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John Sindzinski
Water Emergency Transportation Authority
Pier 9, Suite 111, The Embarcadero
San Francisco, CA 94111

Subject: Comments on the draft EIR for the Berkeley/Albany Ferry Terminal

Dear Mr. Sindzinski:

I am writing as an individual, but I am vice president of the San Francisco Boardsailing Association (SFBA), an organization devoted to protecting the safety and access rights of the windsurfing and kitesurfing community who sail on San Francisco Bay. Many of our members sail in Berkeley, launching from the South Basin docks and from the small cove just west of Hs. Lordships restaurant. We also rely on parking within the marina because windsurfing equipment is bulky, and is almost always transported to the site by car. We believe that our recreational use is an established use, fully protected by the California Environmental Quality Act (CEQA), and by Section 4(f) of the Federal Transportation Act. Unfortunately, the EIR falls well short of acceptable standards for analyzing and mitigating impacts to recreational use. The following are my specific comments.

STANDARDS FOR PROTECTION

The interest of the public in reaching the tidelands without undue restriction has been so important a matter that it is enshrined in the State Constitution, and has been given more modern emphasis in legislation such as the MacAteer-Petris Act that created BCDC. The Constitutional provision is included in Section 4 of Article 10, and provides:

No individual ... shall be permitted to exclude the right of way to such water ... or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall always be attainable for the people thereof.

One such law that is intended to increase access is the MacAteer-Petris Act, which provides in Section 66602 that:

...existing public access to the shoreline and waters of the San Francisco Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided.

The EIR acknowledges the importance of Section 4(f) of the Transportation Act, but applies it in such a constrained manner to consideration of parking and actual recreational use so as to render the document completely inadequate.

DIRECT ACCESS IMPACTS

Alternative B would place a ferry terminal, an access pier, and a breakwater in an area of San Francisco Bay that has been used for recreational boating, windsurfing, and kayaking, for decades. I have sailed out of Berkeley marina since 1979, and have participated in various kinds of racing events in the area contemplated for the ferry terminal.

The EIR identifies the area where the terminal is proposed in Figure 2-10, however that figure includes a note that it is not to scale. Some details of the potential size of the facility can be gleaned from discussion in the text that shows the terminal will include a breakwater 300 feet long, located 725 feet from shore. No analysis of the impacts of that facility on in-Bay recreational use is included in the document in Chapter 4. Indeed, the discussion of recreational impacts is so cursory and conclusory as to render the document virtually unusable for CEQA purposes.

It appears that the immediate footprint of the terminal would occupy approximately 5 acres of area now actively used for recreation. It appears obvious to us that actively used Public Trust lands are afforded the protections of Section 4(f) of the Transportation Act, and the silence of the document on recreational impacts on the water renders it legally insufficient for decision making purposes.

The poorly detailed Figure 2-10 indicates that the construction of the terminal parking would eliminate 2 areas now used for rigging sails, and might impair access to the water as well. The design conflicts with the adopted alignment for the Bay Trail, which includes substantial improvements to the windsurfing launch at Hs. Lordships. The EIR makes no mention of these physical impacts.

INDIRECT IMPACTS

There are two indirect impacts that concern the windsurfing community: usurpation of parking and modification of swell. By its very intent, the breakwater proposed will alter the swell characteristics in this recreational area, both in the lee of the structure and to windward, where reflected waves will create a substantial more chaotic wave climate. The recreational use in the marina, particularly in the area near Hs. Lordships restaurant, uses that swell as a recreational resource. Waves on California's coast are readily seen as a recreational resource, but they also warrant protection within the Bay where they are actively used for recreation.

Further, it appears obvious to most windsurfers that a single off-shore breakwater may not be sufficient to protect ferries during substantial southern winds, which occur both during the summer and during winter storms. Any increase in the size of the breakwater will increase the

impacts to recreational use, as well as the associated fill and biological impacts. In fact, the biggest wave in this area is generated by the northwest winds given it has the greatest fetch. As windsurfers we have all experienced the huge swell on those northwesterly clearing wind sessions. In order to operate in the winter, we believe that an additional breakwater would be required, increasing fill, dredging, and recreational impacts. Emeryville needed an additional breakwater to provide shelter with their marina from these swells. This affects the fundamental test of an EIR—identifying all significant impacts and alternatives that would avoid those impacts. The likely costs are critical because all feasible mitigation measures must be included, and the public must be given an opportunity to comment on both the selection of alternatives and the sufficiency of mitigation measures. In this case the EIR does not include any analysis of recreational impact, or sufficient information on wave energy and sheltering, to be able to draw any meaningful conclusions or develop mitigation measures. As such, the document is inadequate and must be revised and circulated again for comment.

It is in the arena of parking where the document is perhaps most appalling as a tool for decision-making. I would remind you of my letter of last December, where I noted the importance of parking for recreational users at the marina, which is **entirely** a recreational facility protected under Section 4(f) of the Transportation Act. The EIR acknowledges a demand for 388 parking spaces for ferry patrons, but fails to analyze the impact of using those parking spaces on established recreational users. Instead, the document simply asserts that the proposed parking area for Alternative A “would not directly or indirectly affect use or access to the park.” However, the proximity of Alternative A to the South Basin, where most of the public oriented uses occur, assures that any spill-over of parking demand from the ferry terminal would adversely affect these users. That parking is completely occupied on many weekends, and recreational demand is quite high on virtually any windy weekday. The failure to provide quantitative analysis, or identify existing users is a deep flaw in the draft document. For Alternative B, the document (p. 4-39) limits its inquiry to the impact on Shorebird Park, and fails to mention any other protected recreational use, which should include windsurfing and fishing along the breakwater, both uses of longstanding within the Marina. The document relies on a generalized conclusion that ferry use is highest on weekdays and recreational use is highest on weekends. However, the document makes no effort to quantify that use, or even identify the parking areas used by recreational users and proposes no mitigation. A simple conclusion, without any quantitative analysis, fails to meet the most lenient threshold for an adequate EIR, and the document must be revised and re-circulated for comment. An example of the cavalier treatment of recreational users in the document can be found on page 4-16, where the authors simply state that “...parking along the waterfront for recreational users ... would be reassigned for ferry patron use.” (p. 4-16) Those are the fishermen and windsurfers who would be displaced by the project, without appropriate consideration for the protected nature of their uses.

CONCLUSION

The broad reach of Section 4(f) of the Transportation Act must be applied to **all** of the established recreational uses of Berkeley Marina. While the document may be intended to function as a programmatic document, it cannot ignore quantitative analysis where needed to

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provide the public with a meaningful opportunity to comment on the selection of alternatives and appropriate mitigation measures. As currently constituted, the document fails to provide this analysis, and cannot be relied upon by either the WETA, or any other responsible agency, for decision-making.

Very truly yours,

Jim McGrath