



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

Operations and Readiness Branch

PUBLIC NOTICE

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

TITLE: Prospect Island Tidal Habitat Restoration (19227)

PUBLIC NOTICE COMMENT PERIOD:

Begins: March 01, 2018

Ends: March 30, 2018

REQUESTER: In compliance with U.S.C. Title 33, Chapter 9, Subchapter 1, Section 408, the California Department of Water Resources (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 March 1, 1917, Public Law 367, Sixty-fourth Congress.

LOCATION: The proposed project is located on Prospect Island, bounded on the east by Miner Slough and the west by Sacramento River Deep Water Channel, Solano County, California (Attachment 1).

REQUESTER'S PROPOSED ACTION: The proposed project is to restore approximately 1,600 acres of tidal habitat, with the overarching goal to restore tidal action to the interior of Prospect Island. The work would consist of constructing new internal channel networks, intertidal benches, and a weir at the north end of Prospect Island (Attachment 2). The proposed project would also include site grading, repairing existing breached embankment segments, creating new breaches within existing embankments, planting approximately 75 acres of wetland, riparian, and upland vegetation (Attachment 3), and removing approximately 250 acres of trees and invasive plants (Attachment 4). Under the proposed project, the non-federal Miner Slough levee would be breached in two locations: one in the north property approximately 0.5 miles south of Arrowhead Harbor Marina and one in the south property at the location of the formerly repaired breach connecting to the Miner Slough spur channel. A portion of the internal cross levee separating the north and the south properties would also be removed. These levee breaches would result in the north and south properties being subject to daily tidal inundation.

ENVIRONMENTAL IMPACTS OF PROPOSED ACTION: Currently, the interior of Prospect Island consists largely of non-tidal freshwater perennial aquatic and emergent wetland, with small isolated areas of upland valley/foothill riparian and grassland habitat (Attachment 5). Immediately following construction of the proposed project, the interior of

Prospect Island would be reconnected with tidal exchange from Miner Slough, resulting in conversion to a primarily tidal perennial aquatic habitat type. Over time, emergent marsh vegetation is expected to colonize the open water areas, resulting in an increase in subtidal and tidal freshwater emergent wetland habitat types in the project area. This would be an approximate restoration to habitat types existing in the project site prior to levee construction around Prospect Island during the late nineteenth century.

The proposed project area provides potential habitat for the federally threatened giant garter snake (*Thamnophis gigas*) and delta smelt (*Hypomesus transpacificus*). Additionally, the project vicinity contains elderberry shrubs (*Sambucus* sp.), the host plant for the federally threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*). See Attachment 6 for a map of elderberry shrub locations and Attachment 7 for a map of giant garter snake habitat within the project area. The proposed project area also provides potential habitat for the federally threatened California Central Valley distinct population segment (DPS) of steelhead (*Oncorhynchus mykiss*), Central Valley spring-run Chinook salmon (*O. tshawytscha*), and Southern DPS of North American green sturgeon (*Acipenser medirostris*), and the federally endangered Sacramento River winter-run Chinook salmon (*O. tshawytscha*). Additionally, the proposed project area contains designated critical habitat for delta smelt, California Central Valley steelhead, Central Valley spring-run Chinook salmon, Southern DPS of North American green sturgeon, and Sacramento River winter-run Chinook salmon. The project area is also identified as essential fish habitat under the Magnuson-Stevens Fishery Conservation and Management Act. The proposed project may have a variety of effects on federally listed species and habitat (Attachment 8); however, a number of conservation measures have been incorporated into the project design to minimize potential effects to listed species and critical habitat. USACE has initiated formal consultation under Section 7 of the Endangered Species Act with both the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

A cultural resources inventory and effects report was prepared for the proposed project and, pursuant to Section 106 of the National Historic Preservation Act, USACE initiated consultation with the State Historic Preservation Officer (SHPO) for potential effects to historic properties. USACE received a letter, dated October 28, 2015, from the SHPO concurring with USACE's determination of no historic properties affected for the proposed project undertaking. Additionally, USACE mailed letters, dated December 11, 2017, to Native American tribes identified by the Native American Heritage Commission, requesting review of the project and inviting comments.

To ensure compliance with the National Environmental Policy Act (NEPA), an environmental assessment is being prepared to address potential effects of the proposed project.

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 USC 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 USC 403), Section 404 of the Clean Water Act (33 USC Section 1344), and/or Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 USC 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 NEPA and other environmental compliance requirements. While USACE is responsible for ensuring environmental compliance, the requester is responsible for providing all information that the district identifies as necessary to satisfy

all applicable federal laws, executive orders, regulations, policies, and procedures. NEPA and other analyses 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 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 Prospect Island Tidal Habitat Restoration Project, 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.

SUBMITTING COMMENTS: Written comments, referencing Identification Number 19227 must be submitted to the office listed below on or before March 30, 2018.

Kaleigh Maze, Biologist
US Army Corps of Engineers, Sacramento District
1325 J Street, Room 1460
Sacramento, California 95814-2922

Email: Kaleigh.Maze@usace.army.mil

Attachments:

- 1) Vicinity map
- 2) Project plans
- 3) Planting plan
- 4) Invasive plant removal plan
- 5) Habitat under existing, proposed as-built, and future conditions
- 6) Elderberry shrub location map
- 7) Giant garter snake habitat map
- 8) Effects to federally listed species