

CALIFORNIA COASTAL COMMISSION

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W14a

ADDENDUM

September 6, 2022

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM W14a, APPLICATION NO. 5-18-0094-A1 FOR THE COMMISSION MEETING OF WEDNESDAY, SEPTEMBER 7, 2022.**

This addendum is designed to provide clarifications and modifications to the special conditions to the staff report for Item W14a. Staff is proposing modifications to the Eelgrass survey special condition to clarify that an eelgrass mitigation plan is required if pre-construction eelgrass surveys identify any impacted eelgrass. In addition, staff is proposing modifications to the Caulerpa Sp. survey special condition in order to clarify that two pre-construction Caulerpa Sp. surveys are necessary and identifies the methods of those surveys. The proposed modifications do not substantively change the special conditions, and do not alter staff's recommendation of Approval with Conditions for the proposed project.

I. CHANGES TO STAFF REPORT

The proposed changes clarify and modify the special conditions to make clear the requirements of the special conditions. Language to be added is shown in **bold double underlined italicized text**, and language to be deleted is identified by ~~strike out~~.

Pages 5-6 – Modify and Add to Section III. Changes to Conditions/Existing Special Conditions/Special Condition No. 8 (Eelgrass Survey(s)), as follows:

8. **Eelgrass Survey(s)**

- A. Pre-Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. ~~If any portion of the project commences in a previously undisturbed area after the last valid eelgrass survey expires, a new survey is required prior to commencement of work in that area.~~ The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation

Policy” dated October 2014 Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game Wildlife. The applicant shall submit the eelgrass survey for the review and approval by the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. ~~If the eelgrass survey identifies any eelgrass within the project area, which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new Coastal Development Permit.~~

~~**Post-Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the survey required by this special condition, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the “Southern California Eelgrass Mitigation Policy” Revision 8 (SCEMP) (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval by the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the SCEMP. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new Coastal Development Permit unless the Executive Director determines that no amendment or new permit is legally required.~~

B. Post-Construction Eelgrass Survey. If any eelgrass is identified in the project area or the 10 meter buffer area by the pre-construction survey required by Subsection A of this condition, within 30 days of completion of construction, or within the first 30 days of the next active growth period following completion of construction that occurs outside of the active growth period, the applicant shall survey the project site and the 10 meter buffer area to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the CEMP adopted by the NMFS (except as modified by this special condition), and in consultation with the CDFW. If side-scan sonar methods are to be used, evidence of a valid permit from CSLC must also be provided prior to the commencement of each survey period. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been adversely impacted, the applicant shall replace the impacted eelgrass at a minimum final 1.38:1 ratio on-site (mitigation: impact), or at another location, in accordance with the CEMP, **and also pursuant to Special Condition No. 13, the applicant shall submit a Final Revised Eelgrass Mitigation Plan.** Any exceptions to the required 1.38:1 minimum final mitigation ratio found within the CEMP shall not apply. Based on past performance of eelgrass mitigation efforts, in order to achieve this minimum, the appropriate regional initial planting ratio provided in the CEMP should be used. Implementation of mitigation to ensure success in achieving the minimum final mitigation ratio (1.38:1) shall require an

amendment to this permit or a new coastal development permit unless the Executive Director provides a written determination that no amendment or new permit is required.

Pages 6-8 – Modify and Add to Section III. Changes to Conditions/Existing Special Conditions/Special Condition No. 9 (Pre-Construction Caulerpa Sp. Survey), as follows:

9. Pre-construction Caulerpa Sp. Survey

~~**Pre-Construction Caulerpa Taxifolia Survey.** Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this Coastal Development Permit (the “project”), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa Taxifolia*. The survey shall include a visual examination of the substrate. If any portion of the project commences in a previously undisturbed area after the last valid *Caulerpa Taxifolia* survey expires, a new survey is required prior to commencement of work in that area.~~

~~The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service. Within five (5) business days of completion of the survey, the applicant shall submit the survey:~~

- ~~(1) — for the review and approval by the Executive Director; and~~
- ~~(2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.~~

~~If *Caulerpa Taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *Caulerpa Taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *Caulerpa Taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.~~

A. Prior to initiation of any authorized Bottom Disturbing Activity within an Infected System Two two pre-construction surveys of the project area for Caulerpa species (*Caulerpa*) shall be conducted by a certified Caulerpa surveyor in accordance with the Caulerpa Control Protocol (version 5) (<https://media.fisheries.noaa.gov/2021-12/caulerpa-control-protocol-v5.pdf>). The surveys shall include the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa* sp. The survey shall include a visual examination of the substrate. **In addition, the surveys shall be initiated not less than 60 days apart, and shall be**

conducted within the project area of potential effect (APE). The first survey shall be conducted using High Intensity Level techniques and the second survey shall be conducted using Eradication Area Level techniques. Both surveys shall be conducted within the same High Growth Period. Deviations from this condition may be considered on a case-by case basis by the appropriate regulatory agency in consultation with NOAA Fisheries and CDFW.

B. Within fifteen (15) business days of completion of the survey, the applicant shall submit the survey:

(1) for the review and approval of the Executive Director; and

(2) California Department of Fish & Wildlife Marine Region (Caulerpa@wildlife.ca.gov) and National Marine Fisheries Service (NOAA Fisheries) (nmfs.wcr.caulerpa@noaa.gov).

~~**C.** Prior to initiation of any authorized Bottom Disturbing Activity within an Infected System, two surveys, initiated not less than 60 days apart, shall be conducted within the project area of potential effect (APE). The first survey shall be conducted using High Intensity Level techniques and the second survey shall be conducted using Eradication Area Level techniques. Both surveys shall be conducted within the same High Growth Period. Deviations from this condition may be considered on a case-by case basis by the appropriate regulatory agency in consultation with NOAA Fisheries and CDFW.~~

~~**C. D.** At least one survey shall be conducted within 45 days of initiation of an authorized Bottom Disturbing Activity (a "Pre-Act Survey"). This survey could be the second (Eradication Area Level) survey conducted during the High Growth Period. However, project delays may require that a third survey be conducted prior to initiation of the Bottom Disturbing Activity in order to meet this 45-day requirement. If a third survey is required, this survey shall be conducted at either a High Intensity Level or Eradication Area Level as determined by the NOAA Fisheries/CDFW Contacts based upon site circumstances and proximity to infestations. To determine appropriate survey level, please contact the NOAA Fisheries/CDFW Contacts with project specific information.~~

~~**D. E.** If Caulerpa species is found within the project or buffer areas, the applicant shall not proceed with the project until:~~

~~(1) The applicant provides evidence to the Executive Director, subject to concurrence by the Executive Director, that all Caulerpa sp. discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or~~

~~(2) The applicant has revised the project to avoid any contact with Caulerpa species. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.~~

Pages 24-25 – Modify and Add to Appendix B Standard and Special Conditions Pursuant to CDP No. 5-18-0094 Through CDP Amendment No. 5-18-0094-A1/Special Conditions/Special Condition No. 8 (Eelgrass Survey(s)), as follows:

8. Eelgrass Survey(s)

- A. Pre-Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the “California Eelgrass Mitigation Policy” (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the eelgrass survey for the review and approval by the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. ~~If the eelgrass survey identifies any eelgrass within the project area, which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new Coastal Development Permit.~~
- B. Post-Construction Eelgrass Survey.** If any eelgrass is identified in the project area or the 10 meter buffer area by the pre-construction survey required by Subsection A of this condition, within 30 days of completion of construction, or within the first 30 days of the next active growth period following completion of construction that occurs outside of the active growth period, the applicant shall survey the project site and the 10 meter buffer area to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the CEMP adopted by the NMFS (except as modified by this special condition), and in consultation with the CDFW. If side-scan sonar methods are to be used, evidence of a valid permit from CSLC must also be provided prior to the commencement of each survey period. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been adversely impacted, the applicant shall replace the impacted eelgrass at a minimum final 1.38:1 ratio on-site (mitigation: impact), or at another location, in accordance with the CEMP, **and also pursuant to Special Condition No. 13, the applicant shall submit a Final Revised Eelgrass Mitigation Plan.** Any exceptions to the required 1.38:1 minimum final mitigation ratio found within the CEMP shall not apply. Based on past performance of eelgrass mitigation efforts, in order to achieve this minimum, the appropriate regional initial planting ratio provided in the CEMP should be used. ~~Implementation of mitigation to ensure success in achieving the minimum final mitigation ratio (1.38:1) shall require an amendment to this permit or a new coastal development permit unless the Executive Director provides a written determination that no amendment or new permit is required.~~

Pages 25-26 – Modify and Add to Appendix B Standard and Special Conditions Pursuant to CDP No. 5-18-0094 Through CDP Amendment No. 5-18-0094-

A1/Special Conditions/Special Condition No. 9 (Pre-Construction Caulerpa Sp. Survey), as follows:

9. Pre-construction Caulerpa Sp. Survey

A. Prior to initiation of any authorized Bottom Disturbing Activity within an Infected System. Two **two** pre-construction surveys of the project area for Caulerpa species (Caulerpa) shall be conducted by a certified Caulerpa surveyor in accordance with the Caulerpa Control Protocol (version 5) (<https://media.fisheries.noaa.gov/2021-12/caulerpa-control-protocol-v5.pdf>). The surveys shall include the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga Caulerpa sp. The survey shall include a visual examination of the substrate. **In addition, the surveys shall be initiated not less than 60 days apart, and shall be conducted within the project area of potential effect (APE). The first survey shall be conducted using High Intensity Level techniques and the second survey shall be conducted using Eradication Area Level techniques. Both surveys shall be conducted within the same High Growth Period. Deviations from this condition may be considered on a case-by case basis by the appropriate regulatory agency in consultation with NOAA Fisheries and CDFW.**

B. Within fifteen (15) business days of completion of the survey, the applicant shall submit the survey:

- (1) for the review and approval of the Executive Director; and
- (2) California Department of Fish & Wildlife Marine Region (Caulerpa@wildlife.ca.gov) and National Marine Fisheries Service (NOAA Fisheries) (nmfs.wcr.caulerpa@noaa.gov).

~~**C.** Prior to initiation of any authorized Bottom Disturbing Activity within an Infected System, two surveys, initiated not less than 60 days apart, shall be conducted within the project area of potential effect (APE). The first survey shall be conducted using High Intensity Level techniques and the second survey shall be conducted using Eradication Area Level techniques. Both surveys shall be conducted within the same High Growth Period. Deviations from this condition may be considered on a case-by case basis by the appropriate regulatory agency in consultation with NOAA Fisheries and CDFW.~~

C.D. At least one survey shall be conducted within 45 days of initiation of an authorized Bottom Disturbing Activity (a "Pre-Act Survey"). This survey could be the second (Eradication Area Level) survey conducted during the High Growth Period. However, project delays may require that a third survey be conducted prior to initiation of the Bottom Disturbing Activity in order to meet this 45-day requirement. If a third survey is required, this survey shall be conducted at either a High Intensity Level or Eradication Area Level as determined by the NOAA Fisheries/CDFW Contacts based upon site circumstances and proximity to infestations. To determine appropriate survey level, please contact the NOAA Fisheries/CDFW Contacts with project specific information.

D.E. If Caulerpa species is found within the project or buffer areas, the applicant shall not proceed with the project until:

- (1) The applicant provides evidence to the Executive Director, subject to concurrence by the Executive Director, that all Caulerpa sp. discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or
- (2) The applicant has revised the project to avoid any contact with Caulerpa species. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.