



San Francisco Bay Regional Water Quality Control Board

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April 18, 2026

City of Berkeley
Parks, Recreation, & Waterfront Department
ATTN: Liza McNulty, Project Manager (lmcnulty@berkeleyca.gov)
2180 Milvia Street, 3rd Floor
Berkeley, CA 94704

Subject: San Francisco Bay Regional Water Quality Control Board Comments on the *Draft Environmental Impact Report for the Berkeley Water Transportation Pier Ferry Project, City of Berkeley, Alameda County, California*
SCH No. 2025040995

Dear Ms. McNulty:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff appreciates the opportunity to review the *Draft Environmental Impact Report for the Berkeley Water Transportation Pier Ferry Project* (DEIR). The DEIR evaluates the potential environmental impacts associated with implementing the Berkeley Water Transportation Pier Ferry Project (Project).

The project site is located at the Berkeley Waterfront along the San Francisco Bay (Bay) in the City of Berkeley, Alameda County. The project site encompasses the closed Berkeley Pier, including the entry area for the Berkeley Pier; the San Francisco Bay waters surrounding a portion of the closed Berkeley Pier; the existing parking lot off Seawall Drive; the Skates on the Bay parking lot and parking lot M (for construction staging); roadways with landscaping (University Avenue and Seawall Drive); and various pathways and sidewalks.

The Berkeley Pier was closed in July 2015 due to visually observed structural problems on the underside of the concrete decking and pilings. The proposed project aims to revitalize the Berkeley Waterfront by developing new dual-purpose pier and ancillary uses that support both public recreation and zero-emission public ferry service. The project would include the following components: demolition of portions of the closed pier, new public pier, new breakwater that provides pedestrian access and recreational amenities, recreational amenities, ferry infrastructure, dredging, new public plaza, improvements to University Avenue and Seawall Drive, a portion of the planned Bay

DONALD YOUNG, CHAIR | EILEEN M. WHITE, EXECUTIVE OFFICER

Trail Extension, new landscaping, new wayfinding signage, utility connections, and operation of zero-emission electric passenger ferry service.

Summary

As is discussed below, we have concerns with the following aspects of the proposed Project:

- It may not be possible to fully mitigate impacts to aquatic species associated with the proposed use of nighttime pile driving.
- Concentrations of contaminants in sediments at the Project site have not been compared to screening levels that are protective of marine species.
- The DEIR does not propose treatment for runoff from the new concrete pier and dock.
- The proposed use of permeable pavement for stormwater runoff treatment may not be appropriate at the Berkeley Marina, which was built over landfilled waste materials

Comment 1. In Section 3.3.3, Regulatory Framework, the discussion of the extent of Water Board jurisdiction on page 3.3-31 does not correctly identify the extent of Water Board jurisdiction at the Project site.

Text on page 3.3-2 states that, “in many cases, the RWQCBs interpret the limits of waters of the State to be bounded by the OHWM, unless isolated conditions or ephemeral waters are present”. Along creeks and rivers, the Water Board has consistently asserted jurisdiction up to at least the top of bank. Along the Bay shoreline, the Water Board considers areas of the bank below the epochal high tide line to be regulated as waters of the State.

Comment 2. To address potential impacts to aquatic species, the City should consult with NOAA Fisheries, the USFWS, and CDFW during the permitting process.

In Section 3.3.4, Impact Analysis, the discussion of impacts to fish during pile driving on page 3.3-45 states that the City would consult with NOAA fisheries and CDFW during the permitting process. Some of the aquatic species that may be impacted by pile driving and other construction-related activities are managed by the U.S. Fish and Wildlife Service (USFWS). In the Bay, USFWS consultation is necessary for potential impacts to longfin smelt and foraging least terns. Also, since the beneficial uses of the Bay in the Water Board’s Basin Plan include wildlife habitat and the preservation of rare and endangered species, consultation with the Water Board is also necessary.

Comment 3. Biologists that monitor work at the Project site must be approved by NMFS and CDFW.

In the discussion of Mitigation Measure BIO-1(A) on page 3.3-53, the text states that the worker awareness program must be conducted by a City-approved qualified biologist. The biologist must also be approved by NMFS and CDFW. If USFWS determines that project work may impact species managed by USFWS, the biologist must also be approved by USFWS.

Comment 4. Mitigation Measure BIO-3, Provide Compensatory Mitigation for Loss of Jurisdictional Waters Prior to Operation, defers the preparation of an actual compensatory mitigation plan to the permitting of the Project.

Text on page 3.3-61 states that the City will submit a proposed mitigation plan to the resource agencies for review and approval during permitting. The mitigation plan should be provided in the DEIR so that the agencies can assess if the proposed compensatory mitigation will be sufficient to mitigate the Project's impacts to jurisdictional waters to a less than significant level.

In a CEQA document, a project's potential impacts and proposed mitigation measures should be presented in sufficient detail for readers of the CEQA document to evaluate the likelihood that the proposed remedy will actually reduce impacts to a less than significant level. CEQA requires that mitigation measures for each significant environmental effect be adequate, timely, and resolved by the lead agency. In an adequate CEQA document, mitigation measures must be feasible and fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines Section 15126.4). Mitigation measures to be identified at some future time are not acceptable. It has been determined by court ruling that such mitigation measures would be improperly exempted from the process of public and governmental scrutiny which is required under the California Environmental Quality Act. Therefore, the DEIR lacks an adequate discussion of proposed mitigation measures for the Project's impacts to waters of the State.

Comment 5. Mitigation Measures BIO-1(D) and BIO-1(E), do not address the Project's impacts to aquatic species associated with the proposed nighttime work for pile driving in the Bay.

Text in Section 2.6.2, Construction Schedule, states that the Project may require up to 50 days in which nighttime work will be used for pile driving. However, Mitigation Measure BIO-1(D), Conduct Pile Driving Impact Avoidance to Fish and Marine Mammals Prior to and During Construction, and Mitigation Measure BIO-1(E), Prepare Marine Mammal Monitoring Plan Prior to Construction and Implement Recommendations During Construction, do not address impacts associated with the proposed nighttime pile driving. Both of these mitigation measures included responses to visual observations of fish or marine mammals. But such observations are not be feasible after dark.

We prefer that pile driving and other construction activities be implemented during daylight hours, when it is easier to observe any discharges of construction materials to Bay water and it is easier to observe marine mammals, water birds, and fish in the vicinity of the construction site. Please revise the Project description to remove the proposed nighttime pile driving.

Comment 6. Constituents detected in sediment at the Project site should be compared to ecological screening levels.

On page 3.8-7, the discussion of chemicals detected in sediments at the Project site states that the measured concentrations did not exceed State for Federal hazardous waste criteria. Hazardous waste criteria are not the appropriate criteria to use in screening sediments for potential impacts to wildlife. Constituent concentrations that are lower than hazardous waste criteria may negatively impact wildlife. Please compare the chemical concentrations in the sediments with the surface layer screening levels in the *Master Quality Assurance Project Plan for the Don Edwards San Francisco Bay National Wildlife Refuge* (QAPP) (USFWS and H.T. Harvey, December 13, 2024). The screening levels in the QAPP were developed to be protective of aquatic species in marine environments.

Comment 7. The DEIR does not propose treatment for stormwater runoff from the new pier and ferry dock.

The DEIR must be revised to describe how runoff from the new pier and ferry dock's impervious surfaces will be treated prior to discharge to the Bay.

Comment 8. The proposed use of pervious pavement to treat stormwater runoff at the Marina may not be appropriate.

The DEIR proposes to treat runoff from land side post-construction impervious surfaces using permeable pavement and bioretention areas. Permeable pavement passes water through the pavement and allows the runoff to infiltrate into the soil below the permeable pavement. However, permeable pavement may not be appropriate at the Berkeley Marina, which was built over landfilled waste materials. Water infiltrating into buried waste may mobilize contaminants that will then be conveyed to the Bay via the movement of groundwater. Permeable pavement is only recommended when the bottom of the gravel infiltration reservoir below the permeable pavement is at least 5 feet above the local groundwater. According to text on page 3.8-35, depth to groundwater at the Project site is approximately 5 to 13.4 feet below the surface.

Prior to constructing areas of permeable pavement at the project site, the depth to groundwater below the areas of proposed permeable surfaces should be determined and the potential presence of waste materials in the subsurface should be assessed.

If you have any questions, please contact me at (510) 622-5680, or via e-mail at brian.wines@waterboards.ca.gov.

Sincerely,



Brian Wines
Water Resource Control Engineer
South and East Bay Watershed Section

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