



**US Army Corps
of Engineers**®
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division
450 Golden Gate Avenue, 4th Floor
San Francisco, CA 94102-3046

PUBLIC NOTICE

PROJECT: Peyton Slough Remediation Maintenance Project

PUBLIC NOTICE NUMBER: SPN-2002-267760S

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COMMENTS DUE DATE: January 5, 2020

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1. **INTRODUCTION:** Eco Services Operations Corporation (POC: Mary Brown, 713-201-1273), 100 Mococo Road, Martinez, California 94553, through its agent, AECOM (POC: Dillon Lennebacker, 510-874-3035), 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 Regional General Permit (RGP) to discharge fill material and conduct work within jurisdictional waters of the United States, which is being proposed as long-term maintenance and adaptive management to maintain the integrity of the completed Peyton Slough Remediation Project (Remediation Project) over the next 5 years. The Remediation Project was implemented to remediate legacy copper and zinc contamination by-products of prior industrial processes at the site per Regional Water Quality Control Board order (RWQCB Order No. 01-094).

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.*). The Remediation Project, previously authorized by USACE as a Standard Individual Permit, was completed in 2006 and concluded its 10-year compliance monitoring, maintenance, and adaptive management period in 2016. On September 25, 2018, USACE authorized 1,080 lineal feet of riprap under a Nationwide Permit verification as shoreline erosion protection at the remediation site's north bulkhead, but ongoing maintenance needs remain.

2. PROPOSED PROJECT:

Project Site Location: The project is located at 100 Mococo Road in the City of Martinez, Contra Costa

County, California. The area is east of the Benicia-Martinez Bridge and west of Peyton Slough, between Carquinez Strait and Waterfront Road and adjacent to Eco Services' Sulfuric Acid Regeneration Plant (38.0319°N, 122.1108°W; 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) (Figures 1-2).

Project Site Description: The project area is a brackish tidal marsh and is bordered on the north by Carquinez Strait. Past land use included a copper processing facility that left legacy contamination at the site. The completed 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 Peyton Slough. An armored bulkhead was installed to protect the remediation cap, but over the last 10 years ongoing erosion has threatened the bulkhead and cap. The project area contains 87.27 acres of jurisdictional waters of the U.S., including 66.18 acres of tidal wetlands and 11.03 acres of other waters that are subject only to Section 404 of the Clean Water Act and an additional 10.06 acres of other waters that are subject to both Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbor Act.

Project Description: The proposed Peyton Slough Remediation Maintenance Project (Maintenance Project) would prevent legacy contamination from entering the site's tidal wetlands and other waters of the U.S. while preserving the site's wetland habitat values. The Maintenance Project includes two types of maintenance actions: planned (shoreline armoring) and as-needed (settlement fill, erosion and headcut repair, bulkhead repair and protection, drainage ditch creation, and levee and berm maintenance). The planned maintenance action is to install

erosion control measures to protect the north bulkhead and remediated slough cap. As-needed actions are included in the proposal because they may become necessary during the next 5 years to maintain the integrity of the completed Remediation Project. These maintenance activities are proposed to be implemented as needed at any time during the expected 10-year duration of the permit. In-water activities for the north bulkhead repairs would be restricted to the annual salmonid work window between September 1 and November 30, of any year. Activities within wetlands would be restricted to the period between September 1 and January 31, of any year. Emergency repairs may be proposed to be conducted outside of these work windows.

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 maintain the protective remediation cap and bulkheads that have been placed on the former Peyton Slough to prevent the release of legacy contamination.

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 conduct maintenance and adaptive management actions that would prevent the exposure of contaminants that are buried within the former Peyton Slough under a protective cap at the Peyton Slough Marsh, while also preserving the project area's tidal wetland habitat in the context of current erosive conditions in Carquinez Strait and projected sea level rise.

Project Impacts: The proposed maintenance activities would consist of one planned impact and several as-needed impacts pertaining to maintenance and adaptive management over 5 years. The proposed planned impact would involve placing 100 cubic yards of 10-inch diameter crushed rock (riprap) along 63 lineal feet and within 0.04 acre below the high tide line of Carquinez Strait at the mouth of the former Peyton Slough to protect the north bulkhead from erosion. The proposed as-needed maintenance and adaptive management impacts are estimated to include: 200 cubic yards of clean imported soil placed within 0.11 acre of tidal wetlands as needed; three cubic yards of clean imported soil, clean imported sediment, permanent erosion control BMPs, rock, and sheet

piles placed within 0.01 acre and 30 lineal feet of tidal wetlands at the junction of the former, capped Peyton Slough and the new Peyton Slough to repair the south bulkhead and protect it from erosion; an additional 28 cubic yards of clean imported fill, clean imported sediment, permanent erosion control BMPs, rock, and sheet piles placed within 0.01 acre of tidal wetlands as needed; and the dredging of 15 cubic yards of native soil and sediment within 0.01 acre of tidal wetlands as needed. Additional maintenance activities outside of USACE jurisdiction may include drainage ditch cuts, levee road repairs, and protection berm repairs. Restoration of disturbed areas and additional unvegetated areas would be implemented after ground-disturbing activities.

Proposed Mitigation: The majority of the anticipated permanent fill impacts, which would comprise an estimated 0.13 acre out of the proposed 0.17 acre of permanent fill, would be beneficial discharges intended to prevent the conversion of wetlands to open waters by halting erosive forces of headcuts and land subsidence, restoring the marsh plain elevation to support wetlands while simultaneously protecting the Remediation Project cap. Maintenance and adaptive management activities would be kept to the minimum extent possible to achieve these goals to maintain the marsh integrity. Because there would be no expected loss of wetlands or other waters of the U.S., USACE has made a *preliminary* determination that no compensatory mitigation would be required.

Project Alternatives: Evaluation of this proposed 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. Section 1344(b)). An evaluation has been made by this office under the guidelines and it was determined that the proposed project is water dependent.

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 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 authorization 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 the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS) to ensure that 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. The Maintenance Project would temporarily impact Federally-listed species and their habitat during maintenance activities, which have the potential to harm or crush individual species and harass species through noise and visual impacts. As the Federal lead agency for this project, USACE initiated consultations with the USFWS and NMFS to address project-related impacts to Federally-listed species and their designated critical habitat, pursuant to Section 7(a) of the ESA. These ESA consultations have been resolved by the completion of a Biological Opinion by the USFWS and a Letter of Concurrence by the NMFS.

The USFWS Biological Opinion entitled “Formal Consultation on the Peyton Slough Remediation Maintenance Project in Contra Costa County, California,” (08FBDT00-2019-F-0209), dated July 22, 2019, contains an incidental take statement for the Federally-listed salt marsh harvest mouse (*Reithrodontomys raviventris*) and Ridgway’s rail (*Rallus obsoletus obsoletus*; formerly the California clapper rail) and a concurrence that the project is not likely to adversely affect the Federally-listed delta smelt (*Hypomesus transpacificus*) or its critical habitat.

The NMFS Letter of Concurrence entitled “Endangered Species Act Section 7(a)(2) Concurrence Letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Peyton Slough Remediation and Long-Term Maintenance Project (Corps File No. 267760),” (WCR-2017-6967), dated April 16, 2018, contains a concurrence that the project is not likely to adversely affect the Federally-listed Sacramento River winter-run evolutionarily significant unit (ESU) of Chinook salmon (*Oncorhynchus tshawytscha*) or its critical habitat, Central Valley spring-run ESU of Chinook salmon (*O. tshawytscha*), Central California Coast and California Central Valley distinct population segments (DPS) of steelhead (*Oncorhynchus mykiss*), and the southern DPS of North American green sturgeon (*Acipenser medirostris*) or its critical habitat.

Based on this review, USACE has made a *preliminary* determination that no further consultation pursuant to Section 7(a) of the ESA is needed. USACE will render a final determination on the need for consultation at the close of the comment period, taking into account any additional comments provided by the USFWS and NMFS.

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 initiated formal EFH consultation with the NMFS. This EFH consultation was resolved by the completion of a Letter of Concurrence by the NMFS.

The NMFS Letter of Concurrence entitled “Endangered Species Act Section 7(a)(2) Concurrence Letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Peyton Slough Remediation and Long-Term Maintenance Project (Corps File No. 267760),” (WCR-2017-6967), dated April 16, 2018, contains a determination that the project would adversely affect EFH for various federally managed fish species under the Coastal Pelagic FMP and

Pacific Groundfish FMP, but the NMFS declined to provide any EFH conservation recommendations because the proposed activities would prevent the release of contaminated sediments that threaten the quality of EFH in Carquinez Strait and the adjacent Suisun and San Pablo Bays.

Based on this review, USACE has made a preliminary determination that no further consultation pursuant to Section 305(b)(2) of the MSFCMA is needed for reauthorization of the program. USACE will render a final determination on the need for consultation at the close of the comment period, taking into account any additional comments provided by the NMFS.

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 lowers 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.

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 Daniel Breen, San Francisco District, Regulatory Division, 450 Golden Gate Avenue, 4th Floor, San Francisco, California 94102; 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>.