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Governor's Office of Planning & Research

June 01 2021

STATE CLEARINGHOUSE



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June 1, 2021

File Ref: SCH #2020080442

San Francisco Bay Conservation and Development Commission
Schuyler Olsson, Coastal Program Analyst
375 Beale Street, Suite 150
San Francisco, CA 94105

VIA ELECTRONIC MAIL ONLY (schuyler.olsson@bcdc.ca.gov)

Subject: Comment letter for the Draft Environmental Assessment (EA) for Cargill, Incorporated Solar Sea Salt System Maintenance and Operations Activities, Alameda and San Mateo Counties

Dear Schuyler Olsson:

The California State Lands Commission (Commission) staff has reviewed the Draft EA for the Cargill, Incorporated Solar Sea Salt System Maintenance and Operations Activities (Project), which is being prepared by the San Francisco Bay Conservation and Development Commission (BCDC). BCDC, as the public agency with the greatest responsibility for supervising or approving the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect State sovereign land and their accompanying Public Trust resources or uses. Additionally, because the Project could involve work on State sovereign land, the Commission may act as a responsible agency.

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The state holds these lands for the benefit of all people of the state for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. On navigable non-tidal waterways, including lakes, the state holds fee ownership of the bed of the waterway landward to the ordinary low-water mark and a Public Trust easement landward to the ordinary high-water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

Based on the information provided and a review of in-house records, the proposed project may extend onto State sovereign land within the Commission's jurisdiction. According to the project description, the proposed maintenance and operations activities, salt ponds, earthen berms, and associated infrastructure near Newark and Redwood City appear to be located within an area associated with General Lease 8596 issued to Cargill, Inc. Placement of new riprap or repair and replacement of existing riprap on the outboard side of berms is not authorized under Lease 8596. At this time, staff does not have sufficient information to determine if the proposed riprap installation, repair, or replacement currently extends or will extend onto lands under the Commission's jurisdiction. Commission staff will request detailed plans and drawings of existing riprap locations and proposed riprap installation from the Project proponent.

Project Description

BCDC proposes to approve a 10-year permit to allow for continued operations and maintenance activities to meet the proponent's objectives and needs by maintaining the integrity and stability of infrastructure necessary to continue salt production activities. The proposed Project would also develop alternative maintenance methods for this infrastructure to reduce environmental effects, improve efficiency, and adapt to changing climate conditions.

From the Project Description, Commission staff understands that the Project would include the following component that has the potential to affect State sovereign land and that would not be consistent with the operations and maintenance activities currently authorized under Lease 8596:

- **Riprap Installation, Repair, Or Replacement.** Existing and proposed infrastructure maintenance activities include placement of new riprap or repair/replacement of existing riprap on the outboard side of berms, with silt fence placement as necessary. In severely eroded areas, imported fill material would be placed, followed by filter fabric, and finally riprap as the final erosion prevention layer. All outboard berms would have a slope maintained at approximately 4:1.

Environmental Review

Commission staff requests that BCDC consider the following comment on the Project's Draft EA, to ensure that Project activities that could affect State sovereign land are reviewed by Commission staff and, if necessary, evaluated with the EA to support any future approvals for the Project.

1. Annual Work Plan: As indicated in the jurisdictional comments, above, various proposed Project activities are not contemplated under the operations and maintenance terms of existing Lease 8596. Section 2.10 of the Draft EA describes how the proponent develops and submits an annual Work Plan to various agencies that outlines the anticipated work to be conducted. Commission staff understands that riprap placement or repair would be included in this document, and requests that the Commission be added to the list of agencies receiving both the annual Work Plan and completion report of activities to ensure that all actions on State sovereign land are authorized and in compliance with lease terms. The Commission is therefore also considered a pertinent agency for purposes of the best management practice (BMP) measure "Riprap Placement-5: Agency Notification."

Thank you for the opportunity to comment on the Draft EA for the Project. As a responsible and trustee agency, Commission staff will need to rely on the Final EA for the issuance of any amended lease as specified above and, therefore, we request that you consider our comments prior to adoption of the EA.

Please send copies of future Project-related documents, including electronic copies of the Final EA and Mitigation Monitoring Program, when they become available. Please refer questions concerning environmental review to Alexandra Borack, Senior Environmental Scientist, at (916) 574-2399 or Alexandra.Borack@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Dobri Tutov, Public Land Management Specialist II, at (916) 574-0722 or Dobri.Tutov@slc.ca.gov.

Sincerely,



Nicole Dobroski, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
D. Tutov, Commission
A. Borack, Commission
A. Kershen, Commission