



# Citizens Committee to Complete the Refuge

P.O. Box 23957, San Jose, CA 95153

Tel: 650-493-5540

Email: [cccrrefuge@gmail.com](mailto:cccrrefuge@gmail.com)

[www.bayrefuge.org](http://www.bayrefuge.org)

*Sent via electronic email only*

Bay Conservation and Development Commission  
Attn: Harriet Ross, Regulatory Director  
375 Beal Street, Suite 510  
San Francisco, California 94105  
Email: [harriet.ross@bcdc.ca.gov](mailto:harriet.ross@bcdc.ca.gov)

30 April 2025

Re: Final Environmental Assessment Cargill, Incorporated Solar Sea Salt System Maintenance and Operations Activities Project (BCDC Permit Application 2021.003.00)

Dear Ms. Ross,

These comments are submitted on behalf of the Citizens Committee to Complete the Refuge (CCCR) in response to the Final Environmental Assessment Cargill, Incorporated Solar Sea Salt System Maintenance and Operations Activities (Final EA). Thank you for the opportunity to provide comments.

As noted in the Final EA, CCCR had previously submitted the following comment letters in response to the Draft Recirculated EA:

- 1) September 23, 2024 CCCR comment letter to the Bay Conservation and Development Commission (BCDC) regarding the Recirculated Draft EA
- 2) June 8, 2021 CCCR comment letter to BCDC regarding the previous version of the Draft EA,
- 3) the November 12, 2022 Save the Bay/CCCR letter addressed to the BCDC Engineering Criteria Review Board (ECRB),
- 4) an email dated June 9, 2021 with recommendations of how to fill void spaces in riprap to avoid harboring predators and non-native species,
- 5) a November 11, 2014 Memo from Dr. Peter Baye to the South Bay Salt Pond Restoration Project regarding the potential to use gravel beach restoration/creation as an alternative to the use of riprap in areas subject to wave erosion,
- 6) A KMZ file providing the location of an example of a gravel barrier

We thank you for the opportunity to provide comments on the Final EA. We recognize that this has been a long process for both BCDC staff and for the permit applicant. And we appreciate the efforts of both BCDC staff and the applicant to provide requested information, including additional studies and analyses, more detailed figures, etc. We appreciate the additions of clarifications of the definition

of a “qualified biologist” and the types of activities that where monitoring of a qualified biologist would be required.

We also appreciate that revisions to the proposed project have been made such as reducing the number of gaps that are proposed to be closed on internal levees from 40 gap closures to 3 gap closures. We had previously conveyed our concerns that these gap closures could result in adverse impacts to migratory and resident waterbirds, including listed and rare species, that utilize the internal levees that are isolated from land-based predators and human disturbance.

However, we disagree that the placement of new riprap, which according the to Final EA might occur on top of tidal marsh, has been adequately analyzed or appropriate mitigation identified and proposed within the Final EA. We question the failure to regulate the deposition of sediment on pond bottoms. And we urge BCDC to incorporate into the Monitoring and Adaptive Management Plan (MAMP), language that would require a cessation to pumping for a pre-determined period of time, if take limits are exceeded to provide an opportunity for the applicant, USFWS, NMFS, and CDFW, time to determine if implementation of additional protective measures can reduce the level of take.

Based upon our review of the Final EA, we have the following comments:

**Long-term Adaptive Management Plan (LAMP):**

p. 8-11. Please provide clarification as to why the adaptations identified in the LAMP would not be implemented until January 1, 2035? Is it because of that the adaptations proposed in LAMP “may warrant the need for a permit amendment or new permit” and environmental review?

**Placement of New Riprap on Outboard Levee Slopes:**

Cumulative Impacts – p. 8-17: RWQCB-23 – “potential cumulative effects from loss of near-shore habitat due to armoring of the shoreline” - In stressing the significance of the cumulative impacts of losing near-shore habitat to armoring, the RWQCB comment letter provides documentation of research that demonstrates the importance of unarmored shorelines for fisheries. In addition, there are substantive concerns regarding continuity of habitat for species such as the listed Ridgway’s Rail and salt marsh harvest mouse.

The response to comments states:

“Cargill estimates 390 linear feet, on average, per year over the 10-year permit period, compared to more than 30 miles (not including sloughs) of predominately unarmored shoreline in the South Bay. This means that an average of up to 0.03% of the existing shoreline may be armored each year with new riprap placement.”

When considering the placement of 390 linear feet of new riprap along the outboard side of levees, the cumulative impacts when assessed at the level of the entire South Bay, may seem insignificant. However, a statement on p. 8-58 of the Final EA raises the question of whether, at a local shoreline level, incremental increases of shoreline armoring could be significant:

“...Specifically, when Cargill identifies the need for new rip rap, it is typically in an area extending approximately 20 linear (LF) adjacent to existing armored areas...

We understand that Cargill provides the locations of work that is proposed, and subsequently completed, each year.

- Does staff track the locations where new riprap is being placed year after year to determine whether those particular locations along the edges of the Bay are being gradually converted from unarmored to armored shoreline? If so, it may be that opportunities for implementation of NBS shoreline resilience projects, that can help protect near-shore habitats, are being lost. If not, this is information that should be tracked over time and utilized to inform future decisions regarding the Cargill O & M permit.

#### Placement of New Riprap on Top of or Adjacent to Existing Tidal Marsh –

- What level of review is undertaken by staff if placement of new riprap on outboard levees is proposed when Cargill submits its annual list of proposed work? For example, is the location analyzed to determine what habitats exist adjacent to the proposed riprap placement?
- If tidal marsh will be impacted by riprap placement, is this information required to be included in the description of the proposed work?
- Does the proposed workplan include an areal estimate of tidal marsh that would be filled? The language provided on p. 9-11 of the Final EA, Section 2.13.2, Riprap Placement – 7: Monitor Effect on Adjacent Tidal Marsh - suggests that this information is provided after-the-fact, which is unacceptable:

*“Where new riprap is placed on or immediately adjacent to existing tidal marsh the biological monitor monitoring the riprap placement will document the precise location and extent of any placement into the adjacent tidal marsh.” [emphasis added]*

This language is concerning as it implies that the regulatory and resource agencies will not be informed of impacts to tidal marsh until after the fill has occurred. Proposed placement of new riprap on top of, or immediately adjacent to existing tidal marsh should be identified prior to approval of the annual workplan so the regulatory and resource agencies can determine if the impacts of the proposed fill will be less than significant, can be avoided or minimized, or whether additional protective measures are required. This is particularly important for areas known to support listed or sensitive species.

The annual workplan of proposed work is usually presented as a laundry list of proposed actions that will be undertaken within each pond complex. Also provided is a very brief description of the activity, duration of the activity, an indication of planned length and volume, whether the activity is on the inboard or outboard side of levees, very brief comments and the biological survey requirements.

Given the turnover and reduction in regulatory and resource agency staff, the annual workplan submittal should be revised to provide an adequate understanding of the local impacts that may occur and to help expedite review of the proposed action items. The annual workplan of proposed activities should be updated to include:

- a separate heading for work that will impact tidal wetlands or tidal flats or work that will convert unarmored shoreline to armored shoreline
- a location more detailed map for these particular activities
- a brief description of the habitat that may be impacted or habitat that is adjacent to the proposed project
- the proposed areal extent of habitat to be impacted, temporarily or permanently,
- listed or special status species documented or likely to occur in the vicinity of the proposed work,
- proposed compensatory mitigation

This additional information can better inform permit decision making in the future, revealing whether or not these activities will, in fact, result in less than significant impacts, are being adequately mitigated and monitored, and do not result in adverse impacts to adjacent habitats (e.g. scouring and erosion, etc.)

### **Minor Fill and Excavation:**

Identification of specific limits to define “Minor Fill” – The Recirculated EA stated, “Specific criteria would be defined in the permit; these quantities and scope of these minor fill and excavation events would be consistent with or less than the baseline period.”

The Response Comments did not adequately address the substantive concern that the EA should provide limits on what would be approved as a “minor fill.” CCCR provided the example of the limit for “minor fill” that is utilized by the U.S. Army Corps of Engineers (Corps) for Nationwide Permit 18 – “Minor Discharges,” that places a limit of 25 CY of fill, with an areal extent of less than 1/10-acre.

Not providing a description of the limits/specific conditions until the permit language is developed, hampers the ability of the public to understand what constitutes a “minor fill” or the extent of impacts to the environment that might occur.

The inclusion of a category of activities labeled “de minimis activities” does not adequately address our concerns as this category of activities “does not involve in-water work,” and according to the EA “would not cause any temporary or permanent adverse effects to the environment or public access.” Thus, we are still left confused as to the potential size of “minor fill.”

### **Why is this deposition of fill within the salt ponds not regulated under the O & M Permit:**

In response to the Recirculated Draft Environmental Assessment, CCCR submitted the photos similar to those provided below, questioning whether the fan of sediment (not salts) depicted within Pond P2-13 is considered a “minor fill.”



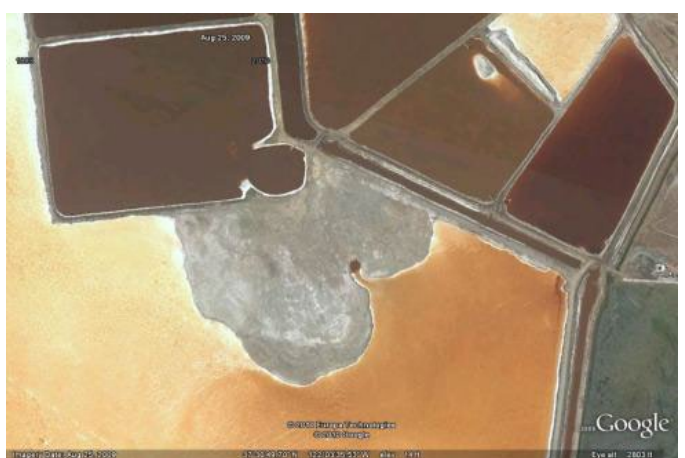
July 1, 2004



June 26, 2006



May 31, 2007

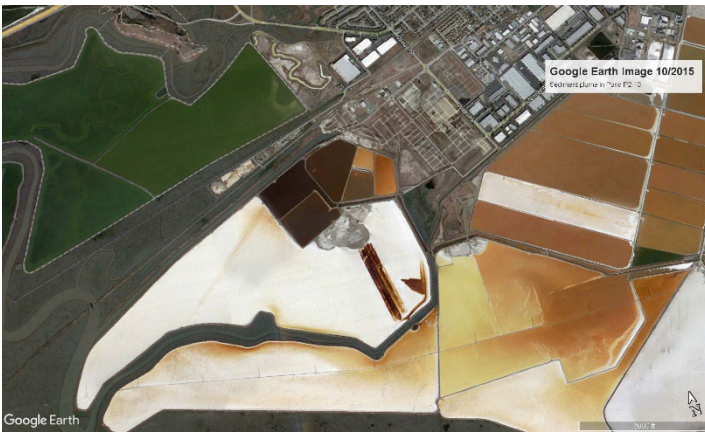


August 25, 2009

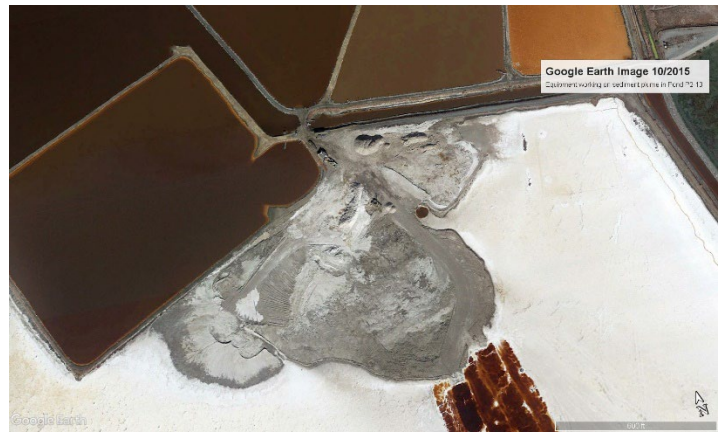
The area of sediment deposition in Pond P2-13 did not exist prior to July 2004. By August 2009, a GIS analysis approximated the size of the fan of sediment to cover approximately 18 acres of the pond bottom of P2-13.

Visual analysis of a Google Earth image from October 2015 indicates this deposition of sediment has continued to grow.





Sediment deposits in Ponds P2- 13 and P2-10



Close-up of the sediment fan in Pond p2-13 (10/2015)

Mounds of sediment can be seen on top of the sediment deposition and equipment working the sediment can be observed in the image.

A similar situation can be observed in Pond P2-10, with sediment depositions on top of the pond bottom visible after 2007.



June 2007 Pond P2-10 no visible sediment deposit



September 2014 sediment deposit visible in P2-10



September 2014 equipment working sediment pad with hummocks of sediment visible in Pond P2-10

The response to CCCR's question of whether this activity is considered a "minor fill" states:

"Cargill has indicated that these photos do not represent fill. The material on the northwest side of Pond P2-13 consists of mixed sea salts within the pond that were moved around. Cargill manages the distribution of mixed sea salts in the ponds to manage and harvest brine and manage rain water."

Does the same response apply for the sediment deposited in pond P2-10?

Estimates of the areal extent of the fill pad on top of the pond bottom of Pond P2-13 was approximately 18 acres as of 2009, which seems significant. It clearly results in a change in the pond bottom elevation. These do not appear to be deposits of salts, but instead appear to be deposits of sediment that remain in place over significant periods of time.

Is an activity that results in the creation of an 18-acre sediment fan on top of the pond bottom not regulated at all? Will this activity cease or will these sediment fans continue to grow over time?

### **Master Comment Response 1 – Intake of Bay Water**

We would suggest that for this section, strengthening the distinction between actions that are protective of listed and special status species, and actions meant to compensate for the various forms of take that have been listed (impingement, entrainment, impacts to eggs and larval fish, etc.).

The need for this distinction is important should monitoring indicate take limits are being exceeded. In describing how this situation would be addressed, some passages of this section almost seem to

default to revisions of compensatory requirements rather than first exploring whether additional protective measures should be implemented:

p. 8-45 “...If necessary, based on the data collected pursuant to the MAMP, compensatory mitigation requirements may be revised if projected take is greater than currently estimated.”

p. 8-46 “...If updated take estimates are required, they would be developed in coordination with BCDC, NMFS, USFWS, and CDFW, and used to prioritize the intakes requiring protection, and to confirm whether the mitigation required in the BOs and ITP is adequate to ensure that potential impacts to special status fish will remain less than significant under CEQA.”

We don’t believe this is the intent of BCDC, as 8.1.6.2 MAMP Implementation Steps begins with the consideration of additional protective measures. The MAMP Implementation Steps should be highlighted in the Final EA and could potentially benefit from incorporation of a simple flowchart figure such as “Figure 3-4.4 (Revised). Revised Mitigation Measure BIO-2 Implementation Process Flowchart” that is specific for visually depicting the process that would be implemented should take limits be exceeded.

We urge that the process be modified to include cessation of pumping for a pre-determined period of time, to allow the applicant in coordination with USFWS, NMFS, and CDFW to identify protective corrective actions. Review of additional protective measures should occur before considering an increase in compensatory mitigation. We concur with the statement on p. 8-38, “For listed and candidate (special status) species, the loss of a single individual is considered a potentially significant impact.”

## **Master Comment Response 2 - Nature-Based Solutions:**

P. 8-59, 8.2.3.4 Nature-Based Solutions as Mitigation for Other Activities – We support consideration of the use of NBS as potential compensatory mitigation (once avoidance and minimization of impacts has been demonstrated) for other activities, provided the appropriateness is determined based upon the conclusion that replacement of lost functions and values will occur (we have seen several situations when greenwashing of projects has occurred). We provide an example below.

The Final EA lists the placement of up to 390 linear feet of riprap. As an alternative we urge BCDC to consider the following approach. As a minimum compensatory mitigation measure, BCDC should require that for every length of new riprap placed on the outboard levee slopes rip-rap length more than a patch 12 ft long, the applicant be required to retrofit at a minimum 2:1 ratio, past authorized riprap reaches with a constructed gravel barrier beach and backbarrier salt marsh habitat, and remove past riprap placed behind new beach fringed-marsh, to achieve no net increase in bayfront riprap. Any riprap exceeding patch repair of 12 ft should be prohibited, and constructed gravel beach with backbarrier marsh protection of the shoreline should be required as the least environmentally damaging practical alternative to maintain and restore large-scale habitat integrity within sensitive Refuge and tidal salt marsh areas [to provide consistence with Corps permit review process - LEDPA].



## Section 9 Revisions, Clarifications and Corrections to Recirculated EA:

p. 9-7, 2.10.1.3 – The Revised Text states, “ New riprap placement on the outboard slopes is estimated to total *approximately 780 lf* and 1,040 CY over a 10-year permit period with an estimated maximum of 7,800 square feet of placement during that permit period.” [emphasis added]  
Please clarify if the estimated amount of new riprap placement on outboard slopes is 390 lf or 780 lf.

### Mitigation Monitoring and Reporting Program:

10.2 Future Changes to Mitigation Measures (p. 10-2) – Bullet one should be modified to state that the determination that “a mitigation measure included in the EA and MMRP is no longer required...” would require coordination and agreement with other pertinent regulatory and resource agencies.

BIO-2 (p.10-4) - As stated above under the discussion of the MAMP Implementation, we urge that a “12a” be inserted, stating that should take limits be exceeded, pumping would cease for a pre-determined period of time to allow Cargill, USFWS, NMFS, and CDFW determine if additional protective measures could be implemented that would reduce take of listed species.

BIO-2 f. (p. 10-5) – “If the updated take estimates exceed those addressed in the BOs and ITP, Cargill shall update the compensatory mitigation plan as needed to ensure all take of special status fish is fully mitigated.” We strenuously object to this language. The process outlined of first determining whether additional protective measures could feasibly be implemented that would reduce the level of take, should be adhered to rather than leaping to a “buy down” of the impacts of take.

BIO-4 (p. 10-8) – We urge that temporal loss of habitat function and values be incorporated into any determination of appropriate minimum compensatory mitigation ratios.



Additionally, this mitigation measure does not include any requirement for monitoring the indirect impacts of placing new riprap on outboard levee slopes on adjacent habitats. Monitoring of adjacent habitats should be required to ensure the impacts of new riprap placement does not extend beyond the fill footprint.

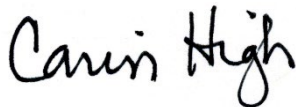
The image to the left is taken from the Draft EA (Figure 206. Riprap Placed on Outboard Side of Berm). What monitoring if any, will be required when new riprap is placed on the outboard side of levees? This particular photo is concerning as the new riprap is placed right up to, perhaps even on, existing tidal wetlands habitat. Such

monitoring must be required if new riprap is installed instead of utilizing NBS This will help ensure that the impacts of the riprap on adjacent tidal wetland are identified and that there are no exceedances in the areal extent of riprap placement Additionally, if impacts are identified a corrective action plan must be developed for the review and approval of regulatory and resource agencies, and the implementation of corrective measures required. If corrective action is not possible, compensatory mitigation should be required and should be at a ratio that considers permanent loss of existing habitat and the temporal loss that will occur until the mitigation area has met its success criteria.

As stated at the beginning of this comment letter, we appreciate the effort that has been expended to address some of the substantive comments that were previously provided.

We thank you for the opportunity to provide comments and ask that we be kept informed of future opportunities to review and provide comments on this project, including documents that are required of part of this permit process but have not been completed.

Respectfully submitted,

A handwritten signature in black ink that reads "Carin High". The signature is written in a cursive, flowing style.

Carin High  
CCCR Co-Chair

A handwritten signature in black ink that reads "Arthur Feinstein". The signature is written in a cursive, flowing style.

Arthur Feinstein  
CCCR Board Member