

San Francisco Bay Conservation and Development Commission

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May 21, 2025

City of Berkeley
Parks, Recreation, and Waterfront Department
2180 Milvia Street, 3rd Floor
Berkeley, California 94704
Attn: Liza McNulty
Via Email: lmcnulty@berkeleyca.gov

SUBJECT: BCDC Comments on the BERKELEY WATER TRANSPORTATION PIER FERRY and Notice of Preparation of an Environmental Impact Report; BCDC Inquiry File No. AL.BY.2025.1

Dear Liza McNulty:

Thank you for the opportunity to comment on the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) under the California Environmental Quality Act (CEQA) for the proposed Berkeley Water Transportation Pier Ferry (Project), received by our office via email on April 18, 2025.

The San Francisco Bay Conservation and Development Commission (BCDC) staff is providing the following comments on the Project as a CEQA responsible agency from which a discretionary approval is necessary, as described below. BCDC will rely on the Final EIR, among other reports, when considering a permit application for the Project, and we appreciate this opportunity to comment on information and analyses to be included in the scope of the EIR. While the description of the Project in the NOP is not specific enough for BCDC staff to comment on every potential issue that could be raised with respect to BCDC's laws and policies, staff has prepared the following comments outlining issues under BCDC's jurisdiction that we believe should be addressed. The following comments are based on BCDC staff review of the NOP, the McAteer-Petris Act (Title 7.2 of the California Government Code), and the *San Francisco Bay Plan* (Bay Plan).

BCDC is a State planning and regulatory agency with permitting authority over San Francisco Bay, the Bay shoreline, and Suisun Marsh, as established in the McAteer-Petris Act and the Suisun Marsh Preservation Act, respectively. Per the McAteer-Petris Act, BCDC is responsible for granting or denying permits for any proposed fill; extraction of materials; or substantial changes in use of any water, land, or structure within the Commission's jurisdiction (Government Code Section 66632). Additionally, BCDC establishes land use



policies for the Bay as a resource and for development of the Bay and shoreline in the Bay Plan, which provides the basis for the Commission's review and actions on proposed projects.

Based on the NOP, the majority of the Project would be located within at least two areas of BCDC's permitting jurisdiction:

- In the San Francisco Bay, being all areas subject to tidal action, including the marshlands lying between mean high tide and five feet above mean sea level; tidelands (land lying between mean high tide and mean low tide); and submerged lands (Government Code Section 66610(a)); and
- In the shoreline band, consisting of all territory located between the shoreline of the Bay, as defined above, and 100 feet landward of and parallel with the shoreline (Government Code Section 66610(b)).

In addition, portions of the Project are located within Bay Plan-designated "Waterfront Park, Beach" priority use areas. Within the Commission's jurisdiction, projects proposed within these priority use areas must be consistent with the Bay Plan's Recreation policies and any relevant policies specified in Bay Plan Map 4.

BCDC requests that the City of Berkeley include mapping of BCDC's jurisdiction in the forthcoming EIR and pay particular attention to potential project impacts that may occur in these areas as they relate to the Commission's policies. The EIR project description should also clearly detail where each component of the Project would take place relative to the Commission's jurisdiction. BCDC staff is available to review any mapping or draft language to ensure that our agency's jurisdiction is accurately depicted and described.

BCDC provides data and mapping tools on our website at <https://www.bcdc.ca.gov/resources/maps-and-data/>. Copies of our planning documents are available at <https://www.bcdc.ca.gov/resources/plans/>. BCDC's laws and regulations can be referenced at <https://www.bcdc.ca.gov/resources/laws-and-regulations/>.

PROJECT UNDERSTANDING

Based on information provided in the NOP and accompanying technical documents, we understand the Project to include a combination of in-Bay and shoreline features that would:

- Demolish portions of the closed pier;
- Construct a new 1,080-foot-long public pier at the same location as the closed pier with pedestrian access and recreational amenities;
- Construct a new 400-foot-long breakwater perpendicular to and connected to the new pier, providing pedestrian access and recreational amenities;
- Provide ferry infrastructure, including, but not limited to, universal charging and boarding float(s), landing(s), gangway(s), and security entrance(s);

- Dredge along the existing 100-foot-wide United States Army Corps of Engineers federal navigation channel parallel to the closed pier;
- Construct a new public plaza with public access;
- Implement improvements to University Avenue and Seawall Drive;
- Develop a portion of the planned Bay Trail Extension, south of the pier and along Seawall Drive;
- Renovate the parking lot off Seawall Drive with new pavement, surfacing, striping, lighting, and stormwater treatment;
- Provide new landscaping as well as tree removal and replacement;
- Provide new way-finding signage and replacement lighting;
- Install new electric infrastructure to charge ferry vessels;
- Install new water connections for a restroom and hose bibs;
- Install new wastewater connections for a restroom; and
- Operate new zero-emission electric passenger ferry service, connecting the Berkeley ferry terminal to San Francisco and Larkspur ferry terminals.

The Project may also include the following potential improvements:

- Solar panels in the renovated parking lot;
- Recreational water access to the Bay, including non-motorized watercrafts; and
- Recreational improvements to Shorebird Park.

Additionally, BCDC understands that the Project and EIR alternatives analysis will be based on the following objectives:

1. Enhance public access and recreational opportunities at the Berkeley Waterfront; and
2. Provide efficient and environmentally friendly zero emission public ferry service between Berkeley and San Francisco.

ENVIRONMENTAL ANALYSIS

Below is a list of environmental topics from the NOP and a description of how they overlap with BCDC policy areas that staff will use to evaluate the Project for any submitted permit application. Including these analyses in the EIR and addressing any related impacts with mitigation measures will support staff in developing relevant conditions and necessary findings to include in the permit staff recommendation. Note that this is not meant to be a complete description of topics or policies to be analyzed in the EIR and is only based on the limited information provided in the NOP.

Aesthetics

The Bay Plan includes a policy section on Appearance, Design, and Scenic Views upon which the Commission will base its findings for the Project's visual impacts on the Bay. In defining the significance of the Project's aesthetic impacts, please consider the findings and policies in this section, and acknowledge these policies in the regulatory setting of the analysis. BCDC provides additional guidance on the interpretation of these policies in the Public Access Design Guidelines for Shoreline Spaces, particularly in the sections related to Visual Access, Visual Quality, and Bay Setting. Please consider the Guidelines in your evaluation of the Project's potential effects on scenic vistas and scenic resources. The Guidelines are available on BCDC's website (<https://www.bcdc.ca.gov/planning/SPLG.pdf>).

Biological Resources

The Bay Plan includes policy sections related to biological resources, including Fish, Other Aquatic Organisms and Wildlife; Subtidal Areas; Dredging; and Mitigation. Please review the policies and findings in these sections and acknowledge them in the regulatory setting for this analysis. As proposed, the Project would likely result in permanent impacts to habitat by placing solid fill in the Bay, suspending fill that would shade the water, increasing the number and frequency of ferry trips in the vicinity and along proposed ferry routes, and dredging. The Project would also involve temporary impacts from construction, including construction activities such as demolition and pile driving, which have the potential to release toxic substances and other materials into the Bay and result in take of aquatic organisms through noise and sediment generation. Notable native species that occur in the project area include longfin smelt, green sturgeon, Chinook salmon, Pacific Herring, eelgrass, steelhead, and California least tern. Please ensure that the EIR analyzes all potential impacts on these and any other special-status species found in the area. Please also ensure that the EIR discusses potential species and habitat impacts from loss of habitat, shading, increased ferry traffic, and construction activities.

The NOP notes that dredging will occur "along the existing 100-foot wide USACE federal navigation channel that parallels the closed pier." Please ensure that the EIR project description provides information on the dimensions of the channel being dredged, estimated volume, proposed project depths, equipment to be used, plans for the beneficial reuse and/or disposal of dredged sediment, and when dredging is expected to begin in order to provide adequate context for the environmental analysis. Analysis of dredging impacts should discuss environmental work windows and any minimization measures being considered to reduce impacts.

The proposed Project intends to dredge the federal navigation channel adjacent to the existing pier, which extends into the shallow subtidal area of the San Francisco Bay. From BCDC's understanding, the proposed dredged area has not been dredged in over 20 years. Due to the absence of dredging during this time, a benthic community will have been established in this subtidal area. Thus, dredging for the Project will be viewed as a large "new work" dredging project. Impacts to the subtidal habitat area as a result of dredging should be discussed in the EIR analysis, and it should also describe the mitigation that will

be required for those impacts. The analysis should also assess the local and Bay-wide effects of the Project in terms of tidal hydrology, sediment transport and budget, localized erosion and accretion, and the Bay's bathymetry.

The Bay Plan's Mitigation policies provide direction for mitigating impacts to Bay natural resources (such as water surface area, volume, or circulation; aquatic organisms and habitat; subtidal areas; and tidal marshes and flats) that cannot be avoided. In further developing the project description and designing potential mitigation measures in response to identified impacts, please consider these policies and engage with BCDC staff to ensure that any mitigation measures proposed will be consistent the Bay Plan. Please note BCDC's expectations for approaching mitigation as established in Mitigation Policy No. 1:

"Projects should be designed to avoid adverse environmental impacts to Bay natural resources such as to water surface area, volume, or circulation and to plants, fish, other aquatic organisms and wildlife habitat, subtidal areas, or tidal marshes or tidal flats. Whenever adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable. Finally, measures to compensate for unavoidable adverse impacts to the natural resources of the Bay should be required. Mitigation is not a substitute for meeting the other requirements of the McAteer-Petris Act."

Mitigation Policy No. 3 also provides that communities surrounding both the Project and compensatory mitigation site should be meaningfully involved in an equitable and culturally relevant manner, which may include consultation with the community in the identification and prioritization of potential projects, and in the monitoring and programming of a mitigation site.

Geology and Soils

The analysis in the EIR's geology and soils section relates to issue areas that BCDC will consider in the permit application process for the Project, including the safety and stability of the proposed pier and breakwater, the location of proposed amenities on historic Bay fill, and how these affect the long-term stability, safety, and usability of the proposed public access areas and improvements. The EIR should discuss the overall suitability of the underlying geologic unit/soils for the Project, disclose the potential for failure as a result of seismic activity or ground failure, and describe the necessary measures to avoid or mitigate such failure. Please also discuss the potential for ferry wake and operations to affect erosion rates along the shoreline.

Hazards and Hazardous Materials

The Project has the potential to release hazardous materials into the environment during both the construction and operation phases. Due to the age of the existing pier, it is possible it was treated with creosote or similar chemicals that could be dispersed during demolition. The EIR should describe the composition of the existing pier and note whether there is potential for creosote or other treatments to be present, and discuss the potential for dispersal.

Additionally, our understanding is that an all-electric ferry service will rely heavily on the use of lithium-ion batteries, which can present a significant hazard if damaged or ignited. Please ensure that the EIR discusses potential hazards related to the reasonably foreseeable upset and accident conditions involving the use and storage of batteries on site.

Hydrology and Water Quality

The Bay Plan includes policy sections for Water Quality, Water Surface Area and Volume, and Climate Change that are relevant to the EIR's hydrology and water quality analysis. Please review these findings and policies and acknowledge them in the regulatory setting for this issue area. As part of the setting and analysis, please clearly identify the water quality standards, plans, and/or discharge requirements applicable to the Project site.

Because sea levels are expected to rise over the life of the Project, the analysis of operational impacts would be incomplete without a consideration of sea level rise scenarios. As part of the hydrology analyses, including the analysis of the Project's effect on drainage and whether flood hazards present a risk of releasing pollutants, please use relevant sea level rise scenarios in accordance with the best available science (currently considered to be the Ocean Protection Council's 2024 Sea Level Rise Guidance). The Project warrants an analysis at the OPC Guidance's medium-high risk level at a minimum, which is appropriate to provide "a precautionary protection that can be used for less adaptive, more vulnerable projects or populations that will experience medium to high consequences as a result of underestimating sea level rise," and using the high emissions assumption. Please ensure that all analyses use the NAVD88 datum.

Note that as part of the application for the Project, the project proponents are expected to provide a sea level rise risk assessment prepared by a qualified engineer, per Bay Plan Climate Change Policy No. 2. The risk assessment will be expected to include mid- and end-of-century scenarios at the medium-high risk level, with the high emissions assumption, using the NAVD 88 datum.

Land Use and Planning

The McAteer-Petris Act and the Bay Plan are a State law and a land use plan, respectively, adopted for the purpose of avoiding or mitigating an environmental effect and should be included in the regulatory settings for this section as well as considered in the impact analysis. Note that the entirety of the landside and pier components will take place within a Bay Plan-designated Waterfront Park, Beach Priority Use Area and should be consistent with the requirements of that designation. Additionally, please note that Part V of the Bay Plan includes site specific policies for locations near the Project site, including Policy 15 of Plan Map 4:

“Berkeley Waterfront - Cesar Chavez Park - Preserve marina, beach, small boat launch, windsurfing access, fishing pier, interpretive center and multi-use trails. Possible ferry terminal. Allow if compatible with park and marina use; serve with bus public transit to reduce traffic and parking needs. Provide signage regarding fish consumption advisories for anglers.”

Please ensure that the EIR assesses the potential for the Project to interfere with the implementation of these policies, and note that any conflict would constitute a significant impact.

Public Services and Recreation

Per the McAteer-Petris Act, BCDC is tasked with ensuring maximum feasible public access to the Bay. As such, BCDC has permitted a number of required public recreation facilities along the shoreline in the vicinity of the Project site, including the existing pier and nearby segments of the San Francisco Bay Trail. Additionally, please note that the Bay itself functions as a recreational facility in the Project’s vicinity, as indicated by Plan Map Policy No. 15, quoted above. The EIR should document the recreational uses of the Bay and shoreline in and around the Project site, identify the service area and service population for the recreational facilities serving those uses, and assess whether the recreational facilities provided as part of the Project are commensurate with the projected need generated by the Project. The EIR should evaluate whether implementation of the Project could result in a deterioration of the facilities that support those identified recreational uses. If so, and if those uses would then be required to relocate to other locations around the Bay, the EIR should evaluate whether this could result in substantial physical deterioration of those alternative facilities.

Transportation

One of BCDC’s key considerations for assessing maximum feasible public access is the convenience and safety of site access where a project connects to the larger transportation network. Additionally, the Bay Plan includes policies that address the siting and design of active transportation facilities and ferry terminals, both of which are components of the proposed Project. Please review the findings and policies in the Bay Plan’s sections on Transportation and Public Access and acknowledge them in the regulatory settings for the transportation analysis. Please consider these policies in your analysis of whether the Project would conflict with a policy addressing transit, roadway, bicycle, and pedestrian facilities, and whether the Project would increase transportation hazards.

- Through its permitting actions, the Commission has required the implementation of numerous public access facilities, many of which are linked together by segments of the San Francisco Bay Trail. As part of the transportation analysis, the EIR should assess any potential conflicts between the Project and the Bay Plan’s public access policies, existing recreational uses and public access, as well as the planned alignment of the Bay Trail along the Project site.

Tribal Cultural Resources

As part of the Bay Plan's policies on Environmental Justice and Social Equity, the Commission is required to consider its guiding principles on environmental justice and social equity in all of its actions and activities. The first of these guiding principles is to "recognize and acknowledge the California Native American communities who first inhabited the Bay Area and their cultural connection to the natural resources of the region." Additionally, Public Access Policy No. 5 states that public access should embrace "local multicultural and indigenous history and presence," and Recreation Policy No. 4 states that parks should emphasize historical and cultural education and interpretation.

Please ensure that the EIR includes a description of the Native American history and cultural resources associated with the Project site. In preparing the EIR, please conduct meaningful outreach towards the tribes associated with this area as part of the AB 52 consultation requirement. Additionally, please ensure that the cultural and tribal cultural resources environmental setting identifies all historically and culturally significant resources at the Project site and at any related sites (if applicable), and note in the analysis whether and how the Project will acknowledge or incorporate information about those resources in its design or programming.

Utilities and Service Systems

Please ensure the EIR describes measures in the design to address the reliability and redundancy of the utilities and service systems necessary for the Project and any impacts these utilities and systems may have on the environment. Please ensure the impacts of the Project on the coastal storm drain and sewer systems are also addressed, in current and future scenarios.

Alternatives Analysis

Section 66605 of the McAteer-Petris Act includes the following provisions relevant to the selection and evaluation of alternatives for the EIR: "...fill in the bay and certain waterways... for any purpose should be authorized only when no alternative upland location is available for such purpose;" "the water area authorized to be filled should be the minimum necessary to achieve the purpose of the fill;" and "the nature, location, and extent of any fill should be such that it will minimize harmful effects to the bay area, such as, the reduction or impairment of the volume surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment, as defined in Section 21060.5 of the Public Resources Code." These requirements are reflected in policies throughout the Bay Plan, including:

- **Bay Plan Water Surface Area and Volume Policy No. 1:** "filling and diking that reduce surface area and water volume should... be allowed only for purposes providing substantial public benefits and only if there is no reasonable alternative."

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- **Tidal Marshes and Tidal Flats Policy No. 1:** “filling, diking, and dredging projects that would substantially harm tidal marshes or tidal flats should be allowed only for purposes that provide substantial public benefits and only if there is no feasible alternative.”
- **Subtidal Areas Policy No. 2:** “subtidal areas that are scarce in the Bay or have an abundance and diversity of fish, other aquatic organisms and wildlife should be conserved. Filling, changes in use, and dredging projects in these areas should therefore be allowed only if: (a) there is no feasible alternative; and (b) the project provides substantial public benefits.”

Therefore, the alternatives evaluated in the EIR should include at least one alternative that reduces or eliminates the amount of fill proposed.

Additionally, during the May 12, 2025, BCDC Design Review Board briefing on the Project, a number of concerns were raised by members of the public that siting the ferry terminal in the proposed location would have a detrimental effect on water recreation such as swimming and board sailing that could lead to impacts on other water access points regionally as individuals who currently use the Berkeley Marina are displaced. Please ensure that at least one of the alternatives allows for the evaluation of an alternate location for the ferry terminal on the waterfront, and evaluate whether an alternate location could reduce potential impacts related to recreation, ferry wake, dredging, and impacts on biological resources, etc.

If all such alternatives are determined to be infeasible and not appropriate to include in the EIR analysis, please include a detailed discussion of why these alternatives are infeasible and how the determination was made.

Please note that, as part of the BCDC permitting process, the project proponents will need to demonstrate to the satisfaction of the Commission that the Project is consistent with Government Code Section 66605. A thorough analysis of these issues in the EIR will likely support the project proponents in this effort.

Thank you for providing this opportunity to review the NOP for the Berkeley Water Transportation Pier Ferry Project. We look forward to working with you as the Project is developed and through the permitting process. If you have any questions regarding this letter or the Commission’s policies and permitting process, please do not hesitate to contact Alyssa Plese at alysa.plese@bcdc.ca.gov or 415-352-3615.

Sincerely,

DocuSigned by:
Alyssa Plese
E97652452B074AD...

ALYSSA PLESE
Coastal Program Analyst
AP/JH/ra



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