

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

RESOLUTION NO. R2-2022-00XX

**ADOPTION OF MITIGATED NEGATIVE DECLARATION AND MITIGATION
MONITORING AND REPORTING PROGRAM for:**

SITE CLEANUP REQUIREMENTS for:

The offshore property located between:

**PIER 39 AND PIER 43½
SAN FRANCISCO
SAN FRANCISCO COUNTY**

WHEREAS:

1. On July 24, 2014, the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) issued a water quality certification for the Port of San Francisco's maintenance dredging program through 2023. This water quality certification included, as Condition 11, a Water Code section 13267 requirement for a technical report characterizing the potential threat to water quality and risk to aquatic life posed by polycyclic aromatic hydrocarbons (PAHs) found in sediment at the Pier 39 Marina.
2. On June 26, 2015, the Port of San Francisco (the Port) submitted the report entitled "PAH Fingerprinting Study Data Report" to the Regional Water Board. The study determined that the sources of PAHs in Pier 39 sediment likely include manufactured gas plant (MGP) waste, urban runoff, soot, and possibly creosote from treated piles. In many samples, the chemical signature was strongly indicative of MGP waste.
3. Pacific Gas & Electric Company (PG&E) retains responsibility for MGP waste from the former Beach Street MGP and subsequently took the lead in investigating the extent of MGP-derived PAH impacts in Pier 39 sediment.
4. Between 2015 and 2018, PG&E conducted extensive offshore sediment investigations between Piers 39 and 45, supplemented with upland soil and groundwater investigations along the shoreline to determine the extent of MGP-related PAH impacts and evaluate the threat to water quality and risk to aquatic life posed by PAHs.

5. Subsequent to the adoption of this Resolution, the Regional Water Board will adopt a Site Cleanup Requirements Order (SCR Order) and Water Quality Certification under section 401 of the federal Clean Water Act (Certification) for the final remediation of sediment between Piers 39 to 43½ in San Francisco, San Francisco County, referred to as the Project. Both the SCR Order and the Certification will rely on the findings in the Initial Study/Mitigated Negative Declaration adopted through this Resolution.
6. The Regional Water Board has assumed the lead agency role for approving the Project under CEQA (CEQA at Public Resources Code § 21000 et seq.), conducted an Initial Study in accordance with California Code of Regulations, title 14, section 15063, and prepared a Mitigated Negative Declaration in accordance with California Code of Regulations, title 14, section 15070 et seq.
7. The Initial Study preliminarily identified potential significant environmental effects associated with implementing planned remediation activities for biological resources, cultural and tribal resources, recreation, and transportation. These potentially significant environmental effects will be avoided or will result in less than significant impacts with the incorporation of mitigation measures, such as coordinating with relevant stakeholders to develop a plan to address impacts on boating businesses as a result of construction activities. The Regional Water Board will enforce implementation of the mitigation measures by including them as required tasks in the SCR Order; in accordance with Public Resources Code section 21081.6 and as described in Finding 8 of the SCR Order, other mitigation measures will be required as conditions of the water quality certification and other project approvals that must be obtained before beginning construction.
8. As required under California Code of Regulations, title 14, section 15074, a Mitigation Monitoring and Reporting Program (MMRP) has been prepared and will be adopted with this Resolution (Attachment A). The MMRP is designed to ensure compliance with mitigation measures during project implementation and the Regional Water Board will ensure that mitigation measures are implemented in accordance with the MMRP.
9. On October 20, 2021, the Regional Water Board provided an electronic Notice of Intent to adopt the Mitigated Negative Declaration (MND) and an electronic copy of the MND to the State Clearinghouse's CEQA Submit website, opening a 30-day public review period, that ended on November 19, 2021. During that same period the Notice of Intent, which included a link to the Draft MND on the State Water Resources Control Board's GeoTracker website, were made available on the Regional Water Board's public notices and documents for review website for public comment. Comments were received from two parties. Staff reviewed the comments and prepared responses. Based on staff review, no changes to the Draft MND were deemed necessary.
10. On November 17, 2021, the Regional Water Board made the tentative resolution available on the Regional Water Board's public notices and documents for review

website for public comment, opening a 30-day public review period, that ended on December 17, 2021. No comments were received.

11. On January 19, 2022, the Regional Water Board made the Mitigation Monitoring and Reporting Program and a revised tentative resolution available for a 10-day public review period. No comments were received.
12. On February 9, 2022, the Board, at a public meeting, heard and considered all comments related to this project.
13. The Regional Water Board finds that on the basis of the whole record that there is no substantial evidence that the Project, as mitigated, will have a significant effect on the environment.
14. The Mitigated Negative Declaration reflects the independent judgment and analysis of the Regional Water Board.

THEREFORE BE IT RESOLVED, that the Regional Water Board hereby adopts the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Project.

I, Thomas Mumley, Interim Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on _____.

Thomas Mumley
Interim Executive Officer

Attachment:

A – Mitigation Monitoring and Reporting Program

ATTACHMENT A – MITIGATION MONITORING AND REPORTING PROGRAM

The Mitigation Monitoring and Reporting Program (MMRP) is a California Environmental Quality Act (CEQA)–required component of the Mitigated Negative Declaration (MND) process for the Pier 39 to Pier 43½ Sediment Remediation Project (the Project). The Project area encompasses Pier 39 and the intertidal and subtidal area between Pier 39 and Pier 43½ along the margin of San Francisco, extending into the Bay to the north of The Embarcadero, approximately between Taylor and Kearny Streets. The bayward limits of the Project area extend approximately 1,000 feet offshore. The Project area includes a small craft marina; multiple piers housing vessels for bay excursions, cruises, sailing, fishing, and ferry operations; and a high concentration of visitor-related commercial development (shops and restaurants). The adjacent upland area consists of densely developed commercial areas including parking lots, hotels, shops, restaurants, pedestrian and bicycle pathways, a playground, and some park areas. The results of the initial study, including proposed mitigation measures, are documented in the Final MND.

CEQA requires that agencies adopting MNDs take affirmative steps to determine that approved mitigation measures are implemented subsequent to project approval. As part of the CEQA environmental review procedures, Public Resources Code section 21081.6 requires a public agency to adopt a monitoring and reporting program to ensure efficacy and enforceability of any mitigation measures applied to a proposed project. The lead agency must adopt an MMRP for mitigation measures incorporated into the project or proposed as conditions of approval. The MMRP must be designed to ensure compliance during project implementation. As stated in Public Resources Code section 21081.6(a)(1):

The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead agency or a responsible agency, prepare and submit a proposed reporting or monitoring program.

Table 1 is the MMRP matrix. The table lists each of the mitigation measures proposed in the Final MND and specifies the party responsible for implementation of the mitigation measure and the time period for the mitigation measure.

Table 1 – MMRP Matrix

Environmental Impact	Mitigation Measure	Responsible Party	Timing
<p>Biological Resources: Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?</p>	<p>BIO-1A: In-water work activities may not be conducted during the December 1 to March 15 Pacific herring spawning season. As the spawning season approaches (month of November), a trained biologist shall monitor the waters within a specified distance of in-water Project activities for spawning event indicators (e.g., presence of milt in the water, active surface predation of herring by birds or marine mammals) and/or conduct herring egg surveys. If required, work shall be stopped if a spawning event is detected in the immediate vicinity of in-water work and shall not resume until spawning has ended and herring embryos have hatched.</p>	<p>PG&E and the Port of San Francisco</p>	<p>Monitoring will commence in November and will continue until December 1 when the in-water work ends.</p>
<p>Biological Resources: Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?</p>	<p>BIO-1B: A hydroacoustic assessment shall be completed to determine which construction activities may produce sound levels that could result in take of listed fish species. Based on assessment findings, appropriate measures (e.g., sound attenuation or work window restrictions) shall be incorporated into project authorization requests. All avoidance measures, monitoring, reporting, timing, and work limit requirements established within the agency consultation and/or authorization shall be fully implemented. Any identified compensatory mitigation shall be completed consistent with agency consultation and authorization requirements.</p>	<p>PG&E and the Port of San Francisco</p>	<p>The assessment will be completed prior to the start of in-water remedial activities.</p>
<p>Biological Resources: Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?</p>	<p>BIO-2: Project activities that could impact nesting birds will be scheduled to greatest extent practicable to avoid the nesting season (February 1 to August 31). If it is not possible to schedule such activities to occur between September 1 and January 31, a pre-construction nesting bird survey of all suitable nesting habitat within the zone of influence shall be conducted by a qualified biologist within 7 days prior to commencement of construction activities, scheduled to occur within the nesting season. The zone of influence would include the area immediately surrounding the work location that supports suitable nesting habitat that could be affected by the Project due to visual or auditory disturbance associated with construction activities scheduled to occur during the nesting season. If no nesting birds are observed during the survey, construction activities may commence as planned.</p> <p>If nesting birds are observed during the survey, the qualified biologist shall review results with the Project sponsor and contractor, evaluate whether the schedule of construction activities could affect the active nests, and recommend measures to the project biologist based the Pacific Gas and Electric (PG&E) Nesting Bird Management Plan, which could include establishing a non-disturbance buffer (e.g., 50 feet for non-raptors and 250 feet for raptors). This buffer would remain in place until such a time as the young have been determined</p>	<p>PG&E and the Port of San Francisco</p>	<p>A survey will be completed within 7 days prior to the onset of construction. The survey shall be re-conducted any time construction has been delayed or curtailed for more than 7 days during the nesting season.</p>

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	<p>(by a qualified biologist) to have fledged. These buffers may be modified (e.g., by reducing their size or installing a blind) as deemed appropriate by the project biologist in coordination with U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW).</p> <p>A brief survey report documenting the preconstruction survey area and findings shall be prepared by the qualified biologist and submitted to the Project sponsor prior to initiation of construction during the nesting season. The report shall document presence or absence of any active nests and prescribe a suitable non-disturbance buffer if active nests are present and could be disturbed by Project-related activities. No report of findings is required if construction is initiated during the non-nesting season (September 1 to January 31) and continues uninterrupted according to the above criteria.</p> <p>If any birds begin nesting within active work areas after construction has commenced, they will be nesting in an environment with high levels of existing and ongoing disturbance and a no work exclusion buffer shall be established around the active nests. However, a qualified biologist shall monitor the nest twice a week. If the qualified biologist determines that birds are showing signs of distress associated with construction (e.g., frequent vocalization or flushing from the nest), a non-disturbance buffer shall be established as determined by the qualified biologist.</p>		
<p>Biological Resources: Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?</p>	<p>BIO-3: Prior to construction, a native oyster survey will be completed. If oysters are within or immediately adjacent to the Project Area, it shall first be determined whether avoidance of the beds is feasible. If feasible, impacts on the oyster bed shall be avoided. If complete avoidance is not feasible, the Project sponsor shall request guidance from the National Marine Fisheries Service (NMFS) regarding the need for and/or feasibility of moving affected beds. Translocation of oyster beds shall be consistent with methods and recommendations presented in Shellfish Conservation and Restoration in San Francisco Bay: Opportunities and Constraints.</p>	<p>PG&E and the Port of San Francisco</p>	<p>The assessment will be completed prior to the start of in-water remedial activities</p>
<p>Cultural and Tribal Cultural Resources: Cause a substantial adverse change in the significance of a historical resource pursuant to § 15064.5?</p>	<p>CUL-1: In the unlikely event that previously unidentified archaeological, cultural, tribal cultural, or historical sites, artifacts, or features are uncovered during remediation, beyond the structural remnants previously identified, recorded, and evaluated, work shall be suspended within 100 feet (30 meters) of the find and redirected to another location. A qualified professional archaeologist shall be contacted immediately to examine the discovery. Project personnel shall not collect cultural resources. If the discovery can be avoided or protected and no further impacts would occur, the resource shall be documented on California Department of Parks and Recreation 523 forms, and no further effort shall be required.</p>	<p>PG&E and the Port of San Francisco</p>	<p>Actions are triggered immediately if and when previously unidentified archaeological, cultural, tribal cultural, or historical sites, artifacts, or features are uncovered during remedial activities.</p>

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	<p>If the resource cannot be avoided and may be subjected to further impacts, PG&E or its representative shall evaluate the significance of the discovery following federal and state laws outlined above and implement data recovery or other appropriate treatment measures if warranted. Evaluation of historical-period resources shall be done by a qualified historical archaeologist, whereas evaluation of prehistoric resources shall be done by a qualified archaeologist specializing in California prehistoric archaeology. If tribal cultural materials are present, the archaeologist shall contact and coordinate with the relevant Tribal Historic Preservation Officer(s). Evaluations may include archival research, oral interviews, and/or field excavations to determine the full depth, extent, nature, and integrity of the deposit.</p>		
<p>Cultural and Tribal Cultural Resources: Disturb any human remains, including those interred outside of formal cemeteries?</p>	<p>CUL-2: If human remains are encountered, all work shall stop in the immediate vicinity (within 100 feet) of the discovered remains and the County Coroner (or the City and County of San Francisco Medical Examiner) shall be notified. In addition, a qualified archaeologist shall be notified immediately so that an evaluation can be performed. If the remains are deemed to be Native American and prehistoric, the Coroner must contact the Native American Heritage Commission (NAHC) so that a “Most Likely Descendant” can be designated and further recommendations regarding treatment of the remains can be provided.</p> <p>If the remains are not Native American, the Coroner will consult with the archaeologist and the Lead Agency to develop a procedure for the proper study, documentation, and ultimate disposition of the remains. If a determination can be made as to the likely identity of the remains—either as an individual or as a member of a group—an attempt shall be made to identify and contact any living descendants or representatives of the descendant community. As interested parties, these descendants may make recommendations to the owner, or representative, for the treatment or disposition, with proper dignity, of the remains and grave goods.</p>	<p>PG&E and the Port of San Francisco</p>	<p>Actions are triggered immediately if and when human remains are encountered during remedial activities.</p>
<p>Recreation: Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?</p>	<p>REC-1: The Project sponsor/ applicant (PG&E) and co-applicant (Port of San Francisco) shall coordinate with all relevant stakeholders (Red and White Fleet, Blue & Gold Fleet, and other recreational businesses affected by construction activities) to develop a plan to address impacts on recreational boating businesses as a result of construction activities. The plan shall discuss how stakeholders and contractors will coordinate and phase construction activities and/or find alternative options (e.g., temporary relocation of businesses, alternate berthing locations) to minimize impacts. In addition, the Project sponsor/applicant and co-applicant shall work with stakeholders to facilitate communication to the public of any changes to recreational</p>	<p>PG&E and the Port of San Francisco</p>	<p>The Plan will be prepared prior to the start of remedial activities.</p>

Environmental Impact	Mitigation Measure	Responsible Party	Timing
	business offerings and schedules in the Project Area well in advance of such changes.		
<p>Transportation: Conflict with program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?</p>	<p>TRANS-1: The Project sponsor/ applicant (PG&E) and co-applicant (Port of San Francisco) shall coordinate with all relevant stakeholders (e.g., Blue & Gold Fleet and the Water Emergency Transportation Authority) to develop a plan to address transportation-related impacts on commuter ferry service as a result of construction activities. The plan shall address how stakeholders and contractors will coordinate and phase construction activities and/or find alternative options (e.g., temporary relocation of ferry services, alternate berthing locations) to minimize impacts on commuter ferry service. In addition, the Project sponsor/applicant and co-applicant shall work with stakeholders to facilitate notifications and communications to the public (e.g., online updates) of any ferry service schedule and berthing location changes well in advance of such changes.</p>	<p>PG&E and the Port of San Francisco</p>	<p>The Plan will be prepared prior to the start of remedial activities.</p>