



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: Liberty Island Conservation Bank Phase II (19687)

PUBLIC NOTICE COMMENT PERIOD:

Begins: February 06, 2024

Ends: March 07, 2024

REQUESTER: In compliance with U.S.C. Title 33, Chapter 9, Subchapter 1, Section 408, Aaron Patsch of Liberty Island Holdings II, LLC (requester) has requested permission through the Central Valley Flood Protection Board (CVFPB) (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 Flood Control Act of 1917.

LOCATION: The project is located approximately 3 miles southwest of the Courtland Road and Ryer Avenue Intersection, and about 6 miles west of the Town of Courtland within the Yolo Bypass in Yolo County, California (Attachments 1-3)

REQUESTER'S PROPOSED ACTION: This project proposes to create approximately 811 acres of habitat for Delta native fish species within the Yolo Bypass, including the following special-status species: Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central Valley steelhead, delta smelt, longfin smelt, Sacramento splittail, and Central Valley fall-run and late fall-run Chinook salmon. Habitat improvements will be accomplished by increasing the extent of habitat for native fish species, improving the connectivity between existing habitat, and reducing predation by non-native fish.

Restoration components of this project include:

- Lowering/degrading portions (approximately 12 acres or 4,500 linear feet) of two existing east-west berms along the northern edge of the Bank to approximately 5.1 feet NAVD 88 to allow for increased tidal action. An excavator with a claw (or similar) attachment positioned along the levees (or on a barge) will remove approximately 97,800 cubic yards of concrete, rock, and soil. The removed material will be placed on a barge and transported out of the project area to be disposed of.

- Excavating 8,600 cubic yards of soil to create three subtidal channels along the northernmost edge using the same methodology described in the previous bullet to promote connectivity between aquatic habitats.
- Lowering three areas of floodplain along the north and east sides of Prospect Slough on the northern boundary of the project to approximately 5.1 feet NAVD 88 for development of tidal emergent marsh. To do this, an excavator with a claw (or similar) attachment positioned along the levees (or on a barge) will remove approximately 84,600 cubic yards of soil and rock.
- Revegetating portions of the Project along the interface between shallow habitats and the tidal channel of Prospect Slough, within the lowered floodplain, and areas where levees will be removed with native freshwater marsh vegetation, including hardstem bulrush (*Schoenoplectus acutus var. occidentalis*) and California bulrush (*Scirpus californicus*), to create tidal emergent marsh and shaded riverine aquatic habitat. An erosion control mix of native and naturalized upland species including annual fescue (*Vulpis spp.*), California brome (*Bromus carinatus*), and blue wildrye (*Elymus glaucus*) will be used to revegetate upland disturbed areas.
- Removing 69 trees from the project area; no shrubs or trees will be planted due to the flood control nature of the Yolo Bypass.
- Removing a water control structure located in a channel along the eastern edge of one of the irrigation berms to allow for water to flow unrestricted through this portion of the channel and be integrated with the lowering of the adjacent levee.

The project construction is estimated to take 60 to 90 days to complete.

ENVIRONMENTAL IMPACTS OF PROPOSED ACTION: The proposed project site is located on an approximately 811-acre site within the Yolo Bypass. The site is comprised of primarily emergent marsh and open wetland habitats, as well as seasonal wetlands, riparian scrub, and ruderal uplands on the levee.

USACE initiated consultation with the United States Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act (ESA) for effects to the federally listed as threatened giant garter snake (*Thamnophis gigas*) and endangered delta smelt (*Hypomesus transpacificus*). The USFWS consultation is ongoing.

Additionally, USACE initiated consultation with the National Marine Fisheries Service (NMFS) under Section 7 of the ESA for effects to the federally listed as endangered winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened spring-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened California Central Valley steelhead (*Oncorhynchus mykiss*), the threatened southern distinct population segment of North American green sturgeon (*Acipenser medirostris*) and for effects to essential fish habitat (EFH) under Section 305 of the Magnuson-Stevens Fishery Conservation and Management Act for Pacific Salmon. NMFS issued a letter of concurrence dated June 11, 2013, concurring that the project may affect, but is not likely to adversely affect endangered winter-run Chinook salmon, threatened spring-run Chinook salmon, threatened California Central Valley steelhead, the threatened southern distinct

population segment of North American green sturgeon, and not likely to adversely affect their respective designated critical habitats. NMFS also concurred that the project will adversely affect the EFH of Pacific Coast salmon, but also that these effects would be sufficiently avoided, minimized, or offset by proposed mitigation measures, and therefore did not warrant EFH conservation recommendations. NMFS sent a letter to USACE on June 3, 2023, affirming the previous letter of concurrence is sufficient and reinitiation of consultation was not warranted.

Potentially eligible cultural resources may be affected by the proposed project. USACE will initiate consultation with the State Historic Preservation Officer and Native American Tribes under Section 106 of the National Historic Preservation Act, as appropriate.

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 Liberty Island Conservation Bank Phase II, 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 19687 must be submitted to the office listed below on or before March 07, 2024.

Madeline Huffman, 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

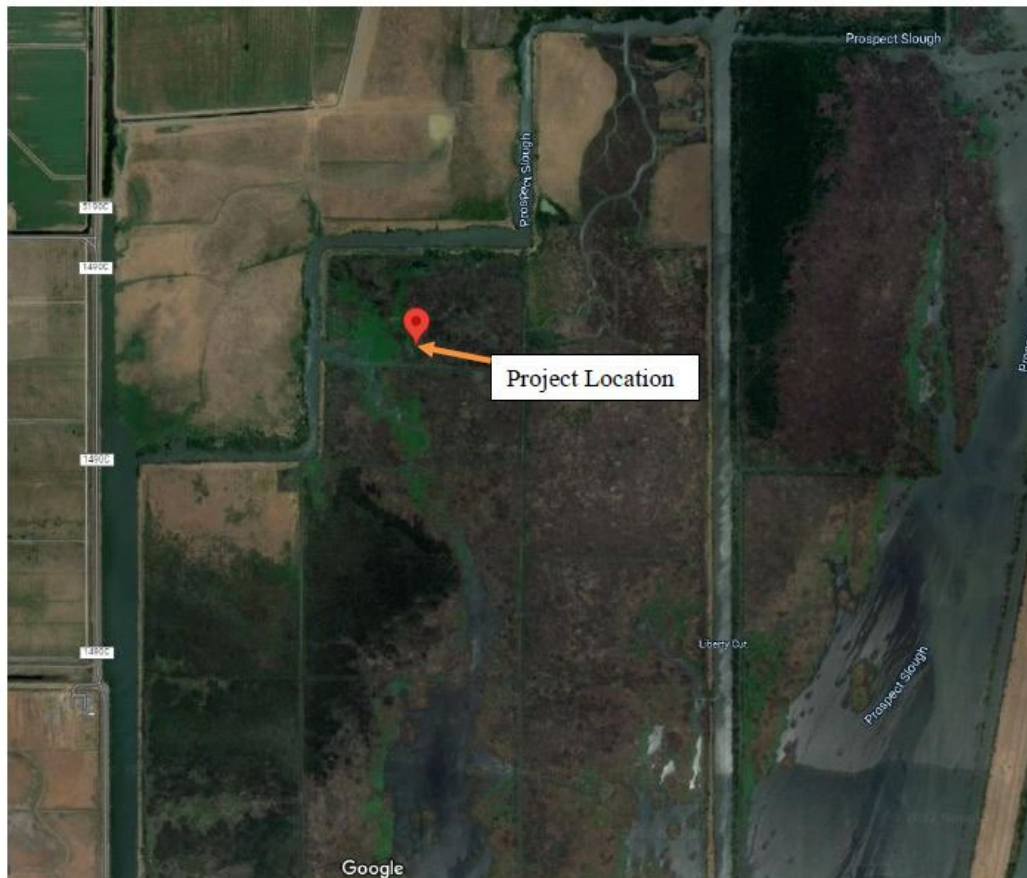
Attachments:

Project Vicinity



1) General vicinity map

Project Location



2) Proposed project location map

Project Footprint



3) Approximate project footprint map