Soft Lights Foundation

9450 SW Gemini Drive
PMB 44671
Beaverton, OR 97008

September 12, 2025

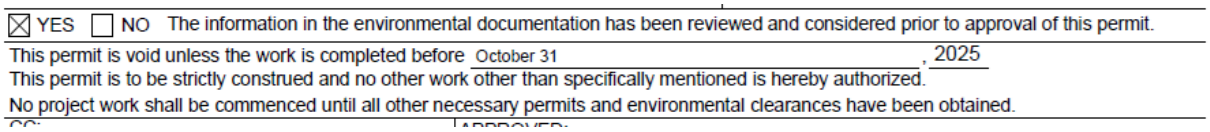
BY EMAIL

Bay Area Toll Authority Oversight Committee
cbonner@bayareametro.gov

Re: Bay Lights 360 Encroachment Permit Requirements

Dear BATA Oversight Committee,

The Encroachment Permit issued by Caltrans on October 29, 2024 for the Bay Lights 360 project expires on October 31, 2025.



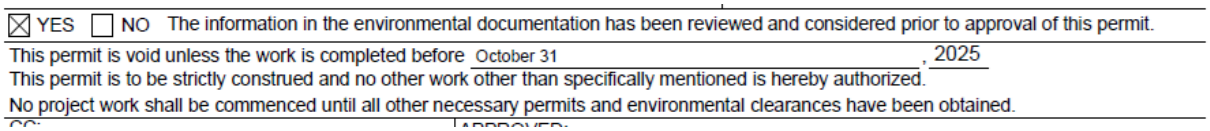
☒ YES ☐ NO The information in the environmental documentation has been reviewed and considered prior to approval of this permit.
This permit is void unless the work is completed before October 31, 2025
This permit is to be strictly construed and no other work other than specifically mentioned is hereby authorized.
No project work shall be commenced until all other necessary permits and environmental clearances have been obtained.

Given that there is no current work on the Bay Lights 360 project, it is highly unlikely that the work will be completed by October 31, 2025 and either a new permit must be issued, or the project must be cancelled.

In the two lawsuits against BATA filed by Mark Baker, it was discovered that the BATA Oversight Committee did not approve the Bay Lights 360 project. There is no Project Approval document for the Bay Lights 360 project. What BATA claimed during the CEQA lawsuits was that BATA had made a decision to move forward with the Bay Lights 360 project, but never formally approved the project, neither by BATA staff, nor by the BATA Oversight Committee. This lack of Project Approval document will likely prevent the Bay Lights 360 project from moving forward.

The two CEQA lawsuits filed by Mark Baker against BATA were both dismissed on demurrer, with the court ruling that the lawsuits were not timely filed. The cases were not heard on the merits, and thus the court did not rule whether the Bay Lights 360 project can be exempted from CEQA requirements. These court rulings do not impact BATA's requirements for approving the project, nor do the rulings impact BATA's requirements for performing a CEQA Initial Study, nor BATA's requirements under the Caltrans Encroachment permit, nor BATA's requirements to ensure that the LED lights do not create discriminatory barriers for individuals with disabilities.

The Bay Lights 360 project is a massive light pollution project involving the installation of 48,000 blue-rich LED lights, half of which will shine directly into the eyes of drivers. As such, BATA must comply with CEQA and perform an Initial Study to determine if the project requires an Environmental Impact Report. The Caltrans Encroachment Permit states, "No project work shall be commenced until all other necessary permits and environmental clearances have been obtained." Thus, without the CEQA Initial Study, the Bay Lights 360 project cannot commence.



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The Caltrans Encroachment Permit requires that BATA provide evidence of liability insurance to ensure public safety. Caltrans has also stated that the amount of this insurance may increase after determining how dangerous the interior lights are. It seems unlikely that an insurance company would provide liability insurance for a project that has not been formally approved. Without the liability insurance, the Bay Lights 360 project would be unable to proceed.

4.0 LIABILITY

Permittee must provide evidence of liability insurance in the amount of $25 million, for the life of the Bay Lights 360 artwork to ensure public safety, convenience and interests, naming the State of California, the California Department of Transportation, the directors, officers, employees, and/or agents of the State of California and/or of the California Department of Transportation as additional named insureds. The applicant also must furnish a certificate of insurance and the endorsement showing those additional named insureds prior to beginning of construction.

The amount for the Certificate of Insurance may be increased. It will be determined after the testing and evaluation of interior lights.

The Caltrans Encroachment Permit requires the involvement of the FHWA and the CHP and both agencies must approve the conditional study. The results of Public Records requests show that neither the CHP nor the FHWA have approved the conditional study, and thus the Bay Lights 360 project cannot move forward.

3. The Permittee's Traffic Engineer shall submit a test plan for concurrence and approval by Caltrans, CHP, and FHWA while acknowledging the risk that there may not be a viable comprehensive test resulting in the interior lights not being activated.

Because the FHWA is a federal agency which will be involved in this project, the FHWA has their own set of requirements such as updating disability access to the Bay Bridge. The FHWA must also prepare an Environmental Impact Statement for the Bay Lights 360 project.

The FHWA has not initiated any of these steps, and thus the Bay Lights 360 project cannot operate until the EIS has been prepared.

The metric for a directly-viewed light source is called luminance and is measured in candela per square meter or nit. The Bay Lights 360 project documents fail to specify the luminance of the LED lights, and thus there is no way to know the impact of the LED lights on drivers crossing the bridge. As shown in the image below, the LED string lights that face the driver will create a strobe effect as the driver travels along the bridge. The luminance level of the LEDs will have a direct impact on driver vision and neurological reactions. The Bay Lights 360 project must include specifications for luminance.

The Americans with Disabilities Act requires that the Bay Lights 360 project modifications ensure that the bay bridge is readily accessible and usable by individuals with disabilities. Given that these types of LED lights, especially with the strobing effect that will be created, create a risk of seizure, migraines, panic attack, and other adverse reactions, the project must include an assessment and possible mitigation measures to ensure that the LED lights do not create illegal discriminatory barriers.

Caltrans requires BATA to receive Caltrans approval to operate the lights. Given that BATA has not issued a Project Approval document, it seems unlikely that Caltrans would give approval to BATA to operate the Bay Lights 360 project even if the lights were installed.

The permittee must obtain Caltrans' approval for the actual display and intensity of the exterior LEDs used on the project.

Caltrans directs BATA to comply with 33 CFR 118. There is little or no indication that the Bay Lights 360 project complies with 33 CFR 118.

> The permittee must comply with Part 118 of Title 33 of the Code of Federal Regulations (CFR), commonly referred to as 33 CFR 118, for Bridge Lighting and Navigational Safety on the waterways.

The Caltrans Encroachment permit states that the project will be "gifted" from BATA to Caltrans. It seems unlikely that Caltrans would accept the Bay Lights 360 project from BATA without a Project Approval document because of the liabilities associated with operating a project with no formal approval and no environmental review.

> 6.0 OWNERSHIP, OPERATION, AND MAINTENANCE
> Once installed, the "Physical Artwork" as described below, must be owned by Caltrans as a gift from BATA to the people of California. Provided, however, that such ownership must not extend or operate to include liability for any accrued but unpaid obligations or any other pre-existing liabilities or obligations associated with the installation of The Bay Lights 360, none of which Caltrans must assume, whether by assignment, expressed or implied contract, under any common law doctrine of successor liability, or otherwise by operation of law, and which must be the responsibility of Illuminate and/or BATA, or other responsible party, as applicable. The gift of the Physical Artwork is made in an "as-is" condition and with all faults, without any representations.

Caltrans commissioned an environmental study of the impacts of LED lights, and this study was published in April 2023 with the title "Effects of LED Lighting on Terrestrial Wildlife." This study confirms that light pollution has a negative impact on wildlife. This Caltrans study has not yet been considered in any of the Bay Lights 360 documents. The CEQA Initial Study must include an analysis of this Caltrans study.

The Caltrans Encroachment permit requires BATA to implement the required measures from the approved environmental document submitted with the project. Because the CEQA Initial Study has not been performed, the required environmental document(s) have not been submitted. Without CEQA compliance, the Bay Lights 360 project cannot move forward.

> 7.0 ENVIRONMENTAL
> Permittee must implement the required measures from the approved environmental document submitted with this project.
> Permittee must comply with Bay Conservation and Development Commission's permit requirements.
> Permittee must implement appropriate measures to prevent dropping any object(s) in the San Francisco Bay.

BATA filed a Notice of Exemption from CEQA for the Bay Lights 360 project on August 15, 2023. However, because there is no formal Project Approval document, the NOE is invalid.

The court's rulings in the Mark Baker lawsuits did not resolve this issue because the court never reviewed the Administrative Record. Mark Baker may appeal the case to the appellate court, but in any event, the Bay Lights 360 project does not have formal project approval, and without the formal project approval by the BATA Oversight Committee, there are significant roadblocks for the Bay Lights 360 project involving liability insurance and receiving approval from Caltrans, the FHWA, and the CHP.

In consideration of the information provided above, the Soft Lights Foundation requests that the Bay Area Toll Authority Oversight Committee take all necessary steps to bring the Bay Lights 360 project into compliance with CEQA, begin the CEQA Initial Study, and to formally approve or disapprove the project by committee vote after all issues have been resolved.

Sincerely,

/s/ Mark Baker
President
Soft Lights Foundation
mbaker@softlights.org