



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: Kinder Morgan LS – 16 Pipeline Ground Monitoring Stations, Walnut Creek
(CCC 634-20)

PUBLIC NOTICE COMMENT PERIOD:

Begins: May 29, 2025

Ends: June 8, 2025

REQUESTER: In compliance with U.S.C. Title 33, Chapter 9, Subchapter 1, Section 408, Kinder Morgan, LS (requester) has requested permission through the Contra Costa County Flood Control and Water Conservation District (CCCFCD, non-federal sponsor of the federally authorized project) from the U.S. Army Corps of Engineers (USACE) to alter (after the fact, due to emergency mitigation) the Walnut Creek Project, an existing federal flood risk management project, authorized by Flood Control Act of 1960.

LOCATION: The proposed alteration/post-event monitoring stations were placed along the LS-16 pipeline near the confluence of the Walnut Creek and the San Ramon Creek Bypass Channel, spanning south to the Broadway Release Location (Figure 1).

REQUESTER'S PROPOSED ACTION: On November 20, 2020, petroleum leaked from a Kinder Morgan pipeline that had been potentially damaged from tree intrusion. The petroleum daylighted into the San Ramon Bypass Flood Control Channel, near the Iron Horse Trail footbridge south of Ygnacio Valley Road. A Unified Command including the U.S. Environmental Protection Agency (US EPA), California Department of Fish and Wildlife-Office of Spill Prevention and Response (CDFW-OSPR), and Kinder Morgan responded to the discharge. Emergency cleanup efforts began to recover the released product. Incident response activities included mitigation and remediation measures to recover the released product, mitigate its contact with surface water, and mitigate threats to humans and the environment. These measures included soil excavation, pipeline repair, and surface water control measures. Approximately 620 barrels of product were recovered by April 2021. Surface water monitoring and sampling was conducted. The impacted pipeline segment was repaired, and ground monitoring wells (GMW) and soil vapor (SV) probes were ultimately installed within the Contra Costa County/CCCFCD's right-of-way.

The action under consideration is a request by Kinder Morgan, through CCCFCD, to authorize the existing monitoring wells to remain in place within the Walnut Creek Project.

ENVIRONMENTAL IMPACTS OF PROPOSED ACTION: The soil vapor probes and well monitoring stations currently span along the LS-16 pipeline (Figure 2), which runs along the San Ramon Bypass Channel and passes through a patchwork of utility corridors, urban and residential areas.

Because the monitoring stations are currently in place and there is no future change or disturbance associated with their specific locations as of now, USACE has determined there will be no effects to federally listed species, designated critical habitat, or essential fish habitat (EFH) under the jurisdictions of the United States Fish and Wildlife Service and the National Marine Fisheries Service.

USACE has also determined that no potentially eligible cultural resources will be affected by the undertaking (ongoing environmental monitoring) associated with allowing the monitoring devices to remain in their current locations. Should this change, 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.

The proposed alteration meets the criteria of an energy-related emergency under EO 14156 Declaring a National Energy Emergency. As such USACE will utilize emergency permitting provisions to facilitate the Nations energy supply.

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 Walnut Creek, a proposed alteration to an existing federally authorized

project. The proposed alteration meets the criteria of an energy-related emergency under EO 14156 Declaring a National Energy Emergency. As such USACE will utilize emergency permitting provisions to facilitate the Nations energy supply. Comments received within 10 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 Walnut Creek 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 Walnut Creek 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 CCC 634-20 must be submitted to the office listed below on or before Public Comment Period June 8, 2025.

Michael Fong, Project Manager
U.S. Army Corps of Engineers, Sacramento District
1325 J Street, Room 1460
Sacramento, California 95814-2922

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

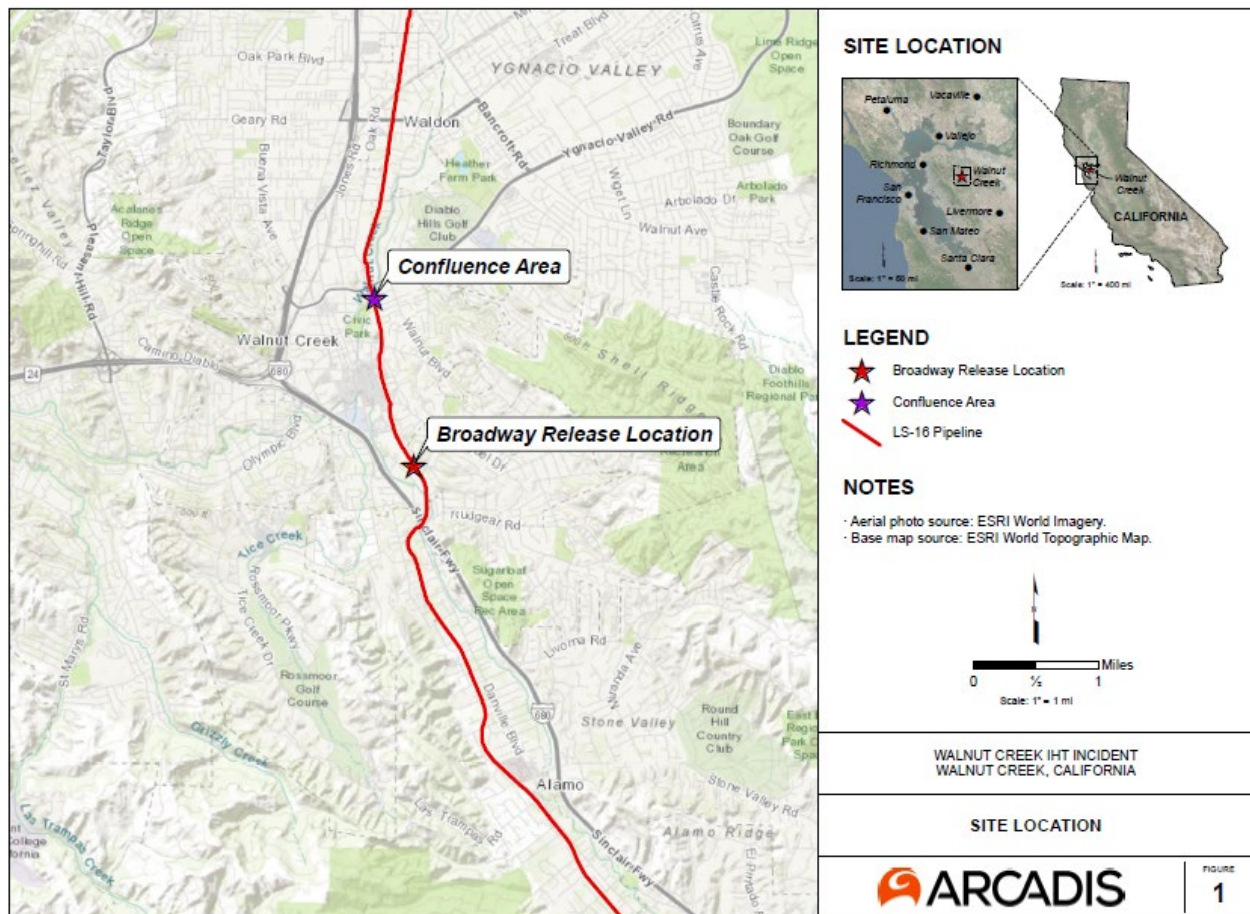


Figure 1. General vicinity map

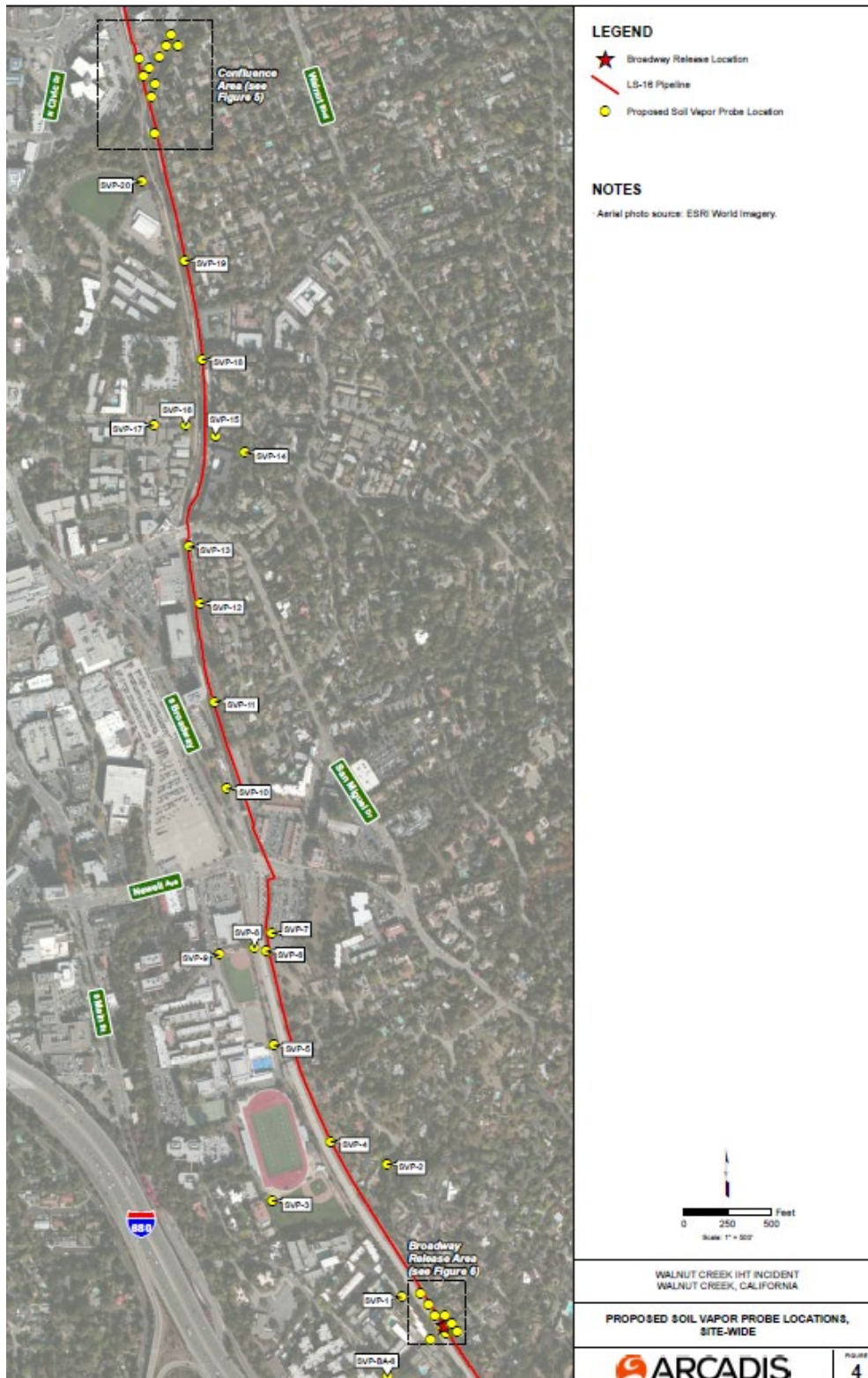


Figure 2. Approximate Project Location