



Tracking Number: (2022-09)

To request a change to regulations under the authority of the California Fish and Game Commission (Commission), you are required to submit this completed form to: California Fish and Game Commission, 1416 Ninth Street, Suite 1320, Sacramento, CA 95814 or via email to FGC@fgc.ca.gov. Note: This form is not intended for listing petitions for threatened or endangered species (see Section 670.1 of Title 14).

Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission’s authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or FGC@fgc.ca.gov.

## **SECTION I: Required Information.**

*Please be succinct. Responses for Section I should not exceed five pages*

### **1. Person or organization requesting the change (Required)**

Name of primary contact person: Walter Lamb, Ballona Wetlands Land Trust

Address: [REDACTED]

PO Box 5623, Playa del Rey, CA 90296 (official address)

Telephone number: 310-384-1042

Email address: landtrust@ballona.org

### **2. Rulemaking Authority (Required) - Reference to the statutory or constitutional authority of the Commission to take the action requested: Fish and Game Code Section 1580 [“The commission may adopt regulations for the occupation, utilization, operation, protection, enhancement, maintenance, and administration of ecological reserves.”]**

### **3. Overview (Required) - Summarize the proposed changes to regulations: This petition proposes to amend Section 630 of Title 14 of the Code of California Regulations to strike the second sentence from paragraph (h)(3), which reads “Unless the department determines that restoration or other uses in the following areas is more appropriate, existing recreational uses may be allowed under license agreement with Playa Vista Little League in that portion of Area C identified in the license agreement and existing parking areas may be allowed under leases to the County of Los Angeles”. The purpose of this proposed change is to maximize the native habitat potential for the ecological reserve by ending or mitigating incompatible land uses within the reserve.**

California Code of Regulations Section 630 requires that “Visitor uses are dependent upon the provisions of applicable laws and upon a determination by the commission that opening an area to such visitor use is compatible with the purposes of the property” (underline added). To date, there is no record of the Commission making any such compatibility determination for the land uses in question. In 2005, when the current regulations were adopted, the Commissioners were expressly told that no such compatibility determination had been analyzed and that such analysis would instead occur as part of the environmental impact analysis for the larger restoration project which, at the time, was expected to take



approximately three years. In December of 2019, multiple Commissioners recognized the legitimate question of whether the existing parking leases should be kept in place and requested that additional parking analysis be included in the final EIR. No such analysis was conducted or included in the Final EIR, which was published in December of 2019 and certified in December of 2020. The Fish and Game Commission should now take this opportunity to evaluate each pertinent land use independently, and make factual findings based on substantial evidence for each land use in order to determine whether those land uses are compatible with the purpose of the property in light of the record, including the certified Final EIR for the proposed Ballona Wetlands Restoration Project.,

- 4. Rationale (Required) - Describe the problem and the reason for the proposed change:** California taxpayers spent \$139 million over 18 years ago to acquire the land which now makes up the Ballona Wetlands Ecological Reserve. This included approximately \$129 million of Proposition O public bond funds and \$10 million of Proposition 12 public bonds funds. Neither of these public bond fund measures was approved by the voters to provide parking space for non-ecological reserve use or to provide land for baseball fields.

Section 630 currently provides the Department with discretion as to whether a more appropriate use of affected areas should take precedence over the existing uses. There is no question that these areas can and would be more appropriately used if the Department exercised that discretion, but the Department has repeatedly refused to do so. Instead, the Department has allowed these uses to continue without conducting any analysis to determine whether other uses of the land in question would be more appropriate, despite assuring this Commission in 2005 that it would undertake such an analysis. Therefore the only available remedy available to stakeholders of the ecological reserve is to request this regulatory change.

The Land Trust recognizes that each specific use potentially impacted by this petition has a different set of circumstances. The Commission should adopt separate factual findings, based on substantial evidence, to determine whether each of the following uses is compatible with the purpose for which the Ballona Wetlands Ecological Reserve was established:

- Los Angeles County Department of Beaches and Harbors Parking
- Los Angeles Sheriff's Department Parking
- Commercial Parking (currently prohibited, with potential to return)
- Little League Baseball Fields

Existing parking uses violate the public bond fund measures used to acquire the land, violate the **temporary** Coastal Development Permits issued in or around 1988, and violate the prohibition in the California Constitution against gifts of public funds, given the discrepancy between the fair market value of the parking spaces (Los Angeles County currently pays the Department of Fish and Wildlife \$1,608 per year to lease approximately 254 parking spaces, the same amount it has paid since approximately 1995) and what the County actually pays the Department pursuant to the lease agreement. Further, potential compatible use of the paved parking areas sometime in the future is not dependent on the continuation of leases for what are clearly incompatible uses, namely parking for private businesses and County agencies that are not connected to the ecological reserve. The existing lease, never updated after 1995, states that "The Leased Property is leased to Tenant for use as an automobile parking lot for



employees, staff and patrons of the Department of Beaches and Harbors and Fisherman's Village, and Tenant shall not permit the Leased Property to be used for any other purpose whatsoever.” This lease was executed prior to the land being acquired by the state in 2003 and prior to it being designated as an ecological reserve in 2003. No credible argument can be made that the land use specified in the 1995 lease is compatible with the purpose for which the land was later acquired and designated as an ecological reserve.

### **New Information:**

When the Commission last denied a similar petition at its June 2020 meeting, Commissioner Samantha Murray (currently the Commission President) expressly indicated that the Commission could revisit the issue once the final Environmental Impact Report for the Ballona Wetlands Restoration Project was certified. This sentiment was verbally supported by Commissioner Eric Sklar following Commissioner Murray’s remarks. The EIR was subsequently certified on December 30, 2020.

At the Commission’s December 2017 meeting, multiple Commissioners urged the Department’s Regional Manager for Region 5 to include analysis in the Final EIR of an alternative that removed some or all of the existing paved parking areas in the ecological reserve. Multiple entities, including the California Coastal Commission, have also suggested the need for a parking analysis to justify the high number of parking spaces envisioned for the ecological reserve. However, the certified Final EIR includes no such analysis and instead merely cites the regulation at issue, making a circular argument for the continuation of that challenged regulation. The Final EIR was certified on December 30, 2020. Now that the Final EIR is certified, there is no reason for the Commission to further delay making the required legal determination about the compatibility of these land uses within the Ballona Wetlands Ecological Reserve.

Additional new information includes a May 2021 staff report from the California Coastal Conservancy for the allocation of over \$1.6 million to the CA Department of Fish and Wildlife for work that would move the full restoration design forward, and an April 1, 2022 Request for Qualifications from the Department that proposes to instead use those funds for a different scope of work that would not move the proposed work in Area A forward. This means that the existing parking areas would continue in their largely unused state indefinitely, when the underlying land could be productively converted to native habitat, thus furthering the purpose of the ecological reserve. Given that multiple commissioners cited the pending restoration project as a reason for delaying any compatibility determination regarding the land uses in question, this new information is highly relevant. A new hearing will allow the Commissioners to review the final, certified EIR for the proposed project, and to get an update on the timing of the project as part of the Commission’s deliberative process..

## **SECTION II: Optional Information**

**5. Date of Petition: May 31, 2022**

**6. Category of Proposed Change**

- Sport Fishing
- Commercial Fishing
- Hunting
- Other, please specify: Ecological Reserves



7. **The proposal is to:** (*To determine section number(s), see current year regulation booklet or <https://govt.westlaw.com/calregs>*)
- Amend Title 14 Section(s):630
  - Add New Title 14 Section(s): *Click here to enter text.*
  - Repeal Title 14 Section(s): *Click here to enter text.*
8. **If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition** 2017-002, 2019-008 and 2020-003  
Or  Not applicable.
9. **Effective date:** If applicable, identify the desired effective date of the regulation.  
If the proposed change requires immediate implementation, explain the nature of the emergency: As soon as practically possible, but not an emergency
10. **Supporting documentation:** Identify and attach to the petition any information supporting the proposal including data, reports and other documents: The Land Trust has previously provided a substantial record showing that the parking areas in question were created and maintained to further the interests of the County of Los Angeles and private businesses in Marina del Rey, not to further the purposes of the ecological reserve. Those previous records should all be incorporated into this petition by reference.
- The Final certified EIR for the Ballona Wetlands is available on the CDFW site:  
<https://www.wildlife.ca.gov/Regions/5/Ballona-EIR>. The Final EIR was certified by CDFW on December 30, 2020, approximately six months after the Commission last denied a petition on this matter.
- The archived audio of the 2005 Fish and Game Commission hearing is at [http://cal-span.org/media/audio\\_files/cfg/cfg\\_05-08-19/cfg\\_05-08-19.mp3](http://cal-span.org/media/audio_files/cfg/cfg_05-08-19/cfg_05-08-19.mp3) and the discussion of the parking lots occurs at 223 minutes and 25 seconds (3:43.25). It is during this meeting that the Department staff presenter expressly states to the Commission that no compatibility determination was being made at that meeting regarding the land uses in question, and that such compatibility determination would instead be made as part of the environmental analysis of the property. However, the final, certified EIR includes no such determination or supporting analysis.
- We will provide additional documentation upon request..
11. **Economic or Fiscal Impacts:** Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing: Eliminating the existing parking lease with Beaches and Harbors and the Sheriff's Department would result in the loss of \$1,608 in annual lease payments for each lot, which is substantially below market value. Additionally, The Land Trust hat offered to more than offset that amount if the paved lots can be converted to more appropriate use.
12. **Forms:** If applicable, list any forms to be created, amended or repealed:  
*Click here to enter text.*



### **SECTION 3: FGC Staff Only**

Date received: 05/31/2022

FGC staff action:

- Accept - complete
- Reject - incomplete
- Reject - outside scope of FGC authority

Tracking Number

Date petitioner was notified of receipt of petition and pending action: \_\_\_\_\_

Meeting date for FGC consideration: \_\_\_\_\_

FGC action:

- Denied by FGC
- Denied - same as petition \_\_\_\_\_

Tracking Number

- Granted for consideration of regulation change