

**Meeting of the Central Valley Flood Protection Board  
July 27, 2012**

**Staff Report – Encroachment Permit**

**Jim DeMartini  
Riparian Vegetation, Stanislaus County**

---

**1.0 – ITEM**

Consider approval of Permit No. 18753 (Attachment B)

**2.0 – APPLICANT**

Jim DeMartini

**3.0 – LOCATION**

The project is located on the left bank of the Tuolumne River approximately 8 miles southwest of the city of Modesto. (Tuolumne River Designated Floodway, Stanislaus County, See Attachment A)

**4.0 – DESCRIPTION**

The project consists of planting up to 15 native riparian trees adjacent to a farm road in a dense riparian area along the Tuolumne River.

**5.0 – PROJECT ANALYSIS**

Mr. Jim DeMartini is proposing to plant up to 15 native riparian trees along the left bank of the Tuolumne River. This area is adjacent to an existing farm road and where a stand of *Arundo donax* (giant reed) was removed in 2010. The removal of the *Arundo donax* was authorized by a Central Valley Flood Protection Board Letter of Authorization in July 2010.

The proposed trees will be planted outside of the channel in an overbank area approximately 120 feet by 30 feet. All trees will be planted at least 16 feet apart and will

be planted perpendicular to the overbank flow. The proposed planting list is as follows: Valley Oak (*Quercus lobata*), Cottonwood spp. (*Populus trichocarpa* or *fremontii*), California Black Walnut (*Juglans californica*), California Sycamore (*Plantanus racemosa*) and Western Redbud (*Cercis occidentalis*).

The trees will be maintained for a three year establishment period after which the trees will function similar to the remnant habitat present throughout the riparian area. The property owner, Jim DeMartini, will be responsible for any unusual maintenance actions after the initial establishment period.

The project is located within the southern boundary of the Tuolumne River Designated Floodway. This project conforms to all standards in Title 23, Section 107 and 131.

### **5.1 – Hydraulic Analysis**

The proposed plantings will be located outside of the channel in an overflow area. The hydraulic impacts of the proposed project are considered negligible therefore a hydraulic analysis was not required.

### **5.2 – Geotechnical Analysis**

The scope of work for this project does not require a geotechnical analysis.

## **6.0 – AGENCY COMMENTS AND ENDORSEMENTS**

The comments and endorsements associated with this project from all pertinent agencies are shown below:

- The U.S. Army Corps of Engineers 208.10 comment letter has not been received for this application. Staff anticipates receipt of a letter indicating that the USACE District Engineer has no objection to the project, subject to conditions. Upon receipt of the letter, staff will review to ensure conformity with the permit language and incorporate it into the permit as Exhibit A.

## **7.0 – CEQA ANALYSIS**

Board staff has prepared the following CEQA determination:

The Board, acting as the CEQA lead agency, has determined the project is categorically exempt in accordance with CEQA under a Class 4 Categorical Exemption (CEQA Guidelines Section 15304) covering minor alterations in the condition of land, water, and/or vegetation.

### **8.0 – SECTION 8610.5 CONSIDERATIONS**

1. Evidence that the Board admits into its record from any party, State or local public agency, or nongovernmental organization with expertise in flood or flood plain management:

The Board will make its decision based on the evidence in the permit application and attachments, this staff report, and any other evidence presented by any individual or group.

2. The best available science that related to the scientific issues presented by the executive officer, legal counsel, the Department or other parties that raise credible scientific issues.

The accepted industry standards for the work proposed under this permit as regulated by Title 23 have been applied to the review of this permit.

3. Effects of the decision on the entire State Plan of Flood Control:

The proposed plantings will have no effect on the State Plan of Flood Control.

4. Effects of reasonable projected future events, including, but not limited to, changes in hydrology, climate, and development within the applicable watershed:

There will be no effects to the proposed project from reasonable projected future events.

### **9.0 – STAFF RECOMMENDATION**

Staff recommends that the Board find the project exempt from CEQA, approve the permit, conditioned upon receipt of a U.S. Army Corps of Engineers comment letter indicating that the District Engineer has no objection to the project, subject to conditions, and direct staff to file a Notice of Exemption with the State Clearinghouse.

**10.0 – LIST OF ATTACHMENTS**

- A. Location Maps and Photos
- B. Draft Permit No. 18753

Design Review:	Ashley Cousin
Environmental Review:	James Herota / Andrea Mauro
Document Review:	Mitra Emami P.E., Len Marino P.E.



Proposed Planting Area for up to 15 native trees. Trees will be spaced at least 16 feet apart. Water flow in image is 2,110 CFS.





U.S. DEPARTMENT OF THE INTERIOR  
U. S. GEOLOGICAL SURVEY

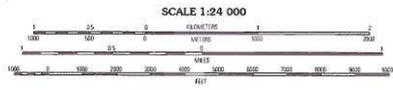
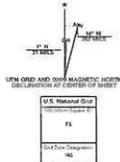


BRUSH LAKE QUADRANGLE  
CALIFORNIA  
7.5-MINUTE SERIES



Produced by the United States Geological Survey  
North American Datum of 1983 (NAD83)  
World Geodetic System of 1984 (WGS84), Projection and  
1 000-meter grid, Universal Transverse Mercator, Zone 18S  
18 North (or later, California Coordinate System of 1983  
Zone 9)

Imagery: NIPR, June 2005  
Roads: National Transportation Database, 2004  
Names: CNL, 2005



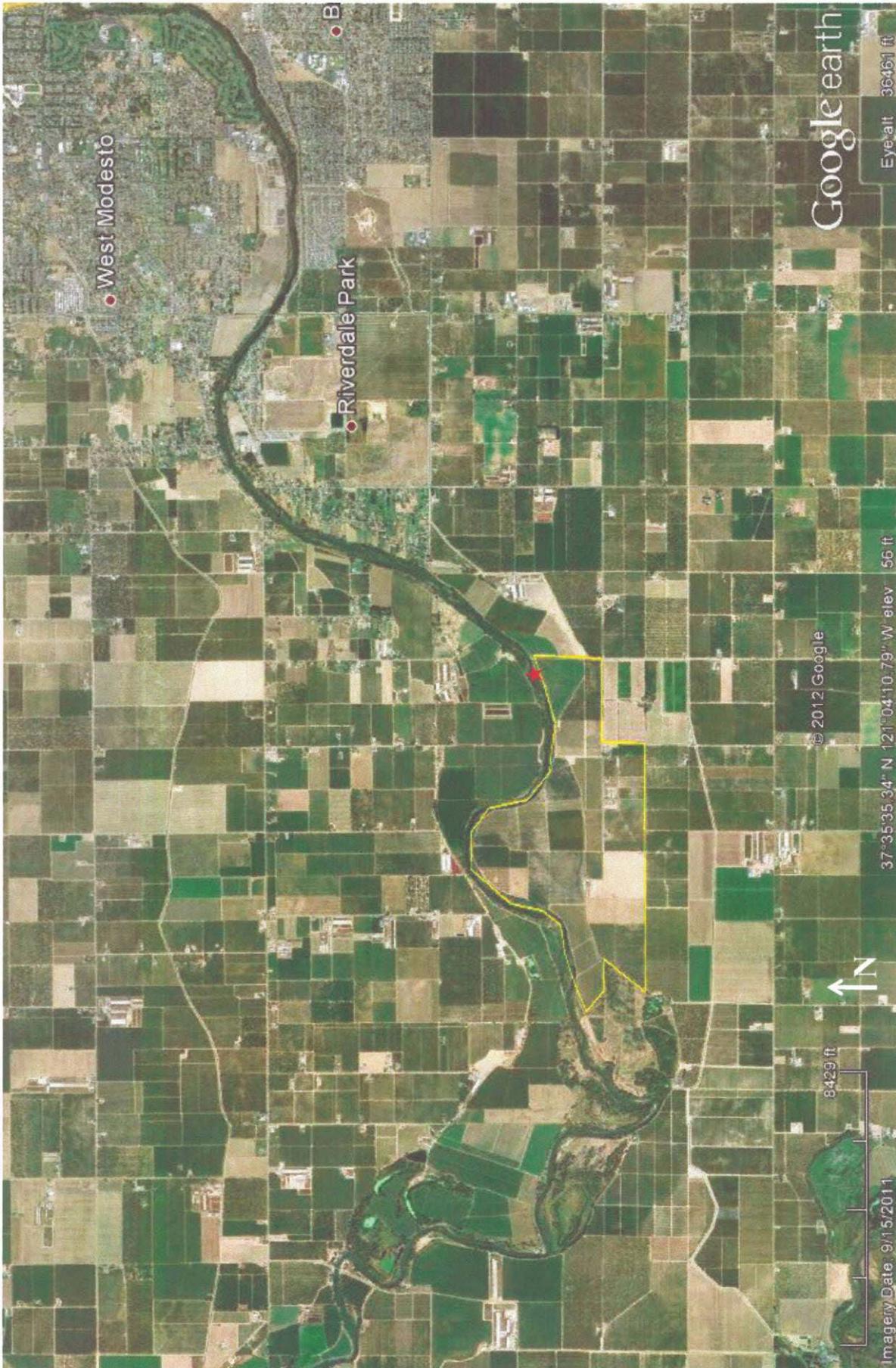
This map was produced to conform with version 8.0.26 of the  
Grid LODS Standards for 7.5-Minute Quadrangle Maps.  
A metadata file associated with this product is the data version 8.0.26.



HYDROGRAPHIC FEATURES		
Open	Salt	Reservoir
Wetland	Shrub	Canal
Patterned	Cover	Marsh
	Landfill	

BRUSH LAKE, CA  
2009

ADJOINING 7.5-MINUTE QUADRANGLES



- DeMartini Property
- Planting Area

This page intentionally left blank.



*Arundo* removal area and propose planting zone (looking north).



Heavily forested riparian zone adjacent to the farm road and proposed site (looking northeast).



Riparian habitat adjacent to the proposed site (looking northwest).



Riparian habitat between the proposed site and river channel (looking north).



*Arundo* removal area and proposed planting zone (looking south).

This page intentionally left blank.

DRAFT

STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
**THE CENTRAL VALLEY FLOOD PROTECTION BOARD**

PERMIT NO. 18753 BD

This Permit is issued to:

Jim DeMartini  
5013 Jennings Road  
Modesto, California 95358

Planting up to 15 native riparian trees adjacent to a farm road and in a dense riparian area along the Tuolumne River. The project is located on the left bank of the Tuolumne River approximately 8 miles southwest of the city of Modesto. (Section 15, 16, 21, 22, T4S, R8E, MDB&M, Tuolumne River, Stanislaus County).

NOTE: Special Conditions have been incorporated herein which may place limitations on and/or require modification of your proposed project as described above.

(SEAL)

Dated: \_\_\_\_\_

\_\_\_\_\_  
Executive Officer

**GENERAL CONDITIONS:**

**ONE:** This permit is issued under the provisions of Sections 8700 – 8723 of the Water Code.

**TWO:** Only work described in the subject application is authorized hereby.

**THREE:** This permit does not grant a right to use or construct works on land owned by the Sacramento and San Joaquin Drainage District or on any other land.

**FOUR:** The approved work shall be accomplished under the direction and supervision of the State Department of Water Resources, and the permittee shall conform to all requirements of the Department and The Central Valley Flood Protection Board.

**FIVE:** Unless the work herein contemplated shall have been commenced within one year after issuance of this permit, the Board reserves the right to change any conditions in this permit as may be consistent with current flood control standards and policies of The Central Valley Flood Protection Board.

**SIX:** This permit shall remain in effect until revoked. In the event any conditions in this permit are not complied with, it may be revoked on 15

days' notice.

**SEVEN:** It is understood and agreed to by the permittee that the start of any work under this permit shall constitute an acceptance of the conditions in this permit and an agreement to perform work in accordance therewith.

**EIGHT:** This permit does not establish any precedent with respect to any other application received by The Central Valley Flood Protection Board.

**NINE:** The permittee shall, when required by law, secure the written order or consent from all other public agencies having jurisdiction.

**TEN:** The permittee is responsible for all personal liability and property damage which may arise out of failure on the permittee's part to perform the obligations under this permit. If any claim of liability is made against the State of California, or any departments thereof, the United States of America, a local district or other maintaining agencies and the officers, agents or employees thereof, the permittee shall defend and shall hold each of them harmless from each claim.

**ELEVEN:** The permittee shall exercise reasonable care to operate and maintain any work authorized herein to preclude injury to or damage to any works necessary to any plan of flood control adopted by the Board or the Legislature, or interfere with the successful execution, functioning or operation of any plan of flood control adopted by the Board or the Legislature.

**TWELVE:** Should any of the work not conform to the conditions of this permit, the permittee, upon order of The Central Valley Flood Protection Board, shall in the manner prescribed by the Board be responsible for the cost and expense to remove, alter, relocate, or reconstruct all or any part of the work herein approved.

#### **SPECIAL CONDITIONS FOR PERMIT NO. 18753 BD**

**THIRTEEN:** All work approved by this permit shall be in accordance with the submitted drawings and specifications except as modified by special permit conditions herein. No further work, other than that approved by this permit, shall be done in the area without prior approval of the Central Valley Flood Protection Board.

**FOURTEEN:** The permittee is responsible for all liability associated with construction, operation, and maintenance of the permitted facilities and shall defend, indemnify, and hold the Central Valley Flood Protection Board and the State of California; including its agencies, departments, boards, commissions, and their respective officers, agents, employees, successors and assigns (collectively, the "State"), safe and harmless, of and from all claims and damages arising from the project undertaken pursuant to this permit, all to the extent allowed by law. The State expressly reserves the right to supplement or take over its defense, in its sole discretion.

**FIFTEEN:** The permittee shall defend, indemnify, and hold the Central Valley Flood Protection Board and the State of California, including its agencies, departments, boards, commissions, and their respective officers, agents, employees, successors and assigns (collectively, the "State"), safe and harmless, of and from all claims and damages related to the Central Valley Flood Protection Board's approval of this permit, including but not limited to claims filed pursuant to the California Environmental Quality Act. The State expressly reserves the right to supplement or take over its defense, in its sole discretion.

**SIXTEEN:** The Central Valley Flood Protection Board and Department of Water Resources shall not be held liable for any damages to the permitted encroachment(s) resulting from flood fight, operation, maintenance, inspection, or emergency repair.

**SEVENTEEN:** No construction work of any kind shall be done during the flood season from November 1 to July 15 without prior approval of the Central Valley Flood Protection Board.

EIGHTEEN: Upon receipt of a signed copy of the issued (not approved only) permit the permittee shall contact the Department of Water Resources by telephone, (916) 574-0609, and submit the enclosed postcard to schedule a preconstruction conference. Failure to do so at least 10 working days prior to start of work may result in delay of the project.

NINETEEN: The permittee shall maintain the permitted encroachment(s) and the project works within the utilized area in the manner required and as requested by the authorized representative of the Department of Water Resources or any other agency responsible for maintenance.

TWENTY: The permitted encroachment(s) shall not interfere with operation and maintenance of the flood control project. If the permitted encroachment(s) are determined by any agency responsible for operation or maintenance of the flood control project to interfere, the permittee shall be required, at permittee's cost and expense, to modify or remove the permitted encroachment(s) under direction of the Central Valley Flood Protection Board or Department of Water Resources. If the permittee does not comply, the Central Valley Flood Protection Board may modify or remove the encroachment(s) at the permittee's expense.

TWENTY-ONE: The permittee may be required, at permittee's cost and expense, to remove, alter, relocate, or reconstruct all or any part of the permitted encroachment(s) if removal, alteration, relocation, or reconstruction is necessary as part of or in conjunction with any present or future flood control plan or project or if damaged by any cause. If the permittee does not comply, the Central Valley Flood Protection Board may remove the encroachment(s) at the permittee's expense.

TWENTY-TWO: If the project, or any portion thereof, is to be abandoned in the future, the permittee or successor shall abandon the project under direction of the Central Valley Flood Protection Board and Department of Water Resources, at the permittee's or successor's cost and expense.

TWENTY-THREE: The permittee shall comply with all conditions set forth in the letter from the Department of the Army dated July 18, 2012, which is attached to this permit as Exhibit A and is incorporated by reference.

TWENTY-FOUR: Upon completion of the project, the permittee shall submit post-construction photos to: Department of Water Resources, Flood Project Inspection Section, 3310 El Camino Avenue, Suite 256, Sacramento, California 95821.

TWENTY-FIVE: The landscaping, appurtenances, and maintenance practices shall conform to standards contained in Section 131 of the Central Valley Flood Protection Board's Regulations.

TWENTY-SIX: The State of California shall not be held liable for damage to the encroachment(s) caused by the operation of the flood control project or by releases of water from storage reservoirs.

TWENTY-SEVEN: Cleared trees and brush (or prunings therefrom) shall be completely burned or removed from the floodway, and downed trees or brush shall not remain in the floodway during the flood season from November 1 to July 15.

This page intentionally left blank.



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
U.S. Army Engineer District, Sacramento  
Corps of Engineers  
1325 J Street  
Sacramento, California 95814-2922

Flood Protection and Navigation Section (18753)

JUL 18 2012

Mr. Jay Punia, Executive Officer  
Central Valley Flood Protection Board  
3310 El Camino Avenue, Room 151  
Sacramento, California 95821

Dear Mr. Punia:

We have reviewed a permit application by Jim DeMartini (application number 18753). This project includes planting up to 15 native riparian trees adjacent to a farm road and in a dense riparian area along the left bank of the Tuolumne River. The project is located 8 miles southwest of the city of Modesto, at 37.5858°N 121.0689°W NAD83, Stanislaus County, California.

The District Engineer has no comments or recommendations regarding flood control because the proposed work does not affect a federally constructed project.

There is not enough information provided to determine if there is a permit action under Section 10 and/or Section 404. Please advise the applicant to contact the U.S. Army Corps of Engineers, Sacramento District, Regulatory Division, 1325 J Street, Room 1350, Sacramento, California 95814, telephone (916) 557-5250.

A copy of this letter is being furnished to Mr. Don Rasmussen, Chief, Flood Project Integrity and Inspection Branch, 3310 El Camino Avenue, Suite LL30, Sacramento, CA 95821.

Sincerely,

*for Ryan Jensen*

Meegan G. Nagy, P.E.  
Chief, Flood Protection and Navigation Section