



**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:** Reclamation District (RD) 2074 Brookside Cutoff Wall (19303).

**PUBLIC NOTICE COMMENT PERIOD:**

Begins: September 4, 2019

Ends: October 3, 2019

**REQUESTER:** In compliance with U.S.C. Title 33, Chapter 9, Subchapter 1, Section 408, RD 2074 (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 Mormon Slough Project, an existing federal flood risk management project, authorized by the Flood Control Act of 1962.

**LOCATION:** The proposed action is located on the north bank of the Calaveras River, south of Brookside Road and approximately 0.5 miles west of Interstate 5, in western Stockton, San Joaquin County, California (Attachment 1).

**REQUESTER'S PROPOSED ACTION:** The proposed project is to improve approximately 540 linear feet of earthen levee along the right (north) bank of the Calaveras River between approximately Levee Mile (LM) 23.3 and LM 23.4 to prevent seepage. The proposed project includes degrading the upper 4 feet of existing levee, installing Deep Mix Method (DMM) cutoff wall to a depth of approximately 54 feet, restoring the levee crown, and reconstructing a levee patrol road on top of the levee (Attachment 2). All vegetation, debris, excess excavation, and other unsuitable levee fill material on the project site would be cleared, removed, and disposed of by the contractor as necessary to perform the project work. A silt fence and straw wattles would be placed between the work area and the waterside edge to prevent erosion and displacement of materials into the Calaveras River. Soil and rock slope protection removed from the levee as part of the proposed project would be stored at the RD 2074 storage yard on Brookside Road, adjacent to the project site (Attachment 1). Access to the project site would be available by existing RD 2074 levee-top roads. A temporary levee ramp would be constructed and surfaced to provide convenient access between the project site and the RD 2074 storage yard on Brookside Road for construction vehicles and equipment.

**ENVIRONMENTAL IMPACTS OF PROPOSED ACTION:** There is currently a levee patrol road existing on the levee crown, and the levee slopes are sparsely vegetated with largely non-native grass species. Regular levee maintenance includes mowing and spraying of vegetation on the levee. Some sections of the landside levee slope have

been landscaped and there are variable amounts of rock slope protection along the waterside levee slope. There are numerous trees, including Oregon ash (*Fraxinus latifolia*), willows (*Salix* sp.), black walnuts (*Juglans californicus*), among other species, on the waterside levee slope, adjacent to the section of the levee where the proposed work would take place. There is a single blue elderberry shrub (*Sambucus mexicana*) near the site; however, this shrub would be protected in place using temporary construction fencing. The project staging area is located in an existing RD 2074 storage yard, which consists of bare dirt and gravel is regularly disturbed.

The proposed project would take place on the levee crown and slopes, there would be no work below the ordinary high water mark of the Calaveras River. The Corps does not anticipate any effects to fish or species federally listed as threatened or endangered under the Endangered Species Act.

A subdivision consisting of residential houses is located adjacent to the project area on the landside of the levee, with the nearest houses located approximately 70 to 90 feet from the project site. Construction equipment would generate noise; therefore, RD 2074 would implement mitigation measures to reduce construction noise to levels that would be consistent with local noise standards. These mitigation measures include limiting construction activities at the project site to the hours of 8:00 a.m. to 5:00 p.m. on all working days. Construction work shall not occur on Sundays and Federal holidays. Additionally, all construction equipment shall be fitted with mufflers and the contractor shall use temporary sound walls, portable acoustical panels, or other barriers around the construction equipment in use during project construction.

A cultural resources inventory report will be prepared for the proposed project and USACE will initiate consultation with Native American tribes and the State Historic Preservation Office pursuant to Section 106 of the National Historic Preservation Act.

**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 RD 2074 Brookside Cutoff Wall, 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 Mormon Slough 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 Mormon Slough 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 19303 must be submitted to the office listed below on or before October 3, 2019.

Brian Luke, Natural Resources Specialist  
US Army Corps of Engineers, Sacramento District  
1325 J Street, Room 1460  
Sacramento, California 95814-2922

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

Attachments:

- 1) Vicinity and site maps
- 2) Project map

## Attachment 1 – Vicinity and Site Maps

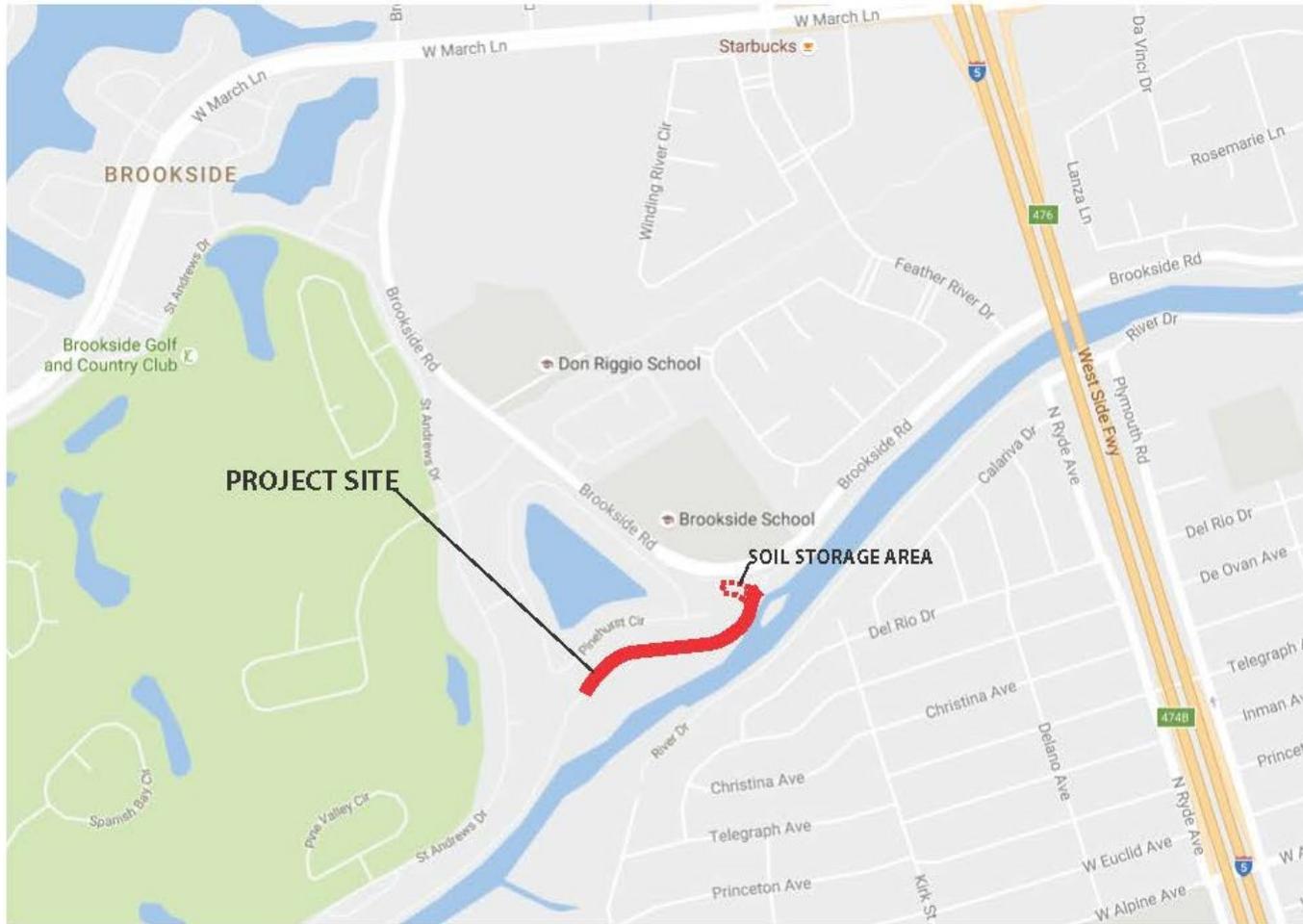




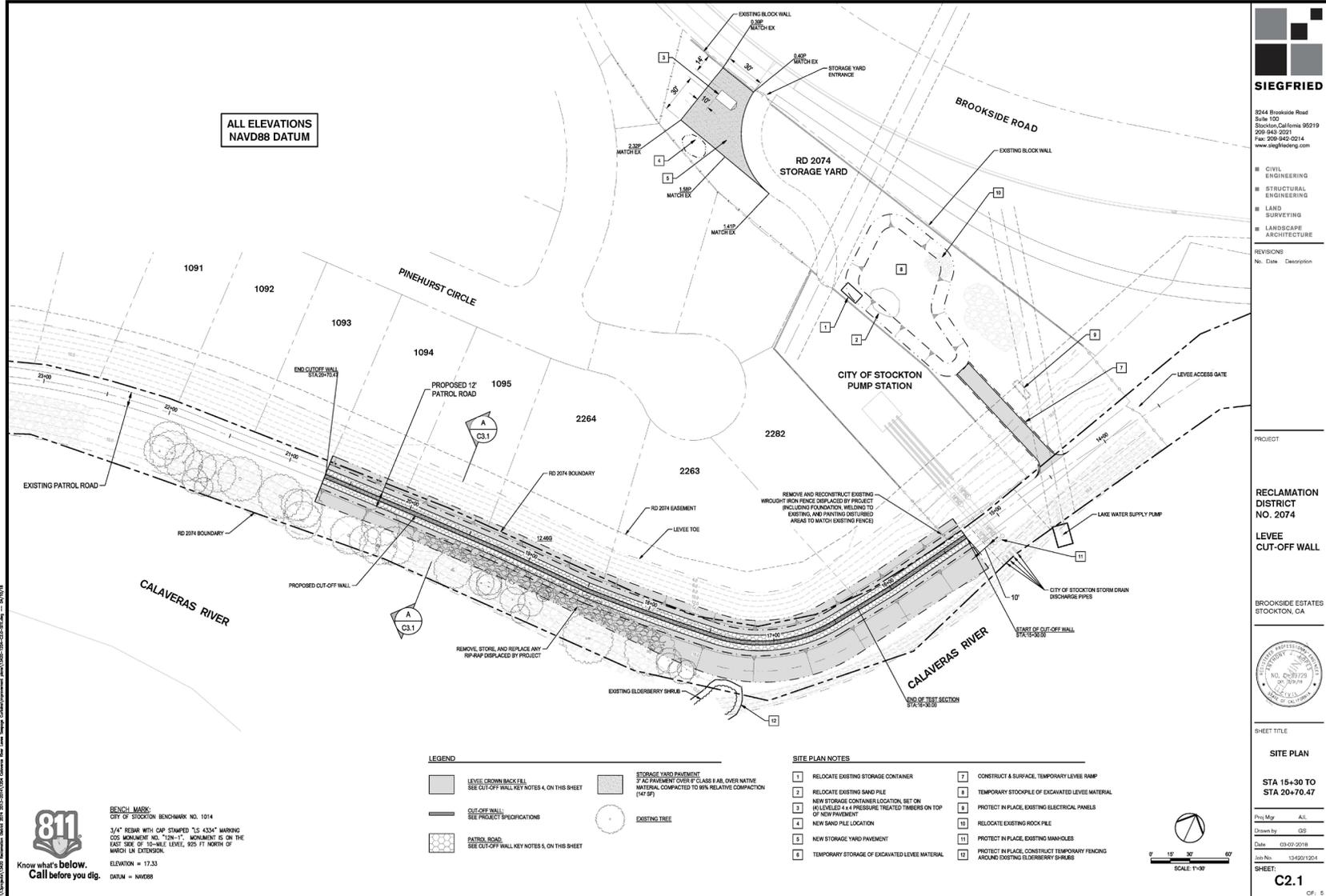
Figure 3. Project APE Map.

 Project APE

1:2,000



# Attachment 2 – Project Map



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CIVIL ENGINEERING  
 STRUCTURAL ENGINEERING  
 LAND SURVEYING  
 LANDSCAPE ARCHITECTURE

REVISIONS  
No. Date Description

PROJECT  
RECLAMATION DISTRICT NO. 2074  
LEVEE CUT-OFF WALL

BROOKSIDE ESTATES STOCKTON, CA

SHEET TITLE  
SITE PLAN

STA 15+30 TO STA 20+70.47

Drawn by: AS  
 Drawn by: OS  
 Date: 03/07/2018  
 Job No.: 134501254

SHEET  
**C2.1**  
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