



US Army Corps  
of Engineers®  
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division  
1455 Market Street, 16<sup>th</sup> Floor  
San Francisco, CA 94103-1398

# PUBLIC NOTICE

PROJECT: Peyton Slough Remediation Project Shoreline Protection

PUBLIC NOTICE NUMBER: 267760S  
PUBLIC NOTICE DATE: May 22, 2017  
COMMENTS DUE DATE: June 22, 2017

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1. **INTRODUCTION:** Eco Services Operations Corporation, through its agent, AECOM (POC: Jan Novak, 510-874-1733), 300 Lakeside Drive, Suite 400, Oakland, California 94612, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to discharge fill material into jurisdictional waters of the United States associated with the construction of shoreline protection where ongoing wave erosion threatens to expose contaminated sediments that were buried as part of the Peyton Slough Remediation Project and to erode tidal salt marsh habitat, located on the southern shore of Carquinez Strait, in the City of Martinez, Contra Costa County, California. This Department of the Army permit application is being processed pursuant to the provisions of Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*) and Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*).

2. **PROPOSED PROJECT:**

**Project Site Location:** 100 Mococo Road, City of Martinez, Contra Costa County, California; APN 159-320-008, 159-320-009, 159-320-003, 159-310-039, 159-320-004, 159-330-002, and 159-310-038; Vine Hill USGS Quadrangle Map, lat. 38.031936N, -122.110793W (Figure 1).

**Project Site Description:** The project site is a brackish tidal marsh, bordered on the north by the Carquinez Strait, where past land uses included a copper processing facility that left legacy contamination some of which was remediated per Regional Water Quality Control Board order (RWQCB Order No. 01-094). The remediation project dredged contaminated sediments from the old Peyton Slough, filled and capped the slough and

dredged a new slough parallel to, and approximately 400 feet east of, the original slough. An armored bulkhead was placed to protect the remediation cap, but over the last ten years ongoing erosion has threatened the bulkhead and the cap. The project area contains 87.27 acres of jurisdictional waters of the U.S. pursuant to Section 404 of the Clean Water Act that is comprised of 66.18 acres of tidal wetlands and 11.03 acres of other waters. In addition, the project area contains 10.06 acres of waters of the U.S jurisdictional pursuant to Section 10 of the Rivers and Harbor Act.

**Project Description:** As shown in Figures 2 through 4, the applicant proposes to install shoreline protection along the northern edge of the project area, which would protect the previously placed remediation cap and bulkhead located at the original Peyton Slough and would additionally protect the tidal wetlands along 800 linear feet of shoreline from erosion along this section of the Carquinez Strait. Approximately 3,300 cubic yards of rock fill would be placed within an area of 0.56 acres of jurisdictional waters of the U.S. Periodic maintenance of this protection may be required over time, of up to 0.23 acres over ten years, which would be included under a separate permit authorization.

**Basic Project Purpose:** The basic project purpose comprises the fundamental, essential, or irreducible purpose of the project, and is used by USACE to determine whether the project is water dependent. The basic project purpose is to provide shoreline protection from erosion at a site within Carquinez Strait and therefore the project is water dependent.

**Overall Project Purpose:** The overall project purpose serves as the basis for the Section 404(b)(1)

alternatives analysis, and is determined by further defining the basic project purpose in a manner that more specifically describes the applicant's goals for the project, while allowing a reasonable range of alternatives to be analyzed. The overall project purpose is to prevent erosion along the shoreline at Peyton Slough Marsh, in Martinez, California, from exposing contaminated sediments that have been capped within the former Peyton slough, while also protecting the tidal wetlands that occur within the project area.

**Project Impacts:** Work within Waters of the U.S. would include placing approximately 1,380 cubic yards of rock slope protection (RSP), permanently impacting approximately 0.14 acre of tidal wetland, and placing approximately 1,920 cubic yards of RSP that would permanently impact up to 0.33 acre of non-wetland other waters. The project would also temporarily impact up to 0.62 acres of tidal wetlands.

**Proposed Mitigation:** The applicant is preparing a mitigation plan that it will provide to the U.S. Army Corps. The plan would compensate for the unavoidable impacts to wetlands and other waters of the U.S.

**Project Alternatives:** The Corps has not endorsed the submitted alternatives analysis at this time. The Corps will conduct an independent review of the project alternatives prior to reaching a final permit decision.

### 3. STATE AND LOCAL APPROVALS:

**Water Quality Certification:** State water quality certification or a waiver is a prerequisite for the issuance of a Department of the Army Permit to conduct any activity which may result in a fill or pollutant discharge into waters of the United States, pursuant to Section 401 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1341 *et seq.*). The applicant has recently submitted an application to the California Regional Water Quality Control Board (RWQCB) to obtain water quality certification for the project. No Department of the Army Permit will be issued until the applicant obtains the required certification or a waiver of certification. A waiver can be explicit, or it may be presumed, if the RWQCB fails or refuses to act on a complete application for water quality certification within 60 days of receipt, unless the District Engineer determines a shorter or longer period is a reasonable time for the RWQCB to act.

Water quality issues should be directed to the Executive Officer, California Regional Water Quality

Control Board, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, California 94612, by the close of the comment period.

**Coastal Zone Management:** Section 307(c) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1456(c) *et seq.*), requires a non-Federal applicant seeking a federal license or permit to conduct any activity occurring in or affecting the coastal zone to obtain a Consistency Certification that indicates the activity conforms with the State's coastal zone management program. Generally, no federal license or permit will be granted until the appropriate State agency has issued a Consistency Certification or has waived its right to do so. Since the project occurs in the coastal zone or may affect coastal zone resources, the applicant has applied for a Consistency Certification from the San Francisco Bay Conservation and Development Commission to comply with this requirement.

Coastal zone management issues should be directed to the Executive Director, San Francisco Bay Conservation and Development Commission, 50 California Street, Suite 2600, San Francisco, California 94111, by the close of the comment period.

**Other Local Approvals:** The applicant will be applying for the following additional governmental authorizations for the project: a California Department of Fish and Wildlife Section 2081 Incidental Take Authorization.

### 4. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

**National Environmental Policy Act (NEPA):** Upon review of the Department of the Army permit application and other supporting documentation, USACE has made a *preliminary* determination that the project neither qualifies for a Categorical Exclusion nor requires the preparation of an Environmental Impact Statement for the purposes of NEPA. At the conclusion of the public comment period, USACE will assess the environmental impacts of the project in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4347), the Council on Environmental Quality's Regulations at 40 C.F.R. Parts 1500-1508, and USACE Regulations at 33 C.F.R. Part 325. The final NEPA analysis will normally address the direct, indirect, and cumulative impacts that result from regulated activities within the jurisdiction of USACE and other non-regulated activities USACE determines to be within its purview of

Federal control and responsibility to justify an expanded scope of analysis for NEPA purposes. The final NEPA analysis will be incorporated in the decision documentation that provides the rationale for issuing or denying a Department of the Army Permit for the project. The final NEPA analysis and supporting documentation will be on file with the San Francisco District, Regulatory Division.

**Endangered Species Act (ESA):** Section 7(a)(2) of the ESA of 1973, as amended (16 U.S.C. § 1531 *et seq.*), requires Federal agencies to consult with either the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) to ensure actions authorized, funded, or undertaken by the agency are not likely to jeopardize the continued existence of any Federally-listed species or result in the adverse modification of designated critical habitat. As the Federal lead agency for this project, USACE has conducted a review of the California Natural Diversity Data Base, digital maps prepared by USFWS and NMFS depicting critical habitat, and other information provided by the applicant, to determine the presence or absence of such species and critical habitat in the project area. Based on this review, USACE has made a preliminary determination that the following Federally-listed species and designated critical habitat are present at the project location or in its vicinity, and may be affected by project implementation. The project area contains Federally-listed threatened California Central Coast Steelhead (*Oncorhynchus mykiss*), threatened California Central Valley Steelhead (*Oncorhynchus mykiss*) and its critical habitat, the endangered Sacramento River Winter-Run Chinook salmon (*Oncorhynchus tshawytscha*) and its critical habitat, the threatened Central Valley Spring Run Chinook salmon (*Oncorhynchus tshawytscha*) and its critical habitat, the threatened North American Green Sturgeon (*Acipenser medirostris*) and its critical habitat, the threatened Delta smelt (*Hypomesus transpacificus*) and its critical habitat, the endangered Ridgway's rail (*Rallus longirostris obsoletus*) and the endangered Salt-marsh harvest mouse (*Reithrodontomys raviventris*). The overall project would permanently impact species habitat (approximately 0.34 acres of aquatic habitat and 0.14 acres of marsh habitat) through the placement of RSP, and would temporarily impact 0.62 acres of tidal marsh habitat during the construction of the project. Project activities have the potential to harm or crush individual species, and to harass species through noise and visual impacts. Conservation measures would be employed to avoid and minimize impacts to species. To address project related impacts to these species and designated critical habitat,

USACE will initiate formal consultation with USFWS and NMFS, pursuant to Section 7(a) of the Act. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

**Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA):** Section 305(b)(2) of the MSFCMA of 1966, as amended (16 U.S.C. § 1801 *et seq.*), requires Federal agencies to consult with the NMFS on all proposed actions authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat (EFH). EFH is defined as those waters and substrate necessary for fish for spawning, breeding, feeding, or growth to maturity. EFH is designated only for those species managed under a Federal Fisheries Management Plan (FMP), such as the *Pacific Groundfish FMP*, the *Coastal Pelagics FMP*, and the *Pacific Coast Salmon FMP*. As the Federal lead agency for this project, USACE has conducted a review of digital maps prepared by NMFS depicting EFH to determine the presence or absence of EFH in the project area. Based on this review, USACE has made a *preliminary* determination that EFH is present at the project location or in its vicinity, and that the critical elements of EFH may be adversely affected by project implementation. The project would have an adverse effect on EFH for species managed under the Pacific Groundfish Fishery Management Plan, Coastal Pelagics Fishery Management Plan, and Pacific Coast Salmon Fishery Management Plan through the temporary disturbance of benthic habitat during the placement of rock protection and would permanently impact the shoreline along Carquinez Strait. To address project related impacts to EFH, USACE will initiate consultation with NMFS, pursuant to Section 305(5)(b)(2) of the Act. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

**Marine Protection, Research, and Sanctuaries Act (MPRSA):** Section 302 of the MPRS of 1972, as amended (16 U.S.C. § 1432 *et seq.*), authorizes the Secretary of Commerce, in part, to designate areas of ocean waters, such as the Cordell Bank, Gulf of the Farallones, and Monterey Bay, as National Marine Sanctuaries for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values. After such designation, activities in sanctuary waters authorized under other authorities are valid only if the Secretary of Commerce certifies that the activities are consistent with Title III of the Act. No Department of the Army Permit will be issued until the applicant obtains the required certification or permit. The

project does not occur in sanctuary waters, and a *preliminary* review by USACE indicates the project would not likely affect sanctuary resources. This presumption of effect, however, remains subject to a final determination by the Secretary of Commerce, or his designee.

**National Historic Preservation Act (NHPA):** Section 106 of the NHPA of 1966, as amended (16 U.S.C. § 470 *et seq.*), requires Federal agencies to consult with the appropriate State Historic Preservation Officer to take into account the effects of their undertakings on historic properties listed in or eligible for listing in the *National Register of Historic Places*. Section 106 of the Act further requires Federal agencies to consult with the appropriate Tribal Historic Preservation Officer or any Indian tribe to take into account the effects of their undertakings on historic properties, including traditional cultural properties, trust resources, and sacred sites, to which Indian tribes attach historic, religious, and cultural significance. As the Federal lead agency for this undertaking, USACE has conducted a review of latest published version of the *National Register of Historic Places*, survey information on file with various city and county municipalities, and other information provided by the applicant, to determine the presence or absence of historic and archaeological resources within the permit area. Based on this review, USACE has made a *preliminary* determination that historic or archaeological resources are not likely to be present in the permit area, and that the project either has no potential to cause effects to these resources or has no effect to these resources. USACE will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided by the State Historic Preservation Officer, the Tribal Historic Preservation Officer, the Advisory Council on Historic Preservation, and Native American Nations or other tribal governments. If unrecorded archaeological resources are discovered during project implementation, those operations affecting such resources will be temporarily suspended until USACE concludes Section 106 consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer to take into account any project related impacts to those resources.

**5. COMPLIANCE WITH THE SECTION 404(b)(1) GUIDELINES:** Projects resulting in discharges of dredged or fill material into waters of the United States must comply with the Guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b) of the Clean Water Act (33 U.S.C. § 1344(b)). An evaluation pursuant to the Guidelines

indicates the project is dependent on location in or proximity to waters of the United States to achieve the basic project purpose. This conclusion raises the (rebuttable) presumption of the availability of a practicable alternative to the project that would result in less adverse impact to the aquatic ecosystem, while not causing other major adverse environmental consequences. The applicant has been informed to submit an analysis of project alternatives to be reviewed for compliance with the Guidelines.

**6. PUBLIC INTEREST EVALUATION:** The decision on whether to issue a Department of the Army Permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the project and its intended use on the public interest. Evaluation of the probable impacts requires a careful weighing of the public interest factors relevant in each particular case. The benefits that may accrue from the project must be balanced against any reasonably foreseeable detriments of project implementation. The decision on permit issuance will, therefore, reflect the national concern for both protection and utilization of important resources. Public interest factors which may be relevant to the decision process include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

**7. CONSIDERATION OF COMMENTS:** USACE is soliciting comments from the public; Federal, State and local agencies and officials; Native American Nations or other tribal governments; and other interested parties in order to consider and evaluate the impacts of the project. All comments received by USACE will be considered in the decision on whether to issue, modify, condition, or deny a Department of the Army Permit for the project. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, and other environmental or public interest factors addressed in a final environmental assessment or environmental impact statement. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the project.

**8. SUBMITTING COMMENTS:** During the specified comment period, interested parties may submit written comments to Frances Malamud-Roam, San Francisco

District, Regulatory Division, 1455 Market Street, 16<sup>th</sup> Floor, San Francisco, California 94103-1398; comment letters should cite the project name, applicant name, and public notice number to facilitate review by the Regulatory Permit Manager. Comments may include a request for a public hearing on the project prior to a determination on the Department of the Army permit application; such requests shall state, with particularity, the reasons for holding a public hearing. All substantive comments will be forwarded to the applicant for resolution or rebuttal. Additional project information or details on any subsequent project modifications of a minor nature may be obtained from the applicant and/or agent, or by contacting the Regulatory Permit Manager by telephone or e-mail cited in the public notice letterhead. An electronic version of this public notice may be viewed under the *Public Notices* tab on the USACE website: <http://www.spn.usace.army.mil/Missions/Regulatory>.