUEST FOR REVOCATION**

**APPLICATION NUMBER:** 5-15-1427-REV

**APPLICANT:** California Department of Fish and Wildlife

**AGENT:** The Bay Foundation

**PROJECT LOCATION:** Ballona Wetlands Ecological Reserve, Area B South, Playa Del Rey, Los Angeles County

**PROJECT DESCRIPTION (Approved on March 10, 2016):** Removal of invasive iceplant from a 3 acre area within the Ballona Wetlands Ecological Reserve south of Culver Blvd., utilizing Solarization techniques over a two month time period. Project area to be restored through natural native species recruitment, and some container plantings if necessary.

**PERSON REQUESTING REVOCATION:** The Ballona Wetlands Land Trust

**SUMMARY OF ISSUES AND STAFF RECOMMENDATION**

Staff recommends that the Commission **deny** the request for revocation on the basis that no grounds exist for revocation under Section 13105 of the Commission's regulations.

PROCEDURAL NOTE: The California Code of Regulations, Title 14, Division 5.5, Section 13105 states that the grounds for the revocation of a coastal development permit (or permit amendment) are as follows:

Grounds for revocation of a permit shall be:

- a) 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;
- b) Failure 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 (14 Cal. Code of Regulations Section 13105).

### **REQUESTOR'S CONTENTIONS:**

The request for revocation contends that the grounds for revocation listed in Section 13105(a) exist because: 1) the applicant intentionally misled Commission staff that a 2008 iceplant removal project within the Ballona wetlands was successful, even though there was no data or documentation to support that claim; 2) the applicant knew that the timing of operations restriction of Special Condition No. 1 of the CDP was unnecessarily restrictive, which contributed to the applicant being unable to remove invasive vegetation in a timely fashion, and failed to inform the Commission of this alleged issue; and 3) the applicant neglected to share with the Commission scientific data illustrating the dominance of invasive species in the seedbank underlying the iceplant monoculture, which increased the likelihood of non-native invasion versus the likelihood of native species recruitment.

The request for revocation also contends that the grounds for revocation listed in Section 13105(b) exist because the applicant knew 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.

### **SUMMARY OF STAFF RECOMMENDATION**

The evidence does not demonstrate that the applicant intentionally omitted or submitted incomplete information in its permit application, much less that any failure to include complete and accurate information would have caused the Commission to act differently on the permit. Rather, the Commission had before it sufficient evidence on which to base its decision to approve the project, including evidence regarding the effectiveness of solarization in removing iceplant and the probability that non-native species would need to be controlled after the solarization was completed. Likewise, there is no evidence that there was a failure to provide adequate notice to interested parties, much less that any such failure caused the views of such parties to be left out of the discussion before the Commission. On the contrary, even the Ballona Wetlands Land Trust acknowledges that most, if not all, interested parties found out about the hearing and were able to express their views to the Commission at its hearing. Accordingly, there is no basis for revocation.

### **I. STAFF RECOMMENDATION ON REVOCATION**

The staff recommends that the Commission determine that no grounds exist for revocation.

**MOTION:** *I move that the Commission grant revocation of Coastal Development Permit No. 5-15-1427*

## **STAFF RECOMMENDATION**

The staff recommends a **NO** vote on the motion. Failure of this motion will result in denial of the request for revocation and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

## **RESOLUTION TO DENY REVOCATION:**

The Commission hereby denies the request for revocation of the Commission's approval of Coastal Development Permit No. 5-15-1427 on the grounds that:

- a) There was no intentional inclusion of inaccurate, erroneous or incomplete information in connection with the coastal development permit application which would have caused the Commission to require additional or different conditions on the permit or deny the application, and
- b) There was no failure 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 (14 Cal. Code of Regulations Section 13105).

## **II. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares as follows:

### **A. PROJECT DESCRIPTION AND BACKGROUND**

On March 10, 2016, the Commission approved, with conditions, Coastal Development Permit No. 5-15-1427 for the removal of non-native *Carpobrotus* spp., or iceplant, from a targeted 3-acre area within the Ballona Wetlands Ecological Reserve, south of Culver Boulevard in Playa Del Rey, in Los Angeles County. The project proposed to kill the invasive plant by using solarization of iceplant monocultures utilizing large black plastic tarps to eliminate radiant sunlight from reaching the iceplant while also heating it. The project area was to be restored through natural native species recruitment, and some container plantings if necessary. The Commission approved the project with three special conditions, which included: 1) timing of operations prohibiting vegetation eradication and removal, hauling, annual maintenance and spot removal from February 1 through August 30 to avoid impact to avian species during breeding season; 2) the submittal of a plan to monitor and remove invasive non-native plants from the project area; and 3) disposal of materials outside the coastal zone ([See Exhibit 4 for all special conditions](#)).

The permit conditions were satisfied, the permit was issued on July 14, 2016, and the first phase of restoration events was conducted from September 2, 2016 through November 30, 2016, which resulted in the removal of over 15 tons of iceplant from .88 acre of the project area. On April 4, 2017, the Bay Foundation (on behalf of the CDF&W), requested a permit amendment (CDP 5-15-1427-A1) to adjust the timing restriction condition of the underlying permit to allow year-round weed pulling to facilitate better management of invasive plant growth in the project area that has resulted from last winter's heavy

rains. The Bay Foundation plans to forgo solarizing this summer in order to focus on weed abatement, and will continue removing iceplant from the remaining two acres pursuant to the permit next summer.

**B. GROUNDS FOR REVOCATION**

Pursuant to Title 14 of the California Code of Regulations (“14 C.C.R. “) Section 13108(d), the Commission has the discretion to grant or deny a request to revoke a coastal development permit if it finds that either of the grounds listed in 14 C.C.R. Section 13105 (meaning all of the elements listed in either subsection of 13105) exist. 14 C.C.R. Section 13105 states, in part, that the grounds for revoking the permit shall be as follows: (a) that the permit application intentionally included inaccurate, erroneous, or incomplete information where accurate and complete information would have caused the Commission to act differently; or (b) that there was a failure 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 act differently.

The South Coast District office received a written request for revocation of the subject coastal development permit from Mr. Walter Lamb, representing the Ballona Wetlands Land Trust, on June 27, 2017 ([Exhibit 1](#)). The request for the revocation is based on both Section 13105 (a) and (b), discussed separately below.

**Coastal Act Section 13105(a): Intentional Inclusion of Inaccurate or Incomplete Information in CDP Application.**

Grounds for revocation in 13105(a) contain three essential elements or tests for the Commission to consider:

- a. Did the applicant include inaccurate, erroneous or incomplete information relative to the coastal development permit application?
- b. If the application included inaccurate, erroneous or incomplete information, was the inclusion *intentional* (emphasis added)?
- c. If the answer to a and b is yes, would accurate and complete information have caused the Commission to require additional or different conditions or deny the application?

The request for revocation asserts that: 1) the applicant intentionally misled Commission staff that a 2008 iceplant removal project conducted by the California Department of Fish and Wildlife was successful, even though there was no data or documentation to support that claim; 2) the applicant knew that the timing of operations restriction of Special Condition No. 1 of the CDP was unnecessarily restrictive, which contributed to the applicant being unable to remove invasive vegetation in a timely manner, and neglected to inform the Commission of this alleged issue; and 3) the applicant neglected to share with the Commission scientific data illustrating the dominance of invasive species in the seedbank underlying the iceplant monoculture, which increased the likelihood of non-native invasion versus the likelihood of native species recruitment.

1. Iceplant Removal Project of 2008

During Commission staff’s analysis of CDP No. 5-15-1427, staff requested that the applicant provide more information about how the proposed solarization could potentially impact fauna in the project area. In response, the applicant provided examples of other successful solarization projects in southern California, including the Carpentaria Creek Mouth project in Carpentaria, and the Channel Islands Restoration projects in Santa Cruz and Anacapa Islands, both of which demonstrated that solarization

was the most effective and least impactful method of iceplant eradication. Ballona Wetlands Land Trust does not dispute the effectiveness of these projects or the Commission's reliance on them to determine that solarization was an appropriate restoration method here. However, the applicant also referenced a similar iceplant solarization project in the Ballona Wetlands Biological Reserve, for which the Commission issued an exemption to CDF&W on July 9, 2008 ([Exhibit 2](#)). Since this invasive plant removal project was issued an exemption as an activity not considered to be development, no monitoring data or success criteria were required to be submitted to the Commission. Therefore, while Mr. Lamb's contention that no monitoring data or compliance with success criteria were submitted to the Commission to support the 2008 exemption is true, submission of such data was simply not a requirement. In addition, this does not mean that there was no evidence of success. Rather, as part of its application, the applicant did submit information to support its assertion that the 2008 project was successful in utilizing solarization to remove iceplant.

The revocation request also states that the applicant's assertion that the 2008 iceplant removal project successfully eradicated iceplant from the project site was "later shown to be false and based on a faulty recollection of where in the Ballona Wetlands that project had actually been implemented." At the time the original CDP application was submitted, the Commission was unaware of any controversy regarding where the 2008 iceplant removal actually took place. Furthermore, regardless of precisely where it took place, the Ballona Wetlands Land Trust has not submitted information demonstrating that the 2008 project was unsuccessful. It is therefore not clear what information the Land Trust believes was omitted from the CDP application.

## 2. The Timing of Operations Restriction of Special Condition No. 1 of the CDP

Special Condition 1 of the permit requires: *"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."*

The revocation request states that the applicant knew that the Timing of Operations restriction in Special Condition No. 1 of the CDP was "unnecessarily restrictive and impeded the project" because "any restriction on spot removal of emergent invasive vegetation on the project site would prevent the applicant from slowing the spread of such vegetation." The applicant did inform Commission staff when it submitted its final report on January 19, 2017, (approximately two months after the tarping was conducted), that one of the challenges it faced with the project was a lack of full desiccation of the iceplant in some areas due to the restrictive timing imposed by our permit conditions, but its concerns were limited to desiccation time rather than more time to pull emerging invasive plants. The Bay Foundation then notified staff that it would be seeking an amendment to change the start date to August 1<sup>st</sup> rather than September 1<sup>st</sup> to allow for more desiccation time. The Bay Foundation then submitted its amendment request on April 4, 2017. Thus, the evidence does not demonstrate that the applicant intentionally omitted or provided incomplete information about the needed timing for the project; rather, the evidence demonstrates that the applicant learned of timing issues through project implementation and then acted appropriately to request an amendment to its permit to address these issues.

## 3. Risk of Invasive Species

The revocation request contends that the applicant neglected to share with Commission staff scientific data illustrating the dominance of invasive species in the seedbank underlying the iceplant monoculture,

which increased the likelihood of non-native invasion versus the likelihood of native species recruitment after iceplant solarization. According to Mr. Lamb, had the Bay Foundation shared a more “thorough and objective analysis of the risks of non-native invasion versus the likelihood of native species recruitment,” the Commission may not have approved the project. The Bay Foundation did not fail to share an objective analysis of the existing seedbank; rather, it relied on previous studies of the soils beneath the existing iceplant monoculture, which demonstrated the presence of a native seed bank which would have a chance of growing in these locations once the iceplant was eliminated. This is evidenced in its approved restoration plan to pull invasive species along the margins where non-natives emerged within the project area post iceplant removal.

For the forgoing reasons, the Commission finds that the applicant did not provide inaccurate, erroneous or incomplete information relative to the coastal development permit with regard to the 2008 Iceplant Removal Project, the Timing of Operations restriction in Special Condition 1, or with the existing seedbank information.

The second element the Commission must consider in a revocation request is whether the applicant *intentionally* included inaccurate, erroneous or incomplete information (emphasis added). No evidence has been provided as a part of the revocation request that illustrates that the applicant intentionally provided any information that was inaccurate, erroneous, or incomplete with the application submittal for the subject CDP.

The third part of the test the Commission must consider is if the applicant intentionally provided inaccurate, erroneous or incomplete information, would accurate and complete information have caused the Commission to require additional or different conditions or deny the application? As stated, this element must only be evaluated if it is determined that the applicant *intentionally* provided inaccurate, erroneous or incomplete information, and the Commission finds that the applicant did not. Nevertheless, this element also would not be met even if the first two were met. Even if the information about the 2008 ice plant study could be considered incomplete, the project staff report described how two other southern California studies demonstrated that ice plant solarization was an effective technique, and the Commission relied on those studies as a basis for determining that solarization was appropriate here. Thus, having slightly different information about the 2008 study would not have caused the Commission to act differently.

### **Coastal Act Section 13105(b): Failure to Comply With Notice Requirements**

Grounds for revocation in 13105(b) contain three essential elements or tests for the Commission to consider as well:

- a. Did the applicant fail to comply with the notice provisions of 14 C.C.R. Section 13054?
- b. Were the views of the person(s) not notified otherwise made known to the Commission?
- c. Had the Commission been made aware of those views, could they have caused the Commission to require additional or different conditions on the permit or to deny the application entirely?

The revocation request alleges that, although the applicant was aware of the numerous stakeholders that would have a strong interest in its permit application, it neglected to inform the Commission about the stakeholder groups as required by 14 CCR 13054.

Section 13054 of the Commission's regulations requires, in relevant part, that (1) the applicant shall provide a list of addresses of all residences and owners of parcels within 100 feet (excluding roads) of the perimeter of the parcel on which the development is proposed, (2) provide a list of names and addresses of all persons known to the applicant to be interested in the application, (3) provide stamped envelopes for all addresses provided pursuant to the prior two requirements, and (4) post a notice, provided by the Commission, in a conspicuous location on the project site that describes the nature of the project and states that an application for a permit for the proposed project has been submitted to the Commission.

On behalf of the California Department of Fish and Wildlife, the Bay Foundation submitted a list of addresses of all residences and owners of parcels within 100 feet of the perimeter of the proposed project, and provided stamped envelopes for all such addresses. Hearing notices were mailed out to the addresses of all residences and owners of parcels on that list. In addition, Commission staff sent out notices to known interested parties that were not included on the submitted list, that Commission staff was aware had previously expressed interest in future projects involving the Ballona Wetlands. A hearing notice was also posted on the project site in a conspicuous location ([Exhibit 3](#)). It is difficult to know if the applicant had actual knowledge of other interested parties and if it therefore failed to inform Commission staff of such parties. However, the applicant did provide the Commission with proper notice of nearby landowners, and Commission staff—based on their lengthy history of working on Ballona wetlands issues—provided proper notice to all interested parties of which they were aware. Accordingly, it does not appear that there was a failure to comply with the notice provisions of Section 13054.

The second question asked is whether the views of persons that were not notified were otherwise made known to the Commission prior to its action on the permit application. While Mr. Lamb concedes that most of the stakeholder groups he claims were not notified were in fact able to express their views at the March 10, 2016 Commission hearing, he contends that 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,” which was due to the applicant's failure to notify stakeholders in a timely manner. A public hearing was conducted by the Commission on March 10, 2016, at which many members of the public spoke in favor of and in opposition to the project. Accordingly, the views of interested persons allegedly not notified pursuant to the provisions of Section 13054 were presented to the Commission prior to the Commission's action. Therefore, the revocation request does not present evidence that views of any persons not notified were not made known to the Commission. Therefore, the second element in deciding whether there was failure in the notice requirement is not met, and since all three elements must be met for the Commission to grant revocation, revocation must be denied.

Lastly, the third factor that must be analyzed is whether, had the Commission been aware of the views that were not made known to the Commission, it could have caused the Commission to require additional or different conditions or deny the permit. As described above, there is no evidence that any interested party was either denied adequate notice or that any such party was unable to make her views known to the Commission prior to its action. Nevertheless, it is worth noting that a large number of concerned members of the public spoke at the public hearing on March 10, 2016, both in favor of and in opposition to the project, and a lively debate ensued regarding the project's merits. Although public testimony focused mostly on concerns related to potential impacts to fauna in the iceplant to be removed, rather than the potential invasion of non-native plants to emerge, this was not because invasive regrowth was not contemplated at the time. This possibility was considered, but the Commission approved the project with the special conditions to ensure the project's success, including a condition to

remove non-native species after the ice plant solarization. Ballona Wetlands Land Trust provides no evidence to support the notion that the Commission was prevented from hearing views about the project that could have caused it to change its action; on the contrary, a robust discussion took place at the Commission meeting. Therefore, the third element in deciding whether there was a failure in the notice requirement is not met, and the request for revocation must be denied.

The Ballona Wetlands Land Trust has not provided evidence demonstrating that all three factors, above, were met. At most, it is questionable whether the project applicant complied with Section 13054 when it failed to provide notice to the Commission of parties who might be interested in the project. However, the evidence does not demonstrate that interested parties failed to actually receive notice of the project, and in fact the evidence shows that parties expressing a wide range of views actually testified to the Commission about those views. There is no evidence that any failure to provide adequate notice prevented the Commission from hearing views or concerns that could have caused it to require additional or different conditions on the permit or to deny the permit application. Therefore, the necessary elements for satisfaction of Section 13105(b) have not been met and the Commission finds that there is no basis for revocation.

**D. Conclusion**

For the reasons set forth above, the Commission finds that the request for revocation does not meet the requirements contained in Section 13105(a) or (b). Therefore, the Commission finds that the revocation request must be denied on the basis that no grounds exist for revocation because there is no evidence that the applicant intentionally included inaccurate, erroneous or incomplete information relative to the coastal development permit that would have caused the Commission to require additional or different conditions on a permit or deny an application, nor that the notice provisions of Section 13054 were not complied with 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.