

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
Thirty Van Ness Avenue • Suite 2011 • San Francisco, California 94102 • (415) 557-3686

July 9, 1993

TO: Commissioners, Alternates and Interested Parties

FROM: Alan R. Pendleton, Executive Director

SUBJECT: **Staff Report and Recommendation on Proposed Agreement with Cargill Salt Division for an Environmental Assessment for Salt Pond Maintenance Activities**
(for Commission consideration on July 15, 1993)

Staff Recommendation

The staff recommends that the Commission approve a proposed agreement (attached) between the Commission and the Cargill Salt Division which would obligate Cargill to hire and pay for a consultant who, under staff direction, would prepare an environmental assessment/DEIR and other documents needed to complete Cargill's application for a Commission permit for the maintenance and use of Cargill's salt pond levees and dredge locks.

Staff Analysis

Cargill Salt Division wishes to perfect an application for a permit to supersede an existing maintenance permit (M76-110) for its salt pond levees and other routine salt pond maintenance activities. M76-110, which has been in effect for almost sixteen years, was modified and extended in 1988 to include almost all maintenance activities, except the use of dredge locks. It has provided a convenient, sound, and routine basis for the Commission and Cargill to implement the Bay Plan policies regarding salt ponds. The new application will request a ten year authorization for all maintenance activities, including the maintenance and use of a series of dredge locks that allow access to and from the salt ponds by Cargill's dredge, which it uses to extract material adjacent to the levees to place it on top of levees to maintain sufficient elevation.

The California Environmental Quality Act (CEQA) and the Commission's regulations require the Commission to analyze and evaluate all of the substantial environmental impacts associated with Cargill's continued maintenance of its levees and the use and maintenance of its dredge locks, all reasonable alternatives to these continuing activities, and possible mitigation for any identified adverse impacts associated with these activities. In addition, CEQA and the Commission's regulations require that the Commission prepare and circulate for public comment a document that summarizes this information, accept public comment on the document, and respond to comments received.

The proposed activities may have substantial impacts on wildlife, especially on one or more wildlife species, such as the California least tern, the Clapper Rail and the Salt Marsh Harvest Mouse, which are listed under either the federal or state endangered species acts. In addition, the proposed maintenance and use activities may have other substantial environmental impacts, either adverse or beneficial or both. The Commission staff currently lacks the resources needed to analyze the impacts and prepare and process the supporting environmental documentation for this application.

The agreement obligates Cargill to hire and to pay for a consultant acceptable to the Executive Director. The consultant would be, however, under contract to Cargill, not to the Commission. The agreement also provides that the Commission and the Executive Director have final authority and responsibility to assure the completeness, objectivity, and legal sufficiency of all consultant

work on the environmental documents, control modifications to the draft documents as necessary, and have complete ownership and control of all documents produced. The agreement also provides that Cargill will pay the costs associated with an intern to help with the extra workload created by the need for the staff to review and edit environmental documents associated with the project.

The agreement may be modified by the Executive Director in the future after it has been reviewed by the staff of the Fair Political Practices Commission and other state control agencies. Both parties understand that such reviews may be necessary to assure that the agreement complies with all relevant control statutes.

The staff recommends that the Commission authorize the Executive Director to execute the agreement on behalf of the Commission and authorize the Executive Director to modify the precise language of the agreement to meet all state requirements because the Commission staff lacks the personnel to prepare on its own such an environmental assessment and environmental impact report. Approving this proposed agreement will allow the Commission to process the application and will help address issues that currently exist concerning the long and short term impact of Cargill's salt pond maintenance activities, including dredging associated with the use of its salt pond dredge locks.

**AGREEMENT FOR THE PREPARATION OF AN ENVIRONMENTAL
ASSESSMENT AND ENVIRONMENTAL DOCUMENTS FOR
SOUTH BAY SALT POND MAINTENANCE ACTIVITIES**

The San Francisco Bay Conservation and Development Commission ("the Commission") and Cargill Salt, a Division of Cargill, Incorporated ("Cargill") agree as follows:

WHEREAS, Cargill owns or controls saltmaking activities over 30,000 acres of property in the south San Francisco Bay area in Alameda, Santa Clara and San Mateo Counties on which it produces salt from the evaporation of Bay water and the crystallization of salt; and

WHEREAS, these ponds, originally created in the late 1800's and the early 1900's, are delineated by over 200 miles of levees which are maintained by dredging material and placing the material on the levees, mainly by a dredge which enters and exits the ponds through "locks" which contain wetland vegetated areas; and

WHEREAS, California Government Code section 66632 requires a Commission permit for activities in and uses of salt ponds, the Bay and a 100-foot shoreline band inland from the Bay and, pursuant to this authority, Permit No. M76-110 has been issued and is in effect for many, but not all, of the maintenance activities associated with the production of salt; and

WHEREAS, local governmental permits are not required for these activities; and

WHEREAS, Cargill now wishes to seek authorization from the Commission for all of its maintenance activities for a period of ten years, and some of these activities may have a significant effect on the environment in that many ponds are used periodically by many species and otherwise have important Bay-related natural values, and adjacent vegetated areas are important habitat, particularly for species that are identified as threatened or endangered; and

WHEREAS, the San Francisco Bay Plan finds that the salt ponds are an economically important and productive use of the waters of the Bay, that they provide 15 percent of the total Bay and pond water surface area, that they are used as habitat by shorebirds; and, therefore, establishes as policy that the salt ponds should be maintained in salt production; and

WHEREAS, the California Environmental Quality Act ("CEQA") (Cal. Pub. Res. Code sections 21000 through 21176) provides that any state agency such as the Commission must give adequate consideration to environmental factors, including the preparation of an environmental impact report ("EIR") or, if the agency's program has been certified by the State Resources Agency as being "functionally equivalent," the agency must follow the regulations and procedures that have been so certified and the Executive Director has determined that the proposed project is likely to have substantial environmental impacts, a document entitled "Environmental Assessment" that is functionally equivalent to an environmental impact report (EIR) must be prepared to accompany the application summary; and

WHEREAS, Cargill and the Commission agree that the Commission lacks the personnel and resources to prepare the needed environmental assessment and documents without assistance from Cargill; and

WHEREAS, the California Environmental Quality Act, the implementing regulations and cases interpreting the Act require that the Commission and its staff must be responsible for assuring that the environmental analysis and all documents will be complete, accurate, objective, and comply fully with the Commission's regulations and with CEQA; and

WHEREAS, Cargill and the Commission agree that by entering into this agreement, the Commission is in no way delegating any of its authority or responsibility for either preparing the environmental assessment and documents or for its review of and final action on the application from Cargill.

THEREFORE, the Commission and Cargill now agree as follows:

I. Purpose

This agreement assures the resources for the preparation of a complete and objective environmental assessment and associated documents to be used by the Commission to evaluate the environmental impacts associated with maintenance of Cargill's salt pond levees, including the use of a dredge and dredge locks. To obtain the necessary information Cargill shall hire and pay a consultant to prepare (1) a draft environmental assessment/environmental impact report (DEIR), (2) draft responses to comments, and (3) a draft final environmental assessment/FEIR.

II. Scope of Work

The consultant shall, under the direction of the Executive Director of the Commission, prepare: (1) a notice of preparation of an environmental assessment and an environmental impact report; (2) a draft environmental assessment/DEIR; (3) all documents associated with consultations with agencies responsible for the federal and state Endangered Species Act; (4) responses to comments on the draft environmental assessment/DEIR; and (5) a draft final environmental assessment/FEIR. The documents shall fully and objectively describe all environmental impacts, including adverse and beneficial impacts, associated with the maintenance of the Cargill South Bay salt ponds, and shall specifically address the use of a dredge and dredge locks associated with placing material on levees to maintain them. Specific concerns addressed shall include, but not be limited to: (1) the short and long term impacts of the proposed activities on tidal marsh and wildlife species that use or may use any of the affected habitat, (2) impact of the proposed activities on any animal or plant species listed or identified pursuant to either the federal or state Endangered Species Acts, (3) impact of the proposed activities on water quality and beneficial uses of the Bay and (4) the consistency of the proposed maintenance activities with the policies of the San Francisco Bay Plan and the provisions of the McAteer-Petris Act and the overall environmental benefit and detriment.

The consultant shall conform all analyses and documents to the California Environmental Quality Act, implementing regulations, and the Commission's laws, policies, and regulations.

III. Term and Duration

This agreement shall be valid and binding until such time as either (1) the Commission has completed its review of the environmental document(s) and taken final action on the associated permit application or (2) Cargill withdraws the application.

IV. Selection of Consultant

No consultant shall be selected until the Executive Director of the Commission agrees in writing that the proposed consultant is acceptable to the Commission and the prospective consultant has agreed to perform work in the manner described in this agreement and agrees to accept the direction of the Commission's staff. The Executive Director may accept a proposed consultant who demonstrates, to the Executive Director's satisfaction, knowledge and experience in the following areas: (1) general Bay environmental issues, (2) the Commission's laws and procedures, (3) the California Environmental Quality Act and the federal and state Endangered Species Acts, (4) the saltmaking properties and their immediately adjacent properties; and (5) environmental issues related to salt making, salt pond levee maintenance, and salt pond dredge lock usage and maintenance. Cargill shall provide information about a proposed consultant to the Executive Director with a request that the consultant be approved. The Executive Director shall respond within 10 days of receiving the request. If the Executive Director disapproves the proposed consultant, Cargill shall select another consultant for consideration. Once the Executive Director has agreed to a selection, the consultant shall agree in writing to comply with this agreement and the direction of the staff.

V. Duties of the Consultant

Under the direction of the Executive Director of the Commission, the consultant shall be responsible for preparing all of the following: (1) a draft environmental assessment/DEIR; (2) all documents needed by the California Department of Fish and Game necessary for it to complete its review pursuant to the state Endangered Species Act; (3) if necessary, a revised draft environmental assessment/DEIR that responds to comments and revisions suggested by the Commission's staff; (3) a summary of comments received on the environmental assessment/DEIR and responses thereto; (4) a final environmental assessment/FEIR; and (5) such supporting documentation as the Executive Director indicates the Commission may need to respond to issues received either in writing or at the public hearing on the environmental assessment/FEIR or the application. Prior to public release or review, any document shall first be submitted to the Executive Director with a request that it be reviewed and approved as meeting the requirements of the applicable laws and regulations, this agreement, and contains fair, complete, objective and reliable information.

VI. Costs for Consultant and Other Services

Cargill shall be responsible for paying all consultant services and other associated charges. The Commission shall not be responsible in any way for any payments to the consultant. Cargill shall be responsible for the reproduction and distribution of documents in accord with the instructions of the Executive Director of the Commission. Cargill shall also pay to the Commission TWELVE THOUSAND DOLLARS (\$12,000.00) no later than August 1, 1993, such funds to be used to reimburse the Commission for the costs of staff associated with the preparation and review of the environmental documents. The Executive Director intends to use such funds to pay the salary of an intern who would help continue the same level of support as the staff provided prior to undertaking the workload associated with the environmental assessment and the preparation and review of environmental documents associated with this

effort. Once this Agreement is executed by the parties and the funds paid to the Commission, the Executive Director shall have sole discretion over the employment of the intern and the assignment of tasks to the intern. Once paid, Cargill shall have no rights to the return of the funds unless the Executive Director does not review and act on the documents submitted to him or her for review and approval pursuant to this agreement.

VII. Ownership and Control of Consultant Work Product

Upon submittal of any draft or final environmental document intended for public review, the Commission shall have complete ownership and control of such document(s) which shall be considered public documents available for the review of any member of the public who satisfies the Commission's procedures for requesting review of public documents. The Commission shall also be free to use the documents and the information in them in any manner that it sees fit.

VIII. Responsibility For the Objectivity and Completeness of the Assessment

The Commission shall be responsible for and control the contents of any and all documents that are published as a result of this agreement, specifically, including the environmental assessment/DEIR; the responses to comments; and the final assessment/FEIR. This responsibility shall include assuring that all information in and documents themselves are complete, accurate, objective, and unbiased, particularly in the identification of environmental benefits and losses, likely impacts, the alternatives for maintaining the salt ponds and the levees, and the discussion of mitigation measures. In fulfilling this obligation, the Executive Director on behalf of the Commission and the Commission shall have the complete and unconditional discretion to modify in any way, to substitute, or to edit any and all of the material provided for public review. In the case that the consultant or Cargill disagrees with changes directed by the Commission's staff to the content of any document, the Executive Director shall assure that the reader can ascertain what information is associated with the consultant and what information has been changed or added by the Commission or the Executive Director.

IX. Further Review and Amendments

Cargill and the Commission recognize that this agreement should be reviewed by the staff of the Fair Political Practices Commission and may be reviewed by other state control agencies. As a result of these reviews, modifications to this agreement may be necessary. On behalf of the Commission, the Executive Director is authorized to make amendments to this agreement recommended by state control agencies and may make other minor modifications.

Executed on _____

By: _____

For Cargil Salt, a Division of Cargill, Incorporated

Executed on _____

By: _____

For San Francisco Bay Conservation and Development Commission

Contents Read, Understood and Agreed to on _____ by

Approved Consultant

