



**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:** Tidal Marsh Complex Restoration Project (19460)

**PUBLIC NOTICE COMMENT PERIOD:**

Begins: February 14, 2020

Ends: March 15, 2020

**REQUESTER:** In compliance with U.S.C. Title 33, Chapter 9, Subchapter 1, Section 408, the Westlands Water District (requester) has requested permission through the California 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:** Shag Slough & Sacramento River Deep Water Ship Canal (DWSC), Yolo County, CA (Attachment 1 & Attachment 2).

**REQUESTER'S PROPOSED ACTION:** The Tidal Marsh Complex Project will include modifications to 2,149 acres of a 3,427-acre site. Actions will include: restoring 1,681 acres of tidal marsh (including 12 acres of tidal channels, seasonal floodplain wetlands, and riparian habitat), constructing a 109-acre soil stockpile behind restricted height levees in the northwest corner of the property, removing 364 acres of agricultural irrigation from the restored wetlands, and relocating several water control structures, irrigation, and drainage ditches. Passages will be created through existing roads to allow for water, fauna, and flora to flow into and out of surrounding tidal channels. The removal of irrigation control structures will greatly reduce the potential to strand fish in the marsh. Water will discharge from the marsh via overland flow and through long, shallow depressions that will be made during marsh construction. An estimated 242,640 cubic yards of soil will need to be excavated in order to construct the marsh. Tidal Marsh features will be constructed to accommodate projected adjustments and modifications – depending on scientific monitoring results of the marsh. Some amount of the excavated soil will be used to create a perimeter berm (slope) around the restored habitats to prevent inundation (flooding) of agricultural lands upon completion of the Tidal Marsh (Attachment 3 & Attachment 4).

**ENVIRONMENTAL IMPACTS OF PROPOSED ACTION:** The Tidal Marsh Complex Restoration Project will result in permanent impacts to approximately 18.46 acres of waters and temporary impacts to approximately 2.82 acres of tidally charged irrigation ditches. Because of its location within the Yolo Bypass, the site often receives

significant flood flows during the winter-spring rainy season (roughly November–April) that can submerge the property by 15 feet or more. Many pastures have been graded to drain to agricultural drainage ditches. To prevent tidal flooding, the hydrology of the site is intensively managed through a series of small berms, flood and drainage ditches, tide gates, flap gates, and other associated infrastructure. During the summer, the entire property is used for cattle grazing. Most of the site is irrigated to support forage production for grazing. Hay is produced to a limited extent along the western portions of the site. Grazing takes place on existing seasonal and perennial wetlands, which cover the majority of the site. During the winter, approximately 865 acres are managed as flooded wetlands for duck hunting. The project would convert large areas of existing irrigated pasture to natural tidal wetlands.

The project area has the potential to support threatened or endangered species, including: the giant garter snake (GGS) (*Thamnophis gigas*), delta smelt (*Hypomesus transpacificus*), vernal pool fairy shrimp (*Branchinecta lynchi*), Conservancy fairy shrimp (*Branchinecta conservatio*), and vernal pool tadpole shrimp (*Lepidurus packardii*). Construction of the tidal marsh is “likely to adversely affect” the GGS and delta smelt, and “not likely to adversely affect” the three shrimp species or delta smelt critical habitat. The U.S. Fish and Wildlife Service has issued a biological opinion to the Corps for effects to the above species.

The USACE identified four (4) listed anadromous species that utilize the Yolo Bypass, including: spring-run Chinook salmon (*Oncorhynchus tshawytscha*), winter-run Chinook salmon (*Oncorhynchus tshawytscha*), steelhead (*O. mykiss*), and green sturgeon (*Acipenser medirostris*). USACE determined that the restoration project may affect, but is not likely to adversely affect any of the listed species. The National Marine Fisheries Service has concurred with USACE’s findings via a Letter of Concurrence.

The Corps has completed Section 106 consultation under the Historic Preservation Act with the State Historic Preservation Office and Native American Tribes. The USACE could have future consultation responsibilities under certain circumstances, such as 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 Tidal Marsh Complex 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. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act.

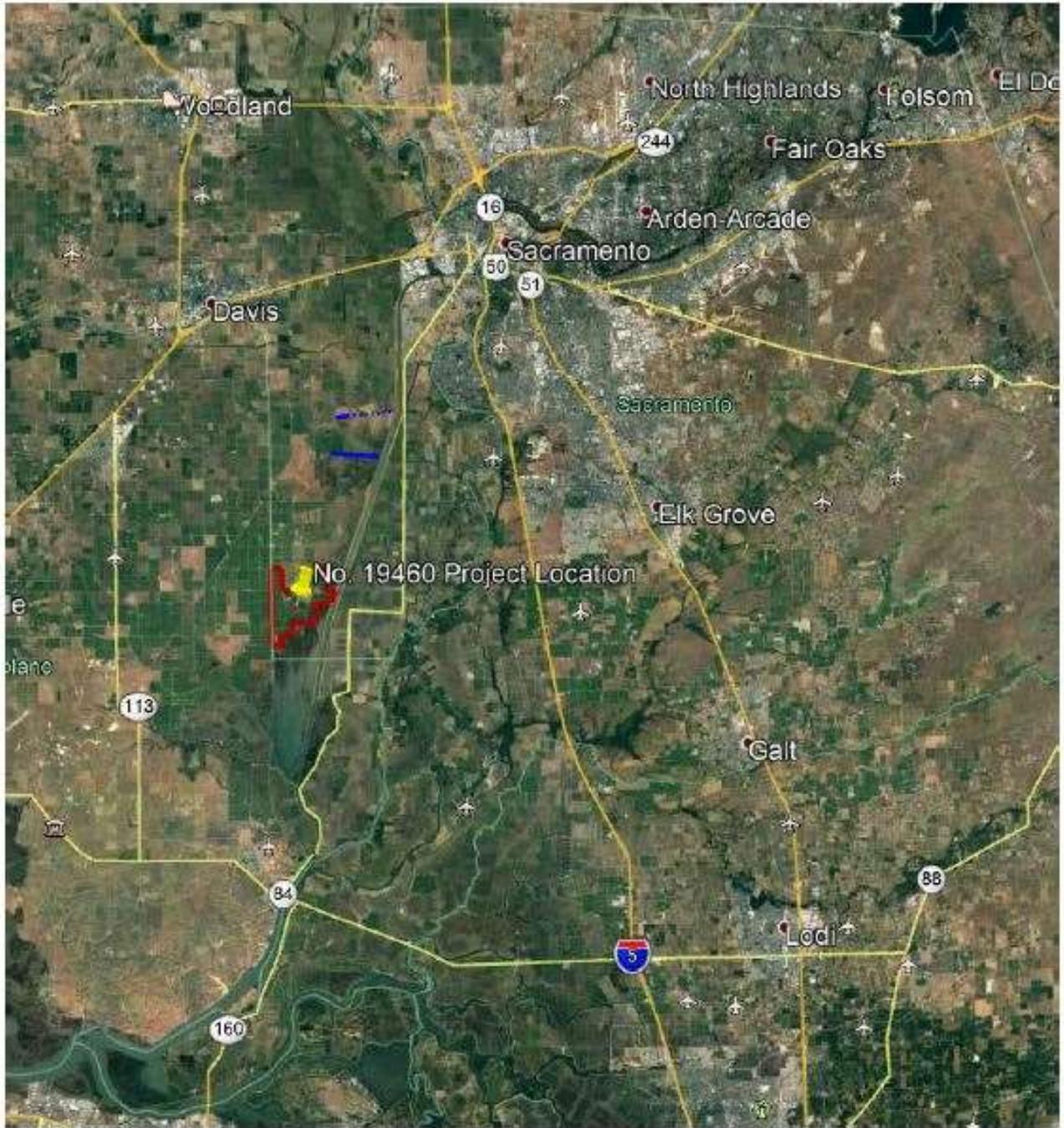
**SUBMITTING COMMENTS:** Written comments, referencing Identification Number 19460 must be submitted to the office listed below on or before March 15, 2020.

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*

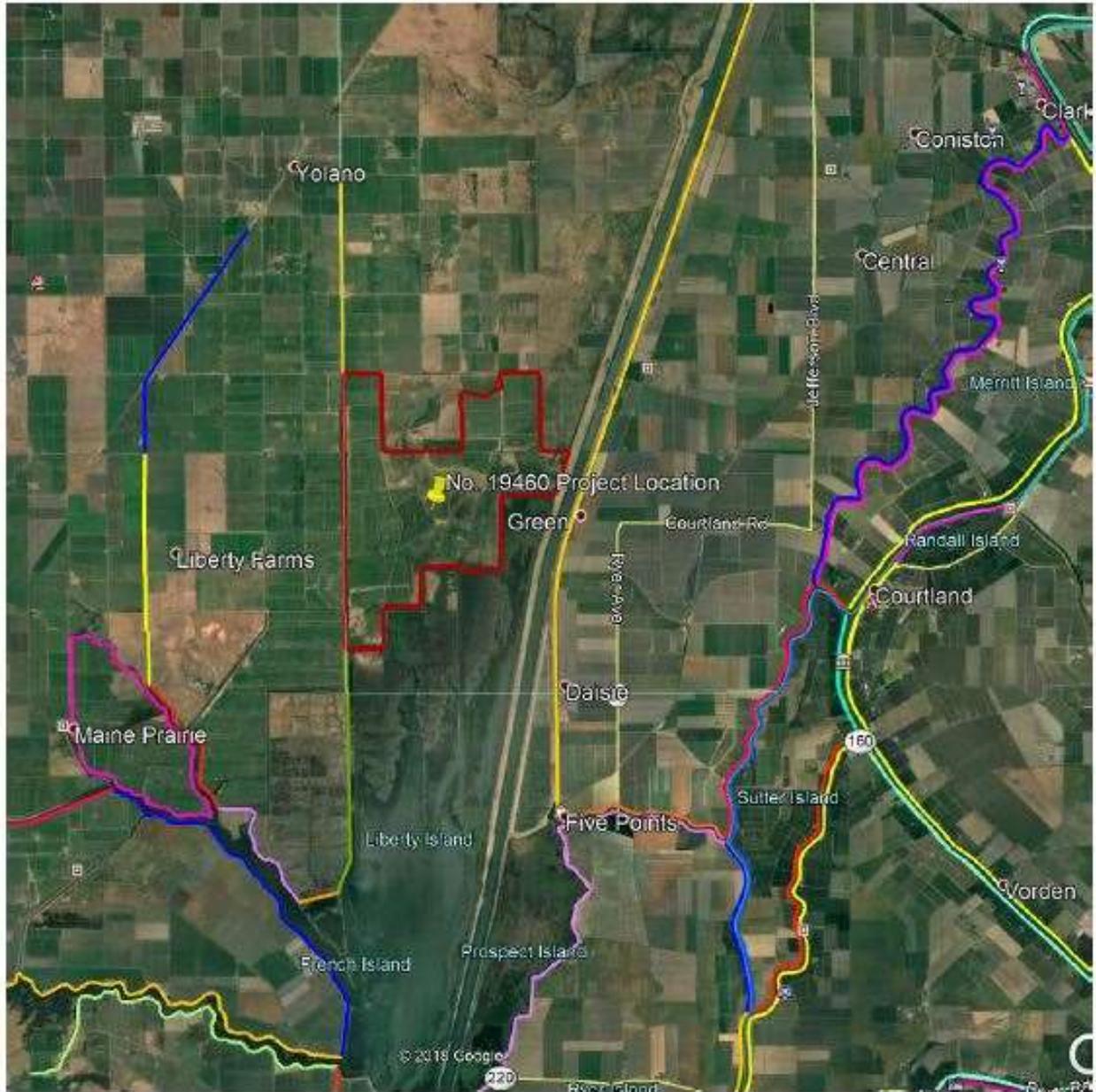
Attachments:

## Project Vicinity Map



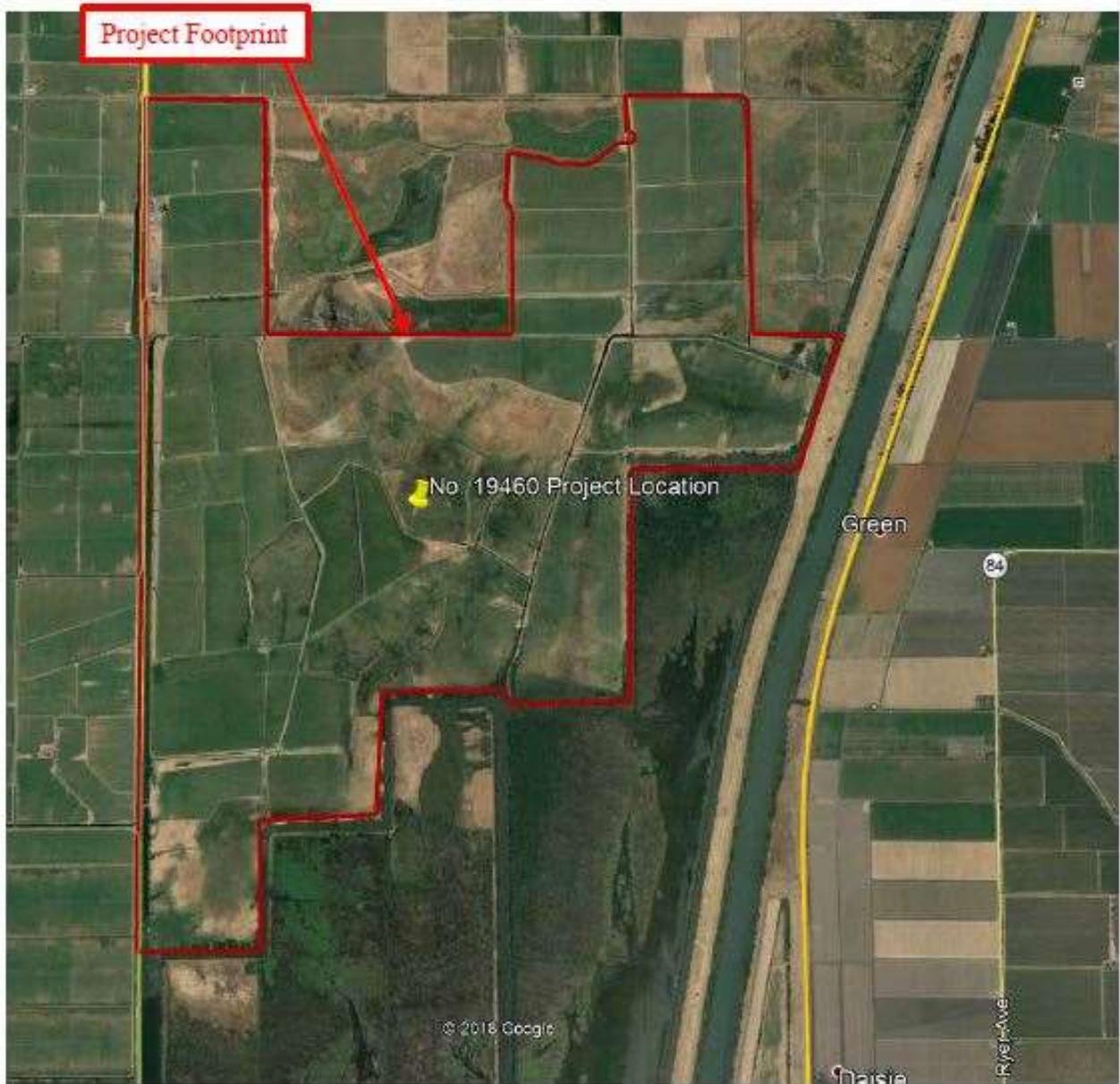
**Attachment 1.** 19460 Project Vicinity Map

## Project Location Map

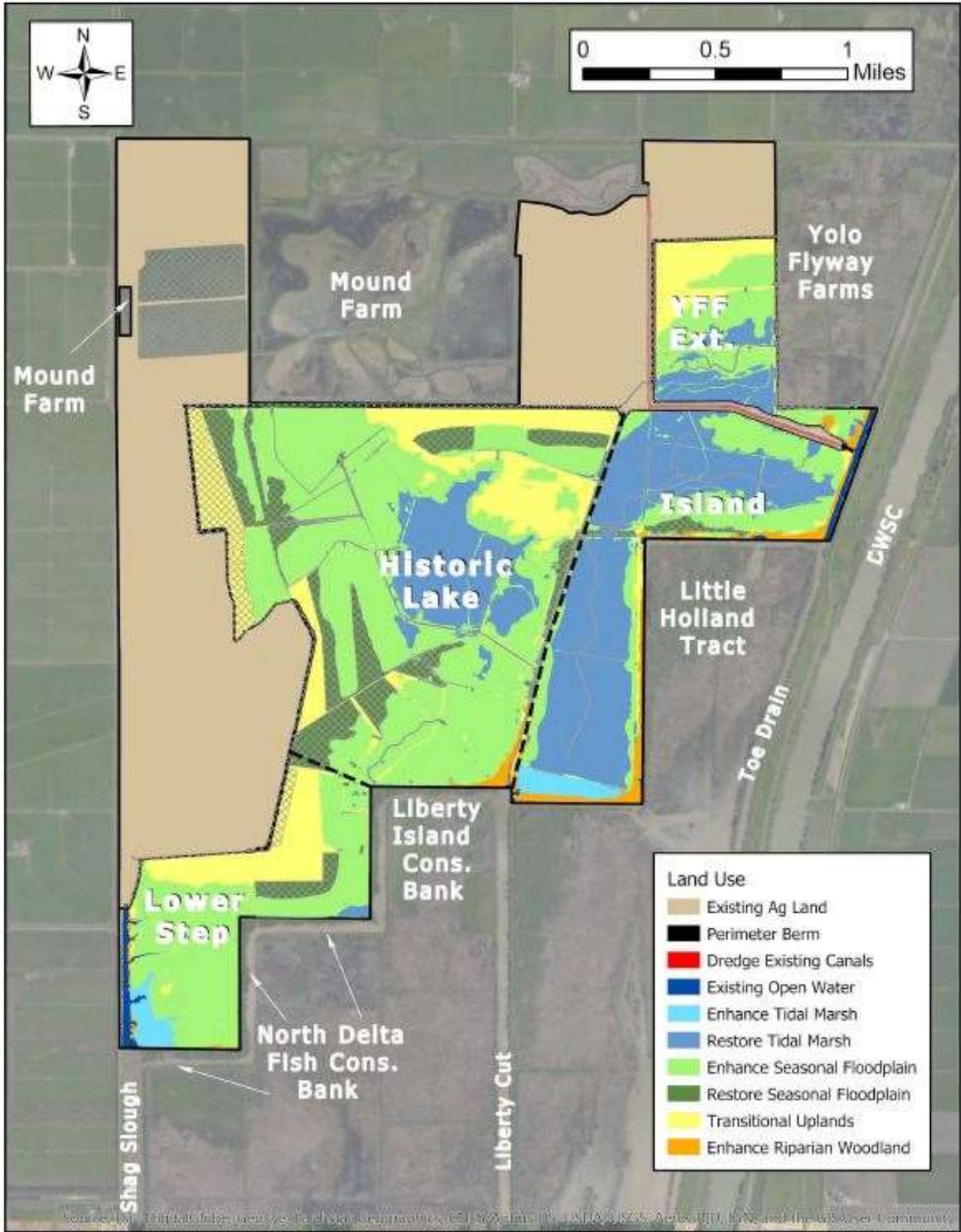


**Attachment 2.** 19460 Project Location Map

## Project Footprint Map



**Attachment 3.** 19460 Project Footprint Map



Attachment 4. 19460 Project Detail Map