



US Army Corps
of Engineers

Regulatory Branch
333 Market Street
San Francisco, CA 94105-2197

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

NUMBER: 26776S – Peyton Slough Remediation

DATE: April 8, 2002

RESPONSE REQUIRED BY: May 6, 2002

PERMIT MANAGER Molly Martindale

PHONE: 415-977-8448 mmartindale@spd.usace.army.mil

1. **INTRODUCTION:** Ms. Mary Brown, Rhodia, Inc., 259 Prospect Plains Road, CN75, Cranbury, New Jersey 08512, ((609) 860-3502) has applied for a Department of the Army permit to conduct a remediation project in Peyton Slough pursuant to requirements of the San Francisco Bay Regional Water Quality Control Board. The project site is located to the northeast of the intersection of Waterfront Road and I-680 in Martinez, Contra Costa County (Figure 1). The remediation would excavate, fill, and cap the existing Peyton Slough and construct a new Peyton Slough parallel to, and to the east of, the existing Slough. Among other functions, Peyton Slough drains McNabney Marsh (formerly Shell Marsh). This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

2. **PROJECT DESCRIPTION:** As shown in the attached drawings, the applicant plans to permanently fill approximately 5.52 acres (5,500 linear feet) of Peyton Slough to cap it, temporarily fill (1-2 years) approximately 12.3 acres of wetlands for access roads, fill 0.17 acre of wetlands for temporary slough crossings, excavate and re-fill approximately 9.4 acres of wetlands to remove contaminated material, and to install three 190-foot and two 30-foot cutoff walls in wetlands.

An east-west levee bisects the site, and includes a tide gate in the existing Peyton Slough. (The operation of the tide gate is controlled by the Contra

Mosquito and Vector Control District.) North of the levee, the average marsh plain elevation is approximately +3 feet NGVD, while south of the levee, the average marsh plain elevation is approximately 0 feet NGVD.

The vegetation on the northern marsh plain includes the following dominant species: narrow-leaved cattail (*Typha angustifolia*), alkali bulrush (*Scirpus robustus*), three-square (*Scirpus americanus*), bulrush (*Scirpus acutus*), perennial pickleweed (*Salicornia virginica*), peppergrass (*Lepidium latifolium*), et al. In the southern marsh, the dominants include: saltgrass (*Distichlis spicata*), fat hen (*Atriplex triangularis*), Baltic rush (*Juncus balticus*), pickleweed, and alkali heath (*Frankenia salina*).

The project is expected to affect the following Federally-listed species: salt marsh harvest mouse (*Reithrodontomys raviventris raviventris*) (Endangered) (E), Sacramento splittail (*Pogonichthys macrolepidotus*) (Threatened) (T), and the Sacramento River winter-run (E), and Central Valley spring-run (T) and fall/late fall-runs (Candidate) of Chinook salmon (*Onchorhynchus tshawytscha*). The Corps has initiated formal consultations with the U.S. Fish & Wildlife Service and the National Marine Fisheries Service on these species as required by Section 7 of the Endangered Species Act. The applicant has proposed some mitigation measures for impacts to these species, and these measures will be reviewed by the appropriate Service.

The applicant proposes to minimize impacts to wetlands and waters by adopting design criteria that will facilitate the reestablishment of a fully functioning ecosystem, e.g., not making the new channel any wider than necessary, placing fill for construction equipment access in areas slated for excavation later on in the project.

As mitigation for unavoidable impacts to wetlands and the Slough, the applicant proposes to: 1) plant trees and shrubs around the toe of "Zinc Hill," adjacent to the southernmost portion of the new Slough (Figure 2); 2) construct a raised viewing platform for the marsh, and 3) plant native vegetation in the transitional zone between McNabney Marsh and the upland along Waterbird Way, to the east of McNabney Marsh.

3. STATE APPROVALS: Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), an applicant for a Corps permit must obtain a State water quality certification or waiver before a Corps permit may be issued. No Corps permit will be granted until the applicant obtains the required certification or waiver. A waiver shall be explicit, or it will be deemed to have occurred if the State fails or refuses to act on a valid request for certification within 60 days after the receipt of a valid request, unless the District Engineer determines a shorter or longer period is reasonable for the State to act.

Those parties concerned with any water quality issues that may be associated with this project should write to the Executive Officer, California Regional Water Quality Control Board (RWQCB), San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, California, 94612, by the close of the comment period of this public notice.

A portion of this project is in the jurisdictional purview of the San Francisco Bay Conservation and Development Commission (BCDC). The applicants will be required to obtain a permit from BCDC after

the RWQCB has made a determination of water quality certification for this project.

4. HISTORIC - CULTURAL CHARACTERISTICS AND ANTICIPATED CHANGES: A Corps of Engineers archaeologist is currently conducting a cultural resources assessment of the permit area, involving review of published and unpublished data on file with city, State, and Federal agencies. If, based upon assessment results, a field investigation of the permit area is warranted, and cultural properties listed or eligible for listing on the National Register of Historic Places are identified during the inspection, the Corps of Engineers will coordinate with the State Historic Preservation Officer to take into account any project effects on such properties.

5. SUMMARY OF INDIRECT IMPACTS: The re-created Peyton Sough could potentially provide better circulation for McNabney Marsh, and is expected to provide cleaner water for all species that use the Slough.

6. SUMMARY OF CUMULATIVE IMPACTS: Cumulative impacts are a major issue at this location due to the route of a proposed new petroleum pipeline which would require a 100-foot-wide temporary lay-down strip extending from the shoreline inland to Waterfront Road, crossing the same marsh areas, parallel to the old and new Peyton Sloughs. This pipeline is being proposed by Kinder-Morgan Energy Partners, LP. Kinder-Morgan intends to bore under the Carquinez Strait from the Contra Costa County shoreline near the Rhodia property. (Although no application has yet been received for the Kinder-Morgan pipeline, the project proponent has begun discussions with regulatory agencies and with Rhodia.) Since we do not yet have the details of the Kinder-Morgan plan, we cannot yet do a thorough evaluation of cumulative impacts to the area.

7. CONCLUSIONS AND RECOMMENDATIONS: Based on an analysis of the above identified impacts, a preliminary determination has been made that it will not be necessary to prepare an Environmental Impact Statement (EIS) for the subject permit application. The Environmental Assessment for the proposed action has however, not yet been finalized and this preliminary determination may be reconsidered if additional information is developed.

8. EVALUATION OF ALTERNATIVES: Evaluation of this activity's impacts includes application of the guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b)(1) of the Clean Water Act (33 U.S.C. 1344(b)). An evaluation was made by this office under the Section 404(b)(1) guidelines and it was determined that the proposed project is water dependent.

9. PUBLIC INTEREST EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process. That decision will reflect the national concern for both protection and utilization of important resources. All factors which may be relevant to the proposal must be considered including the cumulative effects thereof. Among those are 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.

10. CONSIDERATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public, Federal, State and local agencies and officials, Indian Tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

11. SUBMISSION OF COMMENTS: Interested parties may submit in writing any comments concerning this activity. Comments should include the applicant's name, the number, and the date of this Notice and should be forwarded so as to reach this office within the comment period specified on page one of this Notice. Comments should be sent to the Regulatory Branch. It is Corps policy to forward any such comments which include objections to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this Notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Additional details may be obtained

by contacting the applicant whose address is indicated in the first paragraph of this Notice, or by contacting Molly Martindale of our office at telephone 415-977-8448 or E-mail: mmartindale@spd.usace.army.mil. Details on any changes of a minor nature which are made in the final permit action will be provided on request.