

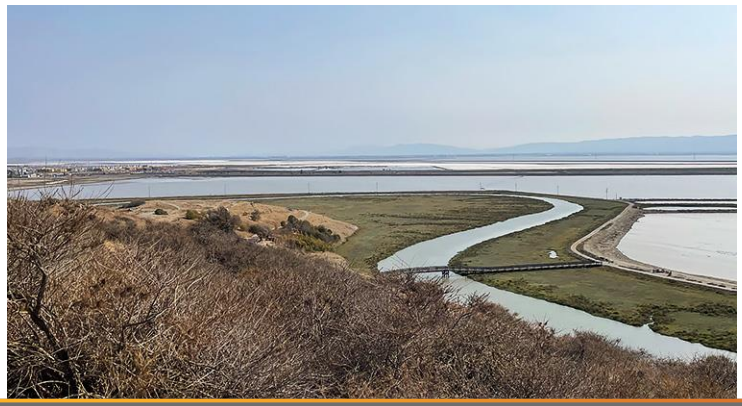



FINAL ENVIRONMENTAL IMPACT REPORT FOR THE

Cargill Mixed Sea Salts Processing and Brine Discharge Project

SCH No. 2022050436

Prepared for:

EBDA
EAST BAY DISCHARGERS AUTHORITY

June 2023

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TABLE OF CONTENTS

Section			Page
1	INTRODUCTION		1-1
	1.1	Purpose and Intended Uses of This Final EIR	1-1
	1.2	Project Location	1-2
	1.3	Project Objectives	1-2
	1.4	Summary Description of the Project	1-4
	1.5	Major Conclusions of the Environmental Analysis	1-5
	1.6	CEQA Public Review Process	1-5
	1.7	Organization of This Final EIR	1-6
2	PROJECT UPDATES		2-1
	2.1	MSS Brine Transport Pipeline Diameter	2-1
	2.2	Staging Areas	2-1
	2.3	Minor Revisions to MSS Brine Transport Pipeline Alignment	2-2
	2.4	Prefabricated Pipe Bridge at Bockman Channel	2-2
	2.5	Update to Project Trenchless Crossings	2-3
	2.6	MSS Brine Transport Pipeline Integrity Fiber Optic Conduit	2-4
3	RESPONSES TO COMMENTS		3-1
	3.1	List of Commenters on the Draft EIR	3-1
	3.2	Comments and Responses	3-1
4	REVISIONS TO THE DRAFT EIR		4-1
	4.1	Revisions to the "Executive Summary" Chapter	4-1
	4.2	Revisions to Chapter 1, "Introduction"	4-11
	4.3	Revisions to Chapter 2, "Project Description"	4-12
	4.4	Revisions to Chapter 3.3, "Biological Resources"	4-30
	4.5	Revisions to Chapter 3.4, "Cultural and Tribal Cultural Resources"	4-34
	4.6	Revisions to Chapter 3.7, "Hazards and Hazardous Materials"	4-34
	4.7	Revisions to Chapter 3.8, "Hydrology and Water Quality"	4-35
	4.8	Revisions to Chapter 3.10, "Recreation"	4-37
	4.9	Revisions to Chapter 4, "Cumulative Impacts"	4-38
	4.10	Revisions to Chapter 5, "Alternatives"	4-39
	4.11	Revisions to Appendix C, "Special-Status Species Potential for Occurrence in the Biological Study Area"	4-39
5	REFERENCES		5-1
6	LIST OF PREPARERS		6-1

Appendices

A Public Meeting Transcript
B Comment Letters

Figures

Figure 1-1 Project Location 1-3
Figure 3-1 Community Vulnerability (BCDC 2020) - Social Vulnerability Rank 3-41
Figure 3.4-1 Proposed Tribal Monitoring Area 4-7
Figure 2-1 Project Area 4-15
Figure 2-8a MSS Brine Transport Pipeline – Map 1 4-16
Figure 2-8b MSS Brine Transport Pipeline – Map 2 4-17
Figure 2-8c MSS Brine Transport Pipeline – Map 3 4-18
Figure 2-8d MSS Brine Transport Pipeline – Map 4 4-19
Figure 2-8e MSS Brine Transport Pipeline – Map 5 4-20
Figure 2-8f MSS Brine Transport Pipeline – Map 6 4-21
Figure 2-8g MSS Brine Transport Pipeline – Map 7 4-23
Figure 2-8h MSS Brine Transport Pipeline – Map 8 4-25

Tables

Table 3-1 List of Commenters 3-1
Table 2-2 Trenchless Crossing Locations Along the MSS Brine Transport Pipeline Alignment 4-14

LIST OF ABBREVIATIONS

ACFCWCD	Alameda County Flood Control & Water Conservation District
ACP	asbestos cement pipe
ACPWA	Alameda County Public Works Agency
ACWD	Alameda County Water District
APN	Assessor's Parcel Number
BAAQMD	Bay Area Air Quality Management District
BCDC	San Francisco Bay Conservation and Development Commission
Caltrans	California Department of Transportation
CARI	California Aquatic Resources Inventory
CBC	California Building Codes
CCC	California Coastal Commission
CEQA	California Environmental Quality Act
CIDH	cast-in-drilled-hole
Commission	San Francisco Bay Conservation and Development Commission
CSLC	California State Lands Commission
DEIR	Draft Environmental Impact Report
draft EIR	draft environmental impact report
DWR	California Department of Water Resource
EBDA	East Bay Dischargers Authority
EBRPD	East Bay Regional Park District
ECRB	Engineering Criteria Review Board
EIR	Environmental Impact Report
Final EIR	final environmental impact report
First Mile Project	First Mile Horizontal Levee Project
GSA	Groundwater Sustainability Agency
HASPA	Hayward Area Shoreline Planning Agency
HDD	horizontal directional drilling
HDPE	high-density polyethylene
Member Agencies	City of Hayward, City of San Leandro, Oro Loma Sanitary District, Union Sanitary District, and Castro Valley Sanitary District
MSS	Mixed Sea Salts
NAHC	Native American Heritage Commission
NOP	notice of preparation
NO_X	oxides of nitrogen
NPDES	National Pollutant Discharge Elimination System
OLEPS	Oro Loma Effluent Pump Station
Oro Loma Plant	Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant in San Lorenzo
Park District	East Bay Regional Park District
PM_{10}	respirable particulate matter

$PM_{2.5}$	fine particulate matter
PRC	Public Resources Code
project proponent	Cargill
Project	Cargill Mixed Sea Salts Processing and Brine Discharge Project
Refuge	San Francisco Bay National Wildlife Refuge
Regional Board	Regional Water Quality Control Board
ROW	right-of-way
RWQCB	Regional Water Quality Control Board
SR	State Route
USACE	U.S. Corps of Engineers
USD	Union Sanitary District

1 INTRODUCTION

This final environmental impact report (Final EIR) has been prepared by the East Bay Dischargers Authority (EBDA), as lead agency, in accordance with the requirements of the California Environmental Quality Act (CEQA) and the State CEQA Guidelines (Section 15132). This Final EIR consists of the Draft EIR for the Cargill Mixed Sea Salt Processing and Brine Discharge Project (project) and this document, which includes comments on the Draft EIR, responses to those comments, and revisions to the Draft EIR.

1.1 PURPOSE AND INTENDED USES OF THIS FINAL EIR

CEQA requires a lead agency that has prepared a Draft EIR to consult with and obtain comments from responsible and trustee agencies that have jurisdiction by law with respect to the project, and to provide the public with an opportunity to comment on the Draft EIR. The Final EIR is the mechanism for responding to these comments. This Final EIR has been prepared to respond to comments received on the Draft EIR, which are reproduced in this document, and to present corrections, revisions, and other clarifications and amplifications to the Draft EIR, including project updates, made in response to these comments and as a result of the project proponent's ongoing planning and design efforts.

EBDA, which is a Joint Powers Public Agency authorized by a "Joint Exercise of Powers Agreement" (JPA) entered into by the City of Hayward, City of San Leandro, Oro Loma Sanitary District, Union Sanitary District, and Castro Valley Sanitary District (Member Agencies) operates under a Commission consisting of one representative appointed by each Member Agency. This Final EIR will be used to support the EBDA Commission's decision regarding whether to approve the project. This Final EIR also will be used by CEQA responsible and trustee agencies to ensure that they have met their requirements under CEQA before deciding whether to approve or permit project elements over which they have jurisdiction. This Final EIR also may be used by other state, regional, and local agencies that have an interest in resources that could be affected by the project or that have jurisdiction over portions of the project.

The responsible, trustee, and interested agencies for the project are listed below.

1.1.1 State Agencies

- California Department of Fish and Wildlife (Region 3 – Bay Delta)
- California Department of Transportation
- California State Lands Commission
- California State Parks, Office of Historic Preservation
- San Francisco Bay Conservation and Development Commission
- San Francisco Bay Regional Water Quality Control Board (Region 2)
- San Francisco Public Utilities Commission

1.1.2 Regional and Local Agencies

- Alameda County Flood Control & Water Conservation District
- Alameda County Public Works Agency
- Alameda County Water District
- Bay Area Air Quality Management District
- City of Fremont

- City of Hayward
- City of Newark
- City of Union City
- County of Alameda
- East Bay Regional Park District
- Hayward Regional Shoreline Planning Agency
- San Mateo County Transit District
- Union Pacific Railroad Company
- Union Sanitary District

Information in this Final EIR also may be used by federal agencies with jurisdiction over portions of the project as they consider environmental impacts under the National Environmental Policy Act. Federal agencies that potentially have jurisdiction over portions of the project are listed below:

- US Army Corps of Engineers
- US Fish and Wildlife Service
- National Marine Fisheries Service

1.2 PROJECT LOCATION

Proposed project features are located in the eastern San Francisco Bay Area, including portions of San Lorenzo, an unincorporated community in Alameda County, and portions of the cities of Hayward, Union City, Fremont, and Newark. Specifically, proposed project improvements would be constructed at Cargill's Solar Salt Facility, located at 7220 Central Avenue in Newark, California, and within roadway rights-of-way between the Solar Salt Facility and the Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant in San Lorenzo (Figure 1-1). The mixed sea salts (MSS) are situated primarily in Ponds 12 and 13 of Cargill's Solar Salt Facility, which are located in the US Fish and Wildlife Service's Don Edwards San Francisco Bay National Wildlife Refuge.

1.3 PROJECT OBJECTIVES

The project has the following objectives:

- Provide wastewater disposal capacity and services to Cargill in a manner that provides economic advantage to EBDA Member Agencies, with emphasis on offsetting and reducing expenses to EBDA and its ratepayers, and furthers the purpose and goals of EBDA's Joint Powers Agreement.
- Further EBDA's sustainability objectives, including those in support of reclamation and reuse of wastewater, by creating or facilitating the creation of permanent infrastructure available for future regional water recycling efforts by EBDA and/or EBDA Member Agencies.
- Balance any impacts due to disruption to local jurisdictions with impacts to sensitive environments.
- Develop new infrastructure to process MSS brine with minimal exposure to disruptions, including connecting with and optimizing existing EBDA infrastructure to use EBDA's excess capacity for processing and blending MSS brine.
- Utilize strategic connection to an existing deep-water outfall to minimize impacts to water quality and aquatic resources in receiving waters associated with the discharge of residual MSS brine.



Source: Data received from AECOM and Jacobs in 2021 and 2022; adapted by Ascent Environmental in 2022.

Figure 1-1 Project Location

- Facilitate the timely harvest of liquid bittern from the MSS in Cargill's Solar Salt Facility on-site ponds and ensure that MSS brine is efficiently, sustainably, and responsibly handled at all stages, including collection, transmission, and disposal.
- Prevent operational and environmental impacts of Bay water overtopping the berms surrounding MSS ponds due to sea level rise.

1.4 SUMMARY DESCRIPTION OF THE PROJECT

Cargill operates a solar sea salt production facility (Solar Salt Facility) at 7220 Central Avenue in Newark, California, in the South Bay, and the project proposed by Cargill would enable the enhanced processing and removal of MSS in existing ponds at its Solar Salt Facility by allowing Cargill to harvest additional liquid bittern from the MSS matrices in these ponds as commercial product, dissolving the residual MSS solids in the ponds using Bay water, and transferring the resulting brine to EBDA's combined effluent pipeline for discharge into the Bay under EBDA's National Pollutant Discharge Elimination System permit. Harvesting the liquid bittern and final disposition of the residual MSS brine would not require the introduction of any chemicals.

Cargill estimates that approximately 6 million tons of MSS are stored in ponds adjacent to the Bay at the Solar Salt Facility and that its existing operations increase the MSS inventory by approximately 60,000 tons annually. It is anticipated that the MSS brine would be discharged to the EBDA system at a rate of up to 2.0 million gallons per day. Based on this estimated flow rate, the harvesting and discharge of the inventory of MSS, including existing annual accumulations, is projected to require a 10- to 15-year timeframe. Discharge of the MSS brine by Cargill to the EBDA system would be subject to an agreement between EBDA and Cargill. Because EBDA's JPA term expires on June 30, 2040, the proposed project either would terminate on or before that date or could continue under a renegotiated agreement.

The proposed project has an on-site component of pipelines and pumping facilities in the existing Solar Salt Facility and an off-site component that would require construction of approximately 15.6 miles of new underground pipeline primarily within roadway rights-of-way to connect the Solar Salt Facility with EBDA's system just downstream of the Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant in San Lorenzo (Figure 1-1).

The proposed project consists of the following components:

- Dissolution Water Pond and Plummer Creek Pump Station. A new pump station would be installed to pump water indirectly from Plummer Creek to a new dissolution water pond.
- Dissolution Water Pump Station and Distribution System. A new dissolution water pump station would be constructed as a cast-in-place slab-on-grade facility located at the dissolution water pond. It would be connected to an on-site high-density polyethylene piping distribution system installed above grade along the internal slope of the existing berms to deliver dissolution water to micro-trenches excavated in the crystallized salt layer above the Bay mud in Ponds 12 and 13 for MSS processing.
- Two MSS Brine Pump Stations. New MSS brine pump stations would be constructed at Ponds 12 and 13 as cast-in-place slab-on-grade pump stations to pump the resultant brine out of the processing ponds and into the off-site brine discharge pipeline.
- Liquid Bittern Recovery Pumps. During the processing of Pond 12, sections of the pond would be temporarily isolated using vinyl sheet piling to enable liquid bittern recovery. Two new pipelines would be installed along the internal slope of the berm on the northern shore of Pond 12: (1) a 12-inch header pipe to deliver dissolution water to Pond 12 and (2) a 4-inch pipe to transfer liquid bittern from Pond 12 to Pond 13, where it would be further processed and harvested as commercial product. After Pond 12 processing is complete, MSS processing would be initiated in Pond 13, and Pond 12 would be converted back to a site used for liquid bittern harvesting. To facilitate Pond 13 processing, two new pipelines similar to the ones described for Pond 12 would be installed along the internal slope of the berm on the southern side of Pond 13 to transfer liquid bittern from Pond 13 to Pond 12.

- Rainwater Decanting. A new weir box structure, which includes a weir plate (barrier) to control the flow of water, and a pipe would be installed at the northeastern corner of Pond 13 to enable decanting of rainwater from the surface of Pond 13 to supplement dissolution water for Pond 12.
- MSS Brine Transport Pipeline. An 18-inch (outside diameter) MSS brine transport pipeline would be constructed and would extend north primarily along roadway rights-of-way for approximately 15.6 miles, from the Solar Salt Facility to the Oro Loma Effluent Pump Station (OLEPS), located at the Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant in San Lorenzo. Based on current design, the MSS brine transport pipeline would be located within portions of Thornton Avenue, Paseo Padre Parkway, Ardenwood Boulevard, Union City Boulevard, Hesperian Boulevard, Eden Shores Boulevard, Marina Drive, Industrial Boulevard, Baumberg Avenue, Arden Road, Corporate Avenue, Investment Boulevard, Production Avenue, Clawiter Road, West Winton Avenue, and Corsair Boulevard.
- MSS Brine Discharge to the EBDA System. The MSS brine transport pipeline would tie into EBDA's combined effluent conveyance system immediately downstream of the Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant in San Lorenzo by connection to the pump discharge manhole approximately 75 feet north and downstream of the OLEPS. The MSS brine would then be combined with the treated wastewater effluents from the other agencies that discharge into the EBDA system before being discharged back to the Bay.

1.5 MAJOR CONCLUSIONS OF THE ENVIRONMENTAL ANALYSIS

The Draft EIR identified significant or potentially significant effects associated with air quality, biological resources, cultural and tribal cultural resources, hydrology and water quality, hazards and hazardous materials, noise, and recreation. Most of the significant or potentially significant impacts from the project could be reduced to a less-than-significant level through mitigation; however, the potential to expose existing receptors (residents and other people sensitive to noise exposure) to short-term construction noise would remain significant and unavoidable.

1.6 CEQA PUBLIC REVIEW PROCESS

On January 4, 2023, EBDA released the Draft EIR for a 45-day public review and comment period. The Draft EIR was submitted to the State Clearinghouse for distribution to reviewing agencies; posted on EBDA's website (https://ebda.org/projects/cargill-partnership/); and made available at EBDA's office, located at 2651 Grant Avenue in San Lorenzo, California. A notice of availability of the Draft EIR was published in the *Alameda Times-Star* and distributed to a project-specific mailing list.

A public meeting was held online via Zoom at 6:00 p.m. on Tuesday, January 24, 2023, to receive input from agencies and the public on the Draft EIR. The meeting was recorded, and a transcript was prepared. The transcript is included in Appendix A. No oral comments were received during the public meeting.

As a result of these notification efforts, written comments on the content of the Draft EIR were received from 12 different agencies and organizations. Chapter 3, "Responses to Comments," identifies these commenting parties, their respective comments, and responses to these comments. None of the comments received, or the responses provided, constitute "significant new information" by CEQA standards (State CEQA Guidelines Section 15088.5). In other words, no new significant impacts or other conditions set forth in Section 15088.5(a) of the State CEQA Guidelines were identified. See also Chapter 2, "Project Updates."

1.7 ORGANIZATION OF THIS FINAL EIR

This Final EIR is organized as follows:

- Chapter 1, "Introduction," describes the purpose of this Final EIR, summarizes the project and the major conclusions of the Draft EIR, provides an overview of the CEQA public review process, and describes the content of this Final EIR.
- Chapter 2, "Project Updates," presents minor updates made to the project as a result of ongoing planning and design refinements made since release of the Draft EIR.
- Chapter 3, "Responses to Comments," contains a list of all parties that submitted comments on the Draft EIR during the public review period, reproductions of the comments received, and responses to the comments. A transcript of the public meeting is included in Appendix A, and the comment letters are provided in Appendix B.
- Chapter 4, "Revisions to the Draft EIR," presents revisions to the Draft EIR text made in response to comments or to amplify or clarify text or make minor modifications or corrections. Changes in the text are signified by strikeouts (~~strikeouts~~) where text is removed and by underline (<u>underline</u>) where text is added.
- Chapter 5, "References," identifies the documents used as sources for the analysis.
- Chapter 6, "List of Preparers," identifies the lead agency contacts, as well as the preparers of this Final EIR.

2 PROJECT UPDATES

CEQA requires recirculation of an EIR when the lead agency adds "significant new information" to an EIR, such as substantial changes to the project description, environmental setting, or impact analysis, after public notice is given of the availability of a draft EIR for public review under State CEQA Guidelines Section 15087, but before EIR certification (Section 15088.5[a]). Recirculation is required when the EIR is changed so substantially that failing to recirculate the document would deprive the public of the opportunity to comment on significant new information, such as a new significant impact from the project, a substantial increase in the severity of a previously disclosed environmental impact, or a new feasible alternative or mitigation measures that would clearly lessen environmental impacts but that the project proponent declines to adopt (State CEQA Guidelines Section 15088.5[a]). Recirculation is not required when the new information added to the EIR is used merely to clarify or amplify or make minor modifications to an adequate EIR (State CEQA Guidelines Section 15088.5[b]).

2.1 MSS BRINE TRANSPORT PIPELINE DIAMETER

After preparation of the Draft EIR, the diameter of the MSS brine transport pipeline was modified by Cargill, the project proponent, from an inside diameter of 14 inches (16-inch outside diameter) to an inside diameter of 16 inches (18-inch outside diameter), for an increase in pipe diameter of 2 inches. This modification was made to reduce the pressure drop through the pipe, thereby reducing the necessary pump discharge pressure at the MSS brine pump stations and any risk of pipe failure. As noted on pages 2-35 through 2-37 of the Draft EIR, impacts associated with construction of the MSS brine transport pipeline were evaluated based on the following assumptions:

- A construction corridor width of 30 feet and a trench approximately 4–5 feet wide and 5–10 feet deep were conservatively assumed for open cut segments.
- A construction corridor of 12 feet was conservatively assumed for trenchless crossings.

Increasing the brine transport pipeline diameter by 2 inches would not result in a change in the construction assumptions, which were conservative, regarding the overall construction footprint, excavation quantity, or maximum excavation depth. In addition, the use of a 16-inch inside diameter (18-inch outside diameter) pipe rather than a 14-inch inside diameter (16-inch outside diameter) pipe would not introduce any new or potentially more severe significant environmental impacts related to project operations. Therefore, this change in the pipeline diameter would not require changes to any calculations of impacts or impact conclusions presented in the Draft EIR. Further, this revision would not constitute a significant change or significant new information added to the Draft EIR and would therefore not trigger a need to recirculate the Draft EIR. All references to the use of a 14-inch (inside diameter) MSS brine transport pipeline in the Draft EIR have been revised to refer to the use of an 18-inch (outside diameter) MSS brine transport pipeline, as identified in Chapter 4 of this Final EIR.

2.2 STAGING AREAS

In response to the Draft EIR, Union Sanitary District commented that the Newark Pump Station property is not available for use by the project as a staging area. This staging area location, referred to in the Draft EIR as SA-2, therefore is no longer under consideration for use by the project. Any necessary staging associated with the entering end of the trenchless crossing at this location of the MSS brine pipeline construction would occur in the laydown area identified and depicted in Figure 2-8b of the Draft EIR. Section 2.6.8, "Construction," of the Draft EIR disclosed that staging areas would be located at open and easily accessed sites in previously developed, disturbed, or nonvegetated areas approved for use by local jurisdictions and that some of the identified potential staging areas might not be used. Therefore, this modification would not constitute a significant change to the Draft EIR and would not trigger a need to recirculate the Draft EIR. SA-2 has been removed and all subsequent staging area numbers updated in Figures 2-8a through 2-8h on pages 2-19 through 2-29 of the Draft EIR. All subsequent figures in the Draft EIR that show the staging areas have also been revised in the same way (refer to Chapter 4, "Revisions to the Draft EIR").

2.3 MINOR REVISIONS TO MSS BRINE TRANSPORT PIPELINE ALIGNMENT

Following release of the Draft EIR, it was determined that the proposed alignment for the crossing of State Route (SR) 84 would not be constructible within the proposed alignment and a new alignment would be required for this crossing because the pipeline would have to be placed within a [steel] sleeve to meet California Department of Transportation requirements and this would be infeasible due to the number of turns in the proposed alignment at this location. The original alignment, as depicted in Figure 2-8b and Figure 2-8c, would have traversed from Thornton Avenue through the southwestern portion of the SR-84/Thornton Avenue cloverleaf and across SR-84 to Quarry Road northwest of the SR-84/Thornton Avenue intersection using a trenchless HDD crossing, then transitioned from Quarry Road to Paseo Padre Parkway by means of the open-cut trenching method. The alignment now proposed for this crossing would involve a straight, trenchless HDD crossing of approximately 2,500 linear feet that would be entirely within the Thornton Avenue and Paseo Padre rights-of-way. Because the revised crossing of SR-84 would lie entirely within public rights-of-way; ground disturbance would no longer be required within playa habitat adjacent to Quarry Road; and the construction methods for the pipeline crossing were discussed and analyzed in the Draft EIR; this modification to the project would not introduce new or substantially more severe potential environmental impacts than what have already been discussed and analyzed in the Draft EIR. Thus, this minor project revision would not constitute a significant change to the Draft EIR and would therefore not trigger a need to recirculate the Draft EIR. Figures 2-8b and 2-8c on pages 2-20 and 2-21 and all subsequent figures in the Draft EIR that show this crossing have been revised accordingly (refer to Chapter 4, "Revisions to the Draft EIR").

In addition, Figure 2-8d of the Draft EIR showed the MSS brine transport pipeline traversing a parcel owned by the Union Sanitary District (USD) (Assessor's Parcel Number [APN] 543-439-3-3) before crossing an East Bay Regional Park District (EBRPD) parcel (APN 543-356-1-5) and the Alameda Creek Flood Control Channel (identified as Crossing 7 in the Draft EIR, but subsequently revised to Crossing 6 in this Final EIR). However, since release of the Draft EIR, USD has indicated that their parcel would not be available for installation of the MSS brine transport pipeline. Therefore, the pipeline alignment and trenchless crossing laydown area on the southeast side of the Alameda Creek Flood Control Channel crossing have been shifted approximately 70 feet to the northeast to the public right-of-way within Ardenwood Boulevard in the City of Fremont before continuing to traverse the EBRPD parcel and the Alameda Creek Flood Control Channel, thus avoiding the USD parcel. This minor modification to the MSS brine transport pipeline alignment would not result in any changes in construction methods for the pipeline discussed in the Draft EIR and the potential impacts of the pipeline within the Ardenwood Boulevard right-of-way and EBPRD parcel were previously addressed in the Draft EIR. Therefore, this minor project revision would not constitute a significant change to the Draft EIR and would not trigger a need to recirculate the Draft EIR. Figure 2-8d on page 2-22 and all subsequent figures in the Draft EIR that show this crossing have been revised accordingly (refer to Chapter 4, "Revisions to the Draft EIR").

2.4 PREFABRICATED PIPE BRIDGE AT BOCKMAN CHANNEL

Pages 2-18 and 3.3-13 of the Draft EIR noted that the MSS brine transport pipeline would cross Bockman Channel attached to a bridge over the channel. However, since release of the Draft EIR, design has progressed and the proposed method for the MSS brine transport pipeline crossing at Bockman Channel has been modified. Rather than attaching the MSS brine transport pipeline to the existing vehicle bridge over Bockman Channel, a separate, prefabricated steel pipe bridge with a span of 100 feet is now proposed to be used for this crossing. The new pipe bridge would be installed approximately 40 feet west of the existing vehicle bridge over Bockman Channel and would be supported by concrete piles. The footings for the pipe bridge would be installed near the abutment of the existing vehicle bridge above the ordinary high water mark of the channel. The concrete piles are expected to be cast-in-drilled-hole (CIDH) piles or H piles. CIDH piles are reinforced concrete piles cast in holes drilled to a predetermined depth. H piles are structural beams that are driven into the soil using vibratory methods. The depth of the piles would be approximately 17.5 feet. A work area for the crossing would be located along an access road from the Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant in San Lorenzo. The prefabricated pipe

bridge would be installed from a crane operating from the work area or the existing vehicle bridge, and then welded in place. The Draft EIR has been revised on pages 2-18 and 2-36 to describe this modification. In addition, Table 2-2 on page 2-35 of the Draft EIR has been revised to remove reference to a trenchless crossing at Bockman Channel and Figures 2-1 on page 2-3 and 2-8h on page 2-29 have been revised to show the crossing at Bockman Channel as a pipe bridge. All subsequent figures in the Draft EIR that show this cross have also been revised accordingly (refer to Chapter 4, "Revisions to the Draft EIR").

The footprint and location of the Bockman Channel crossing would remain largely the same as what was described in the Draft EIR and the construction methods and equipment associated with its installation, including drilling, small excavations, and vibratory pile driving for the footings for the bridge, would be similar to methods and equipment previously described and evaluated in the Draft EIR. Furthermore, because this work would occur more than 3,300 linear feet from the nearest sensitive receptor, and implementation of Mitigation Measure 3.9-1, "Implement Construction Noise Reduction Measures" would minimize noise levels to the extent feasible, installation of the pipe bridge would not result in any new or substantially more severe impacts related to noise than previously identified in the Draft EIR. Also, as described on page 3.8-20 of the Draft EIR, a Storm Water Pollution Prevention Plan would be developed and implemented during construction in accordance with the California Construction General Permit Order 2009-0009-DWQ (as amended by 2010-0014-DWQ and 2012-0006-DWQ) and city and county codes that would include BMPs to avoid or minimize impacts to water quality from construction, including perimeter control, minimizing wind- and water-related soil and sediment discharges from work areas, minimizing potential contamination of stormwater and nonstormwater discharges, minimizing the potential for hazardous material spills, and storm water sampling of stormwater flowing off of the project area. Therefore, this modification would not result in any new or substantially more severe impacts to wetlands or water quality. Thus, this minor project revision would not constitute a significant change to the Draft EIR and would not trigger a need to recirculate the Draft EIR.

2.5 UPDATE TO PROJECT TRENCHLESS CROSSINGS

Table 2-2 of the Draft EIR identifies a trenchless crossing proposed at the Alameda County Flood Control and Water Conservation District Channel, Zone 5, Line J-3 culvert (Crossing 9 - Silvertide Drive Surface Drain). The project has been updated to instead propose the open cut method of construction at this location and Table 2-2 on page 2-35 and Figures 2-1 on page 2-3 and 2-8d on page 2-20 of the Draft EIR have been updated accordingly. All subsequent figures in the Draft EIR that show a trenchless crossing at this location have also been updated accordingly (refer to Chapter 4, "Revisions to the Draft EIR").

In addition, Figure 2-8b depicts the trenchless crossing at the Barge Canal as consisting of two separate crossings (Crossings 1 – Former Barge Canal south of Hetch Hetchy Aqueduct and Crossing 2 - Sam Trans Rail Line/Hetch Hetchy Aqueduct). After further discussions with the San Francisco Public Utilities Commission and San Mateo County Transit District staff, the project proponent is now proposing that the former Barge Canal, Sam Trans Rail Line, and Hetch Hetchy Aqueduct be crossed utilizing a single microtunnel that is 1,050 feet long. The two laydown areas shown between Crossings 1 and 2 in Figure 2-8b would no longer be necessary. Figure 2-8b on page 2-20 and Table 2-2 on page 2-35 of the Draft EIR have been revised accordingly, along with all subsequent figures in the Draft EIR that referred to Crossings 1 and 2 (refer to Chapter 4, "Revisions to the Draft EIR").

The potential impacts of the open cut and trenchless methods of construction have been fully discussed and analyzed in the Draft EIR, and the utilization of the open cut method at Crossing 9 and a single microtunnel to cross the former Barge Canal, Sam Trans Rail Line, and Hetch Hetchy Aqueduct would not introduce potentially new or more severe significant impacts than what was previously discussed and analyzed in the Draft EIR. Therefore, these project revisions would not constitute a significant change to the Draft EIR and would not trigger a need to recirculate the Draft EIR.

2.6 MSS BRINE TRANSPORT PIPELINE INTEGRITY FIBER OPTIC CONDUIT

Subsequent to the release of the Draft EIR, the project proponent proposed the addition of a 1-inch fiber optic conduit to be placed adjacent to the MSS brine transport pipeline to provide an additional means of communication regarding pipeline operations. This fiber optic conduit would be placed within the same trench or trenchless bore as the MSS brine transport pipeline and would therefore not result in a change in the construction assumptions associated with the pipeline regarding the overall construction footprint, excavation quantity, or maximum excavation depth, which were conservatively estimated as noted in Section 2.1 above. Adding the fiber optic conduit would not introduce any new or potentially more severe significant environmental impacts related to project operations. Therefore, this minor project modification would not constitute a significant change to the Draft EIR and would therefore not trigger a need to recirculate the Draft EIR. Page 2-18 of the Draft EIR has been revised to include this project update (refer to Chapter 4, "Revisions to the Draft EIR").

3 RESPONSES TO COMMENTS

This chapter identifies the commenters and contains a reproduction of the comment letters received during the public review period for the Draft EIR, which concluded on February 17, 2023. In conformance with Section 15088(a) of the State CEQA Guidelines, written responses were prepared addressing comments on environmental issues received from reviewers of the Draft EIR.

3.1 LIST OF COMMENTERS ON THE DRAFT EIR

Table 3-1 presents the list of commenters, including the numerical designation for each comment letter received, the author of the comment letter, and the date of the comment letter. The comment letters are grouped by commenter type (i.e., tribes, agencies, and organizations) and are presented in the order in which the letters were received.

Table 3-1 List of Commenters

Letter No.	Commenter	Date
TRIBES		
T1	Northern Valley Yokut/Ohlone/Patwin	1/5/2023
AGENCIES		
A1	California State Lands Commission	2/3/2023
A2	California State Lands Commission	2/13/2023
A3	Bay Area Air Quality Management District	2/14/2023
A4	Alameda County Water District	2/15/2023
A5	California Department of Transportation, District 4	2/15/2023
A6	City of Hayward Public Works & Utilities Department	2/15/2023
A7	Alameda County Flood Control & Water Conservation District	2/17/2023
A8	Alameda County Public Works Agency	2/17/2023
A9	San Francisco Bay Conservation and Development Commission	2/17/2023
A10	East Bay Regional Park District	2/17/2023
A11	Union Sanitary District	2/17/2023
A12	California State Lands Commission	3/3/2023
ORGANIZATIONS		
O1	Save the Bay and Citizens Committee to Complete the Refuge	2/17/2023

3.2 COMMENTS AND RESPONSES

The comment letters are provided in Appendix B. Where a comment letter contains multiple comments, each comment is indicated by a line bracket and an identifying number in the margin of the comment letter. The individual comments are reproduced in their entirety in Sections 3.2.1 through 3.2.3, below, and each comment is followed by a response.

3.2.1 Tribes

Letter T1 Northern Valley Yokut/Ohlone/Patwin

Katherine Perez, Tribal Chairperson
January 5, 2023

Comment T1-1
The tribe had a zoom meeting regarding the proposed project and, at that time, stated our concerns and recommended a Native American monitor for the project. The tribe considered it a timely response to the proposed project.

Response T1-1
This comment is noted. Mitigation Measure 3.4-3 on pages ES-27 and 3.4-21 of the Draft EIR has been revised to require Cargill to invite a tribal monitor/consultant who is approved by the Confederated Villages of Lisjan and Northern Valley Yokut/Ohlone/Patwin tribes to monitor ground-disturbing activities in areas within native soils that occur within 100 feet of a waterway or a known tribal cultural site, as identified during a meeting with the tribes on May 24, 2023 (refer to Chapter 4, "Revisions to the Draft EIR").

3.2.2 Agencies

Letter A1 California State Lands Commission

Alexandra Borack, Senior Environmental Scientist
February 3, 2023

Comment A1-1
State Lands Commission staff is reviewing the Draft EIR for the Cargill Mixed Sea Salt Processing and Brine Discharge Project, and evaluating the Commission's associated potential jurisdiction for the pipeline crossings identified in the EIR.

Does the Authority have a .kmz file that shows the Project's proposed pipeline pathway? If not, does the Authority have a .cad file instead? If either of those files could be provided to Commission staff, then we can more quickly determine whether or not the Commission has partial (or perhaps no) jurisdiction for the pipeline crossings. Without that information, staff may need to provide comments on all aspects of the Project that could potentially affect State sovereign land.

Please let me know if you have access to one of those files, and if so, how quickly it could be provided.

Response A1-1
The comment notes that California State Lands Commission (CSLC) staff is reviewing the Draft EIR and requests a .kmz or .cad file showing the proposed MSS brine transport pipeline alignment. This comment is noted, and EBDA provided CSLC with a .kmz file of the project's pipeline alignment. This comment is not related to the adequacy of the CEQA document. No further response is required.

Letter A2 California State Lands Commission

Alexandra Borack, Senior Environmental Scientist
February 13, 2023

Comment A2-1
I apologize for sending an email after hours. I was out for most of last week dealing with family illnesses and then my own, and I am still coming back up to speed.

SLC requests additional time to prepare a CEQA comment letter for the Cargill Mixed Sea Salt Processing and Brine Discharge Project. Please let me know if that is possible, and what time the Authority could accommodate. Two weeks would be greatly appreciated, but even one week would be very helpful.

Response A2-1
The comment requests additional time for CSLC staff to review and comment on the Draft EIR. In response to this comment, EBDA granted the CSLC until March 3 to provide comments. This comment is not related to the adequacy of the CEQA document. No further response is required.

Letter A3 Bay Area Air Quality Management District

Andrea Gordon, Senior Environmental Planner
February 14, 2023

Comment A3-1
We received the Draft Environmental Impact Report (DEIR) for the Cargill Mixed Sea Salts Processing and Brine Discharge Project (Project). We commend you for taking measures to reduce construction-related exhaust emissions. Measures such as using Tier 4 construction equipment will eliminate most construction-related exhaust emissions.

Response A3-1
The comment commends EBDA and Cargill (project proponent) for taking measures to reduce construction-related exhaust emissions, including the commitment to using Tier 4 construction equipment, which would eliminate most construction-related exhaust emissions. This comment is not related to the adequacy of the CEQA document. No further response is required.

Comment A3-2
Air District staff strongly recommend the implementation of all available on-site emission reduction measures before relying on an off-site mitigation program and want to send you additional recommendations for the development of the Project mitigation program. Please include additional on-site mitigation language in the DEIR to ensure every effort is made by the East Bay Dischargers Authority (EBDA) to exhaust all options before implementing an offsite mitigation program.

Response A3-2
The comment recommends implementation of all available on-site reduction measures for construction-related emissions, including the use of the US Environmental Protection Agency's Tier 4 engines, which substantially reduce oxides of nitrogen (NO_X) emissions, before relying on an off-site mitigation program, and it requests that on-site mitigation language be added to the EIR. This comment is noted; however, implementation of Mitigation Measure 3.2-1 would be sufficient to reduce the impacts of project emissions of NOx during construction to a less-than-significant level. As described on page 3.2-14 of the Draft EIR, Mitigation Measure 3.2-1 requires contribution to one or more off-site mitigation programs in the San Francisco Area Air Basin to offset the project's exceedance of the Bay Area Air Quality Management District's (BAAQMD's) thresholds of significance for NOx emissions during project construction, and BAAQMD considers this mitigation to be feasible. Although the comment indicates a preference for on-site, rather than off-site, mitigation, the use of on-site mitigation is not required by CEQA. No revision to the Draft EIR is necessary in response to this comment.

Comment A3-3
For further emissions reduction, additional measures can be taken at the construction site, including:

- Requiring off-road construction equipment to be zero-emission, where available. This requirement should be included in applicable bid documents, purchase orders, and contracts, with successful contractors demonstrating the ability to supply the compliant construction equipment for use prior to any ground-disturbing and construction activities.
- Require construction on-road vehicles to operate with zero-emission engines as commercially available.
- Require or incentivize zero emission trucks for facility operations to the greatest extent feasible.
- Use grid power for construction activities whenever possible. If grid power is not available, use alternative power such as battery storage, hydrogen fuel cells, or renewable fuels. If no other options are available, use Final Tier 4 diesel generators.

- Prohibit trucks from idling for more than two minutes or prohibit idling altogether.
- Require electric forklifts and install associated charging stations.

Response A3-3

The comment lists additional on-site measures that could be implemented to further reduce emissions from project construction. As discussed on page 3.2-14 of the Draft EIR, implementation of Mitigation Measure 3.2-1 would reduce the project's construction-related emissions, particularly those of NOx, to a level below BAAQMD's thresholds of significance; therefore, no additional mitigation is required by CEQA. The project proponent could implement some or all of the additional measures recommended in this comment but would do so at its discretion. No revisions to the Draft EIR are necessary in response to this comment.

Comment A3-4

While the Project includes Basic Construction Mitigation Measures, the Air District also recommends implementing all feasible and practical "Additional Construction Mitigation Measures" to reduce construction-related fugitive dust to the greatest extent possible (Table 8-3, page 85). Some examples would include, but are not limited to the following:

- All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
- Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.
- Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
- The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.
- All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
- Site access to a distance of 100 feet from the paved road shall be treated with a 6-to-12-inch compacted layer of wood chips, mulch, or gravel.

Response A3-4

The comment recommends implementing all feasible and practical "Additional Construction Mitigation Measures" in addition to "Basic Construction Mitigation Measures," as identified in BAAQMD's CEQA Air Quality Guidelines (BAAQMD 2010), to reduce construction-related fugitive dust to the greatest extent possible and lists examples of such additional measures. Fugitive dust emissions of respirable particulate matter (PM_{10}) and fine particulate matter ($PM_{2.5}$) would be below BAAQMD's thresholds of significance during project construction, and CEQA does not require mitigation for less-than-significant impacts. The project proponent also could implement some or all of the other measures recommended in this comment but would do so at its discretion. No revisions to the Draft EIR are necessary in response to this comment.

Comment A3-5

In addition, the Project should incorporate measures to promote worker emission reductions. For example, VMT reduction measures for employees will greatly reduce transportation-related emissions from employees traveling to and from work. Consider implementing the following best practices included below to reduce Project impacts.

1. Implement a program that incentivizes construction workers to carpool, use EVs [electric vehicles], or use public transit to commute to and from the site. The program may include the following features:
    - Provide a shuttle service to and from BART.
    - Provide preferential parking to carpool vehicles, vanpool vehicles, and EV's.
    - Schedule work shifts to be compatible with the schedules of local transit service.

Response A3-5

The comment recommends the incorporation of certain measures to promote reductions in worker commute emissions. Because the impact associated with emissions from project construction and operations would be less than significant through project design and implementation of Mitigation Measures 3.2-1, CEQA does not require the inclusion of these additional measures. No revisions to the Draft EIR are necessary in response to this comment.

Letter A4 Alameda County Water District

Ed Stevenson, General Manager
February 15, 2023

Comment A4-1

Alameda County Water District (ACWD) is pleased to have the opportunity to review the Draft Environmental Impact Report (EIR) for the Cargill MSS Processing and Brine Discharge Project (Project). The Project proposes an innovative regional partnership approach to address project objectives. ACWD has reviewed the Draft EIR for the Project and would appreciate consideration of the following comments for the Project activities within ACWD's service area and Niles Cone Groundwater Basin:

Response A4-1

The comment provides introductory remarks. This comment is not related to the adequacy of the CEQA document. No further response is required.

Comment A4-2

1. Section 2.6.5 MSS Brine Transport Pipeline: Section 2.6.5 of the Draft EIR states that the proposed MSS brine transport pipeline will be 14-inches in diameter; however, ACWD has received planning materials and improvement plans for an 18-inch high-density polyethylene (HDPE) MSS brine transport pipeline. ACWD requests that the Final EIR address any potentially significant or significant impacts related to the larger design pipeline diameter of 18 inches. ACWD requests all references to the MSS brine transport pipeline in the Final EIR include the correct design pipeline diameter.

Response A4-2

The comment requests clarification regarding the diameter of the MSS brine transport pipeline, noting that the Draft EIR indicates a 14-inch diameter, whereas design plans reviewed by ACWD indicate an 18-inch diameter. After preparation of the Draft EIR, the design size of the MSS brine transport pipeline was changed by the project proponent from an inside diameter of 14 inches (outside diameter of 16 inches) to an inside diameter of 16 inches (outside diameter of 18 inches). The increase in pipeline diameter of 2 inches was made to reduce the pressure drop through the pipe, thereby reducing the necessary pump discharge pressure at the MSS brine pump stations and reducing the risk of pipe failure. As noted on pages 2-35 through 2-37 of the Draft EIR, impacts associated with construction of the MSS brine transport pipeline were evaluated based on the following assumptions:

- A construction corridor width of 30 feet and a trench of approximately 4–5 feet wide and 5–10 feet deep was conservatively assumed for open cut segments.
- A construction corridor of 12 feet was conservatively assumed for trenchless crossings.

A difference in pipeline diameter of 2 inches would not result in a change in the construction assumptions for the overall construction footprint, excavation quantity, or maximum excavation depth. In addition, the use of an 18-inch (outside diameter) pipe would not introduce any new or potentially more significant environmental impacts related to project operations compared to the use of a 14-inch (inside diameter) pipe, as analyzed in the Draft EIR. Therefore, this revision to the pipeline diameter would not change any impact calculations or conclusions presented in the Draft EIR. Consequently, this revision would not constitute a significant change to the Draft EIR and would not trigger a need to recirculate the Draft EIR. All references to the use of a 14-inch (inside diameter) MSS brine transport pipeline on pages ES-3, 2-16, 2-18, 3.10-8, and 3.10-14 of the Draft EIR have been revised in the Final EIR to refer to the use of an 18-inch (outside diameter) pipeline (refer to Chapter 4, "Revisions to the Draft EIR").

Comment A4-3

2. Section 1.4.2 Trustee and Responsible Agencies: ACWD appreciates the inclusion of our permit requirements in Section 3.8.1 Regulatory Setting; however, Section 1.4.2 Trustee and Responsible Agencies does not identify ACWD as a responsible agency. In addition, Section 2.6.9 Project Permits and Approvals (and ES.2.5) does not include ACWD's permitting requirements. As required by ACWD Ordinance No. 2010-01, drilling permits are required prior to the start of any subsurface drilling activities for wells, exploratory holes, and other excavations (including the installation of shafts, tunnels or directional boreholes, support piers, sheet piles, and dewatering wells) within the cities of Fremont, Newark, and Union City. ACWD developed Standards for the Construction, Use, Operation, Maintenance, Repair, Inactivation, or Destruction of Wells, Exploratory Holes, Other Excavations, and Appurtenances (ACWD Standards) which specifies the minimum requirements for permitted work on any well, exploratory hole, or other excavation. Therefore, ACWD requests that Section 1.4.2 be corrected by adding ACWD under the Regional and Local Agencies and Section 2.6.9 (and ES.2.5) be corrected to include ACWD's approval and permit requirements.

Response A4-3

The comment requests that ACWD be identified as a responsible agency in Section 1.4.2 of the EIR and that ACWD's requirements for drilling permits be included in Section 2.6.9 of the EIR. This comment is noted, and pages ES-4, 1-5, and 2-39 of the Draft EIR have been revised accordingly (refer to Chapter 4, "Revisions to the Draft EIR"). This change does not alter the conclusions in the EIR regarding the significance of project impacts.

Comment A4-4

a) Reference is made to Mitigation Measure 3.7-4b: Prepare a Phase II ESA in the Ground Disturbance Areas in Locations Where Contamination May Be Present. ACWD requests that Mitigation Measure 3. 7-4b be modified to require submittal of a work plan for any soil and groundwater sampling and analysis planned as part of a Phase II to ACWD for review and approval, per ACWD Ordinance No. 2010-01.

Response A4-4

The comment requests that Mitigation Measure 3.7-4b of the Draft EIR be revised to include reference to the requirement to submit work plans for any soil and groundwater sampling in areas under ACWD's jurisdiction to ACWD for review and approval. This comment is noted, and the description of Mitigation Measure 3.7-4b on pages ES-31 and 3.7-14 has been modified accordingly (refer to Chapter 4, "Revisions to the Draft EIR"). This change does not alter the conclusions in the EIR regarding the significance of project impacts.

Comment A4-5

b) Reference is made to Mitigation Measure 3.7-4c: Coordinate with Regulatory Agencies and Implement Appropriate Remedies, which states, "Coordination will occur with the [Regional Water Quality Control Board] RWQCB or [California Department of Toxic Substances Control] DTSC, as appropriate, regarding the necessity for and types of protective measures required during Project-related excavation activities... Such protective measures could include marking and avoiding existing groundwater monitoring wells, employing shoring and avoiding dewatering activities, installing temporary soil trench plugs...monitoring groundwater, and documenting backfill quality." Such activities also require notifications to ACWD. Please revise Mitigation Measure 3.7-4c to include ACWD in the list of agencies requiring coordination during implementation of the above-listed remedies.

Response A4-5

The comment requests that Mitigation Measure 3.7-4c of the Draft EIR be revised to include ACWD among the list of agencies requiring coordination during implementation of the remedies required by this mitigation measure. This comment is noted, and the description of Mitigation Measure 3.7-4c on pages ES-31 and 3.7-14 has been revised accordingly (refer to Chapter 4, "Revisions to the Draft EIR"). This change does not alter the conclusions in the EIR regarding the significance of project impacts.

Comment A4-6

c) Mitigation Measure 3.7-4d: Incorporate Standards for Proper Excavation and Staging Activities, for Handling, Transport, and Disposal of Excavated Soils, and for Construction-Related Dewatering into the Project's Construction Specifications states, "If contaminated materials require dewatering before being hauled off-site, or if excavation would encounter shallow groundwater in the affected area(s), a dewatering plan will be prepared, specifying methods of collecting, transporting, treating, and discharging all water produced by dewatering, and demonstrating compliance with RWQCB requirements and permits." ACWD requests Mitigation Measure 3.7-4d be modified to require Project proponents coordinate development of the dewatering plan with ACWD for review and comment prior to approval.

Response A4-6

The comment requests that Mitigation Measure 3.7-4d of the Draft EIR be revised to include ACWD as an agency that must review and approve any proposed dewatering plans. This comment is noted, and the description of Mitigation Measure 3.7-4d on pages ES-33 and 3.7-15 has been revised accordingly (refer to Chapter 4, "Revisions to the Draft EIR"). This change does not alter the conclusions in the EIR regarding the significance of project impacts.

Comment A4-7

a) Groundwater Hydrology on page 3.8-12 of the Draft EIR includes a description of the Niles Cone Subbasin and states that the Subbasin is 103 square miles, which is referenced in a 2006 publication of the Department of Water Resources Bulletin 118. Bulletin 118 has been updated since that time (as recently as 2020). ACWD requests that the Final EIR include the correct area of the Subbasin, which is 107 square miles.

Response A4-7

The comment requests that the area of the Niles Cone Subbasin be changed from 103 to 107 square miles, consistent with the California Department of Water Resources' (DWR's) most recently published Bulletin 118 for the subbasin. The project proponent reviewed available data from DWR and could not confirm that the area of the Niles Cone Subbasin is 107 square miles. The project proponent acknowledges that the Niles Cone Subbasin is generally consistent with ACWD's Groundwater Statutory Service Area, which is approximately 107 square miles, as described in ACWD's February 2023 *Survey Report on Groundwater Conditions* (ACWD 2023). Regardless, this comment does not address the impacts of the project. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Comment A4-8

b) Most of the Project area has a perched shallow water-bearing zone(s) located within the Newark Aquiclude which sits above the regional Newark Aquifer, a drinking water aquifer utilized by ACWD. In some areas of the Niles Cone, the Newark Aquifer can be encountered as shallow as 35 feet below ground surface (bgs). Any interconnection of the shallow water-bearing zone(s) to the Newark Aquifer could have significant impact on water quality in the Newark Aquifer. As previously stated, ACWD requires drilling permits for subsurface drilling activities for wells, exploratory holes, and other excavations (including piles and directional boreholes). In order to protect the groundwater basin, ACWD requests the Final EIR include the following:

Response A4-8

The comment describes aquifer conditions in the project area and notes that drilling permits are required for subsurface drilling activities. The permit program was established for the purpose of regulating subsurface activities for the protection of groundwater within the boundaries of the cities of Fremont, Newark, and Union City. Specifically, the permit program ensures that groundwater will not be degraded, polluted, or contaminated by improper construction, use, maintenance, repair, improvement, decommissioning, or destruction of wells, exploratory holes, other excavations, and appurtenances. These permits require the project proponent to identify areas where drilling is proposed and the schedule of activities, submit a work plan for all chemical investigations, notify ACWD of any identified contamination or pollution in soil and groundwater, and file a Well Completion Report with DWR. The permit program also establishes procedures for the abatement of public nuisances of any abandoned or unused well, exploratory hole, or other excavation that creates or threatens to create a water contamination hazard. The project

proponent would be required to obtain all necessary drilling permits before any project-related excavation begins. Compliance with such permits would ensure that impacts on groundwater quality, including the flow of groundwater and hazardous substances between aquifers, from project-related drilling activities would be avoided or promptly abated. ACWD has been added to the list of responsible agencies, as described in Response A4-3, above. No further revisions to the Draft EIR are necessary in response to this comment.

Comment A4-9

i. All geotechnical reports for the Project be included as an appendix to the Final EIR to support the understanding of groundwater conditions within the Project area. This information is important to support the evaluation of potential interconnection of aquifers or water-bearing zones. As stated in ACWD's Standards, annular seal requirements for shafts, tunnels, and directional boreholes will depend on the geologic setting and will be determined by the District on a case-by-case basis. Therefore, ACWD requests that Project proponents submit all geotechnical data for the Project to ACWD for review and comment and to assist in the permit approval process.

Response A4-9

The comment requests that geotechnical reports prepared in connection with the project be included as an appendix to the Final EIR and that geotechnical data be provided to ACWD in connection with the ACWD drilling permit process. CEQA does not require the preparation or inclusion of design-level studies, such as geotechnical reports, in a project EIR if other information is available to sufficiently address impacts. Such a requirement would obligate project proponents to unreasonable financial commitments in advance of project approvals. In this case, a mandatory permitting process ensures that impacts on groundwater quality, including the flow of groundwater and hazardous substances between aquifers, from project-related drilling activities would be avoided or promptly abated. (Refer to Response A4-8 for additional information regarding drilling permit requirements.) In addition, adopted codes and standards can be assumed to minimize environmental impacts and need not be included as mitigation measures, as long as the environmental benefits of the cited codes and sections are described (*Oakland Heritage Alliance v. City of Oakland* [2011] 195 Cal.App.4th 884). Geotechnical reports were not specifically used in the preparation of the Draft EIR; however, as discussed on pages 3.5-14 through 3.5-17 of the Draft EIR, Appendix J of the California Building Code requires preparation of a site-specific geotechnical and engineering report that contains recommendations to reduce seismic, geologic, and soils hazards that must be incorporated into the project design. These regulatory requirements specify a mandatory permit process and prescriptive actions to fulfill those requirements. The project proponent is required to incorporate standard engineering practices and specifications to minimize risk associated with geotechnical conditions as recommended based on the findings of the geotechnical report.

The Draft EIR concluded that impacts related to geology and soils would be less than significant because Cargill would prepare site-specific geotechnical reports as the project design advances, would incorporate appropriate standard engineering practices and specifications recommended in the geotechnical report, and would coordinate with applicable permitting agencies regarding grading and site plan review and review of geotechnical hazards. Accordingly, Cargill would be required to submit geotechnical data and other information to ACWD during the permitting process in support of any necessary drilling permit applications. No revisions to the Draft EIR are necessary in response to this comment.

Comment A4-10

ii. In Section 2.6.8 and in other areas of the Draft EIR it states that sheet piles would be installed up to approximately 35 feet below ground surface (bgs) which could potentially interconnect the shallow water-bearing zone and the Newark Aquifer. In addition, the Draft EIR states that trenchless drilling (e.g., horizontal drilling and micro tunneling) will occur up to 40 feet bgs in certain areas, which also may extend into the Newark Aquifer. The sheet piles and the trenchless drilling have the potential to create a possible interconnection of aquifers and water-bearing zones, which could impact groundwater quality.

The piles, trenchless drilling, and installation of the pipeline must be constructed in a manner that will prevent the creation of a preferential pathway or interconnection of aquifers or water-bearing zones. Since groundwater is shallow within most of the Project area, ACWD requests that the Final EIR address this potentially significant impact to water quality, include appropriate mitigation measures, and include a provision requiring Project

proponents coordinate piles and trenchless drilling with ACWD prior to permit application submittal. Final permitting requirements will depend on the geologic setting and will be determined by the District on a case-by-case basis per ACWD's Standards.

Response A4-10

The comment expresses concern that sheet piles and trenchless drilling could occur at depths that could create a possible interconnection between aquifers and water-bearing zones, with potential impacts on groundwater quality. The comment requests that the Final EIR address this potential impact, include appropriate mitigation measures, and require the project proponent to coordinate any such piles and trenchless drilling with ACWD.

Sheet piles would be utilized in connection with the construction of on-site improvements, including the Plummer Creek pump station, the dissolution water pump station, the MSS brine pump station and the Pond 13 weir at shallow depths of less than 12 inches bgs in order to provide a dry working area for the construction of these structures. The maximum excavation depth of 35 feet that is referenced in Section 2.6.8 refers to drilling piles (i.e., column-shaped foundation), not the sheet piles (i.e., sections of sheet materials with interlocking edges that are driven into the ground to provide earth retention and excavation support) that would be needed for the construction of these improvements. Drilling piles would encompass a much smaller area than sheet piles. Regardless, no drilling piles or trenchless drilling would occur unless and until the project proponent submits detailed plans to the ACWD in support of required drilling permits, in compliance with ACWD Ordinance No. 2010-01 (Well Ordinance), to which reference is made in Section 3.8.1 of the Draft EIR, and to which an additional reference has been added on pages ES-4 and 2-39.

The Well Ordinance expressly applies not only to exploratory holes and wells but also to other excavations (e.g., shaft tunnel, directional borehole, support piers, piles, and caissons). Therefore, the Well Ordinance would apply to any proposed drilling piles or trenchless drilling in connection with the project. As specified in Section 6 of the Well Ordinance, such activities would be required to comply with the minimum standards outlined in the *Standards for the Construction, Use, Operation, Maintenance, Repair, Inactivation, or Destruction of Wells, Exploratory Holes, Other Excavations, and Appurtenances* (ACWD 2011). The minimum standards include specifications for sealing annular space during drilling activities to prevent preferential pathways for the movement of pollutants, contaminants from surface spills and leaks, or from poor-quality water flow between aquifers.

To the extent that such sheet piles or trenchless drilling could create a preferential pathway between or interconnection of aquifers or water-bearing zones, the project proponent would be required to coordinate with ACWD and implement minimum standards to avoid such pathways and interconnection, pursuant to the Well Ordinance and required drilling permits and to modify its plans as necessary, as requested by this comment. Because the project proponent is already required to comply with ACWD requirements, including to avoid creating an interconnection or preferential pathways between aquifers and water-bearing zones, any potential impact from such piles or drilling would be less than significant. Therefore, it is not necessary to add mitigation measures that require coordination with ACWD and otherwise mitigate the potential impacts noted in this comment. No further revisions to the Draft EIR are necessary in response to this comment.

Comment A4-11

c) The Draft EIR states that dewatering would be needed during construction activities related to the Solar Salt Facility and MSS brine transport pipeline installation. The amount of water that may be extracted by either temporary or permanent dewatering must be evaluated and documented. Alternative designs should be considered that would minimize the amount of dewatering required during and subsequent to construction. Measurement of groundwater losses due to dewatering may be required and may be subject to a Replenishment Assessment fee. Mitigation Measure 3.8-2 addresses this by stating, "if discharge to a nearby well or using dewatering water for dust control in the vicinity is not feasible, then pay the appropriate replenishment assessment fee to the applicable [Groundwater Sustainability Agency] GSA to compensate for loss of groundwater from the basin." ACWD requests that the Mitigation Measure include a provision of coordination with ACWD, as the applicable GSA, prior to beginning any construction in order to determine how the amount of dewatering will be documented.

Response A4-11

The comment requests that an express reference be made to the need for coordination with ACWD as a Groundwater Sustainability Agency in connection with any dewatering operations as part of Mitigation Measure 3.8-2 of the Draft EIR. Mitigation Measure 3.8-2 and the ACWD Well Ordinance already require such coordination in connection with ACWD's drilling and well permit authority. Pages ES-4, 1-5, and 2-39 of the Draft EIR have been revised to include ACWD as a responsible agency for drilling and well permit approval (refer to Chapter 4, "Revisions to the Draft EIR"). No further revisions to the Draft EIR are necessary in response to this comment.

Comment A4-12

d) Mitigation Measure 3.8-2 states that clean groundwater extracted during dewatering performed during construction of the MSS brine transport pipeline may be discharged "back to a nearby well, if permitted." Please note that injection of water into any well requires approval by agencies such as the San Francisco Bay Regional Water Quality Control Board (Regional Board or RWQCB) and ACWD. As previously mentioned, ACWD requires permits for the drilling and installation of groundwater wells. Any well that is proposed to be used as an injection well must be in compliance with ACWD Ordinance No. 20I0-01. Water quality testing will be required prior to approval of injection, and any water containing exceedances of primary or secondary maximum contaminant levels will not be allowed to be injected. In addition, the United States Environmental Protection Agency Underground Injection Control (UIC) Program requires that any injection well be reported in its Inventory of injection Wells (e.g., 7520-16 Online Form). ACWD requests that Mitigation Measure 3.8-2 be modified to reflect the above review and approval information. In addition, ACWD requests that the Mitigation Measure include a provision of coordination with ACWD regarding the planned possibility of injection into the Niles Cone.

Response A4-12

The comment requests that Mitigation Measure 3.8-2 be modified to reflect review, approval, and reporting requirements by ACWD, RWQCB, and the US Environmental Protection Agency if discharge of extracted groundwater into injection wells is required and to include coordination with ACWD regarding any proposed injection into the Niles Cone Subbasin. Compliance with regulatory requirements is already enforced through the applicable agency's permitting and approval process; however, this comment is noted, and the description of Mitigation Measure 3.8-2 on pages ES-37 and 3.8-28 has been revised accordingly (refer to Chapter 4, "Revisions to the Draft EIR").

Comment A4-13

e) Mitigation Measure 3.8-2 states that clean groundwater could be used for dust control. Any groundwater used for dust control must be measured and is subject to ACWD's replenishment assessment fee. Therefore, Mitigation Measure 3.8-2 should also stipulate that any groundwater used for dust control or similar beneficial use is subject to ACWD's replenishment assessment fee.

Response A4-13

The comment requests that Mitigation Measure 3.8-2 be revised to stipulate that any groundwater used for dust control or similar beneficial use be subject to ACWD's replenishment assessment fee. Mitigation Measure 3.8-2 already states that payment of the appropriate replenishment assessment fee to the applicable GSA is required to compensate for the loss of groundwater from the basin. In addition, the payment of permit fees is required under the ACWD Well Ordinance, and this ordinance was already identified as a regulatory requirement applicable to the project on page 3.8-5 of the Draft EIR. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Comment A4-14

5. Section 3.10 Recreation: Mitigation Measure 3.10-1 states that all recreational facilities would experience access interruptions during Project construction, including Don Edwards National Wildlife Refuge/Newark Slough Trail, Alameda Creek Regional Trail, and segments of the San Francisco Trail that are not within roadway rights-of-way. ACWD has groundwater monitoring wells located on the north (three wells) and south (four wells) of Alameda Creek Trail, on the west side of Ardenwood Boulevard. There are also two additional wells located in the Don Edwards National Wildlife Refuge along Marshland Road, on the west side of Paseo Padre Road. ACWD must be notified, and access coordinated ahead of trail or facilities closure because these wells are monitored by ACWD

and are critical to ACWD's management of the Niles Cone Groundwater Basin. ACWD requests Sections ES.5 and 3.8.3 and Table ES-I be modified to require coordination with ACWD.

Response A4-14

The comment notes the presence of several ACWD groundwater monitoring wells in the vicinity of project construction activities near Alameda Creek Trail and Marshland Road. The comment requests that Sections ES.5 and 3.8.3 and Table ES-1 be modified to require coordination with ACWD in connection with project construction-related closures of these recreational trails or facilities. As stated in Table 3.10-2 on pages 3.10-12 and 3.10-13 of the Draft EIR, Alameda Creek Regional Trail would remain open for the duration of construction, and no temporary closures are proposed on the trail itself. Only the access road from Eastin Drive would be used as a project staging and laydown area, and the trail would remain accessible from various other locations along its 12-mile length. In addition, no temporary closures are needed on Marshland Road itself because a trenchless crossing is proposed at this location (although closures are proposed in the parking area adjacent to Marshland Road). The text on page 3.10-10 has been revised for clarification (refer to Chapter 4, "Revisions to the Draft EIR"). Furthermore, the project proponent would provide notification of closures and alternative access points in accordance with Mitigation Measure 3.10-1. Mitigation Measure 3.10-1 on pages ES-41 and 3.10-14 has been further revised to identify ACWD as an agency requiring consultation for the review and development of detour plans (refer to Chapter 4, "Revisions to the Draft EIR"). Therefore, ACWD's access to these groundwater monitoring wells would not be interrupted as a result of project construction and no further revisions to the Draft EIR are necessary in response to this comment.

Comment A4-15

6. Existing ACWD Infrastructure within the Project Area: ACWD requests that the following potentially significant impacts to existing ACWD facilities and infrastructure be addressed by the Final EIR:

    a) Section 3 Environmental Impacts and Mitigation Measures: The category of "Utilities" was not included under Potential Environmental Effects in the Draft EIR. ACWD requests that "Utilities" be added to the list and evaluated as the Project may generate a potentially significant or significant impact.

Response A4-15

The comment requests that the category of "utilities" be included for detailed review in the EIR to address potentially significant impacts. As discussed on page 3.1-4 of the Draft EIR, the category of "utilities" did not warrant detailed review because construction and operation of the project would not result in potentially significant impacts on utilities and service systems for the following reasons:

- The project would not require new or expanded utilities service.
- The final MSS brine transport pipeline alignment would be determined only after subsurface utility investigations are conducted; all required leases, licenses, permits, and easements are obtained; and coordination with utility owners has occurred.
- This process would ensure that the project would not result in accidental damage to or result in the need to relocate existing utility infrastructure.
- All environmental impacts related to constructing and operating the new infrastructure for the project are evaluated in Sections 3.2 through 3.10 of the Draft EIR.

This comment does not offer any specific concern that the Draft EIR's conclusions are flawed or unsupported by substantial evidence. Therefore, no revision to the Draft EIR is necessary in response to this comment.

Comment A4-16

b) ACWD has water system infrastructure, including (but not limited to) water pipelines and associated appurtenances, monitoring stations, etc., located within the limits of the proposed MSS brine transport pipeline alignment. The Project may have potential impacts to existing water facilities which will require close coordination between Project proponents and ACWD. ACWD expects the Project will include accommodations for protection in place or relocation of ACWD facilities. The Project should maintain required minimum clearances from the

proposed improvements to ACWD's existing infrastructure in accordance with ACWD Standards (see ACWD's Standard Specifications for Water Main Installation on ACWD's website) and Regional Board requirements. Access to ACWD facilities must be maintained at all times. The Final EIR should include mitigation measures to protect this important infrastructure. In addition, this infrastructure should be included on the improvement plans for the proposed Project and protected during any construction activities. For example:

i. ACWD operates an existing 30-inch transmission pipeline (i.e., Patterson Reservoir Pipeline) in Paseo Padre Parkway and within the Patterson Reservoir access road, which is located west of Paseo Padre Parkway, between Quarry Road (north of Highway 84) and Ardenwood Creek. Contact ACWD Engineering regarding the proposed crossing(s) of the transmission pipeline. The proposed MSS brine transport pipeline alignment is anticipated to cross the ACWD 30-inch Patterson Reservoir Pipeline several times.

ii. ACWD operates existing 14- to 20-inch pipelines on Paseo Padre Parkway, Ardenwood Boulevard, and Union City Boulevard in Fremont and Union City along the proposed brine transport pipeline alignment.

iii. To the extent the proposed brine transport pipeline will cross numerous water service laterals, those ACWD facilities should be shown on the improvement plans and protected in place during construction.

Response A4-16

The comment notes that ACWD water system infrastructure is located within the limits of the proposed MSS brine transport pipeline alignment; that close coordination is required between the project proponent and ACWD; that minimum clearances would be necessary between the project's infrastructure and ACWD infrastructure; that access to ACWD facilities must be maintained; that the Final EIR should include mitigation measures to protect ACWD infrastructure; and that ACWD infrastructure should be included on improvement plans for the proposed project, including the 30-inch Patterson Reservoir Pipeline, 14- to 20-inch pipelines, and water service laterals. As noted in Response A4-15, above, the project proponent would be required to perform subsurface utility investigations to confirm the location of existing utilities, including ACWD infrastructure. In addition, the project proponent would be required to obtain all necessary leases, licenses, permits, and easements to construct and install the pipeline. The project proponent also would be required to comply with all applicable requirements pertaining to separation with other existing utilities, including requirements pertaining to potable water lines set forth by the California Division of Drinking Water and local ordinances and utility easements, including those pertaining to ACWD infrastructure. Improvement plans showing the location of any potential utility conflicts with the MSS brine transport pipeline would be required in connection with any such approvals. The protocols requested by ACWD to protect its infrastructure are already required by regulation. Therefore, no revision to the Draft EIR is necessary in response to this comment.

Comment A4-17

c) ACWD has no plans to relocate existing facilities or infrastructure for this Project. The alignment and depth of the brine discharge line should consider existing ACWD facilities and may have significant impacts to ACWD infrastructure which must be coordinated with ACWD and fully mitigated. Particular attention should be paid to any proposed work near or underneath existing ACWD asbestos cement pipe (ACP) water mains within the limits of the Project. No excavations or crossings under the ACP are allowed. If utility installations below the ACP are required for the Project, ACWD may replace a portion of the existing main with polyvinyl chloride (PVC) or steel pipe. Such a replacement must be done by ACWD forces at the Project proponent's expense. The Final EIR should reflect the potential need for such utility replacement work to occur and account for such work in the project plans.

Response A4-17

The comment requests that the alignment and depth of the MSS brine transport pipeline consider existing ACWD facilities and that particular attention be paid to any proposed work near or underneath existing ACWD ACP water mains. Please see Responses A4-3 and A4-15, regarding the project proponent's obligation to obtain all necessary approvals for construction of the MSS brine transport pipeline in the vicinity of other utilities, including ACWD infrastructure. As noted in Response A4-15, the final MSS brine transport pipeline alignment would be determined only after subsurface utility investigations are conducted; all required leases, licenses, permits, and easements are

obtained; and coordination with utility owners has occurred. This process would ensure that implementing the project would not result in accidental damage to or result in the need to relocate existing utility infrastructure. Furthermore, trenchless construction methods would be used in the vicinity of any ACP water mains to minimize potential impacts on these lines. No revision to the Draft EIR is necessary in response to this comment.

Comment A4-18

d) ACWD Facilities: ACWD recommends the Project proponent submit a request for available records pertaining to ACWD facilities located within the limits of the proposed Project alignments. In addition, the Project proponent should pothole existing ACWD facilities to confirm the exact depth and location.

    i. The Project proponent should contact ACWD Engineering regarding anticipated pipeline crossings along the length of the MSS brine transport pipeline. ACWD has record drawings and geographic information system (GIS) 200-scale base maps for ACWD-owned pipelines and facilities in Fremont, Newark, and Union City along the alignment of the MSS brine transport pipeline, and improvement plans will need to be coordinated with ACWD Engineering for review and approval.

Response A4-18

The comment requests that the project proponent submit a request for available records pertaining to ACWD facilities located in the vicinity of the proposed project, conduct potholing to confirm the location of ACWD facilities, and coordinate with ACWD Engineering regarding anticipated crossings between the proposed MSS brine transport pipeline and ACWD pipelines. This comment is noted, and such coordination and due diligence would occur as required in connection with the permits and approvals necessary for the project. Pages ES-4, 1-5, and 2-39 in Section 2.6.9 of the Draft EIR have been revised to identify ACWD as a responsible agency and identify associated ACWD permits and approvals (refer to Chapter 4, "Revisions to the Draft EIR"). Please also see Responses A4-3 and A4-15. As noted in Response A4-15, the final MSS brine transport pipeline alignment would be determined only after subsurface utility investigations are conducted; all required leases, licenses, permits, and easements are obtained; and coordination with utility owners has occurred. This process would ensure that implementing the project would not result in accidental damage to or result in the need to relocate existing utility infrastructure; therefore, no new environmental impacts would occur.

Comment A4-19

7. ACWD Contacts: The following ACWD contacts are provided so that the East Bay Dischargers Authority (EBDA) can coordinate with ACWD as needed during the CEQA process:

    a) Michelle Walden, Groundwater Resources Manager, at (510) 668-4454, or by email at michelle.walden@acwd.com, for coordination regarding ACWD's groundwater resources, groundwater wells, and drilling permits.

    b) Sean O'Reilly, Development Services Manager, at (510) 668-4472, or by email at sean.oreilly@acwd.com, for coordination regarding GIS mapping, public water systems, engineering, and water service.

Thank you again for the opportunity to comment on the Draft Environmental Impact Report for the Cargill Mixed Sea Salt Processing and Brine Discharge Project. This Project takes an interesting partnership approach to address long-term regional needs and ACWD looks forward to further coordination and learning more about future partnership opportunities.

Response A4-19

The comment provides ACWD contacts for coordination in connection with the project. The project proponent will coordinate with the identified staff if questions concerning ACWD's comments arise. This comment is not related to the adequacy of the CEQA document. No further response is required.

Letter A5 California Department of Transportation, District 4

Yunsheng Luo, Associate Transportation Planner, Caltrans D4
February 15, 2023

Comment A5-1

Thank you for the opportunity to review the DEIR for the Cargill Mixed Sea Salts Processing and Brine Discharge Project. Below please find our comments for this project. Feel free to contact me if you have any questions.

Right-Of-Way (ROW)
Because this is a secondary non-Highway use of Caltrans ROW for the proposed pipeline locations, a ROW Use Agreement would need to be obtained along with the payment of fair market value for the use of ROW.

Response A5-1

The comment states that approvals from the California Department of Transportation (Caltrans) would be necessary to construct the project within Caltrans's right-of-way. This comment is noted. Pages ES-4, 2-39, and 3.3-7 of the Draft EIR identify Caltrans as a responsible agency with authority to review and consider permits and approvals for any use of Caltrans's right-of-way. This comment is not related to the adequacy of the CEQA document. No further response is required.

Letter A6 City of Hayward Public Works & Utilities Department

Alex Ameri, P.E., Director of Public Works
February 15, 2023

Comment A6-1

On behalf of the City of Hayward's Public Works & Utilities Department, thank you for the opportunity to review and provide comments on the Draft Environmental Impact Report (DEIR) for the Cargill Mixed Sea Salts Processing and Brine Discharge Project.

As an agency that will need to consider the EIR when deciding to issue an encroachment permit, as well as other approvals for the project, the following City of Hayward contact information is provided:

Contact Person: Alex Ameri, Director of Public Works
Email Address: alex.ameri@hayward-ca.gov
Mailing Address: 777 B Street, Hayward, CA 94541

We respectfully request the following comments and questions be addressed in the final version of the Environmental Impact Report:

Response A6-1

The comment notes that the City of Hayward is responsible for issuing an encroachment permit and other approvals for the project and provides the City of Hayward contact for coordination in connection with the project. Page 1-5 of the Draft EIR identifies the City of Hayward as a responsible agency and notes that the City of Hayward will use the Draft EIR in consideration of discretionary approvals. In addition, page 2-39 of the Draft EIR notes that routine development permits from the City of Hayward, such as encroachment, grading, and noise permits, and agreements for private pipeline placement in public rights-of-way under the Franchise Act of 1937 and the Charter of the City of Hayward, would be required before project implementation. The project proponent will contact the director of Public Works with any questions regarding the encroachment permit process. This comment is not related to the adequacy of the CEQA document. No further response is required.

Comment A6-2

1) Impact 3.7-3 indicates the MSS Brine that will be conveyed through the transport pipeline is non-hazardous. How was this determination made? Was the non-hazardous classification for this MSS brine confirmed with any regulatory agencies such as the US Environmental Protection Agency, US Occupational Safety and Health Administration, and/or the US Department of Transportation?

Response A6-2

The comment asks how the Draft EIR determined that the MSS brine that would be transported through the MSS brine pipeline would be non-hazardous. As described on page 2-1 of the Draft EIR, the MSS brine that would be transported as part of the project is a concentrate of naturally occurring San Francisco Bay water; no additives or chemicals are used in the processing of this byproduct. After it is introduced into EBDA's system, the MSS brine would be blended and diluted with effluent to a level that meets EBDA's National Pollutant Discharge Elimination System (NPDES) permit requirements before being discharged back into the Bay. Further, MSS brine is not classified as a hazardous material under the following regulatory standards:

- The National Fire Protection Association Code/Standard No. 704, which provides basic information for emergency personnel responding to a fire or spill and those planning for emergency responses, does not classify the type of MSS brine produced from Cargill's solar salt operations as a hazardous substance. This determination is based on the properties of the MSS brine, including the fact that the brine is not flammable, is not considered to be a reactive substance, is not listed as a carcinogen or mutagen, and is associated with only minor potential health effects upon exposure. This type of MSS brine is assigned a Hazardous Materials Identification System score of 1, which applies to materials in which exposure will cause an irritation and result in minor residual injuries.
- The Occupational Safety and Health Administration Hazard Communication Standard (29 CFR 1910.1200) does not consider salt brine solution to be hazardous.
- Salt brine is not listed as a hazardous material or dangerous good under shipping requirements promulgated by the US Department of Transportation.
- The components of the MSS brine are listed as nonhazardous under the Toxic Substances Control Act.
- MSS brine is not listed as a hazardous substance subject to reportable quantities in the event of a release under the Comprehensive Environmental Response, Compensation, and Liability Act.
- MSS brine is not listed as a hazardous waste under the Resource Conservation and Recovery Act.

No revisions to the Draft EIR are necessary in response to this comment.

Comment A6-3

2) Regardless of whether or not the MSS brine is classified as a hazardous material, consideration should be taken for potential detrimental impacts to the environment or publicly owned treatment works resulting from accidental MSS brine discharges to storm drain, sewer, or surface water conveyances. Please include Mitigation Measures to contain and dispose of MSS brine discharged in the event of a transport pipeline failure to address Impacts 3.7-1 and 3.7-2.

Response A6-3

The comment requests that the Draft EIR include mitigation measures related to containing and disposing of brine discharged in the event of a transport pipeline failure to address Impacts 3.7-1 and 3.7.2. Impacts 3.7-1 and 3.7-2 do not pertain to the potential release of MSS brine, which is not considered to be a hazardous material (see Response A6-2); rather, they pertain to the potential release of small quantities of hazardous materials (e.g., transportation fuels, lubricating fluids, and solvents) during the transport, use, storage, or disposal of such materials during the construction and operation of the project. Multiple federal, state, and local regulations pertain to the use and disposal of such materials, including response actions required in the event of an accidental release (refer to pages 3.7-1 through 3.7-6 of the Draft EIR for additional information). In addition, the project would be required to comply with NPDES permit requirements pertaining to stormwater discharges during construction, including spill prevention and contingency measures for prompt cleanup of accidental spills (refer to pages 3.8-2 and 3.8-3 of the Draft EIR for additional information). Because the project would use limited quantities of such hazardous materials in compliance with applicable regulations, pages 3.7-11 and 3.7-12 of the Draft EIR present the conclusion that the potential impact related to the use and potential release of such hazardous materials during construction and operations would be less than significant.

The comment does not suggest that the Draft EIR's conclusions pertaining to Impacts 3.7-1 and 3.7-2 are flawed but instead asks that impacts from accidental releases of MSS brine be included in this analysis. Because MSS brine is not considered a hazardous material (for the reasons noted in Response A6-2), potential impacts associated with the accidental release of MSS brine are not considered and analyzed in Section 3.7, "Hazards and Hazardous Materials"; however, these impacts are addressed in Section 3.8, "Hydrology and Water Quality." The analysis and conclusions in Section 3.8 explain why the impact related to the potential accidental release of MSS brine would be less than significant. Please also see Responses A6-4 and A6-5, below, for additional information regarding potential impacts related to MSS brine transport pipeline leaks or failure. No revision to the Draft EIR is necessary in response to this comment.

Comment A6-4

3) Impact 3.8-2 does not address the potential for a non-planned brine discharge during operation, which could occur from a leak, pipe failure, etc. Please include Mitigation Measures to address the potential for a brine discharge during operation to violate water quality standards, waste discharge requirements, and cause degradation of surface water and groundwater quality.

Response A6-4

The comment states that Impact 3.8-2 does not address the potential for a nonplanned brine discharge during operation, which could occur from a leak or pipe failure. The comment also requests that mitigation measures be added to the project EIR to address the potential for a brine discharge during operation to violate water quality standards, violate waste discharge requirements, and cause degradation of surface water and groundwater quality.

The discussion for Impact 3.8-2 in Section 3.8, "Hydrology and Water Quality," of the Draft EIR addresses the potential for nonplanned brine discharges. As discussed on pages 3.8-24 through 3.8-27 of the Draft EIR, the MSS brine transport pipeline would be almost entirely buried, and aboveground appurtenances would not be placed in any waters or wetlands. In addition, the MSS brine transport pipeline has been designed with safeguards against leaks or failures. These safeguards include the use of flow meters, pressure transmitters, pipeline inspection gauges (PIGs) for periodic inspections, fused pipes, pressure rating safety factors, air relief and isolation valves, and an operator to monitor operations 24 hours a day. Many of these safeguards are already described on page 2-18 of the Draft EIR; however, the text has been revised to provide additional detail regarding leak detection and prevention (refer to Chapter 4, "Revisions to the Draft EIR").

The maintenance of the MSS brine transport pipeline and appurtenant structures would prevent leaks of MSS brine to groundwater and adjacent waterways and wetlands. Specifically, PIGs would be injected into the pipeline to inspect and maintain the pipeline, which would include monitoring for leaks and other issues. Pigging would be used to force out buildup in the pipeline, and sensors on the PIGs would inspect and record data that would be used to inform maintenance needs. Pigging would occur without stopping the flow of MSS brine in the pipeline. In addition to periodic inspections and pipe cleaning, as-needed servicing of fittings, valves, and other appurtenances would occur.

The Solar Salt Facility can shut down the brine discharge pump and suspend MSS brine discharge in the event of any system upset or other reasons that may affect EBDA system capacity or water quality. The MSS brine discharge would be suspended immediately by Cargill upon direct notification received from EBDA through a dedicated 24-hour, 7-days-per-week communication link established as part of the operations agreement that would be required between the two entities, as noted on pages 2-31 and 3.8-26 of the Draft EIR. In such instances, the Solar Salt Facility would retain the brine in Ponds 12 and 13, consistent with its existing operations. Leaking sections of pipe would be isolated, and bypass pumps and/or vacuum trucks would be used to transport MSS brine through undamaged pipe to either Cargill's Solar Salt Facility or EBDA's conveyance system. The MSS brine pipeline would not be connected to any municipal sanitary sewer mains, drains, or other infrastructure.

As described above, pipeline design features and routine maintenance and inspections would minimize the potential for pipe failure to the extent that any leaks of MSS brine would be infrequent, detectable, and promptly addressed. Leaks of this scale would not be substantial enough to interfere with the regional water quality control board's (RWQCB's) ability to protect beneficial uses of the region's groundwater. The Draft EIR includes the analysis requested in this comment and concludes that project operations would not violate any water quality standards or waste

discharge requirements or otherwise substantially degrade surface water or groundwater quality (Impact 3.8-2). Because the impact was determined to be less than significant, no mitigation measures are required. Therefore, no further revisions to the EIR are necessary in response to this comment.

Comment A6-5

4) Impact 3.8-3 does not address the potential impact to groundwater resulting from a brine leak from the MSS transport pipeline or spill during operation. Please include Mitigation Measures to address this scenario.

Response A6-5

This comment states that Impact 3.8-3 does not address the potential impact on groundwater arising from a release of MSS brine during project operations and asks that mitigation measures be added to address this scenario. Impact 3.8-3 discusses potential impacts arising from dewatering operations during project construction. Potential impacts arising from a release of MSS brine from the MSS brine pipeline during operations are discussed in connection with Impact 3.8-2. As discussed on pages 3.8-24 through 3.8-27 of the Draft EIR and in Response A6-4, the impact resulting from a leak or spill from the MSS brine transport pipeline would be less than significant. As discussed in Response A6-4, pipeline design features and routine maintenance and inspections would minimize the potential for pipe failure to the extent that any leaks of MSS brine would be infrequent, detectable, and promptly addressed. Leaks of this scale would not be substantial enough to interfere with the RWQCB's ability to protect beneficial uses of the region's groundwater. The inclusion of the information presented in Response A6-4 does not change the impact conclusion and does not result in the need for additional mitigation measures. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Comment A6-6

5) Please provide a contingency plan within the Mitigation Measures that includes:

   a. Engineering controls that will be implemented to detect leaks (pressure monitoring, visual inspection etc.)

   b. How leak locations would be determined if no visible or above-ground evidence were present

   c. How the brine transport pipeline would withstand seismic events

   d. How the brine transport pipeline would be isolated in segments to minimize the volume spilled

   e. How a brine spill or leak would be cleaned up to restore the environment to a preproject state including soils, groundwater, vegetation, etc.

   f. What would be done if a brine leak migrated to the storm drain

   g. What would be done if brine was discharged to the Bay as a result of a brine leak

   h. What would be done if brine were discharged into the sanitary sewer, where it could significantly harm the operation of the City of Hayward's Water Pollution Control Facility

   i. How buildup of crystallized brine within the brine transport pipeline would be prevented and how it would be mitigated if buildup were to occur

   j. How corrosion of appurtenances such as air valves, blowoffs, isolation valves, etc. would be prevented

Response A6-6

The comment requests that a contingency plan be provided within mitigation measures of the Draft EIR consisting of a number of provisions. The project proponent is preparing a Spill Response Plan, which would be approved and enforced by EBDA pursuant to an agreement between EBDA and Cargill. The provisions requested in the comment will be included in the Spill Response Plan, and are included as part of the project design or in existing mitigation measures presented in the Draft EIR, as follows:

(a) and (b). The comment asks to include engineering controls that would be implemented to detect leaks and asks how leak locations would be determined. The project design includes controls to detect leaks, which are described on pages 2-18, 2-31, and 3.8-24 through 3.8-27 of the Draft EIR and in Response A6-4. In addition, the project has been

modified as discussed in Section 2.6, "MSS Brine Transport Pipeline Integrity Fiber Optic Conduit" to include the installation of a 1-inch fiber optic conduit adjacent to the MSS brine transport pipeline to provide for an additional means of communication regarding pipeline operations.

(c). The comment asks how the brine transport pipeline would withstand seismic events. This comment is addressed under Impact 3.5-1 in Section 3.5, "Geology and Soils," of the Draft EIR. Specifically, the project would be required to comply with California Building Code requirements and local codes, including the preparation of a site-specific geotechnical report and incorporation of the recommendations therein. These regulatory requirements specify a mandatory permit process and prescriptive actions to fulfill those requirements. Compliance with these regulatory requirements would minimize hazards from seismic-related ground shaking and ground failure.

(d) The comment asks how the brine transport pipeline would be isolated in segments to minimize the volume spilled. As discussed on page 2-18 of the Draft EIR, the project design would include isolation valves to isolate sections of the MSS brine pipeline if necessary. Leaking sections of pipe would be isolated, and bypass pumps and/or vacuum trucks would be used to transport MSS brine through undamaged pipe to either Cargill's Solar Salt Facility or EBDA's conveyance system. Refer to Response A6-4, above, for additional information. The current project design does not identify the exact number and spacing of isolation valves; however, EBDA, Cargill, and the affected jurisdictions, including City of Hayward, would discuss the appropriate number and spacing of isolation valves during the design of the project.

(e) The comment asks how a brine spill or leak would be cleaned up to restore the environment (e.g., soils, groundwater, and vegetation) to a pre-project state. This comment assumes that it would be necessary to restore any soils, groundwater, or vegetation that comes into contact with the MSS brine in the event of a pipeline spill or leak. As noted in Responses A6-2 and A6-4, the MSS brine would not be considered a hazardous material. As also noted in Response A6-4, the potential for environmental impacts from leaks or spills would be minimized because any leak in the pipeline would be detected almost immediately because pipeline pressure, flow, and density measurements would be monitored 24 hours a day. As noted in Response A6-6(d), the project design includes isolation valves that would isolate any compromise in the system. In addition, the discharge of MSS brine from the Solar Salt Facility into the pipeline could be suspended as necessary, limiting the quantity of any MSS brine released. Therefore, the Draft EIR concludes, on pages 3.8-24 through 3.8-27, that potential impacts associated with any accidental release of MSS brine would be less than significant (Impact 3.8-2).

(f) The comment asks what would be done if a brine leak migrated into the storm drain system. The potential for brine to migrate into a storm drain system would be limited because the MSS brine pipeline would be almost entirely buried below any inlets for storm drains and would include only minimal aboveground appurtenances. Therefore, there is no reasonably foreseeable pathway for leaks to migrate into the storm drain system. Although there is potential for pressure pipelines to be inadvertently ruptured during future excavation and cause leaks into storm drain systems; these events would be considered speculative because excavators are required to delineate underground lines before any planned excavations to prevent damage to these lines pursuant to California Government Code 4216. Regardless, as noted in Responses A6-2 and A6-4, MSS brine is not considered a hazardous material, and because any leaks of MSS brine would be infrequent, detectable, and promptly addressed, and therefore minimized in scale, they would be unlikely to result in a violation of applicable water quality standards. Therefore, the impact on water quality would be less than significant in the unlikely event of a migration of MSS brine into the storm drain system.

(g) The comment asks what would be done if brine were discharged to the Bay as a result of a brine leak. As shown in Figure 2-1 in the Draft EIR, the MSS brine pipeline would not be located adjacent to the Bay except at its terminus at the Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant in San Lorenzo (Oro Loma Plant); therefore, the unanticipated discharge of brine into the Bay would be extremely unlikely. In addition, the MSS brine transport pipeline would be almost entirely buried, and aboveground appurtenances would not be placed in any waters or wetlands. In addition, the MSS brine transport pipeline has been designed with safeguards against leaks or failures, including flow meters, pressure transmitters, and isolation valves, which would serve to substantially limit the scale of any potential leak of MSS brine. Therefore, the impact of any potential discharge of MSS brine into the Bay would be less than significant. After the MSS brine reaches the Oro Loma Plant, it would be blended with and

further diluted with EBDA's Member Agency effluent, for ultimate discharge into the Bay in compliance with EBDA's NPDES permit. As discussed on page 2-31 of the Draft EIR, the discharge of MSS brine into EBDA's system could be interrupted by shutting down the brine discharge pump at the Cargill Solar Salt Facility to ensure that EBDA maintains sufficient capacity to accommodate wet weather flows. Similarly, in the event of any system upset or other reasons that may affect EBDA system capacity or water quality, brine discharges would be suspended. Suspension of the MSS brine discharge would be implemented by Cargill upon direct notification received from EBDA through a dedicated 24-hour, 7-days-per-week communication link established as part of the operations agreement that would be required between the two entities; would typically last 1–2 days; and would occur approximately two times a year. During any temporary interruptions of MSS brine export, Cargill would retain the brine in Ponds 12 and 13, consistent with its existing operations.

(h) The comment asks what would be done if brine were discharged into the sanitary sewer, where it could significantly harm the operation of the City of Hayward's Water Pollution Control Facility. As noted above, the MSS brine pipeline would be buried below any receiving inlets or drains connecting to the City of Hayward's sanitary sewer mains. Therefore, there is no apparent pathway for any accidental discharge of MSS brine into the City of Hayward's sanitary sewer system. In addition, any intentional discharge of MSS brine to any sanitary sewer system, including the City of Hayward's system, would require appropriate permits. If MSS brine was discharged to the sanitary sewer in large quantities, treatment plant operations could be disrupted; however, the Spill Response Plan would clearly direct that any recovered brine shall not be discharged into the sewer without appropriate permits. Finally, as noted in Response A6-2 and A6-4, above, the MSS brine is not considered a hazardous material and any leaks of MSS brine, including any unlikely leaks into the City's sanitary sewer system, would be infrequent, detectable, and promptly addressed, and therefore minimized in scale and unlikely in such limited quantities to impact operation of the City of Hayward's Water Pollution Control Facility. Therefore, the impact of any such discharge, however unlikely, would be less than significant.

(i) The comment asks how buildup of crystallized brine in the brine transport pipeline would be prevented and how it would be mitigated if buildup were to occur. As noted in Section 2.6.3 of the Draft EIR, the salt concentration of the MSS brine would be controlled by blending it with a small fraction of dissolution water to avoid crystallization in the downstream pipeline. Furthermore, as discussed in Section 2.6.7 of the Draft EIR, maintenance of the pipeline would include periodic inspections and pipe cleaning. In particular, PIGs would be injected into the pipeline to inspect and maintain the pipeline. Pigging would be used to force out buildup in the pipeline, and sensors on the PIGs would inspect and record data that would be used to inform maintenance needs.

(j) The comment asks how corrosion of appurtenances (e.g., air valves, blowoffs, and isolation valves) would be prevented. Please see pages 2-31 and 2-32 of the Draft EIR for a description of maintenance activities that would be included as part of the project, which include routine inspections of air valves, blowoffs, isolation valves, and other MSS brine pipeline appurtenances. The purpose of these inspections would be to determine whether any of these appurtenances would require maintenance or replacement as a result of corrosion or other factors. The text on page 2-18 of the Draft EIR has been revised to provide this information (refer to Chapter 4, "Revisions to the Draft EIR").

As described above, all elements of the contingency plan requested in the comment are included as part of the project design or in existing mitigation measures presented in the Draft EIR. These provisions will also be included in a Spill Response Plan, which is being prepared by the project proponent and would be approved and enforced by EBDA as part of an agreement between EBDA and Cargill. No further revision of the Draft EIR is necessary in response to this comment.

Comment A6-7

6) The Draft EIR indicates the MSS brine transport pipeline will be 14 inches in diameter. The 30% design drawings the City of Hayward reviewed indicated the MSS brine transport pipeline would be 18 inches in diameter. Please clarify or revise the EIR to indicate the MSS brine transport pipeline will be 18 inches in diameter.

Response A6-7

Similar to comment A4-2, this comment requests clarification regarding the diameter of the MSS brine transport pipeline. Please refer to Response A4-2, above.

Comment A6-8

7) Please indicate specific vertical and horizontal clearance distances that will be observed between the MSS brine transport pipeline and potable water, recycled water, sanitary sewer, and storm drain pipelines.

Response A6-8

This comment requests information regarding vertical and horizontal clearance distances between the MSS brine transport pipeline and potable water, recycled water, sanitary sewer, and storm drain pipelines. Separation requirements vary depending on the jurisdiction in which the pipeline would be constructed and the nature of adjacent pipelines. As discussed in Responses A4-15 and A4-16, the project proponent would be required to (1) perform subsurface utility investigations to confirm the location of existing utilities; (2) obtain all necessary leases, licenses, permits and easements; and (3) comply with all applicable separation requirements, local ordinances, and utility easements, including requirements set by the California Division of Drinking Water pertaining to potable water lines. For the pipeline segment through the City of Hayward, the project proponent would be required to submit design plans showing proposed horizontal and vertical clearances to the city's Public Works and Utilities Department for review. The project proponent would follow the same process for pipeline segments constructed in other jurisdictions. Each jurisdiction's permit approval process would ensure project compliance with applicable clearance requirements before construction. Therefore, no revision to the Draft EIR is necessary in response to this comment.

Comment A6-9

8) Page 2-18 states blowoffs would be placed near sanitary sewer manholes. Please note that discharging brine directly to the sanitary sewer will not be permitted.

Response A6-9

The comment states that any discharge of MSS brine from blowoffs directly to the sanitary sewer would not be permitted. This comment is noted, which presumably applies to the City of Hayward's sanitary sewer system. The project proponent would be required to obtain any necessary permits and approvals to discharge MSS brine to any sanitary sewer. Regardless, it is anticipated that MSS brine from blowoffs would be discharged to a vacuum truck or tank and not to the sanitary sewer. This comment is not related to the adequacy of the CEQA document. No further response is required.

Comment A6-10

9) Between Crossing 20 and Crossing 21 on Figure 2-8h, the brine transport pipeline traverses around the perimeter of the Oro Loma Marsh. Please confirm there is adequate existing vehicular access to perform the visual inspections of the brine transport pipeline for this segment.

Response A6-10

The comment asks to confirm that there will be adequate vehicle access to accommodate visual inspections of the MSS brine transport pipeline between Crossing 20 and Crossing 21. This segment of the MSS brine transport pipeline would traverse property owned in fee by the East Bay Regional Park District, State, and United States. The design for this segment is preliminary, and the alignment would be finalized in coordination with the respective property owners. There is currently adequate vehicle access at this location, and no changes to the existing road are proposed as part of the project. Therefore, the project design would accommodate vehicular access along this pipeline segment. This comment is not related to the adequacy of the CEQA document. No further response is required.

Comment A6-11

10) When considering potentially less impactful alternatives, was blending the MSS brine with treated wastewater from the San Jose-Santa Clara Regional Wastewater Facility (SJSCRWF) considered? The SJSCRWF seems closer to Cargill's Solar Salt Facility.

Response A6-11

The comment asks whether blending the MSS brine with the San Jose-Santa Clara Regional Wastewater Facility was considered as an alternative to EBDA's Bay Outfall and Diffuser. The project proponent considered and rejected this alternative because it would have required a more expensive and difficult to operate pressurized, upgradient

transport pipeline. In addition, discharges of combined MSS brine and wastewater effluent at the San Jose-Santa Clara Regional Wastewater Facility would occur at a much shallower and more environmentally sensitive portion of the Bay than EBDA's deep water outfall. This alternative also would not satisfy the project objectives of (1) optimizing the use of existing EBDA infrastructure and excess wastewater capacity and (2) furthering EBDA's sustainability objectives through the creation of permanent infrastructure available for future regional water recycling efforts by EBDA and/or EBDA Member Agencies. As described in State CEQA Guidelines Section 15126.6(a), CEQA requires consideration of alternatives that would avoid or substantially lessen any of the significant environmental effects of a project. This comment does not identify any specific project impacts that would be avoided or minimized by selecting this alternative. Therefore, no revisions to the Draft EIR are required in response to this comment.

Comment A6-12

11) When considering potentially less impactful alternatives, was using Cargill's transbay pipeline between Newark and Redwood City considered to potentially blend the MSS brine with treated wastewater discharged by treatment facilities on the west side of the bay?

Response A6-12

The comment asks whether using Cargill's transbay pipeline between Newark and Redwood City was considered in order to blend the MSS brine with treated wastewater effluent on the west side of the Bay. The project proponent considered and rejected this alternative because the individual treatment facilities on the west side of the Bay operate at much lower capacities compared to EBDA's wastewater system and would take longer to process Cargill's inventory of stored MSS. In addition, accessing the facilities on the west side of the Bay would be more difficult than accessing EBDA's system because Cargill's transbay pipeline is not located near an existing wastewater treatment plant that could be utilized for blending wastewater with MSS brine, and no feasible location for a new pipeline to provide such a connection was identified during due diligence for the project. This alternative also would not satisfy the project objectives of (1) optimizing the use of existing EBDA infrastructure and excess wastewater capacity and (2) furthering EBDA's sustainability objectives through the creation of permanent infrastructure available for future regional water recycling efforts by EBDA and/or EBDA Member Agencies. Finally, as noted in Response A6-11, CEQA requires consideration of alternatives that would avoid or substantially lessen any of the significant environmental effects of a project. This comment does not identify any specific project impacts that would be avoided or minimized by selecting this alternative. Therefore, no revisions to the Draft EIR are required in response to this comment.

Letter A7 Alameda County Flood Control & Water Conservation District

Dámaris Villalobos-Galindo, P.E., Supervising Civil Engineer
February 17, 2023

Comment A7-1

The Alameda County Flood Control and Water Conservation District (District) has reviewed the Draft Environmental impact Report (EIR) for the Cargill MSS Processing and Brine Discharge Project (Project) and would appreciate your consideration of the following comments while completing the final EIR:

Response A7-1

This comment provides introductory remarks and is not related to the adequacy of the CEQA document. No further response is required.

Comment A7-2

1. Existing District Infrastructure within the Project Area:

As mentioned in the Draft EIR, the proposed Project includes a 14-inch MSS brine transport pipeline extending for approximately 15.6-miles from the Cargill Solar Salt Facility to the Oro Loma Effluent Pump Station (OLEPS) located at the Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant in San Lorenzo. Based on the proposed alignment of the pipeline, which is shown in Figure 1, various District flood control facilities would likely be impacted due to the proposed Project. These facilities include but are not limited to:

- Alameda Creek
- Ardenwood Creek
- Crandall Creek
- Engineered Channel at Delores Drive
- Old Alameda Creek/Ward Creek
- Sulphur Creek
- Bockman Channel
- Plummer Creek

The District is not planning on relocating or modifying its flood control facilities due to the proposed Project. As a result, the alignment and depth of the brine discharge pipeline should consider flood control facilities and closely coordinate with the District to avoid, reduce or mitigate any impacts. In addition, the District recommends the Project proponents to submit a request for available records pertaining to flood control facilities located within the limits of the Project and closely work with District staff to coordinate and mitigate Project crossing impacts.

Response A7-2

The comment provides a brief summary of the project description and identifies various Alameda County Flood Control & Water Conservation District (ACFCWCD) facilities that are in the alignment of the proposed MSS brine transport pipeline. The comment states that ACFCWCD is not planning to relocate or modify its facilities as a result of the project. In addition, the comment recommends that the project proponent coordinate with ACFCWCD staff in connection with the project's proposed MSS brine pipeline alignment, which would cross several ACFCWCD flood control facilities.

This comment is noted, and ACFCWCD is expressly recognized on pages ES-4 and 2-39 of the Draft EIR as an agency responsible for issuing easements, licenses, and encroachment permits for project elements that cross flood control/engineered channels and storm drains. Construction activities would not adversely affect ACFCWCD's flood control facilities, because trenchless crossing methods would be used at these locations (refer to pages 2-35 and 2-36 of the Draft EIR for a description of construction methods that would be used at crossings of ACFCWCD facilities), and the project proponent would comply with ACFCWCD Permit Ordinance No. 0-2000-37 and any other permit requirements for work in ACFCWCD rights-of-way. In addition, Mitigation Measures 3.3-10, 3.3-13, and 3.8-5 would be implemented to mitigate potential impacts associated with flooding. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Comment A7-3

2. Hydrology and Drainage

The District has concerns on the MSS brine discharge outlet causing soil erosion to the channel banks. The District requests that the Project identifies and eliminates erosion problems on public and private lands caused by the Project's proposed outlet and MSS brine flowrate. The potential for erosion of the channel banks should be considered as a design and engineering factor in the new development of the outfall and flow amount. The District would like the Project proponents to conduct a hydrologic study on Plummer Creek and the impacts of the MSS brine discharge on the channel banks.

Response A7-3

The comment expresses concerns regarding soil erosion on the channel banks from the MSS brine discharge outlet and requests that the project proponent conduct a hydrologic study on Plummer Creek and the impacts of the MSS brine discharge on the channel banks. The project does not propose construction of a new brine discharge outlet that would discharge MSS brine to Plummer Creek. Rather, Bay water would be extracted from Plummer Creek to dissolve MSS at Cargill's Solar Salt Facility using an existing intake on Plummer Creek that has been used in Cargill's operations for many decades. The rate of extraction of water from Plummer Creek necessary for the project would be

significantly less than the rate of extraction used for Cargill's past operations. Soil erosion on the Plummer Creek channel banks would not be expected, because no MSS brine would be discharged into Plummer Creek and because the project proponent would continue to adhere to the current California Industrial General Permit Order 2014-0057-DWQ, which requires the implementation of operational best management practices to reduce impacts on water quality associated with operations. Therefore, a hydrologic study on Plummer Creek is not warranted, and no revisions to the Draft EIR are necessary in response to this comment.

Comment A7-4

3. District Contacts:

The following District contacts are provided so that the Project proponent can coordinate with District as needed during the CEQA process:

a. Moses Tsang, Principal Civil Engineer, Design Flood Control, at (510) 670-6549, or by email at moses@acpwa.org for coordination regarding flood control facilities.

b. Dámaris Villalobos-Galindo, Supervising Civil Engineer, at (510) 670-5292, or by email at damarisvg@acpwa.org for coordination regarding Environmental Compliance.

c. Beth Perrill, Supervising Right-Of-Way Agent, at (510) 670-5587 or by email at beth@acpwa.org for coordination of easement and License agreements.

d. Fernando Gonzales, Supervising Civil Engineering, Development Engineering and Permits, at (510) 670-5267 or by email at fernando@acpwa.org for the coordination of flood encroachment permits.

Thank you for the opportunity to comment on the Draft Environmental Impact Report for the Cargill Mixed Sea Salt Processing and Brine Discharge Project.

Response A7-4

The comment provides ACFCWCD contacts for coordination in connection with the project. This comment is noted, and EBDA will reach out to the identified staff if questions concerning ACFCWCD's comments arise.

Letter A8 Alameda County Public Works Agency

Dámaris Villalobos-Galindo, P.E., Supervising Civil Engineer
February 17, 2023

Comment A8-1

The Alameda County Public Works Agency (ACPWA) has reviewed the Draft Environmental Impact Report (EIR) for the Cargill MSS Processing and Brine Discharge Project (Project) and would appreciate your consideration of the following comments while completing the final EIR:

1. Existing ACPWA Infrastructure within the Project Area:

As mentioned in the Draft EIR, the proposed Project includes a 14-inch MSS brine transport pipeline extending for approximately 15.6-miles from the Cargill Solar Salt Facility to the Oro Loma Effluent Pump Station (OLEPS) located at the Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant in San Lorenzo. Based on the proposed alignment of the pipeline, as shown in Figure 1, ACPWA Right-of-Way (ROW) facilities, particularly roads located within unincorporated Alameda County, would likely be impacted due to the open-cut methods described in the Draft EIR. The ACPWA is not planning on relocating or restoring its facilities at its own expense due to the proposed Project. As a result, the alignment and depth of the brine discharge pipeline should consider ACPWA roads located within unincorporated Alameda County and additional facilities and closely coordinate with ACPWA to avoid, reduce or mitigate any impacts to its existing facilities. In addition, ACPWA recommends the Project proponents to submit a request for available records pertaining to ACPWA roads and ROW located within the limits of the Project and closely work with ACPWA to ensure minimum clearances are maintained.

Response A8-1

The comment provides a brief summary of the project description and states that ACPWA facilities would likely be affected during construction of the MSS brine transport pipeline. The comment states that ACPWA is not planning to relocate or restore its facilities as a result of the project. In addition, the commenter recommends that the project proponent coordinate with ACPWA staff in connection with the project's proposed MSS brine pipeline alignment, which it says could affect ACPWA right-of-way, including roadways in unincorporated Alameda County.

This comment is noted, and pages ES-4 and 2-39 of the Draft EIR have been revised to include ACPWA as a responsible agency (refer to Chapter 4, "Revisions to the Draft EIR"). Page 3.1-4 of the Draft EIR also notes that the project proponent would be required to obtain any necessary easements, licenses, permits, and approvals from public agencies and property owners, which would include ACPWA, and may include requirements to repair facilities affected by construction.

Comment A8-2

2. Drilling and Well Permits:

As required by ACPWA Ordinance No. O-2015-20, well and borehole drilling permits are required prior to the start of any subsurface drilling activities including exploratory soil borings and other excavations within the cities of Hayward, San Leandro, Emeryville, Oakland, Alameda, Piedmont, Albany, and unincorporated areas of Alameda County. As a result, all permitted work within ACPWA jurisdiction requires close coordination with ACPWA prior to the start of any field work. Additional details on the ACPWA Well Standards Program can be found at www.acpwa.org or call 510-670-6633.

Response A8-2

The comment notes that well and borehole drilling permits would be required for the project in areas under ACPWA's jurisdiction. The comment is noted, and pages ES-4, 1-5, and 2-39 of the Draft EIR have been revised to include ACPWA as a responsible agency (refer to Chapter 4, "Revisions to the Draft EIR").

Comment A8-3

3. ACPWA Contacts:

The following ACPWA contacts are provided so that the Project proponent can coordinate with ACPWA as needed during the CEQA process:

a. Amber Lo, Principal Civil Engineer, Design Road, at (510) 670-5485, or by email at amberl@acpwa.org for coordination regarding road ROW.

b. Dámaris Villalobos-Galindo, Supervising Civil Engineer, at (510) 670-5292, or by email at damarisvg@acpwa.org for coordination regarding Environmental Compliance.

Thank you for the opportunity to comment on the Draft Environmental Impact Report for the Cargill Mixed Sea Salt Processing and Brine Discharge Project.

Response A8-3

The comment provides ACPWA contacts for coordination in connection with the project. This comment is noted, and the project proponents will reach out to the identified staff if questions concerning ACPWA's comments arise.

Letter A9 San Francisco Bay Conservation and Development Commission

Anniken Lydon, Bay Resources Program Manager
February 17, 2023

Comment A9-1

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the *Cargill Mixed Sea Salt Processing and Brine Discharge Project* (project). The Proposed Project is located along approximately 16 miles of San Francisco Bay shoreline in portions of the cities of San Lorenzo, an unincorporated community in Alameda County, City of Hayward, Union City, Fremont, and Newark in Alameda County. The project includes installation of additional infrastructure at the Cargill Solar Salt Facility and a new pipeline to transport the concentrated Mixed Sea

Salts (MSS) brine currently stored in Ponds 12 and 13 to the East Bay Discharger Authority (EBDA) Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant where it will be diluted, mixed with the effluent, and discharged to the Bay consistent with EBDA NPDES [National Pollutant Discharge Elimination System] permit requirements. The Cargill Ponds 12 and 13 currently store approximately 6 million tons of MSS adjacent to the Bay and these ponds are facing a potential long-term threat of sea level rise from the Bay. The discharge of the MSS from these ponds via the pipeline is anticipated to take approximately 10-20 years based upon the estimated discharge rate. The project is intended to remove the MSS and reduce the potential for impacts from sea level rise.

Response A9-1

The comment provides a summary of the project description and purpose. This comment is not related to the adequacy of the CEQA document. No further response is required.

Comment A9-2

The San Francisco Bay Conservation and Development Commission (Commission or BCDC) is a responsible agency for this project and will rely on the DEIR when it considers the project during permitting for any portions of the project occurring within the Commission's jurisdiction. Our staff has prepared comments outlining specific additional issues or comments on the alternatives that should be addressed in the DEIR or through the Commission permitting process as appropriate. The comments below are based on the McAteer-Petris Act and the Commission's San Francisco Bay Plan (Bay Plan).

Response A9-2

The comment describes BCDC's role as a responsible agency for the project. Pages ES-4, 1-5, and 2-39 of the Draft EIR identify BCDC as a responsible agency with authority to review and consider permits and approvals for activities within BCDC jurisdictional areas. This comment is not related to the adequacy of the CEQA document. No further response is required.

Comment A9-3

The DEIR analyzed a number of alternatives including the following:

1. No project – This alternative includes no changes to the Cargill Solar Salt Facility or operations and the MSS would remain in Ponds 12 and 13. The ponds would continue to build up additional MSS during salt making operations. Over the next 20 to 50 years, the berms around the ponds become more at risk of overtopping that could result in a release of MSS brine into the Bay.
2. Proposed Project – The Proposed Project includes construction of a new approximately 15.6-mile pipeline mostly in existing roadway right-of-ways connecting [from] Cargill Ponds 12 and 13 to the Oro Loma facility. This alternative also includes the installation of three new pump stations, each containing approximately four pumps with varying power and size, in the salt ponds and adjacent waterways (Plummer Creek).
3. Alternative 1 – In-Pipe Alternative – This alternative includes a combination of new pipeline and existing EBDA pipeline, with a shorter MSS transport route and the new pipeline connecting downstream of EBDA's Alvarado Treatment Plant in Union City rather than directly to the Oro Loma facility. This alternative requires installation of 4 miles of liner in the current EBDA pipeline and new construction of approximately 7.5 miles of new pipeline, and three new pump stations, each containing approximately four pumps with varying power and size, in the salt ponds and adjacent waterways (Plummer Creek). This route would be mostly under existing roadway right-of-ways, except for work occurring on the existing EBDA pipeline.
4. Alternative 2 – Bayside Parallel Pipe Alternative – This alternative includes a new 17-mile pipeline route that travels along the edges of Cargill's existing salt ponds and existing berms rather than along the inland route in roadway right-of-ways and may require more work in environmentally sensitive areas. This alternative also includes the installation of three new pump stations, each containing approximately four pumps with varying power and size, in the salt ponds and adjacent waterways (Plummer Creek).

Response A9-3
The comment provides a summary of the proposed project and the alternatives analyzed in the Draft EIR. This comment is not related to the adequacy of the CEQA document. No further response is required.

Comment A9-4
While Alternative 1 will have more impacts than the No Project alternative, the DEIR identifies Alternative 1 as the environmentally superior alternative because it accomplishes the objectives of the project to remove the MSS material from Ponds 12 and 13. However, Alternative 1 would have greater impacts in sensitive wetland habitat areas than the Proposed Project and would lead to more disruptions in the EBDA operations during the installation of the lining of the pipeline. Additionally, Alternative 1 only includes lining certain sections of the existing EBDA pipeline, which would also leave some areas susceptible to corrosion or additional maintenance or replacement in the future. Alternative 2 would require more impacts in sensitive habitat areas and recreational areas than the Proposed Project. Therefore, it appears that EBDA has tentatively selected the Proposed Project as the alternative to move forward into design and permitting.

Response A9-4
The comment provides a comparative description of the alternatives, including the ability of the alternatives to meet project objectives and the impacts resulting from the alternatives. Regarding EBDA's selection process, this will be a decision of the EBDA Commission. This comment is not related to the adequacy of the CEQA document. No further response is required.

Comment A9-5
Proposed Project Details

The following project details should be clarified in the DEIR:

1. Project Timing. Please clarify the timing in DEIR Section 2.6.8. There is a mention that construction is likely to begin in the summer of 2023, but to BCDC's knowledge Cargill has not applied to any agencies, including BCDC, for permits and it may not be realistic for all agency approvals to be obtained for construction to occur in the summer of 2023.

Response A9-5
The comment requests clarification on the timing of construction activities and notes that it would be unrealistic for construction to begin in the summer of 2023 given the necessary agency permits and approvals. Construction on certain project elements is proposed to begin in the summer of 2023, pending the timing of project approval. In particular, as noted on page 2-18 of the Draft EIR, installation of the segment of MSS brine pipeline along Union City Boulevard could potentially be constructed at the same time as the proposed Union City Boulevard Bike Lanes Project (Bike Lanes Project), a separate project proposed by Union City. The Bike Lanes Project would result in extensive investment in roadwork along the affected segment of roadway; therefore, Union City and Cargill are exploring the possibility of coordinating construction of these two projects to avoid disruption of the roadway segment multiple times over a relatively short period. Construction of other segments of the MSS brine pipeline, including in areas that require BCDC permits and approval, is expected to occur at a later time. The exact timing of these activities would be determined outside of the CEQA process. It should be noted that the timing of construction activities presented in the Draft EIR is subject to change given the uncertainty of when all necessary permits and approvals would be obtained if the project is approved. CEQA requires that reasonable assumptions be made for evaluating a project's impacts; therefore, the construction period evaluated in the Draft EIR was selected for the purpose of conducting a conservative analysis. Finally, the timing of construction also hinges on when and whether the project is approved.

Comment A9-6
2. Construction Phasing. The DEIR mentions that the Pond 12 infrastructure is planned to be built in the first year, but the Pond 13 infrastructure is not planned to be built until 6 years later. There is no explanation for the need of this phasing. Additionally, Pond 13 to be larger and may contain more MSS that will take much longer to remove so this phasing appears to extend the anticipated total timeline for the removal of the MSS. Please clarify

if it possible to construct the infrastructure for both ponds concurrently, to try and decrease the amount of time needed to remove the MSS from both ponds.

Response A9-6

The comment requests clarification regarding the phasing of the construction of Pond 12 and Pond 13 infrastructure, including whether it would be possible for construction at both ponds to be concurrent to reduce the time needed to process MSS brine. The comment does not identify specific concerns related to an impact that concurrent processing would address. A higher rate of discharge could, if not properly diluted, result in water quality impacts in the Bay. Also, because of the existing limitations imposed on EBDA's effluent through its NPDES permit, processing more MSS concurrently is not presently feasible. EBDA's NPDES permit limits brine to 4 percent of EBDA's total discharge. Based on average dry weather flows, the NPDES permit would limit brine discharge to approximately 2 million gallons per day. With these constraints, it would not be practicable to install infrastructure for Pond 13 that could not be used for several years and would likely depreciate before its operation. Therefore, the Draft EIR has not carried forward a project alternative that runs enhanced MSS recovery and disposal operations in both Ponds 12 and 13 simultaneously.

Comment A9-7

3. Volume of MSS. The DEIR reports that there are approximately 6 million tons of MSS that will need to be discharged, but there is not mention of the how the rate of removal and the time associated factors in the continued use and additional of new MSS to the ponds from ongoing salt making operations. Please include additional details on this in the DEIR.

Response A9-7

The comment requests information regarding how ongoing salt-making operations would result in the continued addition of new MSS to the ponds at the Solar Salt Facility and how this would affect the timeframe for removal of the MSS. As noted in the Draft EIR, approximately 60,000 tons of MSS are generated annually during salt making operations (see page 2-1 of the Draft EIR) and approximately 6 million tons of MSS is stored in Ponds 12 and 13. It is estimated that the project could remove this inventory in an approximately 10 year time frame (see pages ES-5 and 2-6 of the Draft EIR). The project is therefore designed and expected to process 600,000 tons of MSS per year. Cargill estimates that its existing operations increase the MSS inventory by approximately 60,000 tons annually (refer to page 2-1 of the Draft EIR), which is negligible in comparison to the existing 6 million tons of MSS currently stored at the Solar Salt Facility. Under anticipated conditions, Cargill's existing inventory of MSS and any added MSS from Cargill's ongoing operations would be fully processed approximately 10 to 15 years after the project begins operations. Page 2-7 of the Draft EIR has been revised to include a reference to the volume of MSS expected to be processed per year (refer to Chapter 4, "Revisions to the Draft EIR"), and the second paragraph of Section 2.6, "Proposed Project," on page 2-6 of the Draft EIR, has been revised accordingly to update the timeframe for processing MSS.

Comment A9-8

Alternatives Analysis

1. Proposed Project. This alternative appears to be the most inland alternative that would include the least fill in the Commission's jurisdiction and minimize impacts to sensitive Bay resources.

Response A9-8

The comment provides a comparative description of the proposed project relative to Alternatives 1 and 2. This comment is not related to the adequacy of the CEQA document. No further response is required.

Comment A9-9

2. Alternative 1. This alternative has the smallest overall footprint but would have a greater impact to Bay resources than the Proposed Project and would require more long-term maintenance in tidal wetlands than other alternatives. While Alternative 1 would have fewer overall impacts than the Proposed Project, it appears to have greater recreational impacts and greater disturbance in environmentally sensitive areas and would also have

greater disruption to EBDA's existing system during the lining of portions of the existing EBDA pipeline and construction of access pits.

Response A9-9

The comment provides a comparative description of Alternative 1 relative to the proposed project and Alternative 2. This comment is not related to the adequacy of the CEQA document. No further response is required.

Comment A9-10

3. Alternative 2. Please clarify the description of Alternative 2 in Section 5.4.3 and provide additional details on where exactly the new pipeline would be located relative to the berms around the Cargill facility and roadways mentioned along the route. For example, will the new pipeline run along the interior of the salt ponds and be exposed, or will the pipeline be buried within the existing berms. Many of the existing berms around the Cargill facility are regularly maintained but are not engineered structures. Please provide more clarity on the proposed location for the pipeline in relation to these berms and analyze whether this may affect any of the berm integrity. Please also clarify whether any import of soils would be needed for this alternative or not. Please also quantify the potential fill for any staging areas that may be associated with this alternative, as it seems the staging areas have not currently been identified.

   The DEIR mentions that the proposed facilities would be designed and constructed in accordance with the California Building Codes (CBC) and standard engineering practices, but it is not clear how or if the berms in Alternative 2 along the pipeline route would also be constructed to similar standards or need to be modified to ensure that the pipeline meets these standards.

Response A9-10

This comment requests clarification on the description of Alternative 2, including additional details regarding the installation of new pipeline relative to existing berms and applicable standard engineering practices. As stated on page 5-21 of the Draft EIR, Alternative 2 would include the same on-site pipelines at the Solar Salt Facility as those of the project. For both the project and Alternative 2, the proposed on-site piping distribution system within Cargill's Solar Salt Facility would be installed above grade along the internal slopes of the existing berms and secured with anchors (refer to page 2-10 of the Draft EIR). As noted on page 5-22 of the Draft EIR, the off-site MSS brine transport pipeline under Alternative 2 would follow Cargill's "Plant 1" berms, which are located in upland areas and not located along the bayside. The pipeline would be laid 8 feet below the ground surface within these berms, using the same construction techniques that Cargill uses to core and repair its other berms. No new berms would be constructed. If this alternative is selected, design-level studies would be required. As discussed on page 5-26 of the Draft EIR, the proposed facilities, including both on-site and off-site facilities, would be designed and constructed in accordance with local ordinances, the CBC, standard engineering practices, and the recommendations outlined in a site-specific geotechnical report, which would ensure that the project would not exacerbate geologic hazards with respect to the existing berms.

The comment also requests additional details regarding soil import and fill quantities required for Alternative 2. Under CEQA, alternatives do not need to be described or analyzed at the same level of detail as the proposed project (State CEQA Guidelines Section 15126.6[d]); however, they need to be described in enough detail to allow a comparative analysis of the alternatives against the proposed project. The exact soil import and fill quantities for Alternative 2 are not known. The discussion on pages 5-21 through 5-23 of the Draft EIR provides information sufficient to allow a comparative analysis of the impacts of Alternative 2 relative to those of the project. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Comment A9-11

Commission Jurisdiction

Within its jurisdiction, Commission permits are required for activities that involve placing fill, extracting materials, or making any substantial change in use of any water, land, or structure. Permits are issued if the Commission finds the activities to be consistent with the McAteer-Petris Act and the policies of the Bay Plan, including, but not limited to,

that the project includes the minimum fill necessary for the project, that there is no alternative upland location for the fill, that the impacts to Bay resources are minimized, and that the fill be constructed in accordance with should safety standards and protection against unstable geologic or soil conditions or flood or storm waters.

Please note that in DEIR sections 1.4 and 2.6.9, BCDC is identified as a Regional or Local Agency, but BCDC is a State Agency and should be included with the list of other State Agencies and State laws. From the DEIR, it is not clear which portions of the project and associated impacts would be in the Commission's jurisdiction, but this should be more clearly defined in the DEIR and through the permitting of the project.

Response A9-11

The comment provides a summary of BCDC's jurisdiction and permit requirements. The comment states that BCDC should be identified as a state agency in the Draft EIR and that the EIR should identify which portions of the project would be within BCDC jurisdiction. Pages ES-4, 1-5, and 2-39 of the Draft EIR have been revised to identify BCDC as a state agency with potential jurisdiction over portions of the project area (refer to Chapter 4, "Revisions to the Draft EIR").

The McAteer-Petris Act (Act) defines BCDC jurisdiction as including the following:

- The Bay itself (all areas that are subject to tidal action, including sloughs, from the south end of the Bay to the Golden Gate to the Sacramento River, as more specifically defined by the Act),
- A shoreline band of land extending inland for 100 feet from the shoreline of the Bay,
- Salt ponds (as defined by the Act),
- Managed wetlands (as defined by the Act), and
- Certain waterways consisting of all areas that are subject to tidal action on named tributaries that flow into the Bay, as listed in the Act.

At this stage in the project, it is difficult to provide an accurate depiction of the project activities that would occur within BCDC jurisdiction. Regardless, including the requested figure in the Draft EIR would not alter the impact conclusions or the mitigation measures associated with the project, and would not otherwise affect the adequacy of the EIR. The project proponent would be required to obtain all necessary permits in compliance with the Act before the commencement of any activities within BCDC jurisdiction, at which time, BCDC would have the authority to definitively determine which portions of the project lie within its jurisdiction. No further revisions to the Draft EIR are necessary in response to this comment.

Comment A9-12

Priority Use Areas

The DEIR does not appear to analyze the priority use areas that were mentioned in the NOP comment letter, please include update the DEIR to include a section on the consistency of the project with the priority use areas identified in the Bay Plan that may occur along the various route alternatives.

Response A9-12

The comment states that the Draft EIR does not discuss the consistency of the project with priority use areas. The focus of the EIR, as required by CEQA, is whether implementing a project would result in a significant impact on land use related to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. This does not diminish the applicability of other policies. Page 3.1-3 of the Draft EIR concludes that no significant impacts related to land use and planning would occur.

Where the MSS brine transport pipeline alignment would encroach on lands within BCDC jurisdiction and other public lands and existing facilities, EBDA and Cargill would initiate project review with the respective agencies with jurisdiction over these lands and existing facilities. As part of this process, EBDA and Cargill would obtain all necessary permits and resource agency approvals before project implementation. These permits and approvals are listed on

pages 2-38 and 2-39 of the Draft EIR. This process would ensure consistency with plans, policies, and regulations adopted for avoiding and mitigating environmental effects.

As a general consideration of BCDC policies, BCDC has authority to deny an application for a project that occurs in a water-oriented priority use area and is not consistent with the priority use identified for that area. Water-oriented priority uses include "ports, water-related industries, airports, wildlife refuges, water-oriented recreation and public assembly, desalinization plants, upland dredged material disposal sites, and [certain] powerplants" (California Government Code Section 66602). The project area does not contain ports, airports, desalinization plants, upland dredged material disposal sites, or power plants; therefore, the project would not conflict with these water-oriented priority uses.

In addition, the project would not conflict with water-oriented recreation uses. No water-based recreation occurs in the Solar Salt Facility, because this area is privately owned and inaccessible to the public. The MSS brine transport pipeline would cross several waterways identified in Table 2-2 of the Draft EIR; however, trenchless crossing methods would be used to avoid in-water work. Furthermore, these water crossings are limited primarily to engineered flood control channels within public utility rights-of-way that are inaccessible to the public. Crossing 4 (Thornton Avenue and Gateway Boulevard Drain) is within the Don Edwards San Francisco Bay National Wildlife Refuge; however, this area is also inaccessible to the public. Crossing 7 (Crandall Creek/Alameda Creek Flood Control Channel) is within Coyote Hills Regional Park; however, no water-based recreation areas are present at this location. Therefore, there are no publicly accessible water-based recreation areas where horizontal directional drilling, microtunneling, or pipeline bridge installation activities would occur. Furthermore, the project would not interfere with water-oriented recreation in the Bay, because MSS brine would be diluted with EBDA's effluent and discharged at EBDA's existing deep-water outfall. No new outfall would be constructed. There are no public access areas for in-water recreation at the Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant or at the location of EBDA's existing outfall. The MSS brine and effluent would comply with NPDES and waste discharge permit requirements to avoid water quality impacts affecting beneficial uses, such as in-water recreation (refer to pages 3.8-24 through 3.8-27 of the Draft EIR).

As discussed on pages 2-2 and 2-4, the Solar Salt Facility is located in the Don Edwards San Francisco Bay National Wildlife Refuge, and Cargill has retained "Reserved Rights" in perpetuity to conduct solar salt operations on approximately 8,000 acres of the refuge. Project activities in Cargill's Solar Salt Facility would be consistent with existing land uses and would fall within the scope of Cargill's Reserved Rights. Further, the project would create infrastructure that could be used, among other purposes, to reduce and permanently remove MSS from Ponds 12 and 13 if salt-making operations cease.

Section 3.10, "Recreation," of the Draft EIR includes a discussion of project effects on wildlife refuges along the MSS brine transport pipeline alignment. As discussed on page 3.10-10 of the Draft EIR, sections of the MSS brine transport pipeline would be installed within a portion of the Don Edwards National Wildlife Refuge, including for approximately 0.5 mile along the Newark Slough Trail. Installation work in this area would occur for approximately 1 month. Additional staging and laydown areas would be in use for approximately 8–12 weeks. During construction, sections of the trail and parking area may be closed to the public. Page 3.10-13 of the Draft EIR states that approximately 150 feet of MSS brine transport pipeline would be installed along the eastern and northern perimeter of the Oro Loma Marsh. Two laydown areas for the trenchless crossings at the Skywest Golf Course and railroad tracks and the crossing at Bockman Channel are within the boundaries of the park. Trenching would occur primarily along the outer boundaries of Oro Loma Marsh that are closed to the public and where no recreational uses are present. No trail closures are anticipated within Oro Loma Marsh. Mitigation Measure 3.10-1 requires EBDA and Cargill to prepare and implement detour plans for parks, trails, and recreational facilities that would experience access interruptions during project construction (refer to pages 3.10-14 and 3.10-15 of the Draft EIR). Mitigation Measure 3.10-1 on pages ES-41 and 3.10-14 has been revised to include BCDC as an agency requiring consultation for the review and development of detour plans (refer to Chapter 4, "Revisions to the Draft EIR"). Page 3.10-15 of the Draft EIR concludes that implementing Mitigation Measure 3.10-1 would reduce the impact on recreationists during construction activities to a less-than-significant level.

The project would not conflict with water-related industry uses, including wastewater treatment plant operations. The proposed MSS brine transport pipeline would tie into EBDA's combined effluent conveyance system just downstream of the Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant in San Lorenzo. As noted in the project objectives on page 2-2 of the Draft EIR, the project would make use of EBDA's existing wastewater disposal capacity and provide economic advantage to EBDA Member Agencies. In addition, the permanent infrastructure created by the project would be available for future regional water recycling efforts by EBDA and/or EBDA Member Agencies, which would further EBDA's sustainability objectives in support of reclamation and reuse of wastewater.

Alternatives 1 and 2 would have effects on priority use areas similar to those of the proposed project; however, implementing these alternatives would result in additional impacts in Eden Landing Ecological Reserve (refer to pages 5-20 and 5-30 of the Draft EIR). Impacts in Eden Landing Ecological Reserve would be temporary, and disturbance would be largely limited to areas within existing former salt pond berms. Implementing Alternative 2 also would result in greater disturbance in the Don Edwards National Wildlife Refuge, which would be located exclusively along existing salt pond berms. As with the proposed project, implementing Mitigation Measure 3.10-1 under Alternative 1 or 2 would reduce the impact on recreationists during construction activities to a less-than-significant level. Therefore, the project alternatives would not conflict with water-oriented priority uses in the long term.

In summary, CEQA does not require an analysis of the project's consistency with priority use areas. Regardless, the project proponent anticipates that the project would not conflict with any water-oriented priority uses, and a consistency analysis would be completed during the permitting process. Therefore, no further revisions to the Draft EIR are necessary in response to this comment.

Comment A9-13

Commission Law and Bay Plan Policies Relevant to the Project

Fill within the Bay and Salt Ponds

The amount of fill or project impacts within the Commission's jurisdiction was not specifically quantified in the DEIR for the Proposed Project or alternatives. This information will be needed during the permitting process. Additionally, there appears to be discussion of ways the project and alternative may minimize impacts to public access and recreation areas, but there is no mention of whether the project includes additional public access improvements or how the project meets maximum public access to the Bay consistent with the project. As mentioned previously, the project will need to meet the requirements of the McAteer-Petris Act and the San Francisco Bay Plan, including that there is no alternative upland location for the fill.

Response A9-13

The comment states that the Draft EIR did not quantify impacts of the project or alternatives in areas under BCDC jurisdiction. As discussed on page 3.3-54 of the Draft EIR, the proposed Solar Salt Facility improvements would result in approximately 0.1 acre of temporary effects in tidal channels, and construction of the MSS brine transport pipeline would result in 0.2 acre of temporary effects in water bodies from pipeline disturbance. Following construction, these areas would be restored to pre-project conditions. The acreage of impact in areas under BCDC jurisdiction is subject to change as the project design is finalized, and the specific quantities would be identified during BCDC's permit process. As discussed in Response A9-10, alternatives do not need to be described or analyzed at the same level of detail as the proposed project (State CEQA Guidelines Section 15126.6[d]); however, they need to be described in enough detail to allow a comparative analysis of the alternatives against the proposed project. The exact acreage of wetland impacts for Alternatives 1 and 2 are not known, but the descriptions on pages 5-10 through 5-11 and 5-21 through 5-23 of the Draft EIR provide information sufficient to allow a comparative analysis of the impacts of these alternatives relative to those of the project. No revisions to the Draft EIR are necessary in response to this comment.

The comment also states that the project does not mention whether public access improvements would be implemented. Pages 3.10-7 through 3.10-15 of the Draft EIR discuss project impacts on public access in parks and recreational facilities. In parks and recreation areas, pipeline installation would be limited primarily to previously disturbed areas (i.e., artificial berms). In addition, Mitigation Measure 3.10-1 requires EBDA and Cargill to prepare and

implement detour plans for any parks, trails, and recreational facilities that would experience access interruptions during project construction. Mitigation Measure 3.10-1 on pages ES-41 and 3.10-14 has further been revised to include BCDC as an agency requiring consultation for the review and development of detour plans (refer to Chapter 4, "Revisions to the Draft EIR"). Page 3.10-15 of the Draft EIR concludes that implementing Mitigation Measure 3.10-1 would reduce the impact related to public access during construction activities to a less-than-significant level. Construction impacts would be temporary, and all public access would be restored to pre-project conditions. Accordingly, there would be no residual impact and therefore no need for other public access improvements as mitigation.

The comment also states that the project would need to comply with the McAteer-Petris Act and Bay Plan. Compliance would include a demonstration that there is no alternative upland location for the fill. Pages 3.3-84 through 3.3-87 of the Draft EIR include analysis demonstrating the project's consistency with BCDC regulations and policies related to biological resources in the Bay Plan after implementation of Mitigation Measures 3.3-1 through 3.3-17. Furthermore, as discussed on page 5-4 of the Draft EIR, Cargill considered two alternatives in which excess MSS brine would be transported from the Solar Salt Facility to off-site land-based locations instead of being discharged into the Bay. These alternatives would have avoided MSS brine transport pipeline construction activities and the need for fill in areas under BCDC jurisdiction. A Truck to Landfill Alternative was considered; however, Cargill determined that implementing this alternative would result in substantially adverse effects associated with the number of vehicle trips needed to transport MSS brine from the Solar Salt Facility to multiple nearby landfills (e.g., traffic congestion, air pollution, greenhouse gas emissions, and excessive energy consumption). An Underground Injection Control Well Alternative also was considered; however, Cargill determined that this alternative would not be feasible, because the number of groundwater well injection sites is not sufficient to accommodate the amount of MSS brine requiring disposal. In addition, implementing this alternative would result in substantially adverse effects from vehicle trips (e.g., traffic congestion, air pollution, greenhouse gas emissions, and excessive energy consumption) and could result in groundwater contamination. The project relies on the discharge of MSS brine to the Bay using EBDA's existing deep-water outfall; therefore, it would not be feasible to completely avoid areas under BCDC's jurisdiction using an MSS brine transport pipeline alignment completely in uplands. Compliance with the McAteer-Petris Act and Bay Plan policies would be further demonstrated during BCDC's permit process. No further revisions to the Draft EIR are necessary in response to this comment.

Comment A9-14

Public Access and Recreation

As mentioned, there are a few Commission-required public access areas that the proposed pipeline alternatives may run through, as well as some existing sections of the Bay Trail and recreational areas that appear to occur along some of the routes for the pipeline alternatives. However, there is no discussion of potential public access improvements that may be associated with the project, especially given that all alternatives, with the exception of the no-project alternative, will impact some amount of exiting public access or recreational areas.

Response A9-14

The comment states that the pipeline alternatives would run through public access areas. It also states that the Draft EIR does not discuss public access improvements associated with the project. As discussed on pages 3.10-15 and 3.10-16 of the Draft EIR, implementing the proposed project would not result in permanent impacts on public access and recreation areas, because the MSS brine transport pipeline would be buried underground. In parks and recreation areas, pipeline installation would occur primarily in previously disturbed areas, such as artificial berms. However, where construction areas would occur along existing trails, temporary detours would be developed in coordination with BCDC and provided for the duration of construction-related disruptions. All public access would be restored to pre-project conditions. No other public access improvements are proposed or required under CEQA. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Comment A9-15

Please note that for any work occurring within BCDC's jurisdiction or in a BCDC required public access area, BCDC will need to review and approve any detour plans associated with the construction of the project. Please be sure that BCDC is added to the Mitigation Measure for Impact 3.10-1 as an agency that needs to be consulted on such review

and the development of any detour plans for facilities in the Commission's jurisdiction and required by the Commission. The precise extent of any public access or recreation impact was not quantified in the DEIR and will need to be evaluated during the permitting process for the project. Please also note that any detours should also be made ADA-accessible throughout the project, and this should be included in the DEIR.

Response A9-15

The comment states that BCDC review and approval are necessary for work in areas under BCDC jurisdiction and for detour plans. The acreage of impact in public access or recreation areas is subject to change as the project design is finalized, and the specific quantities would be identified during BCDC's permit process. The description of Mitigation Measure 3.10-1 on pages ES-41 and 3.10-14 has been revised to include BCDC as an agency requiring consultation for the review and development of detour plans and to state that detours would meet accessibility requirements (refer to Chapter 4, "Revisions to the Draft EIR").

Comment A9-16

We noted that the DEIR mentioned that Alternative 2 appears may have more permanently impacts to some recreational facilities. BCDC encourages looking for a route that minimizes permanent and temporary impacts to public access and recreational facilities. Any temporarily impacted areas, should also be restored following the construction.

Response A9-16

The comment states that implementing Alternative 2 would result in more permanent impacts on some recreational facilities, and the commenter encourages looking for a route that minimizes impacts on public access and recreational facilities. The proposed project was selected as the alternative for detailed analysis and review under CEQA because it provides an optimal balance of minimizing impacts on sensitive environments, including public recreational areas, while also minimizing disruptions to local jurisdictions. As noted in Response A9-13, implementing the proposed project would not result in permanent impacts on public access and recreation areas because the MSS brine transport pipeline would be buried underground and all public access areas would be restored to pre-project conditions following construction. No revisions to the Draft EIR are necessary in response to this comment

Comment A9-17

Fish, Other Aquatic Organisms and Wildlife

The Proposed Project mostly includes construction in upland habitats and terrestrial areas; however, it does include the construction of intake pumps in Plummer Creek. The DEIR mentions the various habitat areas that may be impacted by the Proposed Project and each of the alternatives but does not specifically quantify the area of impact. The Proposed Project and all alternatives would include increased diversions from Plummer Creek and Mowry Slough for the intake pumps, but there is no mention of whether there was consideration of including fish screens on the intakes as a mitigation measure to reduce potential direct impacts to special-status and native fish that may occur in Plummer Creek. This should be addressed in the DEIR.

Response A9-17

The comment states that the project includes construction of intake pumps in Plummer Creek. However, as stated on page 2-7 and shown in Figure 2-3 of the Draft EIR, the proposed Plummer Creek Station would be installed in the FMC ditch in Cargill's Solar Salt Facility, not in Plummer Creek itself. In addition, page 3.3-55 of the Draft EIR states that all proposed structures would be constructed in uplands or in ponds and ditches at the Solar Salt Facility. No construction would occur directly in Plummer Creek, Mowry Slough, or other tidal channels.

The comment also states that the Draft EIR does not quantify the extent of habitat areas that would be affected by the project and alternatives. Page 3.3-74 of the Draft EIR quantifies the extent of habitat areas in the Solar Salt Facility that would be affected by the project. As discussed on pages 5-10 and 5-21 of the Draft EIR, Alternatives 1 and 2 would include the same on-site pipelines and pumping facilities at the Solar Salt Facility as those described for the project; therefore, the area of impact would be the same for the project and for Alternatives 1 and 2. Table 3.3-2 on page 3.3-78 of the Draft EIR quantifies the habitat areas that would be affected along the MSS brine transport

pipeline alignment. As discussed in Response A9-10, the exact acreage of habitat areas along the MSS brine transport pipeline that would be affected by Alternatives 1 and 2 is unknown; however, the descriptions on pages 5-10 through 5-11 and 5-21 through 5-23 of the Draft EIR provide a comparative analysis of the impacts of these alternatives relative to those of the project, as required under State CEQA Guidelines Section 15126.6(d).

The comment states that the project and alternatives would include increased diversions from Plummer Creek and Mowry Slough for the intake pumps, but the Draft EIR does not consider including fish screens on intakes as mitigation to reduce potential direct impacts to special-status and native fish in Plummer Creek. The frequency (i.e., number of days) that the pumps would be in use for the Plummer Creek intake would increase compared to existing conditions; however, the pumps would operate within the same functioning parameters as existing operations. Therefore, the impact of the water intake on the environment would not substantially change from existing conditions. As discussed on pages 3.3-54 through 3.3-57 of the Draft EIR, there is minimal potential during operations for impingement under gates or entrainment during diversions in consideration of the relatively low likelihood for special-status fish species presence, the potential life stages present, and the magnitude of diversions; therefore, the Draft EIR concludes that the impact on fish would be less than significant. State CEQA Guidelines 15126.4 states that "mitigation measures are not required for effects which are not found to be significant." The Draft EIR does not identify a significant environmental impact on fish; therefore, no additional mitigation (e.g., fish screens) is required by CEQA. Therefore, no revisions to the Draft EIR are proposed in response to the comment.

Comment A9-18

Tidal Marshes and Tidal Flats

From the DEIR, it is not clear to what extent tidal wetlands would be impacted. It appears that both trenching and directional drilling methods of pipeline construction are considered for use with the various project alternatives, but the impacts associated with each are not quantified. BCDC's permit process will require that any potential impacts be minimized and avoided and then mitigated if there are unavoidable impacts to these habitat areas.

Response A9-18

The comment states that the Draft EIR does not quantify impacts on tidal wetlands from the project alternatives and states that the permit process would require potential impacts to be minimized, avoided, or mitigated. The acreage of wetland impacts by habitat type, based on current project design, is disclosed for Impact 3.3-3 (pages 3.3-74 through 3.3-80). Measures to avoid, minimize, and mitigate these impacts are identified. Specifically, Mitigation Measures 3.3-18 through 3.3-20 apply to crossings directly affecting tidal channels, which are anticipated to include Sulphur Creek and Oro Loma Marsh. The acreage of impact may change as the project design is finalized, and the specific quantities would be identified during BCDC's permit process. The wetland impacts associated with the alternatives were not quantified because CEQA does not require alternatives to be evaluated at the same level of detail as the proposed project. As noted in State CEQA Guidelines Section 15126.6(d), "the EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.... If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed."

Comment A9-19

Water Quality

The DEIR briefly mentions that if the Proposed Project does not occur and the MSS is not removed, that there is a risk of potential release of MSS into the Bay. However, there is no further discussion on the potential effects of such a release on Bay habitats and species and this should be further detailed in the DEIR discussion of the baseline condition that exists today.

Response A9-19

The comment states that the Draft EIR should include a discussion of the potential effects of a release of MSS into the Bay, which should be further detailed in the Draft EIR in the discussion of existing baseline conditions. State CEQA

Guidelines Section 15125 defines the baseline conditions as the "physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced." Consistent with Section 15125, the impacts of the project were evaluated relative to the existing conditions at the time the notice of preparation (NOP) was released.

The potential for release of MSS into the Bay would increase if the project were not implemented. The Draft EIR includes a discussion of the environmental impacts of the No Project-No Development Alternative and addresses the topic of potential releases of MSS into the Bay. Consistent with the State CEQA Guidelines, the No Project-No Development Alternative was evaluated at a level sufficient to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. Page 5-8 of the Draft EIR concludes that impacts on biological resources in the Bay would be greater under the No Project-No Development Alternative. Specifically, the Draft EIR states that a release of high-salinity brine could create habitat conditions in the Bay and in tributaries such as Plummer Creek that would be unsuitable for special-status fish species or other aquatic communities that provide foraging resources. The Draft EIR then states that the extent of potential salinity impacts is unknown but that the impacts would likely be minimized by mixing and tidal action with distance from the Solar Salt Facility. The extent of special-status fish impacts would also be affected by the low to moderate potential for transitory, and often seasonal, occurrence. Additional impacts on adjoining tidal marsh habitat and associated species may also occur as a result of hypersaline conditions and as brine is deposited and accumulates in the intertidal zone, potentially creating salinity conditions unsuitable for marsh vegetation. The discussion on page 5-8 provides information sufficient to allow a comparative analysis of the impacts of the No Project-No Development Alternative relative to those of the project, which is consistent with State CEQA Guidelines Section 15126.6(d)(e). Therefore, no revisions to the Draft EIR are needed in response to this comment.

Comment A9-20

Mitigation

Some of the alternatives considered in the DEIR are likely to have more impacts to natural resources within the Commission's jurisdiction than others, but at this time it is not clear the exact extent of such impacts. Please note the unavoidable impacts to species and their habitat may require mitigation from BCDC, in addition to the other agencies that are mentioned in the Executive Summary on page ES-20 regarding Impact 3.3-3. During the permitting, it is likely that BCDC will also require compensatory mitigation for such impacts and coordinate these requirements with the other agency staff. BCDC will also need to review the Compensatory Mitigation Plan for any impacts occurring within the Commission's jurisdiction. Generally, the Mitigation Policies in the Bay Plan direct that mitigation should be provided onsite and in-kind first prior to providing an in-lieu fee or purchasing mitigation credits. The DEIR should provide additional information on whether onsite and in-kind mitigation options for the impacts were considered or why these were not feasible.

Response A9-20

The comment states that the project alternatives are likely to have greater impacts on natural resources and that these impacts may require mitigation. The comment states that BCDC would likely require compensatory mitigation and references Bay Plan policies that recommend providing on-site and in-kind mitigation before considering in-lieu fees or mitigation credits. The comment requests an explanation regarding whether on-site or in-kind mitigation was considered and why this type of mitigation was determined to be infeasible.

Mitigation Measure 3.3-13, described on pages 3.3-75 and 3.3-76 of the Draft EIR, includes mitigation for impacts on wetlands and other waters of the United States and state. Mitigation Measure 3.3-14, described on pages 3.3-76 and 3.3-77, requires compensatory mitigation for unavoidable loss of any sensitive natural communities, and Mitigation Measure 3.3-15, described on page 3.3-80 of the Draft EIR, includes on-site, in-kind mitigation for the removal of riparian habitat. As discussed on pages 5-15 and 5-25, the same mitigation measures would be required if Alternatives 1 or 2 were selected.

Mitigation Measure 3.3-13 states that "[t]o the degree feasible and acceptable to the agencies with jurisdiction, restoration, rehabilitation, and/or replacement of jurisdictional waters for permanent impacts will be mitigated in-kind and completed on-site at a location agreeable to U.S. Corps of Engineers (USACE) and the RWQCB in accordance

with USACE and San Francisco RWQCB mitigation guidelines. Any permanent impacts that cannot be mitigated through on-site restoration, rehabilitation, and/or replacement will be compensated through purchase of mitigation credits at a USACE/San Francisco RWQCB-approved mitigation bank." This measure has been revised to include coordination with BCDC, as an agency with jurisdiction, for determining compensatory mitigation requirements (refer to Chapter 4, "Revisions to the Draft EIR"). Mitigation Measure 3.3-14 requires on-site and off-site mitigation and preparation and implementation of a compensatory mitigation plan for loss of sensitive natural communities, as described on pages 3.3-76 and 3.3-77 of the Draft EIR. Thus, on-site and in-kind mitigation is under consideration and has not been ruled out as infeasible. The Draft EIR concludes that implementing Mitigation Measures 3.3-13, 3.3-14, and 3.3-15 would reduce impacts on wetlands and waters of the United States and state, sensitive natural communities, and riparian habitat to a less-than-significant level, and the effectiveness of these measures would be the same for Alternatives 1 and 2.

The comment does not identify any specific concerns regarding the effectiveness of the mitigation measures in reducing project impacts to a less-than-significant level; therefore, no further revisions to the Draft EIR are required in response to this comment.

Comment A9-21

Safety of Fills and Climate Change

The DEIR mentions that there is a long-term threat of sea level rise from the Bay in the project area and to the Solar Salt Facility. The Bay Plan Map No. 7 contains a note on subsidence for this area of the Bay that says "[a]rea subject to possible subsidence. Construction in or near Bay should be carefully planned, taking into account effects of future subsidence and sea level rise." We understand that AECOM also prepared a memo in 2021 that discusses the sea level rise and flooding vulnerability of different ponds within Cargill facilities. However, this memo does not appear to address the issue of subsidence or the seismic stability of the current berms protecting the ponds. The Bay Plan has several policies relevant for the project related to climate change, sea level rise, and safety of fills. Climate Change Policy No. 2 requires, in part, that "a risk assessment should be prepared by a qualified engineer,…based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise and current flood protection and planned flood protection….A range of sea level rise projections for mid-century and end of century based on the best scientific data available should be used…[the] assessment should identify all types of potential flooding, degrees of uncertainty, consequences of defense failure, and risks to existing habitat from proposed flood protection devices." Policy No. 3 states that where such risk assessments show vulnerability to public safety, projects should be designed to be resilient to a mid-century sea level rise projection, and an adaptive management plan should be developed to address sea level rise impacts beyond mid-century through the life of the project.

Response A9-21

The comment refers to a sea level rise assessment prepared for Cargill's existing facilities and states that the memo does not address the stability of the berms surrounding Cargill's solar salt ponds (AECOM 2021a). The comment is outside the scope of the project being evaluated in this EIR. The issue of berm stability is being addressed as part of Cargill's application to BCDC for renewal of its current operations and maintenance permit, which is not part of this project. This project does not propose any improvements to address the stability of the berms surrounding Cargill's solar salt ponds; rather, this project involves the installation of an on-site piping distribution system above grade along the internal slopes of existing berms (refer to pages ES-3, 2-7 through 2-16, and 3.5-1 of the Draft EIR).

The comment states that sea level rise poses a long-term threat to the project and identifies policies in the Bay Plan related to climate change, sea level rise, and safety of fills. CEQA does not require an analysis of the environment's effects on a project or an explanation of possible future conditions in the surrounding area unless the project under consideration would exacerbate these conditions (see State CEQA Guidelines Section 15126.2[a]). The project would not affect sea level rise, nor would it exacerbate these conditions. In its simplest form, the project would move water from one part of the Bay to another part. Although not part of this project, as noted on page 3.5-1 of the Draft EIR, Cargill is proposing to implement sea level rise adaptation efforts as part of ongoing maintenance and operation activities to increase the resilience of berms; the environmental impacts of these activities are evaluated in a 2021 Environmental Assessment (BCDC and Cargill 2021).

With regard to geologic and soil conditions, Appendix G of the State CEQA Guidelines asks whether a project has potential to cause adverse effects, including the risk of loss, injury, or death, or exacerbate geologic or soil instability. As discussed on pages 3.5-14 through 3.5-17 of the Draft EIR, the project would comply with the requirements of the CBC, which include preparing and incorporating the recommendations of a site-specific geotechnical and engineering report. Based on the findings of the geotechnical report, the project design would incorporate appropriate standard engineering practices and specifications to minimize risks of structural failure, which would include failure of berms. Therefore, compliance with the CBC would minimize the potential for adverse impacts from seismic, geologic, or soils hazards. The comment does not express any specific concern that the Draft EIR's conclusions are flawed or unsupported by substantial evidence. Therefore, no revision to the Draft EIR is necessary in response to this comment.

Comment A9-22

In addition, Policy No. 4 in the Bay Plan Safety of Fills section states that structures on fill or near the shoreline should have adequate flood protection, including consideration of future relative sea level rise as determined by engineers. The policy states that, "adequate measure should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project…New projects on fill or near the shoreline should either be set back from the edge of the shore so that the project will not be subject to dynamic wave energy, be specifically designed to tolerate periodic flooding, or employ other effective means of addressing the impacts of future sea level rise and storm activity."

Response A9-22

The comment includes a summary and excerpt of Bay Plan Policy No. 4, which requires that new projects placed on fill or near the shoreline be designed to have adequate flood protection in consideration of sea level rise. AECOM prepared an assessment to identify sea level rise vulnerability and risk associated with the project components and inform project component design elevations (AECOM 2021b). The project is being designed in consideration of the risks of sea level rise to Cargill's proposed facilities, as elaborated further in Response A9-23, below. In addition, the MSS brine transport pipeline would be almost entirely buried, except for aboveground appurtenances, which would not be affected by or have potential to exacerbate hazards from flooding related to sea level rise. The comment does not raise any concerns about the sufficiency of the Draft EIR in identifying and analyzing the possible impacts of the project on the environment or the "ways in which the significant effects of the project might be avoided or mitigated" (14 CCR 15204[a]). Therefore, no further response is required.

Comment A9-23

The DEIR mentions that the project would be built to CBC or other engineering standards. However, there is little discussion about the expected life of the project and how the various alternatives will perform during future sea level rise and with any potential groundwater flooding or during any seismic events. There was also little discussion about potential subsidence and the contribution that this may have on potential flooding. There was also little discussion about the resilience of the infrastructure to future flooding and any adaptive capacity. The DEIR should indicate whether the infrastructure for the new pipeline could be raised in the future if needed, taking into account spatial constraints, whether the underlying soils would support additional fill, and other limitations. We also recommend again that the DEIR discuss the seismic stability of the berms around Ponds 12 and 13 and how they will remain intact over the life of the project to ensure there will not be spilling of the MSS into the Bay following a strong earthquake. In addition, the DEIR should include a discussion of groundwater at the site, how it is expected to impact the MSS ponds and the pipeline infrastructure both during construction and with future sea level rise, and how any risks from groundwater rise would be addressed.

Response A9-23

The comment states that the Draft EIR does not discuss how the project and alternatives would withstand sea level rise, groundwater flooding, seismic events, and subsidence. Cargill commissioned sea level rise assessments for the existing Solar Salt Facility (AECOM 2021a) and for the proposed project (AECOM 2021b). The reports do not suggest that any project components in Cargill's Solar Salt Facility would need to be raised, even in the face of sea level rise. If determined to be necessary at a later time, project components that are exposed to the elements (e.g., the pump

station) could be elevated further. In addition, the reports suggest that the best current climate science predicts a rate of sea level rise (including a 100-year flood scenario) that would be unlikely to threaten the integrity of the berms around the MSS ponds until the latter half of the century. The project and alternatives would process the inventory of MSS within 10–15 years, which would ensure that annual accumulation of additional MSS would have ceased by the time sea level rise reaches a more critical level. The project and alternatives advanced in the Draft EIR would process the existing inventory in 10–15 years, assuming that the project operates 24 hours a day, 350 days a year. However, the Draft EIR contemplates that processing could take up to twice as long because this project would be a first-of-its-kind operation and there may be unforeseen operating constraints. The off-site project component consists of a subsurface pipeline that would not be vulnerable to sea level rise.

Furthermore, as discussed on page 3.5-1 of the Draft EIR, CEQA requires that an EIR evaluate only impacts of the proposed project on the environment, including impacts associated with exacerbating existing environmental hazards. For example, courts have recognized that sea level rise is not an impact on the environment caused by a project (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* [2015] 62 Cal.4th 369, 386, 377 [CBIA]; *Ballona Wetlands Land Trust v. City of Los Angeles* [2011] 201 Cal.App.4th 455, 472–474). Likewise, the California Supreme Court has struck down CEQA regulations that claimed "an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision" (CBIA, supra, 201 Cal.App.4th 388–389). Addressing existing environmental concerns or conditions is not required under CEQA (*Ctr. for Biological Diversity v. Dep't of Fish & Wildlife* [2015] 234 Cal.App.4th 214, 249; *Citizens for E. Shore Parks v. Cal. State Lands Comm'n* [2011] 202 Cal. App. 4th 549, 559.). Furthermore, because "[m]itigation is defined as an action that minimizes, reduces, or avoids a significant environmental impact or that rectifies or compensates for the impact," CEQA cannot be used to require adaptive responses to conditions not caused by the project (*King & Gardiner Farms, LLC v. County of Kern* [2020] 45 Cal.App.5th 814, 851). The comment does not raise any concerns about the sufficiency of the Draft EIR in identifying and analyzing the possible impacts of the project on the environment or the "ways in which the significant effects of the project might be avoided or mitigated" (14 CCR 15204[a]). Therefore, no further response is required.

The comment also requests that the Draft EIR discuss the seismic stability of the berms around Ponds 12 and 13. Refer to Response A9-21 for a discussion regarding berm stability.

In summary, this comment requests analysis that is outside the scope of the project and the requirements of CEQA. CEQA requires that an EIR evaluate only impacts of the proposed project on the environment, not the impact of the environment on the project. The project would not be vulnerable to sea level rise during its lifespan. In addition, the project would not affect, and is not designed to address, the seismic and geotechnical integrity of the berms. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Comment A9-24

As mentioned previously, the project may need to go before the Commission's Engineering Criteria Review Board (ECRB), which review projects "for the adequacy of their specific safety provisions, and make[s] recommendations concerning these provisions [and] prescribe[s] an [i]nspection system to assure placement and maintenance of fill according to approved designs." Our staff will work with the project proponent to determine whether ECRB review and early guidance is necessary.

Response A9-24

The comment states that the project may need to be reviewed by BCDC's ECRB. This comment is not related to the adequacy of the CEQA document. No further response is required.

Comment A9-25

Shoreline Protection

The DEIR should further detail the risk from rising sea levels, subsidence, and potential seismic safety of the existing, unengineered berms surrounding Ponds 12 and 13 and include details of any project elements, such as shoreline protection, that may be included around these ponds to ensure that there is no release of the MSS to the Bay over the life of this project. We recommend that Cargill consider design options for the Ponds 12 and 13 berms that can increase the stability of the berms against a strong earthquake that may occur over the life of the project. It appears

that for some project alternatives, additional shoreline protection may be necessary. The DEIR should describe in detail all existing and proposed shoreline protection features at the site, including an analysis of their potential to adversely impact natural resources and public access, and how the impacts would be avoided, minimized, or mitigated for. In any areas where shoreline protection may be needed as part of the project, the DEIR should describe and analyze the feasibility of using natural or nature-based alternatives as described in the policies above.

Response A9-25

The comment requests additional details regarding risks to berms from sea level rise, subsidence, and seismic activity. It recommends that the project include design elements to protect against these hazards and that the Draft EIR analyze the associated environmental impacts and mitigation. Refer to Response A9-21, which addresses these concerns.

Comment A9-26

The DEIR briefly analyzes the potential for sea level rise and groundwater rise impacts on the Proposed Project and the alternatives with 16 inches of sea level rise by 2050 but does not include any analysis of sea level rise beyond that time. Given that the life of the pipeline project appears to be longer than this, please include potential sea level rise inundation and analysis for the life of the project and discuss any potential impacts to the pipeline from sea level and groundwater rise for the Proposed Project and the alternative alignments that are closer to the Bay. This discussion should be further improved in the Flood Hazard sections of the DEIR.

Response A9-26

The comment requests that the Draft EIR include analysis related to sea level rise inundation beyond 2050. The Draft EIR is not required under CEQA to analyze the impacts that the environment may have on the project, as opposed to impacts the project may have on the environment. Applicable California case law is summarized in Response A9-23. Regardless, as also noted in Response A9-23, the project is anticipated to process the inventory of MSS within 10–20 years of project construction. Therefore, consideration of the effects of sea level rise beyond 2050 would extend beyond the lifespan of the project. As discussed on page 2-33 of the Draft EIR, a consideration of potential future uses of the MSS brine transport pipeline and associated infrastructure would be speculative and is not included in the EIR. Future proposals for the use of the infrastructure after the expiration of the agreement between EBDA and Cargill would be subject to additional CEQA review at the time of any such proposals. No revisions to the Draft EIR are necessary in response to this comment.

Comment A9-27

Please also note that in section 3.8, there is reference to the California Coastal Commission and their guidelines for sea level rise in Local Coastal Programs. Please note that this project does not occur within the California Coastal Commission jurisdiction but is within BCDC's jurisdiction. BCDC currently considers the Ocean Protection Council's 2018 Sea Level Rise Guidance as the best available science and planning guidance for sea level rise impacts on a project. BCDC also has published the San Francisco Bay Plan Climate Change Policy Guidance that may also provide useful information for the sea level and groundwater rise section.

Response A9-27

The comment states that the project is not located in areas under the California Coastal Commission's (CCC's) jurisdiction but in areas under BCDC jurisdiction and requests that a reference to BCDC's sea level rise guidance be added in place of the reference to CCC's guidelines. Page 3.8-4 of the Draft EIR has been revised accordingly (refer to Chapter 4, "Revisions to the Draft EIR"). Please refer to Response A9-23 regarding sea level rise.

Comment A9-28

Environmental Justice and Social Equity

In our NOP letter, we mentioned that the DEIR should provide an assessment of any vulnerable communities adjacent to the project and also describe how there would be meaningful community engagement throughout the project planning, design, and permitting and this information should be included in the DEIR. If you need additional assistance on this topic, please contact BCDC and we can provide some additional guidance and resources for this analysis.

Response A9-28

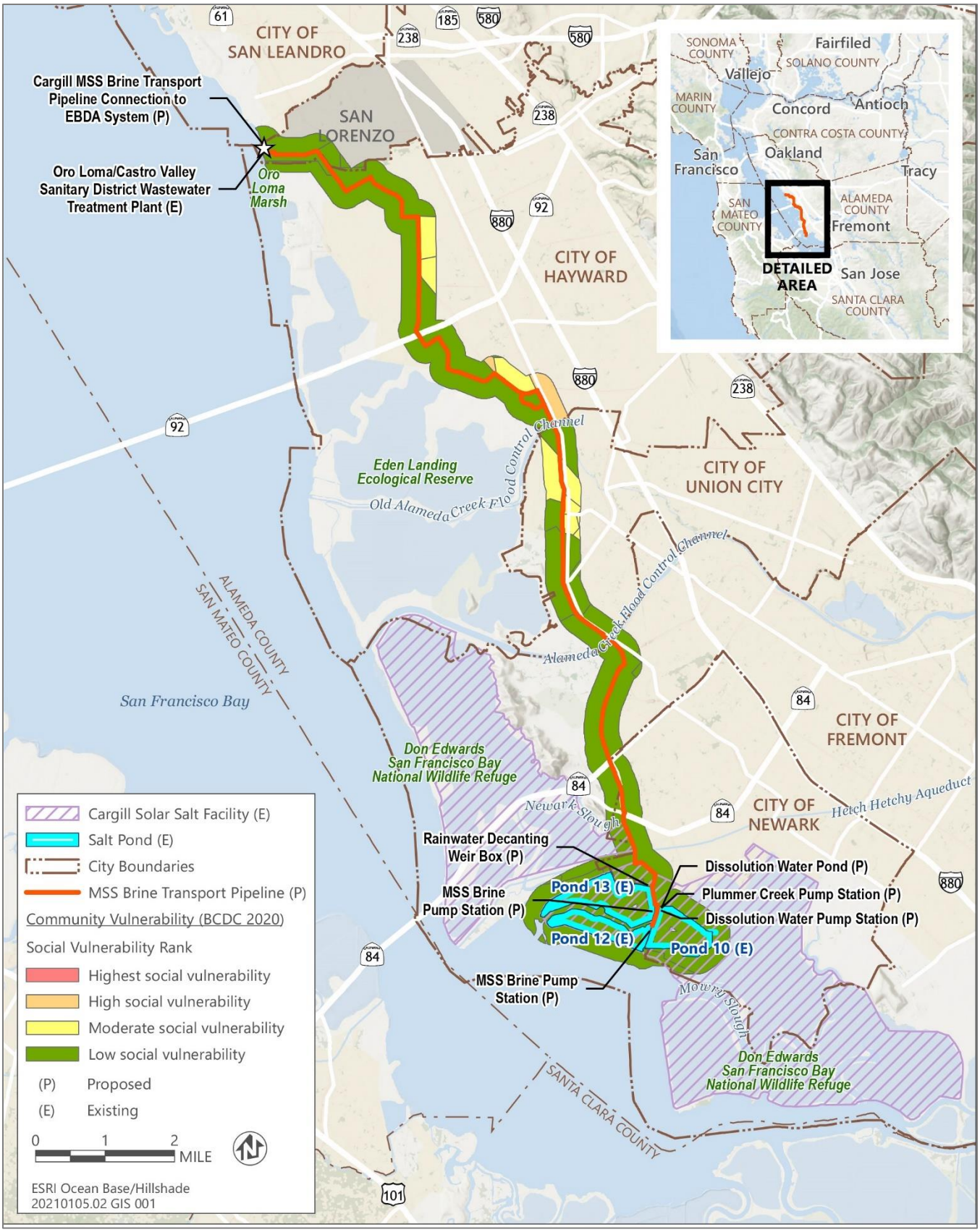
The comment requests that the Draft EIR provide an assessment addressing vulnerable communities and a description of community engagement. This comment is noted. The issue of environmental justice, as it is defined in California law, is not a required analysis under CEQA, where potential social and economic effects have a circumscribed role. State CEQA Guidelines Section 15131 allows the approving agency to include or present economic or social information in an EIR, but Section 15131(a) limits the consideration of such factors in the assessment of significant impacts, stating:

> Economic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.

CEQA also requires consideration of land use policies adopted for the purposes of reducing or avoiding environmental impacts. With the adoption of Senate Bill (SB) 1000 in 2016, the California Legislature ensured that local governments would address environmental justice in their general plans under certain circumstances. Other than through this indirect process, CEQA does not include provisions for consideration of environmental justice or vulnerable communities separate and distinct from the analysis of a project's impacts on the environment. The general plans for Alameda County and the cities of Fremont, Hayward, and Newark were adopted before the adoption of SB 1000; therefore, they do not currently include policies related to environmental justice that are applicable to the project. As these plans are updated, they will be required to include policies related to environmental justice in accordance with SB 1000. The Health and Quality of Life Element of the 2040 Union City General Plan (Union City 2019), which was adopted in 2019, includes policies related to environmental justice as required under SB 1000. These policies pertain to ensuring equal access to decision-making processes, communicating potential impacts from development, and communicating potential toxic materials and emissions.

BCDC has developed data to better understand community vulnerability to current and future flooding related to sea level rise and storms for use in implementing BCDC's Environmental Justice and Social Equity Bay Plan policies. Pursuant to the McAteer-Petris Act, BCDC is required to guide the development of the Bay and shoreline, including any actions related to the proposed Project, in accordance with these Bay Plan policies and Bay Plan maps. The BCDC will have an opportunity to evaluate the Project's consistency with its policies as part of its decision whether to grant approvals. The BCDC policies and findings relate to their own approval process for the Project and do not relate to environmental impact issues that are required to be analyzed under CEQA. BCDC's Community Vulnerability Tool identifies census block groups that have certain socioeconomic characteristics that may reduce their ability to prepare for, respond to, or recover from a hazard event. Indicators of social vulnerability include populations that have a high percentage of individuals meeting the following criteria: disabled, single parent, people of color, no high school degree, very low income, severe housing cost burden, not U.S. citizen, limited English proficiency, under 5, over 65 alone, renter, and no vehicle. Census block groups with high concentrations of these characteristics are flagged as socially vulnerable, with each block group assigned a rank of highest, high, moderate, and low. Socially vulnerable communities include very low-income communities and/or communities of color that meet the definition of environmental justice communities.

Although not required under CEQA, a figure has been provided to show the census block groups that encompass the project site and their social vulnerability rank (Figure 3-1). Of the census block groups that overlap with or are within 0.25 mile of the project site, 18 have low social vulnerability, seven have moderate social vulnerability, and two have high social vulnerability. However, the project would not exacerbate hazards for any community, including communities identified as having high or the highest social vulnerability. The Draft EIR considers impacts on all sensitive receptors—people living along the proposed pipeline route—and identified one unavoidable impact: short-term construction noise. Mitigation is included to reduce this impact to the degree feasible. Therefore, no disproportionate effects would be borne by communities that are ranked as having high or the highest social vulnerability or that would be considered environmental justice communities.



Source: Data received from AECOM and Jacobs in 2021 and 2022; adapted by Ascent in 2023

Figure 3-1 Community Vulnerability (BCDC 2020) - Social Vulnerability Rank

Further, as noted on page 3.1-3 of the Draft EIR, the project would be constructed in Cargill's Solar Salt Facility and primarily within roadway rights-of-way, would not divide existing communities, and would not change existing land use and zoning designations on the project site. Therefore, the project would be consistent with plans, policies, and regulations adopted to avoid and mitigate environmental effects and would not cause significant impacts related to land use and planning, including within environmental justice communities.

The comment also requests a description of how there would be meaningful community engagement throughout the project planning, design, and permitting processes. Public engagement completed for the project is described on page 1-6 of the Draft EIR and was completed in accordance with CEQA requirements. A scoping meeting for the Draft EIR was conducted online via Zoom on June 1, 2022, and a public meeting to solicit comments on the Draft EIR was conducted online via Zoom on January 24, 2023. Both meetings were offered in English, and EBDA provided the public an opportunity to request other language interpretation or accommodation; however, no such services were requested by the public. In addition, Cargill provided presentations to multiple community and stakeholder groups to obtain input and address questions on the project during the period of July 15, 2020, to May 25, 2023. Specifically, presentations were provided to the following groups:

- Union City Chamber of Commerce (05/25/2023; Virtual)
- Hayward Chamber of Commerce – Government Affairs Council (04/7/2023; In-person)
- Hayward City Council Infrastructure Committee (01/25/2023; Virtual)
- East Bay Economic Development Alliance (08/23/2022; In-person)
- Bay Area Council (08/22/2022; Virtual)
- Union City Council (07/26/2022; In-person)
- Bay Planning Coalition (07/07/2022; In-person)
- East Bay Leadership Council – Water and Environment Task Force (8/17/2021; Virtual)
- Save The Bay (12/21/2020; Virtual)
- East Bay Leadership Council (11/6/2020; Virtual)
- Silicon Valley Leadership Group (09/18/2020; Virtual)
- San Francisco Baykeeper (07/15/2020; Virtual)

This comment does not identify any inconsistencies between the project and land use plans, policies, or regulations, including with respect to environmental justice considerations, or express any specific concern regarding the analysis in the Draft EIR. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Comment A9-29

Public Trust

It does not appear that the DEIR has identified those portions of the project that may be subject to the public trust and how the project is consistent with the public trust. Please update the DEIR to include this information. The Bay Plan policies on public trust lands states, in part, that when taking actions on such land, the Commission "should assure that the action is consistent with the public trust needs for the area and, in the case of lands subject to legislative grants, would also assure that the terms of the grant are satisfied and the project is in furtherance of statewide purposes."

Response A9-29

The comment requests that the Draft EIR identify the portions of the project site that are subject to the public trust and demonstrate how the project is consistent with the public trust.

The Public Trust Doctrine governs the use of tidal and submerged lands, including former tidal and submerged lands that have been filled. The purpose of the Public Trust Doctrine is to ensure that these lands are held in trust for the

people, for purposes of commerce, navigation, and fisheries. Because public trust lands are held for the benefit of the statewide public, they are subject to certain limitations on their use. Water-dependent or water-related uses are generally considered to be consistent with the public trust. Trust lands may also be used for non-trust purposes if such purposes are incidental to and accommodate trust uses. *San Francisco Baykeeper, Inc. v. State Lands Com.* (2015) (242 Cal.App.4th 202, 234).

The California State Lands Commission (CSLC) has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The CSLC also has residual and oversight authority over tidelands and submerged lands previously granted and is responsible for ensuring that the grantees are managing granted trust lands in accordance with the public trust and terms of applicable grants.

The EIR identifies that land leases for public trust lands from CSLC may be required for the project. The title history for Cargill's operations in the tidal lands surrounding the Solar Salt Facility is complicated and was not well documented, despite some efforts between Cargill and CSLC to resolve these title disputes. In addition, Cargill already has rights to operate in tidal areas throughout the Bay through its historic operations, "Reserved Rights" discussed on page 2-4 of the Draft EIR, and an existing lease. As a result, the specific sites requiring leases are uncertain. Cargill would seek additional authorizations to the extent they are needed for the project or alternatives. CSLC, in turn, would need to determine whether the requested lease or leases are consistent with the public trust. Regardless, the specific acreage of state lands that would be temporarily disturbed during project-related construction and maintenance activities is not in itself an environmental impact. As such, this information is not necessary to fully evaluate the environmental impacts of the project under CEQA.

At this time, the specific locations requiring a lease are unknown, although they would likely include at least some of the creeks, channels, and canals that the pipeline would cross. The construction impacts would be temporary, and the MSS brine transport pipeline would primarily be buried underground, in particular at crossings of state lands. Thus, there is no proposed permanent placement of non-trust uses on public trust lands within the project site that would be inconsistent with the Public Trust Doctrine, and there is a factual basis for CSLC to find the project's purpose would "not substantially impair the public rights to navigation and fishing or interfere with the trust upon which the lands are held" (Public Resources Code [PRC] Section 6895). The project would be consistent with the public trust because CSLC approval, with a trust consistency finding, would be required if public trust lands are used for the project.

Comment A9-30

Thank you for providing the staff with an opportunity to review the DEIR for the *Cargill Mixed Sea Salt Processing and Brine Discharge Project*. We recognize the importance and scope of this project to protect the Bay and habitats from the MSS brine and hope these comments aid you in finalizing the DEIR. We look forward to working with you and the project sponsors through the planning and permitting of the project.

If you have any questions regarding this letter or the Commission's policies and permitting process, please do not hesitate to contact me at 415-352-3624 or anniken.lydon@bcdc.ca.gov.

Response A9-30

The comment provides closing remarks and identifies BCDC staff who can be contacted if questions concerning BCDC's comments arise. The project proponent will reach out to the identified staff if questions concerning BCDC's comments arise. This comment is not related to the adequacy of the CEQA document. No further response is required.

Letter A10 East Bay Regional Park District

Devan Reiff, AICP, Principal Planner, Planning, Trails and GIS
February 17, 2023

Comment A10-1

The East Bay Regional Park District (Park District) appreciates the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Cargill Mixed Sea Salt Processing and Brine Discharge Project (project). As a member of

the Hayward Area Shoreline Planning Agency (HASPA) and as a land-owning and operating agency in the proposed project area, the Park District is concerned about the potential impacts to natural and recreational resources in the Hayward Shoreline area that could result from the project. The Park District owns and operates 1,841 acres of salt, fresh, and brackish water marshes, seasonal wetlands, and public trails along the Hayward Shoreline, including the 250-acre Cogswell Marsh, the 145-acre Hayward Marsh, and sections of the Oro Loma Marsh. The Park District owns and operates over five miles of public trails along the shoreline which are important segments of the San Francisco Bay Trail. Additionally, the Park District participates in HASPA to help plan for sea level rise along the shoreline and protects numerous endangered and protected species in the shoreline area, including the California Ridgway's rail, California black rail, western snowy plover, California least tern, and salt marsh harvest mouse.

Response A10-1

The comment summarizes the East Bay Regional Park District's (EBRPD's) roles and responsibilities as a member of the Hayward Area Shoreline Planning Agency and as an owner and operator of public and protected lands. The comment describes natural and recreational resources found on these lands. This comment does not identify specific concerns related to the adequacy of the CEQA document. Therefore, no further response is required.

Comment A10-2

The project's objective is to build new pipeline to transport brine from the manufacturing of salt at Cargill's facility in the City of Newark that would be blended and diluted with the East Bay Dischargers Authority (EBDA) Member Agency effluent and then discharged back into the Bay west of San Leandro in accordance with EBDA's National Pollutant Discharge Elimination System (NPDES) permit. The proposed project and its alternative could include new pipeline construction within Park District-owned parcels as well as state and federal lands operated by the Park District. The Park District is prepared to continue working with shoreline stakeholders such as EBDA and Cargill to ensure that project impacts are avoided and minimized, and that implementation of the capital projects identified in the recently completed Hayward Shoreline Adaptation Master Plan (SAMP) are not impacted by the Cargill project.

Response A10-2

The comment summarizes the project's objective. It states that the project would include construction on EBRPD-owned parcels and that EBRPD would work with the project proponents to ensure that project impacts are avoided and minimized. This comment does not identify specific concerns related to the adequacy of the CEQA document. Therefore, no further response is required.

Comment A10-3

In a previous comment letter dated June 15, 2022, the Park District expressed concerns with the project's Alternative Two, referred to as the Bayside Parallel Pipe Alternative (Bayside Alternative). These concerns included the construction of approximately 1.2 miles of pipeline under the Park District-owned sections of Oro Loma Marsh and the potential impacts to public access at Hayward Regional Shoreline and Coyote Hills Regional Park in Fremont. The Park District requested that the DEIR analyze Recreation and Transportation impacts, the feasibility of the Bayside Alternative, restrictions and easements on potentially impacted parcels managed by the Park District, and impacts to Biological resources managed by the Park District and HASPA Member Agencies. The Park District also preferred that the brine transport pipeline be constructed in existing roads, away from sensitive biological resources.

Response A10-3

The comment provides a summary of the comment letter that EBRPD submitted in response to the notice of preparation for the proposed project, dated June 15, 2022, including concerns related to impacts on public recreation access, transportation, and sensitive biological resources from Alternative 2. This comment does not contain any specific concern regarding the analysis or any of the conclusions in the Draft EIR with respect to Alternative 2, other than expressing preference for an MSS brine transport pipeline route within existing roadways. The comment is noted, and no further response is required.

Comment A10-4

While the Park District's concerns were not initially with the project, but with the Bayside Alternative as of June 2022, the project proposed in the DEIR has since been changed to include the building of pipeline along the eastern edge of Oro Loma Marsh at the northerly end of the project area. A second Notice of Preparation was released on July 8, 2022 and the project's proposed pipeline alignment moved largely west, away from the City of Hayward and closer to the Hayward Shoreline marsh areas. While the current project addresses the Park District's earlier request to consider building the pipeline under existing roads where possible, and it now appears to follow existing service roads on Park District lands, the alignment through the Oro Loma Marsh puts the project adjacent to sensitive habitat for federally listed Ridgway's rail and salt marsh harvest mouse. The DEIR offers mitigation for Biological impacts, but acknowledges that, in the case of the Bayside Alternative, "the implementation of Alternative 2 could result in direct and indirect impacts on special-status species and habitats… Alternative 2 has greater potential for these impacts than the project due to additional work within sensitive habitat areas" including disturbance, injury, or mortality to special-status fishes, California least tern, and black skippers in the Oro Loma Marsh area [section 5.4.3 of DEIR]. The DEIR identifies noise and vibration as a significant and unavoidable impact, and the Park District is concerned about those effects on the Oro Loma Marsh.

Response A10-4

The comment expresses concerns with the project's potential impacts on biological resources along the eastern edge of Oro Loma Marsh. It also restates the Draft EIR's conclusion that Alternative 2 has a greater potential for impacts on biological resources as compared to the project. As discussed on pages 3.3-54 through 3.3-91 of the Draft EIR, the implementation of Mitigation Measures 3.3-1 through 3.3-17 would reduce impacts on biological resources, including those within Oro Loma Marsh, to a less-than-significant level. The comment does not express disagreement with any of the conclusions of the Draft EIR.

The comment also expresses concern about the project's significant and unavoidable impact related to noise and vibration on the Oro Loma Marsh but does not express any specific concern with respect to the adequacy of the analysis or the conclusions in the Draft EIR. Furthermore, it should be noted that the project's significant and unavoidable impact relates to the increase in noise levels at residential receptors (refer to the Impact 3.9-1 discussion on pages 3.9-17 through 3.9-24). However, the construction-related noise and vibration impacts on biological resources, including those within Oro Loma Marsh, were found to be less than significant with implementation of mitigation measures (refer to the Impact 3.3-1 discussion on pages 3.3-54 through 3.3-73 and Impact 3.3-4 discussion on pages 3.3-81 through 3.3-83). Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Comment A10-5

Based on preliminary plans and project documents recently provided to the Park District, it appears that the project pipeline would cross Park District property at two locations: The Alameda Creek Regional Trail staging area at the junction of Union City Boulevard and Alameda Creek in Union City, and the Oro Loma Marsh just south of the Oro Loma Sanitary District Water Pollution Control Plant on the Hayward/San Lorenzo border. Pipeline installation and construction vehicle staging would require the acquisition of a Temporary Park Access Permit or a temporary construction easement from the Park District. The installation of pipeline under Park District property would also require the acquisition of permanent utility easements from the Park District. The granting of temporary and permanent access and property rights involves thorough Park District staff review followed by Park District Board of Directors review and authorization, and a complete plan set will need to be provided. Additionally, two Park District-managed parcels of land in Oro Loma Marsh are federal (Assessor's Parcel Number [APN] 438-0020-002-09) and state (APN 438-0020-002-12) owned and may require separate property right easements for the project. The District looks forward to discussing these and other property rights with Cargill and EBDA.

Response A10-5

The comment notes that temporary and permanent permits and/or easements would need to be acquired in order to construct the MSS brine transport pipeline through real property owned or managed by EBRPD. Page 2-39 of the Draft EIR identifies EBRPD as a responsible agency for issuing easements, licenses, and/or encroachment permits for

activities on EBRPD lands and for granting approval for temporary trail closures or access interruptions. Mitigation Measure 3.10-1, which is described on pages 3.10-14 and 3.10-15 of the Draft EIR, also requires that the project proponent prepare and implement a detour plan during project construction to reduce impacts on recreationalists to a less-than-significant level. This measure requires that the project proponent consult with EBRPD in the development of detour plans and coordinate with EBRPD to ensure that the public is notified of construction activities in proximity to recreational use areas. This comment does not identify specific concerns related to the adequacy of the CEQA document. Therefore, no further response is required.

Comment A10-6

The Park District is concerned with the project and with the Bayside Alternative because Park District-owned and operated lands would have new pipeline construction. They could impact EBDA's First Mile Horizontal Levee Project that is currently being designed along the eastern edge of Oro Loma Marsh. It is the Park District's preference that the brine transport pipeline be constructed, where possible, in existing roads away from sensitive biological resources. Much of the habitat within the overall project area (Oro Loma, Hayward Marsh and Eden Landing, Coyote Hills, and Don Edwards) is currently being restored, which will serve to connect existing habitat for tidal marsh and upland species. These areas are particularly vulnerable to future sea level rise. The pipeline should be designed to withstand the climatic and oceanic conditions that may impact the shoreline. Please consider anticipated maintenance activities that may be necessary over the life of the project, with particular attention towards impacts to sensitive and newly restored habitats.

Response A10-6

The comment expresses concerns related to the project and Bayside Parallel Pipe Alternative because pipeline construction would occur on lands owned and operated by EBRPD. It also expresses concerns that the project would affect EBDA's planned First Mile Horizontal Levee Project (First Mile Project) and sensitive habitats that are currently being restored.

EBDA acknowledges that EBRPD's habitat restoration efforts are ongoing and looks forward to further coordination to avoid project conflicts with those efforts. Page 4-4 of the Draft EIR recognizes EBDA's planned First Mile Project as a reasonably foreseeable future project. The First Mile Project is an element of the Hayward Area Shoreline Adaptation Master Plan (HASAMP) and is in the design phase with an uncertain timeline and funding mechanism; the HASAMP estimates that the First Mile Project could be constructed sometime in the next 10–25 years. Under CEQA, the Draft EIR is required to evaluate the project's potential impacts on the existing environment, which in this case comprises the eastern perimeter berm along Oro Loma Marsh in its present configuration.

Mitigation Measure 3.10-1 would require that the project proponent coordinate with the members of the Hayward Area Shoreline Planning Agency, including EBPRD, to ensure that construction and maintenance activities do not interfere with implementation of the HASAMP, including the First Mile Project. In addition to complying with Mitigation Measure 3.10-1, the project proponent would be required to obtain easements, licenses, and/or permits to construct the MSS brine transport pipeline on lands owned and managed by EBPRD, including the eastern perimeter berm alongside Oro Loma Marsh, where the First Mile Project would be constructed. Therefore, EBPRD would have the opportunity to address any design concerns regarding the relationship of the project to the First Mile Project during this permitting process. Page 4-11 of the Draft EIR also notes that construction of the project and the First Mile Project are unlikely to occur concurrently. Therefore, the Draft EIR concludes that cumulative impacts on biological resources related to concurrent construction are not anticipated. The comment does not express any specific concerns that the Draft EIR's analysis or conclusions are flawed or unsupported by substantial evidence. Therefore, no revision to the Draft EIR is necessary in response to this comment.

The comment also expresses preference for constructing the MSS brine transport pipeline in existing roadways. Construction of the MSS brine transport pipeline within the eastern perimeter berm of Oro Loma Marsh would occur within an unpaved road. Therefore, the proposed MSS brine transport pipeline alignment would satisfy EBPRD's preference. No revision to the Draft EIR is necessary in response to this comment.

The comment states that the project should be designed to withstand the effects of anticipated sea level rise along shoreline areas. The MSS brine transport pipeline would be buried underground, including within berms and

roadways. In any event, the Draft EIR, under well-established California case law, is not required under CEQA to analyze the impacts that the environment may have upon the project, as opposed to impacts that the project may have upon the environment. Applicable California case law is summarized in Response A9-23, and no revision to the Draft EIR is necessary in response to this comment.

The comment requests that the Draft EIR consider the impact of maintenance activities over the life of the project, particularly with respect to sensitive and newly restored habitats. Section 2.6.7 of the Draft EIR describes the operations and maintenance activities that are anticipated for the project, including at Cargill's Solar Salt Facility and for the MSS brine transport pipeline. The Draft EIR further considers and analyzes potential impacts that these operations and maintenance activities may have on the environment, including impacts on biological resources. The Draft EIR concludes that the operations and maintenance of project facilities in Cargill's Solar Salt Facility would be similar to those under existing operations and would therefore be unlikely to result in impacts on biological resources in the facility (see pages 3.3-55, 3.3-58, 3.3-75, and 3.3-81 of the Draft EIR). In addition, the Draft EIR concludes either that operations and maintenance activities for the MSS brine transport pipeline would not result in significant impacts on biological resources or, to the extent that construction is entailed, that impacts could be reduced to a less-than-significant level with mitigation (see page 3.3-82 of the Draft EIR). Because impacts within sensitive habitat would be avoided and minimized to the extent feasible during maintenance activities; any ground disturbance during future maintenance would be infrequent and limited in extent; and impacts associated with ground disturbance during maintenance activities would be similar to impacts addressed for construction of the MSS brine transport pipeline, impacts associated with operations and maintenance activities would result in less than significant impacts on biological resources. This comment does not offer any specific concerns with regard to this analysis and these conclusions; therefore, no revision to the Draft EIR is necessary in response to this comment.

Comment A10-7

Lastly, the Park District requests that Table 4-2 in the DEIR be revised for the two projects in Map IDs # 35 and 37, to note in the description that the East Bay Regional Park District is the project lead.

Response A10-7

The comment requests that Table 4-2 be revised to identify EBRPD as the project lead for Map IDs #35 and 37. This comment is noted, and pages 4-7 and 4-8 of the Draft EIR have been revised accordingly (refer to Chapter 4, "Revisions to the Draft EIR").

Comment A10-8

The Park District looks forward to working together with EBDA to protect important natural and recreational assets in the Hayward Shoreline area. Thank you for your consideration.

Response A10-8

The comment provides closing remarks and is not related to the adequacy of the CEQA document. No further response is required.

Letter A11 Union Sanitary District

Andrew Baile, Assistant Engineer
February 17, 2023

Comment A11-1

The Union Sanitary District (USD) wishes to thank you for the opportunity to comment on the draft Environmental Impact Report (EIR) for Cargill, Inc.'s MSS Processing and Brine Discharge Project (Project) dated January 2023. USD has reviewed the EIR and offers the following comments for your consideration:

Response A11-1

The comment provides introductory remarks and is not related to the adequacy of the CEQA document. No further response is required.

Comment A11-2

1. Project Description (Figures 2-8b): The Newark Pump Station property owned by USD is not available for the Project's staging area (SA-2).

Response A11-2

The comment states that the Newark Pump Station property owned by USD is not available for the project's staging area. This comment is noted, and staging area SA-2 will not be used for the project. Any necessary staging associated with the entering end of the trenchless crossing at this location of the MSS brine pipeline construction would occur within the laydown area depicted in Figure 2-8b of the Draft EIR (refer to Chapter 2, "Project Updates"). Page 2-33 of the Draft EIR notes that some or all of the staging areas identified on Figures 2-8a through 2-8h would be used, acknowledging that the construction contractor would need to make appropriate arrangements with land holders and coordinate permits and other arrangements with the local jurisdiction for use of any staging area. Figure 2-8b has been revised accordingly (refer to Chapter 4, "Revisions to the Draft EIR."

Comment A11-3

2. Project Description (Figure 2-8d): Figure shows the proposed brine pipeline passing through a USD owned parcel (APN: 543 043900303). It is a site for a future USD facility and is not available for the siting of the Cargill brine pipeline.

Response A11-3

The comment states that a USD parcel identified as APN 543-439-3-3 is not available for the MSS brine pipeline alignment. Therefore, as discussed in Section 2.3, "Minor Revisions to MSS Brine Transport Pipeline Alignment," of this Final EIR, the MSS brine transport pipeline alignment has been shifted approximately 70 feet to avoid this USD parcel. The project alignment would instead traverse from the public right-of-way within Ardenwood Boulevard in the City of Fremont and connect directly to a parcel owned by EBRPD (APN 543-356-1-5) before the trenchless crossing at the Alameda Creek Flood Control Channel, as depicted in Figure 2-8d and discussed at page 2-16 of the Draft EIR. Figure 2-8d of the Draft EIR has been revised accordingly (refer to Chapter 4, "Revisions to the Draft EIR").

Comment A11-4

3. Section 2.6.8 Construction, Construction Methods, Trenchless Methods (Page 2-36): The draft EIR states that horizontal directional drilling (HDD) trenchless method for pipe installation will be utilized to cross creeks and certain roadways. Please note that a USD Encroachment Permit and Agreement will be required for any HDD crossing USD sanitary sewer mains or HDD installations within 5 feet (horizontal) of a USD sanitary sewer main. The encroachment permit requires that the affected sewer mains have a pre-construction and a post-construction television inspection performed to ensure that they were not damaged during the installation.

Response A11-4

The comment states that a USD encroachment permit would be required for any HDD crossing USD sewer mains or HDD installations within 5 feet (horizontal) of a USD sanitary sewer main. This comment is noted. Pages ES-4, 1-5, and 2-39 of the Draft EIR have been revised to include USD as a responsible agency in the event that an encroachment permit is required (refer to Chapter 4, "Revisions to the Draft EIR"). The project proponent would be required to obtain all leases, licenses, permits, and easements for work within utility rights-of-way, including USD rights-of-way. Therefore, the project proponent would be required to address any potential conflicts with USD facilities as part of this approval process.

Comment A11-5

4. Section 2.6.9 Project Permits and Approvals (Pages 2-38 to 2-39): The draft EIR did not list USD as a permitting agency. Encroachment Permit(s) and Agreement(s) with USD will be required for any construction work within the USD's Force Main Easement. A USD Encroachment Permit will be required for the HDD construction activities mentioned in comment 3.

Response A11-5

The comment states that USD was not listed as a permitting agency in the Draft EIR and that encroachment permits would be needed for work within USD's rights-of-way. Pages ES-4, 1-5, and 2-39 of the Draft EIR have been revised to include USD as a responsible agency for issuing encroachment permits and agreements for any construction work within USD's rights-of-way (refer to Chapter 4, "Revisions to the Draft EIR"). The project proponent would be required to obtain all leases, licenses, permits, and easements for work within utility rights-of-way, including USD rights-of-way. Therefore, the project proponent would be required to address any potential conflicts with USD facilities as part of this approval process.

Comment A11-6

5. Impact 3.8-1 Potential to Violate Any Water Quality Standards or Waste Discharge Requirements or Otherwise Substantially Degrade Surface Water or Groundwater Quality during Construction (Pages 3.8-19 to 3.8-21): The EIR states that the Project area generally has very high groundwater levels and as such groundwater is anticipated during construction, requiring groundwater dewatering. For groundwater dewatering within the USD service area, all reasonable alternatives to sewer disposal, such as legally permissible reuses, must be explored before discharge into the USD sanitary sewer system will be approved. When no other alternatives for disposal of groundwater exists, USD may issue discharge permits for groundwater encountered during excavation. The permit is a conditional discharge permit and approval of [a] discharge permit is dependent upon available capacity in the sewer system. Please contact USD's Environmental Compliance Team (Marian Gonzalez, mariang@unionsanitary.ca.gov, 510-477-7621) for specific requirements, limits, and fees for a groundwater permit.

Response A11-6

The comment states that all reasonable alternatives to the discharge of groundwater encountered during dewatering operations to the USD sanitary sewer system should be explored before discharge to USD's system, which would require a discharge permit from USD. Pages ES-4, 1-5, and 2-39 of the Draft EIR have been revised to include conditional discharge permits from USD for any dewatering activities that would require discharge into the USD sanitary sewer system (refer to Chapter 4, "Revisions to the Draft EIR"). As noted on page 3.8-20 of the Draft EIR, project dewatering operations would be conducted in accordance with the General Order for Dewatering Order No. R2-2018-0036 or other waste discharge permits, and discharge from groundwater operations would be disposed of in approved sewer systems within approved capacity limitations or in settling tanks.

Comment A11-7

6. Impact 3.9-2 Potential to Expose Sensitive Receptors to Construction Vibration (Pages 3.9-24 to 3.9-25): The EIR states that, "Operation of construction equipment, including an impact pile driver, would generate vibration during project construction." Please coordinate with USD prior to commencement of construction activities that my result in vibratory loading of the USD Force Main.

Response A11-7

The comment requests that the project proponent coordinate with USD before the commencement of construction activities that may result in vibratory loading of the USD Force Main. As noted in Responses A11-5 and A11-6, USD has been added as a responsible agency on pages ES-4, 1-5, and 2-39 of the Draft EIR. The project proponent would be required to obtain all leases, permits, and easements for work within utility rights-of-way, including within USD right-of-way. The project proponent would be required to address any potential conflicts with USD facilities as part of the approval process, including potential damage from project construction-related vibration. This comment is not related to the adequacy of the CEQA document. No further response is required.

Comment A11-8

Please feel free to email me at andrewb@unionsanitary.ca.gov or call me at (510) 477-7633 as needed during this process.

Response A11-8
The comment provides contact information for further coordination with USD. The project proponent will reach out to the identified staff if questions concerning USD's comments arise. This comment is not related to the adequacy of the CEQA document. No further response is required.

Letter A12 California State Lands Commission

Nicole Dobroski, Chief
March 3, 2023

Comment A12-1
The California State Lands Commission (Commission) staff has reviewed the Draft Environmental Impact Report (EIR) for the Cargill Mixed Sea Salts Processing and Brine Discharge Project (Project), which is being prepared by the East Bay Dischargers Authority (EBDA). EBDA, as the joint powers public agency with the principal responsibility for 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 involves work on State sovereign land, the Commission will act as a responsible agency.

Response A12-1
The comment describes the role of EBDA as lead agency and CSLC as trustee and responsible agency for the project under CEQA. Page 1-5 of the Draft EIR identifies EBDA as the lead agency and CSLC as a trustee and responsible agency. This comment is not related to the adequacy of the CEQA document. No further response is required.

Comment A12-2

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.

Response A12-2
The comment provides a description of CSLC jurisdiction and authority. Page 1-5 of the Draft EIR identifies CSLC as a trustee and responsible agency. This comment is not related to the adequacy of the CEQA document. No further response is required.

Comment A12-3
After review of the information contained in the Draft EIR and in-house records, Commission staff has determined that portions of the proposed Project's mixed sea salts (MSS) brine transport pipeline may cross State-owned sovereign land under Commission leasing jurisdiction, including but not limited to those areas identified in the Draft EIR as crossing numbers 1, 3, 4, 6 through 10, 12 through 14, 18, 19, and 21, and Plummer Creek. Therefore, a lease from the Commission will be required for the Project. An application may be submitted to the Commission through the online application portal (OSCAR.slc.ca.gov).

It is also important to note that the Commission has an existing Master Lease in this vicinity with Cargill. On April 26, 2005, the Commission authorized the issuance of a 25-year General Lease – Right-of-Way Use, Lease 8596.1, for the

continued use and maintenance of an existing overhead electric transmission line; 12 existing steel, rubber, and plastic (PVC) pipelines; siphons; water intakes; three dredge locks; and four horizontally-drilled brine and water pipelines. Please contact Public Land Management Specialist George Asimakopoulos (contact information below) for further information on the extent of the Commission's jurisdiction and lease application requirements. Commission staff notes that the Draft EIR anticipates a construction timeline that would start in summer 2023 and urges EBDA to submit a lease application at their first opportunity.

Response A12-3

The comment identifies portions of the proposed MSS brine transport pipeline that cross state-owned sovereign land under CSLC leasing jurisdiction and states that a lease from CSLC would be required for the project. The comment also describes an existing lease agreement between Cargill and CSLC for the continued use and maintenance of existing infrastructure. Page 2-39 of the Draft EIR identifies the requirement for land leases for public trust lands from CSLC. The project proponent would submit a lease application before construction of project components on land under CSLC leasing jurisdiction. This comment is not related to the adequacy of the CEQA document. No further response is required.

Comment A12-4

Project Description

EBDA proposes to accept residual brine from Cargill, Incorporated's (Cargill) proposed enhanced salt processing and removal process, with Cargill transferring the remaining brine through a new MSS brine pipeline to EBDA's combined effluent pipeline for discharge into San Francisco Bay under EBDA's National Pollutant Discharge Elimination System permit. This Project would meet objectives and needs as follows:

- Provide wastewater disposal capacity and services to Cargill.
- Further EBDA's sustainability objectives by facilitating permanent infrastructure that could be available for future regional water recycling.
- Balance any impacts due to disruption to local jurisdictions with impacts to sensitive environments.
- Develop new infrastructure to process MSS brine with minimal exposure to disruptions, including connecting with and optimizing existing EBDA infrastructure.
- Utilize an existing deep-water outfall for the MSS brine to minimize impacts to water quality and aquatic resources.

Response A12-4

The comment provides a summary of the project description and objectives. This comment is not related to the adequacy of the CEQA document. No further response is required.

Comment A12-5

From the Project Description, Commission staff understands that the Project would include the following components that have potential to affect State sovereign land:

- HDD/Microtunneling for Trenchless Crossings. At least 14 brine pipeline crossings may be under Commission jurisdiction. Horizontal directional drilling (HDD) is a trenchless construction method being considered for most of the potential crossings, except for crossings under railroad tracks, which would use another trenchless method called microtunneling.
- Bridge Crossings. The Proposed Project would attach the MSS brine transport pipeline to existing bridges that cross Plummer Creek and Bockman Channel. The Draft EIR does not provide sufficient information to specify or evaluate these construction activities.

Response A12-5

The comment identifies project components that are located on lands under CSLC jurisdiction. It states that the Draft EIR does not provide information sufficient to specify or evaluate construction activities involving bridge crossings over Plummer Creek and Bockman Channel. Page 2-35 of the Draft EIR has been revised to include additional detail regarding construction methods for connecting the proposed discharge pipeline from the MSS brine pump station, which would cross Plummer Creek at an existing pipe bridge, to the off-site MSS brine transport pipeline (refer to Chapter 4, "Revisions to the Draft EIR"). In addition, a prefabricated pipe bridge has been proposed by the project proponent as an alternative to attaching the MSS brine transport pipeline to the existing bridge over Bockman Channel (refer to Section 2.4, "Prefabricated Pipe Bridge at Bockman Channel"). Accordingly, Page 2-36 of the Draft EIR has been revised to provide further details regarding the installation of this pipe bridge (refer to Chapter 4, "Revisions to the Draft EIR"). Further, at the crossing of Plummer Creek, the pipeline segment would be prefabricated entirely within an adjacent staging area outside of the waterway, and the prefabricated pipeline would be lifted over the waterway and attached to the bridge itself. At the Bockman Channel crossing, concrete piles would be constructed to support the prefabricated pipe bridge. The footings for the pipe bridge would be located near the abutment of the existing vehicle bridge. The concrete piles are expected to be cast-in-drilled-hole (CIDH) piles or H piles. CIDH piles are reinforced concrete piles cast in holes drilled to a predetermined depth. H piles are structural beams that are driven into the soil using vibratory methods. The depth of the piles would be approximately 17.5 feet. A work area for the crossing would be located along an access road from the Oro Loma Plant. The prefabricated pipe bridge would be installed from a crane located at the work area or on the existing vehicle bridge and then welded in place. Because the pipeline segments and pipe bridge would be prefabricated in staging areas and lifted over the waterways, construction workers would not work directly over waterways; therefore, the potential for construction materials to fall from the bridges and into waterways would be avoided. Furthermore, as discussed throughout Section 3.8-3 of the Draft EIR, a storm water pollution prevention plan (SWPPP) would also be required for the project to comply with National Pollutant Discharge Elimination System Construction General Permit requirements. The SWPPP would specify best management practices to prevent the release of materials from staging areas into waterways.

Comment A12-6

The Draft EIR identifies Alternative 1 (In-Pipe Alternative), which would reduce the MSS brine transport pipeline length to 7.5 miles, as the Environmentally Superior Alternative.

Response A12-6

The comment states that the Draft EIR identifies Alternative 1 as the environmentally superior alternative. This comment is not related to the adequacy of the CEQA document. No further response is required.

Comment A12-7

Environmental Review

Commission staff requests that EBDA consider the following comments on the Project's Draft EIR, to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the Final EIR when considering a future lease application for the Project.

Response A12-7

The comment requests that EBDA consider CSLC's comments on the Draft EIR. EBDA appreciates CSLC's review and consideration of the Draft EIR and looks forward to further coordination. Each of CSLC's comments has been considered, and responses are provided below. As noted in the responses, revisions to the Draft EIR were made where required under CEQA.

Comment A12-8

General Comments

1. Project Description – Bridge Crossings: The Draft EIR identifies Plummer Creek and Bockman Channel as two locations where the MSS brine transport pipeline would be attached to an existing bridge. The document notes

an "existing pipe bridge" at Plummer Creek and "a bridge over the channel" for Bockman Channel but does not describe how the pipeline would be attached to the bridges and what construction equipment would be required. The Project Description should include a discussion of these brine transport pipeline bridge attachment activities in Section 2.6.8, *Construction*. In addition, the EIR should analyze any potential impacts from construction materials falling from the bridge work area into the waterways in Section 3.3, *Biological Resources*, Section 3.7, *Hazards and Hazardous Materials*, and Section 3.8, *Hydrology and Water Quality*, and provide or identify any needed mitigation.

Response A12-8

The comment requests additional detail regarding how the MSS brine pipeline would be attached to bridges over Plummer Creek and Bockman Channel and requests that the EIR analyze potential environmental impacts from construction materials falling from the bridge work area into the waterways. This comment is similar to Comment A12-5. Please refer to Response A12-5 for a discussion of construction methods involving the bridge crossing over Plummer Creek and the prefabricated pipe bridge proposed over Bockman Channel.

Comment A12-9

2. Project Description – Open-Water Excavation: Please clarify the following discussion from page 2-37: "The MSS brine transport pipeline is anticipated to cross multiple drainages throughout the alignment…The majority of these crossings are at culverts, where open-water excavation is not required. Exceptions include the Old Alameda Creek and Alameda Creek Flood Control Channels, which would be crossed using trenchless technologies." Commission staff cannot determine whether the Project would require open-water excavation at Old Alameda Creek and Alameda Creek Flood Control Channels, given that trenchless construction is very different from open-water excavation. If the Project includes any open-water excavation, then please have the EIR identify those activities and areas in the Project Description as well as evaluate the potential in-water work impacts in Section 3, *Environmental Impacts and Mitigation Measures*.

Response A12-9

The comment asks to confirm whether the MSS brine transport pipeline crossings at Old Alameda Creek and the Alameda Creek Flood Control Channel would require open-water excavation and if so, that the EIR identify such activities and areas and evaluate potential in-water work impacts. As shown in Table 2-2 (page 2-35) and in Figures 2-8d (page 2-22) and 2-8f (page 2-25) of the Draft EIR, the proposed crossings at Old Alameda Creek and the Alameda Creek Flood Control Channel would use trenchless methods (either HDD, microtunneling, or another trenchless method) and not open-water excavation. Therefore, no in-water work would occur, and no revisions to the Draft EIR are necessary.

Comment A12-10

Section 3.3, *Biological Resources*, also notes on page 3.3-65 that "construction would occur outside of waterbodies, with the exception of small areas of temporary effects from pipeline disturbance (approximately 0.2 acre based on preliminary design and CARI mapping)." Please have the Project Description include a description or figure showing these disturbances within the waterbodies. Commission staff is concerned that the Draft EIR states work will be done within waterbodies in certain discussions, but then asserts that the Project would avoid directly impacting waterbodies. For example, this appears to occur within the same paragraph on page 3.3-65.

Response A12-10

The comment requests that the project description include a discussion or figure showing any pipeline disturbances of water bodies. Figures 3.3-1a and 3.3-1b of the Draft EIR show construction work areas relative to wetlands and aquatic resources. Construction of the MSS brine pipeline across all waterways would use trenchless methods, with the pipeline being placed several feet below these waterways or attached to existing bridges and a prefabricated pipe bridge. No work would occur directly within waterways; however, HDD and microtunneling would require temporary disturbance within adjacent sensitive habitat at the construction pit entrance and receiving ends. Pages 3.3-78 and 3.3-79 of the Draft EIR describe the locations where temporary effects on sensitive habitats may occur. Table 3.3-2 provides preliminary estimates of temporary impact acreages for these habitat areas based on California Aquatic

Resources Inventory (CARI) mapping. The impact acreages are based on preliminary design and are subject to change based on design revisions, vegetation changes, and site-specific conditions that differ from CARI mapping. A formal delineation of the boundaries of state and federally protected wetlands would be completed before ground disturbance in accordance with Mitigation Measure 3.3-13. No revision to the Draft EIR is necessary in response to this comment.

Comment A12-11

3. Project Description - Microtunneling: Microtunneling, as discussed in the Draft EIR, includes simultaneously drilling the borehole and laying the HDPE pipe into the hole. However, the document also notes that steel casing pipes would be used to protect the brine pipeline. There is no further information regarding the casing pipes. Please include information on the steel pipes' length(s), whether they would require laydown areas and welding prior to insertion, if they would be installed prior to the HDPE pipe, if the casings would be temporary or permanent, and the method of installation. If dynamic pipe ramming or a similar method would be used, then please evaluate any potential impacts to biological resources and sensitive noise receptors in Section 3, *Environmental Impacts and Mitigation Measures*.

Response A12-11

The comment requests that the project description include additional information regarding the use of casing pipes in connection with microtunneling. The comment also requests that potential impacts on biological resources and sensitive noise receptors be evaluated if dynamic pipe ramming or similar installation methods are used. Most, if not all, trenchless crossings would require pipe casings, which would be permanent and composed of steel or high-density polyethylene, depending on the particular crossing and landowner and agency requirements. Dynamic pipe ramming would not be used for project construction at any location. Pipe sections, including casings, would be fabricated and assembled at the staging and laydown areas near each crossing. Page 2-36 of the Draft EIR has been revised to include this information (refer to Chapter 4, "Revisions to the Draft EIR"). The Draft EIR already accounts for the potential environmental impacts associated with such trenchless crossings; therefore, no further revisions to the Draft EIR are necessary in response to this comment.

Comment A12-12

4. Project Description – HDPE Pipe: Page 2-36 of the Draft EIR explains that the brine transport pipeline HDD activities would require a laydown area of half the crossings' length to string and fuse the HDPE pipe segments. Please confirm whether the pipe segments would be assembled in two phases as it is pulled through the borehole, and how the fused pipe segments would be assembled during pipe pullback. In addition, please clarify whether the HDPE pipe segments would be tested for integrity (i.e., hydrotesting) prior to or after HDD installation. If the Project will include hydrotesting, then please discuss that information in Section 3, *Environmental Impacts and Mitigation Measures*.

Response A12-12

The comment asks for clarification regarding pipe installation assembly using HDD methods. It also asks if hydrotesting would occur and requests that any potential environmental impacts associated with hydrotesting be included in Chapter 3 of the EIR, if applicable. For most HDD crossings, pipe segments would be fabricated into one section in staging and laydown areas near the boreholes and pulled through as one section. Some HDD crossings may require the handling of multiple fused sections of pipe because of the length of the crossing. All pipe sections would be hydrotested before and after installation with potable water that is dechlorinated before use; therefore, no environmental impacts associated with hydrotesting are anticipated. Page 2-36 of the Draft EIR has been revised to include this information (refer to Chapter 4, "Revisions to the Draft EIR").

Comment A12-13

Biological Resources

5. Pre-Construction Bird Survey: Mitigation Measure (MM) 3.3-4 requires preconstruction surveys for the California Ridgway's rail if Project activities, which could include HDD and microtunneling pits as well as pipe segment laydown areas, occur during the breeding season. The timing for the second survey is noted as "…at least 14 days

prior to construction in the areas where suitable habitat is present" (emphasis added), but Commission staff notes that the other preconstruction surveys are required within a set number of days before Project activity commencement. Please confirm that it was intended the California Ridgway's rail surveys would be 14 days or greater from the start of Project activities, or modify MM 3.3-4 accordingly.

Response A12-13

The comment asks to confirm whether preconstruction surveys for the California Ridgway's rail would occur 14 or more days from the start of construction activities for the project under Mitigation Measure 3.3-4 or to modify this mitigation measure accordingly. Preconstruction surveys for nesting birds would be conducted within 14 days prior to when construction activities are initiated in each of the areas of suitable nesting habitat in accordance with Mitigation Measure 3.3-3 (Conduct Focused Surveys for Nesting Special-Status Bird Species, Nesting Raptors, and Other Native Nesting Birds and Implement Protective Buffers). The purpose of Mitigation Measure 3.3-4 (Conduct Protocol-Level Surveys and Implement Protective Buffers for California Ridgway's Rail) is to provide additional protection for California Ridgeway's rail through the requirement for protocol-level surveys in accordance with USFWS-approved *Site Specific Protocols for Monitoring Marsh Birds: Don Edwards San Francisco Bay and San Pablo Bay National Wildlife Refuges* (USFWS 2017). Accordingly, Mitigation Measure 3.3-4 has been revised to remove reference to preconstruction surveys, which are not part of the protocol-level survey methods for this species, and to specify that the protocol-level surveys would be conducted between January 15 to April 15 and within a year before construction begins. The revisions to Mitigation Measure 3.3-4 would not change the effectiveness of the mitigation measure in reducing the impact on California Ridgeway's rail to a less-than-significant level. Consequently, this revision would not constitute a significant change to the Draft EIR.

Comment A12-14

Cultural and Tribal Cultural Resources

6. Assembly Bill (AB) 52 Tribal Consultation: The Draft EIR identifies three tribal representatives who responded to EBDA's notification letters and requested consultation. EBDA initiated consultation with the three groups, and two tribal representatives requested cultural resource reports and/or assessments while the third recommended a Native American Monitor during all ground disturbing activities. All three tribal groups also had concerns "for the areas in the project where the pipeline crosses the creek" and indicated that the Project area is sensitive, particularly around water features. EBDA subsequently sent the cultural resources report on October 27, 2022, and followed up with communications on November 14 and 18, 2022, to request input by December 16 and schedule meetings to discuss. No response was received.

   According to the Draft EIR, "because none of the three tribes responded by December 16, 2022, EBDA considered AB 52 consultation to be closed" (page 3.4-17). However, page 3.4-5 of the Draft EIR sets forth the conditions under Public Resources Code Section 21080.3.2 wherein a CEQA lead agency can conclude AB 52 tribal consultation. Commission staff does not believe that either of the two conditions have been satisfied: no parties have agreed to mitigation measures since the tribal consultations did not result in feedback on tribal cultural resource impacts or mitigation, and EBDA has not shown that a mutual agreement cannot be reached after acting in good faith and with reasonable effort. Commission staff is concerned that EBDA has effectively dismissed tribal concerns and engagement and recommends that EBDA 1) continues to reach out to the three tribes for dialogue, feedback, and mitigation measure development; and 2) modifies the language in the EIR to indicate that AB 52 tribal engagement is ongoing.

   In the absence of continued tribal consultation, Commission staff would need to conduct additional outreach and consultation/coordination which could result in additional or modified CEQA mitigation measures to address tribal cultural resource impacts.

Response A12-14

The comment expresses concerns that the conditions for concluding consultation with three tribal representatives who responded to EBDA's notification regarding the project have not been met under PRC Section 21080.3.2.

As discussed in the Draft EIR on pages 3.4-16 and 3.4-17, on May 24, 2022, EBDA mailed notification letters regarding the project to 12 tribal representatives who were identified by the Native American Heritage Commission (NAHC) as representatives with a potential interest in or knowledge about the project site. Three tribal representatives from the (1) Confederated Village of Lisjan, (2) the Indian Canyon Mutsun Band of Costanoan Ohlone People, and (3) the Northern Valley Yokut/Ohlone/Patwin Tribe responded to the notification letter, and EBDA subsequently conducted three separate consultation meetings with the three responding tribes in July and August 2022. On October 27, 2022, EBDA provided the cultural report for the project to the three responding tribes and requested meeting availability to receive input on the report. When no response was received, EBDA requested meeting availability from the three tribes on November 14 and again on November 28, 2022, and requested to receive input on the cultural report by December 16, 2022.

Following close of the public comment period on the Draft EIR, EBDA reached out to representatives of the Confederated Villages of Lisjan and the Northern Valley Yokut/Ohlone/Patwin tribes on March 10, 2023. On March 14, 2023, EBDA received a response from the representative of the Northern Valley Yokut/Ohlone/Patwin Tribe, who requested to meet with EBDA to identify locations where cultural monitors should be present during construction. On April 5, 2023, EBDA received a response from the representative of the Confederated Villages of Lisjan, who indicated that the tribe received the cultural report and would like to be part of the discussion of cultural monitoring. EBDA met with the two tribes on May 24, 2023. Based on this meeting, revisions to the proposed mitigation measures addressing potential impacts to tribal cultural resources have been prepared and shared with the tribes.

Mitigation Measure 3.4-3, "Protect Unidentified Tribal Cultural Resources," in the Draft EIR included implementation of Mitigation Measures 3.4-2a and 3.4-2b to avoid or minimize potential impacts of the project on tribal cultural resources. Mitigation Measure 3.4-2a requires a qualified archaeologist to develop a construction worker awareness brochure in coordination with representatives from Native American tribes culturally affiliated with the project area (akin to the sensitivity training requested by the representative for the Indian Canyon Mutsun Band of Costanoan Ohlone People). Mitigation Measure 3.4-2b requires that ground-disturbing activities be halted upon the discovery of subsurface archaeological features and that a qualified professional archaeologist be retained to determine the significance of the find. Cargill would be required to contact the appropriate California Native American tribe if the archaeological material is determined to be Native American in nature (akin to the request by the Indian Canyon Mutsun Band of Costanoan Ohlone People) that a Native American representative be involved with ground-disturbing activities). Cargill would then be required to implement appropriate procedures to protect the integrity of the resource and ensure that no additional resources are affected. Further, Health and Safety Code Section 7050.5 and PRC Section 5097 govern the discovery of human remains. In the event that Native American human interments are discovered during project construction, Cargill would be required to halt construction, notify the NAHC within 24 hours, and adhere to NAHC guidelines regarding the treatment and disposition of the remains. Based on the meeting with the tribal representatives in May 2023, Mitigation Measure 3.4-2a on pages ES-25 and 3.4-20 has been revised to specify that a qualified professional archaeologist (one who meets the Secretary of the Interior's Professional Qualification Standards for archaeology) shall develop the construction worker awareness brochure for all construction personnel, and that the brochure will be developed in coordination with representatives of the Confederated Villages of Lisjan and Northern Valley Yokut/Ohlone/Patwin tribes. Mitigation Measure 3.4-2b on pages ES-26 through ES-27 and 3.4-20 has also been revised to specify that the Confederated Villages of Lisjan and Northern Valley Yokut/Ohlone/Patwin tribes shall be contacted in the event a potential resource is identified during construction to evaluate it and make recommendations. Lastly, Mitigation Measure 3.4-3 on pages ES-27 and 3.4-21 of the Draft EIR has been revised to require Cargill to coordinate with and invite a tribal monitor/consultant who is approved by the Confederated Villages of Lisjan and Northern Valley Yokut/Ohlone/Patwin tribes to monitor ground-disturbing activities that are associated with construction of the MSS brine transport pipeline and involving grading, tree removal, boring, excavation, drilling, or trenching in areas with native soils that will occur within 100 feet of a waterway or a known tribal cultural site (refer to Chapter 4, "Revisions to the Draft EIR").

EBDA believes, in good faith, that it has made reasonable efforts to consult with interested Native American tribes, is in full compliance with PRC Section 21080.3.2, and that the revisions to the Draft EIR fully address concerns on the part of the tribes.

Comment A12-15

7. Tribal Cultural Resources Mitigation: MM 3.4-2b requires EBDA to retain a qualified professional archaeologist to assess the significance of any unanticipated discovery. It appears that this archaeologist would determine whether the resource was of Native American origin, and then contact potentially affected Tribes. Commission staff requests that MM 3.4-2b be modified to require both archaeological and Tribal monitors (if requested by a culturally affiliated Tribe) onsite to jointly evaluate any unanticipated discovery. In addition, MM 3.4-2b should be modified to provide for Native American monitors during all ground disturbing activities, consistent with the request from the Indian Canyon Mutsun Band of Costanoan Ohlone People.

   Finally, Commission staff recommends that MM 3.4-2b require development of an Unanticipated Discoveries Evaluation and Treatment Plan prior to ground-disturbing Project activities, if further tribal consultation deems it necessary.

Response A12-15

The comment requests that Mitigation Measure 3.4-2b be modified to require both archaeological and tribal monitors (if requested by a culturally affiliated tribe) on-site to jointly evaluate any unanticipated discovery. It also requests that development of an Unanticipated Discoveries Evaluation and Treatment Plan be included as part of this mitigation measure before ground disturbance if further tribal consultation deems it necessary. Please refer to Response A12-14, regarding tribal monitoring. The archaeologist to be retained as a site monitor would be required to meet the Secretary of the Interior's Professional Qualifications Standards for archaeology and therefore would be fully qualified to make an initial determination as to whether finds are Native American in nature. Further, Mitigation Measure 3.4-3 has been revised based on tribal consultation (please refer to Response A12-14, regarding tribal consultation) to require Cargill to invite a tribal monitor/consultant who is approved by the Confederated Villages of Lisjan and Northern Valley Yokut/Ohlone/Patwin tribes, to monitor ground-disturbing activities that are associated with construction of the MSS brine transport pipeline and involving grading, tree removal, boring, excavation, drilling, or trenching in areas with native soils that will occur within 100 feet of a waterway or a known tribal cultural site, in addition to implementation of Mitigation Measures 3.4-2a and 3.4-2b. Incorporation of an Unanticipated Discoveries Evaluation and Treatment Plan was not included in the revised mitigation measure in consultation with the tribes, because implementation of tribal monitoring along with Mitigation Measures 3.4-2a and 3.4-2b as modified and the requirements of PRC Section 5097 pertaining to the discovery, identification, and protection of human remains would minimize or avoid impacts on tribal cultural resources and would therefore include the essential elements of an Unanticipated Discoveries Evaluation and Treatment Plan. Because the comment does not offer any specific concern regarding the conclusions of the Draft EIR in this regard, no further revisions to the Draft EIR are necessary in response to this comment.

Comment A12-16

8. Title to Resources Within Commission Jurisdiction: The EIR should state that the title to all archaeological sites and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and under the jurisdiction of the Commission (Pub. Resources Code, § 6313). Commission staff requests that EBDA consult with Staff Attorney Jamie Garrett should any cultural resources on state lands be discovered during construction of the proposed Project.

   Staff requests that the following statement be included in the Final EIR's Mitigation Monitoring Program: "The final disposition of archaeological, historical, and paleontological resources recovered on State land under the jurisdiction of the California State Lands Commission must be approved by the Commission."

Response A12-16

The comment requests that the Final EIR state that title to all archaeological sites and historic or cultural resources on or in the tide and submerged lands of California is vested in the state and under the jurisdiction of the CSLC. The comment also requests that EBDA consult with the CSLC staff attorney in connection with any cultural resources discovered on state lands during project construction, and provides suggested text to include in the Final EIR's mitigation monitoring and reporting program. Page 3.4-5 of the Draft EIR and Mitigation Measure 3.4-2b on page 3.4-20 have been revised to include the requested language (refer to Chapter 4, "Revisions to the Draft EIR"). This change to Mitigation 3.4-2b will also be reflected in the final mitigation monitoring and reporting program for the project.

Comment A12-17

Geology, Soils, Mineral Resources, and Paleontological Resources

9. Soil Stability Hazards: The Project site's soils create potential liquefaction, expansion, and seismic shaking hazards for the brine transport pipeline. These hazards could occur to pipeline segments crossing waterbodies at a depth of up to 40 feet. However, the Draft EIR determines the hazards are less than significant because a "site-specific geotechnical and engineering report will be prepared to identify geologic hazards along the MSS brine transport pipeline alignment, including hazards related to soil stability." Commission staff does not understand why a geotechnical and engineering report was not prepared prior to release of the Draft EIR. This is of particular concern because "many of the soils underlying the project site have a low soil-bearing strength, are frequently water saturated, have a high percentage of clay and organic materials, and are unstable," which may require Project design or construction changes to avoid or minimize the hazard.

   While the Project would incorporate the design and engineering recommendations contained in the California Building Code and local codes, the geotechnical report could provide recommendations that would alter existing impacts or add new impacts that are not discussed in the Draft EIR. For example, if the pipeline crossings contain unstable soils, the HDD borehole activities may need to include metal pipeline casings or other protective devices as temporary construction methods or as permanent components to ensure the pipeline's long-term structural integrity. Commission staff recommends that the EIR include a geotechnical and engineering report (draft or final) or, in the alternative, identify possible actions that the report may recommend to address soil stability. Any identified actions should be analyzed for potential impacts and mitigated, if necessary and feasible.

Response A12-17

The comment expresses concern that many of the soils underlying the project site have a low soil-bearing strength, are frequently water saturated, have a high percentage of clay and organic materials, and are unstable. The comment recommends that the EIR include a geotechnical/engineering report. Alternatively, the comment recommends identifying possible actions to address soil stability and analyze potential impacts and mitigation measures for those actions.

Section 3.5, "Geology and Soils," of the Draft EIR contains a detailed discussion and analysis of the geology and soils underlying the project site. The section also includes a detailed discussion and analysis of potential environmental impacts of the project related to hazards from geology and soil instability, including the types of impacts mentioned in the comment. As further discussed, the California Building Code and local ordinances regulate the grading activities and construction on expansive soils, areas subject to liquefaction, and other unstable soils and geologic units. Appendix J of the California Building Code requires preparation of a site-specific geotechnical and engineering report that contains recommendations to reduce seismic and geologic and soils hazards, which must be incorporated into the project design. These regulatory requirements specify a mandatory permit process and prescriptive actions to fulfill those requirements; therefore, the Draft EIR concludes that the impact related to unstable geologic units and soils would be less than significant and that no mitigation measures are required.

CEQA does not require that detailed geotechnical and engineering reports be prepared or that final project design be completed before preparation of the project EIR in order to identify and analyze potential seismic and geologic and soils hazards related to the project. The Draft EIR discloses the fact that soils below the project area may be unstable. If a geotechnical report recommends metal pipeline casings to ensure the long-term structural integrity of the MSS brine transport pipeline (an example offered in the comment), this recommendation would not introduce a new or different impact than what has already been identified and discussed in the Draft EIR. Rather, this recommendation would represent a project design element that would be required to comply with regulatory requirements to avoid or lessen potential impacts associated with unstable soils. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

However, if design recommendations, in any way, cause the potential for the project to result in new or more severe significant effects than those reported in the EIR, supplemental environmental review, consistent with State CEQA Guidelines Sections 15162–15164, would be required.

Comment A12-18
Hazards and Hazardous Materials

10. Drilling Fluid – Aquatic Hazards: The bentonite used for HDD drilling is a naturally occurring, nontoxic, inert substance and is not identified as a potentially hazardous material. However, other chemicals included in drilling mud may be acutely hazardous to aquatic environments (e.g., DRILL-TERGE). Commission staff recommends the EIR discuss how MM 3.3-10 would mitigate a potentially toxic inadvertent release of drilling mud into a waterbody during pilot hole drilling or borehole reaming. Alternatively, the document could incorporate the requirement that the HDD drilling mud contain no chemicals that are acutely hazardous to aquatic environments, which would be confirmed by Material Safety Data Sheets.

Response A12-18
The comment requests that the Draft EIR discuss how Mitigation Measure 3.3-10 would mitigate a potentially toxic inadvertent release of drilling mud into a water body during pilot hole drilling or borehole reaming, or, alternatively, require that HDD drilling mud contain no chemicals that are acutely hazardous to aquatic environments. Mitigation Measure 3.3-10 requires the deployment of containment and cleanup equipment to respond to spills, including portable pumps, silt fencing, and fiber rolls. Silt fencing would be installed between a bore site and any water or wetland, which would prevent drilling muds consisting of a bentonite-clay-water mixture from being spilled into a water or wetland. Further, if a spill does occur, this mitigation measure requires that drilling immediately cease and that spill prevention and control measures be immediately deployed, including the use of pumps as necessary and that affected water be dammed and flumed until the spill is contained and removed. Page 3.3-66 of the Draft EIR has been revised accordingly to include this information (refer to Chapter 4, "Revisions to the Draft EIR"). In addition, Mitigation Measure 3.3-10 on pages ES-16, ES-17, 3.3-66 and 3.8-22 of the Draft EIR has been revised to specify that drilling mud must not contain any hazardous materials (refer to Chapter 4, "Revisions to the Draft EIR").

Comment A12-19
Recreation

11. Water-based recreation: Please have the EIR discuss whether there is any water-based recreation that occurs in the waterbodies that have potential brine pipeline crossings. If so, the EIR should discuss and analyze whether any water-based recreation could be affected by HDD, microtunneling, or pipeline bridge installation activities and propose feasible mitigation.

Response A12-19
The comment requests that the Draft EIR identify impacts on water-based recreation and propose feasible mitigation. This comment is addressed in Response A9-12. As discussed in the response, there are no water-based recreation areas in Cargill's Solar Salt Facility, which is used for salt-making operations and is closed to the public. The MSS brine transport pipeline would cross several waterways identified in Table 2-2 of the Draft EIR; however, trenchless crossing methods would be used to avoid in-water work at these locations. Furthermore, these water crossings would be limited primarily to engineered flood control channels within public utility rights-of-way that are inaccessible to the public. Crossing 4 (Thornton Avenue and Gateway Boulevard Drain) is within the Don Edwards San Francisco Bay National Wildlife Refuge; however, this area is also inaccessible to the public. Crossing 7 (Crandall Creek/Alameda Creek Flood Control Channel) is within Coyote Hills Regional Park; however, no water-based recreation areas are present. Therefore, there are no publicly accessible water-based recreation areas where HDD, microtunneling, or pipeline bridge installation activities would occur. Implementing the project would not result in impacts on water-based recreation, and no mitigation is required. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Comment A12-20
Environmental Justice

12. Environmental justice is defined by California law as "the fair treatment and meaningful involvement of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." (Gov. Code § 65040.12) This definition is consistent with the Public

Trust Doctrine's principle that management of trust lands is for the benefit of all people. The Commission adopted an updated Environmental Justice Policy and Implementation Blueprint in December 2018 to ensure that environmental justice is an essential consideration in the agency's processes, decisions, and programs. The twelve goals outlined in the Policy reflect an urgent need to address the inequities of the past, so they do not continue. Through its policy, the Commission reaffirms its commitment to an informed and open process in which all people are treated equitably and with dignity, and in which its decisions are tempered by environmental justice considerations.

Although not legally required in a CEQA document, Commission staff suggests that EBDA include a section in the Final EIR describing any environmental justice community outreach and engagement undertaken and the results of such outreach. The California Office of Environmental Health Hazard Assessment developed the CalEnviroScreen mapping tool to assist agencies with locating census tracts near proposed projects and identifying the environmental burdens, should there be any, that disproportionately impact those communities. Environmental justice communities often lack access to the decision-making process and experience barriers to becoming involved in that process. It is crucial that these communities are consulted as early as possible in the project planning process. Commission staff strongly recommends using the BCDC Community Vulnerability Tool and the climate change map developed by the Delta Stewardship Council, Vulnerability to Climate Change in the Delta. Then, as applicable, EBDA should reach out through local community organizations, such as the California Environmental Justice Alliance. In this manner, the CEQA public comment process can improve and provide an opportunity for more members of the public to provide input related to environmental justice. Commission staff also recommends incorporating or addressing opportunities for community engagement in mitigation measures. Commission staff will review the environmental justice outreach and associated results as part of any future Commission action.

Response A12-20

The comment requests that the Final EIR include a section describing any environmental justice community outreach and engagement undertaken and the results of such outreach. This comment is noted, and EBDA acknowledges that an assessment of environmental justice is an essential consideration in CSLC's processes, decisions, and programs. As the comment notes, a discussion of such considerations is not required by CEQA. This comment is similar to Comment A9-28; please refer to Response A9-28, regarding environmental justice considerations, community outreach that was conducted for the project pursuant to CEQA, and vulnerable communities identified near the project site using BCDC's Community Vulnerability Tool. The project site is not located in the Sacramento–San Joaquin Delta and is not included in the climate change map developed by the Delta Stewardship Council; therefore, no further discussion of this topic is provided.

The comment further recommends that the Draft EIR identify opportunities for community engagement in mitigation measures. Mitigation Measure 3.9-1 requires that public notices with information on how the public can file noise or vibration complaints during construction activities be posted at job sites. Mitigation Measure 3.10-1 requires the project proponent to provide public notices regarding any planned park, trail, and recreational facility closures and detours. The Draft EIR does not identify any other significant impacts that would require community engagement as a mitigation measure. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Comment A12-21

Thank you for the opportunity to comment on the EIR for the Project. As a responsible and trustee agency, the Commission will rely on the Final EIR to issue a new lease as specified above (see Section "Commission Jurisdiction and Public Trust Lands"). We request that you consider our comments before certifying the EIR.

Response A12-21

The comment requests that CSLC comments are considered before the EIR is certified. Page 1-5 of the Draft EIR recognizes CSLC as a trustee and responsible agency with authority to review and consider permits and approvals for portions of the project on state lands. EBDA appreciates CSLC's review and consideration of the Draft EIR and looks forward to further coordination. Each of CSLC's comments has been considered, and responses have been provided. As noted in the responses above, revisions to the Draft EIR were made where required under CEQA.

Comment A12-22
Please send electronic copies of the Final EIR, Mitigation Monitoring Program, and Notice of Determination, approving resolution, CEQA Findings, and, if applicable, Statement of Overriding Considerations when they become available. Please note that federal and state laws require all government entities to improve accessibility of information technology and content by complying with established accessibility requirements. (29 U.S.C. § 794d; 36 C.F.R. § 1194.1 et seq.; Gov. Code, § 7405.) California State law prohibits State agencies from publishing on their websites content that does not comply with accessibility requirements. (Gov. Code, § 115467.) Therefore, any documents submitted to Commission staff during the processing of a lease or permit, including all CEQA documentation, must meet accessibility requirements for Commission staff to place the application on the Commission agenda.

Response A12-22
The comment requests electronic copies of the Final EIR, mitigation monitoring and reporting program, notice of determination, approving resolution, CEQA findings, and, if applicable, statement of overriding considerations. The comment also notes that any documents submitted to CSLC staff during the processing of a lease or permit, including all CEQA documentation, must meet accessibility requirements. This comment is noted. EBDA will transmit electronic copies of the CEQA documents to CSLC as these documents become available. The documents will be prepared to meet applicable accessibility requirements. This comment is not related to the adequacy of the CEQA document. No further response is required.

Comment A12-23
Refer questions concerning environmental review to Alexandra Borack, Senior Environmental Scientist, at Alexandra.Borack@slc.ca.gov or (916) 574-2399. For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Jamie Garrett, Staff Attorney, at Jamie.Garrett@slc.ca.gov or (916) 574-0398. For questions concerning Commission leasing jurisdiction, please contact George Asimakopoulos, Public Land Management Specialist II, at George.Asimakopoulos@slc.ca.gov or (916) 574-0990.

Response A12-23
The comment provides contact information for CSLC staff. EBDA will coordinate with the identified staff if questions arise. This comment is not related to the adequacy of the CEQA document. No further response is required.

3.2.3 Organizations

Letter O1 Save the Bay and Citizens Committee to Complete the Refuge

David Lewis, Executive Director, Save the Bay
Carin High, Co-chair, Citizens Committee to Complete the Refuge
February 17, 2023

Comment O1-1
We appreciate this opportunity to comment on the project draft EIR, in the interest of ensuring that the Authority thoroughly examines and pursues alternatives that avoid significant impacts to San Francisco Bay and minimizes any unavoidable significant impacts.

Response O1-1
This comment provides introductory remarks and is not related to the adequacy of the CEQA document. No further response is required.

Comment O1-2
Save The Bay is the largest organization working to protect and restore San Francisco Bay for people and wildlife, now in its 62nd year. The Citizens Committee to Complete the Refuge was established in 1965 because current and future generations of bay area residents deserve a clean, healthy, sustainable and vibrant San Francisco Bay. We

submit these comments on behalf of the thousands of Save The Bay and Citizens Committee to Complete the Refuge supporters throughout the San Francisco Bay Area.

Response O1-2

This comment provides background information about the organizations providing comments and is not related to the adequacy of the CEQA document. No further response is required.

Comment O1-3

A significant deficiency of the draft EIR is its failure to thoroughly characterize the baseline environmental condition of the project site, especially the risk of discharge from Newark Ponds 12 and 13 under current Cargill salt-making operations and planned salt-making operations during the years between now and when the project is designed, approved, permitted, constructed and begins operation. Until such time as the project is successfully operating to reduce the net volume of mixed sea salts (MSS) in ponds 12 and 13, the contents of those ponds will continue to increase from ongoing salt-making operations.

This deficiency must be addressed and corrected in the final EIR to meet CEQA's objectives of providing the Authority and the public with complete and accurate information on which to base EIR certification and project adoption, and providing regulatory agencies with complete information on which to rely in their consideration of permits for the project.

Response O1-3

The comment states that the Draft EIR fails "to thoroughly characterize the baseline environmental condition of the project site, especially the risk of discharge from Newark Ponds 12 and 13," and that MSS will continue to accumulate from Cargill's ongoing salt-making operations between the present day and the time at which the project would begin operating. This comment is similar to Comment A9-7, above. Please refer to Response A9-7, regarding the Draft EIR's discussion of the baseline environmental conditions of the project, including the current inventory of MSS in Ponds 12 and 13, the expected accumulation of MSS from Cargill's ongoing salt-making operations without the project, and projections regarding the volume of MSS that would be processed and removed from these ponds each year as a result of the project. The Draft EIR and the information in Response A9-7 include a characterization of the baseline environmental condition as requested in this comment.

The risk of MSS discharge from Ponds 12 and 13 is not an impact of the project, but a consequence of maintaining the project site in its current condition (i.e., implementing the No Project-No Development Alternative). Pages 5-6 through 5-10 include a discussion of the environmental impacts associated with the No Project-No Development Alternative, including impacts that would result from the release of high salinity brine into the Bay in the event of a future berm failure from increased wind and wave action triggered by sea level rise. As stated on page 5-6 of the Draft EIR, the risk of a brine release from sea level rise is not an immediate threat, but this risk would increase over the next 20 to 50 years if the project is not implemented. CEQA does not require an evaluation of environmental impacts as a result of existing conditions at the Solar Salt Facility, nor does it require implementation of mitigation measures to reduce impacts resulting from existing conditions at the Solar Salt Facility.

Because the Draft EIR and revisions to the Draft EIR in response to Comment A9-7 include a characterization of the baseline environmental condition, as requested in this comment, no further revisions to the Draft EIR are necessary in response to this comment.

Comment O1-4

The DEIR acknowledges in the summary description of the No Development Alternative (ES-3) some of the risks that current storage of MSS in ponds 12 and 13 poses to San Francisco Bay, and that "more would accumulate:"

> No Project–No Development Alternative assumes no changes to existing facilities and operations at Cargill's Solar Salt Facility. The project site would remain in its current condition and Cargill would continue to produce salt products consistent with existing operations. The approximately 6 million tons of existing residual MSS would continue to be stored in Ponds 12 and 13 and more would accumulate. Over the next 20

to 50 years, rising sea levels would increase the risk of Bay water overtopping containment berms and releasing MSS brine into the Bay.

This comment is similar to Comments A9-7 and A9-19, above. Please refer to Response A9-7, regarding the accumulation of MSS from Cargill's ongoing salt-making operations, and Response A9-19, regarding the environmental impacts of the No Project-No Development Alternative, including impacts from potential releases of MSS into the Bay.

Response O1-4

The comment restates and summarizes the description of the No Project-No Development Alternative. It also states that the Draft EIR does not characterize the risks of Cargill's ongoing salt-making operations on water quality, habitat, and wildlife, which would increase until the project is implemented.

This comment is similar to Comments A9-7 and A9-19, above. Please refer to Response A9-7, regarding the accumulation of MSS from Cargill's ongoing salt-making operations, and Response A9-19, regarding the environmental impacts of the No Project-No Development Alternative, including impacts from potential releases of MSS into the Bay.

Comment O1-5

Cargill's current and ongoing salt-making operations ensure that the volume of MSS in ponds 12 and 13 continues to increase, and may already have increased as a result of salt harvest and processing in the fall of 2022 and recent significant rainfall. The berms separating that material from the Bay are being maintained at a constant height, or may be lowered by erosion and settling over the years before this pipeline project becomes operational and begins reducing the volume of stored MSS.

The EIR should include information on how much liquid and solid MSS is added to the ponds each year, how much annual rainfall and above-average precipitation in the current rainfall year has increased the volume of liquid in the ponds, how much space remains in the ponds for additional MSS with the current configuration and height of pond berms, and whether that capacity will be exceeded with ongoing addition of material from salt-making operations and annual projected precipitation-minus-evaporation over the next several years until a pipeline could be operating.

These details and foreseeable projections should be included in the EIR's establishment of the environmental baseline and site conditions, as the snapshot figure of current volume provided by Cargill – "6 million tons" of MSS – provides an incomplete and misleading characterization of the baseline.

Response O1-5

The comment requests additional information regarding the accumulation of MSS in the ponds between fall 2022 and the time at which the project could begin operating and claims that the Draft EIR's characterization of baseline conditions is incomplete. This comment is similar to Comments A9-7 and A9-21, above. Please refer to Response A9-7, regarding the accumulation of MSS from Cargill's ongoing salt-making operations. In addition, Response A9-21 discusses the condition of the berms surrounding Ponds 12 and 13. As discussed in Response A9-21, the issue of berm stability is being addressed as part of Cargill's application to BCDC for renewal of its current operations and maintenance permit, which is not part of this project; the environmental impacts of those activities are evaluated in a 2021 environmental assessment (BCDC and Cargill 2021). No further revisions to the Draft EIR are required in response to this comment.

Comment O1-6

The draft EIR also incorrectly and inappropriately dismisses comments BCDC submitted in response to the notice of preparation (NOP) regarding characterization of the geology and "potential seismic safety of the existing berms surrounding Ponds 12 and 13." This information should appropriately be included in the EIR's description and characterization of the baseline condition of the project site, independent of the project's impact on the environment. The DEIR suggests BCDC's concerns are invalid considerations for the project, stating "The project has not been proposed out of concern that environmental factors, such as seismic events, pose an immediate threat to the integrity of the berms."

On the contrary, BCDC's NOP comments are evidence of precisely that concern about environmental factors, which were also the focus of an extensive public hearing by BCDC's Engineering Criteria Review Board with Cargill to investigate berm integrity on November 16, 2022 (see https://bcdc.ca.gov/ecrb/2022ecrb_mtng.html) and a subsequent request to Cargill from BCDC for additional investigation and information (see attached letter of December 20, 2022).

Response O1-6

The comment states that the Draft EIR dismisses BCDC comments regarding the characterization of the geology and seismic safety of existing berms surrounding Ponds 12 and 13. This comment is similar to Comment A9-21, above. Please refer to Response A9-21, which discusses the condition of the berms surrounding Ponds 12 and 13. As discussed in Response A9-21, the issue of berm stability is being addressed as part of Cargill's application to BCDC for renewal of its current operations and maintenance permit, which is not part of this project; the environmental impacts of those activities are evaluated in a 2021 environmental assessment (BCDC and Cargill 2021).

Comment O1-7

The DEIR also incorrectly dismisses concerns BCDC has raised by noting Cargill's "proposed" implementation of sea level rise adaptation efforts through a permit application to BCDC. But Cargill's proposals have not been fully considered nor approved by BCDC or the Regional Water Quality Control Board. Significant questions have been raised about the appropriateness and permissibility of the proposal to install vinyl sheets to increase the resilience of berms, and to raising the height of berms without additional reinforcement of berm cores.

Proposed changes to the berms whose approval remains in significant doubt should not be assumed in the EIR as part of the description of baseline site conditions, nor as a reason to dismiss recommended additions to the EIR from agencies that require an adequate CEQA document on which to base their permitting deliberations for the project.

Response O1-7

The comment states that the Draft EIR dismisses BCDC concerns regarding sea level rise adaptation efforts, including berm reinforcement. It states that berm improvements should not be considered in the baseline conditions of the Draft EIR.

Page 2-2 of the Draft EIR states the objectives of the project. Fortifying the ponds in which MSS is held is not one of the objectives of the proposed project or part of its description. As stated on page 3.5-1, fortifying the ponds in which MSS is held is being considered by BCDC as part of a separate project to renew Cargill's existing operations and maintenance permit, which is concerned primarily with ongoing maintenance of the berms. Page 2-6 of the Draft EIR describes the baseline conditions related to the earthen berms at the Solar Salt Facility. Consistent with State CEQA Guidelines Section 15125, this description of the earthen berms reflects the existing conditions at the time the NOP was published. The Draft EIR does not assume that the MSS pond berms would be managed differently as part of the project baseline, because, as noted in other responses above, the proposed project would not involve any changes to the configuration or stability of the berms. Rather, the project would include the installation of an on-site piping distribution system that would be installed above grade along the internal slopes of the existing berms. The condition of the berms with regard to resiliency and stability is outside the scope of this analysis.

BCDC has circulated and accepted public comments on the draft environmental assessment that it prepared, along with Cargill's operations and maintenance permit application. An analysis of the proposed changes to the berms in the context of Cargill's operations and maintenance permit is outside the scope of this project EIR, which assesses the impacts of new salt-processing infrastructure. BCDC has not identified any discretionary approvals that it would need to consider in furtherance of this project that require the requested analysis. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Comment O1-8

We urge the Authority to remedy these significant deficiencies in the DEIR to ensure that the final document provides a robust environmental baseline against which to assess alternatives and impacts, that meets the CEQA standard and

provides the Authority, permitting agencies and the public with the information necessary to support decisions regarding the project.

Thank you for your consideration.

Response O1-8

The comment provides closing remarks and does not identify specific issues related to the adequacy of the CEQA document. Specific concerns expressed by the commenter are addressed in Responses O1-3 through O1-7. No further response is required.

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4 REVISIONS TO THE DRAFT EIR

This chapter presents specific text changes made to the Draft EIR since its publication and public review. The changes are identified by the Draft EIR page number. Text deletions are shown in strikethrough (~~strikethrough~~), and text additions are shown in underline (underline). It should be noted that revisions to the mitigation measures presented in the Draft EIR are only shown in Section 4.1, "Revisions to the 'Executive Summary' Chapter" of this Final EIR. For the sake of brevity, the mitigation measures in the respective environmental resource sections of the Draft EIR are modified in the same way, although these duplicate revisions are not repeated herein.

The information contained in this chapter clarifies and expands on information in the Draft EIR and does not constitute "significant new information" requiring recirculation. (See the responses in Section 3.2, "Comments and Responses"; see also CEQA Section 21092.1 and State CEQA Guidelines Section 15088.5.)

4.1 REVISIONS TO THE "EXECUTIVE SUMMARY" CHAPTER

In response to comments on the Draft EIR, the following text on page ES-3 of the Draft EIR has been revised as follows to reflect the diameter of the MSS brine transport pipeline shown on the most current design plans:

- MSS Brine Transport Pipeline. ~~A 14-inch~~ A 16-inch inside diameter (18-inch outside diameter) MSS brine transport pipeline would be constructed and extend north primarily along roadway rights-of-way for approximately 15.6 miles from the Solar Salt Facility to the Oro Loma Effluent Pump Station (OLEPS), located at the Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant in San Lorenzo.

In response to comments on the Draft EIR, the text on page ES-4 in Section ES.2.5 has been revised as shown below to identify Alameda County Water District (ACWD), Alameda County Public Works Agency (ACPWA), and Union Sanitary District (USD) as responsible agencies. In addition, the text has been revised to identify the San Francisco Bay Conservation and Development Commission (BCDC) as a state agency rather than a local agency.

State

- San Francisco Bay Conservation and Development Commission (BCDC): BCDC Permit and Coastal Zone Management Act Consistency Determination
- San Francisco Regional Water Quality Control Board (RWQCB): Clean Water Act Section 401 Water Quality Certification; NPDES construction stormwater permit (Notice of Intent to proceed under General Construction Permit), discharge permit for stormwater, general order for dewatering
- California Department of Fish and Wildlife (CDFW): California Fish and Game Code (CFGC) Section 2081 Incidental Take Permit for California Endangered Species Act listed species; CFGC Section 1602, Lake and Streambed Alteration Agreement
- Caltrans: Encroachment permits for activities affecting state highways
- California State Lands Commission (CSLC): Land leases for Public Trust Lands
- Office of Historic Preservation (OHP): National Historic Preservation Act (NHPA) Section 106 Consultation through the federal lead agency (USACE)

Local

- ~~Alameda County: Routine development permits, such as grading and noise permits~~
- Alameda County Flood Control and Water Conservation District: Easements, licenses and/or encroachment permits for crossing flood control/engineered channels and storm drains

- Alameda County Public Works Agency (ACPWA): Routine development permits, such as grading and noise permits; easements or encroachment permits for crossing streets, bridges, and flood control facilities, such as stormwater conveyance infrastructure; drilling and well permits for subsurface drilling activities within the city of Hayward and unincorporated areas of Alameda County
- Alameda County Water District (ACWD): Drilling permits for subsurface drilling activities within the cities of Fremont, Newark, and Union City; approval of activities subject to ACWD Ordinance No. 2010-01 (Well Ordinance); review and approval of dewatering plans
- Bay Area Air Quality Management District (BAAQMD): Permit to construct and permit to operate
- Cities of Newark, Fremont, Union City, and Hayward~~, and Alameda County~~: Routine development permits, such as encroachment, grading, and noise permits, and agreements for private pipeline placement in public rights-of-way under the Franchise Act of 1937 and the Charter of the City of Hayward
- East Bay Dischargers Authority (EBDA): Operations agreement with Cargill
- East Bay Regional Park District: Easement, license and/or encroachment permit for activities on East Bay Regional Park District lands; approval for temporary trail closures or access interruptions
- Hayward Regional Shoreline Planning Agency: approval for temporary trail closures or access interruptions
- San Mateo County Transit District (SamTrans): Easement, license and/or encroachment permit or other limited easement or access agreement for crossing underneath the Dumbarton Rail Corridor owned by SamTrans, to the extent Cargill does not have an existing easement for such a crossing
- Union Pacific Railroad Company (UPRR): Plan approval by Chief Engineer of UPRR for crossing underneath rail lines owned by UPRR
- Union Sanitary District (USD): Encroachment permit and/or agreements for activities within USD rights-of-way, including horizontal directional drill (HDD) crossings; conditional discharge permit for dewatering activities that require discharge into the USD sanitary sewer system
- ~~San Francisco Bay Conservation and Development Commission (BCDC): BCDC Permit and Coastal Zone Management Act Consistency Determination~~
- San Francisco Public Utilities Commission (SFPUC): Easement, license and/or encroachment permits for crossing Hetch Hetchy Aqueduct and Bay Tunnel, to the extent Cargill does not have an existing easement for such a crossing

In response to a comment on the Draft EIR, the text of Mitigation Measure 3.3-4 on pages ES-11 and ES-12 of the Draft EIR has been revised as shown below to remove reference to preconstruction surveys, which are not part of the protocol-level survey methods for this species. Identical text also appears on pages 3.3-59 and 3.3-60 in Section 3.3, "Biological Resources," of the Draft EIR and is modified in the same way.

> Mitigation Measure 3.3-4: Conduct Protocol-Level Surveys and Implement Protective Buffers for California Ridgway's Rail
>
> Where feasible, project construction activities in suitable nesting habitat for California Ridgway's rail will not occur during the breeding season (February 1 through August 31).
>
> If project activities during the breeding season within suitable nesting habitat for the California Ridgway's rail are unavoidable, a qualified permitted biologist will conduct ~~two surveys prior to construction activities. The first survey would be~~ a protocol-level survey between January 15 to April 15 and within a year before construction begins ~~in the spring of the year of construction. The second survey would be a preconstruction survey conducted at least 14 days prior to construction in the areas where suitable habitat is present.~~ The survey~~s~~ will occur in suitable habitats within a 700-foot buffer around the project area. Survey methods would follow USFWS-approved Site Specific Protocols for Monitoring Marsh Birds: Don Edwards San

Francisco Bay and San Pablo Bay National Wildlife Refuges (USFWS 2017). If California Ridgway's rails are confirmed to be present, additional coordination with CDFW and USFWS will be required.

If protocol surveys identify breeding California Ridgway's rails within 700 feet of the project area, no construction activities will occur within 700 feet of suitable habitat during the breeding season (February 1 through August 31) unless authorization is obtained from CDFW and USFWS.

If the surveys confirm that there are no breeding California Ridgway's rails within 700 feet of the project area, work activities could occur during the breeding season (February 1 through August 31). ~~If construction activities pause for more than 14 days, another preconstruction nesting California Ridgway's rail survey will be conducted before construction can resume in suitable habitat.~~ If Ridgway's rail is observed during biological monitoring within the rail nesting season, work will stop within 700 feet of the observation and Cargill will coordinate with USFWS and CDFW to determine appropriate measures.

Use of heavy equipment in suitable habitat will be minimized to the maximum extent practicable.

In response to a comment on the Draft EIR, the text of Mitigation Measure 3.3-10 on pages ES-16 and ES-17 of the Draft EIR has been revised as shown below to specify that drilling mud must not contain any hazardous materials. Identical text also appears on page 3.3-66 in Section 3.3, "Biological Resources," and page 3.8-22 in Section 3.8, "Hydrology and Water Quality," of the Draft EIR and is modified in the same way.

Mitigation Measure 3.3-10: Implement Directional Drilling Fluid Containment Measures

Prior to directional drilling activities, containment and cleanup equipment, such as portable pumps, silt fence, and fiber rolls, will be present for use at the staging areas and active construction site. At high-risk boring locations directly adjacent to or under waterbodies or wetlands, damming and flume materials will be pre-staged. During directional drilling activities, construction crews will monitor bentonite flow and returns so that fluid loss can be identified before the material surfaces. Silt fencing or equivalent will be installed between the bore site and any water or wetland. This will prevent the bentonite mixture from entering the water or wetland should a spill occur. If a spill is detected in a water or wetland, drilling will immediately cease, and spill prevention and control measures will immediately be employed. If the mixture flows to the surface of a water, a pump will be used to pump it to a safe location within a BMP. If a release occurs in a water, the water will be immediately dammed and flumed and the bentonite mixture will be contained and removed. The appropriate permitting agencies will be contacted including the San Francisco Bay RWQCB. In addition, drilling mud must not contain any chemicals that are acutely hazardous to aquatic environment, as confirmed by Material Safety Data Sheets.

In response to a comment on the Draft EIR, the text of Mitigation Measure 3.3-13 on pages ES-18 through ES-20 of the Draft EIR has been revised as shown below to include BCDC as an agency with jurisdiction for determining compensatory mitigation requirements. Identical text also appears on pages 3.3-75 and 3.3-76 in Section 3.3, "Biological Resources," of the Draft EIR and is modified in the same way.

Mitigation Measure 3.3-13: Mitigate for Unavoidable Impacts to Wetlands and Other Waters of the United States/State

Before initial ground disturbance or vegetation removal activities begin within areas that may contain wetlands and other waters, the following measures, which are intended to avoid and minimize impacts on state or federally protected wetlands, shall be implemented.

A qualified biologist will delineate the boundaries of state or federally protected wetlands within the project site according to methods established in the USACE wetlands delineation manual (Environmental Laboratory 1987) and the Western Mountains, Valleys, and Coast regional supplement (USACE 2010). The qualified biologist will also delineate the boundaries of wetlands that may not meet the definition of waters of the United States, but would qualify as waters of the state, according to the state wetland definition and procedures (SWRCB 2021).

If state or federally protected wetlands are determined to be present within a work area and can be avoided, the qualified biologist will establish a buffer around wetlands and mark the buffer boundary with high-visibility flagging, fencing, stakes, or clear, existing landscape demarcations (e.g., edge of a roadway). The buffer will be a minimum width of 25 feet but may be larger if deemed necessary. The appropriate size and shape of the buffer zone will be determined in coordination with the qualified biologist and will depend on the type of wetland present, the timing of project activities (e.g., wet or dry time of year), whether any special-status species may occupy the wetland and the species' vulnerability to the project activities, environmental conditions and terrain, and the project activity being implemented.

Project activities (e.g., ground disturbance, vegetation removal, staging) will be prohibited within the established buffer. A qualified biologist will periodically inspect the materials demarcating the buffer to confirm that they are intact and visible, and wetland impacts are being avoided.

If it is determined that fill of waters of the United States would result from project implementation, authorization for such fill will be secured from USACE through the Section 404 permitting process. Any waters of the United States that would be affected by the project will be replaced or restored on a no-net-loss basis in accordance with USACE mitigation guidelines. In association with the Section 404 permit (if applicable) and prior to the issuance of any grading permit, Section 401 Water Quality Certification from the San Francisco RWQCB will be obtained.

If it is determined that disturbance or fill of state protected wetlands, or any other waters of the state cannot be avoided, the implementing party will notify CDFW, ~~and~~ the San Francisco RWQCB, and BCDC before commencing any activity within the bed ~~or~~, bank, or riparian corridor of any waterway and will notify the RWQCB before commencing any activity within a state wetland. If project activities trigger the need for a Streambed Alteration Agreement, the proponent will obtain an agreement from CDFW before the activity commences. Project construction activities will be implemented in accordance with the agreement, including implementing reasonable measures in the agreement necessary to protect ~~the~~ fish and wildlife resources, when working within the bed or bank of waterways that function as a fish or wildlife resource or in riparian habitats associated with those waterways. The applicant will apply for a permit from the San Francisco RWQCB for any activity that may result in discharges of dredged or fill material to waters of the state. The application will be completed in accordance with state procedures (SWRCB 2021).

If it is determined that fill in any water, land, or structure within BCDC jurisdiction would result from project implementation, authorization for such fill will be secured from BCDC through its permitting process before the activity commences.

State or federally protected waters and wetlands disturbed during project activities will be restored to pre-disturbance conditions or better. Restoration ~~would~~ will include restoring pre-disturbance contours, hydrology, and vegetation. Temporary impacts to wetlands ~~would~~ will require preparation of a restoration plan which details how wetlands ~~would~~ will be restored and ~~would~~ will require implementation of a monitoring plan to ensure the restoration is successful. Permanent impacts to wetlands and other waters of the United States will be replaced in accordance with USACE regulations to achieve "no net loss" of area or function of waters of the United States, including wetlands.

Permanent impacts to waters of the state will be compensated in accordance with the state procedures, such that the project would not result in a net loss of overall abundance, diversity, and condition of aquatic resources within the affected watershed based on a watershed assessment using an assessment method approved by the San Francisco RWQCB or State Water Resources Control Board.

To the degree feasible and acceptable to the agencies with jurisdiction, restoration, rehabilitation, and/or replacement of jurisdictional waters for permanent impacts will be mitigated in-kind and completed on-site at a location agreeable to USACE, ~~and~~ the RWQCB, and BCDC in accordance with USACE, ~~and~~ San Francisco RWQCB, and BCDC mitigation guidelines. Any permanent impacts that cannot be mitigated through on-site restoration, rehabilitation, and/or replacement will be compensated through purchase of mitigation credits at a USACE/San Francisco RWQCB/BCDC-approved mitigation bank.

Based on consultation with Native American tribes culturally affiliated with the project area, the text of Mitigation Measure 3.4-2a on page ES-26 of the Draft EIR has been revised as shown below to specify additional requirements for the development of a Worker Environmental Awareness Program. Identical text also appears on page 3.4-20 in Section 3.4, "Cultural and Tribal Cultural Resources," of the Draft EIR and is modified in the same way.

> Mitigation Measure 3.4-2a: Develop and Implement a Worker Environmental Awareness Program
> Before the start of any ground disturbing construction activities, a qualified professional archaeologist (one who meets the Secretary of the Interior's Professional Qualification Standards for archaeology) shall develop a construction worker awareness brochure for all construction personnel. The brochure will be developed in coordination with representatives from the following Native American tribes culturally affiliated with the project area: Confederated Villages of Lisjan and Northern Valley Yokut/Ohlone/Patwin. The topics to be addressed in the Worker Environmental Awareness Program will include, at a minimum:
>
> - types of archaeological and tribal cultural resources expected in the project area;
> - what to do if a worker encounters a possible resource;
> - what to do if a worker encounters bones or possible bones; and
> - penalties for removing or intentionally disturbing archaeological and tribal cultural resources, such as those identified in the Archeological Resources Protection Act.

In response to comments on the Draft EIR and based on consultation with Native American tribes culturally affiliated with the project area, the text of Mitigation Measure 3.4-2b on pages ES-26 and ES-27 of the Draft EIR has been revised as shown below to require coordination with those tribes in the event archaeological material that is Native American in nature is found during construction and to require coordination with the CSLC for any resources recovered under CSLC jurisdiction. Identical text also appears on page 3.4-20 in Section 3.4, "Cultural and Tribal Cultural Resources," of the Draft EIR and is modified in the same way.

> Mitigation Measure 3.4-2b: Halt Ground-Disturbing Activity upon Discovery of Subsurface Archaeological Features
> If any precontact or historic-era subsurface archaeological features or deposits (e.g., ceramic shard, trash scatters), including locally darkened soil ("midden"), which may conceal cultural deposits, are discovered during construction, all ground-disturbing activity within 100 feet of the resources shall be halted, and a qualified professional archaeologist (one who meets the Secretary of the Interior's Professional Qualification Standards for archaeology) shall be retained to assess the significance of the find. If the qualified archaeologist determines the archaeological material to be Native American in nature, Cargill shall be required by EBDA to contact the following Native American tribes culturally affiliated with the project area: Confederated Villages of Lisjan and Northern Valley Yokut/Ohlone/Patwin ~~appropriate California Native American tribe~~. A tribal representative from these tribes~~a California Native American tribe that is traditionally and culturally affiliated with the project area~~ may make recommendations for further evaluation and treatment as necessary and provide input on the preferred treatment of the find. If the find is determined to be significant by the archaeologist or the tribal representative (i.e., because it is determined to constitute a unique archaeological resource or a tribal cultural resource, as appropriate), the archaeologist and tribal representative, as appropriate, shall develop, and Cargill shall be required by EBDA to implement, appropriate procedures to protect the integrity of the resource and ensure that no additional resources are affected. Procedures may include but would not necessarily be limited to preservation in place (which shall be the preferred manner of mitigating impacts on archaeological and tribal sites), archival research, subsurface testing, or contiguous block unit excavation and data recovery (when it is the only feasible mitigation, and pursuant to a data recovery plan). No work at the discovery location shall resume until all necessary investigation and evaluation of the resource has been satisfied. The final disposition of any archaeological, historical, or paleontological resources recovered on state land under the jurisdiction of the California State Lands Commission (CSLC) shall also be approved by the CSLC.

In response to a comment on the Draft EIR and based on consultation with Native American tribes culturally affiliated with the project area, the text of Mitigation Measure 3.4-3 on page ES-27 of the Draft EIR has been revised as shown below to include a requirement for monitoring by a tribal monitor/consultant approved by those tribes during ground-disturbing activities in certain potentially sensitive areas. Identical text has also appears on page 3.4-21 in Section 3.4, "Cultural and Tribal Cultural Resources," of the Draft EIR and is modified in the same way.

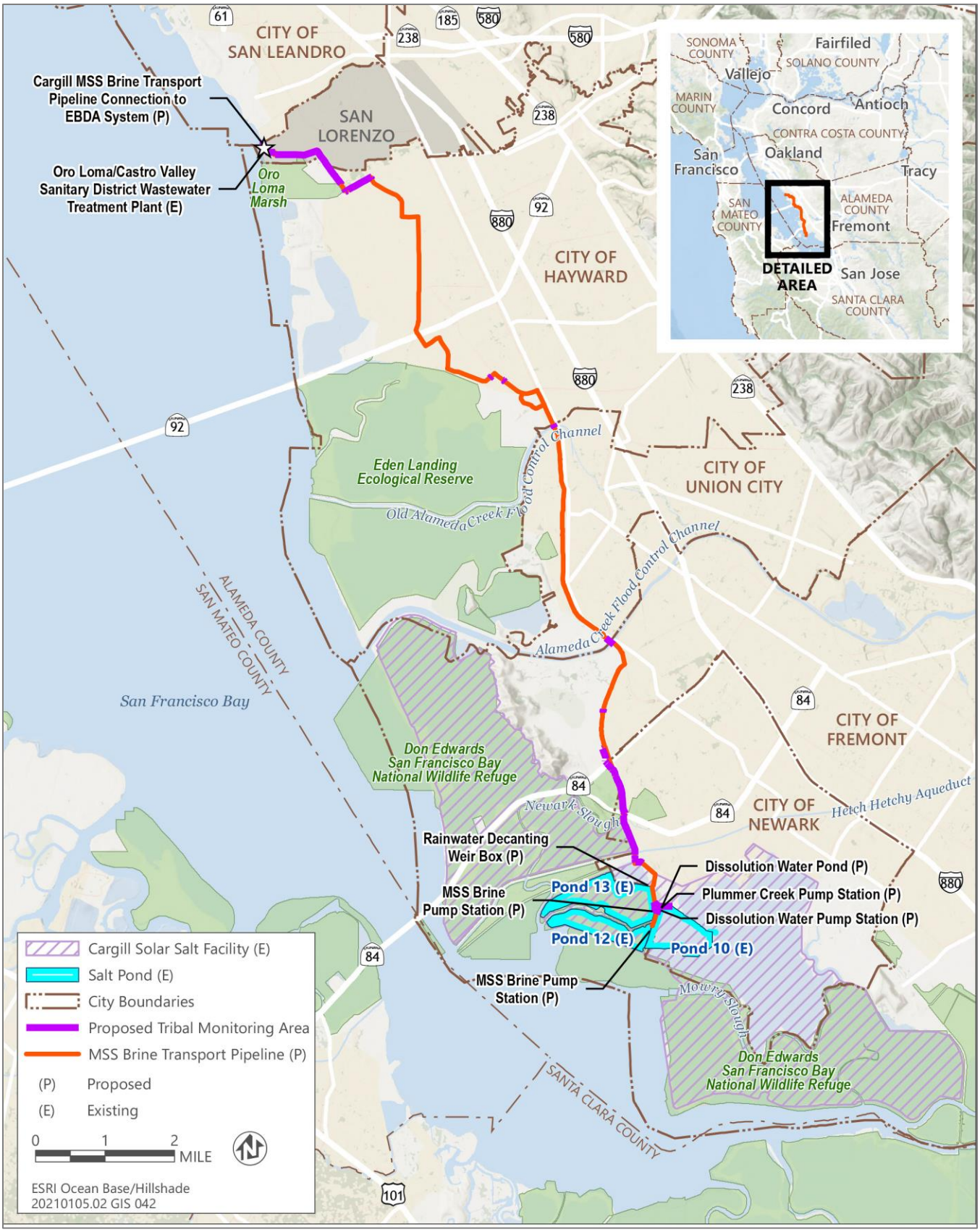
~~Implement Mitigation Measures 3.4-2a and 3.4-2b.~~

Mitigation Measure 3.4-2a: Develop and Implement a Worker Environmental Awareness Program

Mitigation Measure 3.4-2b: Halt Ground-Disturbing Activity upon Discovery of Subsurface Archaeological Features

Mitigation Measure 3.4-3: Protect Unidentified Tribal Cultural Resources

EBDA will require Cargill to invite a tribal monitor/consultant who is approved by one or both of the following Native American tribes culturally affiliated with the project area, Confederated Villages of Lisjan and Northern Valley Yokut/Ohlone/Patwin, to monitor ground-disturbing activities that are associated with construction of the MSS brine transport pipeline and involve grading, tree removal, boring, excavation, drilling, or trenching in areas with native soils that will occur within 100 feet of a waterway or a known tribal cultural site. Areas of these anticipated ground-disturbing activities are shown in purple in Figure 3.4-1; areas with trenching/disturbance at man-made berms are not anticipated to be of interest. Before construction begins, Cargill shall coordinate with the representatives of the culturally affiliated tribes to determine which tribe will be contacted to provide the tribal monitor/consultant for each area of the project identified in Figure 3.4-1. Cargill shall contact the appropriate tribal representative by email and phone a minimum of 3 days before beginning ground-disturbing activities in the areas identified on Figure 3.4-1, and the tribal representative or their tribal monitor/consultant shall confirm attendance at least 24 hours before ground-disturbing activities are scheduled to begin. If confirmation is not provided, ground-disturbing activities may proceed without the presence of a tribal monitor/consultant. The tribal monitor/consultant shall complete daily monitoring logs that describe each day's activities, including construction activities, locations and type of soil disturbed, and any cultural materials identified. The monitoring logs shall be emailed to the tribal representatives for both the Confederated Villages of Lisjan and Northern Valley Yokut/Ohlone/Patwin tribes, as well as Cargill, and EBDA, on a weekly basis. The on-site monitoring shall end when the ground-disturbing construction activities in native soils are completed or when the tribal monitor/consultant has indicated that the site has a low potential for affecting tribal cultural resources.



Source: Data received from AECOM and Jacobs in 2021 and 2022; adapted by Ascent in 2023

Figure 3.4-1 Proposed Tribal Monitoring Area

In response to a comment on the Draft EIR, the text of Mitigation Measure 3.7-4b on page ES-31 of the Draft EIR has been revised as shown below to include requirements under ACWD Ordinance No. 2010-01 (Well Ordinance). Identical text also appears on page 3.7-14 in Section 3.7, "Hazards and Hazardous Materials," of the Draft EIR and is modified in the same way.

> Mitigation Measure 3.7-4b: Prepare a Phase II ESA in the Ground Disturbance Areas in Locations Where Contamination May Be Present
>
> If the Phase I ESA indicates the presence or likely presence of contamination in areas proposed for ground disturbance, Cargill will hire a licensed environmental professional to prepare a Phase II ESA for these areas before the start of earthmoving activities. The Phase II study will assess the potential for human health and environmental hazards related to potential contact with existing environmental contamination of the surface and subsurface soil and groundwater in the areas where ground disturbance and excavation associated with the project would occur and soil adjacent to SR 84 and SR 92, where horizontal directional drilling is planned.
>
> The Phase II assessment will comply with the ASTM International E1903-19 standard and include soil and groundwater sampling and laboratory analysis sufficient to identify the types of chemicals and their respective concentrations. The work plan for any soil and groundwater sampling that would occur in areas under the jurisdiction of ACWD as part of the Phase II assessment will be submitted to ACWD for review and approval in accordance with ACWD Ordinance No. 2010-01. If the laboratory analysis determines that contaminants are present at concentrations below RWQCB threshold levels, the Phase II assessment will present such results, and no further analysis or mitigation will be necessary.
>
> If the laboratory analysis determines that contaminants are found at levels that exceed RWQCB threshold levels, the Phase II assessment will examine and discuss all potential exposure pathways for the locations where project-related excavation could encounter hazardous materials, including:
>
> - dermal—physical contact with contaminated soil and groundwater during construction;
> - inhalation—dust generated by construction activities;
> - groundwater—potential for groundwater generated by construction dewatering to cause migration of a contaminant plume; and
> - surface water—potential for overland flow of contaminated groundwater generated during construction dewatering to contaminate surface waters.
>
> The Phase II assessment will evaluate potential hazards to both construction workers and the environment and will make recommendations governing project excavation, staging, soil reuse or disposal, and construction dewatering requirements.
>
> The results from the Phase II assessment will be provided to project contractors so that recommendations from the Phase II assessment regarding excavation, staging, soil reuse or disposal, and construction dewatering can be incorporated into contractor specifications in accordance with Mitigation Measure 3.7-4d and to inform preparation of a site-specific health and safety plan (HASP), in accordance with Mitigation Measure 3.7-4e. If it is determined through the Phase II assessment that in some areas along the pipeline alignment, groundwater dewatering likely would cause plumes of contaminated water in the vicinity to migrate in the direction of the dewatering activity, contractor specifications will state that shoring rather than dewatering will be used in these areas.

In response to a comment on the Draft EIR, the text of Mitigation Measure 3.7-4c on page ES-31 of the Draft EIR has been revised as shown below to include ACWD in the list of agencies requiring coordination. Identical text also appears on page 3.7-14 in Section 3.7, "Hazards and Hazardous Materials," of the Draft EIR and is modified in the same way.

Mitigation Measure 3.7-4c: Coordinate with Regulatory Agencies and Implement Appropriate Remedies
If the results of the Phase II assessment indicate that any contaminants are present at a level that exceeds the associated RWQCB or DTSC threshold level, Cargill will notify the appropriate city, the appropriate CUPA, ACWD, and the RWQCB or DTSC, as appropriate. Coordination will occur with the ACWD, and RWQCB or DTSC, as appropriate, regarding the necessity for and types of protective measures required during project-related excavation activities and to ensure that project activities do not interfere with ongoing remedial actions by other entities. Such protective measures could include marking and avoiding existing groundwater monitoring wells, employing shoring and avoiding dewatering activities, installing temporary soil trench plugs, containing contaminated groundwater in Baker Tanks and treating the water before discharge, monitoring groundwater, and documenting backfill quality. As required by the regulatory agencies, reports documenting the implementation of appropriate protective measures, including any required groundwater monitoring, will be prepared and submitted during the course of construction activities.

In response to a comment on the Draft EIR, the text of Mitigation Measure 3.7-4d on page ES-33 of the Draft EIR has been revised as shown below to include ACWD as an agency that must review and approve any proposed dewatering plans. Identical text also appears on page 3.7-15 in Section 3.7, "Hazards and Hazardous Materials," of the Draft EIR and is modified in the same way.

Mitigation Measure 3.7-4d: Incorporate Standards for Proper Excavation and Staging Activities, for Handling, Transport, and Disposal of Excavated Soils, and for Construction-Related Dewatering into the Project's Construction Specifications
Specifications and procedures to be followed by the contractor for proper excavation and staging activities, for the handling, transport, and disposal of excavated soils, and for construction-related dewatering in affected area(s), which will be based on the results of the Phase II assessment completed under Mitigation Measure 3.7-4b, will be incorporated into the construction specifications. These specifications and procedures will be consistent with federal and state requirements, including RCRA, CERCLA, the federal hazardous materials transportation law, the Clean Water Act, the Occupational Safety and Health Act, and Title 22, Division 4.5 of the CCR. The following provisions will be included in the project's construction specifications:

- Construction workers in the affected area(s) who will be involved with ground disturbance will be trained in Hazardous Waste Operations and Emergency Response if the types of contaminants and their concentrations warrant this training based on the results of the Phase II ESA completed under Mitigation Measure 3.7-4b.
- Soil and materials removal from the affected area(s) will be performed by a licensed engineering contractor with a Class A license and hazardous substance removal certification. A California-licensed engineer will provide field oversight on behalf of Cargill and will document the origin and destination of all removed materials. If necessary, removed materials will be stockpiled temporarily and covered with plastic sheeting, pending relocation, segregation, or off-site hauling. To protect groundwater and surface water quality, contaminated soils will not be stored on-site during the winter rainy season (i.e., November through April).
- If excess materials from the affected area(s) are hauled off-site, waste profiling of the material will be completed and documented. Materials classified as nonhazardous waste will be transported under a bill of lading. Materials classified as non-RCRA hazardous waste will be transported under a hazardous waste manifest. All materials will be disposed of at an appropriately licensed landfill or facility.
- Trucking operations will comply with Caltrans requirements and any other applicable regulations, and all trucks will be licensed and permitted to carry the appropriate waste classification. The tracking of dirt by trucks leaving the project site will be minimized by cleaning the wheels on exit and by cleaning the loading zone and exit area as needed.

- If contaminated materials require dewatering before being hauled off-site, or if excavation would encounter shallow groundwater in the affected area(s), a dewatering plan will be prepared, specifying methods of collecting, transporting, treating, and discharging all water produced by dewatering, and demonstrating compliance with RWQCB requirements and permits. The project proponent will also coordinate with ACWD on the development of the dewatering plan and submit it to ACWD for review and approval before commencing dewatering activities in areas under the jurisdiction of ACWD.

In response to a comment on the Draft EIR, the text of Mitigation Measure 3.8-2 on page ES-37 of the Draft EIR has been revised as shown below to include review and approval by ACWD and the San Francisco RWQCB and compliance with the US Environmental Protection Agency (EPA) Underground Injection Control Program, as appropriate. Identical text also appears on page 3.8-28 in Section 3.8, "Hydrology and Water Quality," of the Draft EIR and is modified in the same way.

Mitigation Measure 3.8-2: Minimize Groundwater Loss Due to Dewatering during Construction of the MSS Brine Transport Pipeline

To minimize the loss of groundwater due to dewatering during construction of the pipeline, compliance with one of the following measures is required:

- Where groundwater levels are high and trench or access pit installation would require significant dewatering, EBDA and Cargill shall require the contractor to pump groundwater to settling tanks and discharge clean water back to a nearby well, if permitted, or use the water for dust control in the vicinity of where the dewatering occurred.
- If discharge of groundwater to injection wells is necessary during construction activities, EBDA shall require Cargill or its contractor to obtain the necessary permits and approvals from ACWD and the San Francisco RWQCB, as appropriate before commencing such activities. If groundwater injection into the Niles Cone Subbasin is foreseeable, EBDA shall require Cargill or its contractor to notify and coordinate with ACWD and comply with the applicable requirements of ACWD Ordinance No. 2010-01, including water quality testing requirements. In addition, EBDA shall require Cargill or its contractor to fulfill applicable reporting requirements under the EPA Underground Injection Control Program.
- If discharge to a nearby well or using dewatering water for dust control in the vicinity is not feasible, then EBDA shall require Cargill to pay the appropriate replenishment assessment fee to the applicable GSA to compensate for loss of groundwater from the basin.

In response to comments on the Draft EIR, the following text on page ES-41 has been revised as shown below to identify ACWD and BCDC as agencies requiring consultation for the review and development of detour plans and to state that detours will meet accessibility requirements. Identical text also appears on page 3.10-14 in Section 3.10, "Recreation," of the Draft EIR and is modified in the same way.

Mitigation Measure 3.10-1: Prepare and Implement Detour Plans for Parks, Trails, and Recreational Facilities

EBDA and Cargill shall prepare and implement a detour plan for all recreational facilities that would experience access interruptions during project construction, including Don Edwards National Wildlife Refuge/Newark Slough Trail, Alameda Creek Regional Trail, and segments of the San Francisco Bay Trail that are not within roadway rights-of-way. Detour plans shall be developed in consultation with applicable resource agencies, including USFWS, CDFW, BCDC, ACWD, EBRPD, the Metropolitan Transportation Commission (MTC), and the Cities of Hayward and Union City. The plan shall be prepared at least 14 days before the start of construction activities involving disruption to a recreational facility. The detour plan shall include posted signs at major entry points for recreational facilities clearly indicating closed areas, the location of alternative facilities or access points, detour routes, and a contact number to call for questions or concerns. The proposed detours will be required to meet accessibility requirements under the Americans with Disabilities Act. The construction contractor shall be required to maintain and implement the detour plan throughout construction activities affecting access to a recreational facility. The 14-day notice period shall also provide time for these agencies to post notices on their respective websites regarding closures and alternate routes….

4.2 REVISIONS TO CHAPTER 1, "INTRODUCTION"

In response to comments on the Draft EIR, the following text on page 1-5 in Section 1.4.2 has been revised as follows to identify ACWD and USD as responsible agencies, to identify BCDC as a state agency rather than a local agency, and to be consistent with the list of agencies included in Section 2.6.9, "Project Permits and Approvals," of the Draft EIR:

State Agencies

- CDFW (Region 3 – Bay Delta)
- California Department of Transportation
- CSLC
- California State Parks, Office of Historic Preservation
- San Francisco Bay Conservation and Development Commission
- San Francisco Bay Regional Water Quality Control Board (Region 2)
- San Francisco Public Utilities Commission

Regional and Local Agencies

- Alameda County Flood Control & Water Conservation District
- Alameda County Public Works Agency
- Alameda County Water District
- Bay Area Air Quality Management District
- City of Fremont
- City of Hayward
- City of Newark
- City of Union City
- ~~County of Alameda~~
- East Bay Regional Park District
- Hayward Regional Shoreline Planning Agency
- ~~San Francisco Bay Conservation and Development Commission~~
- San Mateo County Transit District
- Union Pacific Railroad Company
- Union Sanitary District

Information in this Final EIR also may be used by federal agencies with jurisdiction over portions of the project as they consider environmental impacts under the National Environmental Policy Act. Federal agencies that potentially have jurisdiction over portions of the project are listed below:

- US Army Corps of Engineers
- US Fish and Wildlife Service
- National Marine Fisheries Service

4.3 REVISIONS TO CHAPTER 2, "PROJECT DESCRIPTION"

In response to a comment on the Draft EIR, the text in the second paragraph of Section 2.1.2, "Cargill Solar Salt Facility," on page 2-1 of the Draft EIR has been revised as follows to clarify the total estimated volume of MSS that has accumulated over time in Ponds 12 and 13 at the Solar Salt Facility:

> Bay water also contains other salts that have not yet been harvested as commercial products. These salts, referred to as mixed sea salts (MSS) are precipitated in Ponds 12 and 13 during the processing of liquid bittern. The most prevalent constituents of MSS are magnesium sulfate ($MgSO_4$, also known as Epsom Salts) and residual NaCl and $MgCl_2$. MSS is generated at a rate of approximately 60,000 T/yr in Ponds 12 and 13, and Cargill estimates approximately 6 million tons of MSS are currently stored in these two ponds.

In response to a comment on the Draft EIR, the text in the first paragraph of Section 2.6, "Proposed Project," on page 2-6 of the Draft EIR, has been revised as follows to describe the amount of MSS that the project is expected to process annually:

2.6 PROPOSED PROJECT

> The proposed project would enable the enhanced processing and removal of up to approximately 600,000 T/yr of the MSS stored in Cargill Ponds 12 and 13, by generating up to an additional 120,000 T/yr of liquid bittern from the MSS matrices in these ponds, dissolving the residual MSS solids in the ponds using Bay water, and transferring the resulting brine to EBDA's combined effluent conveyance system for discharge to the Bay under EBDA's NPDES permit. Harvesting the liquid bittern and final disposition of the residual MSS brine would not require the use of any chemicals.
>
> The MSS brine would be discharged to the EBDA system at up to 2.0 mgd (average 24-hour flow rate of 1,389 gpm). Based on this estimated flow rate, the harvesting and discharge of the current inventory of MSS is projected to require a 10- to 15-year timeframe. This time frame could be extended to accommodate intermittent turndown or shutdown of brine discharge. Discharge of the MSS brine by Cargill to the EBDA system would be subject to an agreement between EBDA and Cargill. The EBDA JPA term expires on June 30, 2040. Therefore, the proposed project would either terminate on or before that date or could continue under a renegotiated agreement.

Based on project design updates, the text in the second and third paragraphs of Section 2.6.1, "Dissolution Water Pond and Plummer Creek Pump Station," on page 2-7 of the Draft EIR, has been revised as follows:

> To obtain water for the dissolution water pond, a new pump station (the Plummer Creek Pump Station) would be installed in the FMC ditch that would pump water indirectly from Plummer Creek to the new dissolution water pond (Figure 2-3). This would be achieved by utilizing ~~connecting~~ the existing head gate structure on Plummer Creek, which would source Bay water into a section of the FMC ditch, from which the Plummer Creek Pump station would pull water to fill the dissolution water pond. ~~via an existing 48-inch corrugated high-density polyethylene (HDPE) pipe through the berm to a new 48-inch corrugated HDPE pipe that would connect to the collection chamber, or wet well, of the Plummer Creek Pump Station~~. The Plummer Creek Pump Station would supply a maximum flow rate of up to 3,400 gpm. Because the FMC ditch is used for periodic brine movements, the Plummer Creek Pump Station would be isolated from the FMC ditch under normal operations; the tidal gate located between the wet well and the FMC ditch would be opened periodically when Bay water is used seasonally for other operations. This gate would also allow rainwater in the FMC ditch to enter the pump station and be pumped into the dissolution water pond. This would occur when decanting rainwater from Pond 13, as discussed below. The Plummer Creek Pump Station would be a slab-on-grade facility located at the edge of the FMC ditch. At the southern end of the structure, there would be an earth embankment approach, supported by a sheet pile wall. A second sheet pile wall would extend from the Plummer Creek pump station, through the FMC ditch, to the existing berm north of the Plummer Creek intake. The existing Plummer Creek intake structure would remain unchanged. An adjacent 10-foot by 12-foot electrical enclosure constructed of precast concrete would be supported by and anchored to

cast-in-place concrete foundations. The electrical enclosure would receive a separate power feed from a 12.7-kilovolt (kV) service drop from the existing nearby Pacific Gas and Electric Company (PG&E) distribution lines. A concrete pad would provide space for the new PG&E utility transformer. Construction would include the trenching and installation of an electrical conduit from this transformer to the new electrical enclosure located near the Plummer Creek and dissolution water pump stations. PG&E would size the transformer and service entrance conductors based on the expected loads from the Plummer Creek Pump Station and Pond 12 MSS Brine Pump Station. In the future, when the Pond 13 MSS Brine Pump Station is constructed, the transformer would be upsized by PG&E to handle this additional load. (The brine pump stations are discussed in Section 2.6.3, "MSS Brine Pump Stations.") A Supervisory Control and Data Acquisition (SCADA) system would be used at the Plummer Creek Pump Station.

In response to a comment on the Draft EIR, references to the diameter of the MSS brine transport pipeline have been revised to be consistent with the pipeline diameter identified in the most current design plans. The text in the first paragraph of Section 2.6.5, "MSS Brine Transport Pipeline," on page 2-16 of the Draft EIR has been revised as follows:

> The MSS brine transport pipeline would be installed below ground primarily within roadway rights-of-way. The ~~14-inch~~16-inch inside diameter (18-inch outside diameter) MSS brine transport pipeline would extend north from the Solar Salt Facility and connect into the EBDA combined effluent conveyance system immediately downstream of the Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant. A proposed alignment for the MSS brine transport pipeline is shown in Figures 8a through 8h and described in more detail below.

The text in paragraph 3 on page 2-18 has also been revised as follows to update the diameter of the MSS brine transport pipeline and address the possible addition of a recycled water line and fiber optic cable conduit:

> To minimize future disruption to roadways in the City of Hayward, the City of Hayward and Cargill are exploring an agreement to also install 4-inch HDPE fiber optic cable conduit and 12-inch HDPE recycled water pipeline ("purple pipe") within affected roadways in the City of Hayward at the same time trenching for and installation of the underground ~~14-inch~~16-inch inside diameter (18-inch outside diameter) MSS brine transport pipeline would occur and within the same 4- to 5-foot wide trench as the MSS brine transport pipeline…

The text in paragraph 4 on page 2-18 has also been revised as follows:

> … Union City and Cargill are therefore exploring the possibility of coordinating construction of the Bike Lanes Project, including laying of the fiber optic cable conduit, and the work including trenching and installation of the underground ~~14-inch~~16-inch inside diameter (18-inch outside diameter) MSS brine transport pipeline between the Alameda Creek Flood Control Channel bridge and Alvarado Boulevard to avoid disruption of the road multiple times over a relatively short period….

In response to a comment on the Draft EIR, the text in the second paragraph on page 2-18 of the Draft EIR has been revised as follows to provide additional information about design features to safeguard against MSS brine transport pipeline leaks or failures and to include a discussion of a fiber optic conduit that was added to the project subsequent to the release of the Draft EIR (refer to Chapter 2, "Project Updates"):

> The MSS brine transport pipeline would be designed with safeguards against leaks or failures. The use of fused pipes and application of pressure rating safety factors would reduce the potential for leaks. In addition, MSS brine transport pipeline appurtenances would include isolation valves, air release/vacuum valves, blowoff valves, tracer wire, and a "pig" delivery system. Pigs, or pipeline inspection gauges, are maintenance projectiles used for cleaning and inspecting pipelines, which would include monitoring for leaks. The pig delivery system would be used to inject pigs into the pipeline to force out buildup and perform inspection or other maintenance operations on the pipeline without stopping the flow of effluent in the pipeline. In addition, a 1-inch fiber optic conduit is proposed to be installed in the same trench or trenchless bore as the MSS brine transport pipeline to provide additional means of communications regarding pipeline operations. Periodic inspections would be conducted to determine whether any pipeline appurtenances would require maintenance or replacement due to corrosion or other factors. In addition to periodic inspections and pipe

cleaning, as-needed servicing of fittings, valves, and other appurtenances would occur to prevent leaks. Isolation valves would be installed upstream and downstream of the SR 84 and SR 92 crossings, ~~and~~ at the connection into the EBDA combined effluent conveyance system immediately downstream of the Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant, and at other locations along the MSS brine transport pipeline as needed based on other regulatory requirements. Air release/vacuum valves would be installed at high points along the pipeline. The valves would typically be housed in an above-grade structure on a concrete pad in the median or behind the curb and sidewalk. Blowoff valves are used to drain the pipeline for repairs and maintenance, and would be installed at major low points along the pipeline. These valves are typically at grade and would likely be placed in the road pavement near sanitary sewer manholes, to the extent possible. To assist in locating the pipes, tracer wire would be installed along the entire length of the below-grade pipeline, and tracer wire boxes (at-grade cast iron boxes) would be installed approximately every 500 feet along the alignment.

As part of the operations agreement between EBDA and Cargill, an operator also would monitor operations 24 hours a day. Flow meters and pressure transmitters would be installed along various sections of pipe to detect any changes in water levels or pressure. If leaks are detected, leaking sections of pipe would be isolated, and bypass pumps and/or vacuum trucks would be used to transport MSS brine through undamaged pipe to either Cargill's Solar Salt Facility or EBDA's conveyance system.

As discussed in Section 2.5, "Update to Project Trenchless Crossings," of this Final EIR, Table 2-2 on page 2-35 of the Draft EIR has been revised as follows to reflect updates to the trenchless crossings proposed along the MSS brine transport pipeline alignment. Figures 2-1 and 2-8a through 2-8h have been revised accordingly, and the revised figures are provided on the following pages. The trenchless crossings are also shown on Figures 3.3-1, 3.2-1, 3.3-3, 3.3-4, 3.3-5, 3.5-1, 3.7-1, 3.8-1, 3.8-1, 3.8-3, 3.8-4, 3.9-1, 3.10-1, 4-1, and 5-1 of the Draft EIR and are modified in the same way. For the sake of brevity, changes to each figure are not identified individually in this Final EIR.

Table 2-2 Trenchless Crossing Locations Along the MSS Brine Transport Pipeline Alignment

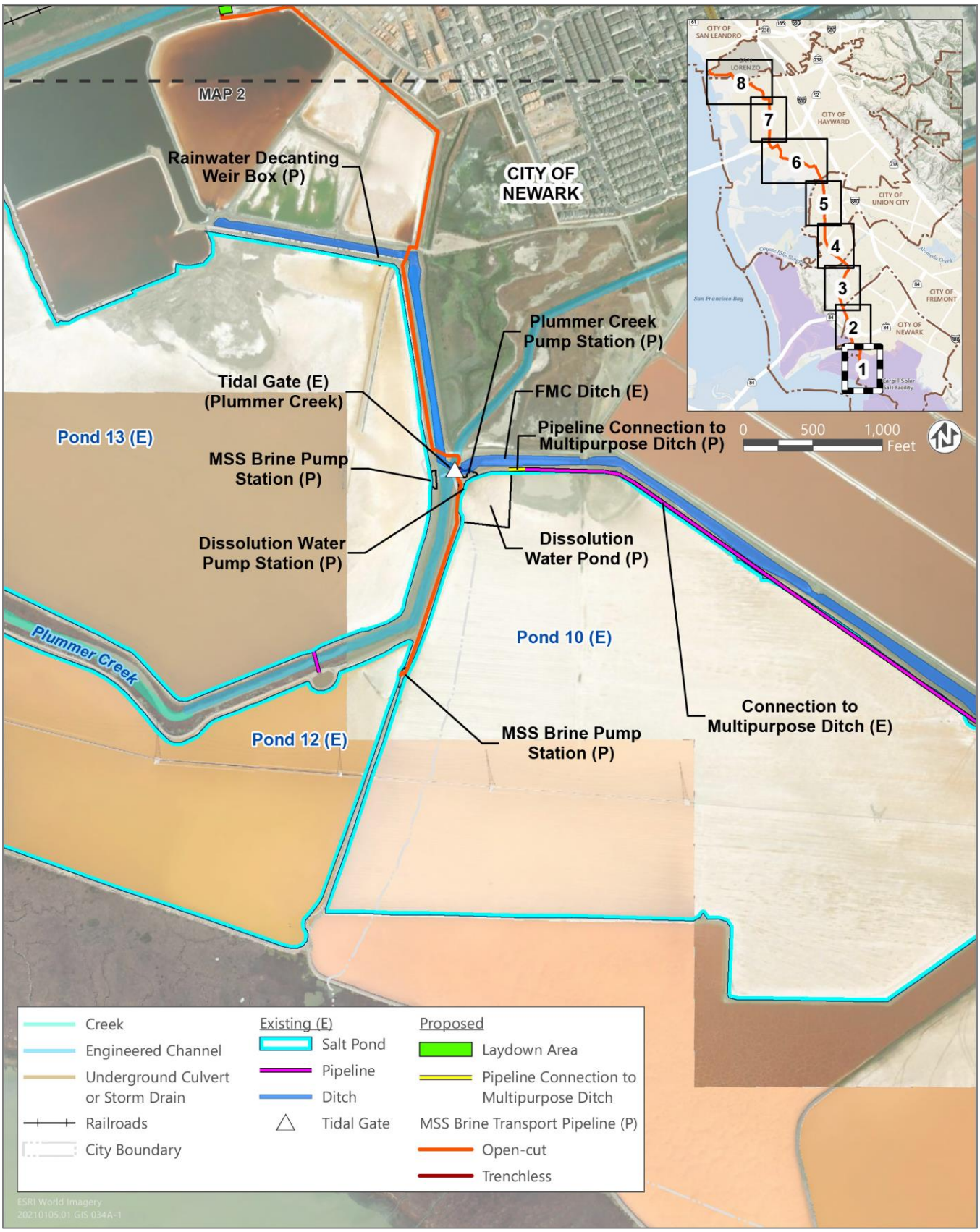
Crossing Number	Crossings Proposed Using Trenchless Methods
1	Former Barge Canal, Sam Trans Rail Line, and ~~south of~~ Hetch Hetchy Aqueduct
~~2~~	~~Sam Trans Rail Line/Hetch Hetchy Aqueduct~~
2~~3~~	Newark Slough at Thornton Avenue
3~~4~~	Thornton Avenue and Gateway Boulevard Drain
4~~5~~	SR 84 and Thornton Avenue
5~~6~~	Ardenwood Creek
6~~7~~	Crandall Creek/Alameda Creek Flood Control Channel
7~~8~~	Engineered Channel at Delores Drive
~~9~~	~~Silvertide Drive Surface Drain~~
8~~10~~	Alvarado Twin Drains
9~~11~~	Union City Boulevard and UPRR
10~~12~~	Old Alameda Creek/Ward Creek
11~~13~~	Industrial Boulevard Canal
12~~14~~	Baumberg Avenue and Railroad
13~~15~~	SR 92 and Production Avenue
14~~16~~	Railroad and Clawiter Road No. 1
15~~17~~	Railroad and Clawiter Road No. 2
16~~18~~	West Street Canal
17~~19~~	Corsair Boulevard Railroad and Sulphur Creek
18~~20~~	Skywest Golf Course and Railroad
~~21~~	~~Bockman Channel~~

Source: Data compiled by Ascent Environmental in 2022.



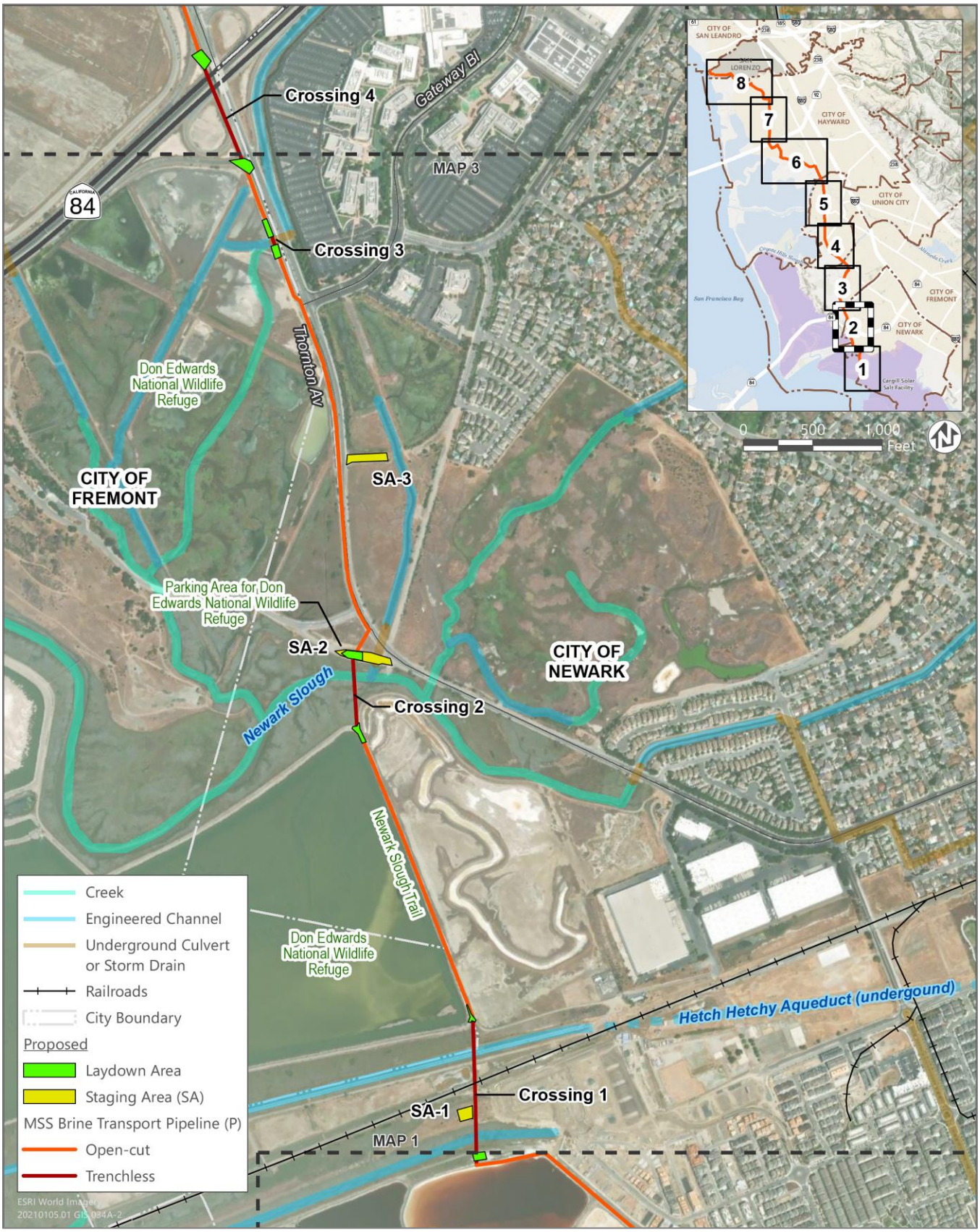
Source: Data received from AECOM and Jacobs in 2021 and 2022; adapted by Ascent in 2023

Figure 2-1 Project Area



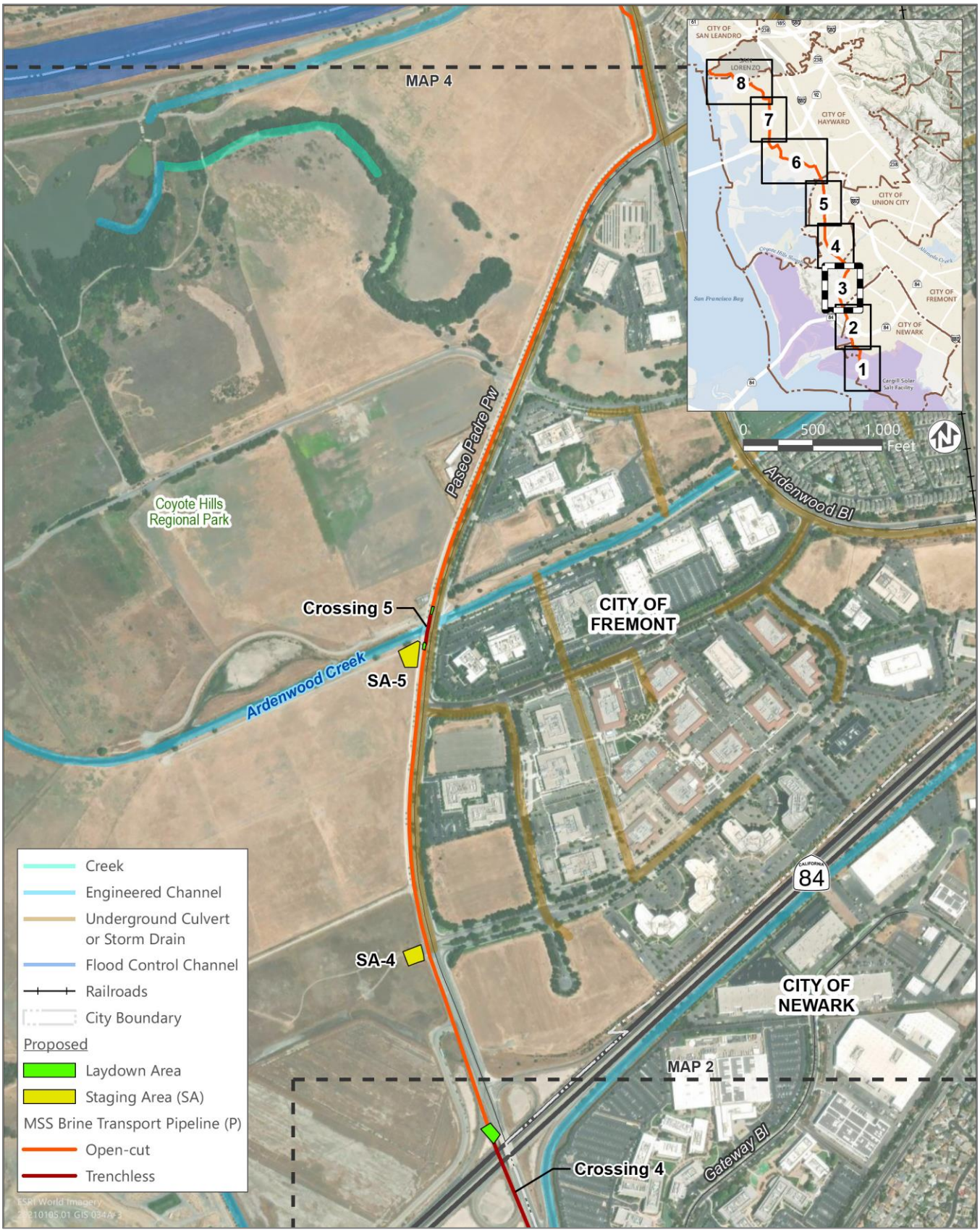
Source: Data received from AECOM and Jacobs in 2021 and 2022; adapted by Ascent in 2023

Figure 2-8a MSS Brine Transport Pipeline – Map 1



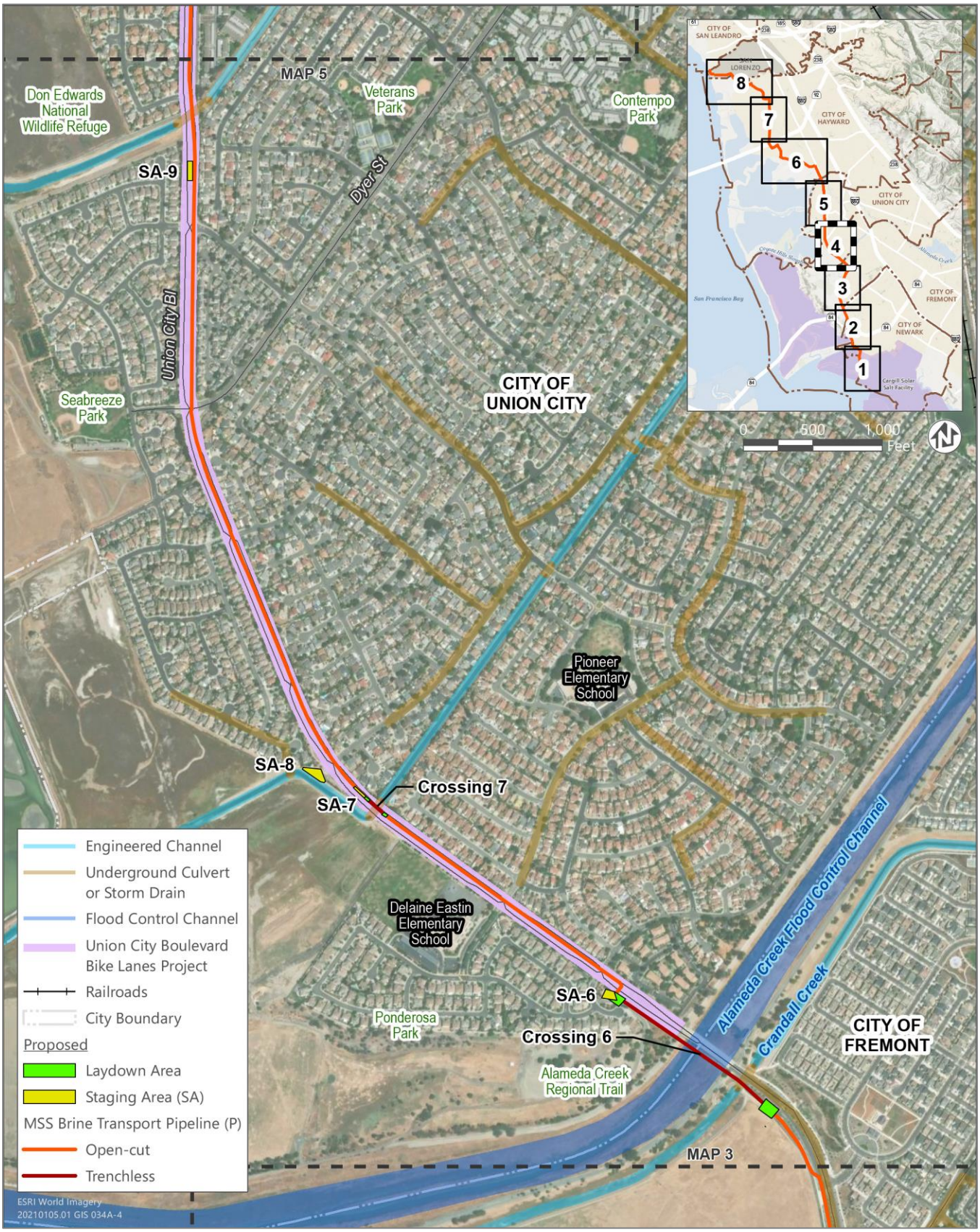
Source: Data received from AECOM and Jacobs in 2021 and 2022; adapted by Ascent in 2023

Figure 2-8b MSS Brine Transport Pipeline – Map 2



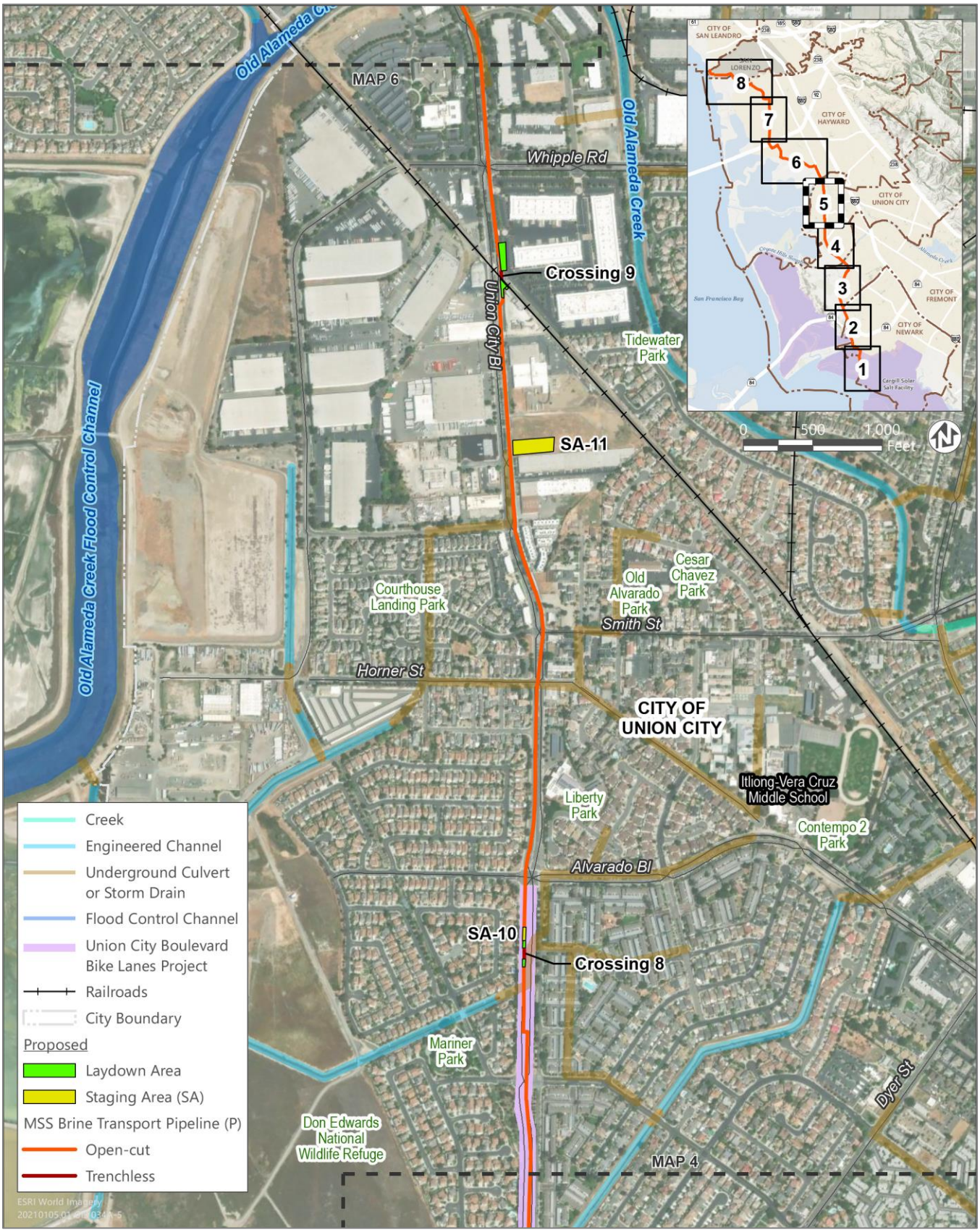
Source: Data received from AECOM and Jacobs in 2021 and 2022; adapted by Ascent in 2023

Figure 2-8c MSS Brine Transport Pipeline – Map 3



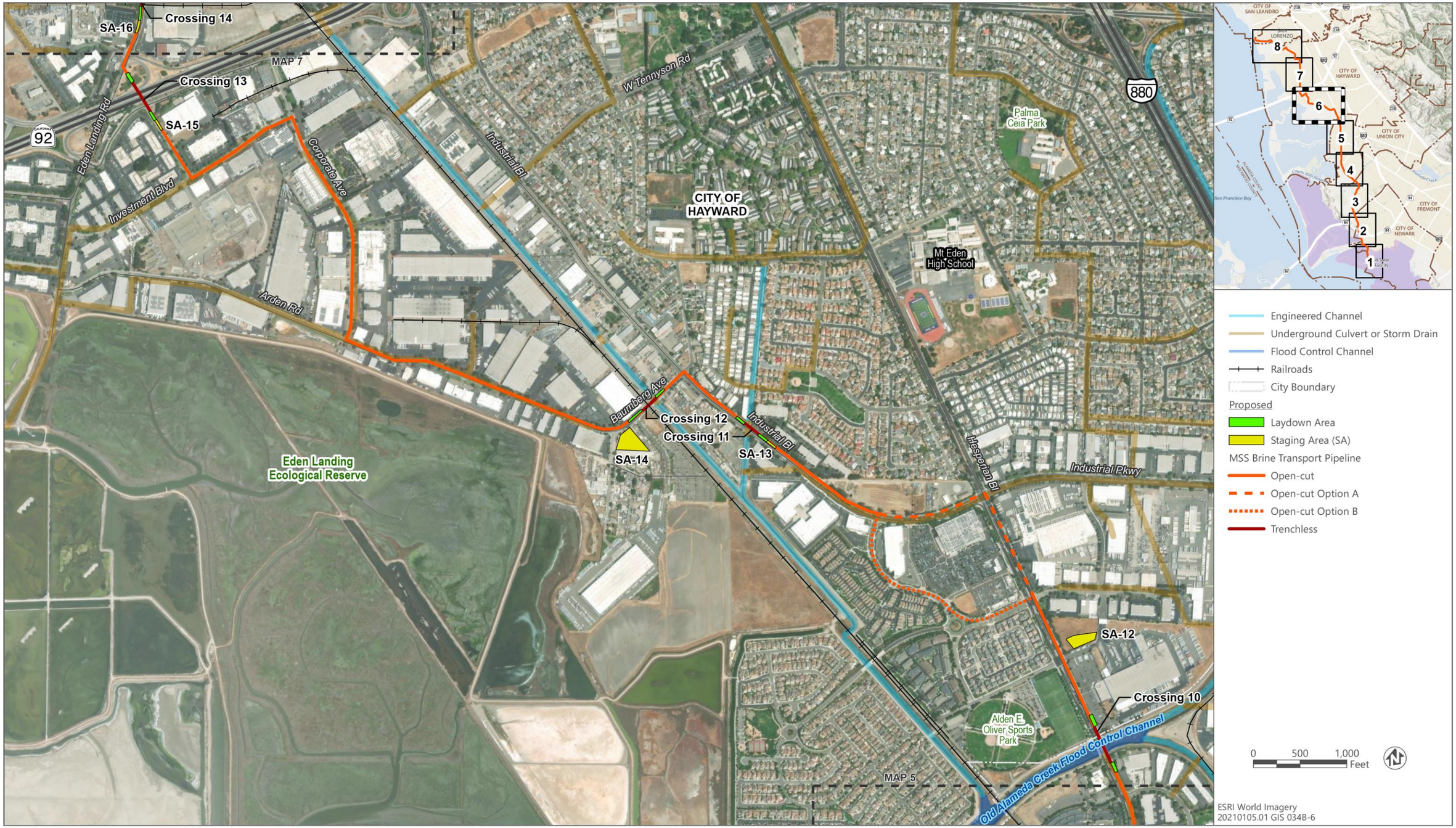
Source: Data received from AECOM and Jacobs in 2021 and 2022; adapted by Ascent in 2023

Figure 2-8d MSS Brine Transport Pipeline – Map 4



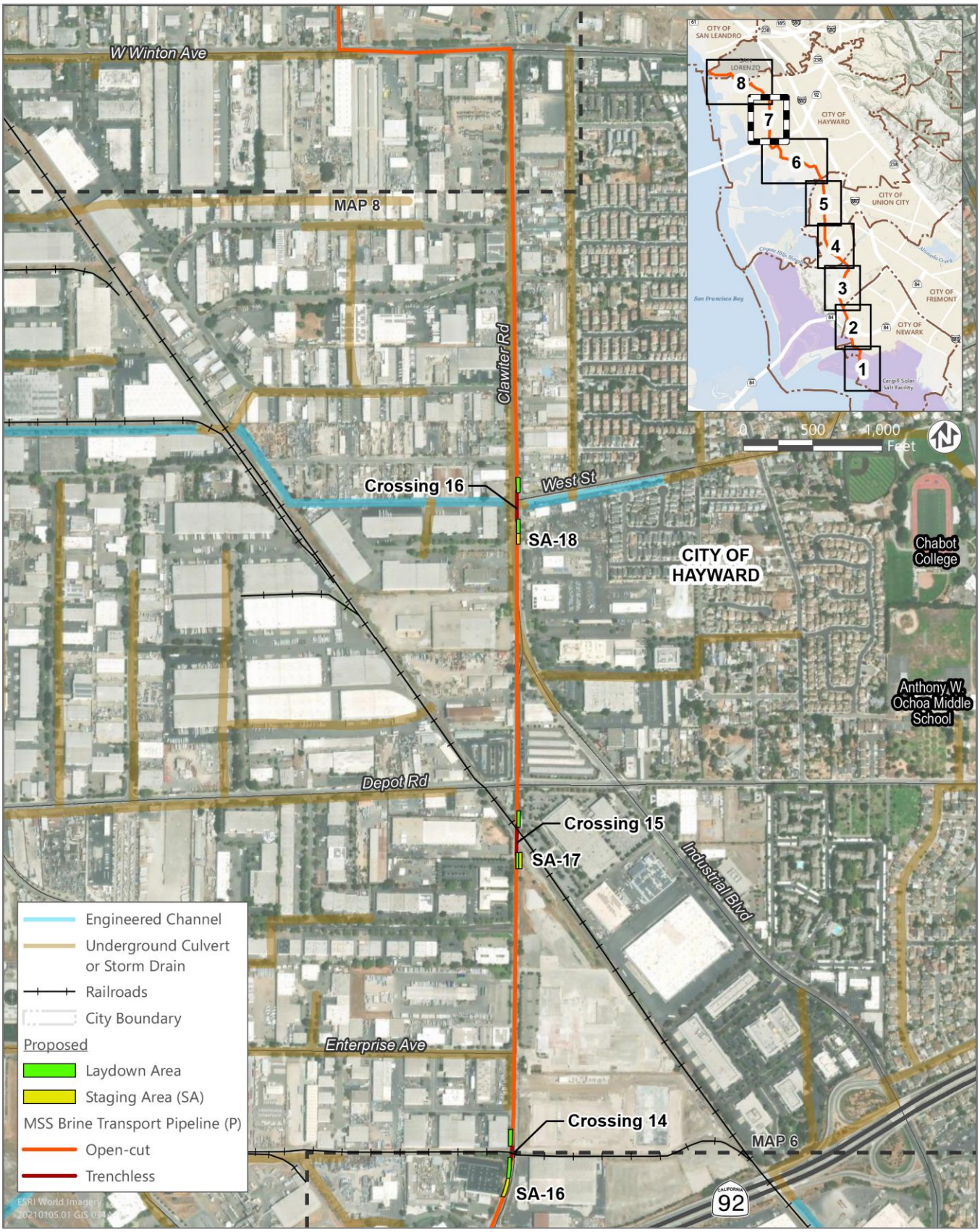
Source: Data received from AECOM and Jacobs in 2021 and 2022; adapted by Ascent in 2023

Figure 2-8e MSS Brine Transport Pipeline – Map 5



Source: Data received from AECOM and Jacobs in 2021 and 2022; adapted by Ascent in 2023

Figure 2-8f MSS Brine Transport Pipeline – Map 6



Source: Data received from AECOM and Jacobs in 2021 and 2022; adapted by Ascent in 2023

Figure 2-8g MSS Brine Transport Pipeline – Map 7

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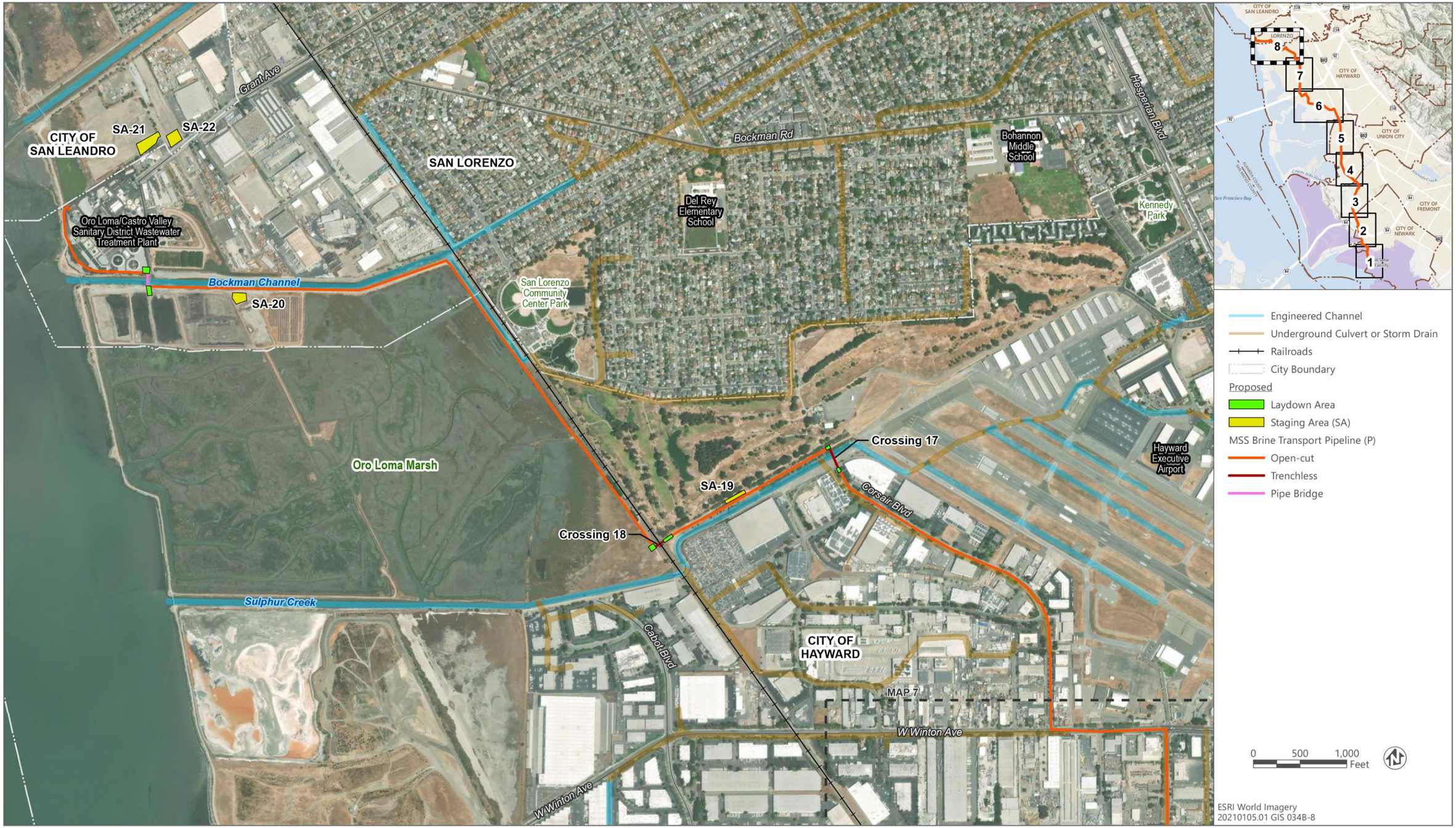

Source: Data received from AECOM and Jacobs in 2021 and 2022; adapted by Ascent in 2023

Figure 2-8h MSS Brine Transport Pipeline – Map 8

In response to a comment on the Draft EIR, the alignment of the MSS brine transport pipeline has been revised to avoid a USD parcel identified as Assessor's Parcel Number (APN) 543-439-3-3. The project alignment has been shifted approximately 70 feet to the northeast to the public right-of-way within Ardenwood Boulevard in the City of Fremont before continuing to traverse the parcel owned by the East Bay Regional Park District (APN 543-356-1-5) at the trenchless crossing of the Alameda Creek Flood Control Channel (identified as Crossing 7 in the Draft EIR, but subsequently revised to Crossing 6 in this Final EIR), as depicted in Figure 2-8d and discussed on page 2-16 of the Draft EIR. Figure 2-8d has been revised accordingly, and the revised figure is provided above.

As discussed in Section 2.3, "Minor Revisions to MSS Brine Transport Pipeline Alignment," of this Final EIR, the proposed MSS brine transport pipeline alignment at the crossing of State Route (SR) 84 has been revised to involve a straight, trenchless HDD crossing of approximately 2,500 linear feet that would be entirely within the Thornton Avenue and Paseo Padre rights-of-way. The alignment would no longer traverse through the southwestern portion of the SR 84 cloverleaf area and along Quarry Road to the northwest of the SR 84/Thornton Avenue intersection. Figures 2-8b and 2-8c have been revised accordingly, and the revised figures are provided above. The description of the SR 84 crossing on page 2-16 of the Draft EIR has also been revised as follows:

> Starting in the south at its connection to the MSS brine pump station, the transport pipeline, originating in Pond 12, would extend north approximately 0.3 mile along the west berm of Pond 10, cross Plummer Creek, extend north approximately 0.5 mile along the east berm of Pond 13 and the FMC Pond then northwest along the north berm of the FMC Ponds for approximately 0.3 mile before turning north/northwest for approximately 0.2 miles and crossing under the former Barge Canal (an engineered channel constructed in the 1930s for a former quicklime facility), the San Mateo County Transit District (SamTrans) rail corridor, and the San Francisco Public Utilities Commission (SFPUC) Hetch Hetchy Aqueduct and Bay Tunnel. It would then continue for approximately 0.5 mile north/northwest along the Newark Slough Trail within the Refuge before turning northeast for approximately 0.1 mile crossing under Newark Slough to Thornton Avenue. From Thornton Avenue, the transport pipeline would continue north/northwest for approximately 0.9 mile until crossing State Route (SR) 84 <u>within Thornton Avenue</u> and ~~transitioning into~~ Paseo Padre Parkway. It would then continue approximately 1.5 miles north along Paseo Padre Parkway to Ardenwood Boulevard, crossing Ardenwood Creek. From Ardenwood Boulevard, the transport pipeline would continue north/northeast for approximately 0.4 mile, where it would cross the Alameda Creek Flood Control Channel, transition into Union City Boulevard, including a crossing over rail lines owned by Union Pacific Railroad Company (UPRR), and continue for approximately 3.5 miles north/northeast until crossing Old Alameda Creek and then transitioning to Hesperian Boulevard.

In response to a comment on the Draft EIR, the following text on page 2-35 has been revised as follows to describe pipeline installation methods at the Plummer Creek bridge crossing:

- The pump stations would be constructed in parallel with each other.
- The piping connecting the pump stations would be laid down and connected to the off-site pipeline. Almost all of the piping would be above ground, so stakes would be driven into the ground to keep pipelines in place. <u>As noted on page 2-10, a discharge pipeline from the proposed MSS brine pump station would cross Plummer Creek at the existing pipe bridge and connect to the off-site MSS brine transport pipeline. Construction workers would not work directly over the waterway. The new discharge pipeline segment would be prefabricated entirely within an adjacent staging area outside of the waterway. The prefabricated pipeline would then be lifted over the waterway and attached to the bridge.</u>

In response to a comment on the Draft EIR and based on project updates identified in Chapter 2, "Project Updates,", the following text on pages 2-18 and 2-36 of the Draft EIR has been revised to describe pipeline installation methods at the Bockman Channel crossing. Page 2-18, in the first paragraph, has been revised as follows:

> ….The pipeline would then continue northwest/west for 1.3 miles around the perimeter of the Oro Loma Marsh past the existing solar fields and biosolids drying beds, until crossing Bockman Channel attached to a new <u>prefabricated steel pipe bridge</u> over the channel…

Page 2-36, after the second to last paragraph, has been revised as follows:

The area of disturbance at the connection of the MSS brine transport pipeline to the EBDA combined effluent conveyance system at the Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant would be less than 1 acre. This facility would include a booster pump for injection of the brine into the EBDA system, along with a pig receiving station, meter vault, communication tower, and either a mechanical mixer at the wet well or an in-line static mixer on the existing EBDA force main at the pump discharge.

As noted on page 2-18, the MSS brine transport pipeline would be attached to a new prefabricated steel pipe bridge over Bockman Channel. The new pipe bridge, with a span of 100 feet, would be installed approximately 40 feet west of the existing vehicle bridge over Bockman Channel and would be supported by concrete piles. The footings for the pipe bridge would be installed near the abutment of the existing vehicle bridge above the ordinary high water mark of the channel. The concrete piles are expected to be cast-in-drilled-hole (CIDH) piles or H piles. CIDH piles are reinforced concrete piles cast in holes drilled to a predetermined depth. H piles are structural beams that are driven into the soil using vibratory methods. The depth of the piles would be approximately 17.5 feet. A work area for the crossing would be located along an access road from the Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant in San Lorenzo. The prefabricated pipe bridge would be installed from a crane operating from the work area, and welded in place. Construction workers would not work directly over the waterway.

In response to a comment on the Draft EIR, the following text has been added to page 2-36 to clarify pipe installation assembly using HDD methods:

Trenchless Methods

Horizontal directional drilling (HDD) is a trenchless construction method being considered for most of the potential crossings (e.g., SR 84, SR 92, Old Alameda Creek, Alameda Creek Flood Control Channel, Sulphur Creek, Oro Loma Marsh), except for crossings under railroad tracks, which would use a microtunneling method. The HDD method employs a directional drill that is set up on the ground surface. A pilot bore is begun by pushing a drill rod through the ground at a shallow angle. When the drill head reaches the desired depth, the bore head is steered along a shallow curve. The pilot bore then continues through the ground at the appropriate depth and grade until it is steered upward to exit the ground surface. For small-diameter bores, the pipeline can be pulled back through the pilot hole with minimal enlargement of the hole. In larger-diameter pipes, the diameter of the pilot hole is increased by fluid-assisted back reaming. Once the boring and reaming processes are complete, the pipeline is assembled into one full length, laid out in-line with the bore, and pulled into place. Microtunneling is a trenchless construction method that uses a microtunnel boring machine (MTBM) mounted on a jacking frame which is moved forward using jacks. The MTBM is operated remotely from a control panel, normally located on the surface. Water jetting is used for the cutting head during the boring stage, or an asymmetrical or slanted head is directed using laser guidance. With microtunneling, the borehole is excavated and pipes are laid simultaneously. ~~Steel casing pipes would be used to protect the HDPE carrier pipe during microtunneling.~~

For most HDD crossings, pipe segments would be fabricated into one section at the staging or laydown area near the boreholes and pulled through as one section. Longer HDD crossings may require the handling of multiple fused sections of pipe. All pipe sections would be hydrotested before and after installation with potable water that is dechlorinated before use.

Most, if not all, trenchless crossings would require pipe casings to protect the carrier pipe during mictrotunneling. The pipe casings would be permanent and composed of steel or HDPE, depending on the particular crossing and landowner and agency requirements. Dynamic pipe ramming would not be used for project construction at any location. Pipe sections, including casings, would be fabricated and assembled at the staging and laydown areas near each crossing.

In response to comments on the Draft EIR, the text on page 2-39 in Section 2.6.9, "Project Permits and Approvals," of the Draft EIR has been revised as shown below to identify ACWD, ACPWA, and USD as responsible agencies. The text has also been revised to identify BCDC as a state agency rather than a local agency.

State

- San Francisco Bay Conservation and Development Commission (BCDC): BCDC Permit and Coastal Zone Management Act Consistency Determination
- San Francisco Regional Water Quality Control Board (RWQCB): Clean Water Act Section 401 Water Quality Certification; NPDES construction stormwater permit (Notice of Intent to proceed under General Construction Permit), discharge permit for stormwater, general order for dewatering
- California Department of Fish and Wildlife (CDFW): California Fish and Game Code (CFGC) Section 2081 Incidental Take Permit for California Endangered Species Act listed species; CFGC Section 1602, Lake and Streambed Alteration Agreement
- Caltrans: Encroachment permits for activities affecting state highways
- California State Lands Commission (CSLC): Land leases for Public Trust Lands
- Office of Historic Preservation (OHP): National Historic Preservation Act (NHPA) Section 106 Consultation through the federal lead agency (USACE)

Local

- ~~Alameda County: Routine development permits, such as grading and noise permits~~
- Alameda County Flood Control and Water Conservation District: Easements, licenses and/or encroachment permits for crossing flood control/engineered channels and storm drains
- Alameda County Public Works Agency (ACPWA): Routine development permits, such as grading and noise permits; easements or encroachment permits for crossing streets, bridges, and flood control facilities, such as stormwater conveyance infrastructure; drilling and well permits for subsurface drilling activities within the City of Hayward and unincorporated areas of Alameda County
- Alameda County Water District (ACWD): Drilling permits for subsurface drilling activities within the cities of Fremont, Newark, and Union City; approval of activities subject to ACWD Ordinance No. 2010-01 (Well Ordinance); review and approval of dewatering plans
- Bay Area Air Quality Management District (BAAQMD): Permit to construct and permit to operate
- Cities of Newark, Fremont, Union City, and Hayward~~, and Alameda County~~: Routine development permits, such as encroachment, grading, and noise permits, and agreements for private pipeline placement in public rights-of-way under the Franchise Act of 1937 and the Charter of the City of Hayward
- East Bay Dischargers Authority (EBDA): Operations agreement with Cargill
- East Bay Regional Park District: Easement, license and/or encroachment permit for activities on East Bay Regional Park District lands; approval for temporary trail closures or access interruptions
- Hayward Regional Shoreline Planning Agency: approval for temporary trail closures or access interruptions
- San Mateo County Transit District (SamTrans): Easement, license and/or encroachment permit or other limited easement or access agreement for crossing underneath the Dumbarton Rail Corridor owned by SamTrans, to the extent Cargill does not have an existing easement for such a crossing
- Union Pacific Railroad Company (UPRR): Plan approval by Chief Engineer of UPRR for crossing underneath rail lines owned by UPRR

- Union Sanitary District (USD): Encroachment permit and/or agreements for activities within USD rights-of-way, including horizontal directional drill (HDD) crossings; conditional discharge permit for dewatering activities that require discharge into the USD sanitary sewer system
- ~~San Francisco Bay Conservation and Development Commission (BCDC): BCDC Permit and Coastal Zone Management Act Consistency Determination~~
- San Francisco Public Utilities Commission (SFPUC): Easement, license and/or encroachment permits for crossing Hetch Hetchy Aqueduct and Bay Tunnel, to the extent Cargill does not have an existing easement for such a crossing

4.4 REVISIONS TO CHAPTER 3.3, "BIOLOGICAL RESOURCES"

Section 4.1, "Revisions to the 'Executive Summary' Chapter," identifies revisions to Mitigation Measures 3.3-4, 3.3-10, and 3.3-13, which appear on pages 3.3-59, 3.3-60, 3.3-66, 3.3-75, and 3.3-76 of the Draft EIR. The mitigation measures are modified in the same way, but the revisions are not repeated here.

As discussed in Section 2.5, "Update to Project Trenchless Crossings," and in Section 4.3, "Revisions to Chapter 2, 'Project Description,'" of this Final EIR, Table 2-2 on page 2-35 of the Draft EIR has been revised to reflect updates to the trenchless crossings. Accordingly, all references to the "Former Barge Canal and Hetch Hetchy Aqueduct" and the "Sam Trans Rail Line/Hetch Hetchy Aqueduct" crossings on pages 3.3-23, 3.3-25, 3.3-26, 3.3-46, 3.3-48, 3.3-49, 3.3-50, 3.3-69, 3.3-79, 3.3-89, 3.10-10 of the Draft EIR have been revised to "Former Barge Canal, Sam Trans Rail Line, and Hetch Hetchy Aqueduct." For the sake of brevity, each change is not identified individually in this Final EIR.

In addition, the reference to the "Silvertide Drive Surface Drain Culvert" in the list of trenchless channel crossings on page 3.3-26 has been removed as follows:

> The MSS brine transport pipeline alignment includes trenchless channel crossings, such as microtunneling, HDD and auger borings, or bridge attachment at waterways including Plummer Creek, Former Barge Canal, Sam Trans Rail Line, and Hetch Hetchy Aqueduct crossing~~a Newark Slough tributary south of Hetch Hetchy Aqueduct, the UPRR/SamTrans Rail Line/Hetch Hetchy Aqueduct crossing~~, the Newark Slough at Thornton Avenue crossing, Ardenwood Creek, Alameda Creek Flood Control Channel, Alameda Creek Tributary at Delores Drive, ~~Silvertide Drive Surface Drain Culvert,~~ Old Alameda Creek Flood Control Channel, Industrial Boulevard Canal, an engineered channel at the Baumberg Ave/railroad crossing, Corsair Boulevard and Sulphur Creek crossing, and Bockman Channel. Trenchless crossing methods may also be needed at additional culverts along the alignment. While each of these crossings would occur at channel locations, some are mapped by CARI as subtidal areas, or as uplands where existing bridges or culverts are present.

As discussed in Section 2.4, "Prefabricated Pipe Bridge at Bockman Channel," and in Section 4.3, "Revisions to Chapter 2, 'Project Description,'" of this Final EIR, the Draft EIR has been revised to describe pipeline installation methods at the Bockman Channel crossing. Accordingly, the text on page 3.3-13 of the Draft EIR has been revised as follows:

> From Industrial Boulevard, the alignment would then continue northwesterly along developed roadways within urban areas of Hayward before arriving at the former Skywest Golf Course. The pipeline alignment would then extend southwest along the former Skywest Golf course upland berm before crossing the railroad west of the former Skywest Golf Course and arriving at the Oro Loma Marsh western berm. At this location, the project would continue along the Oro Loma Marsh's eastern and northern berms before crossing Bockman Channel within a proposed prefabricated steel pipe bridge~~at an existing bridge~~ and terminating at the Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant, which lies within the unincorporated portion of Alameda County in the community of San Lorenzo.

The text on page 3.3-67 of the Draft EIR has also been revised as follows:

> The potential staging areas occur in easily accessible, previously developed, or disturbed areas with only limited coverage of ornamental or ruderal vegetation (if any) of marginal value to special-status bird species. Various channel and wetland crossings would also occur in habitat potentially suitable for special-status

birds. Where bridge crossings ~~at existing bridges~~ are not feasible, trenchless construction techniques such as HDD and microtunneling would be employed to avoid direct impacts to sensitive habitats such as tidal marsh. HDD and microtunneling does, however, require temporary disturbance for work areas associated with the construction pit entrance and receiving ends, and HDD does require a pipe string laydown area. This may result in additional direct temporary impacts to sensitive habitats. Per the preliminary design, staging and laydown would result in 0.1 acre of CARI mapped playa temporary impacts.

The text on page 3.3-85 of the Draft EIR has also been revised as follows:

Project construction activities such as pipeline trenching, or establishment of work areas for construction pits or HDD pipe string laydown areas could potentially require tree trimming or tree removal. Most of the MSS brine transport pipeline alignment would occur along existing roadways and berm roads that are unlikely to require tree removal or trimming. Channel and sensitive habitat crossings would occur via trenchless construction techniques such as HDD and microtunneling, or over ~~existing~~ bridges, which would minimize the potential need for tree trimming or removal in these areas. Nonetheless, trees may be present within the construction footprint area, and could require trimming or removal, or be otherwise damaged during construction. Based on aerial photo review, trees are most likely to be present and potentially affected within landscaped roadways and medians, on the former Skywest Golf Course berm, and at the proposed HDD or microtunnel crossing of Alameda Creek Flood Control Channel.

As discussed in Section 4.3, "Revisions to Chapter 2, 'Project Description,'" the MSS brine transport pipeline alignment at the crossing of State Route 84 has been shifted entirely within public rights-of-way and ground disturbance would no longer be required adjacent to Quarry Road. Accordingly, Section 3.3, "Biological Resources," of the Draft EIR has been revised as described below.

The text on page 3.3-13 of the Draft EIR has been revised as follows:

The pipeline alignment would then continue under SR 84 and along ~~Quarry Road,~~ Paseo Padre Parkway, and Ardenwood Boulevard within the City of Fremont. This area includes undeveloped uplands to the west and urban developments to the east. After crossing the Alameda Creek Flood Control Channel, the alignment would continue along Union City Boulevard, within a developed urban environment within the City of Union City, to the Old Alameda Creek Flood Control Channel (aka Old Alameda Creek).

The text on page 3.3-20 of the Draft EIR has also been revised as follows:

Upland Habitats

Urban Developed

Most of the project between the Newark Slough at Thornton Avenue crossing and the former Skywest Golf Course would occur in urban developed uplands. These areas are characterized by asphalt roadways; urban, residential, and industrial developments; barren but disturbed parcels; public parks and appurtenances; and paved parking lots. Nearly all of the MSS brine transport pipeline alignment between the Refuge and the former Skywest Golf Course would be constructed on or adjacent to existing roadways, with the exception of select channel, road, and railway crossings and approaches ~~including a short roadway crossing approach through annual grassland adjacent to Quarry Road in Fremont~~.

The text on page 3.3-24 of the Draft EIR has also been revised as follows:

CARI mapping identifies playa habitat within or adjacent to the southern portion of the MSS brine transport pipeline alignment, including northeast of the proposed Plummer Creek crossing; east of the proposed alignment on the Refuge berm between the Former Barge Canal, Sam Trans Rail Line, and Hetch Hetchy Aqueduct ~~UPRR/SamTrans Rail Line/Hetch Hetchy Aqueduct~~ crossing and the Newark Slough at Thornton Avenue crossing; and surrounding SR 84 ~~and Quarry Road~~ (SFEI 2017). Other large areas of playa habitat are mapped within the study area, but away from the pipeline alignment.

The text on page 3.3-46 of the Draft EIR has also been revised as follows:

> There are 13 CNNDB recorded presumed extant occurrences of this species within the study area. The MSS brine transport pipeline alignment overlaps with salt-marsh harvest mouse mapped occurrence ranges at the proposed Newark Slough at Thornton Avenue HDD crossing~~ and in playa habitat west of Quarry Road~~. This species has also been recorded in dense pickleweed within Oro Loma Marsh. Several other occurrences have been recorded within 1,000 feet or less of pipeline alignment. There is potential foraging and nesting habitat within tidal marsh throughout the study area, and salt-marsh harvest mouse may traverse berms to move between tidal marsh habitats.

The text on page 3.3-67 of the Draft EIR has also been revised as follows:

> Most of the MSS brine transport pipeline would be installed beneath existing roadways and berm roads that do not provide high quality habitat for special-status bird nesting or foraging; however, the buried pipeline would require direct temporary construction disturbance of select undeveloped areas away from existing developed roadways. This includes a short segment along the shoulder of Thornton Avenue~~, in an annual grassland area adjacent to CARI mapped tidal marsh; a short segment along Quarry Road, identified in CARI mapping as playa~~ and in the focused surveys as annual grassland and seasonal alkali wetland; and short segments on either side of the proposed Alameda Creek Flood Control Channel adjacent to Ardenwood Boulevard and Union City Boulevard, identified during focused surveys as annual grassland; and a short segment north of SR 92 that appears to contain annual grassland and ornamental plantings….

The text on page 3.3-69 of the Draft EIR has also been revised as follows:

> MSS Brine Transport Pipeline – Terrestrial Mammals
>
> As described for special-status birds, the MSS brine transport pipeline alignment would predominantly occur on roadways in urban developed environments. Along the proposed alignment, salt marsh habitat potentially suitable for salt-marsh harvest mouse and salt-marsh wandering shrew occurs only in select areas, including within Oro Loma Marsh, along the proposed Thornton Avenue alignment, at the proposed Newark Slough at Thornton Avenue crossing, at the proposed Newark Slough tributary south of Hetch Hetchy Aqueduct and UPRR/SamTrans Rail Line/Hetch Hetchy Aqueduct crossings, east of the Pond 13 berm alignment (across a submerged channel), and at the proposed Plummer Creek crossing. Based on the preliminary design and CARI mapping, there would be no temporary or permanent impacts to tidal marsh habitats. The MSS brine transport pipeline alignment overlaps with CNDDB recorded ranges of salt marsh harvest mouse and salt marsh wandering shrew at the Newark Slough at Thornton Avenue crossing~~, and salt-marsh harvest mouse along Quarry Road~~. Salt marsh harvest mouse has also been recorded in Oro Loma Marsh.
>
> …
>
> Disturbance of salt marsh habitat throughout the alignment would be largely avoided through use of trenchless construction techniques such as HDD and microtunneling. HDD and microtunneling do, however, require temporary disturbance for work areas associated with the construction pit entrance and receiving ends, and HDD requires a pipe string laydown area. This could result in additional direct temporary impacts to sensitive habitats potentially including tidal marsh. In select narrow roadway or berm areas, trenching could also result in small areas of impact to adjoining salt marsh to accommodate the required 4 to 5 feet of trenching. The project also notably includes trenching ~~adjacent to Quarry Road at the margins of playa habitat with a CNDDB recorded salt-marsh harvest mouse occurrence, and~~ on the Oro Loma Marsh berm adjacent to recorded salt marsh harvest mouse occurrences.

The text and Table 3.3-2 on page 3.3-78 of the Draft EIR has also been revised as follows:

> The proposed MSS brine transport pipeline alignment would avoid or minimize construction impacts to waters, wetlands, or other environmentally sensitive areas to the extent practicable. ~~A segment of the alignment may require trenching or associated disturbance in CARI mapped playa habitat, which is considered a water of the United States and state subject to USACE and RWQCB jurisdiction. This includes an approximately 500-foot segment of the proposed MSS brine transport pipeline alignment next to Quarry~~

~~Road (0.9 acre of pipeline disturbance, 0.1 acre of laydown).~~ Temporary encroachment on waters and wetlands may also occur from pipeline trenching, staging, and laydown areas throughout the alignment. Based on CARI mapping, preliminary estimates of temporary impacts from MSS brine transport pipeline disturbance, staging, and laydown area (including construction buffers) presented in Table 3.3-2.

Table 3.3-2 Temporary Impacts to Waters and Wetlands from MSS Brine Transport Pipeline Construction

Habitat Type	Project Component	Impact Acreage
~~Playa~~	~~Laydown Area~~	~~0.1~~
	~~Pipeline Disturbance~~	~~0.9~~
Unvegetated Pond	Pipeline Disturbance	0.2
Vegetated Pond	Pipeline Disturbance	0.1
Tidal Channel	Pipeline Disturbance	0.2
	Total Impact	0.5~~1.5~~

Note: Waters and wetlands habitat areas calculated using CARI mapping for study area (SFEI 2017).

Source: Data from SFEI 2017, compiled by AECOM in 2022.

...

HDD or microtunneling would be implemented below water features at the Former Barge Canal, Sam Trans Rail Line, and Hetch Hetchy Aqueduct crossing ~~Newark Slough tributary south of Hetch Hetchy Aqueduct and UPRR/SamTrans/Hetch Hetchy Aqueduct crossings~~, which includes tidal marsh, tidal channels, and CDFW designated northern coastal salt marsh; the Newark Slough at Thornton Avenue crossing, which includes tidal marsh, tidal flat and marsh panne habitat, and CDFW designated northern coastal salt marsh; the SR 84 ~~cloverleaf~~ crossing, with ~~which include~~ playa and vegetated pond habitat to the west of the crossing; the Old Alameda Creek Flood Control Channel, which includes CDFW designated northern coastal salt marsh sensitive natural community; and the former Skywest Golf Course and railroad crossing at Oro Loma Marsh, which includes vegetated pond habitat on its western end. Roadway or berm trenching could result in small areas of impact to adjoining salt marsh to accommodate the required 4 to 5 feet of trenching; this is most likely to occur in areas adjacent to tidal marsh habitat, including on the Solar Salt Facility and Oro Loma Marsh berms and along Thornton Avenue.

In response to a comment on the Draft EIR, the following text has been added to page 3.3-66, which describes how implementing Mitigation Measure 3.3-10 would reduce the impact from potential directional drilling releases to a less-than-significant level:

Significance after Mitigation

Mitigation Measure 3.3-10 would minimize and substantially avoid an adverse environmental effect from directional drilling releases to fish and other species associated with aquatic and wetland habitats because deployment of silt fencing and other spill prevention and control measures, along with immediate cessation of drilling and implementation of other measures in the event of a spill, would ensure rapid containment and cleanup.

Common to all special-status species resources, Mitigation Measures 3.3-2 and 3.3-3, which entail standard biological resource avoidance measures and worker environmental awareness training, would ensure that construction encroachment or disturbance on special-status species habitats are avoided.

With the implementation of Mitigation Measures 3.3-1, 3.3.-2, and 3.3-10, impacts on special-status fish species would be reduced to less than significant.

In response to a comment on the Draft EIR, the following text has been added to the last paragraph in the description of Mitigation Measure 3.3-13 on page 3.3-76 to include coordination with BCDC in determining compensatory mitigation for impacts on wetlands under BCDC's jurisdiction:

> To the degree feasible and acceptable to the agencies with jurisdiction, restoration, rehabilitation, and/or replacement of jurisdictional waters for permanent impacts will be mitigated in-kind and completed on-site at a location agreeable to USACE and the RWQCB in accordance with USACE and San Francisco RWQCB mitigation guidelines and in coordination with BCDC as applicable. Any permanent impacts that cannot be mitigated through on-site restoration, rehabilitation, and/or replacement will be compensated through purchase of mitigation credits at a USACE/San Francisco RWQCB-approved mitigation bank.

4.5 REVISIONS TO CHAPTER 3.4, "CULTURAL AND TRIBAL CULTURAL RESOURCES"

Section 4.1, "Revisions to the 'Executive Summary' Chapter," identifies revisions to Mitigation Measures 3.4-2a, 3.4-2b, and 3.4-3, which appear on pages 3.4-20 and 3.4-21 of the Draft EIR. The mitigation measures are modified in the same way, but the revisions are not repeated here.

In response to a comment on the Draft EIR, the following text has been added to page 3.4-5, immediately following the "Public Resources Code Section 5097" section, to identify applicable regulations related to public lands:

> ### Public Resources Code Section 6313
> PRC Section 6313 governs the administration and control of state lands and specifies that the title to all archaeological sites and historic or cultural resources on or in the tidelands and submerged lands of California is vested in the state and under the jurisdiction of the California State Lands Commission (CSLC). The final disposition of archaeological, historical, and paleontological resources recovered on state land under the jurisdiction of the CSLC must be approved by the CSLC.

In response to a comment on the Draft EIR and based on consultation with Native American tribes culturally affiliated with the project area, the following text has been revised on page 3.4-21 to refer requirement for tribal monitoring during ground-disturbing activities in sensitive areas:

> **Significance after Mitigation**
> Implementation of Mitigation Measures 3.4-2a, ~~and~~ 3.4-2b, and 3.4-3 would include tribal monitoring during ground-disturbing activities in potentially sensitive areas, and require daily monitoring logs to document any cultural materials identified. In the case of a discovery, appropriate treatment and proper care of significant tribal cultural resources, in accordance with the wishes of the geographically and culturally affiliated tribe, will be required ~~in the case of a discovery~~. Therefore, this impact would be reduced to less than significant.

4.6 REVISIONS TO CHAPTER 3.7, "HAZARDS AND HAZARDOUS MATERIALS"

Section 4.1, "Revisions to the 'Executive Summary' Chapter," identifies revisions to Mitigation Measures 3.7-4b, 3.7-4c, and 3.7-4d, which appear on pages 3.7-14 and 3.7-15 of the Draft EIR. The mitigation measures are modified in the same way, but the revisions are not repeated here.

4.7 REVISIONS TO CHAPTER 3.8, "HYDROLOGY AND WATER QUALITY"

Section 4.1, "Revisions to the 'Executive Summary' Chapter," identifies revisions to Mitigation Measures 3.3-10 and 3.8-2, which appear on pages 3.8-22 and 3.8-28 of the Draft EIR. The mitigation measures are modified in the same way, but the revisions are not repeated here.

In response to a comment on the Draft EIR, the following text on pages 3.8-4 and 3.8-5 of Section 3.8.1, "Regulatory Setting," has been revised as follows to identify BCDC as a state agency and to include BCDC's sea level rise guidance:

~~California Coastal Commission~~

~~The California Coastal Commission published Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits per Public Resources Code Division 20.6 Planning for Sea Level Rise. This document provides an overview of the best available science on sea level rise for California and recommended methodology for addressing sea level rise in Coastal Commission planning and regulatory actions. It is intended to serve as a multi-purpose resource for a variety of audiences and includes a high level of detail on many subjects (CCC 2018).~~

San Francisco Bay Conservation and Development Commission

The San Francisco Bay Conservation and Development Commission's (BCDC's) authority derives from two statutes, the McAteer-Petris Act and the Suisun Marsh Preservation Act. Under the McAteer-Petris Act, jurisdiction of the San Francisco Bay includes:

- the Bay itself (all areas that are subject to tidal action, including sloughs, from the south end of the Bay to the Golden Gate to the Sacramento River, as more specifically defined by the act);
- a shoreline band of land extending inland for 100 feet from the shoreline of the Bay;
- salt ponds (as defined by the act);
- managed wetlands (as defined by the act); and
- certain waterways consisting of all areas that are subject to tidal action on named tributaries that flow into the Bay, as listed in the act.

The McAteer-Petris Act requires that any person or governmental agency wishing to place fill in, or to extract materials exceeding $20 in value from, or make any substantial change in use of any land, water, or structure within the area of BCDC's jurisdiction must secure a permit from BCDC (as well as any permit required from any city or county within which any part of the work is to be performed). The act provides that BCDC shall grant a permit if it finds that the project is either: (1) necessary to the health, safety, or welfare of the public in the entire Bay Area; or (2) consistent with the provision of the act and with the applicable provisions of the San Francisco Bay Basin Plan.

In addition to its permit authority under state law, BCDC exercises authority under Section 307 of the federal Coastal Zone Management Act (CZMA) (16 US Code Section 1456) over federal activities and development projects and nonfederal projects that require a federal permit or license or are supported by federal funding. The consistency provisions of Section 307 of the CZMA provide that any federal activity, including a federal development project, that affects any land or water use or natural resource of the BCDC's coastal zone, must be conducted in a manner that is "consistent to the maximum extent practicable" with the enforceable policies of the BCDC's federally approved coastal management program. Similarly, any nonfederal activity that requires either a federal permit or license or is supported by federal financial assistance that affects the BCDC's coastal zone must be conducted in a manner that is fully consistent with the enforceable policies of the BCDC's federally approved coastal management program.

In July 2021, BCDC published the *San Francisco Bay Plan Climate Change Policy Guidance* (BCDC 2021). The document provides nonregulatory information to assist in the development of projects in relation to the

requirements of climate change policies. The document incorporates resources that draw upon the best available science and planning guidance for sea level rise, including the Ocean Protection Council's 2018 Sea Level Rise Guidance.

LOCAL

East Bay Dischargers Authority

The project will be required to enter an Operations Agreement with EBDA and adhere to the requirements of ~~the~~ San Francisco Bay RWQCB ~~issued~~ Order Number R2-2022-0023 NPDES Number CA0037869, which authorizes EBDA and its M~~m~~ember A~~a~~gencies to discharge secondary treated municipal wastewater and Zone 7 reverse osmosis reject water to the lower San Francisco Bay ~~in July of 2022~~. Average monthly effluent limitations are 86 mg/L as nitrogen for total ammonia, 53 µg/L for total recoverable copper, 20 µg/L for total cyanide, and 1.4 x 10^{-8} µg/L for dioxin toxic equivalency.

~~San Francisco Bay Conservation and Development Commission~~

~~The San Francisco Bay Conservation and Development Commission's (BCDC's) authority derives from two statutes, the McAteer-Petris Act and the Suisun Marsh Preservation Act. Under the McAteer-Petris Act, jurisdiction of the San Francisco Bay includes:~~

- ~~the Bay itself (all areas that are subject to tidal action, including sloughs, from the south end of the Bay to the Golden Gate to the Sacramento River, as more specifically defined by the act);~~
- ~~a shoreline band of land extending inland for 100 feet from the shoreline of the Bay;~~
- ~~salt ponds (as defined by the act);~~
- ~~managed wetlands (as defined by the act); and~~
- ~~certain waterways consisting of all areas that are subject to tidal action on named tributaries that flow into the Bay, as listed in the act.~~

~~The McAteer-Petris Act requires that any person or governmental agency wishing to place fill in, or to extract materials exceeding $20 in value from, or make any substantial change in use of any land, water, or structure within the area of BCDC's jurisdiction must secure a permit from the Commission (as well as any permit required from any city or county within which any part of the work is to be performed). The act provides that the Commission shall grant a permit if it finds that the project is either: (1) necessary to the health, safety, or welfare of the public in the entire Bay Area; or (2) consistent with the provision of the act and with the applicable provisions of the San Francisco Bay Basin Plan.~~

~~In addition to its permit authority under state law, BCDC exercises authority under Section 307 of the federal Coastal Zone Management Act (CZMA) (16 US Code Section 1456) over federal activities and development projects and non-federal projects that require a federal permit or license or are supported by federal funding. The consistency provisions of Section 307 of the CZMA provide that any federal activity, including a federal development project, that affects any land or water use or natural resource of the BCDC's coastal zone, must be conducted in a manner that is "consistent to the maximum extent practicable" with the enforceable policies of the BCDC's federally approved coastal management program. Similarly, any nonfederal activity that requires either a federal permit or license or is supported by federal financial assistance that affects the BCDC's coastal zone must be conducted in a manner that is fully consistent with the enforceable policies of the BCDC's federally approved coastal management program.~~

In response to a comment on the Draft EIR, the following text in the summary of Mitigation Measure 3.8-4 on page 3.8-29 in Section 3.8.3, "Environmental Impacts and Mitigation Measures," has been revised as follows to clarify that above ground appurtenances associated with the MSS brine transport pipeline would not include access vaults:

> **Impact 3.8-4: Potential to Substantially Alter the Existing Drainage Pattern of the Area, Including through the Alteration of the Course of a Stream or River, in a Manner That Would Result in Substantial Erosion or Siltation On- or Off-Site, Result in Flooding On- or Off-Site, Create or Contribute Runoff Water That Would Exceed the Capacity of Existing or Planned Storm Water Drainage Systems or Provide Additional Sources of Polluted Runoff, or Impede or Redirect Flood Flows**
>
> The project would not alter drainage patterns. Aboveground infrastructure proposed at the Solar Salt Facility, which includes surface pipelines, a weir, pump stations, and electrical boxes, would result in a small increase in impervious area, which would not cause runoff that would exceed the capacity of existing or planned stormwater drainage systems. The aboveground components for the extent of the pipeline would be~~are~~ minimal and include air relief and isolation valves~~access vaults~~. All other project components are below ground and would not alter existing drainages or increase impervious area. The project would comply with the Statewide Construction General Permit (Order No. 2009-0009-DWQ) to minimize erosion or siltation during construction. Although located in the FEMA 100-year floodplain in some locations, the project would not result in flooding or redirect flood flows. The project's impact on existing drainage patterns, erosion or siltation, stormwater runoff, and flooding would be less than significant.

4.8 REVISIONS TO CHAPTER 3.10, "RECREATION"

Section 4.1, "Revisions to the 'Executive Summary' Chapter," identifies revisions to Mitigation Measure 3.10-1, which appears on page 3.10-14 of the Draft EIR. The mitigation measures are modified in the same way, but the revisions are not repeated here.

In response to a comment on the Draft EIR, references to the diameter of the MSS brine transport pipeline have been revised to be consistent with the pipeline diameter identified in the most current design plans. Specifically, the text in the third paragraph on page 3.10-8 of the Draft EIR has been revised as follows:

> …Union City and Cargill have agreed, if the project is approved, to coordinate construction of the Bike Lanes Project, including laying of the fiber optic cable conduit, and the work including trenching and installation of the underground ~~14-inch~~18-inch MSS brine transport pipeline between the Alameda Creek Flood Control Channel bridge and Alvarado Boulevard to avoid disruption of the road multiple times over a relatively short period…

In addition, the text in the last row under the "Description of Effects" column of Table 3.10-2, "Project Effects on Parks and Recreation Resources in the Study Area," on page 3.10-14 of the Draft EIR has been revised as follows:

> …The bike lanes project would result in extensive investment in roadwork along the affected segment of the roadway. Union City and Cargill have agreed, if the project is approved, to coordinate construction of the bike lanes project, including laying of the fiber optic cable conduit, and the work including trenching and installation of the underground ~~14-inch~~18-inch MSS brine transport pipeline between the Alameda Creek Flood Control Channel bridge and Alvarado Boulevard to avoid disruption of the road multiple times over a relatively short period…

In response to a comment on the Draft EIR, the description of the proposed staging and laydown area near Marshlands Road on page 3.10-10 of the Draft EIR has been revised as follows:

Don Edwards National Wildlife Refuge/ Newark Slough Trail	Figure 2-8b	Intersects/ Adjacent	The Cargill Solar Salt Facility is within the Don Edwards National Wildlife Refuge. On-site improvements would be limited to areas that are reserved for Cargill's operations and are inaccessible to the public. However, sections of the MSS brine transport pipeline would be installed within a portion of the refuge that is used for recreation, including for approximately 0.5 mile along the Newark Slough Trail. Assuming that up to 150 feet of pipeline would be installed per day, pipeline installation along the Newark Slough Trail would occur for approximately 1 month. Staging and laydown areas are also proposed on portions of this trail, including the area just south of the Newark Slough at Thornton Avenue crossing and the area just north of the UPRR, SamTrans Rail Line, Hetch Hetchy Aqueduct crossing. Additionally, a staging and laydown area is proposed ~~on~~ near Marshlands Road, just west of Thornton Avenue, in an area that is used as parking for the refuge. Staging and laydown areas would be in use for approximately 8 to 12 weeks. During construction, sections of the trail and parking area may be closed to the public. Additionally, project construction has potential to result in indirect effects (e.g., temporary changes to visual character and quality, and increases in noise, dust, and traffic) based on the distance from the trail to project construction activities. Because of the required closures and duration of construction activities, recreationists could be displaced to other locations such that physical deterioration of other parks and recreational facilities could occur or be accelerated.

4.9 REVISIONS TO CHAPTER 4, "CUMULATIVE IMPACTS"

In response to a comment on the Draft EIR, pages 4-7 and 4-8 of the Draft EIR have been revised as follows to identify East Bay Regional Park District as the project lead for Map IDs #35 and 37:

35	Hayward Shoreline Restoration	Restoration	Hayward Marsh, Alameda County	The project, led by East Bay Regional Park District, would include restoring 350 acres of habitat restoration to plan for sea level rise and habitat resiliency; enhancing wildlife habitat; and restoring portions of Hayward Marsh to seasonal wetlands, muted tidal marsh, fully tidal marsh, or a combination. The project would also provide adequate hydrology to minimize silting and stagnant water and would enhance public access and wildlife viewing.	Planning
36	South Bay Salt Ponds Restoration: Eden Landing	Restoration	Eden Landing, Alameda County	The project would include restoring over 1,375 acres of tidal wetlands between Old Alameda Creek and the Alameda Creek Flood Control Channel, possibly adding 400 acres of enhanced pond habitat, constructing innovative flood protection elements, and around 4 miles of new Bay Trail.	Planning
37	Coyote Hills Regional Park - Restoration and Public Access Project	Restoration	Coyote Hills Regional Park, Alameda County	This project, led by East Bay Regional Park District, would include restoring marsh, seasonal wetlands, and coastal prairie; improving water circulation and quality; enhancing habitat for the endangered Salt Marsh Harvest Mouse and Ridgway's Rail; and acquiring lands to protect wildlife and develop public access to restored areas.	Planning

4.10 REVISIONS TO CHAPTER 5, "ALTERNATIVES"

As noted above in Section 4.3, "Revisions to Chapter 2, 'Project Description,'" the MSS brine transport pipeline alignment at the crossing of State Route 84 has been shifted entirely within public rights-of-way and ground disturbance would no longer be required adjacent to Quarry Road. Accordingly, page 5-24 of the Draft EIR has been revised as follows:

> Alternative 2 would, however, avoid some work near or adjoining sensitive habitats compared to the project; this includes project trenching ~~within playa habitat adjacent to Quarry Road,~~ within the roadway adjacent to tidal marsh along Thornton Avenue, and on the former Skywest Golf Course berm. Impacts to some annual grasslands, ornamental upland vegetation, or developed uplands from the project may also be avoided. This includes reduced construction affecting urban structures that could provide pallid bat nesting habitat compared to the project. However, the increased construction within or near larger areas of sensitive habitat under Alternative 2 would likely more than offset any benefits from avoiding these select areas.

4.11 REVISIONS TO APPENDIX C, "SPECIAL-STATUS SPECIES POTENTIAL FOR OCCURRENCE IN THE BIOLOGICAL STUDY AREA"

As noted above in Section 4.3, "Revisions to Chapter 2, 'Project Description,'" the MSS brine transport pipeline alignment at the crossing of State Route 84 has been shifted entirely within public rights-of-way and ground disturbance would no longer be required adjacent to Quarry Road. Accordingly, the text in the row labeled "Salt-marsh harvest mouse" and column labeled "Summary of Known Occurrences" on the third page of the table included in Appendix C to the Draft EIR, has been revised as follows:

> 13 presumed extant occurrences in the study area; proposed project alignment overlaps with mapped occurrence ranges at Newark Slough crossing ~~and in playa habitat west of Quarry Road~~. Mapped occurrence range also recorded in dense pickleweed within Oro Loma Marsh. Several other occurrences within 1,000 feet of less of the Proposed Project alignment.

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5 REFERENCES

Chapter 1 Introduction

No references used in this chapter.

Chapter 2 Project Updates

No references used in this chapter.

Chapter 3 Responses to Comments

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Chapter 4 Revisions to the Draft EIR

BCDC. *See* San Francisco Bay Conservation and Development Commission.

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6 LIST OF PREPARERS

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Bill Williams ..... Vice President
Matt Roberts ..... Estimator/Project Manager

Appendix A

Public Meeting Transcript

Cargill Mixed Sea Salt Processing and Brine Discharge Project

East Bay Dischargers Authority

Public Meeting on the Draft EIR

Description:

Public meeting to provide information and solicit public comments on the Draft Environmental Impact Report for the Cargill Mixed Sea Salt Processing and Brine Discharge Project in Alameda, California.

Date/Time:

January 24, 2023, 6:00 p.m. via Zoom

Transcription

1

00:00:17.860 --> 00:00:24.259

Jackie Zipkin, EBDA: Welcome everyone. We're just gonna wait one more minute to see if anyone else joins, and then we'll get started.

2

00:01:31.770 --> 00:01:44.139

Jackie Zipkin, EBDA: Alright. Well, it's 6:02. We have a handful of attendees, so I think we can go ahead and get started, and hopefully, anyone else who joins will catch up.

3

00:01:44.150 --> 00:02:07.589

Jackie Zipkin, EBDA: So, welcome everyone to the Draft EIR public meeting for the Cargill Mixed Sea salt Processing and Brine Discharge Project. My name is Jackie Zipkin. I am the general manager of the East Bay Dischargers Authority, or EBDA, and we are the Lead Agency for this project. Next slide, please.

4

00:02:07.630 --> 00:02:30.759

Jackie Zipkin, EBDA: So, as it says, we're the Lead Agency. We have hired Ascent Environmental to conduct this environmental impact assessment and develop the report for us. And Andrea Shephard and Jamie Kirchner from Ascent will be presenting today to walk you all through the project.

5

00:02:30.770 --> 00:02:49.330

Jackie Zipkin, EBDA: If you have any technical questions, you can put them into the Q&A. I believe the chat is disabled for the Webinar, so you can reach out to us via the Q&A box, and we'll do our best to get back to you. With that I'm going to hand it over to Andrea.

6

00:02:51.060 --> 00:03:10.600

Andrea Shephard: Next slide, please. Thank you. Hi, everyone. My name is Andrea Shephard. I am the Project Manager on this project for Ascent Environmental working on behalf of EBDA, East Bay Dischargers Authority, preparing the Environmental Impact Report to comply with CEQA, the California Environmental Quality. Act. So, thank you everyone for attending today.

7
00:03:11.040 --> 00:03:28.979
Andrea Shephard: The presentation is being recorded that will help facilitate a transcript of the comments. As the point of this meeting is to hear oral input on the project and get your comments on the Draft EIR.

8
00:03:29.100 --> 00:03:52.120
Andrea Shephard: During the presentation, all the video cameras for participants will be off, as will your microphones. They'll be muted. At the end of the meeting, after the presentation, we will provide an opportunity for you to raise your hand, and you'll be unmuted to provide oral comments, and you'll each have 3 minutes to provide oral comments.

9
00:03:52.160 --> 00:04:07.390
Andrea Shephard: Written comments are encouraged, and even if you give oral comments today, we ask that you submit them in writing as well. Written comments will be accepted by mail or email, and we'll provide the contact information at the end of the presentation.

10
00:04:07.450 --> 00:04:14.780
Andrea Shephard: The public comment period is open until February 17 until 5 p.m.

11
00:04:15.090 --> 00:04:49.369
Andrea Shephard: If, during the presentation you have questions, you need clarification on the project, or you have questions about how to use Zoom, it's not working for you, please use the Q&A feature at the bottom of your screen to type in a comment and we will do our best to address them. If your comment is a technical nature in terms of the EIR and the analysis, we will be accepting those comments today, but we won't be responding to those comments. Those comments will be responded to in the Final EIR.

12
00:04:50.480 --> 00:05:04.239
Andrea Shephard: And this presentation is available on EBDA's website at this URL here. We'll have this up again at the end of the presentation as well. This is also where you can find a copy of the Draft EIR.

13
00:05:04.980 --> 00:05:11.919
Andrea Shephard: Next slide, please. Jamie, why, don't you walk them through how to use the Zoom features?

14
00:05:12.830 --> 00:05:25.089
Jamie Kirchner: Hello! As Jackie and Andrea mentioned, the chat will be turned off. We will be using the Q&A feature at the bottom of your screen for all comments and questions. Or if you have any Zoom issues that you need assistance with.

15
00:05:25.790 --> 00:05:33.990
Jamie Kirchner: If you are on a desktop and using the web version of Zoom, you're going to find the Q&A at the bottom of your screen. You can see on the image below.

16
00:05:34.150 --> 00:05:45.710
Jamie Kirchner: If you are using your mobile phone, you're going to have to click the three dots for the more options to get access to the Q&A. And to ask a question to submit it that way. Thank you.

17
00:05:48.790 --> 00:06:05.999
Andrea Shephard: All right. So, we're going to begin the presentation with some background on EBDA and Cargill, the project proponent. And then we'll go over a description of the proposed project, and then we'll spend some time on the environmental review process and going over the conclusions of the Draft EIR.

18
00:06:06.160 --> 00:06:15.030
Andrea Shephard: Once we've completed that we will open it up for receiving comments. And again, we're looking for comments on the adequacy of the EIR analysis.

19
00:06:15.690 ---> 00:06:30.020
Andrea Shephard: Please note that EBDA will not be making any decisions on the project today. There'll be no consideration or action at today's meeting. That will happen after the Final EIR is published. Next slide, please.

20
00:06:32.030 --> 00:06:35.610
Andrea Shephard: So, we'll begin with some project background. Next slide.

21
00:06:53.680 --> 00:07:02.329
Andrea Shephard: First, I wanted to introduce you to East Bay Dischargers Authority in a little bit more detail. East Bay Dischargers Authority, or you'll hear me use EBDA throughout the rest of this meeting, is a joint powers public agency, consisting of five local agencies. They include the City of San Leandro, Oro Loma Sanitary District, Castro Valley Sanitary District, City of Hayward, and Union Sanitary District.

22
00:07:02.790 --> 00:07:32.359
Andrea Shephard: EBDA manages treated effluent from the member agencies as well as the Livermore-Amador Valley Water Management Agency, which is the blue line that you see on the figure. It manages the treated effluent from these agencies, and discharges it through a common outfall and diffuser into a deep water portion of San Francisco Bay. It does this under a National Pollutant Discharge Elimination System Permit, or NPDES permit.

23
00:07:32.800 --> 00:08:04.660
Andrea Shephard: As far as the components of EBDA's system, it consists of three effluent pump stations, a dechlorination facility, which is up near where the outfall. Sorry, number one on the figure is the dechlorination facility. And then also the combined effluent pipeline or force main, and the outfall itself. So those are the main components that are owned and operated by EBDA. Next slide, please.

24
00:08:06.490 --> 00:08:29.820
Andrea Shephard: Now, Cargill, is the project proponent for this project. Cargill operates a solar sea salt production facility in Newark, adjacent to the San Francisco Bay. Cargill's solar salt system is separated from the Bay and from local streams and flood control channels by a system of earthen berms with outboard berms abutting the Bay sloughs and tidal marshes.

25
00:08:29.880 --> 00:08:48.909
Andrea Shephard: The berms enclose salt ponds, and these were built for the exclusive purpose of producing salts, namely, sodium chloride and a concentrated magnesium chloride brine, also known as liquid bittern. And it does this through a solar evaporation process using these shallow ponds.

26
00:08:50.090 --> 00:09:01.930
Andrea Shephard: The solar salt production process begins with the intake of Bay water, which enters Cargill's system through pumps or tide gates. The Bay water is generally taken into the system during the high tides in the dry months.

27
00:09:02.080 --> 00:09:18.029
Andrea Shephard: And once in the salt production process, the Bay water becomes known as brine, and the brine is moved through a series of sequential concentrators or concentrator ponds until it reaches a concentration close to the point where the sodium chloride will precipitate out.

28
00:09:19.070 --> 00:09:28.089
Andrea Shephard: Siphons, pipelines, and brine channels allow the brine to be moved through the system and under sloughs, and the Bay, as well as under infrastructure, such as roadways.

29
00:09:28.410 --> 00:09:54.799
Andrea Shephard: When the brine reaches saturation, it is transferred to crystallizer ponds, where the sodium chloride precipitation occurs, and can then be harvested from the beds. After the remaining brine in those ponds is removed. The remaining brine continues through the salt production process, where further sodium chloride may be recovered and liquid bittern, that concentrated magnesium chloride brine, is harvested for production of other commercial products.

30
00:09:55.650 --> 00:10:14.919
Andrea Shephard: The remaining brine also contains other salts, though, that are present in Bay water, namely magnesium sulfate, and additional sodium chloride and magnesium chloride. And if you weren't aware, magnesium sulfate's also known as Epsom salts. And these additional salts are referred to as mixed sea salts.

31
00:10:15.250 --> --> 00:10:29.609
Andrea Shephard: The mixed sea salts are precipitated in two ponds, Ponds 12 and 13, which are shown in the green, the aqua green color in the figure. And they're precipitated out in those two ponds during the processing of the liquid bittern.

32
00:10:30.900 --> 00:10:43.490
Andrea Shephard: Cargill generates mixed sea salts at a rate of approximately 60,000 tons per year in those two ponds, and there are currently approximately 6 million tons of mixed sea salts stored in those two ponds.

33
00:10:44.490 --> 00:11:07.609
Andrea Shephard: Now Cargill is concerned that over time the berms containing this mixed sea salt inventory could be overtopped and/or fail from increased wind and wave action triggered by sea level rise, and that could release high salinity brine into the Bay. And that's the main driver for this project. Next slide, please. Next slide.

34
00:11:08.460 --> 00:11:44.010
Andrea Shephard: So, the proposed project. Basically the proposed project is going to use an innovative technology developed by Cargill to enhance the extraction of additional liquid bittern from the mixed sea salt inventory at Cargill's solar salt facility that would then dissolve the residual mixed sea salts in Bay water to produce more brine that could then be pumped into EBDA's system, EBDA's combined, effluent conveyance system, where it would be blended and diluted with the EBDA member effluent, Member Agency effluent, and then discharge back into the Bay in accordance with EBDA's NPDES permit.

35
00:11:44.680 --> 00:12:06.560
Andrea Shephard: So, in the event of a future berm failure, or overtopping primarily, because the berms are maintained. But with overtopping from increased wind and wave action, triggered by sea level rise, removing the MSS salts stored in the pond, would reduce the potential for release of high salinity brine into San Francisco Bay. Next slide, please.

36
00:12:09.130 --> 00:12:26.640
Andrea Shephard: So, the project itself has two sets of components, what we like to refer to as on-site components, which are those facilities that are being constructed at Cargill's solar salt facility, and then

an off-site component, which is the mixed sea salt brine transport pipeline, which I'll talk about in a minute.

37
00:12:26.700 --> 00:13:06.470
Andrea Shephard: But I just wanted to briefly cover the new facilities at the solar salt facility. The crystallized sea salts in the bay muds in Pond 12 would be dissolved using Bay water that is pumped from a new pump station on Plummer Creek to a new dissolution water pond at the north end of Pond 10. And then a new dissolution water pump station, adjacent to the new Plummer Creek pump station would pump that water through a new distribution system into an innovative micro-trenching system installed in Pond 12 to start out with, to dissolve the mixed sea salts that have crystallized in that pond.

38
00:13:07.500 --> 00:13:27.080
Andrea Shephard: Then the additional liquid bittern would be recovered from the salts that have been dissolved, basically. They would be recovered from the pond and pumped into the other pond, Pond 13, where they could be further processed and the liquid bittern could be harvested.

39
00:13:27.390 --> 00:14:09.389
Andrea Shephard: Then, after Pond 12 is harvested or processed, the micro-trenching system would be installed in Pond 13, and the process would be repeated, and then the additional liquid bittern would be pumped back over to Pond 12 where it would be further processed and harvested. The remaining brine, after the processing of each pond, would be pumped using a new pump station, a mixed sea salt brine pump station installed adjacent to each of the ponds. And those pumps would pump the brine into a new pipeline that would carry the brine, the mixed sea salt brine, to EBDA's system. Next slide, please.

40
00:14:12.570 --> 00:14:31.020
Andrea Shephard: So, this figure here shows the route that the pipeline would take to get to EBDA's system. We have the Newark facility down at the bottom of the map and we have the Oro Loma Sanitary District's water pollution control plant up near the top of the figure.

41
00:14:31.670 --> 00:14:58.729
Andrea Shephard: It would be a 14-inch brine transport pipeline that would be constructed and extend north, primarily along roadway rights-of-way for approximately 15.6 miles, again connecting the solar salt facility to the Oro Loma Effluent Pump Station just beyond the Oro Loma Sanitary District/Castro Valley Sanitary District's water pollution control plant in San Lorenzo, which is up at the north end of the map.

42
00:14:59.790 --> 00:15:27.200
Andrea Shephard: Based on the current design, the transport pipeline would be located within portions of Thornton Avenue, Paseo Padre Parkway, Ardenwood Boulevard, Union City Boulevard, Hesperian Boulevard, Eden Shores Boulevard, Marina Drive, Industrial Boulevard, Lombard Avenue, Arden Road,

Corporate Avenue, Investment Boulevard, Production Avenue, Clawiter Road, West Winton Avenue and Corsair Boulevard. That's the route that is being proposed.

43
00:15:28.240 --> 00:15:55.439
Andrea Shephard: And the brine transport pipeline would tie into this combined effluent system immediately downstream of the plant at the OLEPS, or the Oro Loma Effluent Pump Station. And that's where it would be combined with treated effluent from the other agencies, and then discharged back into EBDA's conveyance system and out to the discharge point in the Bay, the outfall. So that is the proposed project. Next slide, please.

44
00:15:57.780 --> 00:16:08.149
Andrea Shephard: Now I'd like to talk a little bit about the environmental review process and provide our conclusions from the Draft EIR, or summarize them at least. Next slide, please.

45
00:16:12.140 --> 00:16:42.910
Andrea Shephard: So, first off, this is the Environmental Impact Report that we prepared under the California Environmental Quality Act, or CEQA. CEQA provides information to the public and decision makers about the potential significant environmental impacts of a project. It identifies ways to avoid or reduce significant impacts, and it does not require that projects with significant impacts be denied if the lead agency finds there are economic, social, or other conditions that would justify project approval. Next slide, please.

46
00:16:47.030 --> 00:17:06.869
Andrea Shephard: So, EBDA has determined that an environmental impact report needed to be prepared because there could be a potential for significant impacts of the project. The EIR describes all phases of the project, including construction and operations. It identifies the potential physical, environmental, or physical impacts on the environment.

47
00:17:07.740 --> 00:17:12.380
Andrea Shephard: And it recommends feasible mitigation measures that would reduce potentially significant impacts.

48
00:17:12.460 --> 00:17:19.170
Andrea Shephard: It also identifies alternatives that may reduce one or more significant impacts of the project, as required under CEQA.

49
00:17:20.390 --> 00:17:39.320
Andrea Shephard: CEQA requires EIRs to describe a range of reasonable alternatives to a project or to the location of a project, which would feasibly attain most of the basic objectives of a project, but would

avoid, or substantially lessen any of the significant effects of the project, and then evaluate the comparative merits of the alternatives.

50
00:17:40.320 --> 00:17:51.379
Andrea Shephard: CEQA also requires that a No Project Alternative be considered, and that allows decision makers to compare the impacts of approving a proposed project with impacts of not approving the project.

51
00:17:52.980 --> 00:18:14.799
Andrea Shephard: Once the EIR is prepared, it is put out for public review, which is the part of the process we are in now. And then comments are responded to, and a Final EIR is prepared. The Final EIR has to be certified to complete the CEQA process. But certification of the EIR does not indicate project approval. That's a separate decision.

52
00:18:17.570 --> 00:18:37.830
Andrea Shephard: And again, I just want to reiterate that identification of significant impacts of a project does not require that a project be denied. If EBDA finds that economic, social, or other overriding considerations would justify approval, the project may still be approved. Next slide, please.

53
00:18:40.810 --> 00:18:46.079
Andrea Shephard: So, this slide describes the EIR process, which I've kind of alluded to already a little bit.

54
00:18:46.110 --> 00:18:58.229
Andrea Shephard: The first part of the process is to issue a Notice of Preparation that an EIR is going to be prepared. That was done back in May of 2022, we issued an NOP, or Notice of Preparation.

55
00:18:58.280 --> 00:19:08.669
Andrea Shephard: And then we issued a revised Notice of Preparation, based on some changes in the alignment for the MSS brine pipeline. We issued that revised NOP on July 8.

56
00:19:09.300 --> 00:19:18.019
Andrea Shephard: That went out to responsible agencies, interested parties, and organizations, as well as individuals that could have an interest in the proposed project.

57
00:19:19.100 --> 00:19:26.360
Andrea Shephard: The purpose of the NOP was to provide notification, as I mentioned, and to solicit input on the scope and content of the EIR.

58
00:19:28.970 --> 00:19:42.840
Andrea Shephard: EBDA also held an online public scoping meeting, similar to this, on June 1 to inform interested parties about the project and to provide an opportunity to provide oral input on the scope and content of the EIR.

59
00:19:43.960 --> 00:19:54.069
Andrea Shephard: The Draft EIR then was prepared and has been issued. It was released on January 4, and is available at the web address shown here on the slide.

60
00:19:56.530 --> 00:20:01.819
Andrea Shephard: That EIR takes into account the comments that we received during the scoping process.

61
00:20:01.900 --> 00:20:07.680
Andrea Shephard: And it's out for a 45-day public review period, which again ends on February 17.

62
00:20:07.980 --> 00:20:16.220
Andrea Shephard: Today we're conducting the public meeting to provide an opportunity for oral input, but you will have until February 17 to provide written comments.

63
00:20:16.580 --> 00:20:38.900
Andrea Shephard: Once the written comments are received, we will prepare a Final EIR, which will respond to all of the comments received on the Draft EIR, and that document will be issued, and then Cargill will consider the Final EIR and make a decision on the project, whether to approve or deny the project. Next slide, please.

64
00:20:41.750 --> 00:20:53.999
Andrea Shephard: So, this slide just summarizes the issue areas that were scoped out of the Draft EIR. They were not addressed in detail in the Draft EIR based on the scoping process. Next slide, please.

65
00:20:58.600 --> 00:21:05.210
Andrea Shephard: And this slide summarizes the resource topics that were addressed in detail in the EIR.

66
00:21:05.850 --> 00:21:16.470
Andrea Shephard: Those identified in bold, a blue bold, those issue areas were issues where we found that the project could have at least for one potential impact that could be significant and mitigation was identified and included in the EIR that would reduce that impact to a less-than-significant level.

68
00:21:30.400 --> 00:21:38.369
Andrea Shephard: There was one resource area, noise in particular, construction-related noise effects, that was found to be significant, not avoidable.

69
00:21:38.490 --> 00:21:54.570
Andrea Shephard: Because of the proximity of sensitive receptors to the pipeline alignment, we found that it would not be possible to reduce the noise levels during construction below the local ordinance requirements.

70
00:21:54.890 --> 00:22:07.060
Andrea Shephard: And that impact was considered significant and unavoidable even after implementation of mitigation measures that are identified in the EIR. Next slide, please.

71
00:22:09.480 --> 00:22:25.230
Andrea Shephard: As I mentioned before, CEQA also requires evaluation of alternatives. We evaluated three alternatives in the EIR, the No Project Alternative, which is required, as I mentioned, and then two other action alternatives.

72
00:22:25.630 --> 00:22:46.530
Andrea Shephard: The No Project Alternative essentially would not construct the project, and would be the status quo. EBDA would continue to operate as it is currently operating and the solar salt facility, Cargill's facility, would continue to operate as it's currently operating and continue to increase its inventory of mixed sea salts.

73
00:22:46.820 --> 00:22:56.900
Andrea Shephard: There would be no construction impacts, therefore, because there would be no construction. But this project obviously would not meet any of the project objectives.

74
00:22:58.220 --> 00:23:08.029
Andrea Shephard: The In-Pipe Alternative, or Alternative 1, is the pink and blue that you see here on the figure.

75
00:23:10.080 --> 00:24:00.650
Andrea Shephard: This alternative would use a combination of new pipeline and existing EBDA pipeline. It assumes a shorter route for the mixed sea salts brine transport pipeline, 7 and a half miles of new pipeline. That is the pink from the solar salt facility up to what is the Alvarado Treatment Plant. And at that point, or just north of there, the pipeline would connect to EBDA’s system just downstream of the Alvarado Treatment Plant in Union City, rather than up at the north end at the Oro Loma Plant, so it

would connect in much sooner and it would require less construction of pipeline. However, this alternative would require the installation of 4 miles of slip liner in EBDA's system.

76
00:24:00.690 --> 00:24:17.229
Andrea Shephard: That's the blue length. The solid blue length, that is. Because that part of the system would have a greater potential for corrosion due to introduction of the brine into their pipeline.

77
00:24:18.460 --> 00:25:12.890
Andrea Shephard: Alternative 1 would result in some impacts that are greater than those of the project, including greater potential to disturb known archaeological resources and special-status species, release of pollutants if the site was inundated, and so on. But most of the impacts under this alternative would be reduced compared to the proposed project. For example, there'd be a reduced degree of construction and excavation, and therefore, less potential to result in water quality impacts and things like that. And less emissions of air pollutants, and so forth. It would also have a reduced construction related noise impact compared to the proposed project. But it would still exceed the thresholds, and would still have a significant and unavoidable impact related to noise. It's just that there would be less opportunity.

78
00:25:14.570 --> 00:26:29.160
Andrea Shephard: The Bayside Parallel Pipe Alternative assumes approximately 17 miles of new MSS brine transport pipeline that would travel along the edges of Cargill salt ponds instead of the 16-mile route along roadways. Because the pipelines under this alignment will be located farther away from urban areas under this alternative, there'd be fewer sensitive receptors that would be exposed to noise during construction and the public would be exposed to fewer safety hazards. But even with mitigation, the construction-related noise and vibration would remain significant and unavoidable under this alternative as well. Additionally, the higher degree of construction and excavation required under this alternative would have a higher potential to impact sensitive habitat. Obviously it's going through the marshes. So that's a concern. And it would also, because it's going through the marshes, it would require a much more involved permitting process, which is less desirable. Next slide, please.

79
00:26:31.760 --> 00:26:45.739
Andrea Shephard: So now let's talk about the public input process, and then we can open it up to public comments. How do you provide comments today and/or prior to the end of the comment period?

80
00:26:45.930 --> 00:27:43.900
Andrea Shephard: Again, you can provide oral comments today by raising your Zoom hand. Or if you're on the phone you can press Star 9. You can enter written comments into the Zoom chat or the, sorry, I should say the Zoom Q&A. Not the chat. Or you can mail or email written comments by 5 p.m. on February 17, to Jackie Zipkin at the address shown here, and her email address is also shown here. Her address is East Bay Dischargers Authority, 2651 Grant Avenue, San Lorenzo, California, 94580. Please make those mailed comments to the attention of Jackie Zipkin, General Manager. Or you can email your comments to Jackie Zipkin. That's jzipkin@EBDA.org. Next slide, please.

81
00:27:46.050 --> 00:27:56.370
Andrea Shephard: So, before we begin, just a few more instructions. We want to make sure that you clearly state your name and organization before you begin your comment.

82
00:27:56.700 --> 00:27:59.329
Andrea Shephard: Please remember that comments are being recorded.

83
00:27:59.630 --> 00:28:04.769
Andrea Shephard: And please focus your comments on the adequacy of the environmental analysis.

84
00:28:05.700 --> 00:28:13.910
Andrea Shephard: We won't be responding to those comments during today's meeting. We will respond to those as part of the Final EIR.

85
00:28:14.120 --> 00:28:21.979
Andrea Shephard: And each commenter will have 3 minutes, and we'll have a timer, and Jamie is going to explain that now. Next slide, please.

86
00:28:24.650 --> 00:28:45.170
Jamie Kirchner: As a reminder, if you would like to raise your hand, you will see at the bottom of the screen there is a raised hand, if you're on the desktop. Once it's your turn to speak, we will announce your name, and you will see a box pop up that says the host would like you to unmute your microphone. You can go ahead and press the unmute button and then give your comments.

87
00:28:47.100 --> 00:29:07.350
Jamie Kirchner: If you're calling in by phone, please press Star 9 to raise your hand. Listen for your phone number to be called out, and then you will hear a message, the host would like you to unmute your microphone. You can press Star 6 to unmute. After you're done giving your comments, you can press Star 6 to re-mute yourself.

88
00:29:07.460 --> 00:29:16.330
Jamie Kirchner: Please limit comments to 3 minutes. There will be a warning sound at 30 seconds and 10 seconds remaining, and then you'll be muted after 3 minutes.

89
00:29:32.670 --> 00:29:35.840
Andrea Shephard: I don't see anyone raising their hand, do you, Jamie?

90
00:29:35.920 --> 00:29:39.030

Jamie Kirchner: No, there's nobody currently raising their hand.

91
00:29:43.480 --> 00:29:49.970
Andrea Shephard: The person on the phone. Are you able to unmute them just in case they have a comment they're having trouble.

92
00:29:50.400 --> 00:29:58.839
Jamie Kirchner: Yes, the phone number ending in 0 0 0 6 has been asked to unmute if they would like to give a comment.

93
00:30:09.010 --> 00:30:19.799
Andrea Shephard: Okay, well, we'll just give it one more minute, and if there are no comments, we can close the meeting, and we look forward to receiving your written comments by February 17.

94
00:30:20.220 --> 00:30:25.250
Andrea Shephard: So, let's just hold on for another minute, give people time to collect their thoughts.

95
00:30:55.630 --> 00:31:05.030
Andrea Shephard: Well, I don't think anyone is looking to provide comments to day, Jamie, so we can go to the next slide, and we'll close things out.

96
00:31:05.800 --> 00:31:15.189
Andrea Shephard: Thank you, everyone, for attending today. We appreciate your time, and again we look forward to receiving your comments by February 17, at 5 p.m.

97
00:31:16.890 --> 00:31:28.310
Andrea Shephard: If you have any questions, please put them in the Q&A. We'll leave the Q&A open for just a moment. And otherwise, we will adjourn the meeting. Thank you.

Appendix B

Comment Letters

Letter T1

From: Katherine Perez
To: Andrea Shephard
Subject: Re: TIME SENSITIVE: Notice of Availability of EBDA Draft EIR and Public Meeting for the Cargill Mixed Sea Salts Processing and Brine Discharge Project
Date: Thursday, January 5, 2023 7:16:25 PM

Hello Andrea,

The tribe had a zoom meeting regarding the proposed project and, at that time, stated our concerns and recommended a Native American monitor for the project. The tribe considered it a timely response to the proposed project. T1-1

Nototomne Cultural Preservation
Northern Valley Yokut / Ohlone / Patwin
Katherine Perez
P.O Box 717
Linden, CA 95236

-----Original Message-----
From: Andrea Shephard <Andrea.Shephard@ascentenvironmental.com>
To: Andrea Shephard <Andrea.Shephard@ascentenvironmental.com>
Sent: Tue, Jan 3, 2023 3:25 pm
Subject: TIME SENSITIVE: Notice of Availability of EBDA Draft EIR and Public Meeting for the Cargill Mixed Sea Salts Processing and Brine Discharge Project

The East Bay Dischargers Authority (EBDA) has prepared a Draft Environmental Impact Report (EIR) (SCH # 2022050436) for the Cargill Mixed Sea Salts Processing and Brine Discharge Project, located in Alameda County. The Draft EIR is now available for a 45-day public review period, from January 4 to February 17, 2023. **Please see the attached Notice of Availability for additional project information and how to participate in the public review process.**

A hard-copy of the Draft EIR is available for public review at:

East Bay Dischargers Authority
2651 Grant Avenue
San Lorenzo, CA 94580

The Draft EIR is also available for download and public review online at: https://ebda.org/projects/cargill-partnership/.

EBDA will conduct a public meeting to present the findings from and receive comments on the Draft EIR. The public scoping meeting will be conducted online via Zoom starting at 6:00 p.m. on Tuesday, January 24, 2023; presentation will begin at 6:05 p.m. Participants must register in advance at the following link: https://us06web.zoom.us/webinar/register/WN_AdmKAvFFQb2sZ1QukFxxgw. After registering, participants will receive an email confirmation with the meeting link to log into the webinar on January 24, 2023.

Interested parties are encouraged to provide comments on the Draft EIR. Please send all comments on the Draft EIR by mail or email to:

East Bay Dischargers Authority
2651 Grant Avenue

San Lorenzo, CA 94580
Attn: Jacqueline Zipkin, General Manager
Phone: (510) 278-5910
E-mail: jzipkin@ebda.org

Comments provided by email should include "Cargill MSS Processing and Brine Discharge Project Draft EIR Comment" in the subject line, and the name and physical address of the commenter in the body of the email. If you are from an agency that will need to consider the EIR when deciding whether to issue permits or other approvals for the project, please provide the name of a contact person.

Because of time limits mandated by State law, comments must be received by 5:00 p.m. on February 17, 2023.

Andrea L. Shephard, Ph.D.
Senior Environmental Project Manager
Senior Associate
Pronouns: she/her/hers - Why do pronouns matter?
D 916.842.3179 | C 916.396.2170
E Andrea.Shephard@AscentEnvironmental.com
ASCENT Careers @ Ascent
Ascent Environmental, Inc
455 Capitol Mall, Suite 300
Sacramento, CA 95814
O 916.444.7301

Letter A1

From: Jacqueline Zipkin
To: Alexandra.Borack@slc.ca.gov
Cc: Andrea Shephard; Gary Jakobs; Nicole Greenfield
Subject: RE: Cargill Mixed Sea Salt Processing and Brine Discharge Project (SCH #2022050436)
Date: Friday, February 3, 2023 2:58:22 PM
Attachments: image002.png
NEW PROPOSED PROJECT ALIGNMENT.kmz

Hi Alexandra,
Thanks for reaching out. Attached is a kmz file of the latest pipeline route. Please let me know if you have any questions.
Best,
Jackie

Jackie Zipkin, P.E. | General Manager
East Bay Dischargers Authority
510.278.5910 Office | 510.206.3820 Cell
jzipkin@ebda.org | www.ebda.org

From: Borack, Alexandra@SLC <Alexandra.Borack@slc.ca.gov>
Sent: Friday, February 3, 2023 10:53 AM
To: Jacqueline Zipkin <JZipkin@ebda.org>
Subject: Cargill Mixed Sea Salt Processing and Brine Discharge Project (SCH #2022050436)

Good morning,

State Lands Commission staff is reviewing the Draft EIR for the Cargill Mixed Sea Salt Processing and Brine Discharge Project, and evaluating the Commission's associated potential jurisdiction for the pipeline crossings identified in the EIR.

Does the Authority have a .kmz file that shows the Project's proposed pipeline pathway? If not, does the Authority have a .cad file instead? If either of those files could be provided to Commission staff, then we can more quickly determine whether or not the Commission has partial (or perhaps no) jurisdiction for the pipeline crossings. Without that information, staff may need to provide comments on all aspects of the Project that could potentially affect State sovereign land.

Please let me know if you have access to one of those files, and if so, how quickly it could be provided.

A1-1

Many thanks,
Alexandra

Alexandra Borack, Senior Environmental Scientist
Division of Environmental Planning and Management
100 Howe Avenue, Ste 100-South | Sacramento | CA 95825 | 916.574.2399

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Letter A2

From: Jacqueline Zipkin
To: Borack, Alexandra@SLC
Cc: Andrea Shephard; Gary Jakobs; Nicole Greenfield
Subject: RE: Cargill Mixed Sea Salt Processing and Brine Discharge Project (SCH #2022050436)
Date: Tuesday, February 14, 2023 8:08:21 PM
Attachments: image001.png

Hello Alexandra,
Thank you for reaching out, and I am sorry to hear you and your family have been ill. There's certainly a lot going around. Your extension request is reasonable. Please go ahead and provide your comments by March 3.
Thank you,
Jackie

From: Borack, Alexandra@SLC <Alexandra.Borack@slc.ca.gov>
Sent: Monday, February 13, 2023 10:16 PM
To: Jacqueline Zipkin <JZipkin@ebda.org>
Cc: Andrea Shephard (Andrea.Shephard@ascentenvironmental.com) <Andrea.Shephard@ascentenvironmental.com>; Gary Jakobs <gary.jakobs@ascentenvironmental.com>; Nicole Greenfield <Nicole.Greenfield@ascentenvironmental.com>
Subject: Re: Cargill Mixed Sea Salt Processing and Brine Discharge Project (SCH #2022050436)

Good evening Jackie,

I apologize for sending an email after hours. I was out for most of last week dealing with family illnesses and then my own, and I am still coming back up to speed.

SLC requests additional time to prepare a CEQA comment letter for the Cargill Mixed Sea Salt Processing and Brine Discharge Project. Please let me know if that is possible, and what time the Authority could accommodate. Two weeks would be greatly appreciated, but even one week would be very helpful.

A2-1

Thank you for your consideration,
Alexandra

Alexandra Borack, Senior Environmental Scientist

Division of Environmental Planning and Management

100 Howe Avenue, Ste 100-South | Sacramento | CA 95825 | 916.574.2399

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This message and its contents, together with any attachments, are intended only for the use of the individual to whom or entity to which it is addressed and may contain information that is legally privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient of this message, you are hereby notified that any dissemination, distribution, or copying of this communication and any attachments or other use of a transmission received in error is strictly prohibited. If you have received this transmission in error, please notify me immediately at the above telephone number or return email and delete this message, along with any attachments, from your computer. Thank you.

From: Jacqueline Zipkin <JZipkin@ebda.org>
Sent: Friday, February 3, 2023 2:57 PM
To: Borack, Alexandra@SLC <Alexandra.Borack@slc.ca.gov>
Cc: Andrea Shephard (Andrea.Shephard@ascentenvironmental.com) <Andrea.Shephard@ascentenvironmental.com>; Gary Jakobs <gary.jakobs@ascentenvironmental.com>; Nicole Greenfield <Nicole.Greenfield@ascentenvironmental.com>
Subject: RE: Cargill Mixed Sea Salt Processing and Brine Discharge Project (SCH #2022050436)

Attention: This email originated from outside of SLC and should be treated with extra caution.

Hi Alexandra,

Thanks for reaching out. Attached is a kmz file of the latest pipeline route. Please let me know if you have any questions.
Best,
Jackie

Jackie Zipkin, P.E. | General Manager
East Bay Dischargers Authority
510.278.5910 Office | 510.206.3820 Cell
jzipkin@ebda.org | www.ebda.org

From: Borack, Alexandra@SLC <Alexandra.Borack@slc.ca.gov>
Sent: Friday, February 3, 2023 10:53 AM
To: Jacqueline Zipkin <JZipkin@ebda.org>
Subject: Cargill Mixed Sea Salt Processing and Brine Discharge Project (SCH #2022050436)

Good morning,

State Lands Commission staff is reviewing the Draft EIR for the Cargill Mixed Sea Salt Processing and Brine Discharge Project, and evaluating the Commission's associated potential jurisdiction for the pipeline crossings identified in the EIR.

Does the Authority have a .kmz file that shows the Project's proposed pipeline pathway? If not, does the Authority have a .cad file instead? If either of those files could be provided to Commission staff, then we can more quickly determine whether or not the Commission has partial (or perhaps no) jurisdiction for the pipeline crossings. Without that information, staff may need to provide comments on all aspects of the Project that could potentially affect State sovereign land.

Please let me know if you have access to one of those files, and if so, how quickly it could be provided.

Many thanks,
Alexandra

Letter A3

From: Jacqueline Zipkin
To: Andrea Shephard; Gary Jakobs; Nicole Greenfield; Diveley, Shaye; Grutzmacher, Edward; Gina Young; Tim Oolman; Drew Heise; Don Brown
Subject: FW: Cargill Mixed Sea Salts Processing and Brine Discharge Project Draft Environmental Impact Report
Date: Tuesday, February 14, 2023 8:05:01 PM

FYI

From: Andrea Gordon <AGordon@baaqmd.gov>
Sent: Tuesday, February 14, 2023 4:05 PM
To: Jacqueline Zipkin <JZipkin@ebda.org>
Cc: Alison Kirk <AKirk@baaqmd.gov>
Subject: Cargill Mixed Sea Salts Processing and Brine Discharge Project Draft Environmental Impact Report

Dear Jacqueline Zipkin:

We received the Draft Environmental Impact Report (DEIR) for the Cargill Mixed Sea Salts Processing and Brine Discharge Project (Project). We commend you for taking measures to reduce construction-related exhaust emissions. Measures such as using Tier 4 construction equipment will eliminate most construction-related exhaust emissions. A3-1

Air District staff strongly recommend the implementation of all available on-site emission reduction measures before relying on an off-site mitigation program and want to send you additional recommendations for the development of the Project mitigation program. Please include additional on-site mitigation language in the DEIR to ensure every effort is made by the East Bay Dischargers Authority (EBDA) to exhaust all options before implementing an offsite mitigation program. A3-2

For further emissions reduction, additional measures can be taken at the construction site, including: A3-3

- Requiring off-road construction equipment to be zero-emission, where available. This requirement should be included in applicable bid documents, purchase orders, and contracts, with successful contractors demonstrating the ability to supply the compliant construction equipment for use prior to any ground-disturbing and construction activities.
- Require construction on-road vehicles to operate with zero-emission engines as commercially available.
- Require or incentivize zero emission trucks for facility operations to the greatest extent feasible.
- Use grid power for construction activities whenever possible. If grid power is not

available, use alternative power such as battery storage, hydrogen fuel cells, or renewable fuels. If no other options are available, use Final Tier 4 diesel generators.

- Prohibit trucks from idling for more than two minutes or prohibit idling altogether.
- Require electric forklifts and install associated charging stations.

A3-3 cont.

While the Project includes Basic Construction Mitigation Measures, the Air District also recommends implementing all feasible and practical "Additional Construction Mitigation Measures" to reduce construction-related fugitive dust to the greatest extent possible (Table 8-3, page 85). Some examples would include, but are not limited to the following:

- All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
- Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.
- Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
- The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.
- All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
- Site access to a distance of 100 feet from the paved road shall be treated with a 6-to-12-inch compacted layer of wood chips, mulch, or gravel.

A3-4

In addition, the Project should incorporate measures to promote worker emission reductions. For example, VMT reduction measures for employees will greatly reduce transportation-related emissions from employees traveling to and from work. Consider implementing the following best practices included below to reduce Project impacts.

1. Implement a program that incentivizes construction workers to carpool, use EVs, or use public transit to commute to and from the site. The program may include the following features:
    - Provide a shuttle service to and from BART.
    - Provide preferential parking to carpool vehicles, vanpool vehicles, and EV's.
    - Schedule work shifts to be compatible with the schedules of local transit service.

A3-5

Please let me know if you have any questions or would like to discuss these recommendations.

Sincerely

Andrea

Andrea Gordon
BAAQMD
375 Beale Street
San Francisco, CA 94105
agordon@baaqmd.gov I 415.749.4940

ALAMEDA COUNTY WATER DISTRICT

43885 SOUTH GRIMMER BOULEVARD · FREMONT, CALIFORNIA 94538
(510) 668-4200 · FAX (510) 770-1793 · www.acwd.org

Letter A4

BOARD MEMBERS

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General Manager
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GIRUM AWOKE
Engineering and Technology
LAURA J. HIDAS
Water Resources
JONATHAN WUNDERLICH
Finance and Administration

February 15, 2023

VIA ELECTRONIC MAIL
Jacqueline Zipkin (jzipkin@ebda.org)
General Manager
East Bay Dischargers Authority
2651 Grant Avenue
San Lorenzo, CA 94580

Dear Ms. Zipkin:

Subject: Draft Environmental Impact Report for the Cargill Mixed Sea Salt (MSS) Processing and Brine Discharge Project (Project).

Alameda County Water District (ACWD) is pleased to have the opportunity to review the Draft Environmental Impact Report (EIR) for the Cargill MSS Processing and Brine Discharge Project (Project). The Project proposes an innovative regional partnership approach to address project objectives. ACWD has reviewed the Draft EIR for the Project and would appreciate consideration of the following comments for the Project activities within ACWD's service area and Niles Cone Groundwater Basin: A4-1

1. Section 2.6.5 MSS Brine Transport Pipeline: Section 2.6.5 of the Draft EIR states that the proposed MSS brine transport pipeline will be 14-inches in diameter; however, ACWD has received planning materials and improvement plans for an 18-inch high-density polyethylene (HDPE) MSS brine transport pipeline. ACWD requests that the Final EIR address any potentially significant or significant impacts related to the larger design pipeline diameter of 18 inches. ACWD requests all references to the MSS brine transport pipeline in the Final EIR include the correct design pipeline diameter. A4-2

2. Section 1.4.2 Trustee and Responsible Agencies: ACWD appreciates the inclusion of our permit requirements in Section 3.8.1 Regulatory Setting; however, Section 1.4.2 Trustee and Responsible Agencies does not identify ACWD as a responsible agency. In addition, Section 2.6.9 Project Permits and Approvals (and ES.2.5) does not include ACWD's permitting requirements. As required by ACWD Ordinance No. 2010-01, drilling permits are required prior to the start of any subsurface drilling activities for wells, exploratory holes, and other excavations (including the installation of shafts, tunnels or directional boreholes, support piers, sheet piles, and dewatering wells) within the cities of Fremont, Newark, and Union City. ACWD developed Standards for the Construction, Use, Operation, Maintenance, Repair, Inactivation, or Destruction of Wells, Exploratory Holes, Other Excavations, and Appurtenances (ACWD Standards) which specifies the minimum A4-3

RECYCLED PAPER

requirements for permitted work on any well, exploratory hole, or other excavation. Therefore, ACWD requests that Section 1.4.2 be corrected by adding ACWD under the Regional and Local Agencies and Section 2.6.9 (and ES.2.5) be corrected to include ACWD's approval and permit requirements. **A4-3 cont.**

3. Section 3.7 Hazards and Hazardous Materials:

   a) Reference is made to Mitigation Measure 3.7-4b: Prepare a Phase II ESA in the Ground Disturbance Areas in Locations Where Contamination May Be Present. ACWD requests that Mitigation Measure 3.7-4b be modified to require submittal of a work plan for any soil and groundwater sampling and analysis planned as part of a Phase II to ACWD for review and approval, per ACWD Ordinance No. 2010-01. **A4-4**

   b) Reference is made to Mitigation Measure 3.7-4c: Coordinate with Regulatory Agencies and Implement Appropriate Remedies, which states, "Coordination will occur with the [Regional Water Quality Control Board] RWQCB or [California Department of Toxic Substances Control] DTSC, as appropriate, regarding the necessity for and types of protective measures required during Project-related excavation activities... Such protective measures could include marking and avoiding existing groundwater monitoring wells, employing shoring and avoiding dewatering activities, installing temporary soil trench plugs… monitoring groundwater, and documenting backfill quality." Such activities also require notifications to ACWD. Please revise Mitigation Measure 3.7-4c to include ACWD in the list of agencies requiring coordination during implementation of the above-listed remedies. **A4-5**

   c) Mitigation Measure 3.7-4d: Incorporate Standards for Proper Excavation and Staging Activities, for Handling, Transport, and Disposal of Excavated Soils, and for Construction-Related Dewatering into the Project's Construction Specifications states, "If contaminated materials require dewatering before being hauled off-site, or if excavation would encounter shallow groundwater in the affected area(s), a dewatering plan will be prepared, specifying methods of collecting, transporting, treating, and discharging all water produced by dewatering, and demonstrating compliance with RWQCB requirements and permits." ACWD requests Mitigation Measure 3.7-4d be modified to require Project proponents coordinate development of the dewatering plan with ACWD for review and comment prior to approval. **A4-6**

4. Section 3.8 Hydrology and Water Quality:

   a) Groundwater Hydrology on page 3.8-12 of the Draft EIR includes a description of the Niles Cone Subbasin and states that the Subbasin is 103 square miles, which is referenced in a 2006 publication of the Department of Water Resources Bulletin 118. Bulletin 118 has been updated since that time (as recently as 2020). ACWD requests that the Final EIR include the correct area of the Subbasin, which is 107 square miles. **A4-7**

b) Most of the Project area has a perched shallow water-bearing zone(s) located within the Newark Aquiclude which sits above the regional Newark Aquifer, a drinking water aquifer utilized by ACWD. In some areas of the Niles Cone, the Newark Aquifer can be encountered as shallow as 35 feet below ground surface (bgs). Any interconnection of the shallow water-bearing zone(s) to the Newark Aquifer could have significant impact on water quality in the Newark Aquifer. As previously stated, ACWD requires drilling permits for subsurface drilling activities for wells, exploratory holes, and other excavations (including piles and directional boreholes). In order to protect the groundwater basin, ACWD requests the Final EIR include the following: A4-8

i. All geotechnical reports for the Project be included as an appendix to the Final EIR to support the understanding of groundwater conditions within the Project area. This information is important to support the evaluation of potential interconnection of aquifers or water-bearing zones. As stated in ACWD's Standards, annular seal requirements for shafts, tunnels, and directional boreholes will depend on the geologic setting and will be determined by the District on a case-by-case basis. Therefore, ACWD requests that Project proponents submit all geotechnical data for the Project to ACWD for review and comment and to assist in the permit approval process. A4-9

ii. In Section 2.6.8 and in other areas of the Draft EIR it states that sheet piles would be installed up to approximately 35 feet below ground surface (bgs) which could potentially interconnect the shallow water-bearing zone and the Newark Aquifer. In addition, the Draft EIR states that trenchless drilling (e.g., horizontal drilling and micro tunneling) will occur up to 40 feet bgs in certain areas, which also may extend into the Newark Aquifer. The sheet piles and the trenchless drilling have the potential to create a possible interconnection of aquifers and water-bearing zones, which could impact groundwater quality.

The piles, trenchless drilling, and installation of the pipeline must be constructed in a manner that will prevent the creation of a preferential pathway or interconnection of aquifers or water-bearing zones. Since groundwater is shallow within most of the Project area, ACWD requests that the Final EIR address this potentially significant impact to water quality, include appropriate mitigation measures, and include a provision requiring Project proponents coordinate piles and trenchless drilling with ACWD prior to permit application submittal. Final permitting requirements will depend on the geologic setting and will be determined by the District on a case-by-case basis per ACWD's Standards. A4-10

c) The Draft EIR states that dewatering would be needed during construction activities related to the Solar Salt Facility and MSS brine transport pipeline installation. The amount of water that may be extracted by either temporary or permanent dewatering must be evaluated and documented. Alternative designs should be considered that would minimize the amount of dewatering required during and subsequent to A4-11

construction. Measurement of groundwater losses due to dewatering may be required and may be subject to a Replenishment Assessment fee. Mitigation Measure 3.8-2 addresses this by stating, "if discharge to a nearby well or using dewatering water for dust control in the vicinity is not feasible, then pay the appropriate replenishment assessment fee to the applicable [Groundwater Sustainability Agency] GSA to compensate for loss of groundwater from the basin." ACWD requests that the Mitigation Measure include a provision of coordination with ACWD, as the applicable GSA, prior to beginning any construction in order to determine how the amount of dewatering will be documented. **A4-11 cont.**

d) Mitigation Measure 3.8-2 states that clean groundwater extracted during dewatering performed during construction of the MSS brine transport pipeline may be discharged "back to a nearby well, if permitted." Please note that injection of water into any well requires approval by agencies such as the San Francisco Bay Regional Water Quality Control Board (Regional Board or RWQCB) and ACWD. As previously mentioned, ACWD requires permits for the drilling and installation of groundwater wells. Any well that is proposed to be used as an injection well must be in compliance with ACWD Ordinance No. 2010-01. Water quality testing will be required prior to approval of injection, and any water containing exceedances of primary or secondary maximum contaminant levels will not be allowed to be injected. In addition, the United States Environmental Protection Agency Underground Injection Control (UIC) Program requires that any injection well be reported in its Inventory of Injection Wells (e.g., 7520-16 Online Form). ACWD requests that Mitigation Measure 3.8-2 be modified to reflect the above review and approval information. In addition, ACWD requests that the Mitigation Measure include a provision of coordination with ACWD regarding the planned possibility of injection into the Niles Cone. **A4-12**

e) Mitigation Measure 3.8-2 states that clean groundwater could be used for dust control. Any groundwater used for dust control must be measured and is subject to ACWD's replenishment assessment fee. Therefore, Mitigation Measure 3.8-2 should also stipulate that any groundwater used for dust control or similar beneficial use is subject to ACWD's replenishment assessment fee. **A4-13**

5. Section 3.10 Recreation: Mitigation Measure 3.10-1 states that all recreational facilities would experience access interruptions during Project construction, including Don Edwards National Wildlife Refuge/Newark Slough Trail, Alameda Creek Regional Trail, and segments of the San Francisco Trail that are not within roadway rights-of-way. ACWD has groundwater monitoring wells located on the north (three wells) and south (four wells) of Alameda Creek Trail, on the west side of Ardenwood Boulevard. There are also two additional wells located in the Don Edwards National Wildlife Refuge along Marshland Road, on the west side of Paseo Padre Road. ACWD must be notified, and access coordinated ahead of trail or facilities closure because these wells are monitored by ACWD and are critical to ACWD's management of the Niles Cone Groundwater Basin. ACWD requests Sections ES.5 and 3.8.3 and Table ES-1 be modified to require coordination with ACWD. **A4-14**

6. Existing ACWD Infrastructure within the Project Area: ACWD requests that the following potentially significant impacts to existing ACWD facilities and infrastructure be addressed by the Final EIR:

   a) Section 3 Environmental Impacts and Mitigation Measures: The category of "Utilities" was not included under Potential Environmental Effects in the Draft EIR. ACWD requests that "Utilities" be added to the list and evaluated as the Project may generate a potentially significant or significant impact. **A4-15**

   b) ACWD has water system infrastructure, including (but not limited to) water pipelines and associated appurtenances, monitoring stations, etc., located within the limits of the proposed MSS brine transport pipeline alignment. The Project may have potential impacts to existing water facilities which will require close coordination between Project proponents and ACWD. ACWD expects the Project will include accommodations for protection in place or relocation of ACWD facilities. The Project should maintain required minimum clearances from the proposed improvements to ACWD's existing infrastructure in accordance with ACWD Standards (see ACWD's Standard Specifications for Water Main Installation on ACWD's website) and Regional Board requirements. Access to ACWD facilities must be maintained at all times. The Final EIR should include mitigation measures to protect this important infrastructure. In addition, this infrastructure should be included on the improvement plans for the proposed Project and protected during any construction activities. For example: **A4-16**

      i. ACWD operates an existing 30-inch transmission pipeline (i.e., Patterson Reservoir Pipeline) in Paseo Padre Parkway and within the Patterson Reservoir access road, which is located west of Paseo Padre Parkway, between Quarry Road (north of Highway 84) and Ardenwood Creek. Contact ACWD Engineering regarding the proposed crossing(s) of the transmission pipeline. The proposed MSS brine transport pipeline alignment is anticipated to cross the ACWD 30-inch Patterson Reservoir Pipeline several times.

      ii. ACWD operates existing 14- to 20-inch pipelines on Paseo Padre Parkway, Ardenwood Boulevard, and Union City Boulevard in Fremont and Union City along the proposed brine transport pipeline alignment.

      iii. To the extent the proposed brine transport pipeline will cross numerous water service laterals, those ACWD facilities should be shown on the improvement plans and protected in place during construction.

   c) ACWD has no plans to relocate existing facilities or infrastructure for this Project. The alignment and depth of the brine discharge line should consider existing ACWD facilities and may have significant impacts to ACWD infrastructure which must be **A4-17**

coordinated with ACWD and fully mitigated. Particular attention should be paid to any proposed work near or underneath existing ACWD asbestos cement pipe (ACP) water mains within the limits of the Project. No excavations or crossings under the ACP are allowed. If utility installations below the ACP are required for the Project, ACWD may replace a portion of the existing main with polyvinyl chloride (PVC) or steel pipe. Such a replacement must be done by ACWD forces at the Project proponent's expense. The Final EIR should reflect the potential need for such utility replacement work to occur and account for such work in the project plans.

A4-17 cont.

d) ACWD Facilities: ACWD recommends the Project proponent submit a request for available records pertaining to ACWD facilities located within the limits of the proposed Project alignments. In addition, the Project proponent should pothole existing ACWD facilities to confirm the exact depth and location.

    1. The Project proponent should contact ACWD Engineering regarding anticipated pipeline crossings along the length of the MSS brine transport pipeline. ACWD has record drawings and geographic information system (GIS) 200-scale base maps for ACWD-owned pipelines and facilities in Fremont, Newark, and Union City along the alignment of the MSS brine transport pipeline, and improvement plans will need to be coordinated with ACWD Engineering for review and approval.

A4-18

7. ACWD Contacts: The following ACWD contacts are provided so that the East Bay Dischargers Authority (EBDA) can coordinate with ACWD as needed during the CEQA process:

   a) Michelle Walden, Groundwater Resources Manager, at (510) 668-4454, or by email at michelle.walden@acwd.com, for coordination regarding ACWD's groundwater resources, groundwater wells, and drilling permits.

   b) Sean O'Reilly, Development Services Manager, at (510) 668-4472, or by email at sean.oreilly@acwd.com, for coordination regarding GIS mapping, public water systems, engineering, and water service.

A4-19

Thank you again for the opportunity to comment on the Draft Environmental Impact Report for the Cargill Mixed Sea Salt Processing and Brine Discharge Project. This Project takes an interesting partnership approach to address long-term regional needs and ACWD looks forward to further coordination and learning more about future partnership opportunities.

Sincerely,

for Ed Stevenson
General Manager

sro/al/mw
cc: Laura Hidas, ACWD
Girum Awoke, ACWD
Michelle Walden, ACWD
Sean O'Reilly, ACWD
Jonathan Wunderlich, ACWD

Letter A5

From: Jacqueline Zipkin
To: Andrea Shephard; Gary Jakobs; Nicole Greenfield; Edward Grutzmacher; Shaye Diveley; Don Brown; Tim Oolman; Drew Heise; Gina Young
Subject: Fwd: Comments for the Cargill Mixed Sea Salts Processing and Brine Discharge Project
Date: Wednesday, February 15, 2023 3:36:02 PM
Attachments: image001.png

FYI

Begin forwarded message:

From: "Luo, Yunsheng@DOT" <Yunsheng.Luo@dot.ca.gov>
Date: February 15, 2023 at 3:14:32 PM PST
To: Jacqueline Zipkin <JZipkin@ebda.org>
Subject: Comments for the Cargill Mixed Sea Salts Processing and Brine Discharge Project

Good afternoon Jacqueline,

Thank you for the opportunity to review the DEIR for the Cargill Mixed Sea Salts Processing and Brine Discharge Project. Below please find our comments for this project. Feel free to contact me if you have any questions.

Right-Of-Way (ROW)
Because this is a secondary non-Highway use of Caltrans ROW for the proposed pipeline locations, a ROW Use Agreement would need to be obtained along with the payment of fair market value for the use of ROW.

A5-1

Thank you.

Best,

Yunsheng Luo
Associate Transportation Planner, Caltrans D4

Phone: 510-496-9285
Email: Yunsheng.Luo@dot.ca.gov
For early coordination and project referrals, please send it to LDR-D4@dot.ca.gov

Caltrans Bay Area

HAYWARD

Letter A6

February 15, 2023

Sent Via Electronic Mail Only
jzipkin@ebda.org

Jacqueline Zipkin
General Manager
East Bay Dischargers Authority
2651 Grant Avenue
San Lorenzo, CA 94580-1841

Hello Ms. Zipkin,

On behalf of the City of Hayward's Public Works & Utilities Department, thank you for the opportunity to review and provide comments on the Draft Environmental Impact Report (DEIR) for the Cargill Mixed Sea Salts Processing and Brine Discharge Project.

As an agency that will need to consider the EIR when deciding to issue an encroachment permit, as well as other approvals for the project, the following City of Hayward contact information is provided:

Contact Person: Alex Ameri, Director of Public Works
Email Address: alex.ameri@hayward-ca.gov
Mailing Address: 777 B Street, Hayward, CA 94541

A6-1

We respectfully request the following comments and questions be addressed in the final version of the Environmental Impact Report:

1) Impact 3.7-3 indicates the MSS Brine that will be conveyed through the transport pipeline is non-hazardous. How was this determination made? Was the non-hazardous classification for this MSS brine confirmed with any regulatory agencies such as the US Environmental Protection Agency, US Occupational Safety and Health Administration, and/or the US Department of Transportation? A6-2

2) Regardless of whether or not the MSS brine is classified as a hazardous material, consideration should be taken for potential detrimental impacts to the environment or publicly owned treatment works resulting from accidental MSS brine discharges to storm drain, sewer, or surface water conveyances. Please include Mitigation Measures to contain and dispose of MSS brine discharged in the event of a transport pipeline failure to address Impacts 3.7-1 and 3.7-2. A6-3

3) Impact 3.8-2 does not address the potential for a non-planned brine discharge during operation, which could occur from a leak, pipe failure, etc. Please include Mitigation Measures to address the potential for a brine discharge during operation to violate water quality standards, waste discharge requirements, and cause degradation of surface water and groundwater quality. A6-4

4) Impact 3.8-3 does not address the potential impact to groundwater resulting from a brine leak from the MSS transport pipeline or spill during operation. Please include Mitigation Measures to address this scenario. A6-5

5) Please provide a contingency plan within the Mitigation Measures that includes:
    a. Engineering controls that will be implemented to detect leaks (pressure monitoring, visual inspection etc.)
    b. How leak locations would be determined if no visible or above-ground evidence were present
    c. How the brine transport pipeline would withstand seismic events
    d. How the brine transport pipeline would be isolated in segments to minimize the volume spilled
    e. How a brine spill or leak would be cleaned up to restore the environment to a pre-project state including soils, groundwater, vegetation, etc.
    f. What would be done if a brine leak migrated to the storm drain
    g. What would be done if brine was discharged to the Bay as a result of a brine leak
    h. What would be done if brine were discharged into the sanitary sewer, where it could significantly harm the operation of the City of Hayward's Water Pollution Control Facility
    i. How buildup of crystallized brine within the brine transport pipeline would be prevented and how it would be mitigated if buildup were to occur
    j. How corrosion of appurtenances such as air valves, blowoffs, isolation valves, etc. would be prevented

A6-6

6) The Draft EIR indicates the MSS brine transport pipeline will be 14 inches in diameter. The 30% design drawings the City of Hayward reviewed indicated the MSS brine transport pipeline would be 18 inches in diameter. Please clarify or revise the EIR to indicate the MSS brine transport pipeline will be 18 inches in diameter.

A6-7

7) Please indicate specific vertical and horizontal clearance distances that will be observed between the MSS brine transport pipeline and potable water, recycled water, sanitary sewer, and storm drain pipelines.

A6-8

8) Page 2-18 states blowoffs would be placed near sanitary sewer manholes. Please note that discharging brine directly to the sanitary sewer will not be permitted.

A6-9

9) Between Crossing 20 and Crossing 21 on Figure 2-8h, the brine transport pipeline traverses around the perimeter of the Oro Loma Marsh. Please confirm there is adequate existing vehicular access to perform the visual inspections of the brine transport pipeline for this segment.

A6-10

10) When considering potentially less impactful alternatives, was blending the MSS brine with treated wastewater from the San Jose-Santa Clara Regional Wastewater Facility (SJSCRWF) considered? The SJSCRWF seems closer to Cargill's Solar Salt Facility.

A6-11

11) When considering potentially less impactful alternatives, was using Cargill's transbay pipeline between Newark and Redwood City considered to potentially blend the MSS brine with treated wastewater discharged by treatment facilities on the west side of the bay? A6-12

We look forward to continuing to work with the East Bay Dischargers Authority, Cargill, and the rest of the project team.

Sincerely,

Alex Ameri, P.E.
Director of Public Works
Public Works & Utilities Department

cc: Suzan England, Acting Utilities Engineering Manager
Cheryl Munoz, Water Resources Manager

Flood Control & Water Conservation DISTRICT

Daniel Woldesenbet, Ph.D., P.E., General Manager
399 Elmhurst Street ○ Hayward, CA 94544-1307 ○ (510) 670-5480 ○ www.acgov.org

Letter A7

February 17th, 2023

VIA ELECTRONIC MAIL
East Bay Dischargers Authority
2651 Grant Avenue
San Lorenzo, CA 94584
Attn: Jacqueline Zipkin, General Manager

Dear Ms. Zipkin,

Subject: Cargill MSS Processing and Brine Discharge Project Draft EIR Comment

The Alameda County Flood Control and Water Conservation District (District) has reviewed the Draft Environmental impact Report (EIR) for the Cargill MSS Processing and Brine Discharge Project (Project) and would appreciate your consideration of the following comments while completing the final EIR: A7-1

1. Existing District Infrastructure within the Project Area:

As mentioned in the Draft EIR, the proposed Project includes a 14-inch MSS brine transport pipeline extending for approximately 15.6-miles from the Cargill Solar Salt Facility to the Oro Loma Effluent Pump Station (OLEPS) located at the Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant in San Lorenzo. Based on the proposed alignment of the pipeline, which is shown in Figure 1, various District flood control facilities would likely be impacted due to the proposed Project. These facilities include but are not limited to: A7-2

- Alameda Creek
- Ardenwood Creek
- Crandall Creek
- Engineered Channel at Delores Drive
- Old Alameda Creek/Ward Creek
- Sulphur Creek
- Bockman Channel
- Plummer Creek

The District is not planning on relocating or modifying its flood control facilities due to the proposed Project. As a result, the alignment and depth of the brine discharge pipeline should consider flood control facilities and closely coordinate with the District to avoid, reduce or mitigate any impacts. In addition, the District recommends the Project proponents to submit a request for available records

pertaining to flood control facilities located within the limits of the Project and closely work with District staff to coordinate and mitigate Project crossing impacts.

A7-2 cont.



Figure 1. Project Location. Source: Property of Ascent Environmental, data received from AECOM and Jacobs in 2021 and 2022; adapted by Ascent Environmental in 2022.

2. Hydrology and Drainage

The District has concerns on the MSS brine discharge outlet causing soil erosion to the channel banks. The District requests that the Project identifies and eliminates erosion problems on public and private lands caused by the Project's proposed outlet and MSS brine flowrate. The potential for erosion of the channel banks should be considered as a design and engineering factor in the new development of the outfall and flow amount. The District would like the Project proponents to conduct a hydrologic study on Plummer Creek and the impacts of the MSS brine discharge on the channel banks. A7-3

3. District Contacts:

The following District contacts are provided so that the Project proponent can coordinate with District as needed during the CEQA process:

a. Moses Tsang, Principal Civil Engineer, Design Flood Control, at (510) 670-6549, or by email at moses@acpwa.org for coordination regarding flood control facilities.
b. Dámaris Villalobos-Galindo, Supervising Civil Engineer, at (510) 670-5292, or by email at damarisvg@acpwa.org for coordination regarding Environmental Compliance.
c. Beth Perrill, Supervising Right-Of-Way Agent, at (510) 670-5587 or by email at beth@acpwa.org for coordination of easement and License agreements.
d. Fernando Gonzales, Supervising Civil Engineering, Development Engineering and Permits, at (510) 670-5267 or by email at fernando@acpwa.org for the coordination of flood encroachment permits.

A7-4

Thank you for the opportunity to comment on the Draft Environmental Impact Report for the Cargill Mixed Sea Salt Processing and Brine Discharge Project,

Sincerely,

Damaris V.G.

Dámaris Villalobos-Galindo, P.E.
Supervising Civil Engineer
Environmental Services Section

Cc: Moses Tsang, District
Beth Perrill, District
Fernando Gonzales, District

Letter
A8

Public Works Agency
Alameda County

Daniel Woldesenbet, Ph.D., P.E., Director
399 Elmhurst Street • Hayward, CA 94544-1307 • (510) 670-5480 • www.acpwa.org

February 17th, 2023

VIA ELECTRONIC MAIL
East Bay Dischargers Authority
2651 Grant Avenue
San Lorenzo, CA 94584
Attn: Jacqueline Zipkin, General Manager

Dear Ms. Zipkin,

Subject: Cargill MSS Processing and Brine Discharge Project Draft EIR Comment

The Alameda County Public Works Agency (ACPWA) has reviewed the Draft Environmental impact Report (EIR) for the Cargill MSS Processing and Brine Discharge Project (Project) and would appreciate your consideration of the following comments while completing the final EIR:

1. Existing ACPWA Infrastructure within the Project Area:

As mentioned in the Draft EIR, the proposed Project includes a 14-inch MSS brine transport pipeline extending for approximately 15.6-miles from the Cargill Solar Salt Facility to the Oro Loma Effluent Pump Station (OLEPS) located at the Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant in San Lorenzo. Based on the proposed alignment of the pipeline, as shown in Figure 1, ACPWA Right-of -Way (ROW) facilities, particularly roads located within unincorporated Alameda County, would likely be impacted due to the open-cut methods described in the Draft EIR. The ACPWA is not planning on relocating or restoring its facilities at its own expense due to the proposed Project. As a result, the alignment and depth of the brine discharge pipeline should consider ACPWA roads located within unincorporated Alameda County and additional facilities and closely coordinate with ACPWA to avoid, reduce or mitigate any impacts to its existing facilities. In addition, ACPWA recommends the Project proponents to submit a request for available records pertaining to ACPWA roads and ROW located within the limits of the Project and closely work with ACPWA to ensure minimum clearances are maintained.

A8-1

2. Drilling and Well Permits:

As required by ACPWA Ordinance No. O-2015-20, well and borehole drilling permits are required prior to the start of any subsurface drilling activities including exploratory soil borings and other excavations within the cities of Hayward, San Leandro, Emeryville, Oakland, Alameda, Piedmont, Albany, and unincorporated areas of Alameda County. As a result, all permitted work within ACPWA jurisdiction requires close coordination with ACPWA prior to the start of any field work. Additional details on the ACPWA Well Standards Program can be found at www.acpwa.org or call 510-670-6633.

A8-2

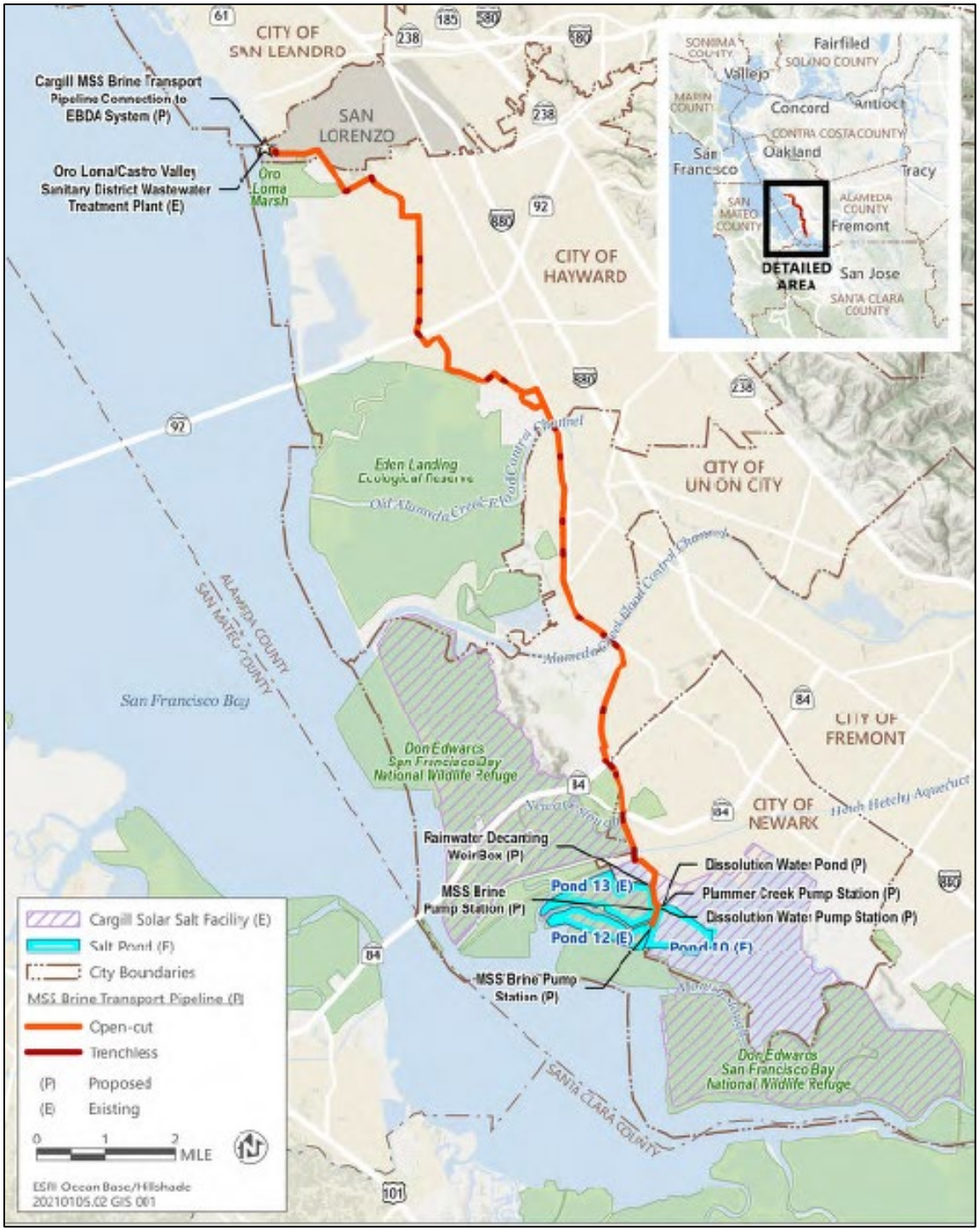

Figure 1. Project Location. Source: Property of Ascent Environmental, data received from AECOM and Jacobs in 2021 and 2022; adapted by Ascent Environmental in 2022.

3. ACPWA Contacts:

The following ACPWA contacts are provided so that the Project proponent can coordinate with ACPWA as needed during the CEQA process:

a. Amber Lo, Principal Civil Engineer, Design Road, at (510) 670-5485, or by email at amberl@acpwa.org for coordination regarding road ROW.

b. Dámaris Villalobos-Galindo, Supervising Civil Engineer, at (510) 670-5292, or by email at damarisvg@acpwa.org for coordination regarding Environmental Compliance.

A8-3

Thank you for the opportunity to comment on the Draft Environmental Impact Report for the Cargill Mixed Sea Salt Processing and Brine Discharge Project,

A8-3 cont.

Sincerely,

Damaris V.G.

Dámaris Villalobos-Galindo, P.E.
Supervising Civil Engineer
Environmental Services Section

Cc: Amber Lo, ACPWA

DocuSign Envelope ID: 0EC8DF06-542C-4E92-821B-BEABFF9B9C15

San Francisco Bay Conservation and Development Commissi
375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348-5190
State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

Letter A9

Transmitted Via Electronic Mail

February 17, 2023

Jacqueline Zipkin
General Manager
East Bay Dischargers Authority
2651 Grant Avenue
San Lorenzo, CA 94580
Via email: < jzipkin@ebda.org >

SUBJECT: Draft Environmental Impact Report for the *Cargill Mixed Sea Salt Processing and Brine Discharge Project*, in San Lorenzo, an unincorporated community in Alameda County, City of Hayward, Union City, Fremont and Newark, Alameda County (BCDC Inquiry File No. MC.MC.7415.026; SCH # 2022050436)

Dear Ms. Zipkin:

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the *Cargill Mixed Sea Salt Processing and Brine Discharge Project* (project). The Proposed Project is located along approximately 16 miles of San Francisco Bay shoreline in portions of the cities of San Lorenzo, an unincorporated community in Alameda County, City of Hayward, Union City, Fremont, and Newark in Alameda County. The project includes installation of additional infrastructure at the Cargill Solar Salt Facility and a new pipeline to transport the concentrated Mixed Sea Salts (MSS) brine currently stored in Ponds 12 and 13 to the East Bay Discharger Authority (EBDA) Oro Loma Sanitary District/Castro Valley Sanitary District Water Pollution Control Plant where it will be diluted, mixed with the effluent, and discharged to the Bay consistent with EBDA NPDES permit requirements. The Cargill Ponds 12 and 13 currently store approximately 6 million tons of MSS adjacent to the Bay and these ponds are facing a potential long-term threat of sea level rise from the Bay. The discharge of the MSS from these ponds via the pipeline is anticipated to take approximately 10-20 years based upon the estimated discharge rate. The project is intended to remove the MSS and reduce the potential for impacts from sea level rise.

A9-1

The San Francisco Bay Conservation and Development Commission (Commission or BCDC) is a responsible agency for this project and will rely on the DEIR when it considers the project during permitting for any portions of the project occurring within the Commission's jurisdiction. Our staff has prepared comments outlining specific additional issues or comments on the alternatives that should be addressed in the DEIR or through the Commission permitting process as appropriate. The comments below are based on the McAteer-Petris Act and the Commission's San Francisco Bay Plan (Bay Plan).

A9-2

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The DEIR analyzed a number of alternatives including the following:

1. **No project –** This alternative includes no changes to the Cargill Solar Salt Facility or operations and the MSS would remain in Ponds 12 and 13. The ponds would continue to build up additional MSS during salt making operations. Over the next 20 to 50 years, the berms around the ponds become more at risk of overtopping that could result in a release of MSS brine into the Bay.
2. **Proposed Project –** The Proposed Project includes construction of a new approximately 15.6-mile pipeline mostly in existing roadway right-of-ways connecting form Cargill Ponds 12 and 13 to the Oro Loma facility. This alternative also includes the installation of three new pump stations, each containing approximately four pumps with varying power and size, in the salt ponds and adjacent waterways (Plummer Creek).
3. **Alternative 1 – In-Pipe Alternative –** This alternative includes a combination of new pipeline and existing EBDA pipeline, with a shorter MSS transport route and the new pipeline connecting downstream of EBDA's Alvarado Treatment Plant in Union City rather than directly to the Oro Loma facility. This alternative requires installation of 4 miles of liner in the current EBDA pipeline and new construction of approximately 7.5 miles of new pipeline, and three new pump stations, each containing approximately four pumps with varying power and size, in the salt ponds and adjacent waterways (Plummer Creek). This route would be mostly under existing roadway right-of-ways, except for work occurring on the existing EBDA pipeline.
4. **Alternative 2 – Bayside Parallel Pipe Alternative –** This alternative includes a new 17-mile pipeline route that travels along the edges of Cargill's salt ponds and existing berms rather than along the inland route in roadway right-of-ways and may require more work in environmentally sensitive areas. This alternative also includes the installation of three new pump stations, each containing approximately four pumps with varying power and size, in the salt ponds and adjacent waterways (Plummer Creek).

A9-3

While Alternative 1 will have more impacts than the No Project alternative, the DEIR identifies Alternative 1 as the environmentally superior alternative because it accomplishes the objectives of the project to remove the MSS material from Ponds 12 and 13. However, Alternative 1 would have greater impacts in sensitive wetland habitat areas than the Proposed Project and would lead to more disruptions in the EBDA operations during the installation of the lining of the pipeline. Additionally, Alternative 1 only includes lining certain sections of the existing EBDA pipeline, which would also leave some areas susceptible to corrosion or additional maintenance or

A9-4

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replacement in the future. Alternative 2 would require more impacts in sensitive habitat areas and recreational areas than the Proposed Project. Therefore, it appears that EBDA has tentatively selected the Proposed Project as the alternative to move forward into design and permitting. A9-4 cont.

Proposed Project Details

The following project details should be clarified in the DEIR:

1. **Project Timing.** Please clarify the timing in DEIR Section 2.6.8. There is a mention that construction is likely to begin in the summer of 2023, but to BCDC's knowledge Cargill has not applied to any agencies, including BCDC, for permits and it may not be realistic for all agency approvals to be obtained for construction to occur in the summer of 2023. A9-5
2. **Construction Phasing.** The DEIR mentions that the Pond 12 infrastructure is planned to be built in the first year, but the Pond 13 infrastructure is not planned to be built until 6 years later. There is no explanation for the need of this phasing. Additionally, Pond 13 to be larger and may contain more MSS that will take much longer to remove so this phasing appears to extend the anticipated total timeline for the removal of the MSS. Please clarify if it possible to construct the infrastructure for both ponds concurrently, to try and decrease the amount of time needed to remove the MSS from both ponds. A9-6
3. **Volume of MSS.** The DEIR reports that there are approximately 6 million tons of MSS that will need to be discharged, but there is not mention of the how the rate of removal and the time associated factors in the continued use and additional of new MSS to the ponds from ongoing salt making operations. Please include additional details on this in the DEIR. A9-7

Alternatives Analysis

1. **Proposed Project.** This alternative appears to be the most inland alternative that would include the least fill in the Commission's jurisdiction and minimize impacts to sensitive Bay resources. A9-8
2. **Alternative 1.** This alternative has the smallest overall footprint but would have a greater impact to Bay resources than the Proposed Project and would require more long-term maintenance in tidal wetlands than other alternatives. While Alternative 1 would have fewer overall impacts than the Proposed Project, it appears to have greater recreational impacts and greater disturbance in environmentally sensitive areas and would also have greater disruption to EBDA's existing system during the lining of portions of the existing EBDA pipeline and construction of access pits. A9-9
3. **Alternative 2.** Please clarify the description of Alternative 2 in Section 5.4.3 and provide additional details on where exactly the new pipeline would be located relative to the berms around the Cargill facility and roadways mentioned along the route. For example, will the new pipeline run along the interior of the salt ponds and be exposed, or will the pipeline be buried within the existing berms. Many of the existing berms around the Cargill facility are regularly maintained but are not engineered structures. Please provide more clarity on the proposed A9-10

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location for the pipeline in relation to these berms and analyze whether this may affect any of the berm integrity. Please also clarify whether any import of soils would be needed for this alternative or not. Please also quantify the potential fill for any staging areas that may be associated with this alternative, as it seems the staging areas have not currently been identified.

The DEIR mentions that the proposed facilities would be designed and constructed in accordance with the California Building Codes (CBC) and standard engineering practices, but it is not clear how or if the berms in Alternative 2 along the pipeline route would also be constructed to similar standards or need to be modified to ensure that the pipeline meets these standards.

A9-10 cont.

Commission Jurisdiction

Within its jurisdiction, Commission permits are required for activities that involve placing fill, extracting materials, or making any substantial change in use of any water, land, or structure. Permits are issued if the Commission finds the activities to be consistent with the McAteer-Petris Act and the policies of the Bay Plan, including, but not limited to, that the project includes the minimum fill necessary for the project, that there is no alternative upland location for the fill, that the impacts to Bay resources are minimized, and that the fill be constructed in accordance with should safety standards and protection against unstable geologic or soil conditions or flood or storm waters.

Please note that in DEIR sections 1.4 and 2.6.9, BCDC is identified as a Regional or Local Agency, but BCDC is a State Agency and should be included with the list of other State Agencies and State laws. From the DEIR, it is not clear which portions of the project and associated impacts would be n the Commission's jurisdiction, but this should be more clearly defined in the DEIR and through the permitting of the project.

A9-11

Priority Use Areas

The DEIR does not appear to analyze the priority use areas that were mentioned in the NOP comment letter, please include update the DEIR to include a section on the consistency of the project with the priority use areas identified in the Bay Plan that may occur along the various route alternatives.

A9-12

Commission Law and Bay Plan Policies Relevant to the Project

Fill within the Bay and Salt Ponds

amount of fill or project impacts within the Commission's jurisdiction was not specifically quantified in the DEIR for the Proposed Project or alternatives. This information will be needed during the permitting process. Additionally, there appears to be discussion of ways the project and alternative may minimize impacts to public access and recreation areas, but there is no mention of whether the project includes additional public access improvements or how the

A9-13

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project meets maximum public access to the Bay consistent with the project. As mentioned previously, the project will need to meet the requirements of the McAteer-Petris Act and the San Francisco Bay Plan, including that there is no alternative upland location for the fill. **10-13 cont.**

Public Access and Recreation

As mentioned, there are a few Commission-required public access areas that the proposed pipeline alternatives may run through, as well as some existing sections of the Bay Trail and recreational areas that appear to occur along some of the routes for the pipeline alternatives. However, there is no discussion of potential public access improvements that may be associated with the project, especially given that all alternatives, with the exception of the no-project alternative, will impact some amount of exiting public access or recreational areas. **10-14**

Please note that for any work occurring within BCDC's jurisdiction or an a BCDC required public access area, BCDC will need to review and approve any detour plans associated with the construction of the project. Please be sure that BCDC is added to the Mitigation Measure for Impact 3.10-1 as an agency that needs to be consulted on such review and the development of any detour plans for facilities in the Commission's jurisdiction and required by the Commission. The precise extent of any public access or recreation impact was not quantified in the DEIR and will need to be evaluated during the permitting process for the project. Please also note that any detours should also be made ADA-accessible throughout the project, and this should be included in the DEIR. **10-15**

We noted that the DEIR mentioned that Alternative 2 appears may have more permanently impacts to some recreational facilities. BCDC encourages looking for a route that minimizes permanent and temporary impacts to public access and recreational facilities. Any temporarily impacted areas, should also be restored following the construction. **10-16**

Fish, Other Aquatic Organisms and Wildlife

The Proposed Project mostly includes construction in upland habitats and terrestrial areas; however, it does include the construction of intake pumps in Plummer Creek. The DEIR mentions the various habitat areas that may be impacted by the Proposed Project and each of the alternatives but does not specifically quantify the area of impact. The Proposed Project and all alternatives would include increased diversions from Plummer Creek and Mowry Slough for the intake pumps, but there is no mention of whether there was consideration of including fish screens on the intakes as a mitigation measure to reduce potential direct impacts to special-status and native fish that may occur in Plummer Creek. This should be addressed in the DEIR. **10-17**

Tidal Marshes and Tidal Flats

From the DEIR, it is not clear to what extent tidal wetlands would be impacted. It appears that both trenching and directional drilling methods of pipeline construction are considered for use with the various project alternatives, but the impacts associated with each are not quantified. BCDC's permit process will require that any potential impacts be minimized and avoided and then mitigated if there are unavoidable impacts to these habitat areas. **10-18**

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Water Quality

The DEIR briefly mentions that if the Proposed Project does not occur and the MSS is not removed, that there is a risk of potential release of MSS into the Bay. However, there is no further discussion on the potential affects of such a release on Bay habitats and species and this should be further detailed in the DEIR discussion of the baseline condition that existing today. 10-19

Mitigation

Some of the alternatives considered in the DEIR are likely to have more impacts to natural resources within the Commission's jurisdiction than others, but at this time it is not clear the exact extent of such impacts. Please note the unavoidable impacts to species and their habitat may require mitigation from BCDC, in addition to the other agencies that are mentioned in the Executive Summary on page ES-20 regarding Impact 3.3-3. During the permitting, it is likely that BCDC will also require compensatory mitigation for such impacts and coordinate these requirements with the other agency staff. BCDC will also need to review the Compensatory Mitigation Plan for any impacts occurring within the Commission's jurisdiction. Generally, the Mitigation Policies in the Bay Plan direct that mitigation should be provided onsite and in-kind first prior to providing an in-lieu fee or purchasing mitigation credits. The DEIR should provide additional information on whether onsite and in-kind mitigation options for the impacts were considered or why these were not feasible. 10-20

Safety of Fills and Climate Change

The DEIR mentions that there is a long-term threat of sea level rise from the Bay in the project area and to the Solar Salt Facility. The Bay Plan Map No. 7 contains a note on subsidence for this area of the Bay that says "[a]rea subject to possible subsidence. Construction in or near Bay should be carefully planned, taking into account effects of future subsidence and sea level rise." We understand that AECOM also prepared a memo in 2021 that discusses the sea level rise and flooding vulnerability of different ponds within Cargill facilities. However, this memo does not appear to address the issue of subsidence or the seismic stability of the current berms protecting the ponds. The Bay Plan has several policies relevant for the project related to climate change, sea level rise, and safety of fills. Climate Change Policy No. 2 requires, in part, that "a risk assessment should be prepared by a qualified engineer,…based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise and current flood protection and planned flood protection….A range of sea level rise projections for mid-century and end of century based on the best scientific data available should be used...[the] assessment should identify all types of potential flooding, degrees of uncertainty, consequences of defense failure, and risks to existing habitat from proposed flood protection devices." Policy No. 3 states that where such risk assessments show vulnerability to public safety, projects should be designed to be resilient to a mid-century sea level rise projection, and an adaptive management plan should be developed to address sea level rise impacts beyond mid-century through the life of the project. 10-21

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In addition, Policy No. 4 in the Bay Plan Safety of Fills section states that structures on fill or near the shoreline should have adequate flood protection, including consideration of future relative sea level rise as determined by engineers. The policy states that, "adequate measure should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near e shoreline over the expected life of a project…New projects on fill or near the shoreline should either be set back from the edge of the shore so that the project will not be subject to dynamic wave energy, …be specifically designed to tolerate periodic flooding, or employ other effective means of addressing the impacts of future sea level rise and storm activity." 10-22

The DEIR mentions that the project would be built to CBC or other engineering standards. However, there is little discussion about the expected life of the project and how the various alternatives will perform during future sea level rise and with any potential groundwater flooding or during any seismic events. There was also little discussion about potential subsidence and the contribution that this may have on potential flooding. There was also little discussion about the resilience of the infrastructure to future flooding and any adaptive capacity. The DEIR should indicate whether the infrastructure for the new pipeline could be raised in the future if needed, taking into account spatial constraints, whether the underlying soils would support additional fill, and other limitations. We also recommend again that the DEIR discuss the seismic stability of the berms around Ponds 12 and 13 and how they will remain intact over the life of the project to ensure there will not be spilling of the MSS into the Bay following a strong earthquake. In addition, the DEIR should include a discussion of groundwater at the site, how it is expected to impact the MSS ponds and the pipeline infrastructure both during construction and with future sea level rise, and how any risks from groundwater rise would be addressed. 10-23

As mentioned previously, the project may need to go before the Commission's Engineering riteria Review Board (ECRB), which reviews projects "for the adequacy of their specific safety provisions, and make[s] recommendations concerning these provisions [and] prescribe[s] an nspection system to assure placement and maintenance of fill according to approved designs." Our staff will work with the project proponent to determine whether ECRB review and early guidance is necessary. 10-24

Shoreline Protection

The DEIR should further detail the risk from rising sea levels, subsidence, and potential seismic safety of the existing, unengineered berms surrounding Ponds 12 and 13 and include details of any project elements, such as shoreline protection, that may be included around these ponds to ensure that there is no release of the MSS to the Bay over the life of this project. We recommend that Cargill consider design options for the Ponds 12 and 13 berms that can increase the stability of the berms against a strong earthquake that may occur over the life of the project. It appears that for some project alternatives, additional shoreline protection may be necessary. The DEIR should describe in detail all existing and proposed shoreline protection features at the site, including an analysis of their potential to adversely impact natural resources and public access, 10-25

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and how the impacts would be avoided, minimized, or mitigated for. In any areas where shoreline protection may be needed as part of the project, the DEIR should describe and analyze the feasibility of using natural or nature-based alternatives as described in the policies above. **10-25 cont.**

The DEIR briefly analyzes the potential for sea level rise and groundwater rise impacts on the Proposed Project and the alternatives with 16 inches of sea level rise by 2050 but does not include any analysis of sea level rise beyond that time. Given that the life of the pipeline project appears to be longer than this, please include potential sea level rise inundation and analysis for the life of the project and discuss any potential impacts to the pipeline from sea level and groundwater rise for the Proposed Project and the alternative alignments that are closer to the Bay. This discussion should be further improved in the Flood Hazard sections of the DEIR. **10-26**

Please also note that in section 3.8, there is reference to the California Coastal Commission and their guidelines for sea level rise in Local Coastal Programs. Please note that this project does not occur within the California Coastal Commission jurisdiction but is within BCDC's jurisdiction. BCDC currently considers the Ocean Protection Council's 2018 Sea Level Rise Guidance as the best available science and planning guidance for sea level rise impacts on a project. BCDC also has published the San Francisco Bay Plan Climate Change Policy Guidance that may also provide useful information for the sea level and groundwater rise section. **10-27**

Environmental Justice and Social Equity

In our NOP letter, we mentioned that the DEIR should provide an assessment of any vulnerable communities adjacent to the project and also describe how there would be meaningful community engagement throughout the project planning, design, and permitting and this information should be included in the DEIR. If you need additional assistance on this topic, please contact BCDC and we can provide some additional guidance and resources for this analysis. **10-28**

Public Trust

It does not appear that the DEIR has identified those portions of the project that may be subject to the public trust and how the project is consistent with the public trust. Please update the DEIR to include this information. The Bay Plan policies on public trust lands states, in part, that when aking actions on such land, the Commission "should assure that the action is consistent with the public trust needs for the area and, in the case of lands subject to legislative grants, would also assure that the terms of the grant are satisfied and the project is in furtherance of statewide purposes." **10-29**

Thank you for providing the staff with an opportunity to review the DEIR for the *Cargill Mixed Sea Salt Processing and Brine Discharge Project*. We recognize the importance and scope of this project to protect the Bay and habitats from the MSS brine and hope these comments aid you in finalizing the DEIR. We look forward to working with you and the project sponsors through the planning and permitting of the project. **10-30**

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If you have any questions regarding this letter or the Commission's policies and permitting process, please do not hesitate to contact me at 415-352-3624 or anniken.lydon@bcdc.ca.gov. 10-30 cont.

Sincerely,

DocuSigned by:
Anniken Lydon
CA403961512F409...

ANNIKEN LYDON
Bay Resources Program Manager

San Francisco Bay Conservation and Development Commission
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East Bay Regional Park District

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Letter A10

February 17, 2023

East Bay Dischargers Authority
2651 Grant Avenue
San Lorenzo, CA 94580
Attn: Jacqueline Zipkin, General Manager

Sent vial email to: jzipkin@ebda.org

RE: East Bay Regional Park District Comment Letter – Cargill MSS Processing and Brine Discharge Project Draft EIR

Dear Jaqueline Zipkin,

The East Bay Regional Park District (Park District) appreciates the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Cargill Mixed Sea Salt Processing and Brine Discharge Project (project). As a member of the Hayward Area Shoreline Planning Agency (HASPA) and as a land-owning and operating agency in the proposed project area, the Park District is concerned about the potential impacts to natural and recreational resources in the Hayward Shoreline area that could result from the project. The Park District owns and operates 1,841 acres of salt, fresh, and brackish water marshes, seasonal wetlands, and public trails along the Hayward Shoreline, including the 250-acre Cogswell Marsh, the 145-acre Hayward Marsh, and sections of the Oro Loma Marsh. The Park District owns and operates over five miles of public trails along the shoreline which are important segments of the San Francisco Bay Trail. Additionally, the Park District participates in HASPA to help plan for sea level rise along the shoreline and protects numerous endangered and protected species in the shoreline area, including the California Ridgway's rail, California black rail, western snowy plover, California least tern, and salt marsh harvest mouse. A10-1

The project's objective is to build new pipeline to transport brine from the manufacturing of salt at Cargill's facility in the City of Newark that would be blended and diluted with the East Bay Dischargers Authority (EBDA) Member Agency effluent and then discharged back into the Bay west of San Leandro in accordance with EBDA's National Pollutant Discharge Elimination System (NPDES) permit. The proposed project and its alternative could include new pipeline construction within Park District-owned parcels as well as state and federal lands operated by the Park District. The Park District is prepared to continue working with shoreline stakeholders such as EBDA and Cargill to ensure that project impacts are avoided and minimized, and that implementation of the capital projects identified in the recently completed Hayward Shoreline Adaptation Master Plan (SAMP) are not impacted by the Cargill project. A10-2

In a previous comment letter dated June 15, 2022, the Park District expressed concerns with the project's Alternative Two, referred to as the Bayside Parallel Pipe Alternative (Bayside Alternative). These concerns included the construction of approximately 1.2 miles of pipeline under the Park District-owned sections of Oro Loma Marsh and the potential impacts to public access at Hayward Regional Shoreline and Coyote Hills Regional Park in Fremont. The Park District requested that the DEIR analyze Recreation and Transportation impacts, the feasibility of the Bayside Alternative, restrictions and A10-3

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Sabrina B. Landreth, General Manager

easements on potentially impacted parcels managed by the Park District, and impacts to Biological resources managed by the Park District and HASPA member agencies. The Park District also preferred that the brine transport pipeline be constructed in existing roads, away from sensitive biological resources. A10-3 cont.

While the Park District's concerns were not initially with the project, but with the Bayside Alternative as of June 2022, the project proposed in the DEIR has since been changed to include the building of pipeline along the eastern edge of Oro Loma Marsh at the northerly end of the project area. A second Notice of Preparation was released on July 8, 2022 and the project's proposed pipeline alignment moved largely west, away from the City of Hayward and closer to the Hayward Shoreline marsh areas. While the current project addresses the Park District's earlier request to consider building the pipeline under existing roads where possible, and it now appears to follow existing service roads on Park District lands, the alignment through the Oro Loma Marsh puts the project adjacent to sensitive habitat for federally listed Ridgway's rail and salt marsh harvest mouse. The DEIR offers mitigation for Biological impacts, but acknowledges that, in the case of the Bayside Alternative, "the implementation of Alternative 2 could result in direct and indirect impacts on special-status species and habitats… Alternative 2 has greater potential for these impacts than the project due to additional work within sensitive habitat areas" including disturbance, injury, or mortality to special-status fishes, California least tern, and black skippers in the Oro Loma Marsh area [section 5.4.3 of DEIR]. The DEIR identifies noise and vibration as a significant and unavoidable impact, and the Park District is concerned about those effects on the Oro Loma Marsh. A10-4

Based on preliminary plans and project documents recently provided to the Park District, it appears that the project pipeline would cross Park District property at two locations: The Alameda Creek Regional Trail staging area at the junction of Union City Boulevard and Alameda Creek in Union City, and the Oro Loma Marsh just south of the Oro Loma Sanitary District Water Pollution Control Plant on the Hayward/San Lorenzo border. Pipeline installation and construction vehicle staging would require the acquisition of a *Temporary Park Access Permit* or a temporary construction easement from the Park District. The installation of pipeline under Park District property would also require the acquisition of permanent utility easements from the Park District. The granting of temporary and permanent access and property rights involves thorough Park District staff review followed by Park District Board of Directors review and authorization, and a complete plan set will need to be provided. Additionally, two Park District-managed parcels of land in Oro Loma Marsh are federal (APN 438-0020-002-09) and state (APN 438-0020-002-12) owned and may require separate property right easements for the project. The District looks forward to discussing these and other property rights with Cargill and EBDA. A10-5

The Park District is concerned with the project and with the Bayside Alternative because Park District-owned and operated lands would have new pipeline construction. They could impact EBDA's First Mile Horizontal Levee Project that is currently being designed along the eastern edge of Oro Loma Marsh. It is the Park District's preference that the brine transport pipeline be constructed, where possible, in existing roads away from sensitive biological resources. Much of the habitat within the overall project area (Oro Loma, Hayward Marsh and Eden Landing, Coyote Hills, and Don Edwards) is currently being restored, which will serve to connect existing habitat for tidal marsh and upland species. These areas are particularly vulnerable to future sea level rise. The pipeline should be designed to withstand the climatic and oceanic conditions that may impact the shoreline. Please consider anticipated maintenance activities that may be necessary over the life of the project, with particular attention towards impacts to sensitive and newly restored habitats. A10-6

Lastly, the Park District requests that Table 4-2 in the DEIR be revised for the two projects in Map IDs # 35 and 37, to note in the description that the East Bay Regional Park District is the project lead. A10-7

The Park District looks forward to working together with EBDA to protect important natural and recreational assets in the Hayward Shoreline area. Thank you for your consideration. A10-8

Sincerely,

Devan Reiff

Devan Reiff, AICP
Principal Planner, Planning, Trails and GIS
East Bay Regional Park District
2950 Peralta Oaks Ct, Oakland, CA 94605
dreiff@ebparks.org

cc: Ken Wysocki, Assistant General Manager of Acquisition, Stewardship & Development
Matt Graul, Chief of Stewardship

Letter
A11

USD TREAT PROTECT PRESERVE esl.1918
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General Manager/ District Engineer

Karen W. Murphy
Attorney

February 17, 2023

East Bay Dischargers Authority
2651 Grant Avenue
San Lorenzo, CA 94580
Attn: Jacqueline Zipkin, General Manager

Subject: Notice of Availability of a Draft Environmental Impact Report (EIR) for Cargill MSS Processing and Brine Discharge Project

Dear Ms. Zipkin

The Union Sanitary District (USD) wishes to thank you for the opportunity to comment on the draft Environmental Impact Report (EIR) for Cargill, Inc.'s MSS Processing and Brine Discharge Project (Project) dated January 2023. USD has reviewed the EIR and offers the following comments for your consideration: A11-1

1. Project Description (Figures 2-8b): The Newark Pump Station property owned by USD is not available for the Project's staging area (SA-2). A11-2

2. Project Description (Figure 2-8d): Figure shows the proposed brine pipeline passing through a USD owned parcel (APN: 543 043900303). It is a site for a future USD facility and is not available for the siting of the Cargill brine pipeline. A11-3

3. Section 2.6.8 Construction, Construction Methods, Trenchless Methods (Page 2-36): The draft EIR states that horizontal directional drilling (HDD) trenchless method for pipe installation will be utilized to cross creeks and certain roadways. Please note that a USD Encroachment Permit and Agreement will be required for any HDD crossing USD sanitary sewer mains or HDD installations within 5 feet (horizontal) of a USD sanitary sewer main. The encroachment permit requires that the affected sewer mains have a pre-construction and a post-construction television inspection performed to ensure that they were not damaged during the installation. A11-4

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4. Section 2.6.9 Project Permits and Approvals (Pages 2-38 to 2-39): The draft EIR did not list USD as a permitting agency. Encroachment Permit(s) and Agreement(s) with USD will be required for any construction work within the USD's Force Main Easement. A USD Encroachment Permit will be required for the HDD construction activities mentioned in comment 3. A11-5

5. Impact 3.8-1 Potential to Violate Any Water Quality Standards or Waste Discharge Requirements or Otherwise Substantially Degrade Surface Water or Groundwater Quality during Construction (Pages 3.8-19 to 3.8-21): The EIR states that the Project area generally has very high groundwater levels and as such groundwater is anticipated during construction, requiring groundwater dewatering. For groundwater dewatering within the USD service area, all reasonable alternatives to sewer disposal, such as legally permissible reuses, must be explored before discharge into the USD sanitary sewer system will be approved. When no other alternatives for disposal of groundwater exists, USD may issue discharge permits for groundwater encountered during excavation. The permit is a conditional discharge permit and approval of discharge permit is dependent upon available capacity in the sewer system. Please contact USD's Environmental Compliance Team (Marian Gonzalez, mariang@unionsanitary.ca.gov, 510-477-7621) for specific requirements, limits, and fees for a groundwater permit. A11-6

6. Impact 3.9-2 Potential to Expose Sensitive Receptors to Construction Vibration (Pages 3.9-24 to 3.9-25): The EIR states that, "Operation of construction equipment, including an impact pile driver, would generate vibration during project construction." Please coordinate with USD prior to commencement of construction activities that my result in vibratory loading of the USD Force Main. A11-7

Please feel free to email me at andrewb@unionsanitary.ca.gov or call me at (510) 477-7633 as needed during this process. A11-8

Sincerely,

Andrew Baile
Assistant Engineer

By Email
Cc: Raymond Chau, USD
Richard Thow, USD
Marian Gonzalez, USD

Letter A12

CALIFORNIA STATE LANDS COMMISSION
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91
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or for Spanish **800.855.3000**

Contact Phone: 916.574.1900

March 3, 2023

File Ref: SCH #2022050436

East Bay Dischargers Authority
Jacqueline Zipkin, General Manager
2651 Grant Avenue
San Lorenzo, CA 94580

VIA ELECTRONIC MAIL ONLY (jzipkin@ebda.org)

Subject: Draft Environmental Impact Report for the Cargill Mixed Sea Salts Processing and Brine Discharge Project, Alameda County

Dear Jacqueline Zipkin:

The California State Lands Commission (Commission) staff has reviewed the Draft Environmental Impact Report (EIR) for the Cargill Mixed Sea Salts Processing and Brine Discharge Project (Project), which is being prepared by the East Bay Dischargers Authority (EBDA). EBDA, as the joint powers public agency with the principal responsibility for 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 involves work on State sovereign land, the Commission will act as a responsible agency. A12-1

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. A12-2

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.

A12-2 cont.

After review of the information contained in the Draft EIR and in-house records, Commission staff has determined that portions of the proposed Project's mixed sea salts (MSS) brine transport pipeline may cross State-owned sovereign land under Commission leasing jurisdiction, including but not limited to those areas identified in the Draft EIR as crossing numbers 1, 3, 4, 6 through 10, 12 through 14, 18, 19, and 21, and Plummer Creek. Therefore, a lease from the Commission will be required for the Project. An application may be submitted to the Commission through the online application portal (OSCAR.slc.ca.gov).

It is also important to note that the Commission has an existing Master Lease in this vicinity with Cargill. On April 26, 2005, the Commission authorized the issuance of a 25-year General Lease – Right-of-Way Use, Lease 8596.1, for the continued use and maintenance of an existing overhead electric transmission line; 12 existing steel, rubber, and plastic (PVC) pipelines; siphons; water intakes; three dredge locks; and four horizontally-drilled brine and water pipelines. Please contact Public Land Management Specialist George Asimakopoulos (contact information below) for further information on the extent of the Commission's jurisdiction and lease application requirements. Commission staff notes that the Draft EIR anticipates a construction timeline that would start in summer 2023 and urges EBDA to submit a lease application at their first opportunity.

A12-3

Project Description

EBDA proposes to accept residual brine from Cargill, Incorporated's (Cargill) proposed enhanced salt processing and removal process, with Cargill transferring the remaining brine through a new MSS brine pipeline to EBDA's combined effluent pipeline for discharge into San Francisco Bay under EBDA's National Pollutant Discharge Elimination System permit. This Project would meet objectives and needs as follows:

A12-4

- Provide wastewater disposal capacity and services to Cargill.
- Further EBDA's sustainability objectives by facilitating permanent infrastructure that could be available for future regional water recycling.
- Balance any impacts due to disruption to local jurisdictions with impacts to sensitive environments.

- Develop new infrastructure to process MSS brine with minimal exposure to disruptions, including connecting with and optimizing existing EBDA infrastructure.
- Utilize an existing deep-water outfall for the MSS brine to minimize impacts to water quality and aquatic resources.

A12-4 cont.

From the Project Description, Commission staff understands that the Project would include the following components that have potential to affect State sovereign land:

- HDD/Microtunneling for Trenchless Crossings. At least 14 brine pipeline crossings may be under Commission jurisdiction. Horizontal directional drilling (HDD) is a trenchless construction method being considered for most of the potential crossings, except for crossings under railroad tracks, which would use another trenchless method called microtunneling.
- Bridge Crossings. The Proposed Project would attach the MSS brine transport pipeline to existing bridges that cross Plummer Creek and Bockman Channel. The Draft EIR does not provide sufficient information to specify or evaluate these construction activities.

A12-5

The Draft EIR identifies Alternative 1 (In-Pipe Alternative), which would reduce the MSS brine transport pipeline length to 7.5 miles, as the Environmentally Superior Alternative.

A12-6

Environmental Review

Commission staff requests that EBDA consider the following comments on the Project's Draft EIR, to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the Final EIR when considering a future lease application for the Project.

A12-7

General Comments

1. Project Description – Bridge Crossings: The Draft EIR identifies Plummer Creek and Bockman Channel as two locations where the MSS brine transport pipeline would be attached to an existing bridge. The document notes an "existing pipe bridge" at Plummer Creek and "a bridge over the channel" for Bockman Channel but does not describe how the pipeline would be attached to the bridges and what construction equipment would be required. The Project Description should include a discussion of these brine transport pipeline bridge attachment activities in Section 2.6.8, *Construction*. In addition, the EIR should analyze any potential impacts from construction materials falling from the bridge work area into the waterways in Section 3.3, *Biological Resources*, Section 3.7, *Hazards and Hazardous Materials*, and Section 3.8, *Hydrology and Water Quality*, and provide or identify any needed mitigation.

A12-8

2. Project Description – Open-Water Excavation: Please clarify the following discussion from page 2-37: "The MSS brine transport pipeline is anticipated to cross multiple drainages throughout the alignment…The majority of these crossings are at culverts, where open-water excavation is not required. Exceptions include the Old Alameda Creek and Alameda Creek Flood Control Channels, which would be crossed using trenchless technologies." Commission staff cannot determine whether the Project would require open-water excavation at Old Alameda Creek and Alameda Creek Flood Control Channels, given that trenchless construction is very different from open-water excavation. If the Project includes any open-water excavation, then please have the EIR identify those activities and areas in the Project Description as well as evaluate the potential in-water work impacts in Section 3, *Environmental Impacts and Mitigation Measures*. **A12-9**

   Section 3.3, *Biological Resources*, also notes on page 3.3-65 that "construction would occur outside of waterbodies, with the exception of small areas of temporary effects from pipeline disturbance (approximately 0.2 acre based on preliminary design and CARI mapping)." Please have the Project Description include a description or figure showing these disturbances within the waterbodies. Commission staff is concerned that the Draft EIR states work will be done within waterbodies in certain discussions, but then asserts that the Project would avoid directly impacting waterbodies. For example, this appears to occur within the same paragraph on page 3.3-65. **A12-10**

3. Project Description - Microtunneling: Microtunneling, as discussed in the Draft EIR, includes simultaneously drilling the borehole and laying the HDPE pipe into the hole. However, the document also notes that steel casing pipes would be used to protect the brine pipeline. There is no further information regarding the casing pipes. Please include information on the steel pipes' length(s), whether they would require laydown areas and welding prior to insertion, if they would be installed prior to the HDPE pipe, if the casings would be temporary or permanent, and the method of installation. If dynamic pipe ramming or a similar method would be used, then please evaluate any potential impacts to biological resources and sensitive noise receptors in Section 3, *Environmental Impacts and Mitigation Measures*. **A12-11**

4. Project Description – HDPE Pipe: Page 2-36 of the Draft EIR explains that the brine transport pipeline HDD activities would require a laydown area of half the crossings' length to string and fuse the HDPE pipe segments. Please confirm whether the pipe segments would be assembled in two phases as it is pulled through the borehole, and how the fused pipe segments would be assembled during pipe pullback. In addition, please clarify whether the HDPE pipe segments would be tested for integrity (i.e., hydrotesting) prior to or after **A12-12**

HDD installation. If the Project will include hydrotesting, then please discuss that information in Section 3, *Environmental Impacts and Mitigation Measures*. **A12-12 cont.**

Biological Resources

5. Pre-Construction Bird Survey: Mitigation Measure (MM) 3.3-4 requires preconstruction surveys for the California Ridgway's rail if Project activities, which could include HDD and microtunneling pits as well as pipe segment laydown areas, occur during the breeding season. The timing for the second survey is noted as "…at least 14 days prior to construction in the areas where suitable habitat is present" (emphasis added), but Commission staff notes that the other preconstruction surveys are required within a set number of days before Project activity commencement. Please confirm that it was intended the California Ridgway's rail surveys would be 14 days or greater from the start of Project activities, or modify MM 3.3-4 accordingly. **A12-13**

Cultural and Tribal Cultural Resources

6. Assembly Bill (AB) 52 Tribal Consultation: The Draft EIR identifies three tribal representatives who responded to EBDA's notification letters and requested consultation. EBDA initiated consultation with the three groups, and two tribal representatives requested cultural resource reports and/or assessments while the third recommended a Native American Monitor during all ground disturbing activities. All three tribal groups also had concerns "for the areas in the project where the pipeline crosses the creek" and indicated that the Project area is sensitive, particularly around water features. EBDA subsequently sent the cultural resources report on October 27, 2022, and followed up with communications on November 14 and 18, 2022, to request input by December 16 and schedule meetings to discuss. No response was received. **A12-14**

   According to the Draft EIR, "because none of the three tribes responded by December 16, 2022, EBDA considered AB 52 consultation to be closed" (page 3.4-17). However, page 3.4-5 of the Draft EIR sets forth the conditions under Public Resources Code Section 21080.3.2 wherein a CEQA lead agency can conclude AB 52 tribal consultation. Commission staff does not believe that either of the two conditions have been satisfied: no parties have agreed to mitigation measures since the tribal consultations did not result in feedback on tribal cultural resource impacts or mitigation, and EBDA has not shown that a mutual agreement cannot be reached after acting in good faith and with reasonable effort. Commission staff is concerned that EBDA has effectively dismissed tribal concerns and engagement and recommends that EBDA 1) continues to reach out to the three tribes for dialogue,

feedback, and mitigation measure development; and 2) modifies the language in the EIR to indicate that AB 52 tribal engagement is ongoing.

In the absence of continued tribal consultation, Commission staff would need to conduct additional outreach and consultation/coordination which could result in additional or modified CEQA mitigation measures to address tribal cultural resource impacts. **A12-14 cont.**

7. Tribal Cultural Resources Mitigation: MM 3.4-2b requires EBDA to retain a qualified professional archaeologist to assess the significance of any unanticipated discovery. It appears that this archaeologist would determine whether the resource was of Native American origin, and then contact potentially affected Tribes. Commission staff requests that MM 3.4-2b be modified to require both archaeological and Tribal monitors (if requested by a culturally affiliated Tribe) onsite to jointly evaluate any unanticipated discovery. In addition, MM 3.4-2b should be modified to provide for Native American monitors during all ground disturbing activities, consistent with the request from the Indian Canyon Mutsun Band of Costanoan Ohlone People. **A12-15**

   Finally, Commission staff recommends that MM 3.4-2b require development of an Unanticipated Discoveries Evaluation and Treatment Plan prior to ground-disturbing Project activities, if further tribal consultation deems it necessary.

8. Title to Resources Within Commission Jurisdiction: The EIR should state that the title to all archaeological sites and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and under the jurisdiction of the Commission (Pub. Resources Code, § 6313). Commission staff requests that EBDA consult with Staff Attorney Jamie Garrett should any cultural resources on state lands be discovered during construction of the proposed Project. **A12-16**

   Staff requests that the following statement be included in the Final EIR's Mitigation Monitoring Program: "The final disposition of archaeological, historical, and paleontological resources recovered on State land under the jurisdiction of the California State Lands Commission must be approved by the Commission."

Geology, Soils, Mineral Resources, and Paleontological Resources

9. Soil Stability Hazards: The Project site's soils create potential liquefaction, expansion, and seismic shaking hazards for the brine transport pipeline. These hazards could occur to pipeline segments crossing waterbodies at a depth of up to 40 feet. However, the Draft EIR determines the hazards are less than significant because a "site-specific geotechnical and engineering report will be prepared to identify geologic hazards along the MSS brine transport **A12-17**

pipeline alignment, including hazards related to soil stability." Commission staff does not understand why a geotechnical and engineering report was not prepared prior to release of the Draft EIR. This is of particular concern because "many of the soils underlying the project site have a low soil-bearing strength, are frequently water saturated, have a high percentage of clay and organic materials, and are unstable," which may require Project design or construction changes to avoid or minimize the hazard.

While the Project would incorporate the design and engineering recommendations contained in the California Building Code and local codes, the geotechnical report could provide recommendations that would alter existing impacts or add new impacts that are not discussed in the Draft EIR. For example, if the pipeline crossings contain unstable soils, the HDD borehole activities may need to include metal pipeline casings or other protective devices as temporary construction methods or as permanent components to ensure the pipeline's long-term structural integrity. Commission staff recommends that the EIR include a geotechnical and engineering report (draft or final) or, in the alternative, identify possible actions that the report may recommend to address soil stability. Any identified actions should be analyzed for potential impacts and mitigated, if necessary and feasible.

A12-17 cont.

Hazards and Hazardous Materials

10. Drilling Fluid – Aquatic Hazards: The bentonite used for HDD drilling is a naturally occurring, nontoxic, inert substance and is not identified as a potentially hazardous material. However, other chemicals included in drilling mud may be acutely hazardous to aquatic environments (e.g., DRILL-TERGE). Commission staff recommends the EIR discuss how MM 3.3-10 would mitigate a potentially toxic inadvertent release of drilling mud into a waterbody during pilot hole drilling or borehole reaming. Alternatively, the document could incorporate the requirement that the HDD drilling mud contain no chemicals that are acutely hazardous to aquatic environments, which would be confirmed by Material Safety Data Sheets.

A12-18

Recreation

11. Water-based recreation: Please have the EIR discuss whether there is any water-based recreation that occurs in the waterbodies that have potential brine pipeline crossings. If so, the EIR should discuss and analyze whether any water-based recreation could be affected by HDD, microtunneling, or pipeline bridge installation activities and propose feasible mitigation.

A12-19

Environmental Justice

12. Environmental justice is defined by California law as "the fair treatment and meaningful involvement of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." (Gov. Code § 65040.12) This definition is consistent with the Public Trust Doctrine's principle that management of trust lands is for the benefit of all people. The Commission adopted an updated Environmental Justice Policy and Implementation Blueprint in December 2018 to ensure that environmental justice is an essential consideration in the agency's processes, decisions, and programs. The twelve goals outlined in the Policy reflect an urgent need to address the inequities of the past, so they do not continue. Through its policy, the Commission reaffirms its commitment to an informed and open process in which all people are treated equitably and with dignity, and in which its decisions are tempered by environmental justice considerations.

    Although not legally required in a CEQA document, Commission staff suggests that EBDA include a section in the Final EIR describing any environmental justice community outreach and engagement undertaken and the results of such outreach. The California Office of Environmental Health Hazard Assessment developed the CalEnviroScreen mapping tool to assist agencies with locating census tracts near proposed projects and identifying the environmental burdens, should there be any, that disproportionately impact those communities. Environmental justice communities often lack access to the decision-making process and experience barriers to becoming involved in that process. It is crucial that these communities are consulted as early as possible in the project planning process. Commission staff strongly recommends using the BCDC Community Vulnerability Tool and the climate change map developed by the Delta Stewardship Council, Vulnerability to Climate Change in the Delta. Then, as applicable, EBDA should reach out through local community organizations, such as the California Environmental Justice Alliance. In this manner, the CEQA public comment process can improve and provide an opportunity for more members of the public to provide input related to environmental justice. Commission staff also recommends incorporating or addressing opportunities for community engagement in mitigation measures. Commission staff will review the environmental justice outreach and associated results as part of any future Commission action. A12-20

Thank you for the opportunity to comment on the EIR for the Project. As a responsible and trustee agency, the Commission will rely on the Final EIR to issue a new lease as specified above (see Section "Commission Jurisdiction and Public Trust Lands"). We request that you consider our comments before certifying the EIR. A12-21

Please send electronic copies of the Final EIR, Mitigation Monitoring Program, and Notice of Determination, approving resolution, CEQA Findings, and, if applicable, Statement of Overriding Considerations when they become available. Please note that federal and state laws require all government entities to improve accessibility of information technology and content by complying with established accessibility requirements. (29 U.S.C. § 794d; 36 C.F.R. § 1194.1 et seq.; Gov. Code, § 7405.) California State law prohibits State agencies from publishing on their websites content that does not comply with accessibility requirements. (Gov. Code, § 115467.) Therefore, any documents submitted to Commission staff during the processing of a lease or permit, including all CEQA documentation, must meet accessibility requirements for Commission staff to place the application on the Commission agenda. A12-22

Refer questions concerning environmental review to Alexandra Borack, Senior Environmental Scientist, at Alexandra.Borack@slc.ca.gov or (916) 574-2399. For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Jamie Garrett, Staff Attorney, at Jamie.Garrett@slc.ca.gov or (916) 574-0398. For questions concerning Commission leasing jurisdiction, please contact George Asimakopoulos, Public Land Management Specialist II, at George.Asimakopoulos@slc.ca.gov or (916) 574-0990. A12-23

Sincerely,

Nicole Dobroski, Chief
Division of Environmental Science, Planning, and Management

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

Letter
O1

February 17, 2023

East Bay Dischargers Authority
2651 Grant Avenue
San Lorenzo, CA 94580
Attn: Jacqueline Zipkin, General Manager

RE: Cargill MSS Processing and Brine Discharge Project Draft EIR

Dear Ms. Zipkin:

We appreciate this opportunity to comment on the project draft EIR, in the interest of ensuring that the Authority thoroughly examines and pursues alternatives that avoid significant impacts to San Francisco Bay and minimizes any unavoidable significant impacts. O1-1

Save The Bay is the largest organization working to protect and restore San Francisco Bay for people and wildlife, now in its 62nd year. The Citizens Committee to Complete the Refuge was established in 1965 because current and future generations of bay area residents deserve a clean, healthy, sustainable and vibrant San Francisco Bay. We submit these comments on behalf of the thousands of Save The Bay and Citizens Committee to Complete the Refuge supporters throughout the San Francisco Bay Area. O1-2

A significant deficiency of the draft EIR is its failure to thoroughly characterize the baseline environmental condition of the project site, especially the risk of discharge from Newark Ponds 12 and 13 under current Cargill salt-making operations and planned salt-making operations during the years between now and when the project is designed, approved, permitted, constructed and begins operation. Until such time as the project is successfully operating to reduce the net volume of mixed sea salts (MSS) in ponds 12 and 13, the contents of those ponds will continue to increase from ongoing salt-making operations.

This deficiency must be addressed and corrected in the final EIR to meet CEQA's objectives of providing the Authority and the public with complete and accurate information on which to base EIR certification and project adoption, and providing regulatory agencies with complete information on which to rely in their consideration of permits for the project. O1-3

The DEIR acknowledges in the summary description of the No Development Alternative (ES-3) some of the risks that current storage of MSS in ponds 12 and 13 poses to San Francisco Bay, and that "more would accumulate:" O1-4

> No Project–No Development Alternative assumes no changes to existing facilities and operations at Cargill's Solar Salt Facility. The project site would remain in its current condition and Cargill would continue to produce salt products consistent with existing operations. The approximately 6 million tons of existing residual MSS

> would continue to be stored in Ponds 12 and 13 and more would accumulate. Over the next 20 to 50 years, rising sea levels would increase the risk of Bay water overtopping containment berms and releasing MSS brine into the Bay.

However, the DEIR does not provide a full list and characterization of those risks to water quality, habitat, and wildlife including threatened and endangered species. The document also does not quantify and assess how much those risks are growing annually because of Cargill's continued salt-making operations, and will continue to grow even if the pipeline project is approved and constructed – until the pipeline is actually operating and removing more material than Cargill's operations are adding. **O1-4 cont.**

Cargill's current and ongoing salt-making operations ensure that the volume of MSS in ponds 12 and 13 continues to increase, and may already have increased as a result of salt harvest and processing in the fall of 2022 and recent significant rainfall. The berms separating that material from the Bay are being maintained at a constant height, or may be lowered by erosion and settling over the years before this pipeline project becomes operational and begins reducing the volume of stored MSS.

The EIR should include information on how much liquid and solid MSS is added to the ponds each year, how much annual rainfall and above-average precipitation in the current rainfall year has increased the volume of liquid in the ponds, how much space remains in the ponds for additional MSS with the current configuration and height of pond berms, and whether that capacity will be exceeded with ongoing addition of material from salt-making operations and annual projected precipitation-minus-evaporation over the next several years until a pipeline could be operating. **O1-5**

These details and foreseeable projections should be included in the EIR's establishment of the environmental baseline and site conditions, as the snapshot figure of current volume provided by Cargill – "6 million tons" of MSS – provides an incomplete and misleading characterization of the baseline.

The draft EIR also incorrectly and inappropriately dismisses comments BCDC submitted in response to the notice of preparation (NOP) regarding characterization of the geology and "potential seismic safety of the existing berms surrounding Ponds 12 and 13." This information should appropriately be included in the EIR's description and characterization of the baseline condition of the project site, independent of the project's impact on the environment. The DEIR suggests BCDC's concerns are invalid considerations for the project, stating "The project has not been proposed out of concern that environmental factors, such as seismic events, pose an immediate threat to the integrity of the berms." **O1-6**

On the contrary, BCDC's NOP comments are evidence of precisely that concern about environmental factors, which were also the focus of an extensive public hearing by BCDC's Engineering Criteria Review Board with Cargill to investigate berm integrity on November 16, 2022 (see https://bcdc.ca.gov/ecrb/2022ecrb_mtng.html) and a subsequent request to Cargill from BCDC for additional investigation and information (see attached letter of December 20, 2022).

The DEIR also incorrectly dismisses concerns BCDC has raised by noting Cargill's "proposed" implementation of sea level rise adaptation efforts through a permit application to BCDC. But Cargill's proposals have not been fully considered nor approved by BCDC or the Regional Water Quality Control Board. Significant questions have been raised about the appropriateness and permissibility of the proposal to install vinyl sheets to increase the resilience of berms, and to raising the height of berms without additional reinforcement of berm cores.

O1-7

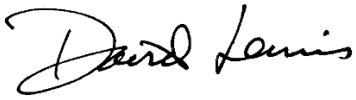
Proposed changes to the berms whose approval remains in significant doubt should not be assumed in the EIR as part of the description of baseline site conditions, nor as a reason to dismiss recommended additions to the EIR from agencies that require an adequate CEQA document on which to base their permitting deliberations for the project.

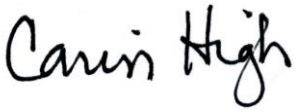
We urge the Authority to remedy these significant deficiencies in the DEIR to ensure that the final document provides a robust environmental baseline against which to assess alternatives and impacts, that meets the CEQA standard and provides the Authority, permitting agencies and the public with the information necessary to support decisions regarding the project.

O1-8

Thank you for your consideration.

Sincerely,





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Attachment

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San Francisco Bay Conservation and Development Commission

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State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

Transmitted via electronic mail only.

December 20, 2022

Tim Oolman
Cargill, Inc.
7220 Central Ave
Newark, CA 94560
Email: tim_oolman@cargill.com

SUBJECT: Next steps and clarification of application filing requirements based on discussion at BCDC Engineering Criteria Review Board (ECRB) Meeting on November 16, 2022 (BCDC Permit Application No. 2021.003.00)

Dear Mr. Oolman,

Thank you for attending BCDC's Engineering Criteria Review Board (ECRB) meeting on November 16, 2022, regarding Cargill's BCDC Permit Application No. 2021.003.00. Upon further review and consideration of the ECRB's discussion and recommendations during the meeting, BCDC staff has clarified a list of action items (below) for Cargill to complete as application filing requirements for BCDC Permit Application No. 2021.003.00.

We expect Cargill to complete these items in 2023, concurrently with other outstanding permit application items identified in previous communications from BCDC, to allow BCDC staff to present the proposed project to the Commission for a hearing and vote by late 2023.

We look forward to discussing these items, including an estimated timeline for completion, at our next meeting on January 9, 2022:

1. **Conduct site specific borings / cone penetration tests (CPTs) and associated analysis of the P2-12 / P2-13 berms ("berms"), including on the berms and off the toes of the berms**.
2. **Provide site-specific surveys and cross-sections of the berms.**
    a. Provide relevant elevations, including: of the berms (top, toe); adjacent marshes/sloughs; various water levels of the Bay (ordinary tides and 100-year storm levels); and levels of Mixed Sea Salt (MSS) materials inside the ponds.
    b. Include cross sections of both settled and non-settled areas at various berm locations.
    c. Specify freeboard on the inboard and outboard sides of the berms.

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d. Include information on the location, depth, status, and history of any borrow trenches adjacent to the berms. Are there borrow trenches that have been recently filled in by sedimentation, and therefore contain ultra-young (highly unconsolidated) Bay muds?

e. Include a time history of settlement on the berms.

3. **History of P2-12 and P2-13 berms.**

a. As part of its ECRB package submission, Cargill provided a report titled "Report of Levee Integrity Bittern Storage Facilities/San Francisco Bay Area, California for Leslie Salt Co." dated April 1, 1986, by Purcell, Rhoades & Associates. The report provides valuable information on the extent of past coring, berm raising, and other repairs that had occurred on the P2-12 and P2-13 berms prior to the report. For example, it states that approximately 7,100 feet or 49% of the P2-12 berm had previously been cored. Please provide a description of any significant maintenance work that has occurred on the P2-12 and P2-13 berms, such as core compaction or raising of the berms, since that 1986 report was published. Wherever possible, please provide approximate work quantities and locations, including estimates of the overall percentages of the P2-12 and P2-13 berms that have been subject to compaction, raising, or other significant maintenance work since that 1986 report.

4. **Static condition assessment.**

a. Conduct a static condition assessment of the berms to analyze the influence of daily operations, routine tides, and seepage on berm stability.

5. **Seismic and ecological risk assessments.**

a. Conduct a seismic risk assessment to analyze and describe performance of the berms under a range of earthquake scenarios, including smaller earthquakes up to a maximum credible earthquake. Analyze any expected damage that may occur, and any expected associated release of MSS material into the environment. For each earthquake scenario, please also analyze that earthquake occurring simultaneously with a Base Flood Event (BFE). We understand this would be unlikely, but it is important to understand a full range of scenarios, including the worst-case scenarios, particularly given the potential ecological risks associated with a substantial breach and release of MSS material into the Bay.

b. Conduct ecological risk assessment to analyze expected ecological impacts that may occur due to release of MSS material into the environment, based on expected performance of berms during various earthquake scenarios.

c. Also describe any expected impacts from any berm failures on adjacent communities / human developments.

6. **2nd Presentation to the ECRB.**

   a. The data and information gathered through Items 1 to 5 should be presented to the ECRB at a second meeting in 2023. Based on ECRB recommendations, further analysis or work to stabilize the berms may be required as a condition of the future permit.

Other issues

The following item will not be a filing requirement for your permit application but will likely be a special condition of your permit.

7. **Updated Sea Level Rise Risk Assessment.**

   a. During the ECRB meeting, some Board members expressed a need for further analysis of sea level rise risk on the berms, beyond what was conducted in the Sea Level Rise Assessment by AECOM in 2020. Specifically, the risk assessment should be updated to include analysis of storm wave run-up beyond stillwater levels, wave-induced berm erosion, and the risk of groundwater rise on berm stability, as discussed in the ECRB meeting. Any permit recommended for approval by the Commission may also include a special condition requiring sea level rise monitoring, and future adaptation measures based on the results of the risk assessment. We will work with you further to refine this requirement as we draft the staff report recommending approval of the permit application.

   b. While Items 1 through 6 above will focus specifically on the P2-12 and P2-13 berms, we expect that the condition for the updated sea level rise risk assessment would apply to the entire Cargill site.

Thank you for your attention to these matters. Please provide all responses to this communication over e-mail, as our staff primarily works remotely. Please do not hesitate to contact me with any questions at 415-352-3668 or schuyler.olsson@bcdc.ca.gov.

Sincerely,

SCHUYLER OLSSON
Senior Environmental Scientist (Specialist)
San Francisco Bay Conservation and Development Commission
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Tel: 415-352-3600 | Fax: 888 348 5190

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SO/mm