



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

408 Permission Section

PUBLIC NOTICE

**REQUEST FOR PERMISSION TO ALTER A U.S. ARMY CORPS OF ENGINEERS
PROJECT UNDER SECTION 408**

TITLE: DWR Site 63 Levee Slope Repair (WA2020001)

PUBLIC NOTICE COMMENT PERIOD:

Begins: August 27, 2020

Ends: September 11, 2020

REQUESTER: In compliance with U.S.C. Title 33, Chapter 9, Subchapter 1, Section 408, the California Department of Water Resources (DWR) (requester) has requested permission through the Central Valley Flood Protection Board (non-federal sponsor of the federally authorized project) from the U.S. Army Corps of Engineers (USACE) to alter the Sacramento River Flood Control Project, an existing federal flood risk management project, authorized by the Flood Control Act of 1917.

LOCATION: Sacramento River, Yolo County, California (Attachment 1 & Attachment 2).

REQUESTER'S PROPOSED ACTION: To restore approximately 540 linear feet of waterside levee slope along the right (west) bank levee of the Sacramento River. The repair consists of excavating out the unstable material and rebuilding the slope with a rock-fill erosion abatement repair. The restoration activities consist of placing native grasses, willows, and the embedment of the in-stream woody material (Attachment 3).

ENVIRONMENTAL IMPACTS OF PROPOSED ACTION: Habitat types within the repair area and laydown area include riverine, riparian, annual grassland, agricultural, ruderal/disturbed, and developed. The remaining native vegetative communities exist now as isolated remnant patches within urban and agricultural landscapes. Riparian habitats provide essential breeding, migration, and wintering habitat for terrestrial wildlife, and link the aquatic resources with terrestrial systems. Riparian vegetation along river channels also functions as primary regional migration routes for most wildlife.

Construction will involve the removal of a small amount of riparian vegetation (a few trees per site), removal of woody vegetation would be minimized within the project area. Construction activities would disturb riverine habitats during gravel placement and excavation that could create turbidity. Best management practices and conservation measures have been proposed to minimize adverse effects to the natural environment.

Consultations under the Endangered Species Act (ESA) have been completed with the United States Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS). Biological opinions (BO) have been issued that include an incidental take statement with reasonable and prudent measures and nondiscretionary terms and conditions that are necessary and appropriate to avoid, minimize, or monitor incidental take of listed species associated with the project.

The project area has the potential to support threatened or endangered species, including: the western yellow-billed cuckoo (*Coccyzus occidentalis*; cuckoo), giant garter snake (*Thamnophis gigas*; GGS), valley elderberry longhorn beetle (*Desmocerus dimorphus californicus*; VELB), and delta smelt (*Hypomesus transpacificus*; smelt). USACE received a BO (08ESMF00-2019-F-3198) from USFWS that concurred with the USACE determination of “may affect, not likely to adversely affect” for the cuckoo, and determined the project is not likely to jeopardize the continued existence of, GGS, VELB, smelt or its critical habitat.

The USACE identified four listed anadromous species that could be affected by the project including: Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*), Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), California Central Valley steelhead (*O. mykiss*), and the southern distinct population segment (DPS) of the North American green sturgeon (*Acipenser medirostris*). USACE received a BO (WCRO-2019-01675) that determined the project is not likely to jeopardize the continued existence of the listed fish species and is not likely to destroy or adversely modify their designated critical habitats. NMFS also concluded that this project would adversely affect the Essential Fish Habitat (EFH) of Pacific Coast salmon within the project area. The EFH conclusion was appended with conservation recommendations to minimize adverse effects. All conservation measures will be appropriately considered.

USACE has completed Section 106 consultation under the Historic Preservation Act with the State Historic Preservation Office and Native American Tribes. USACE could have future consultation responsibilities under certain circumstances, such unanticipated discovery.

AUTHORITY: The authority to grant permission for temporary or permanent use, occupation or alteration of any USACE civil works project is contained in Section 14 of the Rivers and Harbors Act of 1899, as amended, codified at 33 U.S.C. 408 (“Section 408”). Section 408 authorizes the Secretary of the Army, on the recommendation of the Chief of Engineers, to grant permission for the alteration or occupation or use of a USACE project if the Secretary determines that the activity will not be injurious to the public interest and will not impair the usefulness of the project. The Secretary of Army’s authority under Section 408 has been delegated to the USACE, Chief of Engineers. The USACE Chief of Engineers has further delegated the authority to the USACE, Directorate of Civil Works and Division and District Engineers, depending upon the nature of the activity.

LIMITS OF SECTION 408 AUTHORITY: A requester has the responsibility to acquire all other permissions or authorizations required by federal, state, and local laws or

regulations, including any required permits from the USACE Regulatory Program under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), Section 404 of the Clean Water Act (33 U.S.C. Section 1344), and/or Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413). In addition, an approval under Section 408 does not grant any property rights or exclusive privileges nor does it authorize any injury to the property or rights of others.

EVALUATION FACTORS: The decision whether to grant the requested permission for project alteration under Section 408 will be based on several factors. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. Review of requests for alteration will be reviewed by a USACE technical review team considering the following factors:

1) Impair the Usefulness of the Project Determination. The review team will determine if the proposed alteration would limit the ability of the USACE project to function as authorized, or would compromise or change any authorized project conditions, purposes or outputs. In order for an alteration to be approved, the requester must demonstrate that the alteration does not impair the usefulness of the federally authorized project.

2) Injurious to the Public Interest Determination. Proposed alterations will be reviewed to determine the probable impacts, including cumulative impacts, on the public interest. Factors that may be relevant to the public interest evaluation depend upon the type of USACE project being altered and the nature of the proposed alteration and may include, but are not limited to, such things as conservation, economic development, historic properties, cultural resources, environmental impacts, water supply, water quality, flood hazards, floodplains, residual risk, induced damages, navigation, shore erosion or accretion, and recreation. This evaluation will consider information received from the interested parties, including tribes, agencies, and the public. The benefits that reasonably may be expected to accrue from the proposal must be compared against its reasonably foreseeable detriments. The decision whether to approve an alteration will be determined by the consideration of whether benefits are commensurate with risks and by the net impact of the alteration on the public interest using the public interest factors.

3) Environmental Compliance. A decision on a Section 408 request is a federal action, and therefore subject to the National Environmental Policy Act (NEPA) and other environmental compliance requirements. While USACE is responsible for ensuring environmental compliance, the requester is responsible for providing all information that the Sacramento District identifies as necessary to satisfy all applicable federal laws, executive orders, regulations, policies, and procedures. NEPA and other analysis completed to comply with other environmental statutes (e.g. Endangered Species Act) should be commensurate with the scale and potential effects of the activity that would alter the USACE project. The Sacramento District will work with the requester to determine the requirements, which will be scaled to the likely impacts of the proposed alteration and should convey the relevant considerations and impacts in a concise and effective manner.

PUBLIC INVOLVEMENT: The purpose of this notice is to solicit comments from the public; federal, state, and local agencies and officials; tribes; and other interested parties regarding the DWR Site 63 Levee Slope Repair, a proposed alteration to an existing federally authorized project. Comments received within 30 days of publication of this notice will be used in the evaluation of potential impacts of the proposed action on important resources and in the evaluation of whether the proposed alteration would be injurious to the public interest and/or would impair the usefulness of the authorized project. Only the specific activities that have the potential to occupy, use or alter the Sacramento River Flood Control Project will be evaluated. Please limit comments to the area of the alteration and those adjacent areas that would be directly or indirectly affected by the alteration to the Sacramento River Flood Control Project. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act.

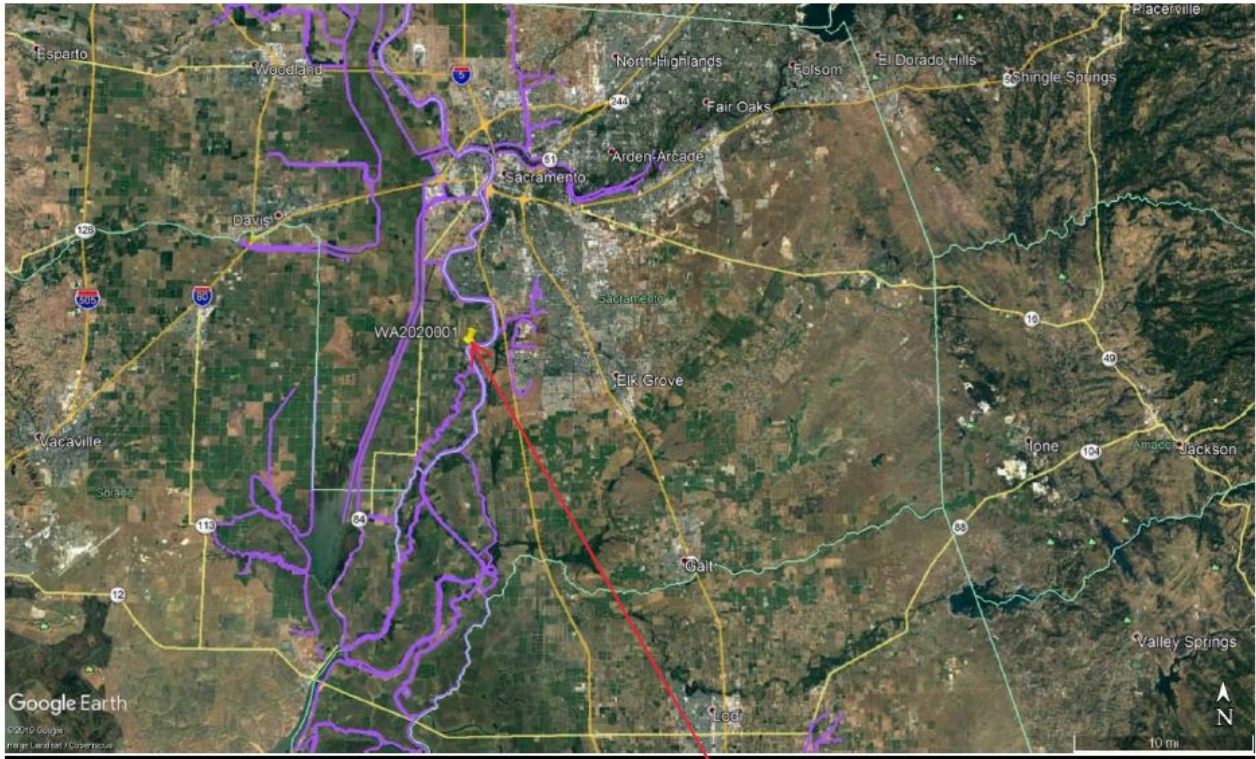
SUBMITTING COMMENTS: Written comments, referencing Identification Number WA2020001 must be submitted to the office listed below on or before September 11, 2020.

Oren M. Ruffcorn, Biologist
U.S. Army Corps of Engineers, Sacramento District
1325 J Street, Room 1460
Sacramento, California 95814-2922

Email: *CESPK-408-PN@usace.army.mil*

Attachments:

Project Vicinity Map



Approximate
Project Vicinity

1) Vicinity map

Project Location Map



Approximate
project Location

2) Location map

Project Footprint Map



Approximate
Project Footprint

3) Footprint map