



# Ballona Wetlands Land Trust

December 28, 2022

State Water Resources Control Board  
Office of Chief Counsel  
Adrianna M. Crowl  
P.O. Box 100  
Sacramento, CA 95812-0100

Via email: [waterqualitypetitions@waterboards.ca.gov](mailto:waterqualitypetitions@waterboards.ca.gov)

Re: Request for Stay and Supplemental Information Regarding Petition to Appeal Permit for Proposed Geotechnical Studies in Area B of the Ballona Wetlands

Dear Ms. Crowl,

On November 29, 2022, the Ballona Wetlands Land Trust submitted a petition to appeal a determination by staff of the Los Angeles Regional Water Quality Control Board (LARWQCB) that proposed geotechnical studies in the Ballona Wetlands Ecological Reserve (BWER) qualify for authorization under the State Water Board General Order for the 2021 Nationwide Permits, specifically Nationwide Permit 6. The purpose of this correspondence is to provide additional information requested by Phil Wyels, legal counsel for the State Water Resources Control Board, and also to request a stay of the permit until such time as an appeal may be heard.

The requested additional information is below:

**(1) Name, address, telephone number and email address (if available) of the petitioner.**

Walter Lamb, President  
Ballona Wetlands Land Trust  
Po Box 5623  
Playa del Rey, CA 90296  
(310) 384-1042  
[landtrust@ballona.org](mailto:landtrust@ballona.org)

**(2) The specific action or inaction of the regional board which the state board is requested to review and a copy of any order or resolution of the regional board which is referred to in the petition, if available. If the order or resolution of the regional board is not available, a statement shall be included giving the reason(s) for not including the order or resolution.**

The Land Trust is requesting that the State Water Resources Control Board review an October 31, 2022 Notice of Applicability which is attached to this correspondence as Exhibit A. We are not aware of any order or resolution from the Regional Board, as we believe this Notice of Applicability was issued by staff of the Regional Board, not the Board itself.

**(3) The date on which the regional board acted or refused to act or on which the regional board was requested to act.**

The challenged action took place on October 31, 2022, as described above.

**(4) A full and complete statement of the reasons the action or failure to act was inappropriate or improper.**

The initial petition submitted on November 29, 2022 included a full and complete statement of reasons that the October 31, 2022 Notice of Applicability issued by LARWQCB staff was improper. To summarize those reasons:

- a) The LARWQCB is a responsible agency for the Ballona Wetlands Restoration Project under the California Environmental Quality Act ("CEQA"). As such, the LARWQCB is required to consider the Final Environmental Impact Report that was published by the California Department of Fish and Wildlife ("CDFW") in December of 2019 and certified by CDFW in December of 2020, roughly two years ago. The sole purpose of the proposed geotechnical studies is to advance two out of thirty-five interdependent construction sequences that were analyzed in the EIR. There is no legally defensible reason for the LARWQCB to delay consideration of the certified FEIR for the Ballona Wetlands Restoration Project before permitting geotechnical work that is inextricably tied to the implementation of that project.
- b) The General Order pursuant to which the Notice of Applicability was rendered requires an evaluation of cumulative impacts for the proposed work. Instead, the application contained only a single sentence to address cumulative impacts, which ignored known projects in the area. The application's analysis of cumulative impacts was woefully deficient.
- c) The application stated that no notice was required to be given to the US Army Corps of Engineers, but the email to which the application was attached asserted that notice would be required if the geotechnical studies were conducted during the wet season, which is now certain to be the case unless the applicant waits until the next dry season to conduct the studies, which it has shown no indication of doing.

**(5) The manner in which the petitioner is aggrieved.**

The Land Trust was established in 1994 for the primary purpose of protecting the greater Ballona Wetlands ecosystem from negative impacts. It is not disputed that environmental impacts are associated with the proposed geotechnical borings. What is disputed is whether the value of the information obtained by the studies would outweigh those impacts. Without the LARWQCB evaluating the Final EIR that was certified almost two years ago, and without the applicant substantively addressing the issue of cumulative impacts, this important question will remain unanswered. No reason has been provided to justify the LARWQCB's unwillingness to evaluate the FEIR in order to determine whether the certified project is viable.

**(6) The specific action by the state or regional board which petitioner requests.**

Petitioner requests that either the LARWQCB or the state board review the Notice of Applicability and provide guidance to staff requiring that the Notice be temporarily rescinded until such time as the LARWQCB has the opportunity to evaluate and either approve or disapprove of the certified Final EIR for the Ballona Wetlands Restoration Project, and also requiring that the application sufficiently analyze known cumulative impacts and impacts of conducting the proposed studies during the wet season.

**(7) A statement of points and authorities in support of legal issues raised in the petition, including citations to documents or the transcript of the regional board hearing if it is available.**

As articulated in our original request for appeal, dated November 29, 2022, the legal issues raised by our appeal are: 1) whether it was legally appropriate for LARWQCB staff to issue the Notice of Applicability without the LARWQCB itself considering the adequacy of a Final Environmental Impact Statement for the Ballona Wetlands Restoration Project that was certified on December 20, 2020; 2) whether the applicant sufficiently addressed potential cumulative impacts in its application; and 3) whether the applicant correctly stated in its application that no notice was required to be given to the US Army Corps of Engineers (“USACE”), even though the work is now envisioned to be completed in the wet season, rather than during the dry season, as initially intended. The relevant statutes and regulations regarding LARWQCB’s responsibilities as a responsible agency under CEQA are outlined in the original November 29, 2022 petition. The relevant legal authority and documents with regard to cumulative impacts and the need to notice USACE are the applicable General Order from the state water board, the subject application, and the subject Notice of Applicability.

**(8) A statement that the petition has been sent to the appropriate regional board and to the discharger, if not the petitioner.**

The November 29, 2022 Petition was sent to staff of the LARWQCB. A copy of this follow up correspondence will be sent to LARWQCB staff and also staff of CDFW, the “discharger” in this action.

**(9) A statement that the substantive issues or objections raised in the petition were raised before the regional board, or an explanation of why the petitioner was not required or was unable to raise these substantive issues or objections before the regional board.**

This issue did not come before the LARWQCB. The Notice of Applicability was issued directly by staff. When I inquired to LARWQCB about the process for appealing the decision, I was directed to appeal to the state water board. We will follow whatever administrative steps are required by the appeal process.

The necessary information for requesting a stay of the permitted activity is below, and supported by the attached declaration:

**1) There will be substantial harm to the petitioner or to the public interest if a stay is not granted**

Without a stay being granted to prevent the geotechnical studies from occurring pending resolution of this appeal, the appeal will have been rendered moot. It is not disputed that the geotechnical studies will impact waters of the state and waters of the U.S.. The applicant has acknowledged that the proposed studies will cause temporary impacts to 9,934 square feet of potential and likely Environmentally Sensitive Habitat Area (“ESHA”). The question is whether this impact is offset by the potential benefit of the studies and the answer to that question is dependent on, among other things, whether LARWQCB would be inclined to permit the underlying project, for which a final EIR was certified almost two years ago. These are not preliminary studies being conducted to determine *whether* to commence the project. Rather these studies are being conducted as *part of* the project, and the LARWQCB was required to consider the certified FEIR prior to permitting any component of the certified project as a responsible agency under CEQA.

It would be procedurally backwards for LARWQCB to allow the project to commence with these geotechnical studies only to later deny a permit for the project based on a certified final EIR for project that has been available for LARWQCB's review since December of 2020. This point is supported by LARWQCB's February 2018 comment letter to CDFW in response to the draft EIR, in which LARWQCB stressed the need for any final project design to adequately address the Total Maximum Daily Loads ("TMDLs") that were established for the Ballona Creek and Wetlands in 2012. The proposed studies are for a subset of the certified project that does not address the primary concerns raised by LARWQCB's 2018 letter.

Thus, this is an issue that is more than ripe to come before the full regional board for consideration. In fact, three members of the regional board acknowledged the need for an update on the status of this project at the November meeting, with one member acknowledging that planning for this project has been ongoing for almost 20 years. If the studies are allowed to proceed without any review and consideration of this petition for appeal, the public interest will have been harmed because an impact to ESHA will have occurred without due public process.

**2) There will be no substantial harm to other interested persons and to the public interest if a stay is granted**

There is no doubt that the applicant/discharger will allege a harm if a stay is granted. However, the record does not support such an allegation, because there would be far greater harm to the applicant, and especially to the public, if considerable time and money is spent conducting the proposed studies, only for a permit to later be denied for the actual project based on information that is already available to the regional board in a final EIR that was certified almost two years ago. The applicant has been either unable or unwilling to articulate why, after almost 20 years of planning, it is working to keep responsible agencies from reviewing its certified FEIR and is instead claiming an urgent need to conduct new studies for only a small subset of the full project. Even under the applicant's own ambitious schedule, final permits for this smaller project would not be obtained until February of 2024. After that, the applicant would need to secure funding for construction, then solicit bids from contractors, select a contractor, negotiate a contract, finalize numerous mitigation plans, and coordinate a construction schedule before beginning any actual work. Waiting until the regional board has an opportunity to review and take action on the certified FEIR would constitute a minor delay in the historical context of this project. If the regional board were, for any reason, to not approve the project as certified in the FEIR, it is in the interest of all parties for that to occur before conducting the proposed studies.

**3) There are substantial questions of fact or law regarding the disputed action.**

As outlined in the original petition and reiterated above, there are multiple questions of law raised by LARWQCB staff's Notice of Applicability. 1) Can a responsible agency under CEQA permit studies designed to *commence* a project prior to the responsible agency reviewing and taking action on a final, certified EIR for that project? 2) Does a single sentence in an application denying any potential cumulative impacts constitute sufficient analysis when other past, current and/or future projects in the immediate vicinity are known to exist? 3) Was the application accurate in its assertion that no notice to USACE is required, even if the proposed studies will be conducted during the wet season?

A sworn declaration alleging pertinent facts raised by our petition for appeal and in this correspondence follows this letter.

**Conclusion**

Thank you for your consideration of our November 29, 2022 petition and this additional information. Please grant a stay to temporarily delay the proposed geotechnical studies described in the October 31, 2022 Notice of Applicability until such time as the issues raised in this petition for appeal are addressed by either the state water board or the regional board.

I am happy to answer any questions that may arise or to provide additional documentation as needed.

Sincerely,

A handwritten signature in blue ink that reads "Walter Lamb". The signature is written in a cursive style with a long, sweeping underline.

Walter Lamb  
Ballona Wetlands Land Trust  
310-384-1042

CC: Philip Wyels, State Water Resources Control Board

Ashley Olmeda, Los Angeles Regional Water Quality Control Board

## DECLARATION OF WALTER LAMB

I, WALTER LAMB, declare:

1. I am the President of the Board of Directors for Petitioner Ballona Wetlands Land Trust (“Petitioner” or “Land Trust”). I make this declaration in support of Petitioner’s request for the appeal of, and a stay of, the Notice of Applicability issued by LARWQCB staff to applicant Environmental Science Associates (“ESA”) on October 31, 2022 regarding proposed geotechnical studies in the Ballona Wetlands Ecological Reserve.

2. The Land Trust was founded in 1994 to protect the greater Ballona Wetlands ecosystem and has a clear interest, along with the general public, in ensuring that any activities which are known to impact sensitive habitat be carefully considered to ensure that the benefit of such activities is likely to outweigh those impacts.

3. The California Department of Fish and Wildlife (“CDFW”), as the lead agency, has been working with the California Coastal Conservancy (“SCC”) on the planning and design of the Ballona Wetlands Restoration Project (“Project”) since 2004.

4. Numerous delays and cost overruns for the project have resulted from management decisions by CDFW and SCC staff and are documented in an SCC staff report which recommended the disbursement of roughly \$1.7 million that is now being used to support the proposed geotechnical studies. See page 12, “Costs and Delays” at the link below.

[https://scc.ca.gov/webmaster/ftp/pdf/scbbb/2021/2105/20210527Board05\\_Ballona\\_Wetlands.pdf](https://scc.ca.gov/webmaster/ftp/pdf/scbbb/2021/2105/20210527Board05_Ballona_Wetlands.pdf)

5. On December 30, 2022, CDFW certified a Final Environmental Impact Report (“FEIR”) for the Project. All CEQA documentation, including the draft EIR and appendices and all volumes of the certified final EIR can be found at:

<https://wildlife.ca.gov/Regions/5/Ballona-EIR>

6. The Los Angeles Regional Water Quality Control Board (“LARWQCB”) is a responsible agency for the Project under the California Environmental Quality Act (“CEQA”) because it has discretionary authority to issue or deny permits on which the Project relies. See EIR page 1-25, table 1-1 (*Summary of Required Permits and Approvals*).

7. According to CEQA guidelines (California Code of Regulations Title 14 § 15096 (a)) “A responsible agency complies with CEQA by considering the EIR or negative declaration

prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved.”

8. Almost two years after the certification of the FEIR for the Project, LARWQCB has not reviewed the certified FEIR or taken any action to approve it.

9. On September 15, 2022, ESA submitted a Notice of Intent (“NOI”) to conduct geotechnical studies in the Ballona Wetlands Ecological Reserve pursuant to “the State Water Board General Order for the 2021 Nationwide Permits (SB21031GN), specifically Nationwide Permit 6.”

10. ESA’s NOI included only a single sentence to address cumulative impacts. That sentence read “Cumulative impacts will be negligible due to the size of the bores, number of bore locations, and the short duration of the activity.” The NOI contained no analysis of any past, current, or future project that could contribute to a potential cumulative impact. This omission conflicts with general condition 4 of the general order, which requires that “the effects of past projects, the effects of other current projects, and the effects of probable future projects” be addressed. Such past, current and/or future projects include multiple habitat restoration projects that are ongoing in South and/or Southeast Area B,

11. ESA’s NOI also asserted that no US Army Corps NWP Pre-Construction Notification was required its proposed geotechnical studies, but ESA acknowledged in its email requesting an expedited approval that tis was only true of work performed during the dry season. It now appears that ESA intends to conduct the geotechnical studies in the wet season.

12. The Land Trust communicated these discrepancies to LARWQCB staff on October 14, 2022. Staff responded on October 17, 2022 acknowledging receipt of the comments and indicating that “the information you’ve shared will be considered during our extensive review of the NOI application and subsequent applications.”

13. On October 31, 2022, LARWQCB staff issued a Notice of Applicability to ESA for the proposed geotechnical studies.

14. On November 29, 2022, the Land Trust filed its initial petition to appeal the Notice of Applicability.

15. On December 13, 2022, Philip Wyels, Assistant Chief Counsel for the State Water Resources Control Board (“SWRCB”) sent a letter to the Land Trust requesting additional information.

16. This declaration and the correspondence to which it is attached is responsive to Mr. Wyels’ letter.

17. All documents referenced in this declaration and/or in the correspondence to which this declaration is attached are either already in the possession of the LARWQCB staff who issued the Notice of Applicability or are provided as links. I will provide any additional documentation that is requested as part of this appeal process.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 28th day of December 2022, at Los Angeles, California

By: Walter Lamb

Walter Lamb