



**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:** Caltrans Bridge Improvements Mud Creek (19625)

**PUBLIC NOTICE COMMENT PERIOD:**

Begins: October 03, 2022

Ends: November 01, 2022

**REQUESTER:** In compliance with U.S.C. Title 33, Chapter 9, Subchapter 1, Section 408, the California Department of Transportation (Caltrans; 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 and Major and Minor Tributaries Project, an existing federal flood risk management project, authorized by the Flood Control Act of 1965.

**LOCATION:** The proposed alteration is located northwest of the city of Chico where Highway 32 crosses Mud Creek, Butte County, California (Attachment 1).

**REQUESTER'S PROPOSED ACTION:** To widen the existing Highway 32 shoulders to eight feet, increase the left-turn deceleration lane lengths, add intersection safety lighting, add shoulder and centerline rumble strips, address poor culvert conditions, upgrade guardrail end treatments, and install new crash cushions at the existing Mud Creek Bridge between Caltrans Post Mile 0.3 at Gianella Road and Post Mile 5.0 at Muir Avenue. Work would also include adding fill on the landside of the Mud Creek levees for re-grading the access ramps (Attachments 2 & 3).

**ENVIRONMENTAL IMPACTS OF PROPOSED ACTION:** The Caltrans proposed alteration action area involves an approximately 4.5-mile bridge and road repair project. Approximately 0.15 mile of the 4.5-mile action area is under 408 Permission Section Jurisdiction. The 0.15 mile, approximately 7-acre, USACE action area is heavily disturbed and the vegetation community is primarily dominated by ruderal grasses on the levee slopes with orchards and a fallow agricultural field directly adjacent. The proposed alteration area provides suitable habitat for the federally listed threatened valley elderberry longhorn beetle (VELB; *Desmocerus californicus dimorphus*). Within the action area, there are a total of 23 elderberry shrubs, the obligatory host plant for the VELB, with at least one stem greater than one inch at ground level. Two elderberry shrubs will be removed and 13 elderberry shrubs will be indirectly impacted by construction activities. The remaining eight elderberry shrubs will be avoided.

Caltrans is acting as the lead federal agency on the behalf of USACE for required consultations under Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act. Caltrans consulted with the U.S. Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act and received a Biological Opinion for impacts to the VELB. No in-water work or removal of riparian vegetation would occur as a result of the proposed alteration. Therefore, there would be no effect on species, critical habitat, or essential fish habitat under the jurisdiction of the National Marine Fisheries Service.

Using the January 2014 First Amended Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act, Caltrans completed consultation with the State Historic Preservation Office and Native American Tribes 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 Caltrans Bridge Improvements Mud Creek, 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 and Major and Minor Tributaries 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 and Major and Minor Tributaries 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 19625 must be submitted to the office listed below on or before November 01, 2022.

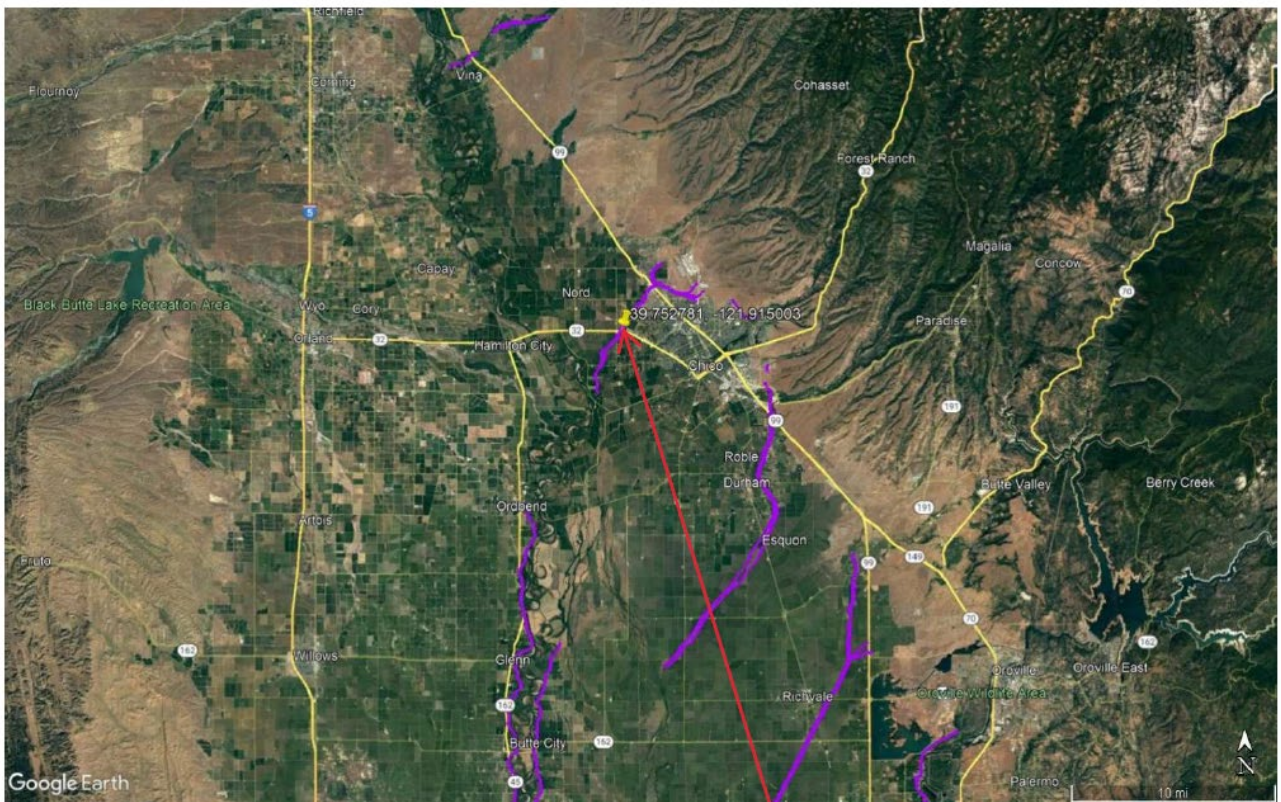
Brian Luke

Natural Resources Specialist  
U.S. Army Corps of Engineers, Sacramento District  
1325 J Street, Room 1460  
Sacramento, California 95814-2922

Email: [CESPK-408-PN@usace.army.mil](mailto:CESPK-408-PN@usace.army.mil)

Attachments:

### Project Vicinity



Vicinity

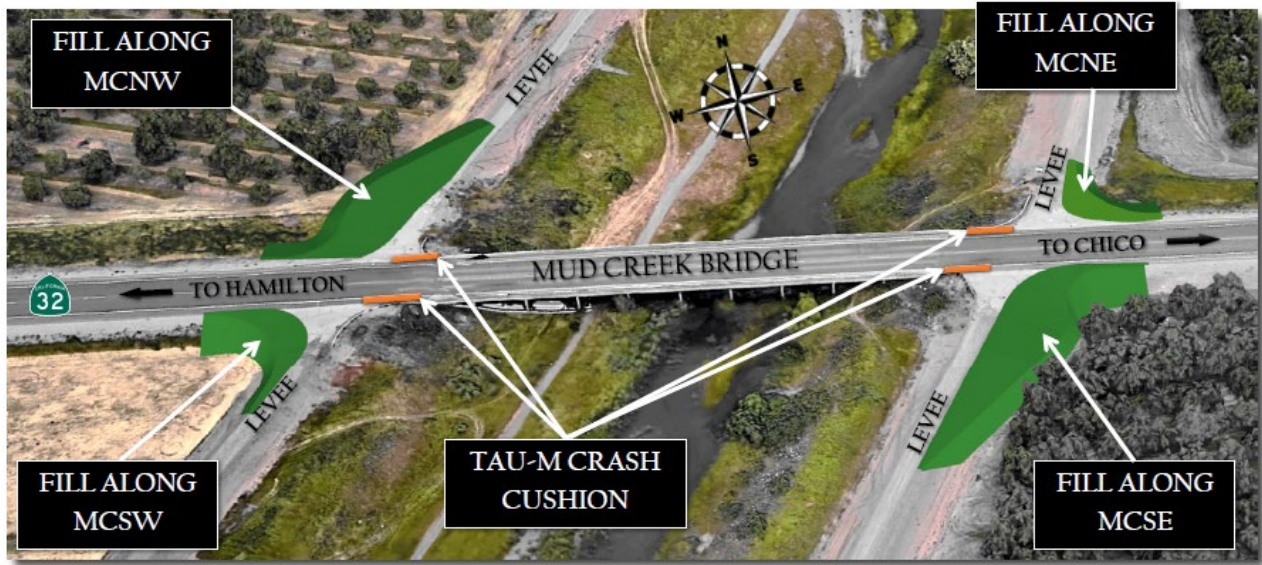
1) General vicinity map

### Project Location



Project Location

2) Proposed project location map



LEGEND

MUD CREEK NORTH WEST - "MCNW" MUD CREEK SOUTH WEST - "MCSW" MUD CREEK NORTH EAST - "MCNE" MUD CREEK SOUTH EAST - "MCSE"

3) Approximate project footprint map