

From: [Mark Baker](#)
To: [Carsie Bonner](#)
Cc: [Kathleen Kane](#); [Higuera, Amy R.](#); [Crystal Matson](#)
Subject: Bay Lights Safety Study - Ralph M. Brown Act
Date: Sunday, July 13, 2025 9:10:40 PM
Attachments: [Exhibit A - Encroachment Permit.pdf](#)

External Email

Dear Bay Area Toll Authority Oversight Committee,

This is a public comment.

On July 9, 2025, the BATA Oversight Committee held a public meeting. On the Agenda was a public comment from Mark Baker and the Soft Lights Foundation regarding the new project called Bay Lights Safety Study. This project is associated with, but separate from, the Bay Lights 360 project.

In the July 9, 2025 transcript and in the video, the agenda item 7a, 25-0998, related to the public comments from Mark Baker and the Soft Lights Foundation, was raised. (https://baha.granicus.com/DocumentViewer.php?file=baha_224c8ba9e37e4d51b47dfcb9f4fb6a45.pdf&view=1). However, Crystal Mason, Senior Counsel, MTC, said, "We really shouldn't discuss it here today." This statement is a violation of the Ralph M. Brown Act, which requires open meetings and transparency. As per Cal. Gov. Code Section 54956.9(g), 'Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state on the agenda or publicly announce the paragraph of subdivision (d) that authorizes the closed session.' Despite this requirement, there was nothing on the July 9, 2025 agenda that stated that the Bay Lights Safety Study would be discussed in a closed session.

The Bay Lights Safety Study is a study required by Caltrans to ensure that the proposed Bay Lights 360 project is safe. (see attached Caltrans encroachment permit). The Bay Lights Safety Study is a large-scale project involving the Federal Highway Administration, California Highway Patrol, and Caltrans, and is required to comply with all CEQA requirements. To date, BATA has not started the CEQA Initial Study for this project, and thus, Mark Baker, as President of the Soft Lights Foundation, filed a lawsuit to ensure that BATA complies with CEQA.

Cal. Gov. Code Section 54953(a) states, "All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter." It is illegal under the Ralph M. Brown Act for BATA or MTC to hide this project from the public merely because Mark Baker initiated a lawsuit to ensure compliance with CEQA. If it were legal to hide a project merely because of litigation or threat of litigation, then government agencies would hide nearly all projects. The only time that a closed session can be used to discuss the Bay Lights Safety Study is to perhaps discuss litigation strategy or a settlement offer. The BATA Oversight Committee is not prohibited from discussing the project itself, and MTC Counsel Crystal Mason violated the law when she advised the BATA Oversight Committee not to discuss the

project in public.

The webpage for the BATA Oversight Committee states, "Bay Area Toll Authority's (BATA) Oversight Committee oversees the work of the authority that administers revenue from the region's seven state-owned toll bridges." What BATA is doing is hiding the Bay Lights Safety Study from the Oversight Committee by falsely claiming that, because there is litigation, the Bay Lights Safety Study cannot be discussed in public.

In addition, the Bay Lights 360 project has never received "actual project approval" and that project is thus in limbo. The Notice of Exemption that was filed by BATA was not properly filed and is thus invalid. The Bay Lights 360 project is required to comply with all CEQA requirements, and the Initial Study must be initiated and authorized by BATA. The Bay Area Toll Authority Oversight Committee must investigate this issue. While there was previous litigation over the Bay Lights 360 project, there is no current litigation.

The BATA Oversight Committee must ensure that no further action occurs on either the Bay Lights 360 project or the Bay Lights Safety Study until a CEQA Initial Study has been authorized for each project.

I request that this public comment on the agenda for the next BATA Oversight Committee meeting and that that MTC and BATA legal counsel comply with the Ralph M. Brown Act and allow the BATA Oversight Committee to fully and transparently discuss the Bay Lights 360 and Bay Lights Safety Study projects.

Sincerely,

Mark Baker
President
Soft Lights Foundation
www.softlights.org
mbaker@softlights.org
X: @softlights_org
Bluesky: @softlights-org.bsky.social

Permit No. 04-24-N-AP-1811	
In compliance with your application of <u>September 17, 2024</u>	Dist/Co/Rte/PM 04/SF/80/PM 6.2L-Var
Reference Documents:	Permit Approval Date October 29, 2024
<input type="checkbox"/> Utility Notice No. _____ of _____	Performance Bond Amount (1) \$0
<input type="checkbox"/> Agreement No. _____ of _____	Payment Bond Amount (2) \$0
<input type="checkbox"/> R/W Contract No. _____ of _____	Bond Company \$ N/A
<input checked="" type="checkbox"/> Project code (ID): <u>0000001157</u> CFC #: _____	Bond Number (1) \$ N/A
<input type="checkbox"/> Applicant's Reference/ Utility Work Order No. _____	Bond Number (2) \$ N/A

TO: Bay Area Toll Authority
C/O: Illuminate the Arts
228 Laidley Street
San Francisco CA 94131

, PERMITEE

and subject to the following, PERMISSION IS HEREBY GRANTED to:
Encroach within State's right-of-way to remove the existing 24,000 LED fixtures and install 48,000 small (approximately 2"x3") LED light fixtures to the suspender cables of the west span of the San Francisco-Oakland Bay Bridge. The lights are in a string with height of 2 feet to 250 feet to match the height of the bridge suspender cables. The LED fixtures on each string are at one-foot intervals with each fixture to be securely attached to the cable with three (3) UV rated plastic ties. The main power and fiber line from previous installation will remain in place and used for new installation, on State Highways 04-SF-80, Post Mile 6.2/7.6, in the City of San Francisco.

A minimum of 7 days prior to the start of work under this encroachment permit, notice must be given to State Representative Chris Nesmith, at chris.nesmith@dot.ca.gov or (510) 715-8749, weekdays between 7:00 a.m. and 3:30 p.m., excluding holidays.

Notwithstanding General Provision 35, lane closures and other activities that may cause a traffic impact requires the permittee to apply for and obtain a closure ID prior to the start of work. Requests must be submitted electronically through the Lane Closure System (LCS).

THIS PERMIT IS NOT A PROPERTY RIGHT AND DOES NOT TRANSFER WITH THE PROPERTY TO A NEW OWNER.

The following attachments are also included as part of this permit (check applicable):	In addition to fee, the permittee will be billed actual costs for:
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO General Provisions	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Review
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Utility Maintenance Provisions	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Inspection
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Storm Water Special Provisions	<input checked="" type="checkbox"/> YES Field Work (if any Caltrans effort expended)
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Special Provisions	As-built Plans are Required
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO A Cal-OSHA Permit, if required: Permit No. _____	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO As-Built Plans Submittal Route Slip for Locally Advertised Projects	
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Storm Water Pollution Protection Plan	
<input checked="" type="checkbox"/> YES <input type="checkbox"/> 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.

CC: #1: RICHARD K FONG #2: CHRIS D NESMITH #3: RAYGON PITTMAN #4: EARL R SHERMAN III	APPROVED: Dina El-Tawansy, District Director
	BY <u>Surya Mantravadi</u> Surya Mantravadi (Oct 29, 2024 20:23 PDT)
	SURYA N MANTRAVADI, District Permit Engineer

Illuminate is hereby recognized as a nonprofit organization responsible for the creation of the Artwork.

All work must comply with the attached "Encroachment Permit General Provisions" (TR-0045) available at [Encroachment Permit General Provisions \(TR-0045\) \(ca.gov\)](#), Art Program Special Provisions" (also available at [Encroachment Permits Manual Appendix F TOC \(ca.gov\)](#)), and the following permit special provisions:

1.0 CONTRACTOR'S AUTHORIZATION

Permittee must include the names of all contractors working pursuant to this permit, on the Contractor's Authorization form TR-0429 and have all the contractors sign and submit to Caltrans prior to beginning of construction.

2.0 TRAFFIC CONTROL SYSTEM FOR LANE CLOSURE

Use attached lane closure charts for traffic control.

2.01 GENERAL

The permittee must be responsible for all traffic control operations and safety measures when installing the Artwork.

Traffic control must be provided by a licensed contractor.

When approved, traffic control under this permit must comply with Caltrans' Standard Plans T9 through T14 [dot.ca.gov/-/media/dot-media/programs/design/documents/locked-2023-std-plans-dor-a11y.pdf](#) or Caltrans approved site specific traffic control plans and the permit's lane closure provisions. The permittee must submit a written closure schedule request of planned closures on Monday by noon before the next week period that is defined as Sunday noon through the following Sunday noon. The State Representative must be notified of cancelled closures two (2) business days prior to the date of planned closure. The closures that are cancelled due to unanticipated events not caused by either party or other extenuating circumstances (such as unsuitable weather conditions, flood, fire, earthquake, epidemic, act of a public enemy, Governor-declared state of emergency, and/or landslide) may be rescheduled at the discretion of the State Representative.

2.02 LANE CLOSURE

The lane closure(s) under this permit must comply with the approved "Freeway Lane Requirement" and "Lane Closure Restriction for Designated Legal Holidays and Special Days" Charts, respectively, included with this permit and the following provisions:

The full width of the traveled way must be open for use by public traffic as shown in the "Lane Closure Restriction for Designated Legal Holidays and Special Days" Chart.

Designated legal holidays are: January 1st, the third Monday in February, the last Monday in May, July 4th, the first Monday in September, November 11th, Thanksgiving and Day after Thanksgiving, and December 25th. When a designated legal holiday falls on a Sunday, the following Monday must be a designated legal holiday. When November 11th falls on a

Saturday, the preceding Friday must be a designated legal holiday. The third Monday in January must also be considered a designated legal holiday.

Special Days are any days on which a major event is scheduled at AT&T Park, in downtown San Francisco, on Yerba Buena Island and/or Treasure Island, or elsewhere during which a closure of a freeway lane will cause major impact to public traffic. Major events are defined as concerts, San Francisco Giants games, and any other scheduled event such as the Bay-to-Breakers race, San Francisco Pride parade, Nike Women's Half Marathon, and Komen Race for the Cure. The contractor must expect up to 10 Special Days during any calendar month. The determination of a Special Day will be made by the State Representative. The contractor will be informed of a Special Day at least one (1) week prior to the designated Special Day.

2.03 LATE REOPENING OF CLOSURES AND LIQUIDATED DAMAGES

If a closure is not reopened to traffic by the specified time, work must be suspended. No further closures must be allowed until the State Representative has reviewed and authorized a work plan submitted by the permittee that ensures that the future closures will be reopened to traffic as scheduled. The State Representative must accept (or reject) the permittee's proposed work plan within two (2) business days of the plan submittal. The permittee must not be entitled to compensation for the suspension of work resulting from the late reopening of closures. For each 10-minute interval, or fraction thereof past the time specified to reopen the closure, a road user delay cost in the amount of \$8,900.00 per 10-minute interval must incur to the permittee.

2.04 CONTINGENCY PLAN

A detailed contingency plan must be prepared for reopening closures to traffic. The contingency plan must be submitted to the State Representative before the start of work. Otherwise, the contingency plan must be submitted to the State Representative within one business day of the State Representative's request.

The contingency plan must identify the activities, equipment, processes, and materials that may cause a delay in the opening of a closure to traffic. The contingency plan must include:

1. List of additional or alternate equipment, materials, or workers necessary to ensure continuing activities and on-time opening of closures if a problem occurs. If the additional or alternate equipment, materials, or workers are not on site, specify their location, the method of mobilizing these items, and the required time to complete the mobilization.
2. General time-scaled logic diagram displaying the major activities and sequence of planned operations. For each activity, the permittee must identify the critical event when the contingency plan will be activated.

Based on a review by the State Representative, additional materials, equipment, workers, or time to complete activities from that specified in the contingency plan may be required.

Any revision(s) to a contingency plan must be submitted to the State Representative at least three (3) business days before starting the activity requiring a contingency plan. The State Representative must complete a review of the revised contingency plan within two (2) business

days of the plan submittal.

3.0 PERSONNEL SAFETY

All the permittee's personnel must wear appropriate and approved personal protective equipment per Chapter 12 of Caltrans "Safety Manual" including hard hats and bright-colored safety vests, and shirts or jackets with retro-reflective material, while within the State right-of-way.

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.

5.0 TRANSPORTATION ART DESIGN AND DISPLAY

Lighting must be installed without damaging any portion of the Bridge; and they must be positioned along the outside and inside of the vertical suspender cables on the upper deck such that the kinetic display is angled away from the direct view of motorists and towards the City of San Francisco or the East Bay, in order to not visually impact the motorists transiting the Bridge.

Only the LED lights facing outward away from the direct view of oncoming traffic will be allowed to be turned on until such time as the conditions described in this encroachment permit have occurred. If the conditional study and evaluation determines that the lights facing traffic will not adversely effect motorists on the bridge span, and is approved by the Department and FHWA, then a separate transportation art exception and permit rider will be required before the inward facing lights can be activated.

Interior lights visible from the roadway and exterior lights visible from the Bayside must be placed on two separate circuits, both of which must be always under Caltrans control.

The interior lights proposed to be visible from the roadway must not be activated until the development and completion of a comprehensive test fully evaluating the traffic safety and operational impacts of said lights.

1. The Permittee shall prepare a complete plan of the computerized light timing program.
2. The Permittee shall procure services of a California Registered Traffic Engineer with the skills and knowledge in transportation safety to devise a plan to evaluate and approve the timing plan for lights visible from the roadway,
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.
4. The Permittee shall provide the Traffic Engineer with a documented delegated

authority to approve the proposed design feature.

5. The Permittee shall submit a signed report from the Traffic Engineer documenting:
 - a. A determination that the light timing program was a reasonable exercise of their engineering judgment, and
 - b. A commitment that the light timing program cannot change without going through.
Items 1-4a above.
6. Activation (turning on interior lights) for public display is not allowed unless a separate permit rider is issued upon approval by Caltrans, CHP, and FHWA.
7. Caltrans shall be provided with and maintain records of the plan, approval documentation, and delegation of authority archived in Document Retrieval System (DRS) for every light timing plan.

In accordance with the attached Caltrans memo dated August 30, 1991, the title sheet of the design plans will carry the Oversight Engineer's Block in compliance with the Caltrans Plan Preparation Manual, Chapter 2, Section 2-1.06 (available at <https://dot.ca.gov/-/media/dot-media/programs/design/documents/cadd/ppm-text-ch2-sect1-a11y.pdf>) to further protect the State for providing oversight only of a design which is different from Caltrans standards.

Permittee proceeds with understanding that installing interior lights is at their own risk, recognizing the associated sunk costs and the potential that the interior Bay Lights may not be allowed to be activated or turned on.

Activation (turning on) interior lights for testing or public display is not allowed under this permit. Interior Bay Lights shall not be activated for testing or public display unless approved via a rider to this permit.

Applicant shall request a separate permit rider to test the interior lights if and when a comprehensive testing plan has been developed by the permittee and approved by FHWA, CHP and Caltrans. The decision to activate the interior lights will be taken after evaluating the potential impacts of interior lights on traffic safety and efficient traffic flow and receiving approval by Caltrans, and concurrence by FHWA, CHP, BATA.

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

The exterior Bay Lights 360 must be programmed to be turned on from dusk to dawn, plus or minus 30 minutes.

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 permittee must adhere to and remain in compliance with Caltrans' rules, regulations, and any additional restrictions Caltrans may apply to the transportation art project when working within the State highway right-of-way.

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.

Physical Artwork

This work consists of removing the existing 24000 LED fixtures and installing 48,000 small (Approximately 2"x3") LED light fixtures to the suspender cables of the west span of the SFO Bay Bridge.

The lights are in a string with height of 2 feet to 250 feet to match the height of the Bridge suspender cables.

The LED fixtures on each string are at one-foot intervals.

Each fixture will be securely attached to the cable with three (3) UV rated plastic ties.

The main power and fiber line from previous installation will remain in place and used for new installation.

Permittee must be responsible for all costs relative to maintenance and on-going operations of the Bay Lights, including reimbursement of Caltrans costs.

Permittee must comply with the requirements of Chapters H and K of Caltrans Maintenance Manual (available at <https://dot.ca.gov/programs/maintenance/maintenance-manual>).

Caltrans reserves the right to remove the installation at any time before or after the initial 10-years term in case of a bona fide necessity to protect public safety, convenience, and/or interests, including allowing access to suspender cables for construction, rehabilitation, painting, or necessary maintenance activities for the transportation facility itself, all as determined by Caltrans, without any obligation, compensation to, or approval from the permittee. Caltrans must use best efforts to notify the permittee of the need to remove the transportation art in order to allow for timely removal and salvage by the permittee.

Caltrans reserves the right to deactivate (turn off) the Bay Lights 360 during emergency situations or periods when the lights are deemed a risk to public safety. Deactivation will be done without advance notification to BATA, Illuminate or the artist.

As background, the original Bay Lights on the west span of the Bay Bridge were installed in accordance with Caltrans Transportation Art policy in 2013. The operation and maintenance of Bay Lights was documented in a three-party memorandum of understanding (agreement) between Caltrans, the Bay Area Toll Authority (BATA), and Illuminate the Arts (Illuminate). The agreement contemplated the parties to collaborate as follows:

- Illuminate, a California based non-profit organization, secured 100 percent of the funds

associated with the installation of the Bay Lights.

- The Bay Lights were gifted by Illuminate to Caltrans.
- Caltrans and BATA accepted the stewardship of the Bay Lights from Illuminate, including operations, repair and maintenance.
- Caltrans assumed ownership and ongoing operations and maintenance responsibilities for the Bay Lights.
- BATA was responsible for all costs relative to on-going display of the Bay Lights, including reimbursement of Caltrans costs.

To be responsive to Caltrans, FHWA, and CHP concerns relative to safety and operations, Illuminate and BATA have acknowledged the following:

- The risk with the commissioning of the interior lights potentially being disallowed resulting in the associated sunk costs of the installation of interior lights.
- The proposed Bay Lights 360 will be placed on two separate circuits, one for the exterior lights visible from the Bay side and another for interior lights visible from the roadway. Caltrans shall always have full control of both the circuits.
- The interior lights proposed to be visible from the roadway shall not be activated until completion of a comprehensive test fully evaluating their traffic safety and operational impacts.
- There is a risk that there may not be a viable comprehensive test. This would result in the interior lights not being activated.
- To protect against future liability, Illuminate will procure services of a California Registered Traffic Engineer with the skills and knowledge in transportation safety to devise the test and approve the lights timing plan, upon concurrence by Caltrans, CHP, and FHWA.
- After the testing, if the interior lights are approved with unanimous agreement by FHWA, CHP, BATA and Caltrans that motorists' safety will not be impacted, the interior lights can be activated.

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.

8.0 EXISTING FACILITIES

The existing Bay Lights installation must be completely removed without damage to the existing bridge structure nor disruption to the normal operation of the SFOBB.

The existing facilities within the State right-of-way that are to remain in place must be protected, preserved, and maintained. Any damaged existing facilities within the State right-of-way that are to remain in place must be repaired or replaced by the permittee at the permittee's expense. After the repair, replacement or removal of the artwork, the condition of the facilities must be equal or better in quality than they were before beginning the work. The permittee must remove materials that are not repaired.

9.0 AS-BUILT PLANS

Upon completion of the work provided herein, the Permittee must submit As-Built plans to the State Representative.

All changes in the work will be shown on the plans, as issued with the permit, including changes approved by Encroachment Permit Rider.

The plans are to be prominently stamped or otherwise noted "AS-BUILT" by the Permittee's representative who was responsible for overseeing the work. Any original plan that was approved with a Department stamp must be used for producing the As-Built plans.

As-Built plans must contain the Encroachment Permit Number, County, Route, and Post Mile on each sheet.

The As-Built Plans must not include a disclaimer statement of any kind that differs from the obligations and protections provided by sections 6735 through 6735.6 of the California Business and Professions Code. Such statements constitute non-compliance with Encroachment Permit requirements and may result in the Department retaining Performance Bonds or deposits until proper plans are submitted.

Failure to comply may also result in denial of future encroachment permits or a provision requiring a public agency to supply additional bonding.

10.0 PERMIT RENEWAL

The permittee must apply for a fee-exempt encroachment permit upon reaching the Artwork end of life cycle, by submitting an encroachment permit application at least thirty (30) days in advance of the permit expiration date.

11.0 COMPLETION NOTICE

Immediately following completion of the work permitted herein, the permittee must fill out and mail the attached Notice of Completion to the State Representative.

Conditional Requirements:

In addition to the requirements stated above in this permit BATA/Illuminate/Artist must also fulfill the following conditional requirements prior to securing an encroachment permit for activating the interior lights on west span of SFOBB.:

1. Permittee must enter and execute a new maintenance agreement with Caltrans prior to securing an encroachment permit for activating the interior lights on the west span of SFOBB.
2. The artist must enter and execute Copyright License and Waiver of Moral Rights in Artwork (CLAW) with Caltrans, prior to securing an encroachment permit for activating the interior lights on the west span of SFOBB.