

August 16, 2019  
Sacramento, California

The Board of Trustees of the American River Flood Control District met in regular session in its office at 185 Commerce Circle, Sacramento, CA at 11:00 a.m. on Friday, August 16, 2019. In attendance were Trustee Shah, Trustee Johns, Trustee Vander Werf and Trustee L'Ecluse. Trustee Holloway was absent. Trustee Shah presided. Also present from the District were General Manager (GM) Tim Kerr, Superintendent Ross Kawamura, Legal Counsel David Aladjem and Office Manager Malane Chapman. One member of the public was present.

*Item No. 1 Public Comments on Non-Agenda Items:* There were no comments on non-agenda items from members of the public.

*Item No. 2 Approval of Consent Agenda Items:* On a motion by Trustee Johns seconded by Trustee L'Ecluse, the Board unanimously approved items 2a) Minutes of Regular Meeting on July 12, 2019, 2b) Approval of Report of Investment Transactions June 2019 (City Pool, LAIF, River City) and Treasurer's Certification, 2c) District Financial Reports: Statement of Operations (July 2019) and Cash Flow Report, 2d) Correspondence: ACWA-JPIA: Liability, Property, and Workers' Compensation Risk Assessment.

*Item No. 3 Accounts Payable and General Fund Expenses (July 2019):* Trustee L'Ecluse requested clarification on payment to US Bank. Trustee Vander Werf requested clarification on payment to Sunbelt Rentals. Trustee Johns requested clarification to Sacramento Web GIS. Following explanation by staff and on a motion by Trustee L'Ecluse seconded by Trustee Johns, the Board unanimously approved payments on the Schedule of Accounts Payable (July 2019) of \$85,418.12 and General Fund Expenses of \$85,926.22 (total aggregate sum \$171,344.34). This item was heard out of order.

*Item No. 4 Confirmation of SAFCA Alternates:* The Board discussed establishing a mechanism for assigning alternates. No reportable action was taken.

*Item No. 5 Endorsement of CA Central Valley Flood Board Permit – Applicant: PG&E – Description: Retirement of Distribution Feeder Main:* Following explanation by staff and on a motion by Trustee Johns seconded by Trustee Vander Werf. The Board unanimously endorsed the permit.

*Item No. 6 Lionakis Scope of Work:* Trustee Shah asked for a cost comparison on owning versus leasing of the District facilities. Following explanation by staff and on a motion by Trustee Johns seconded by Trustee Vander Werf, the Board unanimously approved the Lionakis scope of work.

*Item No. 7 Sacramento County Sheriff's Work Crew Contract:* Following explanation by staff and on a motion by Trustee Shah seconded by Trustee L'Ecluse, the Board unanimously approved the Sacramento County Sheriff's Work Crew Contract.

*Item No. 8. Renaming the Newsletter Committee to Public Outreach Committee:* Trustee Vander Werf discussed the reasons behind the change. On a motion by Trustee Vander Werf seconded by Trustee L'Ecluse, the Board unanimously approved renaming the Newsletter Committee to Public Outreach Committee.

*Item No. 9 Administrative Staff Reports:*

a) *General Manager Tim Kerr reported on the following:*

- General Manager's July Meeting Summary: Flood Maintenance Assistance Program Grant Application, CA Central Valley Flood Protection Board Tour of ARFCD Levees and Meeting with Kleinfelder Associates meetings were discussed;
- *Environmental Impact Report – Two Rivers Trail;*
- *Recreational Trails Policy;*
- *Ground Penetrating Radar Contract;*
- Hydrologic Conditions: Folsom Lake 82% of capacity with an outflow 3,824 cfs;
- Next Board Meeting and District Tour is scheduled for September 13, 2019.

b) *Legal Counsel David Aladjem discussed SAFCA OMRR&R.*

c) *Office Manager Malane Chapman had nothing further to report.*

*Item No. 10 Operations and Maintenance Staff Reports:*

a) *Superintendent Ross Kawamura reported on:*

- Crew activities including camp cleanup, vegetation management, water leak, respirator training, garbage cleanup, tree removal, equipment repair, mowing and yard clean up.

*Item No. 11 Questions and Comments by Trustees:* Trustee Vander Werf mentioned that there is a LAFCO Board election for one seat and one alternate, candidate statements are due by September 19, 2019.

*Item No. 12 Adjourn:* There being no further business requiring action by the Board, the meeting was adjourned by Trustee Shah at 12:30 p.m.

Attest:

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Secretary

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President

**American River Flood Control District  
Staff Report**

**Investment Transactions Summary; July 2019**

**LAIF:**

- On July 12, 2019 a quarterly interest payment was deposited in the amount of \$2,893.91.

**City Pool A**

- Statement was not available prior to the September 13, 2019 Board meeting.

Interest Receivable is accrued and transferred to the Cash Balance at the discretion of the City.

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**River City Bank Money Market:**

- On July 18, 2019 a transfer was received from River City Bank Checking in the amount of \$1,000,000.00.
- On July 31, 2019 a monthly interest payment was deposited in the amount of \$881.47.

**River City Bank Checking:**

- On July 11, 2018 a deposit was received from Sacramento Area Flood Control District for FY 2018/2019 in the amount of \$980,000.00.
- On July 18, 2018 a transfer was sent to River City Bank Money Market in the amount of \$1,000,000.00.
- Total amount of Accounts Payable cleared during the month of July was \$164,017.41.
- On July 31, 2018 a monthly interest payment was deposited in the amount of \$43.93.

**American River Flood Control District  
Investment Transaction Report  
July 2019**

Item 2b

**Balance and Transactions**

Account		LAIF	City Pool A	River City Bank Money Market	River City Bank Checking
Beginning Balance	7/1/19	\$452,875.51	\$7,933,300.92	\$24,193.45	\$387,150.19
<b>Transactions</b>					
SAFCA	7/11/19				980,000.00
LAIF Interest	7/12/19	<b>2,893.91</b>			
Transfer from River City Checking to River City Money Market	7/18/19			1,000,000.00	(1,000,000.00)
River City Bank Interest	7/31/19			881.47	43.93
Accounts Payable (cleared)					(164,017.41)
<b>Ending Balance:</b>	<b>7/31/19</b>	<b>\$455,769.42</b>	<b>\$7,933,300.92</b>	<b>\$1,025,074.92</b>	<b>\$203,176.71</b>

\*\*City Pool A Interest is accrued and deposited in the account at the discretion of the City.

**Interest**

Date:	Aug 2018	Sep 2018	Oct 2018	Nov 2018
LAIF	2.00	2.06	2.14	2.21
City Pool A	2.20	2.89	2.27	2.33
River City Bank Money Market	1.65	1.73	1.79	1.87
River City Bank Checking	0.06	0.06	0.08	0.09
Date:	Dec 2018	Jan 2019	Feb 2019	Mar 2019
LAIF	2.29	2.36	2.39	2.44
City Pool A	2.41	2.45	2.63	2.5
River City Bank Money Market	1.95	2.01	2.10	2.14
River City Bank Checking	0.06	0.09	0.10	0.10
Date:	Apr 2019	May 2019	June 2019	<b>July 2019</b>
LAIF	2.45	2.45	2.43	2.38
City Pool A	2.58	2.56	2.56	2.56
River City Bank Money Market	2.19	2.22	2.23	2.20
River City Bank Checking	0.10	0.10	0.10	0.10

**Local Agency Investment Fund**  
**P.O. Box 942809**  
**Sacramento, CA 94209-0001**  
**(916) 653-3001**

[www.treasurer.ca.gov/pmia-laif/laif.asp](http://www.treasurer.ca.gov/pmia-laif/laif.asp)  
August 01, 2019

AMERICAN RIVER FLOOD CONTROL DISTRICT

DISTRICT ENGINEER/MANAGER  
165 COMMERCE CIRCLE, SUITE D  
SACRAMENTO, CA 95815

PMIA Average Monthly Yields

**Account Number:**  
90-34-002

Tran Type Definitions

July 2019 Statement

Effective Date	Transaction Date	Tran Type	Confirm Number	Authorized Caller	Amount
7/15/2019	7/12/2019	QRD	1612343	SYSTEM	2,893.91

Account Summary

Total Deposit:	2,893.91	Beginning Balance:	452,875.51
Total Withdrawal:	0.00	Ending Balance:	455,769.42



# River City Bank

WWW.RIVERCITYBANK.COM

PO Box 15247, Sacramento, CA 95851-0247

Return Service Requested

Item 2b



Last statement: June 30, 2019  
This statement: July 31, 2019  
Total days in statement period: 31

AMERICAN RIVER FLOOD CONTROL DISTRICT  
C/O ROBERT MERRITT, CPA  
4000 MAGNOLIA HILLS DR  
EL DORADO HILLS CA 95762-6561

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0811100952  
( 0)

Direct inquiries to:  
916-567-2836

## Public Fund Money Market

Account number	0811100952	Beginning balance	\$24,193.45
Low balance	\$24,193.45	Total additions	1,000,881.47
Average balance	\$475,806.35	Total subtractions	0.00
Avg collected balance	\$475,806	Ending balance	\$1,025,074.92
Interest paid year to date	\$5,703.48		

## CREDITS

Date	Description	Additions
07-18	Cash Mgmt Trsfr Cr REF 1991243L FUNDS TRANSFER FRMDEP XXXXX0736 FROM	1,000,000.00
07-31	Interest Credit	881.47

## DAILY BALANCES

Date	Amount	Date	Amount	Date	Amount
06-30	24,193.45	07-18	1,024,193.45	07-31	1,025,074.92

## INTEREST INFORMATION

Annual percentage yield earned	2.20%
Interest-bearing days	31
Average balance for APY	\$475,806.35
Interest earned	\$881.47

AMERICAN RIVER FLOOD CONTROL DISTRICT  
July 31, 2019

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0811100952

**OVERDRAFT/RETURN ITEM FEES**

	Total for this period	Total year-to-date
Total Overdraft Fees	\$0.00	\$0.00
Total Returned Item Fees	\$0.00	\$0.00



**River City Bank**

WWW.RIVERCITYBANK.COM

PO Box 15247, Sacramento, CA 95851-0247

Return Service Requested

Item 2b



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C/O ROBERT MERRITT, CPA  
4000 MAGNOLIA HILLS DR  
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0811090736  
( 44)

Direct inquiries to:  
916-567-2836

### Public Fund Interest Checking

Account number	0811090736	Beginning balance	\$387,150.19
Enclosures	44	Total additions	980,043.93
Low balance	\$203,133.20	Total subtractions	1,164,017.41
Average balance	\$548,837.52	Ending balance	\$203,176.71
Avg collected balance	\$517,224		

### CHECKS

Number	Date	Amount	Number	Date	Amount
7020	07-08	1,640.17	7065	07-31	521.95
7035 *	07-10	230.48	7066	07-23	3,500.00
7036	07-01	353.15	7068 *	07-23	373.84
7046 *	07-23	26,554.06	7069	07-30	157.50
7047	07-23	14,314.08	7070	07-26	81.56
7048	07-26	54.57	7071	07-24	76.82
7049	07-22	65.00	7072	07-22	261.24
7050	07-23	683.03	7073	07-23	675.00
7051	07-23	700.00	7075 *	07-24	840.97
7052	07-23	98.00	7076	07-29	2,305.64
7053	07-25	92.00	7077	07-23	765.00
7054	07-24	1,472.39	7078	07-24	811.90
7055	07-24	3,712.00	7079	07-24	795.71
7056	07-29	99.00	7080	07-31	200.00
7057	07-23	7.85	7081	07-25	3,129.50
7058	07-24	25.11	7082	07-30	203.66
7059	07-23	58.40	7083	07-26	848.91
7060	07-24	2,269.54	7084	07-25	156.40
7061	07-24	1,227.09	7085	07-24	448.76
7062	07-25	1,072.01	7086	07-25	456.57
7063	07-24	2,123.69	7088 *	07-31	60.00
7064	07-23	17,175.33			

\* Skip in check sequence



AMERICAN RIVER FLOOD CONTROL DISTRICT  
July 31, 2019

**DEBITS**

Date	Description	Subtractions
07-02	' ACH Withdrawal INTUIT PAYROLL S QUICKBOOKS 190702 946000047	3,097.54
07-15	' ACH Withdrawal INTUIT PAYROLL S QUICKBOOKS 190715 946000047	27,283.17
07-18	' Cash Mgmt Trsfr Dr REF 1991243L FUNDS TRANSFER TO DEP XXXXX0952 FROM	1,000,000.00
07-19	' ACH Withdrawal HEALTHEQUITY INC HealthEqui 190719	152.95
07-19	' ACH Withdrawal CALPERS 1900 100000015741487	2,870.47
07-19	' ACH Withdrawal CALPERS 1900 100000015711857	48.97
07-19	' ACH Withdrawal CALPERS 3100 100000015737452	1,405.94
07-19	' ACH Withdrawal CALPERS 3100 100000015740101	3,642.40
07-19	' ACH Withdrawal CALPERS 1900 100000015711847	5,483.57
07-25	' ACH Withdrawal INTUIT PAYROLL S QUICKBOOKS 190725 946000047	428.53
07-31	' ACH Withdrawal INTUIT PAYROLL S QUICKBOOKS 190731 946000047	28,905.57
07-31	' Service Charge ADDITIONAL DEBITS	0.42

**CREDITS**

Date	Description	Additions
07-11	Deposit	980,000.00
07-31	' Interest Credit	43.93

**DAILY BALANCES**

Date	Amount	Date	Amount	Date	Amount
06-30	387,150.19	07-15	1,334,545.68	07-25	236,571.56
07-01	386,797.04	07-18	334,545.68	07-26	235,586.52
07-02	383,699.50	07-19	320,941.38	07-29	233,181.88
07-08	382,059.33	07-22	320,615.14	07-30	232,820.72
07-10	381,828.85	07-23	255,710.55	07-31	203,176.71
07-11	1,361,828.85	07-24	241,906.57		

AMERICAN RIVER FLOOD CONTROL DISTRICT  
July 31, 2019

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0811090736

**INTEREST INFORMATION**

Annual percentage yield earned	0.10%
Interest-bearing days	31
Average balance for APY	\$517,224.61
Interest earned	\$43.93

**OVERDRAFT/RETURN ITEM FEES**

	Total for this period	Total year-to-date
Total Overdraft Fees	\$0.00	\$0.00
Total Returned Item Fees	\$0.00	\$0.00

**CERTIFICATION**

The American River Flood Control District's investment portfolio [] is [ is not] in compliance with the District's Financial Management Investments Plan.

The District's investment portfolio is not in compliance in the following respects:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

A cash flow analysis confirms that the District [ is] [ is not] expected to be able to meet its expenditure requirements for the next six months.

The District's cash is insufficient to meet obligations for the next six months as a result of the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attached hereto are the most recent statements of accounts of the following District accounts:

- LAIF Account, State Treasurer's Office      **Dated July 2019**
- Investment Pool A Account, City of Sacramento      **Dated July 2019**
- District Checking Account, River City Bank      **Dated July 2019**
- District Repurchase Account, River City Bank      **Dated July 2019**

Certified by: \_\_\_\_\_ Date: \_\_\_\_\_  
Rachelanne Vander Werf, District Treasurer

**American River Flood Control District**  
**Statement of Operations**  
**July 1, 2019 to August 31, 2019 (Two Month Ending of Fiscal 2020)**  
**For Internal Use Only**

	Year to Date July 1, 2019 to August 31, 2019	Budget	Percent of Budget
<b>Revenues</b>			
Benefit assessment	\$ -	\$ 1,429,793	0.00%
Consolidated capital assessment	-	980,000	0.00%
Interest	2,818	77,267	3.65%
O & M agreements	-	231,801	0.00%
Miscellaneous	-	-	Not budgeted
<b>Total Revenues</b>	<b>2,818</b>	<b>2,718,861</b>	<b>0.10%</b>
<b>M &amp; O Expenses</b>			
Salaries and wages	116,956	790,476	14.80%
Payroll tax expense	8,842	63,238	13.98%
Pension expense	26,819	156,542	17.13%
Compensation insurance	-	39,524	0.00%
Medical/dental/vision	45,655	213,378	21.40%
Fuel/oil reimbursement	3,683	35,000	10.52%
Equipment rental	3,130	20,000	15.65%
Equipment repairs/parts	7,864	45,000	17.48%
Equipment purchases (< \$5,000)	-	15,000	0.00%
Shop supplies	3,573	15,000	23.82%
Levee maint. (supp. & material)	1,110	20,000	5.55%
Levee maint. chemicals	1,360	15,000	9.07%
Levee maint. services	5,136	80,000	6.42%
Rodent abatement (supplies & materials)	-	10,000	0.00%
Employee uniforms	4,782	5,000	95.64%
Staff training	805	7,500	10.73%
Miscellaneous	-	2,000	0.00%
Small tools & equipment	1,482	7,500	19.76%
Emergency preparedness program	4,200	15,000	28.00%
Engineering services	4,038	20,000	20.19%
Environmental services/studies	-	5,000	0.00%
Encroachment remediation	-	15,000	0.00%
Urban camp cleanup	-	50,000	0.00%
<b>Total M &amp; O Expenses</b>	<b>239,435</b>	<b>1,645,158</b>	<b>14.55%</b>
<b>Administration Expenses</b>			
Board of trustees compensation	831	7,600	10.93%
Trustee expenses	798	1,750	45.60%
Accounting services	700	20,000	3.50%
Legal services (general)	-	50,000	0.00%
Utilities	3,499	40,000	8.75%
Telephone	989	25,000	3.96%
Retiree benefits	32,906	135,000	24.37%
Office/shop/yard lease	1,200	6,000	20.00%
Office equipment/furniture	-	7,500	0.00%
Office supplies	-	2,000	0.00%
Auto allowance	1,183	6,600	17.92%
Parking reimbursement	-	500	0.00%
General office expense	1,226	15,000	8.17%
Technology and software	260	10,000	2.60%
Legislative services	-	-	Not budgeted
Dues and associations	8,155	25,000	32.62%
Property and liability insurance	9,741	30,000	32.47%
Conference/workshop/seminar	-	-	Not budgeted
Public relations/information	-	30,000	0.00%
Miscellaneous	696	5,000	13.92%
Election expense	-	-	Not budgeted
Employee morale/wellness	-	2,000	0.00%
Investment fees	-	20,000	0.00%
Community services	-	1,500	0.00%
Bookkeeping services	638	14,000	4.56%
Property taxes	-	3,000	0.00%
Building maintenance	-	10,000	0.00%
County Dtech fees for DLMS	2,109	50,000	4.22%
Interest expense	88	-	Not budgeted
<b>Total Administration Expenses</b>	<b>65,019</b>	<b>517,450</b>	<b>12.57%</b>
<b>Special Projects Expenses</b>			
Engineering studies/survey studies	-	150,000	0.00%
Levee standards compliance	-	25,000	0.00%
Encroachment remediation	-	-	Not budgeted
Vegetation management	-	-	Not budgeted
Small capital projects	-	50,000	0.00%
<b>Total Special Project Expenses</b>	<b>-</b>	<b>225,000</b>	<b>0.00%</b>
<b>Capital Outlay</b>			
Bank protection	-	-	Not budgeted
Magpie Creek	-	-	Not budgeted
Property acquisition	-	-	Not budgeted
Miscellaneous	-	-	Not budgeted
Equipment purchases (over \$5,000)	-	100,000	0.00%
<b>Total Capital Outlay</b>	<b>-</b>	<b>100,000</b>	
<b>Capital Outlay: District Headquarters Build-Out</b>			
Building improvements/maintenance	-	225,000	0.00%
La Riviera improvements/maintenance	-	2,000	0.00%
	-	227,000	

**Note: Amounts above are not audited**

The above information is current through the last day of the previous month's bank activity.

Data has been verified by the bookkeeper and physical copies of checks have not been reviewed or received and some checks may not have cleared the bank account.

AMERICAN RIVER FLOOD CONTROL DISTRICT  
Cash Flow Report  
July 2019 through June 2020

Cash Flow Report													
Maintenance and Operations Expens	Jul 19	Aug 19	Sept 19	Oct 19	Nov 19	Dec 19	Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20	TOTAL
500 - Salary/Wages	58,116.53	59,270.60	61,453.64	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	178,840.77
501 - Payroll Taxes	4,470.68	4,558.96	4,690.48	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	13,720.12
502 - Pension	9,373.16	18,128.96	(1,314.34)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	26,187.78
503 - Compensation Insurance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
504 - Medical/Dental/Vision	15,684.32	15,856.32	(331.35)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	31,209.29
508 - Fuel/Oil	2,188.69	5,121.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7,310.19
509 - Equipment Rental	3,129.50	3,129.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6,259.00
510 - Equipment Purchase(< \$5000	297.26	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	297.26
511 - Equipment Repair/Parts	5,655.89	8,224.85	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	13,880.74
512 - Shop Supplies	1,231.54	3,512.76	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4,744.30
514 - Levee Maint(Supplies&Materi	134.09	1,109.89	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,243.98
515 - Levee Maintenance Services	4,645.16	1,635.71	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6,280.87
516 - Employee Uniforms	492.64	4,782.23	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5,274.87
518 - Staff Training	1,500.00	805.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2,305.00
519 - Miscellaneous O&M	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
521 - Small Tools & Equip	0.00	1,185.23	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,185.23
523 - Levee Maint. (Chemicals)	0.00	1,360.38	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,360.38
525 - Emergency Preparedness Pr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
530 - Encroachment Remediation I	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
532 - Rodent Abatement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
605 - Engineering Services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
615 - Survey Services	164.97	1,122.65	55.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,342.87
616 - Environmental Services/Studi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total M&amp;O Expense</b>	<b>107,084.43</b>	<b>129,804.54</b>	<b>64,553.68</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>301,442.65</b>
Administrative Expenses	Jul 19	Aug 19	Sept 19	Oct 19	Nov 19	Dec 19	Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20	TOTAL
505 - Telephone	1,131.79	1,382.67	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2,514.46
506 - Utility Charges	2,905.15	3,315.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6,220.40
507 - Office/Shop Lease	600.00	600.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,200.00
513 - Office Supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
517 - Auto Allowance	550.00	550.00	550.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,650.00
520 - Retiree Benefits	10,968.74	10,968.74	331.35	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	22,268.83
522 - Office Equipment/Furniture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
526 - Mileage/Parking Reimburs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
527 - General Office Expense	1,050.23	1,079.19	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2,129.42
529 - Pre-funding Retiree Benefits	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
531 - Technology & Software	341.55	259.99	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	601.54
600 - Board of Trustees Compensa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
601 - Trustee Expenses	380.00	380.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	760.00
602 - Accounting Services	53.92	798.12	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	852.04
603 - Legal Fees (General)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
604 - Flood Litigation	3,810.00	8,944.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	12,754.00
606 - Legislative Services	0.00	(8,323.69)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	(8,323.69)
607 - Dues and Assoc. Expenses	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
608 - Insurance Premiums	0.00	60.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	60.00
609 - Conference /Workshops/Sem	14,314.08	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	14,314.08
610 - Public Relations Information	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
611 - Election Expenses	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
612 - District Annexations	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
613 - Community Services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
614 - Miscellaneous Admin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
617 - Investment Fees	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
618 - Property Tax	0.00	4,083.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4,083.00
619 - Building Maintenance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
620 - Bookkeeping Services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
621 - County Assessment Fees	675.00	1,387.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2,062.50
622 - County DTEch Fees for DLMS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
623 - Employee Morale/Wellness	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

AMERICAN RIVER FLOOD CONTROL DISTRICT  
Cash Flow Report  
July 2019 through June 2020

Total Administrative	36,780.46	25,484.77	881.35	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	63,146.58
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Special Projects Expenses	Jul 19	Aug 19	Sept 19	Oct 19	Nov 19	Dec 19	Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20	TOTAL
702 - Engineering/Survey Studies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
703 - Encroachment Remediation &	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
704 - Vegetation Management	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
705 - Small Capital Projects	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
707 - Levee Standards Compliance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Special Projects</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>

Capital Outlay: Flood Control	Jul 19	Aug 19	Sept 19	Oct 19	Nov 19	Dec 19	Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20	TOTAL
700 - Bank Protection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
701 - Magpie Creek	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
706 - Property Acquisition	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
709 - Equipment Purchase (> \$500)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Capital Outlay: Flood Control</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>

Income	Jul 19	Aug 19	Sept 19	Oct 19	Nov 19	Dec 19	Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20	TOTAL
120 - Benefit Assessment	0.00	38,024.99	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	38,024.99
122 - SAFCA CAD4	980,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	980,000.00
123 - Interest	3,819.31	1,892.89	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5,712.20
124 - O&M Agreements	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
126 - Miscellaneous Income	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Income</b>	<b>983,819.31</b>	<b>39,917.88</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>1,023,737.19</b>

Fund Balance

District Operations Fund	Jul 19	Aug 19	Sept 19	Oct 19	Nov 19	Dec 19	Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20
Beginning Balance	1,204,681.07	2,044,635.49	1,929,264.06	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Income	983,819.31	39,917.88	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Expenses	143,864.89	155,289.31	65,435.03	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Ending Balance	2,044,635.49	1,929,264.06	1,863,829.03	0.00	0.00	0.00	0.00	TRUE	0.00	0.00	0.00	0.00

Capital Outlay Reserve Fund	Jul 19	Aug 19	Sept 19	Oct 19	Nov 19	Dec 19	Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20
Beginning Balance	1,270,000.00	1,270,000.00	1,270,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Income	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Expenses	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Ending Balance	1,270,000.00	1,270,000.00	1,270,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Retiree Health Benefit Reserve Fund	Jul 19	Aug 19	Sept 19	Oct 19	Nov 19	Dec 19	Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20
Beginning Balance	3,480,014.00	3,480,014.00	3,480,014.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Income	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Expenses	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Ending Balance	3,480,014.00	3,480,014.00	3,480,014.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Flood Emergency Response Reserve Fund	Jul 19	Aug 19	Sept 19	Oct 19	Nov 19	Dec 19	Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20
Beginning Balance	1,500,000.00	1,500,000.00	1,500,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Income	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Expenses	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Ending Balance	1,500,000.00	1,500,000.00	1,500,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Emergency Repair Reserve Fund	Jul 19	Aug 19	Sept 19	Oct 19	Nov 19	Dec 19	Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20
Beginning Balance	1,500,000.00	1,500,000.00	1,500,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Income	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Expenses	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Ending Balance	1,500,000.00	1,500,000.00	1,500,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

<b>Total Balance</b>	<b>9,794,649.49</b>	<b>9,679,278.06</b>	<b>9,613,843.03</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>1.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
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September 13, 2019

VIA ELECTRONIC MAIL:  
[RBess@cityofsacramento.org](mailto:RBess@cityofsacramento.org)

Ron Bess  
Assistant Planner  
Community Development Department  
300 Richards Boulevard  
Sacramento, California 95811

Re: Two Rivers Trail (Phase II) Draft Environmental Impact Report

Dear Mr. Bess:

I am writing on behalf of the American River Flood Control District (the “District”) to comment on the Two Rivers Trail (Phase II) Draft Environmental Impact Report (“DEIR”). The District has been protecting the Sacramento community from floods for over 90 years and is one of the most well-respected flood control agencies in California. The District has been involved in the Two Rivers Trail project from its inception to ensure that the project conforms to the District’s mission and benefits from the District’s long experience with safely maintaining and operating levees.

The District’s primary concern during this process has been to ensure that the trail is located along the toe of the levee in order to best protect public safety. The DEIR properly reflects the great lengths that the City has gone to adhere to the requirements of the District’s Recreational Trails Policy. The District very much appreciates the City’s efforts.

The District adopted its Recreational Trails Policy in 2002 to clarify how best to coordinate with recreational trail proposals being developed to interface with the urban levee system. The District’s policy indicated that the District supports recreational uses of the levee as long as flood control remained the primary purpose within the levee footprint. For that reason, the Policy states that trails are acceptable if, where feasible, they are located at the levee toe. This stipulation is to preserve the District’s free access to the levee crown for levee operations and maintenance activity. No obstructions are allowed on a levee crown because that is the essential zone of access and travel for operations, maintenance, inspections, and flood fights. Of the District’s 40 miles of levees in the Sacramento region, only 4.8 miles of the levee crown roadway is paved for trails. The rest of the levee crown roadway surface is gravel or chip seal and the majority of trail proposals have been successfully placed at the levee toe.

Ron Bess  
September 13, 2019  
Page 2

The trail policy discourages recreational trails on the levee crown because of the potential threat to members of the public. The District's maintenance crews are out on the American River levees using heavy equipment every work day and 24/7 during periods of high water. Just as with a construction site where members of the public are separated from heavy equipment, so it is with levees. Members of the public who choose to recreate on levees need – for their own safety – to be separated from the District's operation of heavy equipment. It is for this reason that the District strongly supports the City's proposal to have the recreational trail physically separated from and located off of the levee crown in the River Park area.

Twelve photographs are attached to this letter. Each photograph demonstrates heavy machinery at use on a local levee where the levee crown is also in use by the public. These photographs drive home the importance of avoiding the placement of trail alignments along the crown of a levee. The danger created by the close proximity of bicyclists and pedestrians to operating heavy machinery is acute, and the margin of safety for the general public using the levee crown is minimal. It is unacceptable to unnecessarily expose the public to such danger.

It is because of this concern for the safety of the recreating public and our awareness of the high risk of dangerous collisions, the District's Recreational Trails Policy requires that, where feasible, all trails must be off the levee crown roadway. The City's proposed trail alignment shown in the DEIR adheres to this requirement, and the District again thanks the City for making that a key criterion of the proposed project.

In the past, members of the public have raised concerns about the effect of the proposed trail alignment on habitat along the American River. Alternatives Two and Three satisfy CEQA's requirement to consider feasible alternatives to the proposed project by situating the proposed trail alignment on the crown of the levee. A trail alignment that is situated entirely on the crown of the levee, however, poses a significant risk to public safety, for the reasons stated above. Accordingly, the DEIR correctly rejects both alternatives.

Once again, thank you for the opportunity to review and comment on the DEIR for the Two Rivers Trail Phase II Project. The District supports the proposed project described in the DEIR and applauds the City's team for developing a plan that complies with the District's Recreational Trails Policy. The District feels this is the best way to provide a recreation trail and protect public safety.

Very truly yours,

David R.E. Aladjem

Enclosures

cc: Board of Trustees  
Tim Kerr, General Manager















September 5, 2019

**SENT VIA EMAIL (tkerr@arfed.org)**

Timothy R. Kerr, General Manager  
American River Flood Control District  
185 Commerce Circle  
Sacramento CA 95815

**RE: Public Records Act Request**

Dear Mr. Kerr:

Pursuant to the provisions of the California Public Records Act (Gov. Code, §§ 6250 et seq.), please make available for inspection and copying all documents produced by or otherwise in the possession, custody, or control of the American River Flood Control District pertaining to the following items, dating back to January 1, 2017:

- Any and all documents related to the timing and frequency of maintenance and repair activities on levee tops under your jurisdiction between the H Street Bridge and the Elvas Freeway overpass.
- Any and all documents related to the timing and frequency of maintenance and repair activities on dirt trails at the water side toe of the levees between the H Street Bridge and the Elvas Freeway Overpass (as applicable).
- Any and all documents related to the types of equipment and numbers of employees needed to accomplish the maintenance and repair of levees between the H Street Bridge and the Elvas Freeway Overpass.
- Any and all documents related to safety practices employed to prevent conflicts between the public accessing the levee tops and dirt paths at the water side toe of the levees between the H Street Bridge and the Elvas Freeway Overpass.
- Any and all documents related to accident reports filed by American River Flood Control District employees and/or the public related to injuries suffered due to unsafe maintenance and repair conditions/practices on levee tops and the dirt paths

on the water side toe of the levees between the H Street Bridge and the Elvas Freeway Overpass.

- Any and all documents illustrating the American River Flood Control District's public campaigns and outreach designed to educate and deter park visitors from engaging in unsafe behavior vis a vis the District's ongoing maintenance and repair activities.
- Any and all documents related to plans/procedures for closing down the levee tops and dirt trails at the water side toe of the levees between the H Street Bridge and the Elvas Freeway Overpass to the public in emergencies.

Please let me know if you have any questions regarding the scope of this request.

By "documents" I mean all letters, memoranda, electronic mail ("e-mail") communications, reports, analyses, notes, maps, diagrams, ordinances, resolutions, findings, photographs, draft documents, notices, or other written or recorded materials pertaining to the requested topic and in the possession, custody or control of the American River Flood Control District.

This request is made pursuant to the California Public Records Act. (Gov. Code, §§ 6250, et seq.) The request is also made pursuant to Article I, section 3(b) of the California Constitution, which provides a Constitutional right of access to information concerning the conduct of government. Article I, section 3(b) provides that any statutory right to information shall be broadly construed to provide the greatest access to government information and further requires that any statute that limits the right of access to information shall be narrowly construed.

The American River Flood Control District must provide access to its records unless the records fall within one of the specific exemptions enumerated in the Public Records Act. (*State of California Ex. Rel. Division of Industrial Safety v. Superior Court* (1974) 43 Cal.App.3d 778, 783.) The overarching policy of the Public Records Act favors disclosure, and a refusal to disclose information can only be based on specific exceptions enumerated in the Act. (*Lorig v. Medical Board* (2000) 78 Cal.App.4th 462, 467.) If the American River Flood Control District believes any of the records are exempt from disclosure by the Public Records Act and withholds any documents, then the agency must notify the requestor that some documents were withheld and provide the exemption(s) that justified withholding the documents. (See Gov. Code, § 6255; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, pp. 1072-74.) The American River Flood Control District is obligated to make the records "promptly available," as well as to promptly respond to the individual making the request. (Gov. Code, § 6253.)

I prefer to receive the documents in electronic format. Please contact me to make copying arrangements and with an estimate of duplication costs, if any, once the responsive materials are located.

Very truly yours,

**SOLURI MESERVE**  
A Law Corporation

By:

Osha R. Meserve

ORM/mre

cc: Betsy Weiland, Land Use Chair, Save the American River Association  
(flweiland@yahoo.com)



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**Board of Trustees**

Brian F. Holloway

Cyril A. Shah

Rachelanne Vander Werf

Steven T. Johns

Tamika L'Ecluse

**Item 4c**  
**General Manager**  
Timothy R. Kerr, P.E.

September 13, 2019

Osha Meserve  
Soluri Meserve  
510 8th Street  
Sacramento, California 95814

Re: Public Records Act Request Dated September 5, 2019 – Save the American River Association

Dear Ms. Meserve:

Thank you for your letter dated September 5, 2019, in which your client, Save the American River Association (SARA) requested documents under the California Public Records Act, Gov't Code §§ 6250 *et seq.* The American River Flood Control District (District) understands your letter as a request for all disclosable records, not just documents, in the possession of the District.

The District will produce all records, as defined in the Act, that are responsive to SARA's requests and that do not fall within the following categories: privileged records, records that are attorney work product, and any other documents that are exempted under Government Code §§ 6250 *et seq.* After the District has had the opportunity to collect the records that are responsive to SARA's request, the District will inform you of the cost required to duplicate those records.

The District will make reasonable efforts to assemble the requested records as quickly as it can. However, given the fact that many of the relevant records are contained in photographs that are shown to the Board of Trustees during the District's monthly meetings (and thereby not indexed by subject) and the fact that many of the records likely to be responsive are not in electronic format, the District anticipates that it will be at least a month before it will be able to respond to SARA's request.

Please feel free to contact me if you have any questions.

Very truly yours,

David R.E. Aladjem

cc: Tim Kerr, General Manager

**American River Flood Control District  
Assignment of District SAFCA Representatives  
Staff Report**

**Discussion:**

The District has two seats on the Sacramento Area Flood Control Agency Board of Directors. The District previously assigned two Trustees to fill the seats and named two alternates to serve in the event an assigned representative is unavailable to attend the Board meeting.

To streamline the process for assigning alternates to fill in at the SAFCA Board meetings, it would be advantageous to number each seat and its corresponding alternate. Therefore, the seats should be specifically designated as SAFCA Representative #1 and SAFCA Representative #2 with alternates designated as SAFCA Alternate #1 and SAFCA Alternate #2.

Each alternate shall be able to fill in for the other alternate in the event that the designated alternate is unavailable to attend the meeting. This will provide the best flexibility and District coverage for the SAFCA seats.

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SAFCA Representative #1

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SAFCA Representative #2

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SAFCA Alternate #1

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SAFCA Alternate #2

**Recommendation:**

The General Manager recommends that the Board adopt the above methodology to assign SAFCA Representatives.

**American River Flood Control District**  
**Central Valley Flood Protection Board Permit Applications**  
**1620 & 1622 McClaren Road**

**Staff Report**

**Discussion:**

The parcel owners at 1620 McClaren Road (Friedman) and 1622 McClaren Road (Bass) in Carmichael, California seek to obtain encroachment permits to construct bank protection work along their properties on the north bank of the American River. The proposed project is to remove existing gunnite bank protection that has failed and replace it with rock revetment. The work will require demolition and removal of the existing gunnite and then excavation to prepare an inset surface in the bank to install the new revetment. The permit application also includes a request to have a name change on the original permits for bank protection issued to previous residents at these locations.

All of the work described in these applications are outside the levee prism and toe area and the work will not have an impact on the District levee.

**California Environmental Quality Act:**

The applicants for this work believe their project requires CEQA documentation. Under CEQA, a government agency must fulfill the role as the CEQA lead agency. The representative for the applicants asked if the District could be the CEQA lead agency. The District has never been the CEQA lead agency for a private encroachment permit. Similar work as that proposed under this application was conducted at 1870 Claremont Road and that work listed Sacramento County as the CEQA lead agency.

**Recommendation:**

The General Manager recommends that the Board of Trustees endorse the permit application and suggest that the applicant seek having Sacramento County serve as the CEQA lead agency.

**APPLICATION FOR A CENTRAL VALLEY FLOOD PROTECTION BOARD  
ENCROACHMENT PERMIT**

**Application No.** \_\_\_\_\_  
(For Office Use Only)

1. Description of proposed work being specific to include all items that will be covered under the issued permit.

The proposed project is to repair the damaged bank protection site along the American River located at 1620 McClaren Drive in Carmichael, CA. The original protection has visible cracks and the bank material beneath is exposed and eroding. This application covers approximately 160 feet of the bank repair work. We are also requesting that permit 4352 issued to Jack Steiner on August 5, 1963 be transferred to Ms. Marcy Friedman.

2. Project

Location: Sacramento County, in Section 56  
(N) (E)  
Township: 9 North (S), Range: 6 East (W), M. D. B. & M.  
Latitude: 38.594179° Longitude: -121.333174°  
Stream : American River , Levee : North Designated Floodway: Yes  
APN: 28902830440000

3. Ms. Marcy Friedman of 1620 McClaren Drive  
Name of Applicant / Land Owner Address

Carmichael CA 95608 Telephone Number  
City State Zip Code  
marcy@marcyfriedman.com  
E-mail

4. Jay Punia of Wood Rodgers Inc.  
Name of Applicant's Representative Company

Sacramento CA 95816 (916) 870-0770  
City State Zip Code Telephone Number  
jpunia@woodroddgers.com  
E-mail

5. Endorsement of the proposed project from the Local Maintaining Agency (LMA):

We, the Trustees of \_\_\_\_\_ approve this plan, subject to the following conditions:  
Name of LMA

- Conditions listed on back of this form       Conditions Attached       No Conditions

\_\_\_\_\_  
Trustee Date      Trustee Date

\_\_\_\_\_  
Trustee Date      Trustee Date



### APPLICATION FOR A CENTRAL VALLEY FLOOD PROTECTION BOARD ENCROACHMENT PERMIT

6. Names and addresses of adjacent property owners sharing a common boundary with the land upon which the contents of this application apply. If additional space is required, list names and addresses on back of the application form or an attached sheet.

Name	Address	Zip Code
See attached		

7. Has an environmental determination been made of the proposed work under the California Environmental Quality Act of 1970?  Yes  No  Pending

If yes or pending, give the name and address of the lead agency and State Clearinghouse Number:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SCH No. \_\_\_\_\_

8. When is the project scheduled for construction? \_\_\_\_\_

9. Please check exhibits accompanying this application.

- A.  Regional and vicinity maps showing the location of the proposed work.
- B.  Drawings showing plan view(s) of the proposed work to include map scale.
- C.  Drawings showing the cross section dimensions and elevations (vertical datum?) of levees, berms, stream banks, flood plain,
- D.  Drawings showing the profile elevations (vertical datum?) of levees, berms, flood plain, low flow, etc.
- E.  A minimum of four photographs depicting the project site.

\_\_\_\_\_  
Signature of Applicant Date

Include any additional information:  
See the attached plans, specifications and x-sections  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**APPLICATION FOR A CENTRAL VALLEY FLOOD PROTECTION BOARD  
ENCROACHMENT PERMIT**

**Application No.** \_\_\_\_\_  
(For Office Use Only)

1. Description of proposed work being specific to include all items that will be covered under the issued permit.

The proposed project is to repair the damaged bank protection site along the American River located at 1622 McClaren Drive in Carmichael, CA 956. The original protection has visible cracks and the bank material beneath is exposed and eroding. This application covers approximately 90 feet of the bank repair work. We are also requesting that permit 4902 issued to Jamee Eddy on April 5, 1965 be transferred to Dr. Lawrence Bass.

2. Project

Location: Sacramento County, in Section 56  
Township: 9 North (N) (E)  
(S), Range: 6 East (W), M. D. B. & M.  
Latitude: 38.594179° Longitude: -121.333174°  
Stream : American River , Levee : North Designated  
Floodway: Yes  
APN: 28902830440000

3. Dr. Lawrence Bass of 1622 McClaren Drive  
Name of Applicant / Land Owner Address

Carmichael CA 95608  
City State Zip Code Telephone Number  
ljbass@surewest.net  
E-mail

4. Jay Punia of Wood Rodgers Inc.  
Name of Applicant's Representative Company

Sacramento CA 95816 (916) 870-0770  
City State Zip Code Telephone Number  
jpunia@woodrodgers.com  
E-mail

5. Endorsement of the proposed project from the Local Maintaining Agency (LMA):

We, the Trustees of \_\_\_\_\_ approve this plan, subject to the following conditions:  
Name of LMA

- Conditions listed on back of this form       Conditions Attached       No Conditions

\_\_\_\_\_  
Trustee Date      Trustee Date

\_\_\_\_\_  
Trustee Date      Trustee Date

### APPLICATION FOR A CENTRAL VALLEY FLOOD PROTECTION BOARD ENCROACHMENT PERMIT

6. Names and addresses of adjacent property owners sharing a common boundary with the land upon which the contents of this application apply. If additional space is required, list names and addresses on back of the application form or an attached sheet.

Name	Address	Zip Code
See attached		

7. Has an environmental determination been made of the proposed work under the California Environmental Quality Act of 1970?  Yes  No  Pending

If yes or pending, give the name and address of the lead agency and State Clearinghouse Number:

\_\_\_\_\_  
\_\_\_\_\_

SCH No. \_\_\_\_\_

8. When is the project scheduled for construction? \_\_\_\_\_

9. Please check exhibits accompanying this application.

- A.  Regional and vicinity maps showing the location of the proposed work.
- B.  Drawings showing plan view(s) of the proposed work to include map scale.
- C.  Drawings showing the cross section dimensions and elevations (vertical datum?) of levees, berms, stream banks, flood plain,
- D.  Drawings showing the profile elevations (vertical datum?) of levees, berms, flood plain, low flow, etc.
- E.  A minimum of four photographs depicting the project site.

\_\_\_\_\_  
Signature of Applicant Date

Include any additional information:  
See the attached plans, specifications and x-sections  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## TECHNICAL MEMORANDUM

TO: Mr. Jonathan Kors, PE

FROM: Mr. Jay Punia, PE  
Mr. Chuck Hilliard, PE

DATE: August 22, 2019

SUBJECT: Project Description – Friedman and Bass Revetment Replacement Project  
1620 and 1622 McLaren Drive, Carmichael, California

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## INTRODUCTION

At the right bank of the American River near U.S. Army Corps of Engineers (USACE) River Mile (RM) 13.4, the gunite bank protection that was installed in early 1960s is failing and needs to be replaced with a more robust design. The attached exhibit shows the location and the initial design for restoring the erosion protection at this site. The gunite extends approximately 250 lineal feet along the bank line and includes Dr. Bass' and Mrs. Friedman's properties along the river. Dr. Bass's property extent is the upstream (approximately) 90 feet of bank line, while Mrs. Friedman's is the remaining downstream 160 feet. The vertical extents of the gunite extend from the toe of the slope below the low summer water levels up to the top of the river bank. Dr. Bass's pool and retaining wall are located near the top edge of the river bank, while Mrs. Friedman's fence, gate, and landscaped structures are located near the top of the slope.

The purpose of this Technical Memorandum is to provide the needed information for preparing the CEQA/NEPA analyses and to describe the project to regulatory agencies.

## PROJECT DESCRIPTION

The proposed project will replace the existing gunite bank protection with Rock Slope Protection (RSP) and will meet or exceed the erosion control standard prescribed in the California Code of Regulations, Title 23, Article 8, Section 121. Based on the initial input from the Central Valley Flood Protection Board (CVFPB), two separate permit applications will be submitted. Application number one (on behalf of Dr. Bass) will cover a portion located approximately 90 feet (upstream) of the project, and a second application (on behalf of Mrs. Friedman) will cover the remaining 160 feet.

## SITE CHARACTERISTICS

- The banks are steep at this location and could become steeper with increased scour at the toe of the bank.

- Flow velocities are very high at or above the toe of the bank.
- Bank material can be mobilized at all flows.
- Toe scour is possible at the estimated velocities, which could encourage bank failure.
- Erosion behind the gunite wall is evident and with continued failure of the gunite wall could become worse.
- Further erosion and bank failure would likely lead to structural damage of Dr. Bass's retaining wall and pool, as well as Mrs. Friedman's staircase, fence, and lawn.

## PROPOSED DESIGN

As shown in attached Project Overview Exhibit (**Exhibit 1**), the existing gunite structure would be removed, and angular rock toe (launch-able) and slope revetment would be placed to arrest erosion and stabilize the bank at this location. The proposed design is based on recommendations developed in the Northwest Hydraulic Consultants (NHC) Report (December 6, 2019), and will meet or exceed the erosion control standard prescribed in the California Code of Regulations, Title 23, Article 8, Section 121.

## ACCESS

The project site is accessible from Mrs. Friedman's property through a gate near the top of the slope and down concrete steps constructed into the gunite protection. There is no existing access for construction equipment to reach the bottom of the steep slope through Mrs. Friedman's property. Dr. Bass has a small boat ramp that passes through the upstream extent of the gunite protection. The boat launch connects to Dr. Bass's driveway and is a feasible location for equipment access to reach the bottom of the slope.

## CONSTRUCTION SEQUENCE

The original gunite bank protection will be removed and hauled away from the project site, with the exception of the concrete anchor block at the waterside toe of the riverbank. The anchor block will remain in its current location, or will be relocated (shifted laterally) as necessary to accommodate the placement of the new rock slope protection.

Debris and vegetation will be removed from the riverbank slope. The bank slope will be excavated as necessary to create a 24-inch-deep inset for placing the Rock Slope Protection (RSP). Before RSP is placed, geotextile filter fabric will be placed there to prevent bank materials from eroding through RSP material. Revetment will be placed uniformly and transitioned into the bank slope. Topsoil materials will be placed over the rock (within the rock interstitial spaces) to facilitate vegetative growth.

## CONSTRUCTION SCHEDULE

<u>Activity</u>	<u>Month/Year</u>
Permits	October 2019–April 2020
Advertise Const. Contract	May–June 2020
Actual Construction	June–Sept. 2020

## EQUIPMENT

Construction Phase	Number of Each Equipment Type	Duration of Use (Days)
Removing and hauling existing gunite bank protection	Excavator with demolition attachment (hydraulic hammer), skid-steer loader, front-end loader, hauling trucks (1-2).	5-7 days
Clearing and grubbing/ stripping	Front-end loader, skid-steer loader, haul trucks, pickup trucks	5-7 days
Placing geotextile filter fabric on slope	Manual labor	3-5 days
Placing rock slope protection revetment	Front-end loader, excavator, haul trucks, and backhoe	15-20 days

## MATERIALS DELIVERY

Typical deliveries and hauling for the project would include the rock slope protection, geofabric and bedding material needed to reconstruct the bank slope. The existing gunite and demolition debris would be hauled away to the nearest disposal site.

The project will require approximately 840 tons of rock to be imported and installed on site, and approximately 115 tons of gunite and concrete will be demolished and removed from the site. These number will be revised once the design is finalized.

## REFERENCES

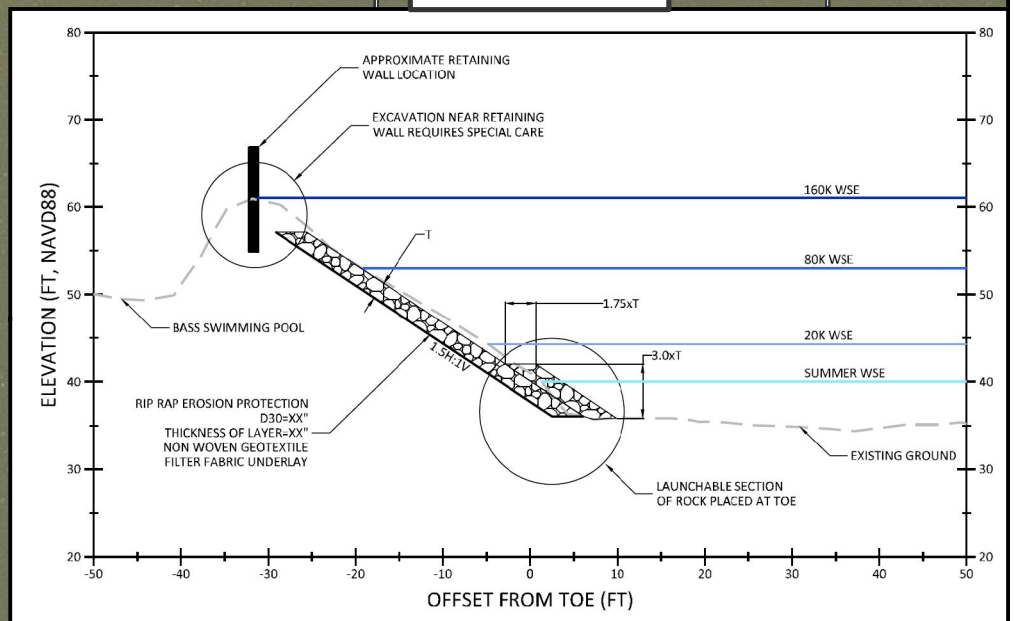
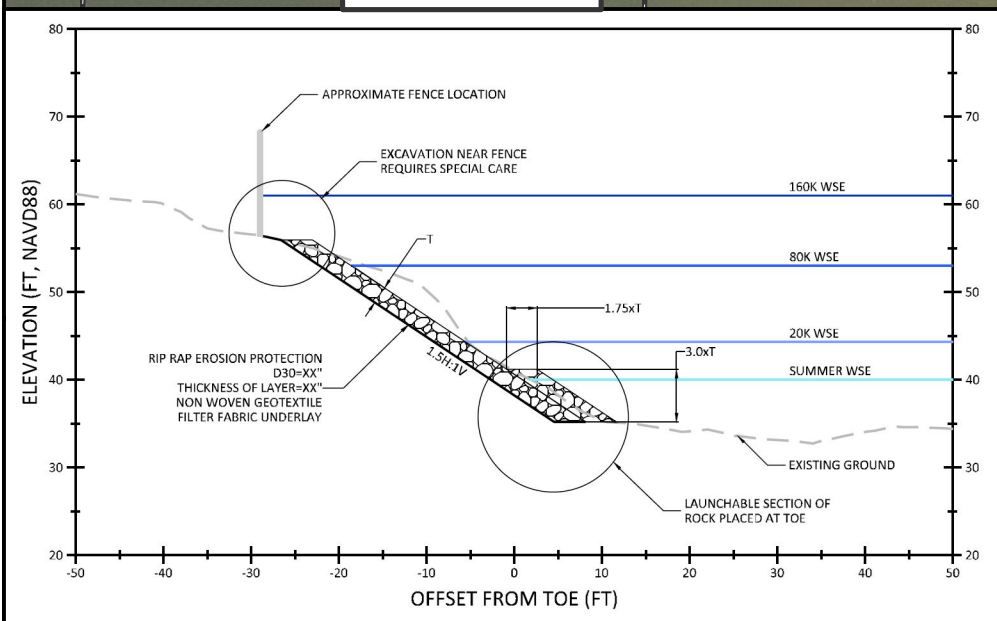
1. Northwest Hydraulic Consultants Report (December 6, 2018) to Mrs. Friedman and to Dr. Bass



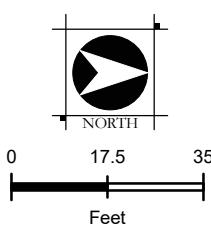
CROSS SECTION 1

AMERICAN RIVER

CROSS SECTION 2



**PROJECT OVERVIEW EXHIBIT**  
**FRIEDMAN AND BASS EROSION PROTECTION**  
**SACRAMENTO COUNTY, CA**  
**JUNE 2019**



**EXHIBIT 1**



**60% DESIGN**

# FRIEDMAN & BASS PROPERTIES REVTMENT REPLACEMENT PROJECT

**OWNERS:**

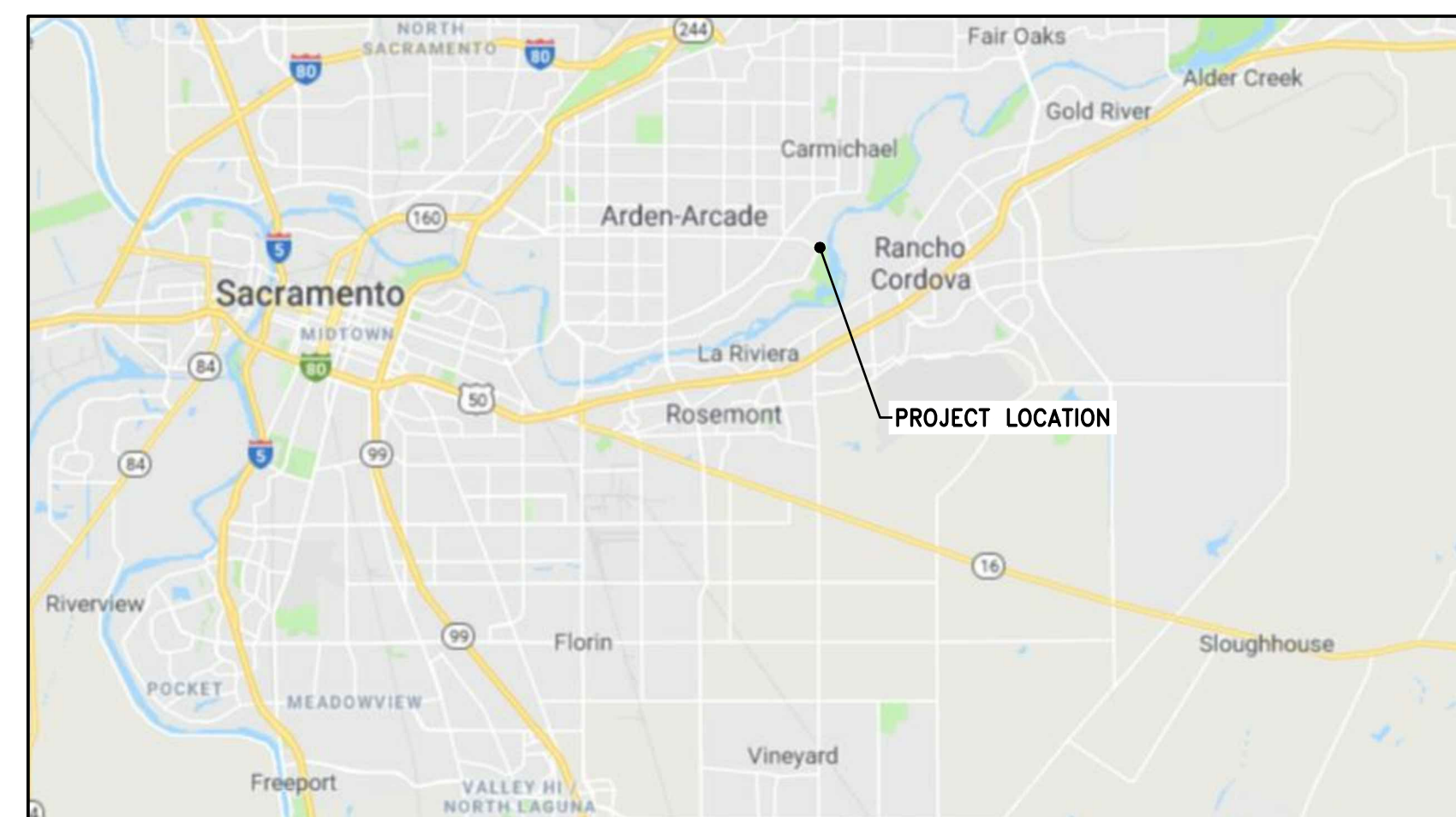
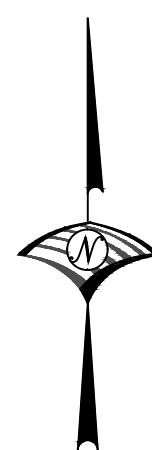
MRS. FRIEDMAN  
1620 McCLAREN DRIVE, CARMICHAEL, CALIFORNIA 95608  
DR. BASS  
1622 McCLAREN DRIVE, CARMICHEAL, CALIFORNIA 95608

**SHEET INDEX**

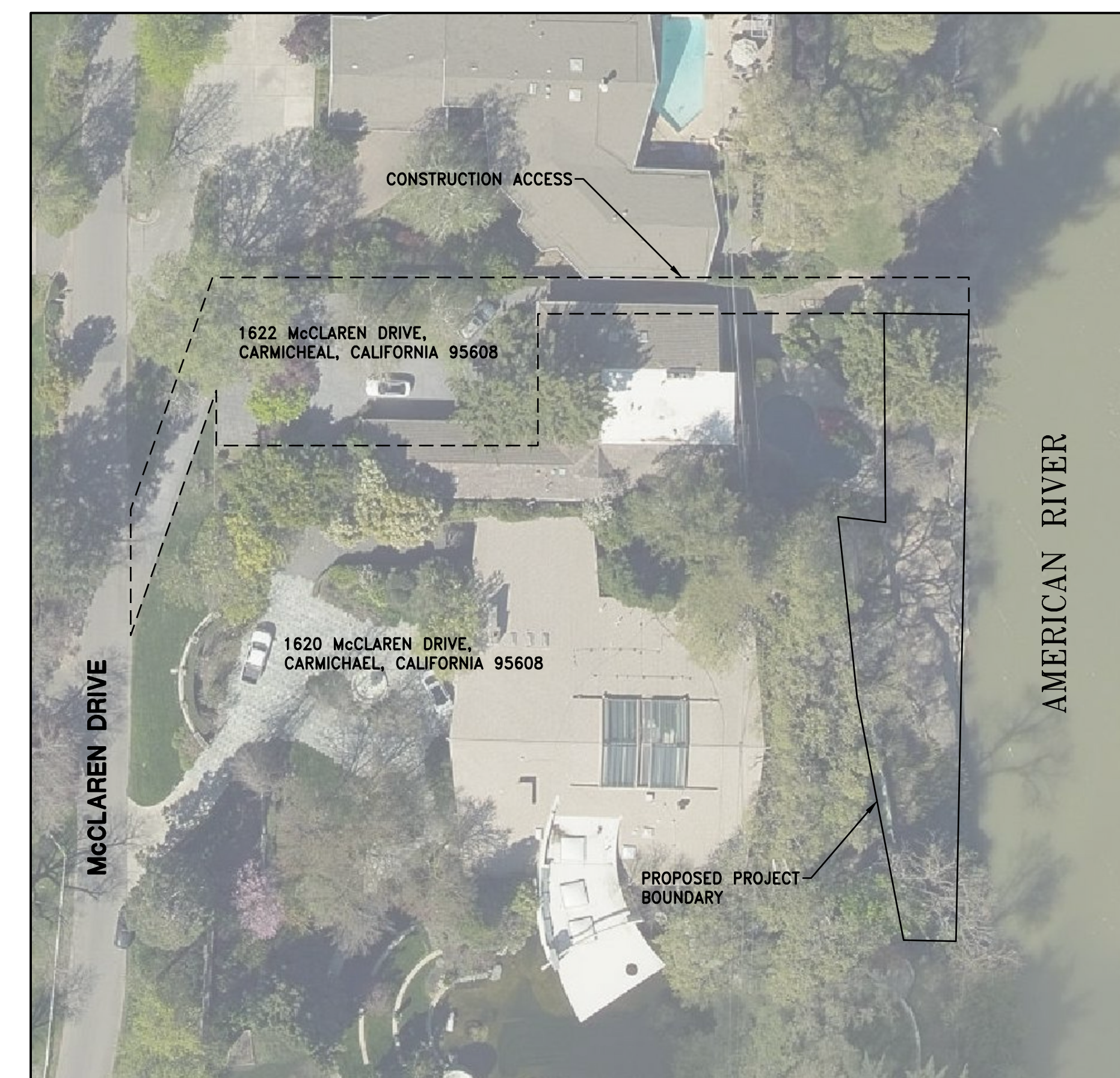
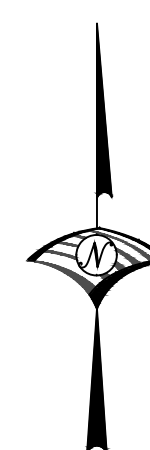
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1	G-001	TITLE SHEET AND SHEET INDEX
2	G-002	GENERAL NOTES AND SPECIFICATIONS
3	C-101	GENERAL PLAN
4	C-102	SITE ACCESS PHOTOS
5	C-103	EXISTING SITE PHOTOS
6	C-201	CROSS SECTIONS STA 0+50 TO 0+80
7	C-202	CROSS SECTIONS STA 0+90 TO 1+20
8	C-203	CROSS SECTIONS STA 1+30 TO 1+60
9	C-204	CROSS SECTIONS STA 1+70 TO 2+00
10	C-205	CROSS SECTIONS STA 2+10 TO 2+40
11	C-301	TYPICAL SECTIONS (1 OF 2)
12	C-302	TYPICAL SECTIONS (2 OF 2)
13	C-303	ALTERNATIVE CONCRETE RAMP



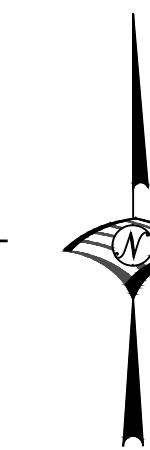
**VICINITY MAP**  
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**LOCATION MAP**  
NOT TO SCALE

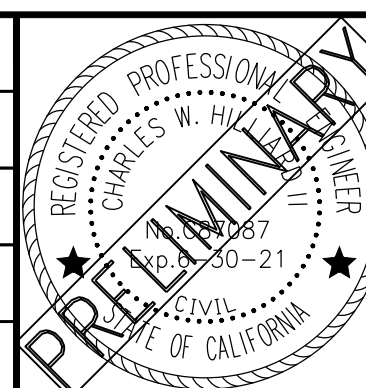


**SITE MAP**  
SCALE: 1"=40'



REV.	DATE	BY	CHK.	APPR.	DESCRIPTION

DESIGNED BY:  
C. HILLIARD  
DRAWN BY:  
J. KAUP  
CHECKED BY:  
J. KORS  
IN CHARGE:  
C. HILLIARD  
DATE:  
XX/XX/XXXX



**WOOD RODGERS**  
DEVELOPING • INNOVATIVE • DESIGN • SOLUTIONS  
3301 C STREET, BLDG. 100-B, SACRAMENTO, CA 95816  
PHONE: (916) 341-7769 FAX: (916) 341-7767

SUBMITTED \_\_\_\_\_ APPROVED \_\_\_\_\_

**FRIEDMAN & BASS PROPERTIES**  
**REVTMENT REPLACEMENT PROJECT**  
TITLE SHEET

DRAWING NO. **G-001** SHEET **1**

VERIFY SCALES  
BAR IS ONE INCH ON  
ORIGINAL DRAWING. ADJUST  
SCALES FOR REDUCED PLOTS  
0" = 1"



**60% DESIGN**

NOTES AND SPECIFICATIONS TO BE ADDED

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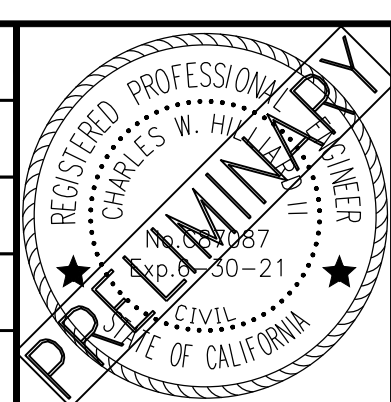
DESIGNED BY:  
C. HILLIARD

DRAWN BY:  
J. KAUP

CHECKED BY:  
J. KORS

IN CHARGE:  
C. HILLIARD

DATE:  
XX/XX/XXXX



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SUBMITTED \_\_\_\_\_ APPROVED \_\_\_\_\_

**FRIEDMAN & BASS PROPERTIES**

**REVETMENT REPLACEMENT PROJECT**

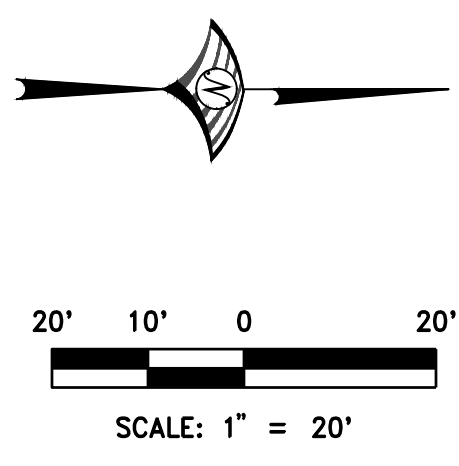
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C. HILLIARD  
DRAWN BY:  
J. KAUP  
CHECKED BY:  
J. KORS  
IN CHARGE:  
C. HILLIARD  
DATE:  
XX/XX/XXXX



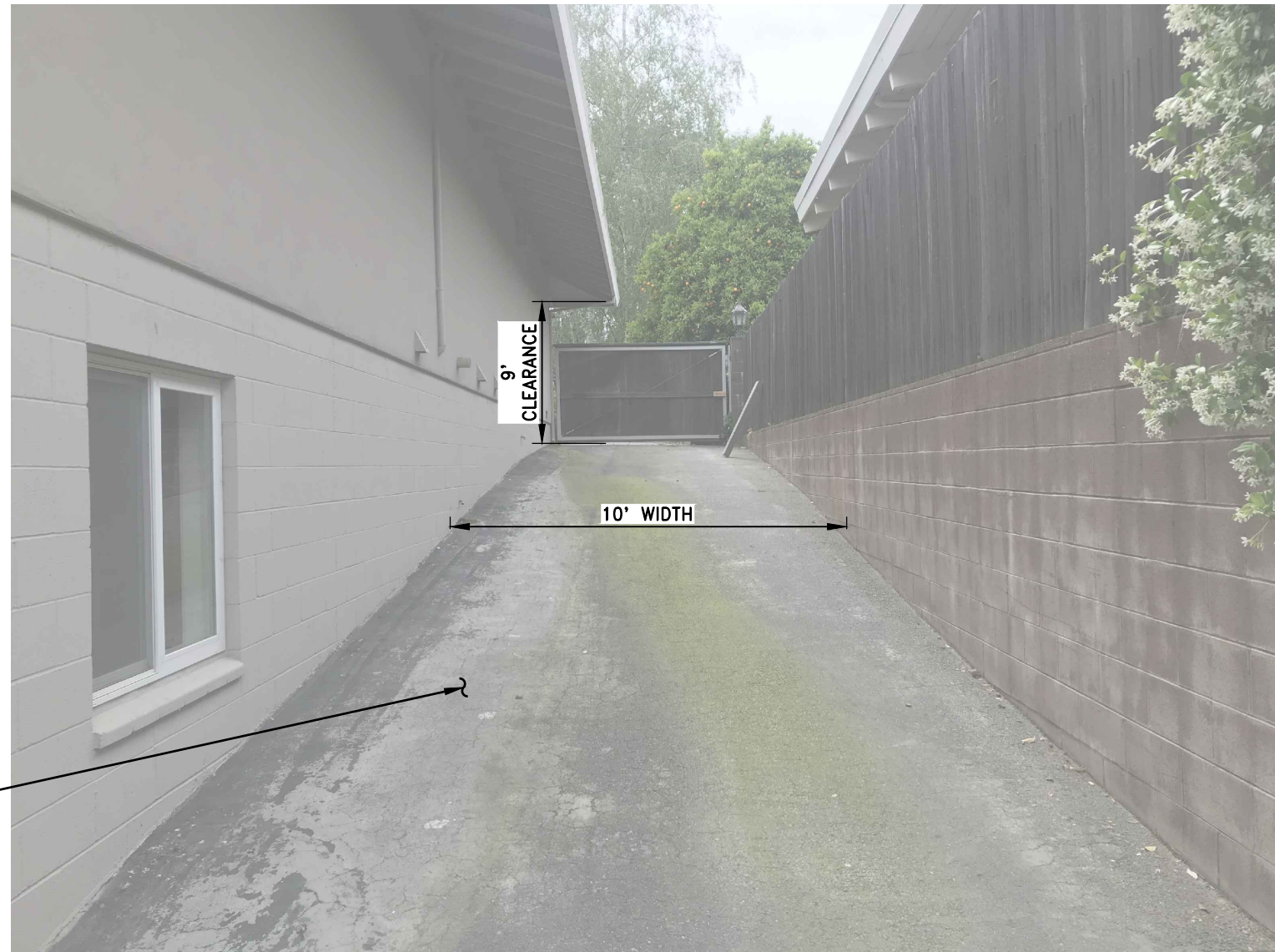
**WOOD RODGERS**  
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PHONE: (916) 341-7769 FAX: (916) 341-7767

SUBMITTED \_\_\_\_\_ APPROVED \_\_\_\_\_

**FRIEDMAN & BASS PROPERTIES**  
**REVTMENT REPLACEMENT PROJECT**  
**GENERAL PLAN**

VERIFY SCALES BAR IS ONE INCH ON ORIGINAL DRAWING. ADJUST SCALES FOR REDUCED PLOTS	
0" = 1"	
DRAWING NO.	SHEET
<b>C-101</b>	<b>3</b>

**60% DESIGN**



**SITE PHOTO 1**



**SITE PHOTO 2**



**SITE PHOTO 3**



**SITE PHOTO 4**

REV.	DATE	BY	CHK.	APPR.	DESCRIPTION

DESIGNED BY:  
C. HILLIARD  
DRAWN BY:  
J. KAUP  
CHECKED BY:  
J. KORS  
IN CHARGE:  
C. HILLIARD  
DATE:  
XX/XX/XXXX



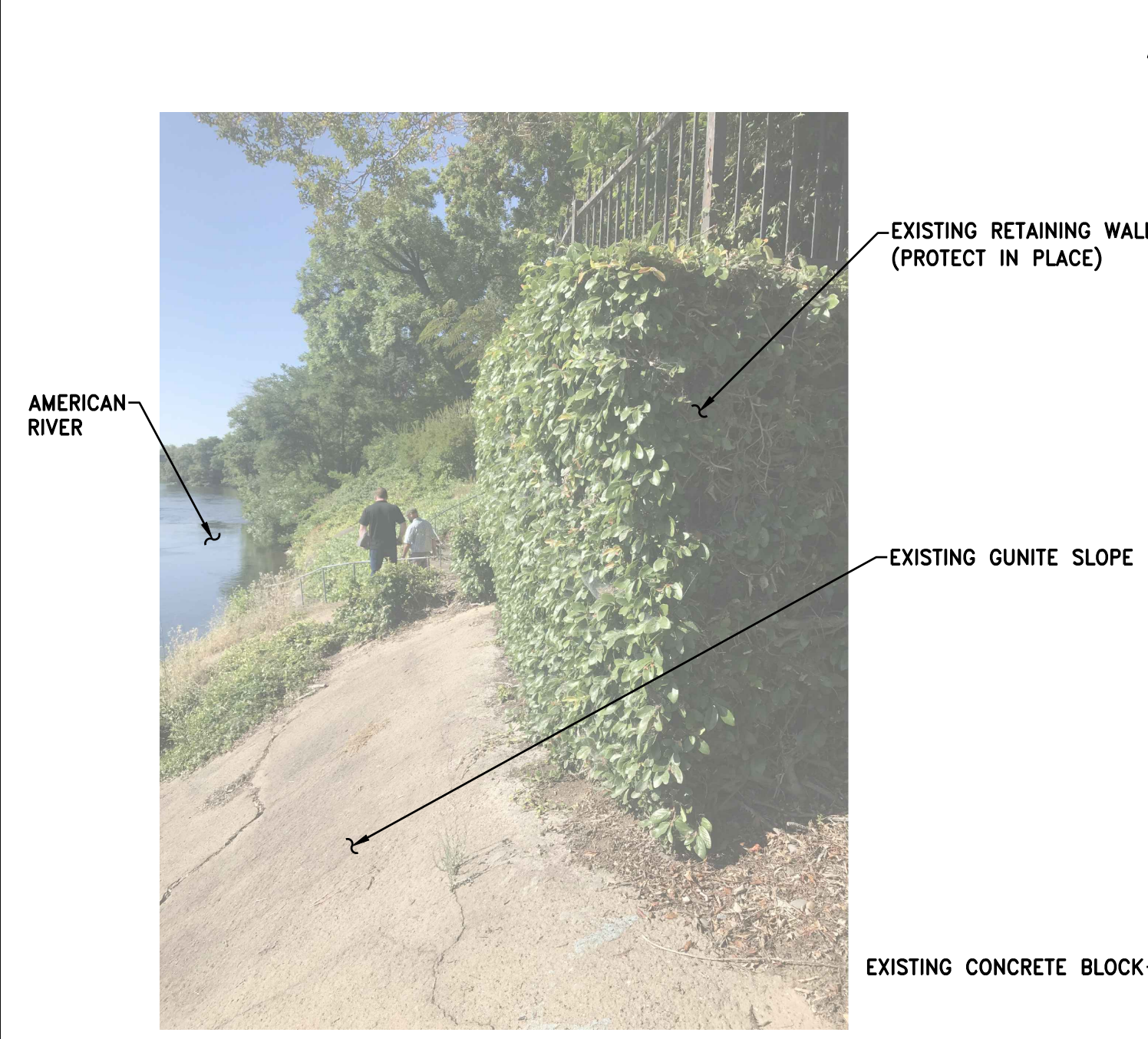
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PHONE: (916) 341-7769 FAX: (916) 341-7767

SUBMITTED \_\_\_\_\_ APPROVED \_\_\_\_\_

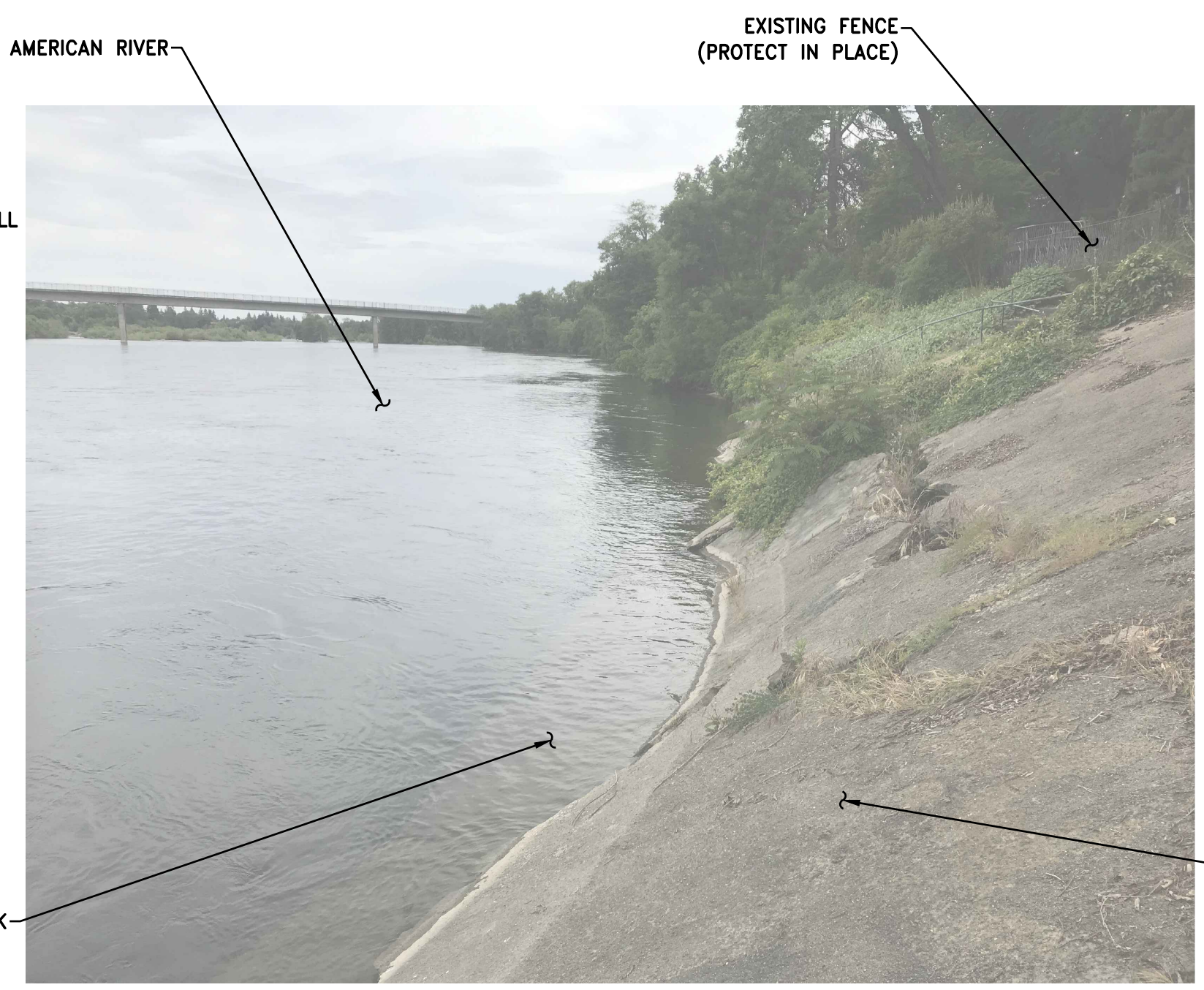
**FRIEDMAN & BASS PROPERTIES**  
**REVTMENT REPLACEMENT PROJECT**  
**SITE ACCESS PHOTOS**

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**60% DESIGN**



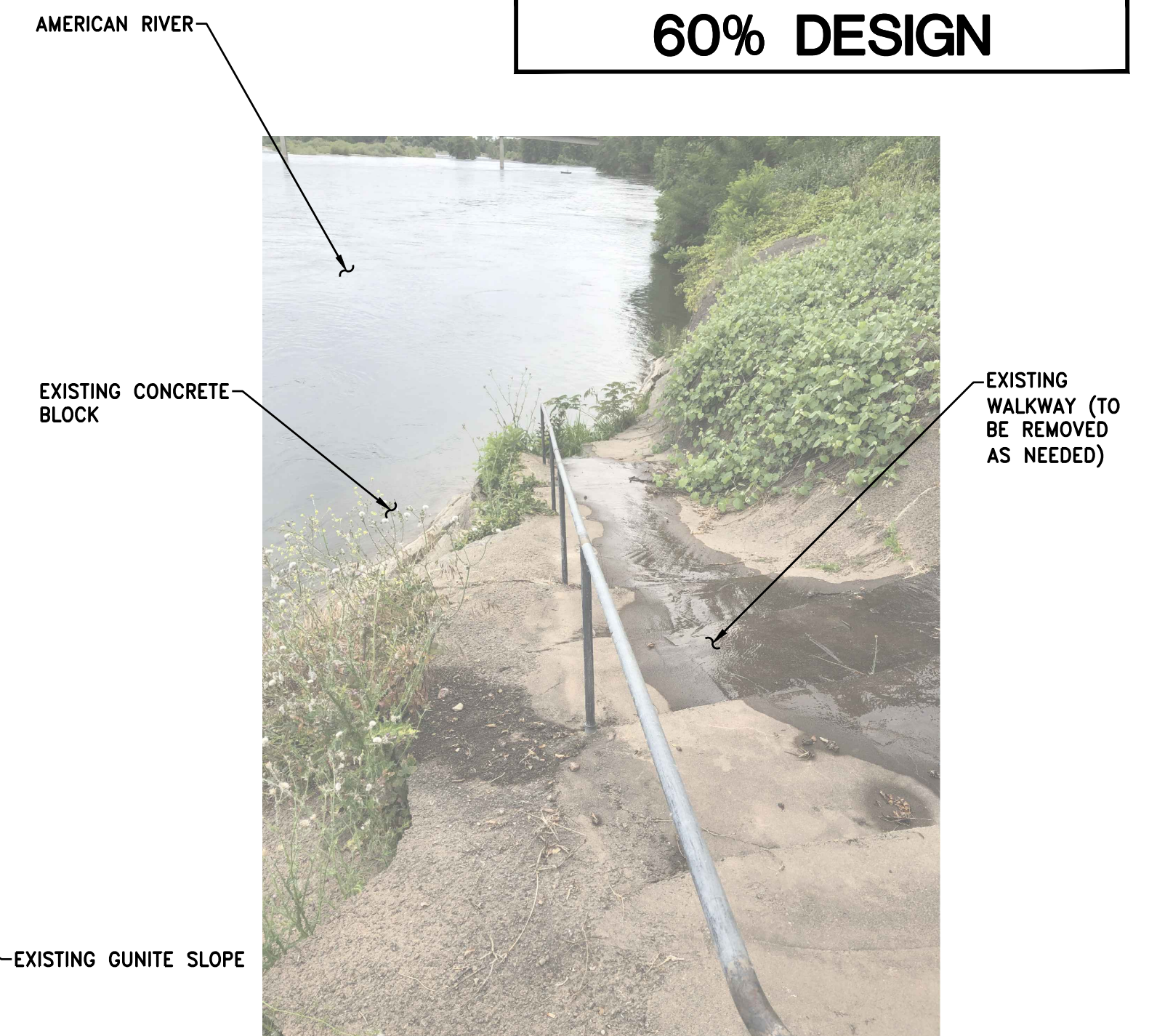
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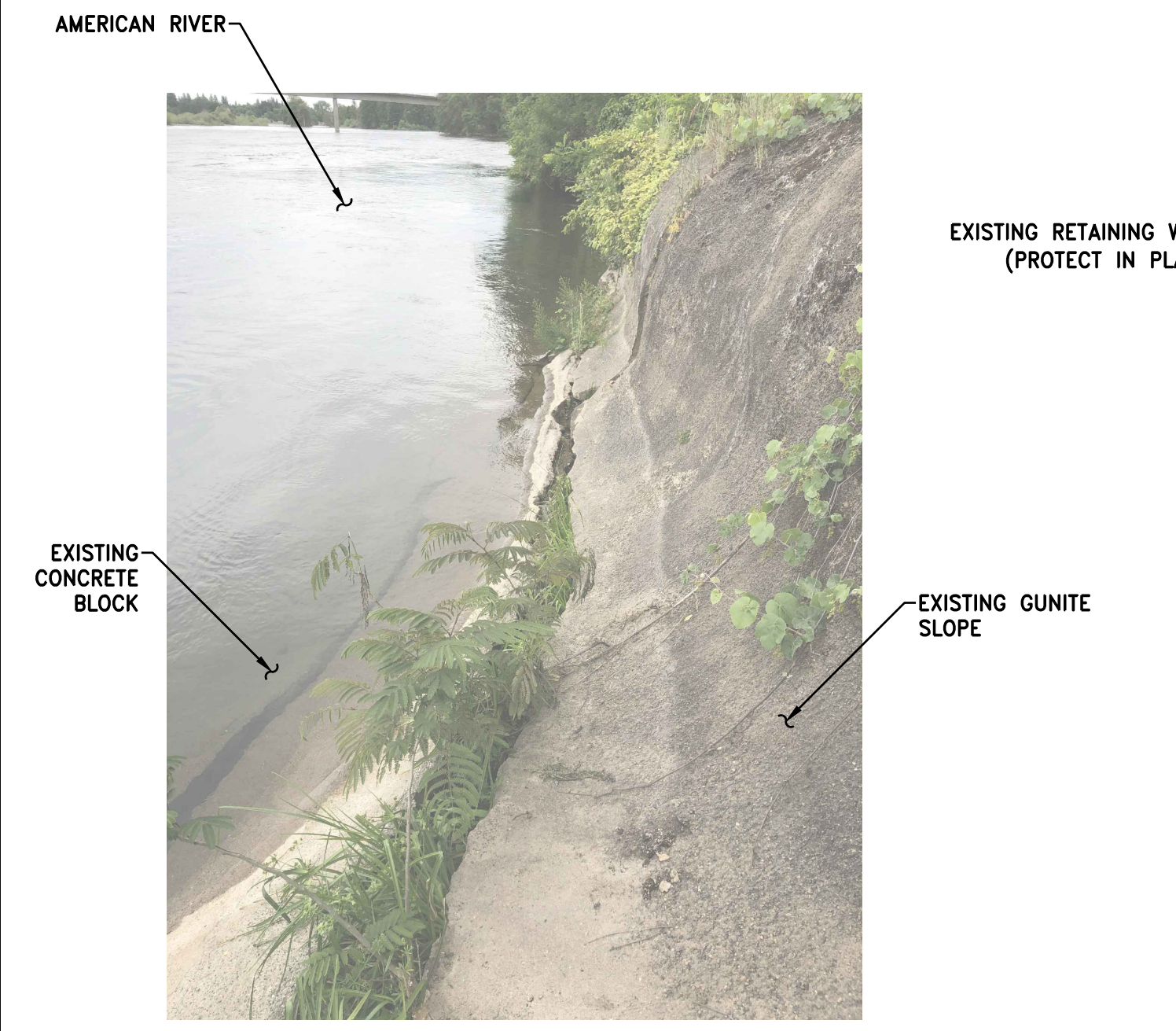
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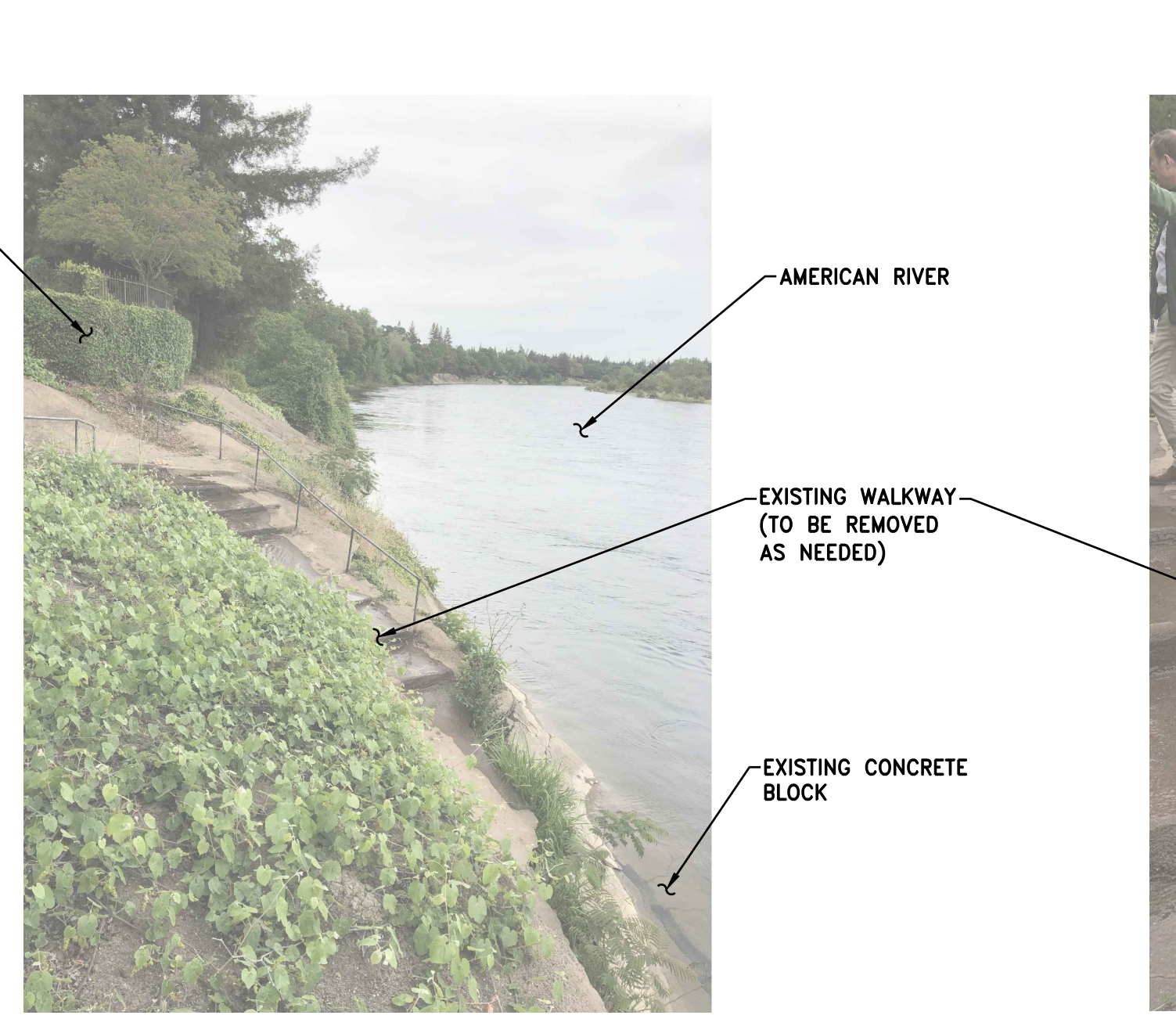
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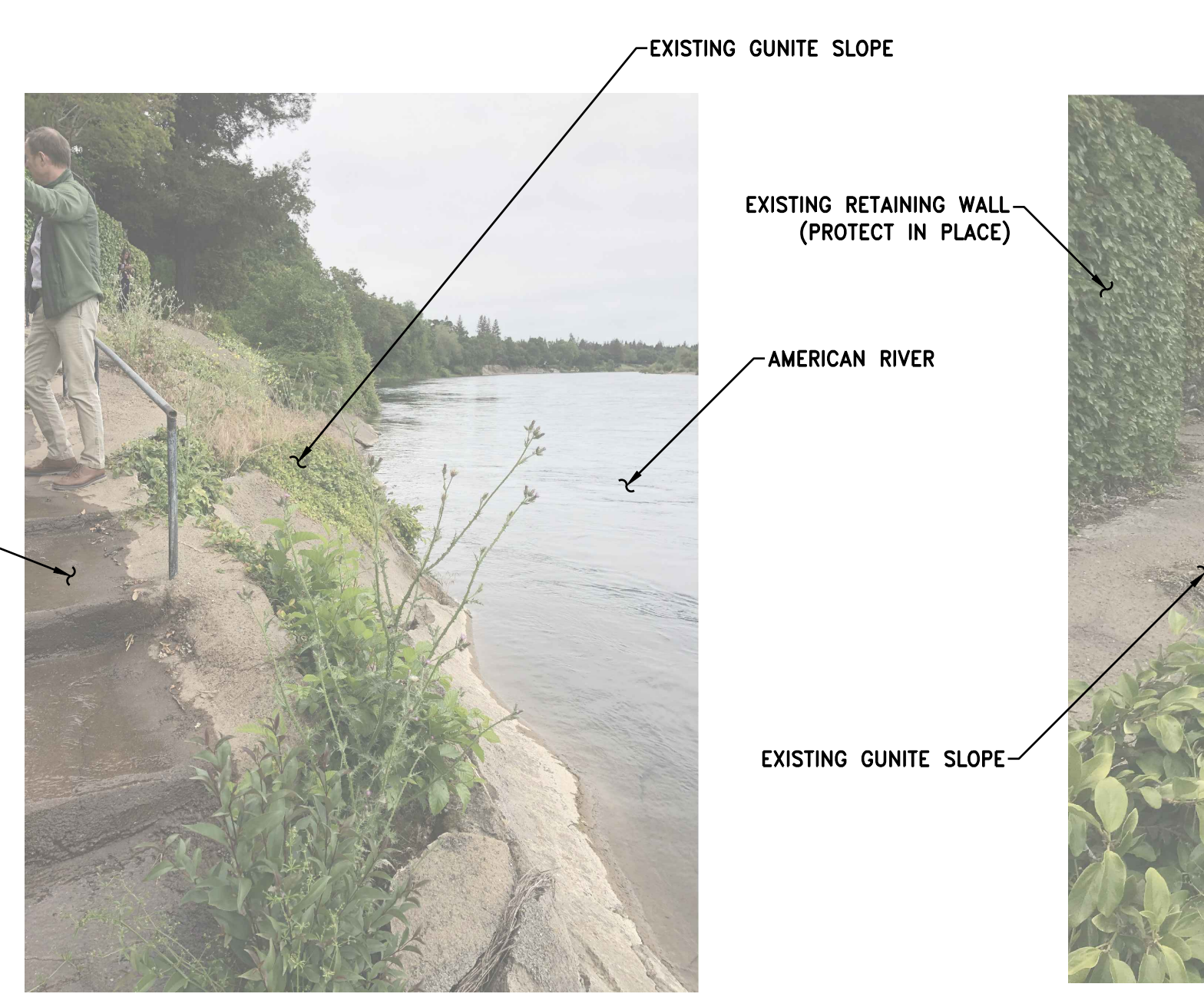
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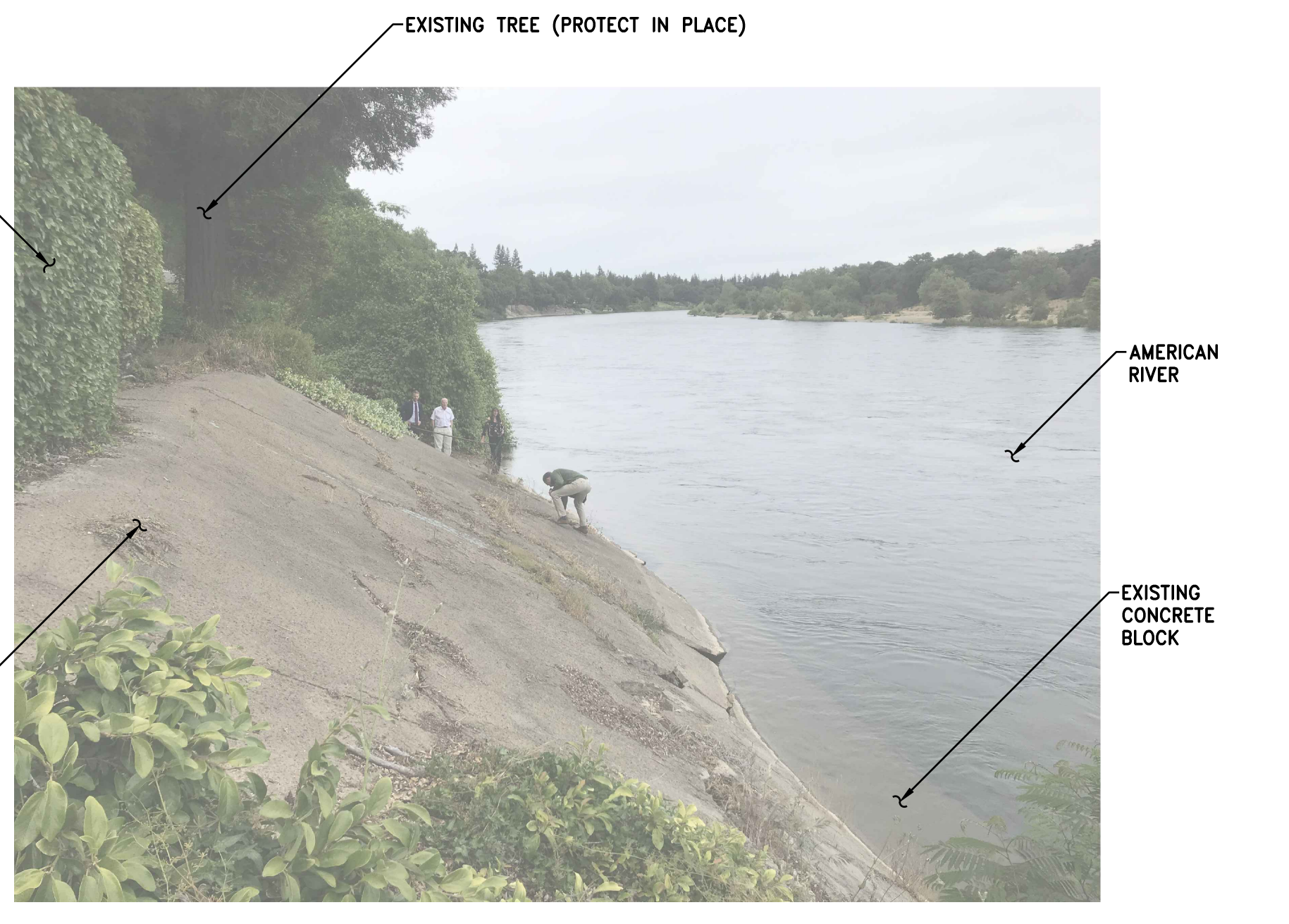
**SITE PHOTO 9**



**SITE PHOTO 10**



**SITE PHOTO 11**



**SITE PHOTO 12**

REV.	DATE	BY	CHK.	APPR.	DESCRIPTION

DESIGNED BY:  
C. HILLIARD  
DRAWN BY:  
J. KAUP  
CHECKED BY:  
J. KORS  
IN CHARGE:  
C. HILLIARD  
DATE:  
XX/XX/XXXX



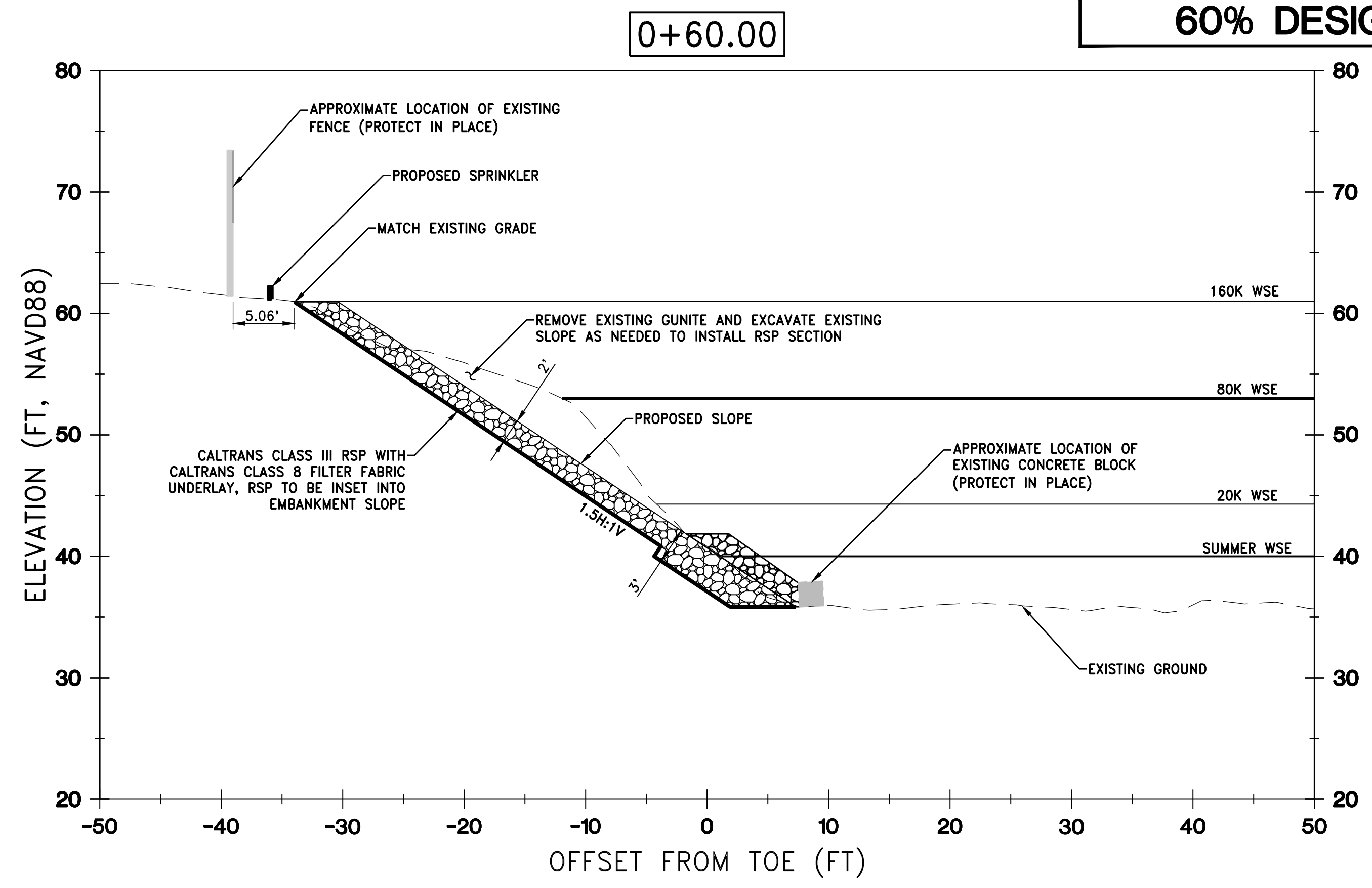
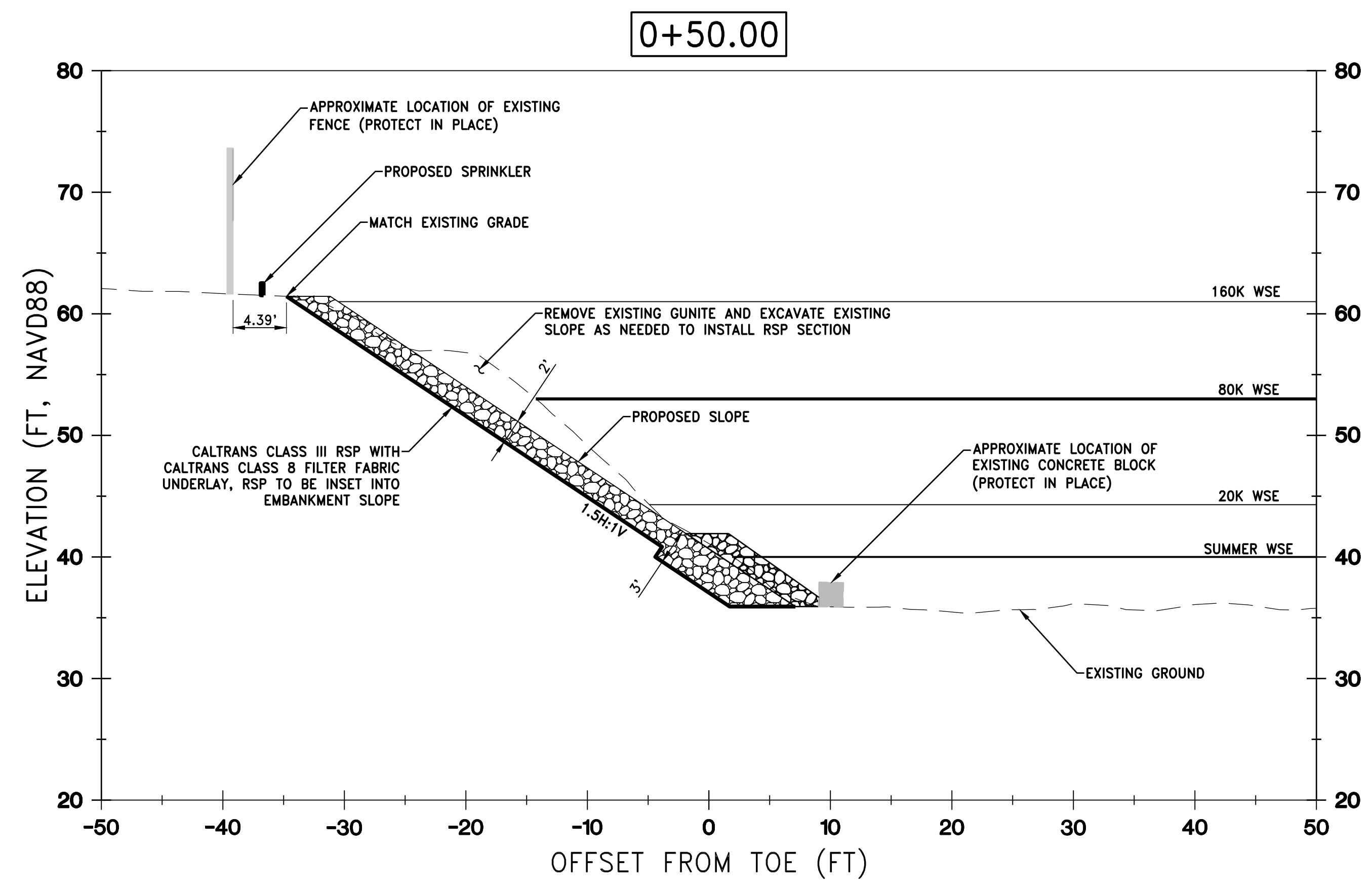
**WOOD RODGERS**  
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3301 C STREET, BLDG. 100-B, SACRAMENTO, CA 95816  
PHONE: (916) 341-7769 FAX: (916) 341-7767

SUBMITTED \_\_\_\_\_ APPROVED \_\_\_\_\_

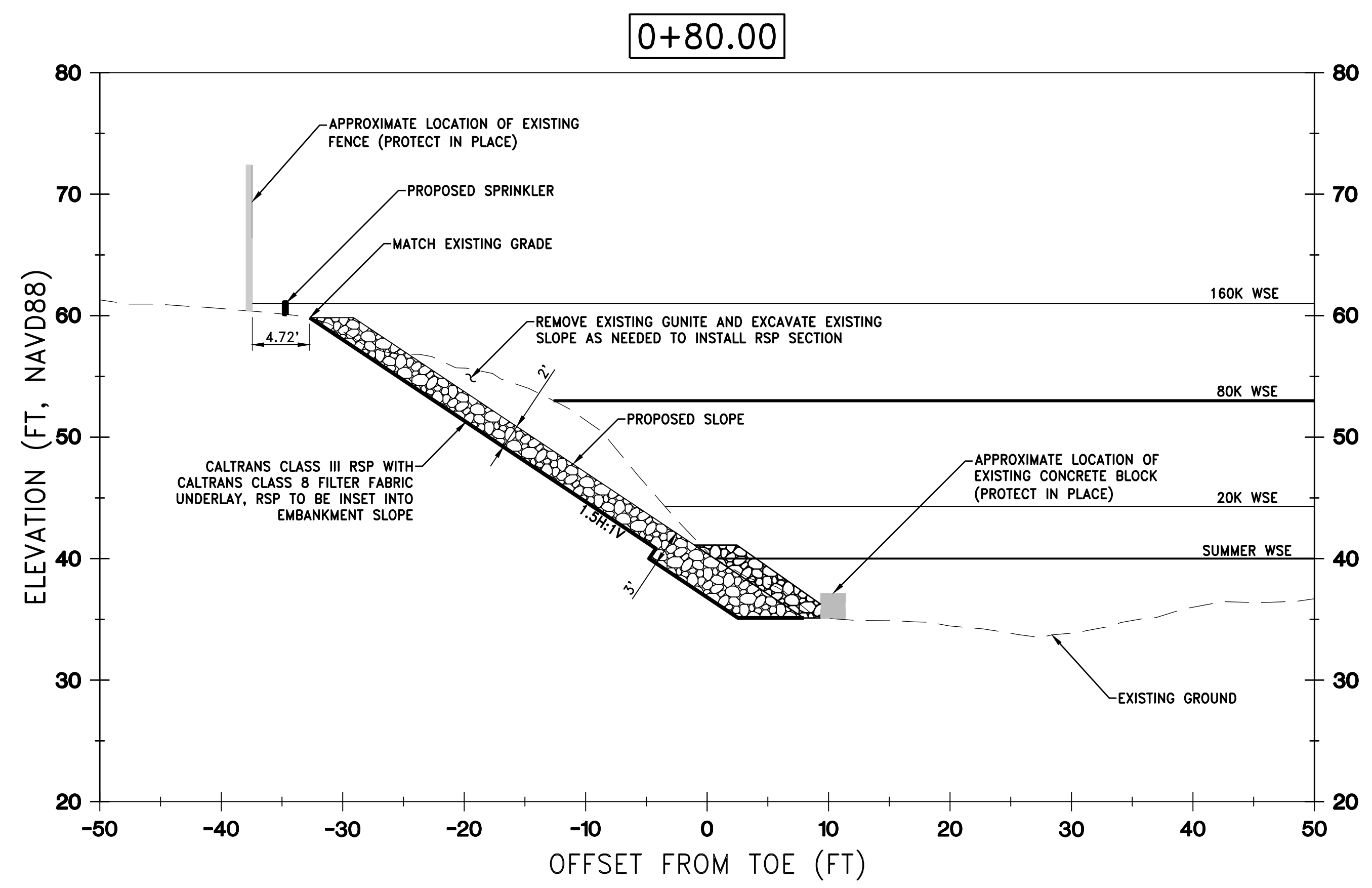
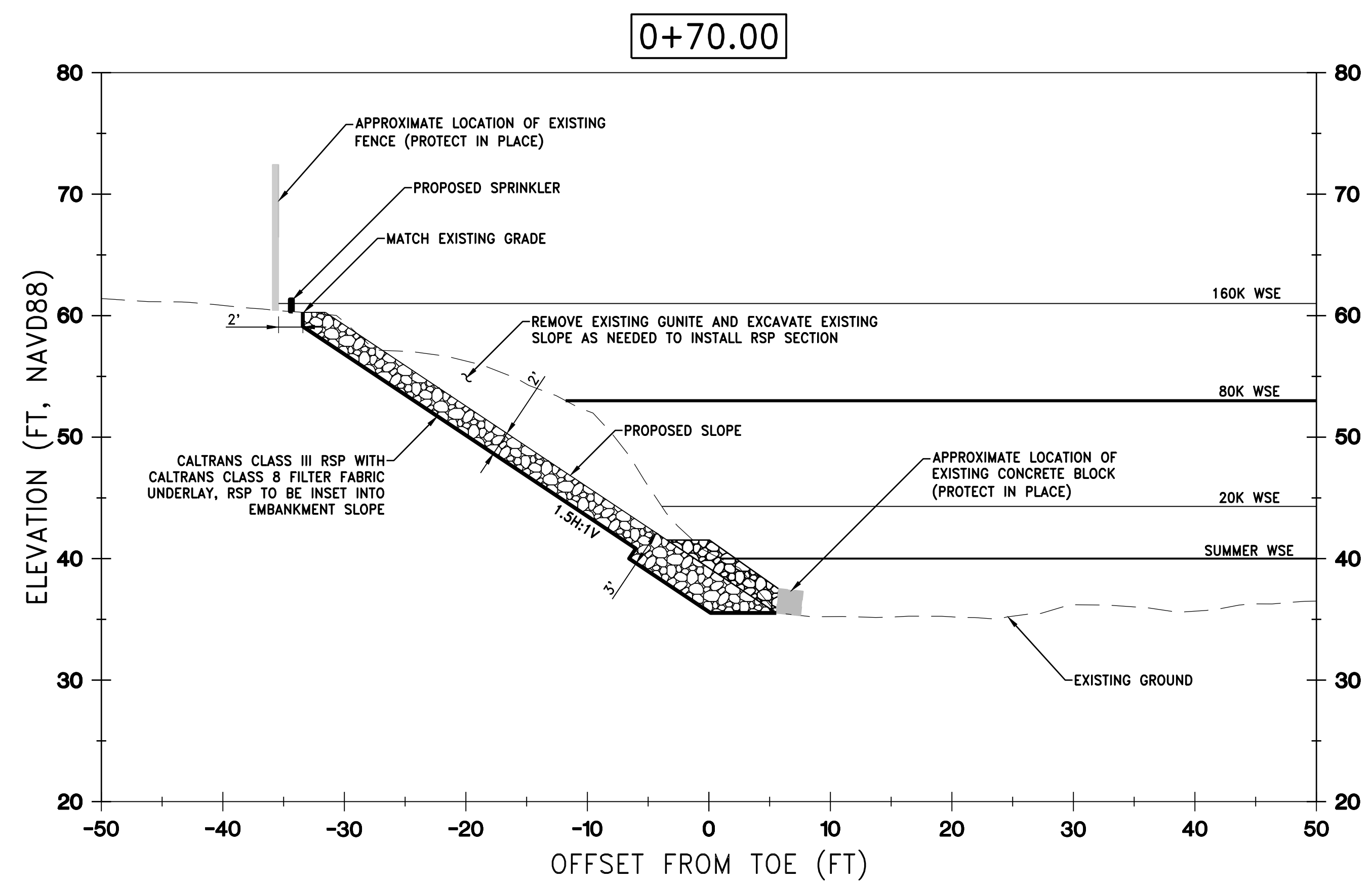
**FRIEDMAN & BASS PROPERTIES**  
**REVTMENT REPLACEMENT PROJECT**  
**EXISTING SITE PHOTOS**

VERIFY SCALES  
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0" = 1"

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**60% DESIGN**



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C. HILLIARD

DRAWN BY:  
J. KAUP

CHECKED BY:  
J. KORS

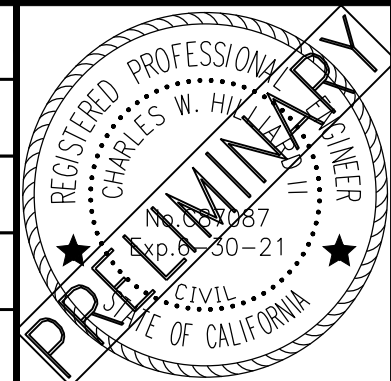
IN CHARGE:  
C. HILLIARD

DATE:  
XX/XX/XXXX

**WOOD RODGERS**  
DEVELOPING • INNOVATIVE • DESIGN • SOLUTIONS  
3301 C STREET, BLDG. 100-B, SACRAMENTO, CA 95816  
PHONE: (916) 341-7769 FAX: (916) 341-7767

SUBMITTED \_\_\_\_\_

APPROVED \_\_\_\_\_



**FRIEDMAN & BASS PROPERTIES**

**REVTMENT REPLACEMENT PROJECT**

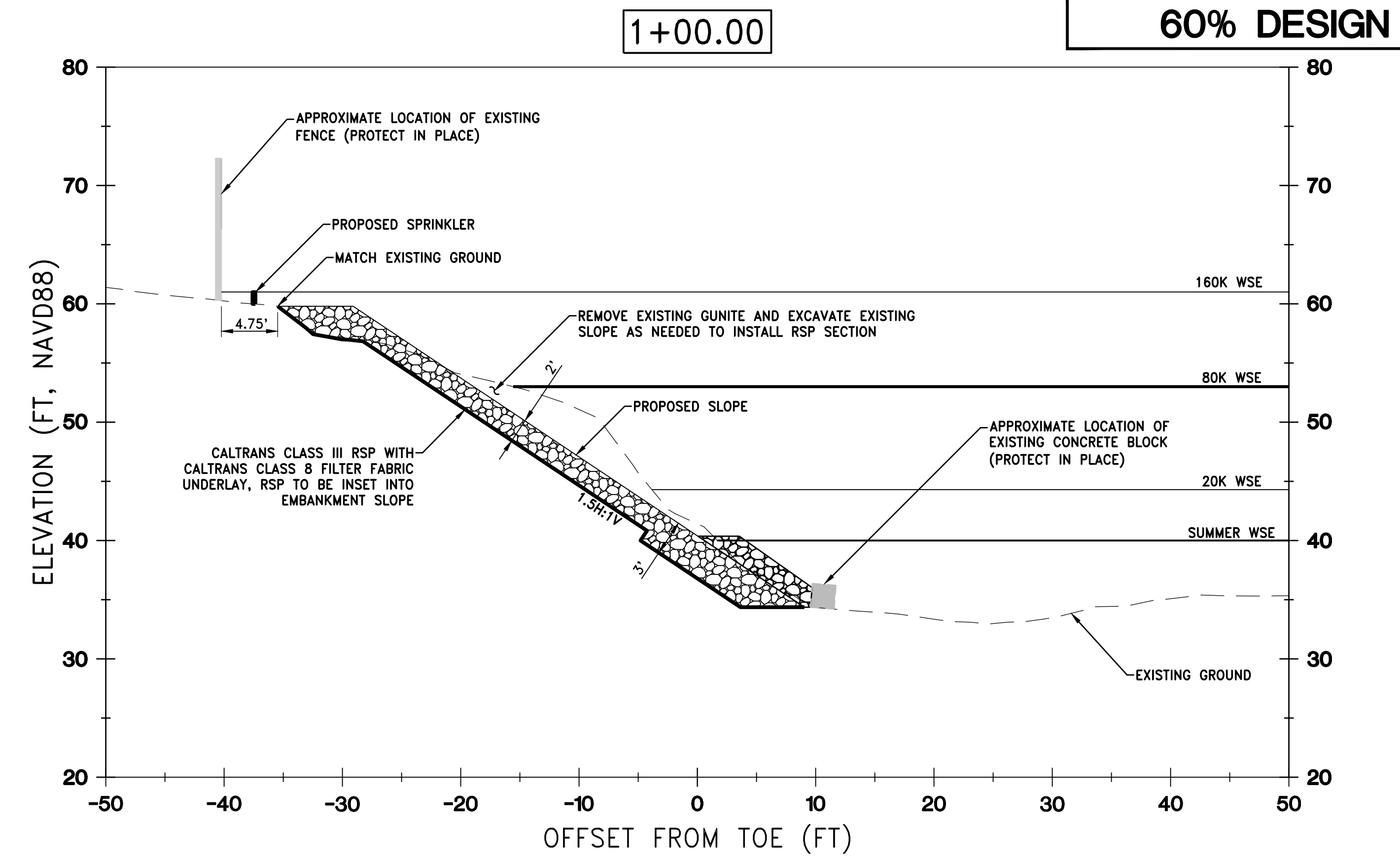
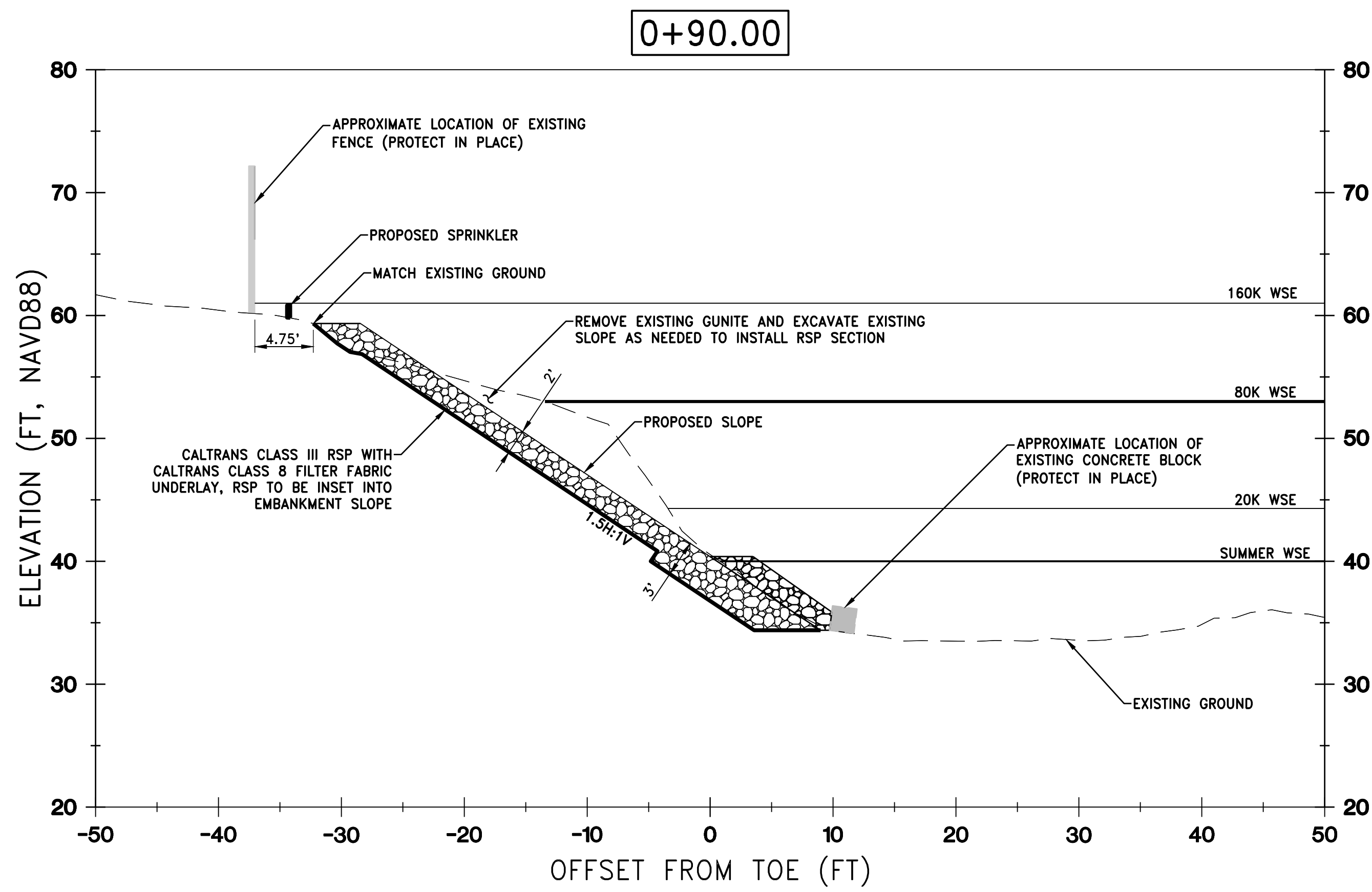
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**STATION 0+50 TO 0+80**

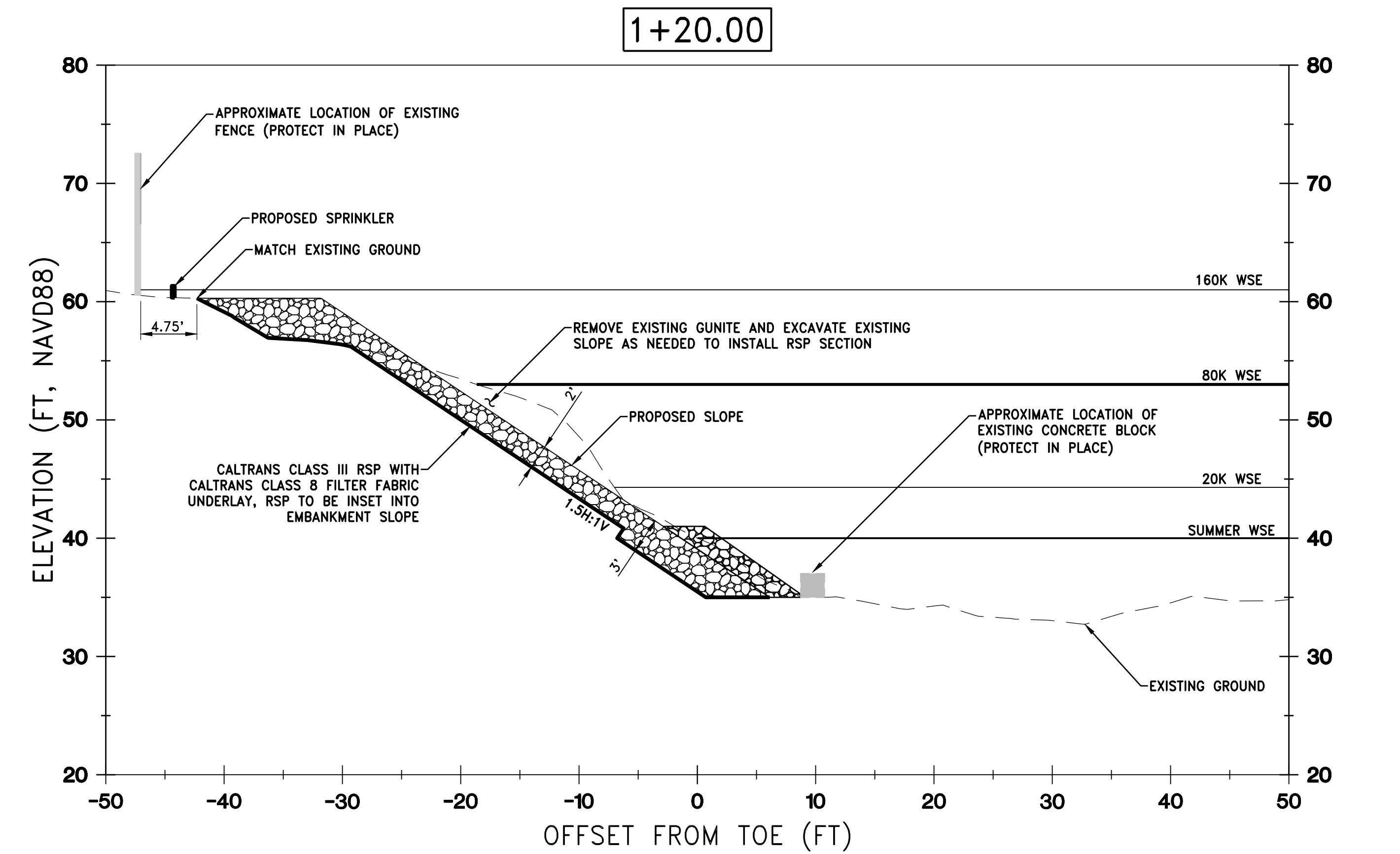
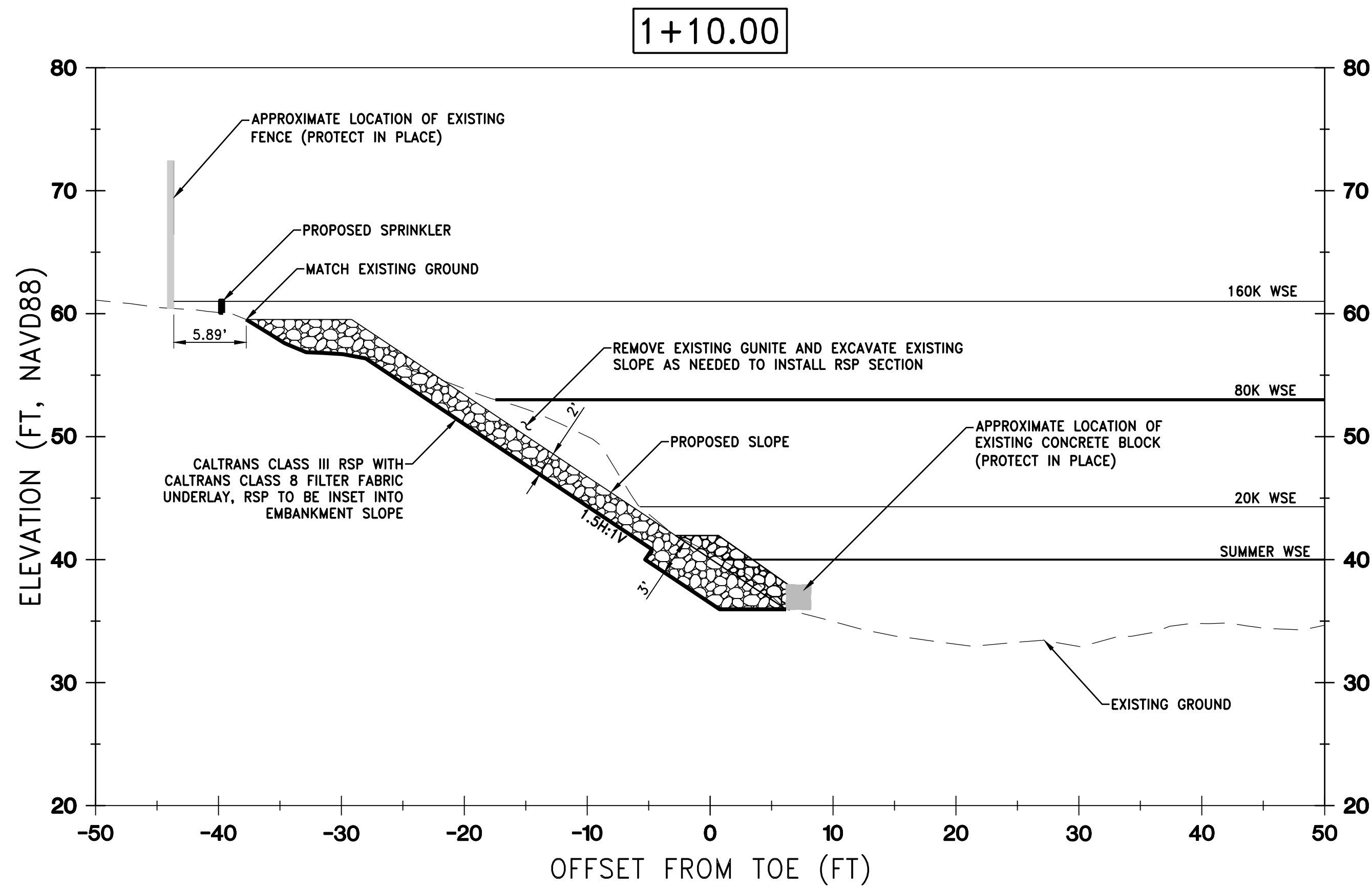
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ORIGINAL DRAWING. ADJUST  
SCALES FOR REDUCED PLOTS

0" = 1"

DRAWING NO. **C-201** SHEET **6**



**60% DESIGN**



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DESIGNED BY:  
C. HILLIARD  
DRAWN BY:  
J. KAUP  
CHECKED BY:  
J. KORS  
IN CHARGE:  
C. HILLIARD  
DATE:  
XX/XX/XXXX



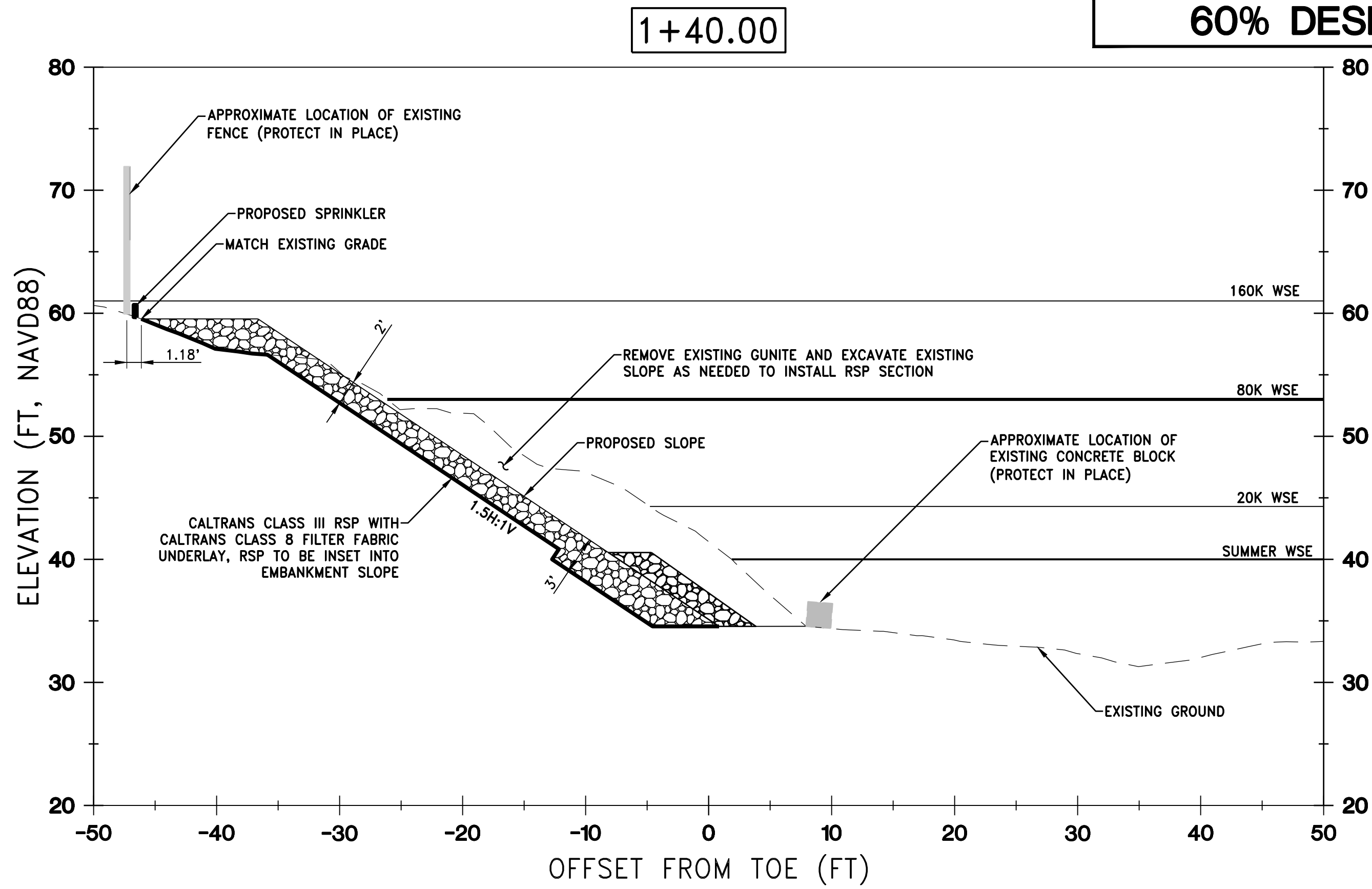
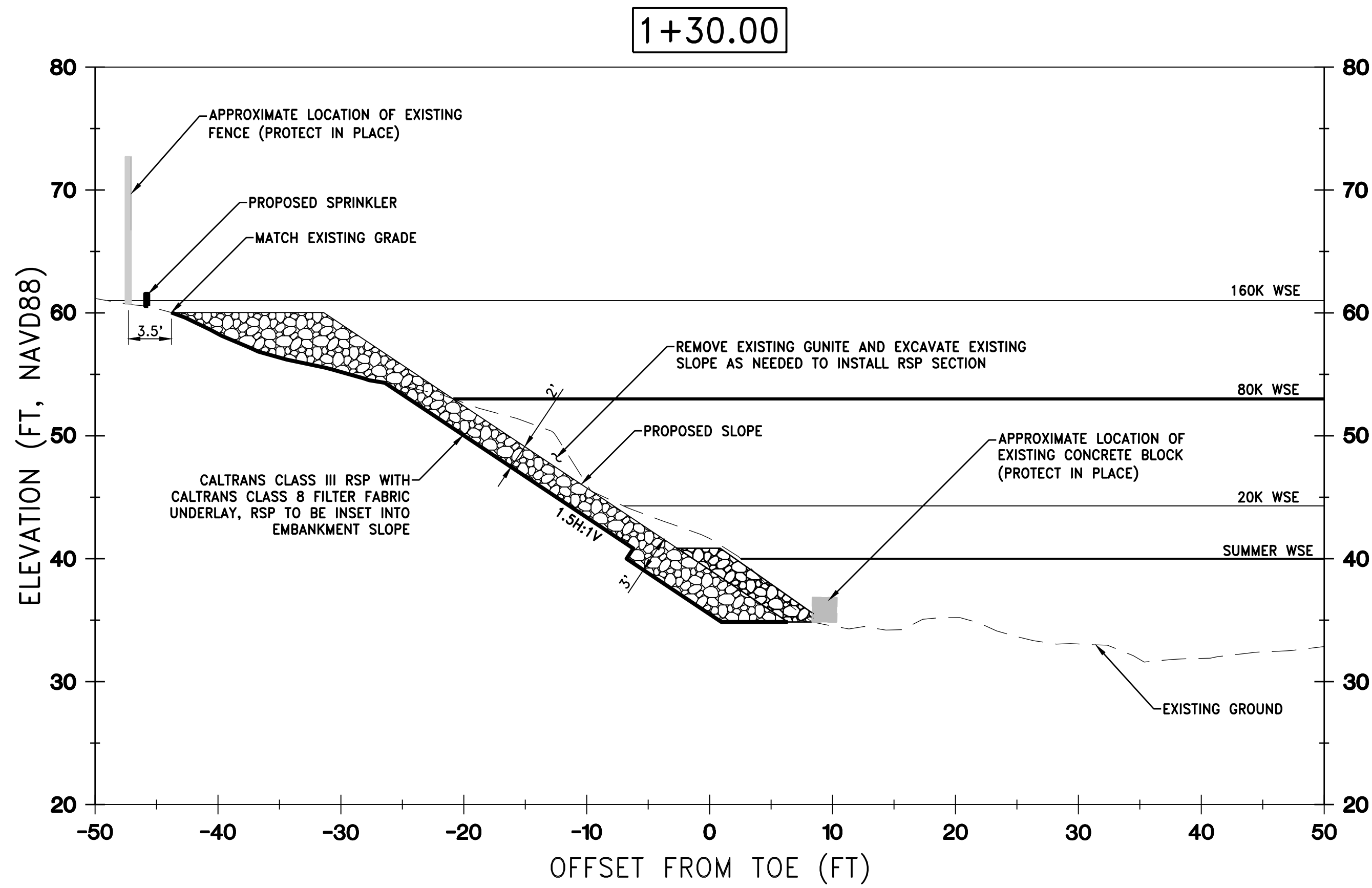
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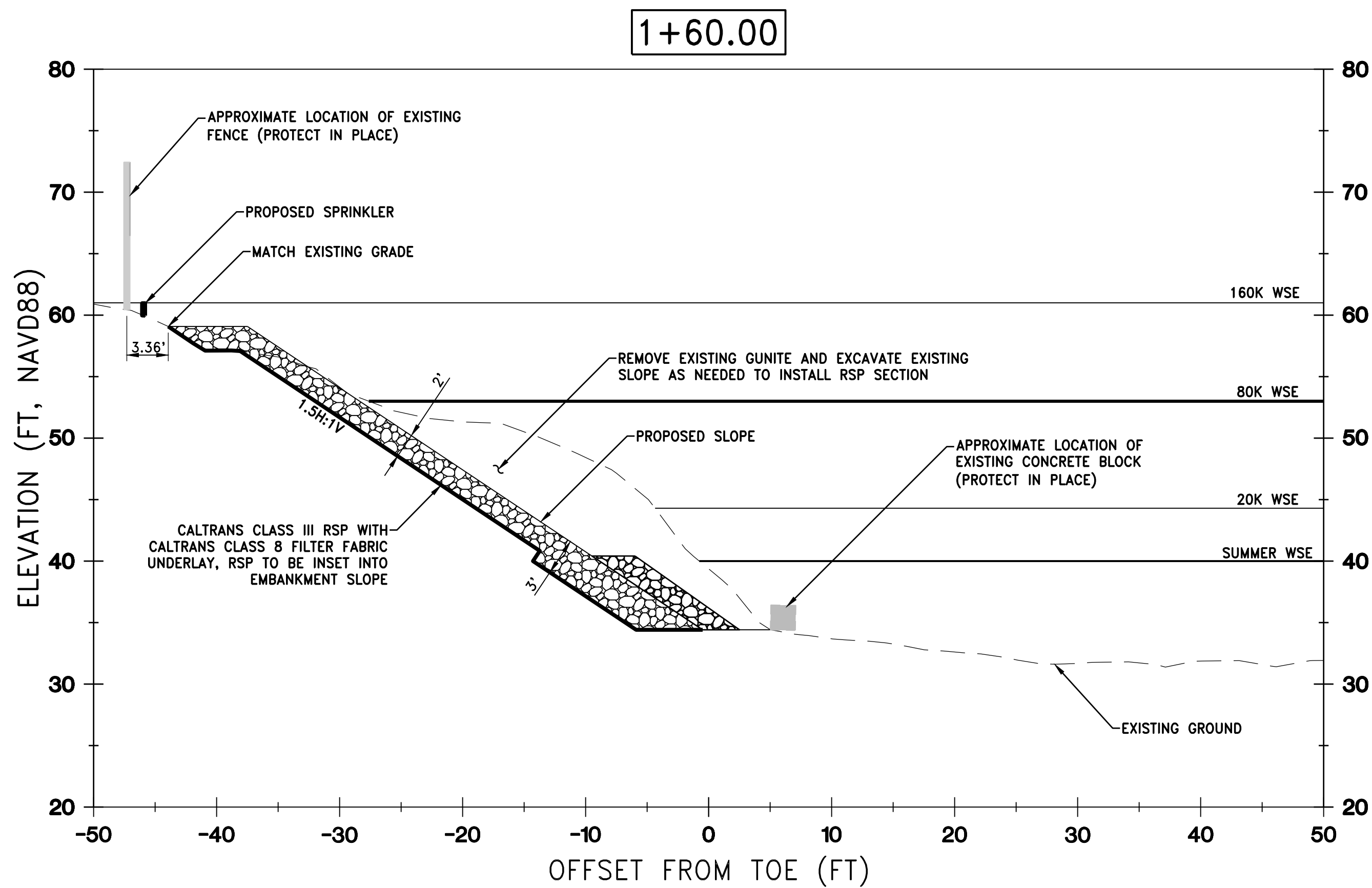
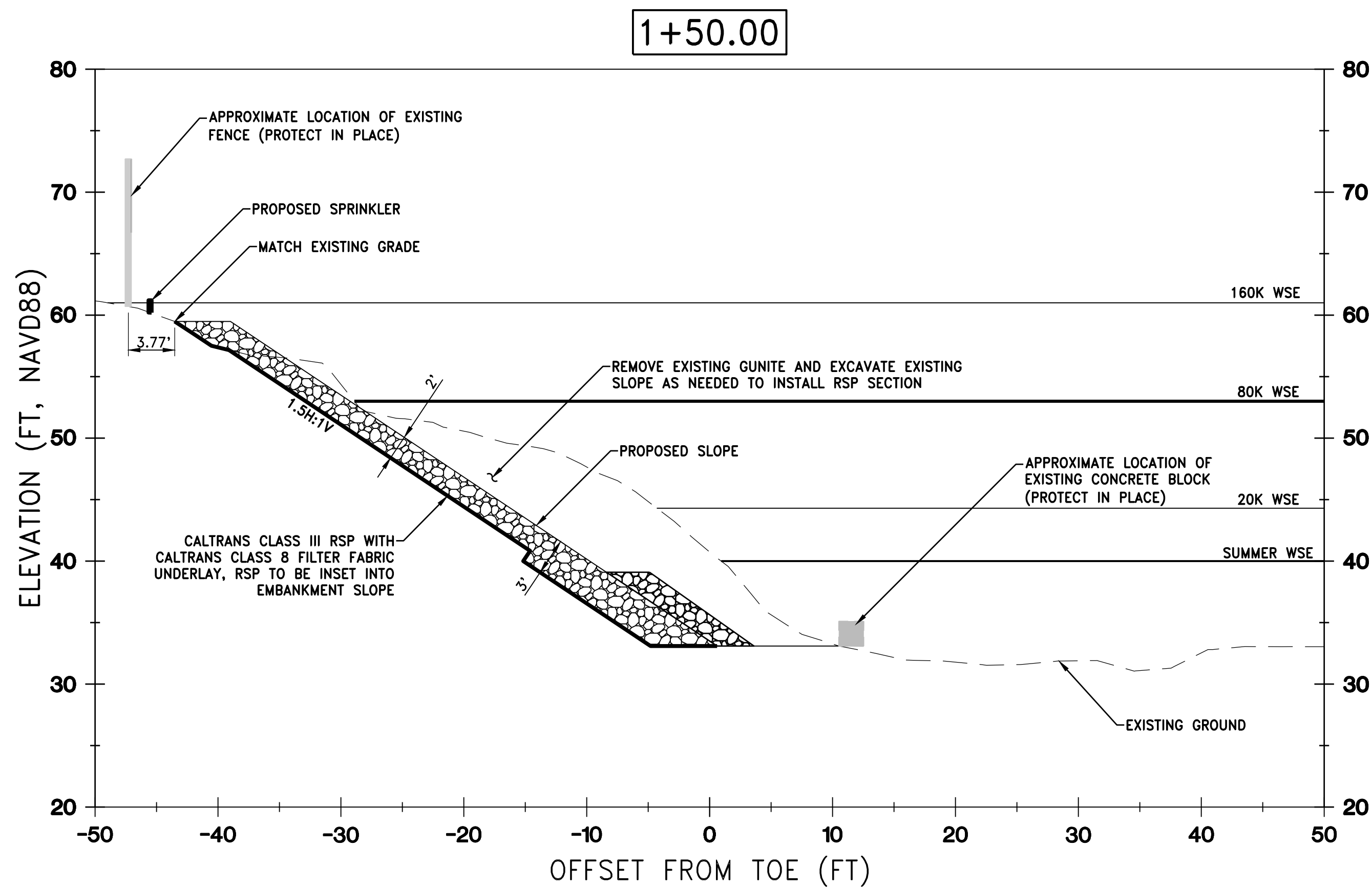
**FRIEDMAN & BASS PROPERTIES**  
**REVTMENT REPLACEMENT PROJECT**  
CROSS SECTIONS  
STATION 0+90 TO 1+20

VERIFY SCALES  
BAR IS ONE INCH ON ORIGINAL DRAWING. ADJUST SCALES FOR REDUCED PLOTS

DRAWING NO. **C-202** SHEET **7**



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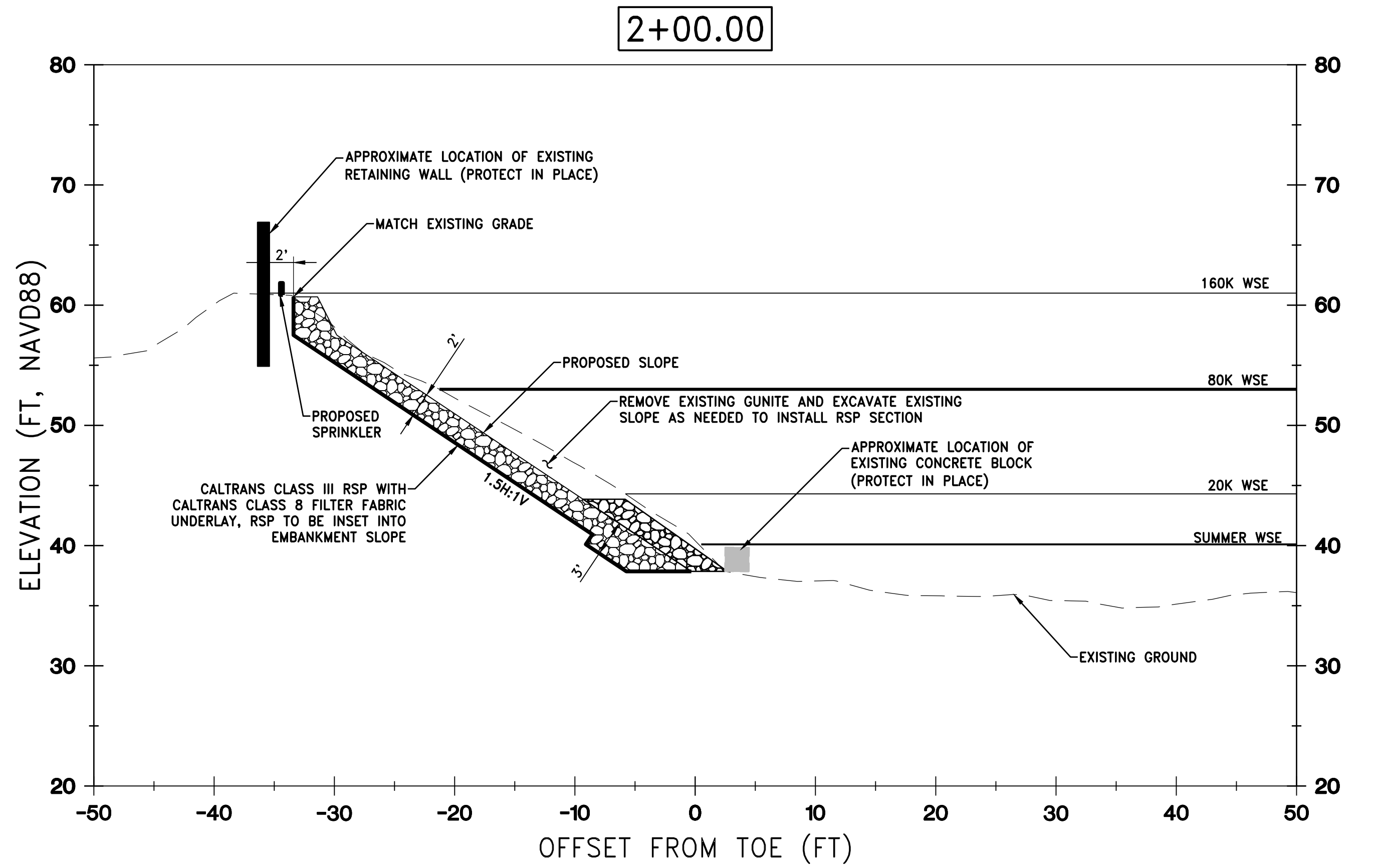
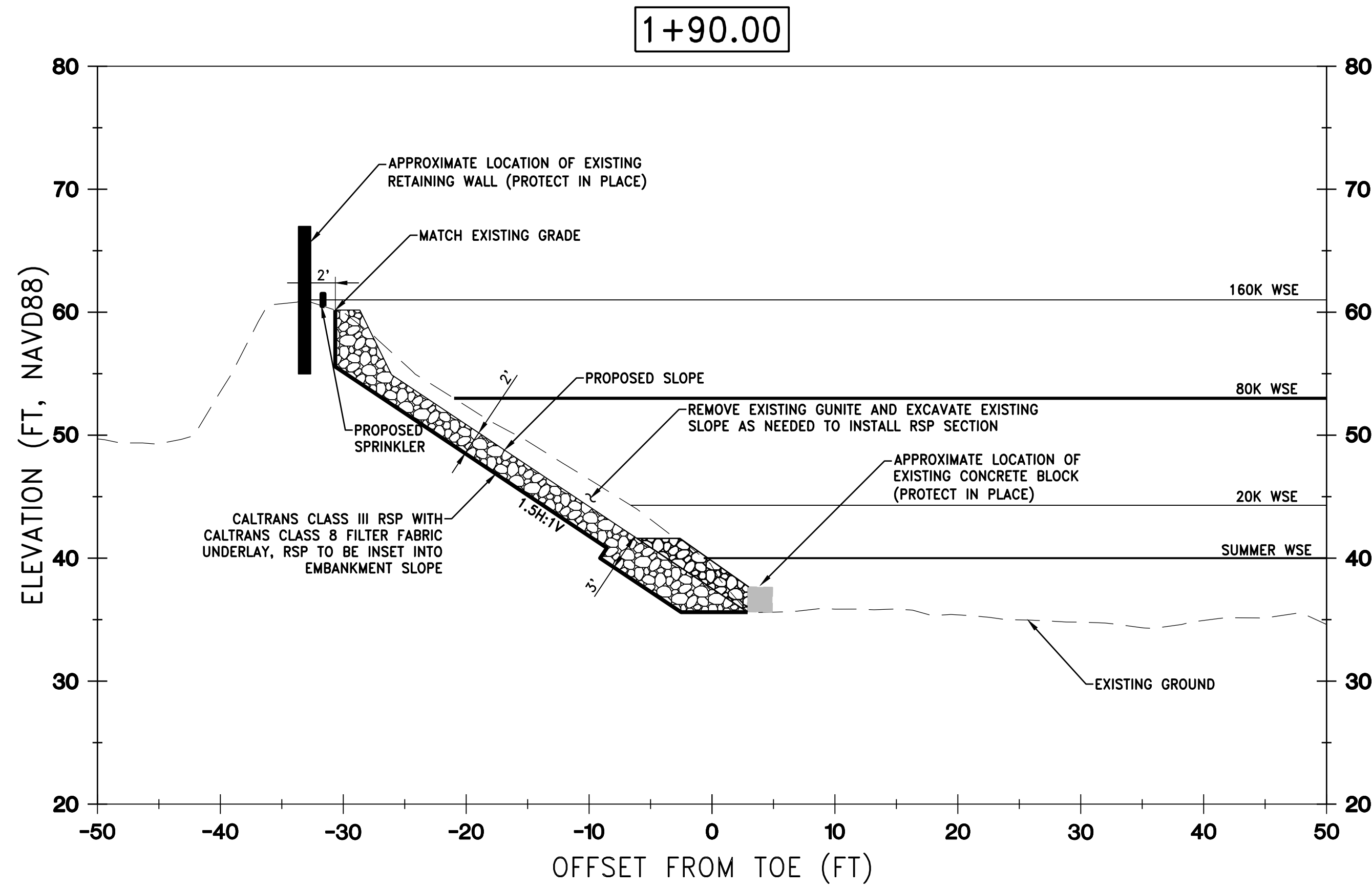
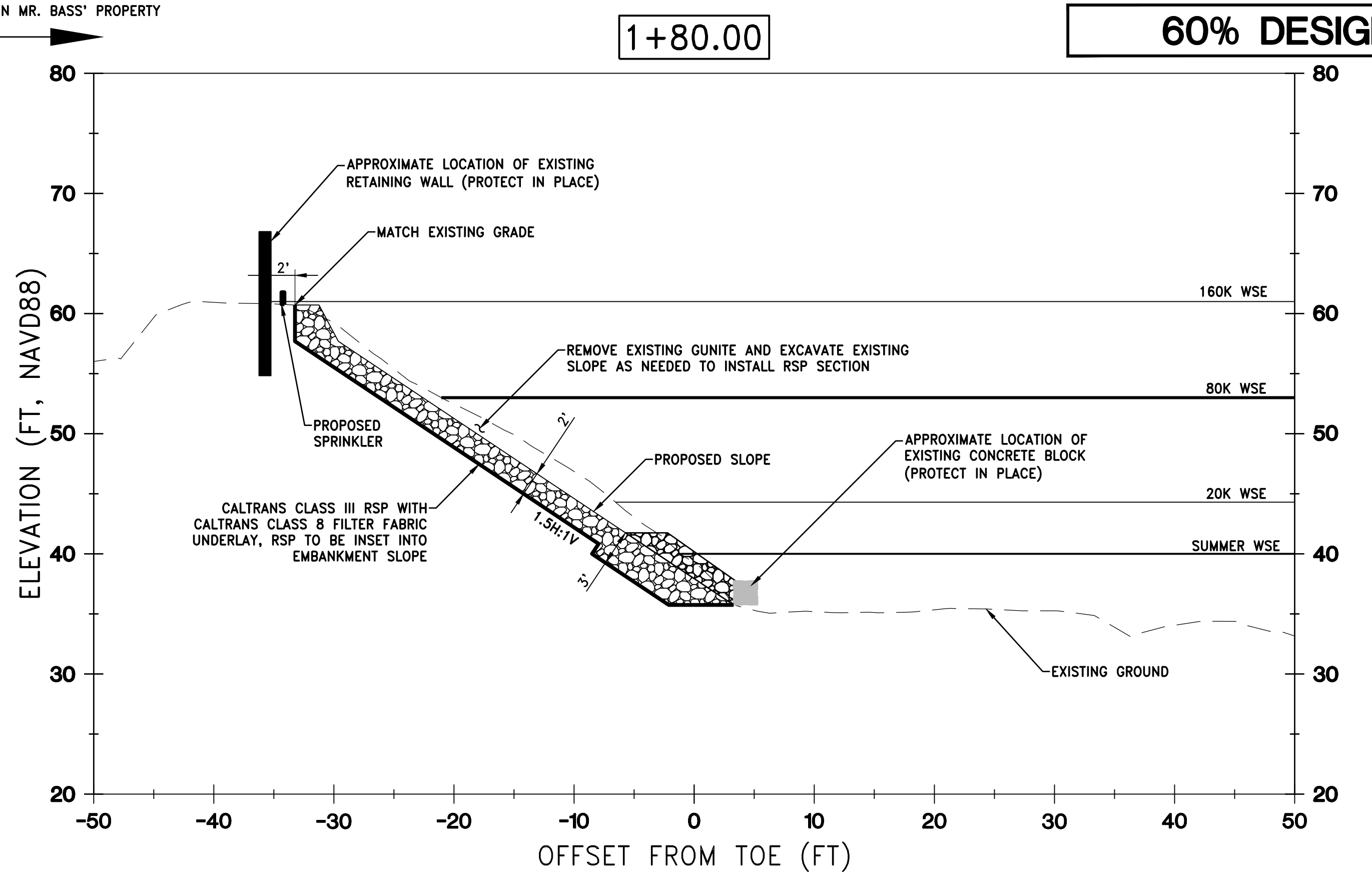
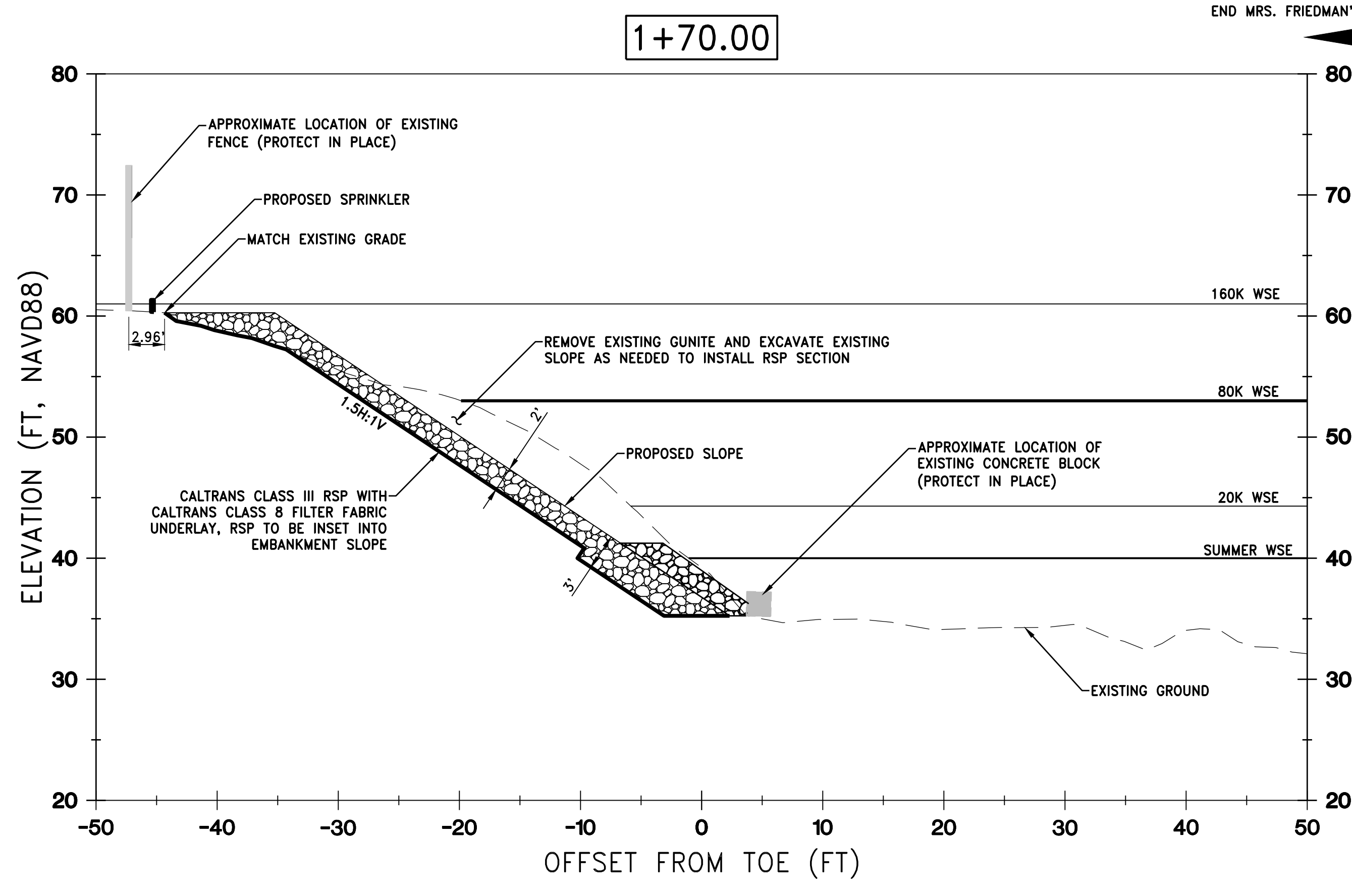


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**FRIEDMAN & BASS PROPERTIES**  
**REVTMENT REPLACEMENT PROJECT**  
CROSS SECTIONS  
STATION 1+20 TO 1+60

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DRAWING NO. SHEET	
C-203	8



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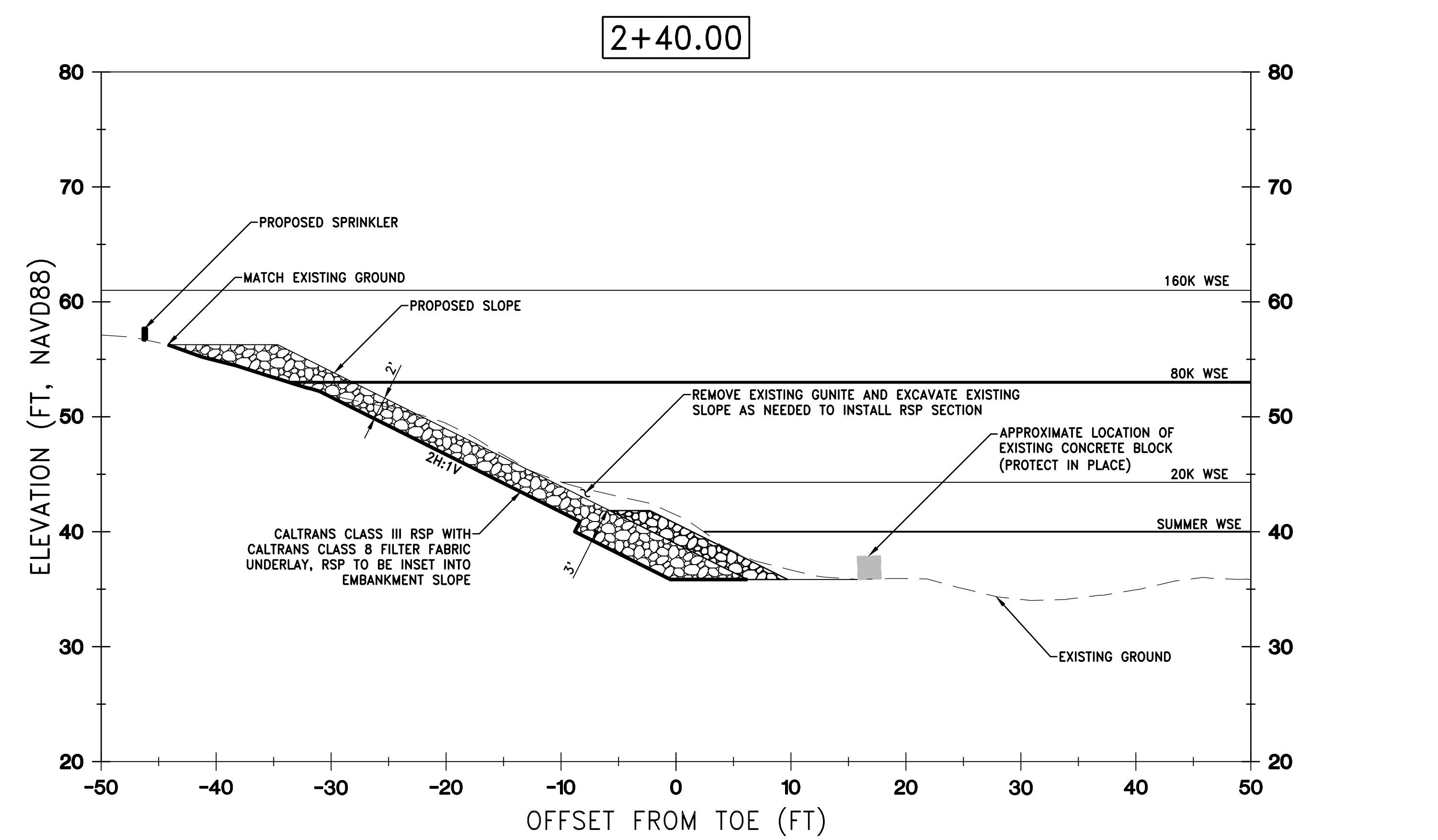
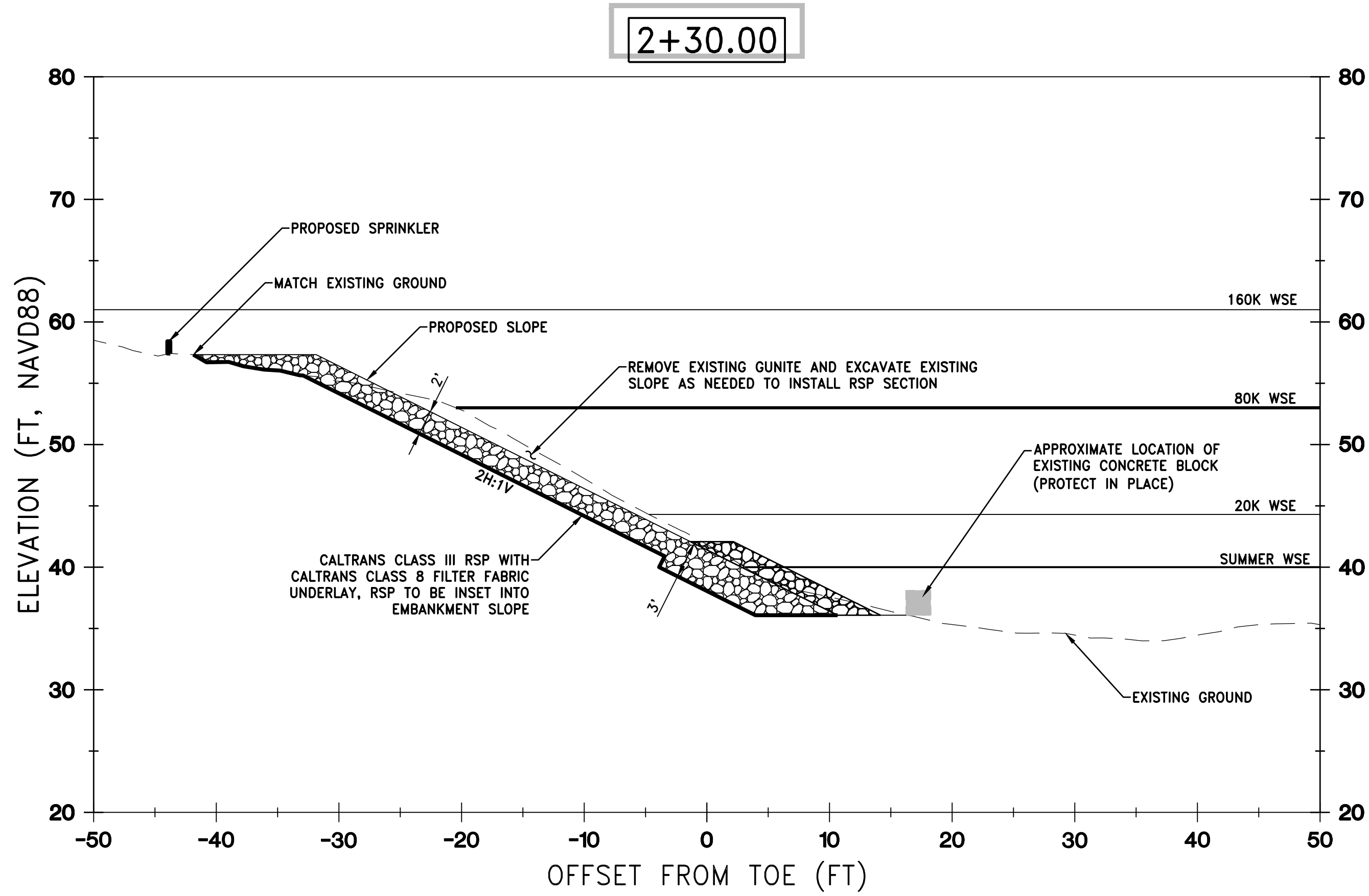
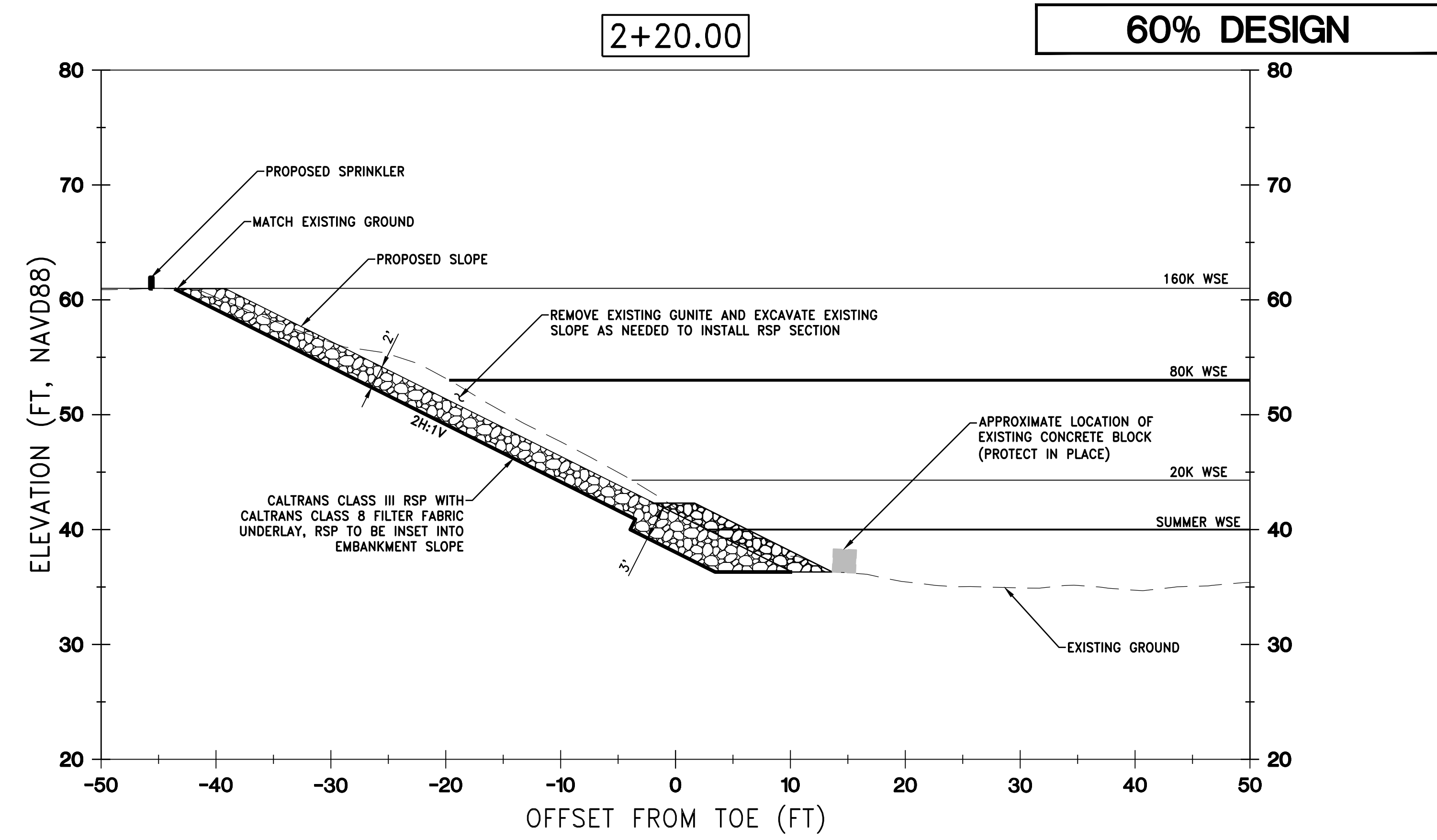
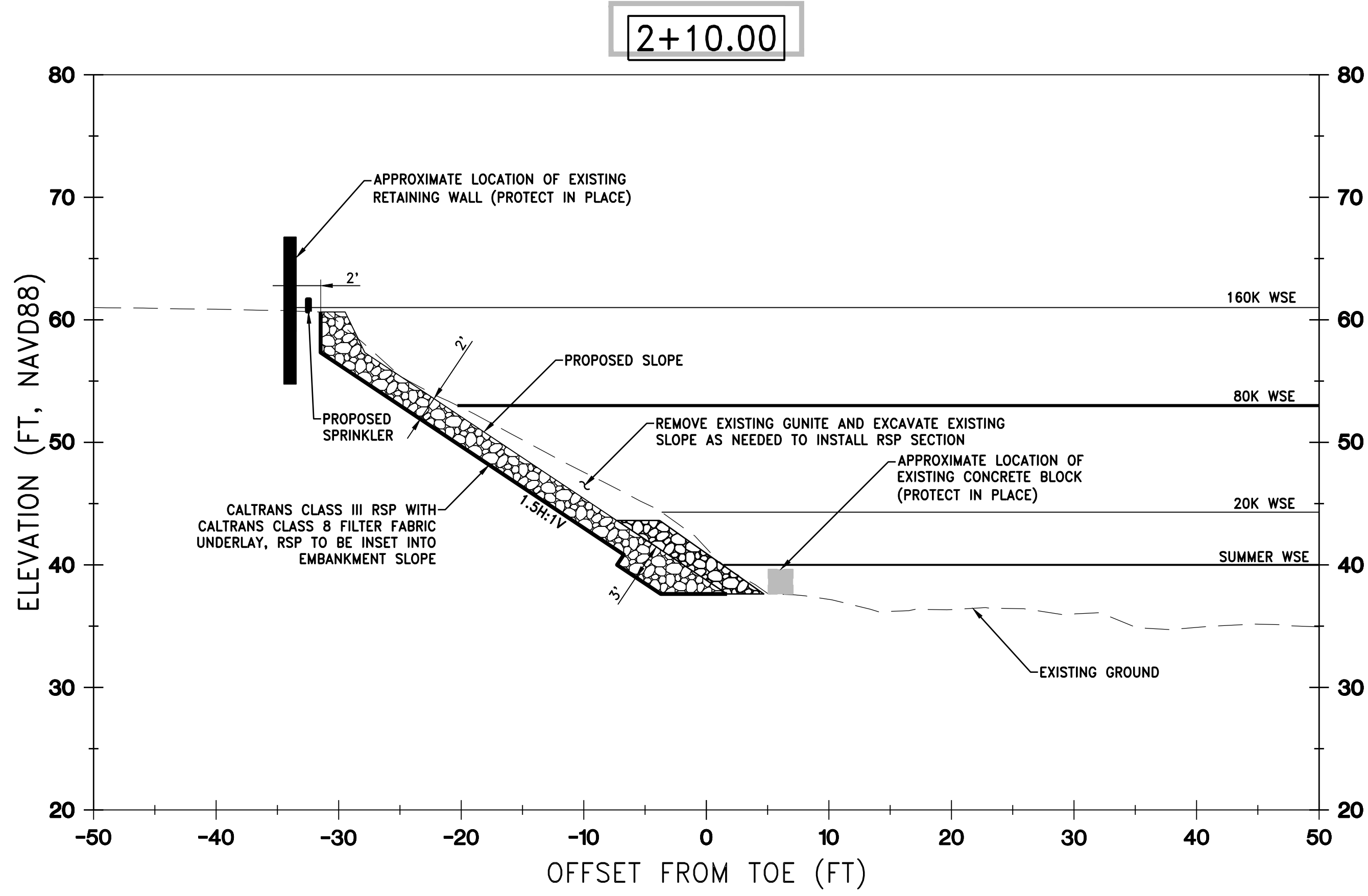
SUBMITTED \_\_\_\_\_ APPROVED \_\_\_\_\_

**FRIEDMAN & BASS PROPERTIES**  
**REVETMENT REPLACEMENT PROJECT**  
CROSS SECTIONS  
STATION 1+70 TO 2+00

VERIFY SCALES  
BAR IS ONE INCH ON  
ORIGINAL DRAWING. ADJUST  
SCALES FOR REDUCED PLOTS  
0" = 1"

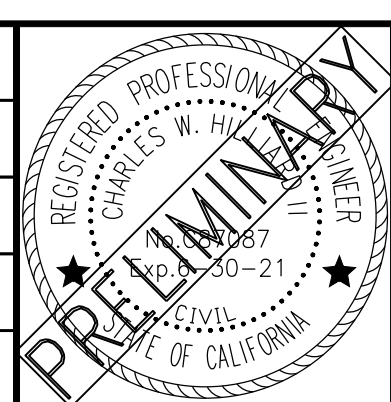
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J. KAUP  
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J. KORS  
IN CHARGE:  
C. HILLIARD  
DATE:  
XX/XX/XXXX



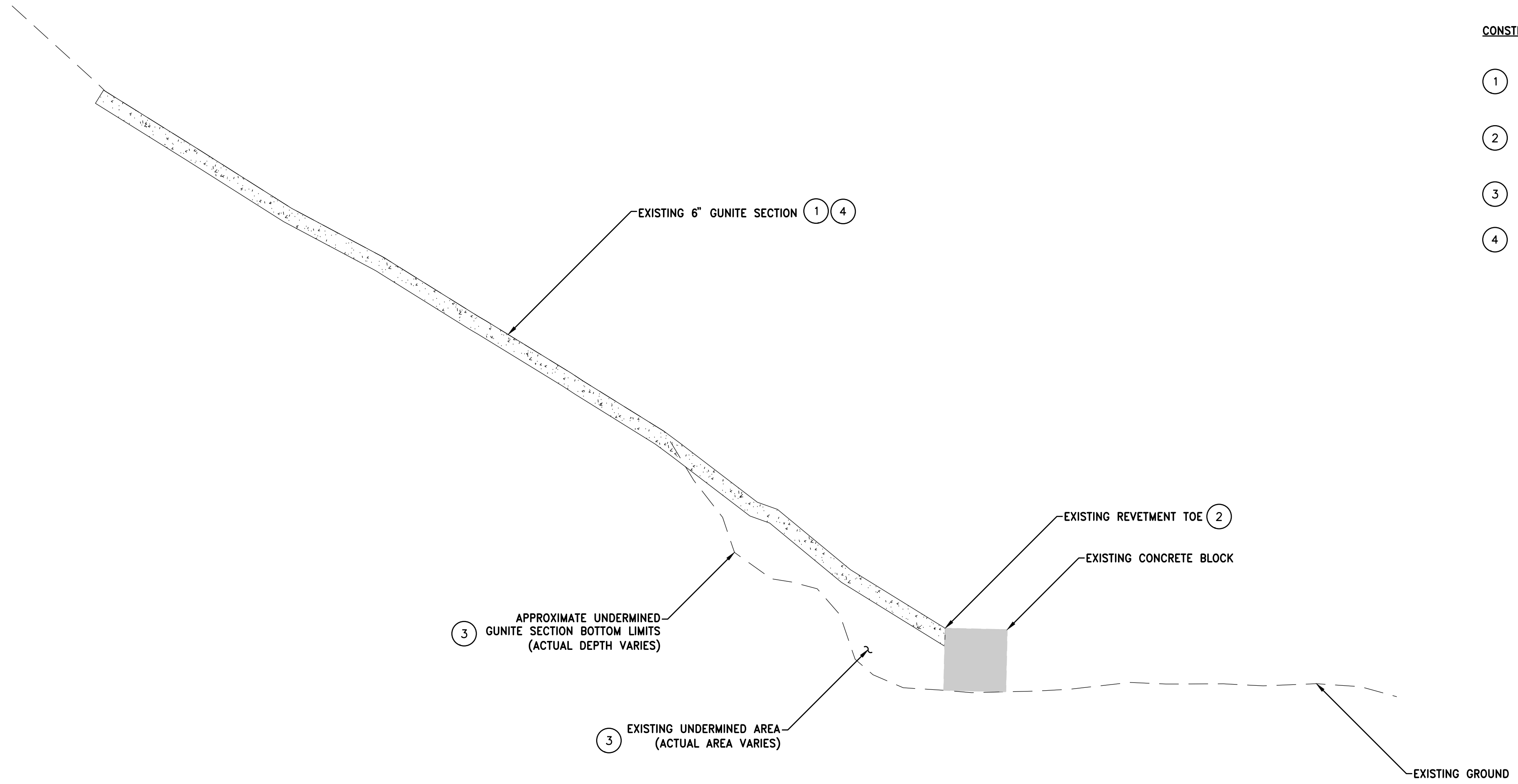
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**FRIEDMAN & BASS PROPERTIES**  
**REVTMENT REPLACEMENT PROJECT**  
CROSS SECTIONS  
STATION 2+10 TO 2+40

VERIFY SCALES BAR IS ONE INCH ON ORIGINAL DRAWING. ADJUST SCALES FOR REDUCED PLOTS	
0" = 1"	
DRAWING NO.	SHEET
C-205	10

**60% DESIGN**



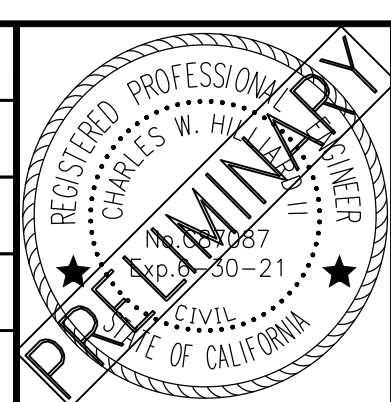
**CONSTRUCTION NOTES:**

- ① EXISTING 6" GUNITE SECTION IS REINFORCED WITH REBAR THROUGHOUT. CONTRACTOR IS TO REMOVE & DISPOSE OF EXISTING GUNITE AND REINFORCING MATERIALS
- ② THE TOP OF THE EXISTING CONCRETE BLOCK AND THE EXISTING GUNITE SLOPE TOE ARE ATTACHED BY ROD REINFORCEMENT. CONTRACTOR SHALL CUT REINFORCEMENT WHILE PROTECTING CONCRETE BLOCK IN PLACE
- ③ ALL UNDERMINED AREAS SHALL BE FILLED WITH ROCK
- ④ SURFACE AREA OF GUNITE TO BE REMOVED AND DISPOSED OF IS APPROXIMATELY 6,900\_SF

**EXISTING REVETMENT SECTION**  
SCALE: NTS

REV.	DATE	BY	CHK.	APPR.	DESCRIPTION

DESIGNED BY:  
C. HILLIARD  
DRAWN BY:  
J. KAUP  
CHECKED BY:  
J. KORS  
IN CHARGE:  
C. HILLIARD  
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**FRIEDMAN & BASS PROPERTIES**  
**REVETMENT REPLACEMENT PROJECT**  
TYPICAL DETAILS (1 OF 2)

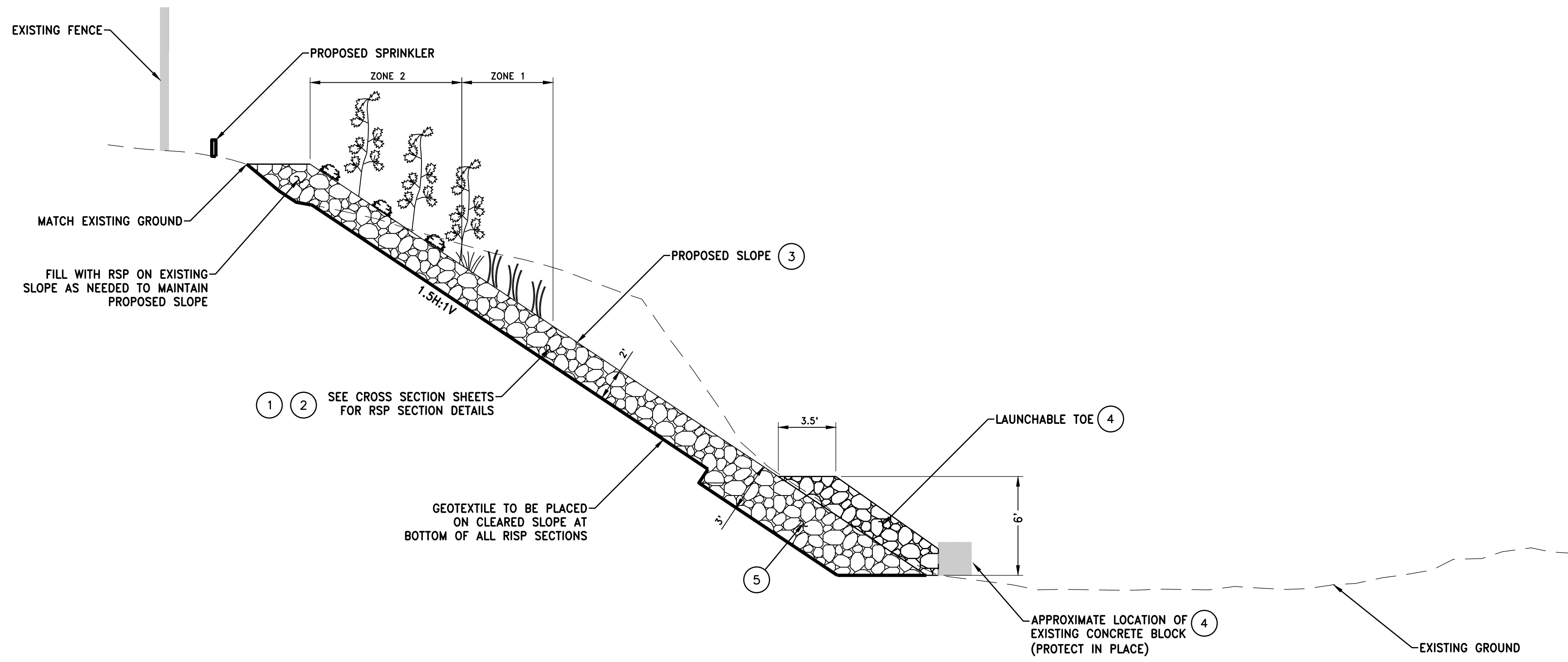
**VERIFY SCALES**  
BAR IS ONE INCH ON ORIGINAL DRAWING. ADJUST SCALES FOR REDUCED PLOTS

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**60% DESIGN**

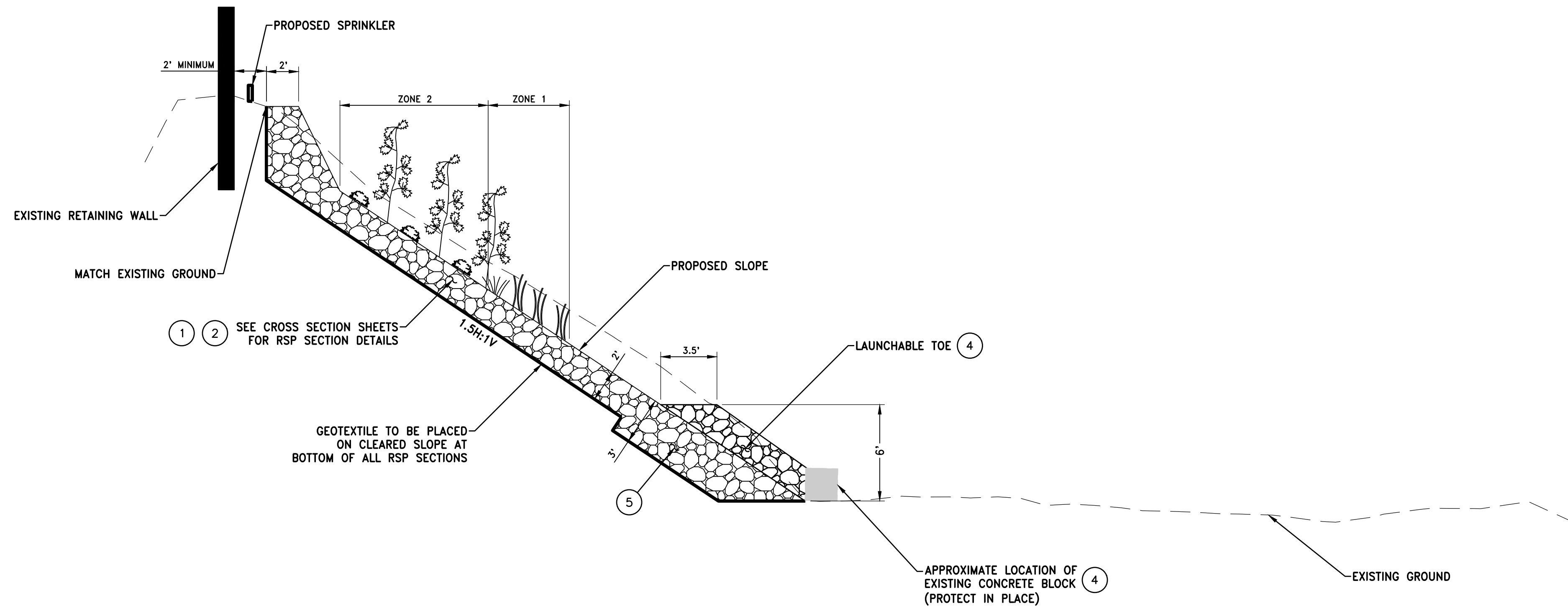
**CONSTRUCTION NOTES:**

- ① 2FT MINIMUM THICKNESS CALTRANS CLASS III RSP WITH CALTRANS CLASS 8 FILTER FABRIC UNDERLAY, RSP TO BE INSET INTO EMBANKMENT SLOPE
- ② FOLLOWING RSP PLACEMENT, SPREAD 3" TOPSOIL OVER RIPRAP AND MANIPULATE INTO VOIDS TO FACILITATE VEGETATIVE GROWTH
- ③ THE SLOPE SHALL TRANSITION FROM 1.5H:1V, TO 2H:1V AT STATIONS 2+20 TO 2+40
- ④ FILL LAUNCHABLE TOE SECTION AGAINST EXISTING CONCRETE BLOCK AS NEEDED
- ⑤ RSP SECTION TO INCREASE 50% WHEREVER SECTION IS BELOW WATER ELEVATION AT TIME OF PLACEMENT
- ⑥ ZONE 2 VEGETATION SHALL BE PLACED FROM TOP OF SLOPE TO 80K WSE (ELEV 53'). ZONE 1 VEGETATION SHALL BE PLACED FROM SUMMER WSE (ELEV 40') TO 80K WSE (ELEV 53').



**TYPICAL CROSS SECTION - FENCE**

STA 0+50 TO 1+70  
STA 2+20 TO 2+40  
SCALE: NTS



**TYPICAL CROSS SECTION- RETAINING WALL**

STA 1+80 TO 2+10  
SCALE: NTS

REV.	DATE	BY	CHK.	APPR.	DESCRIPTION

DESIGNED BY: C. HILLIARD
DRAWN BY: J. KAUP
CHECKED BY: J. KORS
IN CHARGE: C. HILLIARD
DATE: XX/XX/XXXX



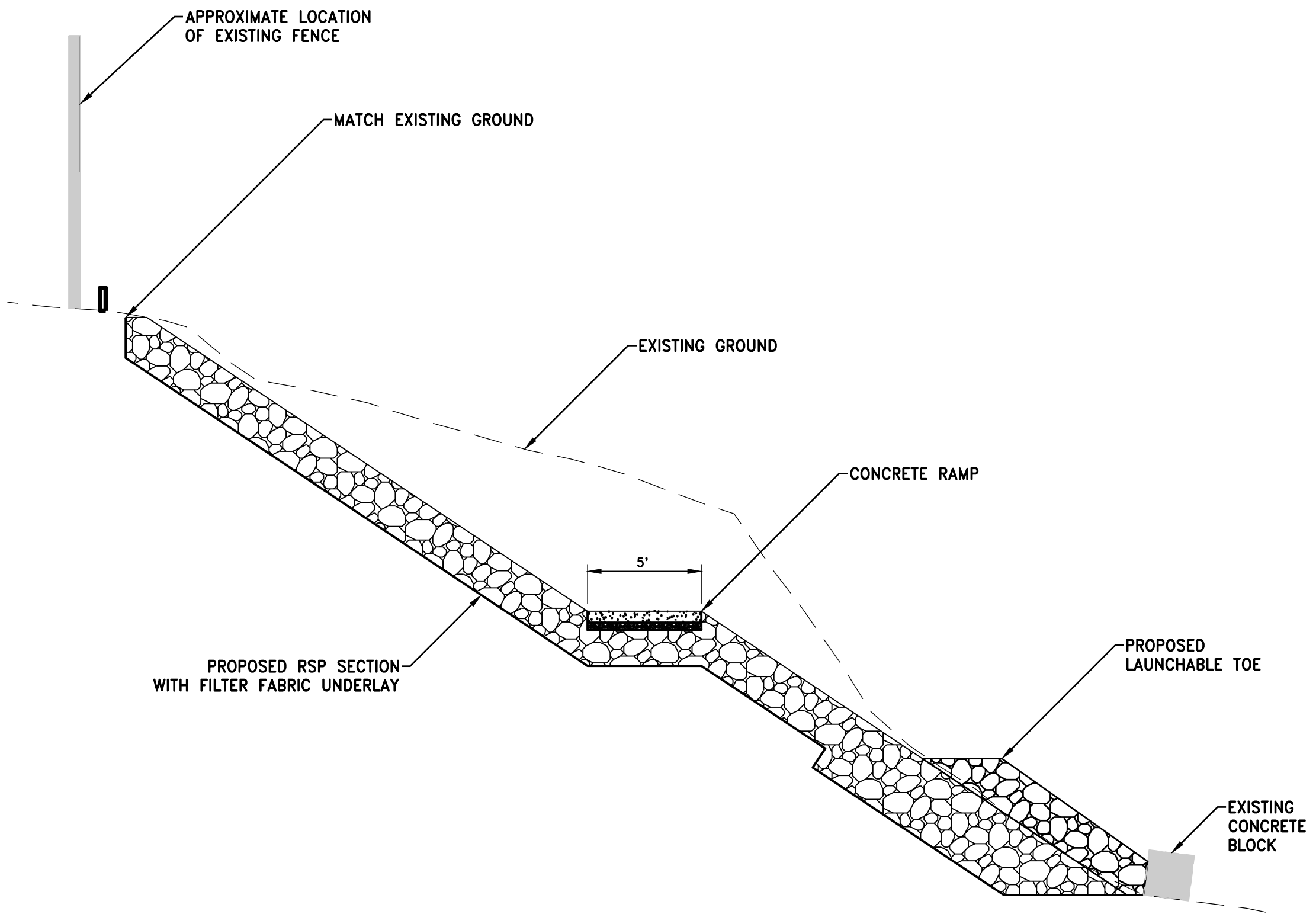
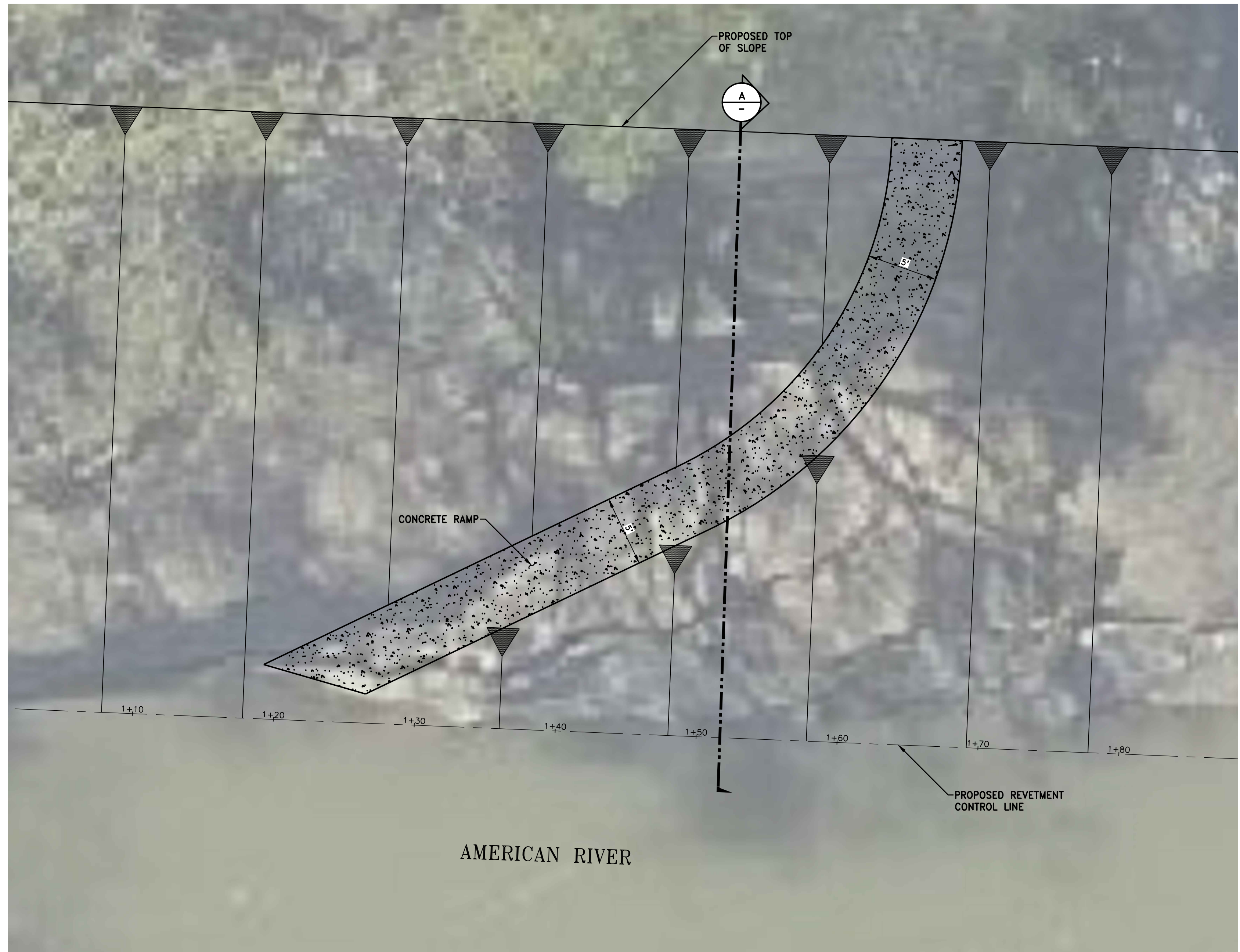
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**FRIEDMAN & BASS PROPERTIES**  
**REVTMENT REPLACEMENT PROJECT**  
TYPICAL DETAILS (2 OF 2)

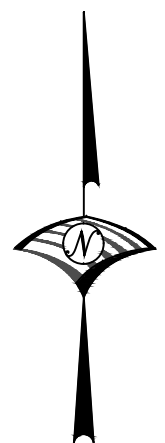
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0" = 1"	
DRAWING NO. <b>C-302</b>	SHEET <b>12</b>

**60% DESIGN**



**ALTERNATIVE CONCRETE RAMP SECTION A**  
SCALE: 1"=5'

**ALTERNATIVE CONCRETE RAMP PLAN**  
SCALE: 1"=5'



REV.	DATE	BY	CHK.	APPR.	DESCRIPTION

DESIGNED BY:  
C. HILLIARD

DRAWN BY:  
J. KAUP

CHECKED BY:  
J. KORS

IN CHARGE:  
C. HILLIARD

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**FRIEDMAN & BASS PROPERTIES**

**REVTMENT REPLACEMENT PROJECT**

**ALTERNATIVE CONCRETE RAMP**

VERIFY SCALES BAR IS ONE INCH ON ORIGINAL DRAWING. ADJUST SCALES FOR REDUCED PLOTS	
0" = 1"	
DRAWING NO. <b>C-303</b>	SHEET <b>13</b>

**American River Flood Control District**  
**Flood Maintenance Assistance Program – O&M Grant**  
**Staff Report**

**Discussion:**

The District recently submitted an application to the State of California Department of Water Resources for grant funding under the Flood Maintenance Assistance Program. Funds issued under this program are eligible to be spent on levee construction, encroachment removal, and equipment purchases. The application submitted by the District included costs for:

- Mini Dump Truck
- Skip Loader
- Chipper
- Backhoe
- Hazardous Tree Removals

The total amount requested was \$533,000.

To be considered for the grant, the District must approve a Resolution authorizing a representative to execute the Funding Agreement and sign an Operations, Maintenance, Repair, Replacement, and Rehabilitation (OMRR&R) Agreement. The OMRR&R Agreement stipulates that the District shall be responsible for any and all maintenance and repairs required on the levee with the exception of replacement of the project after the design life has been reached.

**Recommendation:**

The General Manager recommends that the Board of approve the Resolution and delegate authority to the President or General Manager to sign the OMRR&R Agreement.

## AMERICAN RIVER FLOOD CONTROL DISTRICT WORKPLAN

**AVAILABLE FUNDING: \$533,000**

### **TASK 1: PREPARE LOI/SWIF - \$40K**

The American River Flood Control District (ARFCD) submitted a Letter of Intent (LOI) to the United States Army Corps of Engineers for approval. If necessary, edits will be made to the LOI. ARFC plans to complete its System-Wide Framework (SWIF) document including an updated list of items corrected by the District. The District will submit a draft to both Central Valley Flood Protection Board (CVFPB) and the United States Army Corps of Engineers (USACE) for review. Once comments are incorporated the District will submit the final SWIF to the CVFPB for submittal to USACE; this may or may not occur within the timeframe of this funding cycle, depending on the review time by the CVFPB and USACE.

#### **Deliverables:**

- Draft SWIF (submitted to USACE and CVFPB for review)

### **TASK 2: TECHNICAL/ENGINEERING REPORT**

The District doesn't plan on doing a 218 election at this time.

### **TASK 3: ADMINISTRATIVE ACTIVITIES - \$4,400**

Administrative activities will not exceed 5% of the total cost of the O&M activities.

### **TASK 4: O&M ACTIVITIES - \$88,600**

**Minor Erosion Repairs:** Minor erosion repairs are needed due to people cutting into the levee to make their homes.

**Encroachment Modification/Removal/Maintenance:** The District will address USACE and DWR identified levee deficiencies and unacceptable items.

**Vegetation Management:** The District will identify any trees that are in an advance state of decline that should be considered for removal. The District will remove those that could most impact the integrity of the levee.

#### **Deliverables:**

- Timecards

### **Task 5: Equipment/Material Purchases - \$400,000**

**Equipment.** The District will purchase equipment to assist in maintenance of the levee. The chipper and mini-dump truck will be used for vegetation control on the levee. The backhoe, skip loader and mini-dump will be used for minor erosion repairs.

- Mini-dump truck \$150,000
- Backhoe \$100,000
- Chipper \$50,000

- Skip Loader \$100,000

**Deliverables:**

- Equipment Invoices

# FLOOD MAINTENANCE ASSISTANCE PROGRAM

## GUIDELINES

DECEMBER 2018



STATE OF CALIFORNIA  
THE DEPARTMENT OF WATER RESOURCES



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APPENDICES

APPENDIX 1 – Local Maintaining Agency Authorizing Resolution

APPENDIX 2 – Attorney Certification

APPENDIX 3 – OMRR&amp;R Agreement

ACRONYMS AND ABBREVIATIONS

CVFPB	Central Valley Flood Protection Board
DWR	Department of Water Resources
FMAP	Flood Maintenance Assistance Program
LMA	Local Maintaining Agency
LOI	Letter of Intent
MA	Maintenance Area
O&M	Operations and Maintenance
OMRR&R	Operations, Maintenance, Repair, Rehabilitation, and Replacement
PSP	Proposal Solicitation Package
PL	Public Law
SPFC	State Plan of Flood Control
SWIF	System Wide Investment Framework
USACE	United States Army Corps of Engineers

## 1.0 INTRODUCTION

### Section 1. Program Overview

The Flood Maintenance Assistance Program (FMAP) is a new program providing state funds for eligible maintenance activities to Local Maintaining Agencies (LMAs), including Maintenance Areas (MAs), for the purpose of obtaining acceptable maintenance of the State Plan of Flood Control facilities (levees, channels, and structures).<sup>1</sup>

The 2017 Central Valley Flood Protection Plan (CVFPP) update recognized that the operation and maintenance (O&M) of the State Plan of Flood Control (SPFC) facilities has been chronically underfunded. In response to this need, the Budget Act of 2018 (Stats. 2018, ch. 29, Item 3860-001-0001), appropriated funding to the Department of Water Resources (DWR) for Operations, Maintenance, Repair, Rehabilitation, and Replacement (OMRR&R) costs. It is DWR's intent to work in collaboration with the Central Valley Flood Protection Board (CVFPB) to allocate a portion of these funds to LMAs. DWR's current appropriation by the Legislature is continuous, meaning each year a certain sum will be appropriated to DWR. DWR has developed this new program for the ongoing administration of these funds and estimates that over \$10 million will be available in the first year for eligible applicants.

The primary goals of the CVFPP are to reduce the chance of flooding and property damage during high water events; and, to improve the public safety, community preparedness, and emergency response. Supporting goals of the CVFPP are to improve operations and maintenance, promote ecosystem functions, improve institutional support, and promote multi-benefit projects.

The FMAP will partner with LMAs to work towards sustainable O&M by:

- Providing State funds through a cost-share based program to LMAs to reduce the accumulation of deferred maintenance.
- Providing technical assistance to enable the LMAs to effectively perform the maintenance activities in an efficient manner.
- Securing new OMRR&R assurance agreements between LMAs and the CVFPB.
- Promoting consolidation or regional governance of LMAs so SPFC facilities can be more efficiently and effectively maintained.
- Sustaining and improving eligibility for United States Army Corps of Engineers (USACE) Public Law (PL) 84-99 Program enrollment and ultimately compliance with USACE O&M manual requirements.

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<sup>1</sup> Wat. Code, § 9110, subd. (f).

## **Section 2. Program Description**

It is the Legislature's intent that DWR use the FMAP funds to reduce future costs to taxpayers associated with OMRR&R related costs and encourage local consolidation where possible. Consistent with this intent, one requirement of the FMAP program is that a local entity must sign an updated OMRR&R assurance agreement prior to receiving funds. To receive FMAP funding, LMAs shall conform to all flood reporting requirements including reporting information as required by Assembly Bill 156 (Stats. 2007, ch. 368).<sup>2</sup> DWR will confirm that the required documents and information has been received prior to disbursing any funds under the FMAP program.

DWR will work with the LMAs to fund the development of USACE Letters of Intent (LOI) and System Wide Improvement Framework plans (SWIFs), and associated supporting documents as well as fund eligible maintenance activities to help LMAs attain acceptable maintenance levels for SPFC facilities, first targeting eligibility for the PL 84-99 Program, and eventually obtaining compliance with USACE O&M manual requirements set forth in the Code of Federal Regulations, Title 33, Section 208.10. DWR will work with funding recipients to fund short-term eligible maintenance activities which may include deferred maintenance items as well as other items including rodent abatement and damage repair, and minor erosion and stability repair.

## **Section 3. Funding Authority**

FMAP funds were authorized and appropriated by the California Budget Act of 2018 (Stats. 2018, ch. 29, Item 3860-001-0001) to DWR for costs of operations, maintenance, repair, rehabilitation, and replacement of state flood control levees and infrastructure. It is the intent of Legislature to fund this program annually. Funds shall be available for expenditures for operations and maintenance of locally maintained levees and related activities that reduce state liability and reduce future costs to taxpayers.

## **Section 4. Cost-Sharing Requirements**

The FMAP does not require a local cost share for eligible maintenance activities. However, matching funds for O&M activities may be provided according to the terms of any future Proposal Solicitation Process (PSP), and each of the program criteria must be met for the LMA to receive funding

## **Section 5. Eligible Applicants**

An applicant must be a local public agency (LMA) with land use authority for the area protected by the SPFC facilities.

## **Section 6. Eligible Activities**

The development of LOIs or SWIFs and associated supporting documents.

Preparation of an engineering report(s) and other documents needed to secure sufficient funding to perform OMRR&R activities.

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<sup>2</sup> Water Code, Division 5, Part 4, Chapter 9 (sections 9110-9142, inclusive).

Any of the activities identified by DWR and USACE inspections that help achieve acceptable level of maintenance to assure system performance are eligible for funding from FMAP. This includes all activities required under Code of Federal Regulations, title 33, section 208.10 and the O&M Manual Standards, such as:

- Levee and channel vegetation management
- Rodent abatement and damage repair
- Maintenance of levee slopes and patrol roads
- Minor erosion, seepage, and stability repairs
- Channel scour repair
- Addressing USACE and DWR identified levee deficiencies and unacceptable problems
- Maintenance of structures and other SPFC facilities
- Encroachment management
- Debris and obstruction removal
- Small sediment removal

FMAP performance will be measured by the execution of a new assurance agreement with the CVFPB and flood reporting compliance. **NOTE** that execution of a new assurance agreement with the CVFPB is required prior to the disbursement of any funds pursuant to this Program. Performance will also be measured through DWR's fall flood system inspections by tracking the unacceptable / minimally acceptable miles of levees in each of the LMAs for:

- Levee vegetation control;
- Rodent damage;
- Levee slope erosion / slips;
- Encroachments;
- Unacceptable / minimally acceptable PL 84-99 problems;
- Channel hydraulic capacity; and,
- All other O&M activities required by Code of Federal Regulations, title 33, section 208.10 and O&M Manual standards

### **Ineligible Activities**

To maximize the use of state funding and to avoid any potential duplication of funds, the following limitations will be applied:

- No O&M funding for LMAs eligible for Delta Subventions Program funding
- No funding for O&M of levees that were recently improved, or are to be improved under the Early Implementation Program/Urban Flood Risk Reduction Program or a USACE project
- Funding will be limited to maintenance activities identified in the LMA's submittal that is not currently covered by local funding

### **Section 7. Project Costs**

Eligible project costs include the reasonable costs of preparation of environmental documentation, environmental mitigation, monitoring, and project construction, and

management. Eligible project costs include those eligible costs incurred after the date an applicant has entered into a funding agreement with DWR.

Costs that are not eligible include:

1. Purchase of equipment that is not an integral part of the funded project.
2. Establishment of a reserve fund.
3. Payment of principal or interest on existing indebtedness, any interest payments, or costs associated with project financing,
4. Costs incurred as part of any necessary response and cleanup activities required under the Comprehensive Environmental Response, Compensation, and Liability Act; Resource Conservation and Recovery Act; Hazardous Substances Account Act; or other applicable law.
5. Duplicate work to obtain new data that the State already has available, unless previously approved by the State or waived by the State.
6. Travel, meals, refreshments, and other per diem costs.
7. Costs of preparing and filing grant or other funding applications.
8. Any indirect costs. "Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the funded project (i.e., costs that are not directly related to the funded project). Examples of Indirect Costs include but are not limited to: central service costs; general administration of the Funding Recipient; non-project-specific accounting and personnel services performed within the Funding Recipient's organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; and, generic overhead or markup. This prohibition applies to the Funding Recipient and any subcontract or sub-agreement for work on the funded project that will be reimbursed with grant funds from DWR.

## **Section 8. Proposal Selection and Funding Process**

This will be stated separately in the Proposal Solicitation Package (PSP)

## **Section 9. Requirements when Signing a Funding Agreement with the State**

### **Conflict of Interest and Confidentiality**

All participants are subject to State conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in the proposal being rejected and any agreement being declared void. Other legal action may also be taken. Applicable statutes include, but are not limited to, Government Code section 1090 and Public Contract Code sections 10410 and 10411.

As part of the conflict of interest requirements, individuals working on behalf of a Funding Recipient may be required by the State to file a Statement of Economic Interests (Fair Political Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.

Applicants should be aware that when submitting a proposal to the State, they will waive their rights to the confidentiality of the contents of the proposal. Once final awards have been announced by the DWR, all proposals are subject to disclosure pursuant to the California Public Records Act (Gov. Code, § 6250 et seq.).

### **Indemnify and Hold Harmless**

As part of the funding agreement, applicants shall indemnify and hold harmless the State, its officers, agents, and employees from any and all liability from any claims and damages (including inverse condemnation) arising from the planning, design, construction of repair, replacement, rehabilitation, maintenance, and operation of the project, and any breach of the funding agreement.

### **Labor Code Compliance**

As part of the funding agreement, the funding recipient shall agree to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from the funding agreement to assure that the prevailing wage provisions of the Labor Code are being met. Current Department of Industrial Relations (DIR) requirements may be found at: <http://www.dir.ca.gov/lcp.asp>. For more information, please refer to DIR's

Public Works Manual at: <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>. The funding recipient will also affirm that it is aware of the provisions of section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance.

### **California Environmental Quality Act (CEQA)**

All activities funded pursuant to FMAP must comply with CEQA. (Pub. Resources Code, § 21000 et seq.) Any work that is subject to CEQA and funded under a funding agreement shall not proceed until documents that satisfy the CEQA process are received by DWR and the DWR has completed its CEQA compliance. Any work funded under FMAP that is subject to CEQA shall not proceed until and unless approved by DWR; such approval is fully discretionary. If CEQA compliance by the funding recipient is not complete at the time a funding agreement is executed by the parties, once DWR has considered the environmental documents, it may decide to require changes, alterations, or other mitigation to the Project; or to not fund the Project. Should the State decide to not fund the Project, the funding agreement shall be terminated.

### **Competitive Bidding and Contractor Hiring**

As part of the agreement, the funding recipient's contracts with other entities for the acquisition of goods and services and construction of public works with funds provided by State must be in writing and shall comply with all applicable laws and regulations regarding the securing of competitive bids and undertaking competitive negotiations. If a funding recipient does not have a written policy to award contracts through a competitive bidding or sole source process,

the Department of General Services' *State Contracting Manual* rules must be followed. This document is available at: <https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/State-Contracting>.

## **Section 10. Guidelines Amendments**

Any or all of the eligibility criteria, requirements, or procedures specified in these Guidelines may be changed, substituted or terminated, and/or other criteria may be added at the State's discretion. They may also be changed as a result of the State legislative actions associated with the passage of the annual State Budget Act or other legislation. Amendments to the final Guidelines will be publicly posted for at least a 45-day public comment period prior to finalization.

## **Section 11. Directed Funding**

In addition to soliciting competitive grants, DWR may use FMAP funds for direct expenditures or directed activities that fulfill the intent of the legislation and DWR priorities. Direct expenditure projects are projects proposed by DWR either in response to a solicitation from a stakeholder, another government entity, or on its own initiative. Direct expenditure projects must address an interest of the State and may be proposed and approved at any time. However, any direct expenditure project shall be evaluated by the same eligibility criteria as competitive grants.

Appendix 1

Local Maintaining Agency Authorizing Resolution
Resolution No. \_\_\_\_\_

A Resolution by the \_\_\_\_\_
of the American River Flood Control District
Authorizing a Proposal for funding from the Department of Water Resources and Designating a
Representative to Execute the Agreement and any Amendments thereto, for the
2020-FMAP-ARFCD-01 \_\_\_\_\_ Project

WHEREAS, the American River Flood Control District \_\_\_\_\_ is a California
Public Agency with responsibility for flood maintenance and land use authority of the Project facilities;

WHEREAS the American River Flood Control District \_\_\_\_\_ acknowledges
that it must submit a new operations, maintenance, repair, rehabilitation, and replacement agreement
with the Central Valley Flood Protection Board prior to the receipt of Flood Maintenance Assistance
Program funds;

WHEREAS, the American River Flood Control District \_\_\_\_\_ is authorized to
enter into an agreement with the Department of Water Resources and the State of California;

THEREFORE, BE IT RESOLVED by the \_\_\_\_\_
of the American River Flood Control District \_\_\_\_\_ as follows:

- 1. That pursuant and subject to all of the terms and conditions of the Budget Act of 2018 (Stats.
2018, ch. 29), the \_\_\_\_\_
authorize the \_\_\_\_\_, or designee, to execute the
funding agreement with the Department of Water Resources and any amendments thereto.
2. That the \_\_\_\_\_, or designee, shall prepare the necessary data,
make investigations, and take other such actions as necessary and appropriate to obtain funding
for the 2020-FMAP-ARFCD-01 \_\_\_\_\_ Project.

CERTIFICATION

I hereby certify that the foregoing Resolution No. \_\_\_\_\_ was duly and regularly
adopted by the \_\_\_\_\_ of
the American River Flood Control District \_\_\_\_\_ at the
meeting held on \_\_\_\_\_, motion by \_\_\_\_\_ and
seconded by \_\_\_\_\_, motion passed by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

\_\_\_\_\_  
Authorized Representative Name  
American River Flood Control District

Attest:



## Appendix 2

### Attorney Certification

*(The Applicant's attorney shall answer the following questions regarding this proposal and where indicated, shall cite statutory authority or other references.)*

- Is the Applicant a political subdivision of the State of California?  Yes  No

Citation: \_\_\_\_\_

- Does the Applicant have legal authority to enter into a Funding Agreement with the State of California?  Yes  No

Citation: \_\_\_\_\_

- What steps are required by law for the Applicant to sign a Funding Agreement with the State?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Citation: \_\_\_\_\_

- What is the statutory authority under which the Applicant may obtain funds for the purpose, amount, and duration requested?

Citation: \_\_\_\_\_

- What is the statutory authority under which the Applicant was formed and is authorized to operate?

Citation: \_\_\_\_\_

- Is the Applicant required to hold an election before entering into a funding contract with the State?  Yes  No

Citation: \_\_\_\_\_

- Will an agreement between the Applicant and the State be subject to review and approval by other governmental agencies?  Yes  No

Identify all such agencies: \_\_\_\_\_  
 \_\_\_\_\_

Citation: \_\_\_\_\_

- Describe any pending litigation that impacts the financial condition of the Applicant or the operation of flood management facilities. If none is pending, so state.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- Does the Applicant have legal authority and jurisdiction to implement a flood control program and the authority to make land use decisions at the Project site and in the protected area?  Yes  No

Citation: \_\_\_\_\_

I certify that I am a duly qualified and licensed attorney in California representing the Applicant Agency and that I have answered the questions on this page and the preceding page to the best of my knowledge.

By \_\_\_\_\_ Date \_\_\_\_\_  
 (Signature of Applicant Agency's Attorney)

\_\_\_\_\_  
 (Printed Name of Applicant Agency's Attorney and Title) (Bar No.)  
 American River Flood Control District  
 \_\_\_\_\_  
 (Name of Applicant Agency)

### Appendix 3

#### OMRR&R Agreement

OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION  
 AGREEMENT BETWEEN

The Central Valley Flood Protection Board

AND

American River Flood Control District

FOR

2020-FMAP-ARFCD-01

This Operation, Maintenance, Repair, Replacement, and Rehabilitation Agreement (“OMRR&R Agreement”) is entered into by and between the State of California (“State”), acting by and through the Central Valley Flood Protection Board, or any successor thereto, (“Board”) and the American River Flood Control District (“Funding Recipient”) on this \_\_\_\_ day of \_\_\_\_\_, 2019 in view of the following circumstances:

1. **Flood Maintenance Assistance Program (FMAP) funds were authorized and appropriated by the California legislature for costs associated with improving the operations, maintenance, repair, rehabilitation, and replacement of state flood control levees and infrastructure of Local Maintaining Agencies (LMAs), pursuant to Water Code Section 12878 et seq.**
2. State funding is available for Eligible Activities pursuant to the FMAP:

The State, acting by and through the Department of Water Resources, has solicited applications for funding for its FMAP program.

The Funding Recipient applied for funding and has signed a Funding Agreement. This Funding agreement is between the State of California Department of Water Resources and the American River Flood Control District for 2020-FMAP-ARFCD-01 (“Funding Agreement”).

The Funding Agreement provides that the Funding Recipient will be responsible for operation, maintenance, repair, replacement, and rehabilitation (“OMRR&R”) of State Plan of Flood Control facilities.

The Department has agreed to enter into the Funding Agreement on the condition that the Funding Recipient enters into this OMRR&R Agreement for State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient.

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3. The Funding Recipient already has responsibility for OMRR&R for the existing portions of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient.

NOW, THEREFORE, IT IS HEREBY AGREED:

For purposes of this OMRR&R Agreement, the terms below are defined as indicated:

**“Board:”** The State of California Central Valley Flood Protection Board or any successor thereto.

**“Department:”** The State of California Department of Water Resources.

**“Eligible Activities:”** The development of System Wide Improvement Framework plans (SWIFs), and associated supporting documents, such as the required Letter of Intent to USACE to create a SWIF, and any of the activities identified by the California Department of Water Resources and U.S. Army Corps of Engineers inspections that help achieve acceptable level of maintenance to assure system performance are eligible for funding from FMAP. This includes all activities required under Code of Federal Regulations, title 33, section 208.10 and the O&M Manual Standards, such as:

- Levee and channel vegetation management
- Rodent abatement and damage repair
- Maintenance of levee slopes and patrol roads
- Minor erosion, seepage, and stability repairs
- Channel scour repair
- Addressing USACE and DWR identified levee deficiencies and unacceptable problems
- Maintenance of structures and other SPFC facilities
- Encroachment management
- Debris and obstruction removal
- Small sediment removal

**“Funding Agreement:”** The agreement between the State of California Department of Water Resources and the American River Flood Control District for 2020-FMAP-ARFCD-01 dated \_\_\_\_\_, 2019.

**“Funding Recipient:”** A public agency in the State of California, duly organized, existing, and acting pursuant to the laws thereof, which is the signatory to the Funding Agreement and this OMRR&R Agreement.

**“OMRR&R:”** Operation, maintenance, repair, replacement, and rehabilitation of the portions of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient in accordance with applicable federal law, including without limitation, compliance with O&M requirements contained in Code of Federal Regulations, title 33, section 208.10, Board Resolution No. 2018-06 and future amendments thereto, and applicable Operation and Maintenance manuals for the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient, any revised or updated version of the Operation and Maintenance Manual, or any supplement to the Operation and Maintenance Manual.

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**“OMRR&R Agreement:”** This agreement between the Central Valley Flood Protection Board and the American River Flood Control District for OMRR&R of the State Plan of Flood Control within the jurisdiction of American River Flood Control District.

**“State:”** The State of California, acting by and through the Board.

**“State Plan of Flood Control:”** The state and federal flood control works, lands, programs, plans, conditions, and mode of maintenance and operations described in Public Resources Code section 5096.805(j).

#### SECTION I: Obligations of the Funding Recipient

##### A. General Obligations. The Funding Recipient agrees to the following:

1. To perform OMRR&R of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient. The duties of the Funding Recipient to perform OMRR&R for the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient shall be accomplished in a manner that does not diminish the flood protection afforded by or jeopardize the structural integrity of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient, and the flood control system of which those facilities are a part. The duties of the Funding Recipient pursuant to this paragraph are described further in Section I-B below.
2. To hold and save the federal government and the State, their representatives, officers, directors, employees, including their attorneys and agents and consultants, as well as their successors and assigns, free and harmless from any and/or all claims and damages, including claims based upon inverse condemnation, arising from the operation, maintenance, repair, replacement, or rehabilitation of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient. Upon demand, the Funding Recipient shall reimburse the Board in full for all reasonable costs and attorneys' fees, including, but not limited to, those charged to it by the California Office of Attorney General, that the Board incurs in connection with the defense of any action brought against the Board arising from the operation, maintenance, repair, replacement, or rehabilitation of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient.
3. To hold and save the federal government and the State, their representatives, officers, directors, employees, including their attorneys, agents and consultants, as well as their successors and assigns free and harmless from any and/or all claims or damages arising out of or in connection with the obligations herein assumed by the Funding Recipient, including any responsibility for claims or damages arising out of work performed by the State on the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient for which the State may be held liable and any claims based upon inverse condemnation. Upon demand, the Funding Recipient shall reimburse the Board in full for all reasonable costs and attorneys' fees,

including, but not limited to, those charged to it by the California Office of Attorney General, that the Board incurs in connection with the defense of any action brought against the Board arising out of work performed by the State on the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient for which the State may be held liable and any claims based upon inverse condemnation.

B. Specific Obligations to Operate, Maintain, Repair, Replace, and Rehabilitate

1. The Funding Recipient hereby accepts responsibility for OMRR&R for the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient. Specifically, the Funding Recipient shall be responsible for OMRR&R in accordance with applicable federal laws, including without limitation, compliance with O&M requirements contained in Code of Federal Regulations, title 33, section 208.10, Board Resolution No. 2018-06 and future amendments thereto, and applicable Operation and Maintenance manuals for the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient, any revised or updated version of the Operation and Maintenance Manual, or any supplement to the Operation and Maintenance Manual.
2. The Funding Recipient hereby gives State the right to enter, at reasonable times and in a reasonable manner land which it owns or controls for access to for the purpose of: (i) conducting subsequent inspections to verify that the Funding Recipient is complying with its obligations under this OMRR&R Agreement; and (ii) operating, maintaining, repairing, replacing, or rehabilitating any part of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient located at or in conjunction with any present or future flood control plan if in the reasonable judgment of State, the Funding Recipient fails to comply with its obligations under this OMRR&R Agreement. In the event the State assumes title to any of the land to which the Funding Recipient needs access to fulfill the obligations set forth in the paragraph, the State grants an irrevocable license to the Funding Recipient to enter the land to fulfill its obligations under this OMRR&R Agreement.
3. If the Funding Recipient has failed or refused to perform the obligations set forth in this OMRR&R Agreement or the requirements of the manuals mentioned above, the State may take appropriate actions including proceedings to establish a maintenance area under Water Code section 12878 et seq.

If the Funding Recipient fails to fulfill its obligations under this Agreement and if the failure or refusal constitutes, in the sole discretion of the State, a threat to the continued ability of the of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient to perform in a manner necessary to provide its designed level of flood protection, then the State, after notifying the Funding Recipient and providing a sixty (60) day opportunity to cure period, (except in the case of an emergency), may in its sole discretion develop a work plan and present it to the Funding Recipient with instructions that if the Funding Recipient does not

agree to carry out, or is unable to carry out, the work plan within the time specified in the work plan, the State will perform the necessary work or do so by contract. The Funding Recipient will reimburse the State for the costs of performing such work. No operation, maintenance, repair, replacement, or rehabilitation by the State shall operate to relieve the Funding Recipient of responsibility to meet the Funding Recipient's obligations as set forth in this OMRR&R Agreement, or to preclude the State from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this OMRR&R Agreement.

## SECTION II: Hazardous Substances

The Funding Recipient acknowledges the State may incur obligations with respect to hazardous substances regulated under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), (42 U.S.C. §§ 9601-9675); California Hazardous Substances Account Act, (Health & Safety Code, § 25310 et seq.) or other statutes or regulations (collectively referred to as "state and federal Hazardous Substances Laws") on lands necessary for OMRR&R to the extent the Funding Recipient fails to comply with its obligations under this OMRR&R Agreement. The Funding Recipient agrees:

- A. That in the event that the Funding Recipient discovers through an environmental investigation or other means that any lands, easements, or rights of way that have been acquired or provided for OMRR&R of State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient contain hazardous substances regulated under state and federal Hazardous Substances Laws, the Funding Recipient shall promptly notify the State of that discovery.
- B. That in the event hazardous substances regulated under state and federal Hazardous Substances Laws have been found, the Funding Recipient shall initiate and complete any and all necessary response and cleanup activity required under state and federal Hazardous Substances Laws, which shall include any studies and investigations necessary to determine the appropriate response to the contamination. Payment for the costs of such necessary response and cleanup activity as required under state and federal Hazardous Substances Laws shall be made by the Funding Recipient. In the event that the Funding Recipient fails to provide the funds necessary for response and cleanup activity required under state and federal Hazardous Substances Laws or to otherwise discharge the Funding Recipient's responsibilities under this Paragraph B, then the State may perform the necessary response and cleanup activity, and the Funding Recipient shall reimburse the State in accordance with the procedures set out in this OMRR&R Agreement. If the State performs the necessary response and cleanup activity required under state and federal Hazardous Substances Laws, the State shall consult with the Funding Recipient concerning the selection of the person(s) to perform the work, the amount of money to be spent on the work, the scope of the work, and any other aspect of response and cleanup activity.
- C. That the Funding Recipient shall consult with the State in order to ensure that responsible persons under state and federal Hazardous Substances Laws ultimately bear all necessary response and cleanup costs as defined in state and federal Hazardous Substances Laws.
- D. That the Funding Recipient shall operate, maintain, repair, replace, and rehabilitate State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient in a

manner that will control and minimize the release or threatened release of hazardous substances regulated under state and federal Hazardous Substances Laws on lands necessary for OMRR&R of the existing portions of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient.

- E. That in the event that the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, are found to be liable under state and federal Hazardous Substances Laws for the release or threatened release of hazardous substances arising out of the operation, maintenance, repair, replacement, or rehabilitation of the portions State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient, then the Funding Recipient shall indemnify and hold the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, harmless from any response or cleanup costs for which the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, may be found to be liable under state and federal Hazardous Substances Laws. Upon demand, the Funding Recipient shall reimburse the State for all reasonable costs and attorneys' fees, including, but not limited to, those charged to it by the California Office of Attorney General, that the State incurs in connection with the defense of any action brought against it arising from the release or threatened release of hazardous substances arising out of the operation, maintenance, repair, replacement, or rehabilitation of the portions State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient.
- F. No decision made or action taken pursuant to any provision of this OMRR&R Agreement shall relieve any responsible person from any liability that may arise under state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State or the Funding Recipient of any right to seek from any responsible person as defined by state and federal Hazardous Substances Laws the recovery, contribution of, or indemnification from costs incurred by the State or the Funding Recipient for response or cleanup activity required under state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State of any other right or remedy provided by law.

### SECTION III: Authorization for Delegation or Subcontracting

The Funding Recipient may delegate or subcontract its responsibilities under this OMRR&R Agreement. The Funding Recipient shall be responsible for all work to be performed under the contract, including any delegated work. The State shall have the right to ask that any services for this OMRR&R Agreement provided by any subcontractor be terminated if its performance is unsatisfactory.

Payment for services rendered by subcontractors shall be made entirely by the Funding Recipient; the State shall not have any responsibility for making any payments to the subcontractors for any services they may render in connection with this OMRR&R Agreement.

### SECTION IV: Disputes

Before any party to the OMRR&R Agreement may bring suit in any court concerning an issue relating to this OMRR&R Agreement, that party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to all parties.



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#### SECTION V: Obligation of Future Appropriations

The parties agree that nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations by the Legislature of the State of California.

#### SECTION VI: Term of Agreement; Amendment

The effective date of this OMRR&R Agreement is the date it is signed by all parties. The OMRR&R Agreement will continue in full force and effect unless terminated or amended upon written consent of all parties.

#### SECTION VII: Notices

All notices, requests, demands, and other communications required or permitted to be given under this OMRR&R Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by first class (postage pre-paid), registered, or certified mail, as follows:

##### **If to American River Flood Control District**

##### **American River Flood Control District**

<Address Line 1>

<Address Line 2>

##### **If to the Board**

**Leslie Gallagher, Executive Officer  
 Central Valley Flood Protection Board  
 3310 El Camino Ave., Suite 170  
 Sacramento, CA 95821**

A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this section.

Any notice, request, demand, or other communication made pursuant to this section shall be deemed to have been received by the addressee at such time as it is personally delivered or seven (7) calendar days after it is mailed, as the case may be.

#### SECTION VIII: Standard Conditions

This OMRR&R Agreement incorporates by reference the standard conditions that are included in Exhibit 1 to this OMRR&R Agreement

#### SECTION IX: Authority

The Funding Recipient has provided a copy of a resolution adopted by its governing body designating a representative to execute this OMRR&R Agreement. This resolution is substantially the same as the draft resolution provided in Exhibit 2 to this OMRR&R Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this OMRR&R Agreement.

**The Central Valley Flood  
Protection Board**

**American River Flood Control District**

By

By

\_\_\_\_\_  
**Leslie Gallagher, Executive Officer**  
Central Valley Flood Protection Board

\_\_\_\_\_  
American River Flood Control District

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Legal Form  
and Sufficiency:

Approved as to Legal Form  
and Sufficiency:

\_\_\_\_\_  
**Jit Dua, General Counsel**  
Central Valley Flood Protection Board

\_\_\_\_\_  
<Name, Title>

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit 1

## STANDARD CONDITIONS OF OMRR&amp;R AGREEMENT

1. **GOVERNING LAW:** This OMRR&R Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
2. **TIMELINESS:** Time is of the essence in this OMRR&R Agreement.
3. **AMENDMENT:** This OMRR&R Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Funding Recipient for amendments must be in writing stating the amendment request and the reason for the request. State shall have no obligation to agree to an amendment.
4. **SUCCESSORS AND ASSIGNS:** This OMRR&R Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this OMRR&R Agreement or any part thereof, rights hereunder, or interest herein by the Funding Recipient shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.
5. **INSPECTION OF BOOKS, RECORDS, AND REPORTS:** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this OMRR&R Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this OMRR&R Agreement. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this OMRR&R Agreement, and State may take any other action it deems necessary to protect its interests, after complying with paragraph V of the OMRR&R Agreement.
6. **PROHIBITION AGAINST DISPOSAL OF PROPERTY:** Funding Recipient shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the existing portions of the State Plan of Flood Control facilities within the jurisdiction of the funding recipient, or with Funding Recipient's service of water, without prior permission of State. Funding Recipient shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Funding Recipient meet its obligations under this OMRR&R Agreement, without prior written permission of State. State may require that the proceeds from the disposition of property be remitted to State.
7. **NO THIRD-PARTY RIGHTS:** The parties to this OMRR&R Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this OMRR&R Agreement, or of any duty, covenant, obligation or undertaking established herein.

8. **OPINIONS AND DETERMINATIONS:** Where the terms of this OMRR&R Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
9. **SUIT ON OMRR&R AGREEMENT:** Each of the parties hereto may sue and be sued with respect to this OMRR&R Agreement.
10. **REMEDIES NOT EXCLUSIVE:** The use by either party of any remedy specified herein for the enforcement of this OMRR&R Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.
11. **SEVERABILITY:** Should any portion of this OMRR&R Agreement be determined to be void or unenforceable, such shall be severed from the whole and the OMRR&R Agreement shall continue as modified.
12. **WAIVER OF RIGHTS:** None of the provisions of this OMRR&R Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this OMRR&R Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the OMRR&R Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.
13. **TERMINATION FOR CAUSE:** The State may terminate this OMRR&R Agreement should Funding Recipient fail to perform the requirements of this OMRR&R Agreement at the time and in the manner herein provided.
14. **INDEPENDENT CAPACITY:** Funding Recipient, and the agents and employees of Funding Recipients, in the performance of the OMRR&R Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
15. **CONFLICT OF INTEREST:** All participants are subject to State and Federal conflict of interest laws. Applicable statutes include, but are not limited to, Government Code section 1090 and Public Contract Code sections 10410 and 10411, for State conflict of interest requirements.
  - A. **Current State Employees:** No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest, and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
  - B. **Former State Employees:** For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or

she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.

- C. Employees of the Funding Recipient: Employees of the Funding Recipient shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act. (Gov. Code, § 87100 et seq.)
- D. Employees and Consultants to the Funding Recipient: Individuals working on behalf of a Funding Recipient may be required by the Department to file a Statement of Economic Interests (Fair Political Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.
16. LABOR CODE COMPLIANCE: The Funding Recipient agrees to be bound by all applicable provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to this OMRR&R Agreement to assure that the prevailing wage provisions of the Labor Code are being met. Current Department of Industrial Relations (DIR) requirements may be found at: <https://www.dir.ca.gov/lcp.asp>. For more information, please refer to DIR's Public Works Manual at: <https://www.dir.ca.gov/dlse/PWManualCombined.pdf>. The Funding Recipient affirms that it is aware of the provisions of section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance, and the Funding Recipient affirms that it will comply with such provisions before commencing the performance of the work under this OMRR&R Agreement and will make its contractors and subcontractors aware of this provision.
17. AMERICANS WITH DISABILITIES ACT: By signing this OMRR&R Agreement, Funding Recipient assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. § 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
18. NONDISCRIMINATION CLAUSE: During the performance of this OMRR&R Agreement, Funding Recipient and its contractors or subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital status, and denial of medial and family care leave or pregnancy disability leave. Funding Recipient and its contractors or subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Funding Recipient and its contractors or subcontractors shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code, § 12990.) and the applicable regulations promulgated there under (Cal. Code Regs., tit. 2, § 11000 et seq.). The applicable regulations of the Fair Employment and Housing are incorporated into this Agreement by reference. Funding Recipient and its contractors or subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Funding

Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the OMRR&R Agreement.

19. DRUG-FREE WORKPLACE CERTIFICATION: Certification of Compliance: By signing this Funding Agreement, Funding Recipient, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code, § 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:

- A. Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code section 8355.
- B. Establish a Drug-Free Awareness Program, as required by Government Code section 8355 to inform employees, contractors, or subcontractors about all of the following:
  - i. The dangers of drug abuse in the workplace,
  - ii. Funding Recipient's policy of maintaining a drug-free workplace,
  - iii. Any available counseling, rehabilitation, and employee assistance programs, and
  - iv. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
- C. Provide, as required by Government Code section 8355, that every employee, contractor, and/or subcontractor who works under this Funding Agreement:
  - i. Will receive a copy of Funding Recipient's drug-free policy statement, and
  - ii. Will agree to abide by terms of Funding Recipient's condition of employment, contract or subcontract.

20. UNION ORGANIZING: Funding Recipient, by signing this OMRR&R Agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this OMRR&R Agreement. Furthermore, Funding Recipient, by signing this OMRR&R Agreement, hereby certifies that:

- A. No State funds disbursed by this OMRR&R Agreement will be used to assist, promote, or deter union organizing.
- B. Funding Recipient shall account for State funds disbursed for a specific expenditure by this OMRR&R Agreement to show those funds were allocated to that expenditure.
- C. Funding Recipient shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.
- D. If Funding Recipient makes expenditures to assist, promote, or deter union organizing, Funding Recipient will maintain records sufficient to show that no State funds were used for those expenditures and that Funding Recipient shall provide those records to the Attorney General upon request.

21. **COMPUTER SOFTWARE:** Funding Recipient certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this OMRR&R Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
22. **DELIVERY OF INFORMATION, REPORTS, AND DATA:** Funding Recipient agrees to expeditiously provide, throughout the term of this OMRR&R Agreement, such reports, data, information, and certifications as may be reasonably required by State.
23. **CHILD SUPPORT COMPLIANCE ACT:** The Funding Recipient acknowledges in accordance with Public Contract Code section 7110, that:
  - A. The Funding Recipient recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq.; and
  - B. The Funding Recipient, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
24. **INSPECTIONS OF OMRR&R BY STATE:** State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Funding Agreement. This right shall extend to any subcontracts, and Funding Recipient shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Funding Agreement with State.
25. **ACCESS:** The Funding Recipient shall ensure that the State, or any authorized representative of the foregoing, will have safe and suitable access to the portions of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient at all reasonable times during the term of this Agreement.
26. **VENUE:** The State and the Funding Recipient hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California.

Agreement No. 2020-FMAP-ARFCD-01  
American River Flood Control District

12-2018

**Exhibit 2**  
**OMRR&R Resolution**

Resolution No. \_\_\_\_\_

Resolved by the \_\_\_\_\_  
of the American River Flood Control District

that pursuant and subject to all of the terms and provisions of Budget Act of 2018 (Stats. 2018, ch. 29), that funds awarded to American River Flood Control District by the Department of Water Resources for a Flood Maintenance Assistance Program project titled: 2020-FMAP-ARFCD-01 have been accepted, and as a condition of accepting these funds the Funding Recipient committed to signing an additional agreement with the Central Valley Flood Protection Board, or successor thereto, which requires American River Flood Control District to assume responsibility for operation and maintenance of 2020-FMAP-ARFCD-01

Therefore, the <Presiding Officer, President, Other> of the \_\_\_\_\_ is hereby authorized and directed to sign an operation, maintenance, repair, rehabilitation, and replacement agreement with the Central Valley Flood Protection Board, or successor thereto.

Passed and adopted at a regular meeting of the \_\_\_\_\_  
of the American River Flood Control District  
on \_\_\_\_\_.

Authorized Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Clerk/Secretary: \_\_\_\_\_



### Exhibit 3

#### State Audit Requirements

The following provides a list of documents typically required by State Auditors and general guidelines for Funding Recipients. The list of documents pertains to both State funding and Funding Recipient's Funding Match and details the documents/records that State Auditors would need to review in the event this Funding Agreement is audited. Funding Recipients should ensure that such records are maintained for each project.

#### List of Documents for Audit

##### Internal Controls

1. Organization chart (e.g., Agency's overall organization chart and organization chart for the State-funded Program/Project).
2. Written internal procedures and flowcharts for the following:
  - a) Receipts and deposits
  - b) Disbursements
  - c) State reimbursement requests
  - d) Expenditure tracking of State funds
  - e) Guidelines, policy, and procedures on State-funded Program/Project
3. Audit reports of the Agency internal control structure and/or financial statements within the last two years.
4. Prior audit reports on the State-funded Program/Project.

##### State Funding:

1. Original Funding Agreement, any amendment(s) and budget modification documents.
2. A listing of all grants, loans or subventions received from the State.
3. A listing of all other funding sources for each Program/Project.

##### Contracts:

1. All subcontractor and consultant contracts and related or partners documents, if applicable.
2. Contracts between the Agency and member agencies as related to the State-funded Program/Project.

##### Invoices:

1. Invoices from vendors and subcontractors for expenditures submitted to the State for payments under the Funding Agreement.
2. Documentation linking subcontractor invoices to State reimbursement, requests, and related Funding Agreement budget line items.

3. Reimbursement requests submitted to the State for the Funding Agreement.

Cash Documents:

1. Receipts (copies of warrants) showing payments received from the State.
2. Deposit slips (or bank statements) showing deposit of the payments received from the State.
3. Cancelled checks or disbursement documents showing payments made to vendors, subcontractors, consultants, and/or agents under the grants or loans.
4. Bank statements showing the deposit of the receipts.

Accounting Records:

1. Ledgers showing entries for funding receipts and cash disbursements.
2. Ledgers showing receipts and cash disbursement entries of other funding sources.
3. Bridging documents that tie the general ledger to requests for Funding Agreement reimbursement.

Administration Costs:

1. Supporting documents showing the calculation of administration costs.

Personnel:

1. List of all contractors and Agency staff that worked on the State-funded Program/Project.
2. Payroll records including timesheets for contractor staff and the Agency personnel who provided services charged to the program

Project Files:

1. All supporting documentation maintained in the Project files.
2. All Funding Agreement related correspondence.

## American River Flood Control District

### SAFCA Agreement for OMRR&R

#### Staff Report

##### **Discussion:**

The Sacramento Area Flood Control Agency (SAFCA) constructed a levee improvement project to increase the level of protection of the District's Arcade Creek Levees. The project, called the North Sacramento Streams (NSS) Levee Improvement Project, was cost-shared with the State of California (State). To define cost sharing details, the State requires a Local Project Partnering Agreement with a local project sponsor such as SAFCA to assign roles, responsibilities, and cost-sharing provisions for the work.

The State also requires an Operation, Maintenance, Repair, Replacement, and Rehabilitation (OMRR&R) Agreement between the State and the local sponsors. In recent years, the State also identifies the Local Maintaining Agency (LMA) as an entity that must be a party to the OMRR&R Agreement. In order for SAFCA to obtain cost-sharing funding to complete the NSS project, SAFCA staff requested that the District sign the OMRR&R Agreement.

In the past, the District provided assurances to the State that we would Operate and Maintain any levee facilities constructed and turned over to the District. It is not evident that the District has ever committed to Repair, Replace, or Rehabilitate (RR&R) any levee facilities.

Many LMAs in the Central Valley are struggling with the idea of RR&R and questioning their ability to pay for the enormous costs associated with RR&R. District Legal Counsel at Downey Brand worked with the Central Valley Flood Control Association to draft a white paper that describes the LMAs' understanding of what OMRR&R entails. This white paper is included as Attachment A.

##### **May 2018 Board Approval:**

In May 2018, the Board approved a motion to delegate authority to the President to sign the SAFCA OMRR&R Agreement. The Board directed staff to include a transmittal letter documenting the LMA understanding of the definition of OMRR&R. This Transmittal Letter is included as Attachment B.

##### **2019 State OMRR&R Agreement Revisions:**

In 2019, the State of California Department of Water Resources added language to address concerns that the Agreement's definition of OMRR&R was too vague:

*"OMRR&R:" Operation, maintenance, repair, replacement, and rehabilitation of the Project. In accordance with the Code of Federal Regulations, Title 33, Section 208.10 and federal Operations and Maintenance manuals. The term "repair, replacement, and rehabilitation" as described in ER 1110-2-401 does not include reconstruction of a*

*project or project segment that has reached the end of its design service life or is deficient due to a design or construction defect.*

In August 2019, SAFCA recirculated the updated Agreement for the District's approval. The revised Agreement is included as Attachment C.

**Consideration:**

Although the State added language to clarify the scope and intent of the OMRR&R Agreement, there may still be a concern that some of what is perceived as the State's obligations could be transferred to the District. It may be prudent to include a transmittal letter similar to the one drafted in 2018 with the Board's signature on the Agreement.

**Recommendation:**

The General Manager recommends that the Board of Trustees sign the OMRR&R Agreement and include a transmittal letter indicating the LMA understanding of OMRR&R.

## **Repair, Replacement, and Rehabilitation – The Three Rs (and now perhaps a fourth)**

### **Introduction and Issue**

The State of California provided assurances to the U.S. Army Corps of Engineers (USACE) for the Sacramento River Flood Control Project and the San Joaquin River Flood Control Project, and in providing those assurances, it agreed to perform operation and maintenance (O&M) on the project. For example, the State signed an MOU with USACE for the Sacramento River Flood Control Project in which it stated that it “fully recognizes and accepts its obligation to operate and maintain all completed project works....” SRFCP 1953 MOU. That MOU further provided that the State is obligated for “the operation and maintenance of all of the works, after completion, in accordance with the regulations prescribed by the Secretary of the Army.” This language set the standard for actions by the State. Subsidiary to its obligations to USACE, the State entered into multiple assurance agreements with local maintaining agencies (LMAs) whereby the LMAs agreed to operate and maintain certain portions of the system.<sup>1</sup>

As a result of Congressional directive in the 1986 Water Resources Development Act,<sup>2</sup> USACE changed its guidance and assurance agreements to go beyond merely requiring operation and maintenance of authorized facilities (the term “maintain” previously already included the use of the term “repair”)<sup>3</sup> by adding repair, replacement, and rehabilitation (OMRR&R). While the terms repair, replacement, and rehabilitation can very well be considered subsidiary to maintenance when applied to things like flap gates, gravel roads, and pumps (in other words, *routine* RR&R), many LMAs are concerned about the possible application of the repair, replacement, and rehabilitation obligation to improvements to federal project features that have traditionally been the domain of USACE Civil Works or other capital expenditure programs.

### **Summary of Conclusions**

The sources listed below coupled with past practices suggests that we actually have a fair amount of certainty as to what the RR&R obligation is and isn't, and what level of funding is required to satisfy the RR&R obligation:

---

<sup>1</sup> See also Water Code 8370 which, while it's questionable what effect it has, also uses the terms maintain and operate: “It is the responsibility, liability and duty of the reclamation districts, levee districts, protection districts, drainage districts, municipalities, and other public agencies within the Sacramento River Flood Control Project limits, to maintain and operate the works of the project within the boundaries or jurisdiction of such agencies, excepting only those works enumerated in Section 8361 and those for which provision for maintenance and operation is made by Federal law.”

<sup>2</sup> 33 USC 2213 “Any project to which this section applies (other than a project for hydroelectric power) shall be initiated only after non-Federal interests have entered into binding agreements with the Secretary to pay 100 percent of the operation, maintenance, and replacement and rehabilitation costs of the project, to pay the non-Federal share of the costs of construction required by this section, and to hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors.”

<sup>3</sup> But note the limited context in which the term “repair” was used: “Maintenance. The Superintendent shall provide at all times such maintenance as may be required to insure serviceability of the structures in time of flood. Measures shall be taken to promote the growth of sod, exterminate burrowing animals, and to provide for routine mowing of the grass and weeds, removal of wild growth and drift deposits, and repair of damage caused by erosion or other forces....” 33 C.F.R. 208.10(b)(1).

- RR&R **is not** work undertaken to allow the facility to function better than the as-built condition (see ER 1110-2-401).
- RR&R **is not** work undertaken to address the major performance deficiencies caused by long-term degradation of a project that has exceeded its expected service life (see August 16, 2005 Guidance by MG Don Riley).
- RR&R **is not** work undertaken to address major, non-routine flood system damage caused by significant floods or other rare events (see application of Sacramento Bank Protection Program; PL 84-99; and other historic capital improvements).
- RR&R **is** work undertaken to achieve the requirements of the O&M manual which largely covers routine maintenance (see ER 1110-2-401).

As a result, an LMA's O&M budget (including RR&R) should be based on the level of funding required to achieve the requirements of the O&M manual with a reserve to fund repair, replacement, and rehabilitation of facilities that have a defined and predictable service life, such as a pump station, a gravity drain and removal of fallen trees and repair of roadways after a flood event. It should also be recognized that many LMAs have not had adequate revenue streams to address repair and replacement activities to date. This has created a backlog of deferred maintenance that will need to be addressed. The LMAs will need to work with the CVFPB and DWR to identify revenue sources to address this backlog.

### **Discussion**

Any consideration of the meaning of the terms repair, replacement, and rehabilitation must be considered in the context of how the terms have been defined by USACE. In 1994, USACE issued ER 1110-2-401 which provided definitions for each of the terms:

Repair is considered to entail those activities of a routine nature that maintain the project in a well kept condition. Replacement covers those activities taken when a worn-out element or portion thereof is replaced. Rehabilitation refers to a set of activities as necessary to bring a deteriorated project back to its original condition.

While these definitions are generally helpful, they are still subject to interpretation of whether one must rehabilitate a pump station (traditional routine O&M), or a dam or a levee (more commonly viewed as a capital improvement). However, the next line in that definition is helpful in creating a limitation:

RR&R actions are to conform to the project as-built plans and specifications unless other arrangements are made with the district commander.

Thus, a levee designed decades ago using less stringent engineering standards cannot be upgraded to the current engineering standards on the basis of RR&R. Similarly, RR&R cannot compel repair of damage from a flood event exceeding the original design flood. At the same time, typical earthen levee design assumes there will be some level of minor damage that requires maintenance or repair following the design event.

Another useful piece of guidance was issued on August 16, 2005 by MG Don Riley, the USACE Director of Civil Works. In that guidance document, Major General Riley notes:

Definition of Reconstruction. Cost shared reconstruction will be defined by elimination. Reconstruction excludes design or construction deficiencies. Further, *reconstruction is limited to addressing impediments that prevent a project from performing as authorized after all maintenance, as required by the project operation and maintenance manual and the Code of Federal Regulations, has been accomplished and any deficiencies resulting from a lack of maintenance have been addressed. Reconstruction will consist of addressing the major performance deficiencies caused by a long-term degradation of the foundation, construction materials, and engineering systems that have exceeded their expected service lives and the resulting inability of the project to perform its authorized project functions.* In addressing reconstruction needs, the latest design standards and efficiency improvements should be incorporated into the project.

This statement is helpful in that it makes clear that efforts to address major performance deficiencies that are caused by long-term degradation of the foundation, construction materials, and engineering systems exceeding their expected lives are not RR&R. To use an example, foundation piping as a result of poor rodent management could be a deficiency to be addressed by the non-Federal sponsor under RR&R, while foundation piping due to subsurface foundation conditions would not be a non-Federal sponsor obligation under RR&R. This suggests that one test to determine whether something should be addressed under RR&R or should be addressed under reconstruction (the fourth “R”), may be determined in part by whether consistent adherence to routine O&M could have prevented the problem.

Another helpful consideration is the way in which substantial damage to levees from extreme flood events have been handled historically. In these cases, USACE has typically repaired major damage using the P.L.84-99 or Civil Works authorities. When USACE did not undertake action to repair a damaged levee from a storm event, and the repair exceeded the LMA’s financial capacity, the State of California usually stepped in to repair the levee, often treating it as a capital project.



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**Board of Trustees**  
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Bettina C. Redway  
Cyril A. Shah  
William J. Pavão  
Steven T. Johns

Item 9  
Att B  
**General Manager**  
Timothy R. Kerr, P.E.

May 31, 2018

Mr. Jason Campbell  
Deputy Executive Director  
Sacramento Area Flood Control Agency  
1007 7<sup>th</sup> Street, 7<sup>th</sup> Floor  
Sacramento, California 95814

Dear Mr. Campbell:

At its meeting on May 11, 2018, the Board of Directors considered approval of the Operation, Maintenance, Repair, Replacement, and Rehabilitation Agreement for the Levee Accreditation Project North Sacramento Stream Levee Improvement Project (“OMRR&R Agreement”). The Board has been tracking the ongoing dialogue between the U.S. Army Corps of Engineers, the Department of Water Resources, the Central Valley Flood Protection Board, and fellow local maintaining agencies, regarding the specific obligations associated with the OMRR&R Agreement. The Board has found this dialogue essential in better understanding what a local maintaining agency is agreeing to when and if it executes an OMRR&R Agreement.

That dialogue has helped the Board understand these essential principles for the interpretation of those obligations:

- RR&R is **not** work undertaken to allow the facility to function better than the as-built condition (see USACE ER 1110-2-401).
- RR&R is **not** work undertaken to address the major performance deficiencies caused by long-term degradation of a project that has exceeded its expected service life (see August 16, 2005 Guidance by MG Don Riley).
- RR&R is **not** work undertaken to address major, non-routine flood system damage caused by significant floods or other rare events (see application of Sacramento Bank Protection Program; PL 84-99; and other historic capital improvements).
- RR&R is work undertaken to achieve the requirements of the O&M manual which largely covers routine maintenance (see USACE ER 1110-2-401).

With this understanding the Board authorized the President to execute the OMRR&R Agreement, which is attached for your consideration. If you believe that American River is not correctly interpreting its obligations under this OMRR&R Agreement, please contact me to discuss.



If you have any questions, please do not hesitate to contact me.

Sincerely,



Tim Kerr  
General Manager

Enclosures:

Operation, Maintenance, Repair, Replacement, and Rehabilitation Agreement Between the Central Valley Flood Protection Board and American River Flood Control District and the Sacramento Area Flood Control Agency for the Levee Accreditation Project North Sacramento Streams Levee Improvement Project

Cc:

Leslie M. Gallagher, Executive Officer  
CA Central Valley Flood Protection Board

Board of Trustees  
American River Flood Control District

OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND  
REHABILITATION AGREEMENT BETWEEN  
The Central Valley Flood Protection Board  
AND  
American River Flood Control District and  
the Sacramento Area Flood Control Agency  
FOR  
The Levee Accreditation Project  
North Sacramento Streams Levee Improvement Project

This Operation, Maintenance, Repair, Replacement, and Rehabilitation Agreement (“OMRR&R Agreement”) is entered into by and between the State of California (“State”), acting by and through the Central Valley Flood Protection Board, or any successor thereto, (“Board”), American River Flood Control District (“Local Maintaining Agency”), and, for the limited purpose of Section I.A.3., hereof, the Sacramento Area Flood Control Agency (“Funding Recipient”) on this \_\_\_\_\_ day of \_\_\_\_\_, 2017 in view of the following circumstances:

1. The North Sacramento Streams Levee Improvement Project (the “Project”) is being undertaken under the Department of Water Resources’ (Department) Urban Flood Risk Reduction (“UFRR”) Program. The Project is a part of the Sacramento River Flood Control Project which was authorized by Congress by Section 101(a)(1) of the Water Resources Development Act (WRDA) of 1996 (Pub. L. No. 104-303, § 101(a)(1), 110 Stat. 3658, 3662-3663 (1996)), as amended. Amendments to this authority are as follows: 1) Section 366 of WRDA of 1999 (Pub. L. 106-53, § 366, 113 Stat. 269, 319-20 (1999)); 2) Section 129 of the Energy and Water Development Appropriations Act (EWDAA) of 2004 (Pub. L. No. 108-137, § 129, 117 Stat. 269, 1839 (2003)); 3) Section 130 of the Consolidated Appropriations Act (CAA) of 2008 (Pub. L. No. 110-161, § 130, 121 Stat. 1844, 1947 (2007)); and 4) Section 7002 of the Water Resources Reform and Development Act (WRRDA) of 2014 (Pub. L. No. 113-121, §7002, 128 Stat. 1193, 1366 (2014)).and the Water Infrastructure Improvements for the Nation Act (WINN) of 2016 (Pub. L. No 114-322, §1401) and is a part of the Sacramento River Flood Control Project which was authorized by Congress on March 1, 1917, and amended on May 16, 1928, August 26, 1937, August 18, 1941, August 17, 1954, and July 14, 1960.
2. State funding had become available for the Project:
  - The voters of California approved the California Disaster Preparedness and Flood Prevention Bond Act of 2006 (Proposition 1E) on November 7, 2006, making available proceeds from the sale of general obligation bonds for flood control work and other purposes.
  - The State, acting by and through the Department of Water Resources (“Department”), solicited applications for funding for its Urban Flood Risk Reduction (“UFRR”) Program.
  - The Funding Recipient applied for funding and the UFRR Funding Agreement was executed on February 23, 2015 (“Funding Agreement”). This Funding Agreement is between the Department and the Funding Recipient for the Project.
  - The Funding Agreement provides that the Funding Recipient will be responsible for construction, and operation, maintenance, repair, replacement, and rehabilitation (“OMRR&R”) of projects on land and rights-of-way that will ultimately be transferred to the Sacramento and San Joaquin Drainage District, acting by and through the Board.

- The Department has agreed to enter into the Funding Agreement on the condition that the Funding Recipient enters into this OMRR&R Agreement under which the Board will oversee OMRR&R for the Project for the State of California, as part of the State Plan of Flood Control.
  - Under the Funding Agreement, the Funding Recipient may agree to assume the responsibility of the Local Maintaining Agency as set out in this OMRR&R Agreement, or may agree with a Local Maintaining Agency that it shall assume responsibility for OMRR&R of the Project, provided that the Funding Recipient shall seek to assume responsibility for OMRR&R if for any reason the Local Maintaining Agency fails to perform under this OMRR&R Agreement.
  - The Funding Recipient has agreed with the Local Maintaining Agency that the Local Maintaining Agency shall assume responsibility for OMRR&R by entering into this OMRR&R Agreement.
  - The Department has agreed to enter into the Funding Agreement with the Funding Recipient on the condition that the Local Maintaining Agency enter into the OMRR&R Agreement and that the Funding Recipient shall seek to assume responsibility for OMRR&R if for any reason the Local Maintaining Agency fails to perform under this OMRR&R Agreement.
3. It is not expected that the Federal Government will provide funding for the Project at this time, but in anticipation that federal funds may become available eventually:
- The Funding Agreement requires the Funding Recipient to seek credit for the expenditures made under the Funding Agreement from the Federal Government, acting by and through the U.S. Army Corps of Engineers ("USACE"), and to enter into agreements necessary to obtain credit or reimbursement from the USACE.
  - The parties agree that this OMRR&R Agreement may be superseded by one or more agreements acceptable to the USACE, the Department, and the Board that gives satisfactory assurances to the Federal Government and the Board that the required local cooperation will be furnished in connection with the Project.
4. The Local Maintaining Agency agrees that it already has responsibility for existing portions of the Project (as hereinafter defined and as depicted on the plat attached here to as Figure 1) under California Water Code Section 12642 which states, and under which the State contends, that in all cases where the Federal Government does not maintain and operate projects, it is the responsibility and duty of the county, city, state agency, or public district affected to maintain and operate flood control and other works, constructed pursuant to the Water Code, after their completion, and hold and save the State and the Federal Government free from damages.
5. The Board has agreed to enter into this OMRR&R Agreement on the condition that the Local Maintaining Agency provides the Board with the assurances specified in this OMRR&R Agreement that Local Maintaining Agency or Funding Recipient will be responsible for OMRR&R of the Project upon its completion; and will, as described below, hold and save the Federal Government, State, their representatives, officers, directors, and employees, including their attorneys, free and harmless from any and all claims and damages arising from OMRR&R of the Project, and Funding Recipient will, as described below, hold and save the Federal Government, State, their representatives, officers, directors, and employees, including their attorneys, free and harmless from any and all claims and damages arising from construction of the Project.

6. The Board, Funding Recipient, and the Local Maintaining Agency have agreed that this OMRR&R Agreement will set forth not only their agreement with respect to OMRR&R for the Project, but also for work funded under prior and future funding agreements related to the Project, on land and rights-of-way that have been or will ultimately be transferred to the Sacramento and San Joaquin Drainage District, acting by and through the Board, and all of the federally and State authorized flood facilities related to the project that are within the Local Maintaining Agency's boundaries.

NOW, THEREFORE, IT IS HEREBY AGREED:

For purposes of this OMRR&R Agreement, the terms below are defined as indicated:

**“Board:”** The State of California Central Valley Flood Protection Board or any successor thereto.

**“Department:”** The State of California Department of Water Resources.

**“Funding Agreement:”** Agreement between the State of California Department of Water Resources and the Sacramento Area Flood Control Agency for The Levee Accreditation Project dated February 23, 2017, Agreement Number 4600011724, as amended.

**“Funding Recipient:”** The Sacramento Area Flood Control Agency (SAFCA), a public agency in the State of California, duly organized, existing, and acting pursuant to the laws thereof, which is the signatory to the Funding Agreement.

**“Federal Government:”** Department of the Army represented by the Assistant Secretary of the Army (Civil Works).

**“Local Maintaining Agency:”** The American River Flood Control District, a public agency in the State of California, duly organized, existing, and acting pursuant to the laws thereof, which has been designated by the Funding Recipient as the agency will assume responsibility for OMRR&R for any Functional Portion of the North Sacramento Streams Levee Improvement Project.

**“OMRR&R:”** Operation, maintenance, repair, replacement, and rehabilitation of the Project in accordance with the Code of Federal Regulations, Title 33, Section 208.10 and federal Operations and Maintenance manuals. The term “repair, replacement, and rehabilitation” as described in ER 1110-2-401 does not include reconstruction of a project or project segment that has reached the end of its design service life or is deficient due to a design or construction defect.

**“OMRR&R Agreement:”** This agreement between the Central Valley Flood Protection Board, the Funding Recipient and American River Flood Control District for OMRR&R of the Project.

**“Overall Work Plan:”** The plan described in the Funding Agreement, as amended, and Funding Agreement Exhibit A, as amended.

**“Post Construction Performance Reports:”** This report shall be prepared annually in compliance with Assembly Bill 156 (Stats. 2007, ch. 368) and comply with Section 9140 of the California Water Code.

**“Project:”** All of the federally and State authorized flood facilities to the extent to which they are within the Local Maintaining Agency's boundaries as shown in Figure 1.

**“Project Site:”** The location of the North Sacramento Streams Levee Improvement Project where permanent improvements are made to facilities of the State Plan of Flood Control.

**“North Sacramento Streams Levee Improvement Project:”** The flood risk reduction project features of such North Sacramento Streams Levee Improvement Project as described in the Overall Work Plan described in the relevant Funding Agreement, as amended.

**“Standard Operation and Maintenance Manual:”** A document prepared by the Funding Recipient and approved by the Local Maintaining Agency and submitted to the State for review, comment and approval that will govern the operation, maintenance, repair, replacement and rehabilitation of the Project. This manual will include all manuals related to the State Plan of Flood Control facilities covered by this OMRR&R agreement, including those prepared by the USACE and/or Board for flood, ecosystem, habitat, mitigation or other purposes and any other such manuals.

**“State:”** The State of California, acting by and through the Board.

**“State Plan of Flood Control:”** The state and federal flood control works, lands, programs, plans, conditions, and mode of maintenance and operations described in Cal. Pub. Res. Code § 5096.805(j).

**“USACE:”** The United States Army Corps of Engineers.

SECTION I: Obligations of the Local Maintaining Agency, and, in part, the Funding Recipient.

A. General Obligations. The Local Maintaining Agency, and, in part, as provided in Subsection 3 and 4, below, the Funding Recipient agree to the following:

1. To cause to perform OMRR&R for the Project, without limitation, in accordance with the Project design specifications, environmental permits, environmental impact reports, regulations, and directions prescribed by the State, all without any cost to the State. The duties of the Local Maintaining Agency to perform OMRR&R for all State Plan of Flood Control Project features shall be performed in a manner that does not diminish the flood protection afforded by or jeopardize the structural integrity of the Project and the flood control system of which the Project is part. The duties of the Local Maintaining Agency pursuant to this paragraph are described further in Section I-B below.
2. To defend, indemnify, hold and save the Federal Government and the State, to the extent allowed by law, their representatives, officers, directors, agents, and employees, including their attorneys free and harmless, to the extent permitted by law, from any and all liability for any claims and damages (including inverse condemnation) that may arise out of this OMRR&R Agreement, including but not limited to any claims or damages arising from the construction and performance of OMRR&R under this Agreement.
3. The Funding Recipient agrees to defend, indemnify, hold and save the Federal Government and the State, to the extent allowed by law, their representatives, officers, directors, agents, and employees, including their attorneys free and harmless, to the extent permitted by law, from any and all liability for any claims and damages (including inverse condemnation) that may arise out of construction of the Project, and to assume responsibility for OMRR&R if for any reason the Local Maintaining Agency fails to perform under this Agreement.
4. The Funding Recipient agrees to cause to perform OMRR&R of all mitigation features of the Project, without limitation, in accordance with environmental permits, environmental impact reports, and regulations.

B. Specific Obligations to Operate, Maintain, Repair, Replace, and Rehabilitate

1. The Local Maintaining Agency hereby accepts responsibility for OMRR&R of the Project. The Local Maintaining Agency agrees that it will be responsible for OMRR&R of the Project as further explained in: (1) the Standard Operation and Maintenance Manual for the Project and (2) any applicable Supplement to the Standard Operation and Maintenance Manual for the Project.
2. The Local Maintaining Agency agrees to cooperate in the Funding Recipient's development of a Standard Operation and Maintenance Manual for State Plan of Flood Control features of the Project as required by Board permits issued to The Funding Recipient for the Project. The Standard Operation and Maintenance Manual for the Project or Functional Portions of the Project may be a stand-alone document or an amendment to the Standard Operation and Maintenance Manual for the Project as directed by the Board. The Local Maintaining Agency and the Funding Recipient acknowledge that changes to the Standard Operation and Maintenance Manual of State Plan of Flood Control facilities may be made by the State and the USACE before the document becomes final. The State may make reasonable changes but shall consult with Local Maintaining Agency and Funding Recipient prior to making such changes. Local Maintaining Agency shall be required to update the Standard Operation and Maintenance Manual as may be necessary or as required by the Board and shall make a copy available to the State and Funding Recipient within three (3) days after the State or Funding Recipient so requests. Local Maintaining Agency shall be responsible for OMRR&R in accordance with any revised version of the Standard Operation and Maintenance Manual for the Project or any Supplement to the Standard Operation and Maintenance Manual.
3. The Local Maintaining Agency hereby gives the State and Funding Recipient the right to enter, at reasonable times and in a reasonable manner, upon the Project Site and land which it owns or controls for access to the Project Site for the purpose of: (i) conducting subsequent inspections to verify that the Local Maintaining Agency is complying with its obligations under this OMRR&R Agreement; and (ii) operating, maintaining, repairing, replacing, or rehabilitating any part of the Project located at or accessible by the Project Site in conjunction with any present or future flood control plan if in the reasonable judgment of State or Funding Recipient, the Local Maintaining Agency fails to comply with its obligations under this OMRR&R Agreement. In the event the State assumes title to any of the land to which the Local Maintaining Agency needs access to fulfill the obligations set forth in the paragraph, the State grants an irrevocable license to the Local Maintaining Agency and Funding Recipient to enter the land to fulfill its obligations under this OMRR&R Agreement.
4. If the Local Maintaining Agency has failed or refused to perform the obligations set forth in this OMRR&R Agreement or the requirements of the manuals mentioned above, and for any reason the Funding Recipient is not able to take appropriate actions under these provisions of law, then the Funding Recipient may take appropriate actions under this OMRR&R Agreement as follows: If the failure or refusal constitutes, in the sole discretion of the Funding Recipient, a threat to the continued ability of the Project or functional portion thereof to perform in a manner necessary to provide its designed level of flood protection, then the Funding Recipient may itself perform the necessary work or do so by contract. The Funding Recipient may in its sole discretion develop a work plan and present it to the Local Maintaining Agency with instructions that if the Local Maintaining Agency does not agree to carry out the work plan within the time specified in the work plan, the Funding Recipient will perform the necessary work or do so by contract. The Local Maintaining Agency will reimburse the Funding Recipient for the costs of performing such work in accordance with the procedures set forth in this OMRR&R Agreement. No completion, operation, maintenance, repair, replacement, or

rehabilitation by the Funding Receipt shall operate to relieve the Local Maintaining Agency of responsibility to meet the Local Maintaining Agency's obligations as set forth in this OMRR&R Agreement, or to preclude the Funding Recipient from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this OMRR&R Agreement.

5. If both the Local Maintaining Agency and the Funding Recipient have failed or refused to perform the obligations set forth in this OMRR&R Agreement or the requirements of the manuals mentioned above, the State may take appropriate actions including proceedings to establish a maintenance area under Water Code Section 12878 *et seq.*

If both Local Maintaining Agency and the Funding Recipient have failed or refused to perform the obligations set forth in this OMRR&R Agreement or the requirements of the manuals mentioned above, and for any reason the State is not able to take appropriate actions under these provisions of law, then the State may take appropriate actions under this OMRR&R Agreement as follows: If the failure or refusal constitutes, in the sole discretion of the State, a threat to the continued ability of the Project or functional portion thereof to perform in a manner necessary to provide its designed level of flood protection, then the State may itself perform the necessary work or do so by contract. The State may in its sole discretion develop a work plan and present it to the Local Maintaining Agency and Funding Recipient with instructions that if the Local Maintaining Agency and/or Funding Recipient does not agree to carry out the work plan within the time specified in the work plan, the State will perform the necessary work or do so by contract. The Local Maintaining Agency and/or Funding Recipient will reimburse the State for the costs of performing such work in accordance with the procedures set forth in this OMRR&R Agreement. No completion, operation, maintenance, repair, replacement, or rehabilitation by the State shall operate to relieve the Local Maintaining Agency and Funding Recipient of responsibility to meet their obligations as set forth in this OMRR&R Agreement, or to preclude the State from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this OMRR&R Agreement.

C. Additional Obligations:

1. The Funding Recipient and/or Local Maintaining Agency shall annually review and, if appropriate or requested by the State, update the safety plan for the Project prepared pursuant to the relevant Funding Agreements or required by Cal. Water Code § 9650. The Funding Recipient and/or Local Maintaining Agency agrees to use best efforts to ensure that the updated safety plan is integrated into any other local agency emergency plan and is coordinated with the State emergency plan.
2. No later than September 30 of each calendar year Local Maintaining Agency shall provide an annual Post Construction Performance Report to the Department, in accordance with Water Code Section 9140 that pertain to the Project.
  - (a) If the Local Maintaining Agency is not the same as the Funding Recipient, the Local Maintaining Agency represents that it has made arrangements with the Funding Recipient to obtain any information needed from the Funding Recipient in order to prepare this report.
  - (c) The Department in its sole determination may modify these reporting requirements as needed to ensure that it has adequate information with which to perform its responsibilities.
3. Upon request, the Funding Recipient will provide the State with copies of Project Completion Reports prepared pursuant to the Funding Agreement.

## SECTION II: Hazardous Substances

The Local Maintaining Agency and Funding Recipient acknowledge State may incur obligations with respect to hazardous substances regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675; California Hazardous Substances Account Act, Calif. Health & Safety Code § 25310 *et seq.* or other statutes or regulations (collectively referred to as “state and federal Hazardous Substances Laws”) on lands necessary for Project construction and OMRR&R to the extent the Local Maintaining Agency fails to comply with its obligations under this OMRR&R Agreement. The Local Maintaining Agency agrees:

- A. That in the event that the Local Maintaining Agency discovers through an environmental investigation or other means that any lands, easements, or rights of way that have been acquired or provided for the Project contain reportable quantities of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws, the Local Maintaining Agency shall promptly notify the State and Funding Recipient of that discovery if it can be reasonably anticipated that the discovery of reportable quantities of hazardous substances will require Local Maintaining Agency to incur response costs in excess of \$10,000.

If the Funding Recipient is responsible for OMRR&R, that in the event that the Funding Recipient discovers through an environmental investigation or other means that any lands, easements, or rights of way that have been acquired or provided for the Project contain reportable quantities of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws, the Funding Recipient shall promptly notify the State and Local Maintaining Agency of that discovery if it can be reasonably anticipated that the discovery of reportable quantities of hazardous substances will require the Funding Receipt to incur response costs in excess of \$10,000.

- B. That in the event reportable quantities of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws have been found, the Local Maintaining Agency shall initiate and complete any and all necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, which shall include any studies and investigations necessary to determine the appropriate response to the contamination. Payment for the costs of such necessary response and cleanup activity as required under CERCLA and/or other state and federal Hazardous Substances Laws shall be made by the Local Maintaining Agency. In the event that the Local Maintaining Agency fails to provide the funds necessary for response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws or to otherwise discharge the Local Maintaining Agency’s responsibilities under this Paragraph B, then the State may perform the necessary response and cleanup activity, and the Local Maintaining Agency shall reimburse the State in accordance with the procedures set out in this OMRR&R Agreement. If the State performs the necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, the State shall consult with the Local Maintaining Agency concerning the selection of the person(s) to perform the work, the amount of money to be spent on the work, the scope of the work, and any other aspect of response and cleanup activity.

If the Funding Recipient is responsible for OMRR&R, that in the event reportable quantities of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws have been found, the Funding Recipient shall initiate and complete any and all necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, which shall include any studies and investigations necessary to determine the appropriate response to the contamination. Payment for the costs of such necessary response and cleanup activity as required under CERCLA and/or other state and federal Hazardous Substances Laws shall be made by the Funding Recipient. In the event that the Funding Recipient fails to provide the funds necessary for response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws or to otherwise discharge the Funding Recipient’s responsibilities under this Paragraph B, then the



State may perform the necessary response and cleanup activity, and the Funding Recipient shall reimburse the State in accordance with the procedures set out in this OMRR&R Agreement. If the State performs the necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, the State shall consult with the Funding Recipient concerning the selection of the person(s) to perform the work, the amount of money to be spent on the work, the scope of the work, and any other aspect of response and cleanup activity.

- C. That the Local Maintaining Agency shall consult with the State in order to ensure that responsible persons under CERCLA and/or other state and federal Hazardous Substances Laws ultimately bear all necessary response and cleanup costs as defined in CERCLA and/or other state and federal Hazardous Substances Laws.

If the Funding Recipient is responsible for OMRR&R, that the Funding Recipient shall consult with the State in order to ensure that responsible persons under CERCLA and/or other state and federal Hazardous Substances Laws ultimately bear all necessary response and cleanup costs as defined in CERCLA and/or other state and federal Hazardous Substances Laws.

- D. That the Local Maintaining Agency shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will control and minimize the release or threatened release of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws on lands necessary for Project construction, operation, maintenance, repair, replacement, or rehabilitation.

If the Funding Recipient is responsible for OMRR&R, that the Funding Recipient shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will control and minimize the release or threatened release of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws on lands necessary for Project construction, operation, maintenance, repair, replacement, or rehabilitation.

- E. That in the event that the State, their representatives, officers, directors, employees, including their attorneys, as well as their successors and assigns, are found to be liable under CERCLA and/or other state and federal Hazardous Substances Laws for the release or threatened release of hazardous substances arising out of the operation, maintenance, repair, replacement, or rehabilitation of the Project, then the Local Maintaining Agency shall indemnify and hold the State, their representatives, officers, directors, employees, including their attorneys, as well as their successors and assigns, harmless from any response or cleanup costs for which the State, their representatives, officers, directors, employees, including their attorneys, as well as their successors and assigns, may be found to be liable under CERCLA and/or other state and federal Hazardous Substances Laws.

If the Funding Recipient is responsible for OMRR&R, that in the event that the State, their representatives, officers, directors, employees, including their attorneys, as well as their successors and assigns, are found to be liable under CERCLA and/or other state and federal Hazardous Substances Laws for the release or threatened release of hazardous substances arising out of the operation, maintenance, repair, replacement, or rehabilitation of the Project, then the Funding Recipient shall indemnify and hold the State, their representatives, officers, directors, employees, including their attorneys, as well as their successors and assigns, harmless from any response or cleanup costs for which the State, their representatives, officers, directors, employees, including their attorneys, as well as their successors and assigns, may be found to be liable under CERCLA and/or other state and federal Hazardous Substances Laws.

- F. No decision made or action taken pursuant to any provision of this Section of the Project OMRR&R Agreement shall relieve any responsible person from any liability that may arise under CERCLA and/or other state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State, the Local Maintaining Agency or the Funding

Recipient of any right to seek from any responsible person as defined by CERCLA and/or other state and federal Hazardous Substances Laws the recovery, contribution of, or indemnification from costs incurred by the State, the Local Maintaining Agency or the Funding Recipient for response or cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State of any other right or remedy provided by law.

### SECTION III: Authorization for Delegation or Subcontracting

The Local Maintaining Agency or the Funding Recipient may delegate or subcontract its responsibilities under this OMRR&R Agreement. The Local Maintaining Agency or the Funding Recipient shall be responsible for all work to be performed under the contract, including any delegated work. The State shall have the right to ask that any services for this OMRR&R Agreement provided by any subcontractor be terminated if its performance is unsatisfactory.

Payment for services rendered by subcontractors shall be made entirely by the Local Maintaining Agency or the Funding Recipient; the State shall not have any responsibility for making any payments to the subcontractors for any services they may render in connection with this OMRR&R Agreement.

### SECTION IV: Procedures for Reimbursing the State

If the Local Maintaining Agency fails to fulfill its obligations under this Agreement and if the failure or refusal constitutes, in the sole discretion of the State, a threat to the continued ability of the flood project to perform in a manner necessary to provide its designed level of flood protection, then the Funding Recipient, after notifying the Local Maintaining Agency and providing a sixty (60) day opportunity to cure period, may in its sole discretion develop a work plan and present it to the Local Maintaining Agency with instructions that if the Local Maintaining Agency does not agree to carry out, or is unable to carry out, the work plan within the time specified in the work plan, the Funding Recipient will perform the necessary work or do so by contract. The Local Maintaining Agency agrees, subject to compliance with applicable state law, to reimburse the Funding Recipient for the costs of performing such work in accordance with the procedures set forth in this Agreement. No completion, operation and maintenance, by the Funding Recipient shall operate to relieve the Local Maintaining Agency of responsibility to meet the Local Maintaining Agency's obligations as set forth in this Agreement, or to preclude the Funding Recipient from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

If the Local Maintaining Agency and Funding Recipient fails to fulfill its obligations under this Agreement and if the failure or refusal constitutes, in the sole discretion of the State, a threat to the continued ability of the flood project to perform in a manner necessary to provide its designed level of flood protection, then the State, after notifying the Local Maintaining Agency and the Funding Recipient and providing a sixty (60) day opportunity to cure period, may in its sole discretion develop a work plan and present it to the Local Maintaining Agency and the Funding Recipient with instructions that if the Local Maintaining Agency or the Funding Recipient does not agree to carry out, or is unable to carry out, the work plan within the time specified in the work plan, the State will perform the necessary work or do so by contract. The Local Maintaining Agency and the Funding Recipient agree, subject to compliance with applicable state law, to reimburse the State for the costs of performing such work in accordance with the procedures set forth in this Agreement. No completion, operation and maintenance, by the State shall operate to relieve the Local Maintaining Agency or the Funding Recipient of responsibility to meet the Local Maintaining Agency's and the Funding Recipient's obligations as set forth in this Agreement, or to preclude the State from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

SECTION V: Disputes

Before any party to the OMRR&R Agreement may bring suit in any court concerning an issue relating to this OMRR&R Agreement, that party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to all parties.

SECTION VI: Obligation of Future Appropriations

The parties agree that nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations by the Legislature of the State of California, the Board of Directors of Funding Recipient, and the Board of Trustees of the Local Maintaining Agency.

SECTION VII: Term of Agreement; Amendment

The effective date of this OMRR&R Agreement is the date all parties sign it. The OMRR&R Agreement will continue in full force and effect unless terminated or amended upon written consent of all parties.

The parties acknowledge that in order to obtain federal credits or reimbursement for this Project, it may be necessary to amend this OMRR&R Agreement as required by the USACE. The parties agree that they will not unreasonably withhold consent for any amendments necessary to obtain federal credits or reimbursement.

#### SECTION VIII: Notices

All notices, requests, demands, and other communications required or permitted to be given under this OMRR&R Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by first class (postage pre-paid), registered, or certified mail, as follows:

If to the Local Maintaining Agency:  
American River Flood Control District  
ATTN: General Manager  
185 Commerce Circle  
Sacramento, CA 95815

If to the Board:  
Central Valley Flood Protection Board  
ATTN: Executive Officer  
3310 El Camino Avenue, Suite 170  
Sacramento, CA 95821

If to the Funding Recipient:  
Sacramento Area Flood Control Agency  
ATTN: Executive Director  
1007 7<sup>th</sup> Street, 7<sup>th</sup> Floor  
Sacramento, CA 95814

A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this section.

Any notice, request, demand, or other communication made pursuant to this section shall be deemed to have been received by the addressee at such time as it is personally delivered or seven (7) calendar days after it is mailed, as the case may be.

#### SECTION IX: Standard Conditions

This OMRR&R Agreement incorporates by reference the standard conditions that are included in Attachment A to this OMRR&R Agreement.

SECTION X: Authority

The Funding Recipient and the Local Maintaining Agency have each provided a copy of a resolution adopted by its governing body designating a representative to execute this OMRR&R Agreement. This resolution is substantially the same as the draft resolution provided in Attachment B to this OMRR&R Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this OMRR&R Agreement.

The Central Valley Flood Protection Board

American River Flood Control District

By \_\_\_\_\_  
Leslie M. Gallagher,  
Executive Officer

By \_\_\_\_\_  
Brian Holloway,  
Board of Trustees, President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Legal Form  
and Sufficiency:

Approved as to Legal Form  
and Sufficiency:

\_\_\_\_\_  
Kanwarjit Dua,  
Board Counsel

\_\_\_\_\_  
David Aladjem,  
District Legal Counsel

Sacramento Area Flood Control Agency

By \_\_\_\_\_  
Jason Campbell,  
Deputy Executive Director

Approved as to Legal Form  
And Sufficiency:

\_\_\_\_\_  
M. Holly Gilchrist,  
Agency Counsel

Attachment A

STANDARD CONDITIONS

1. **GOVERNING LAW:** This OMRR&R Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
2. **TIMELINESS:** Time is of the essence in this OMRR&R Agreement.
3. **AMENDMENT:** This OMRR&R Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Local Maintaining Agency for amendments must be in writing stating the amendment request and the reason for the request. State shall have no obligation to agree to an amendment.
4. **SUCCESSORS AND ASSIGNS:** This OMRR&R Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this OMRR&R Agreement or any part thereof, rights hereunder, or interest herein by the Local Maintaining Agency shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.
5. **INSPECTION OF BOOKS, RECORDS, AND REPORTS:** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this OMRR&R Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this OMRR&R Agreement. Failure or refusal by Local Maintaining Agency to comply with this provision shall be considered a breach of this OMRR&R Agreement, and State may take any other action it deems necessary to protect its interests, after complying with paragraph V of the OMRR&R Agreement.
6. **PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION:** Local Maintaining Agency shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, without prior permission of State. Local Maintaining Agency shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Local Maintaining Agency meet its obligations under this OMRR&R Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property acquired, reimbursed or credited with State funds be remitted to State.
7. **NO THIRD PARTY RIGHTS:** The parties to this OMRR&R Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this OMRR&R Agreement, or of any duty, covenant, obligation or undertaking established herein.
8. **OPINIONS AND DETERMINATIONS:** Where the terms of this OMRR&R Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
9. **SUIT ON OMRR&R AGREEMENT:** Each of the parties hereto may sue and be sued with respect to this OMRR&R Agreement.
10. **REMEDIES NOT EXCLUSIVE:** The use by either party of any remedy specified herein for the enforcement of this OMRR&R Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

11. SEVERABILITY: Should any portion of this OMRR&R Agreement be determined to be void or unenforceable, such shall be severed from the whole and the OMRR&R Agreement shall continue as modified.
12. WAIVER OF RIGHTS: None of the provisions of this OMRR&R Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties hereto that from time to time either party may waive any of its rights under this OMRR&R Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the OMRR&R Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.
13. TERMINATION FOR CAUSE: The State may terminate this OMRR&R Agreement should Local Maintaining Agency fail to perform the requirements of this OMRR&R Agreement at the time and in the manner herein provided or in the event of a default by the Funding Recipient under the relevant Funding Agreement.
14. INDEPENDENT CAPACITY: Local Maintaining Agency, and the agents and employees of Local Maintaining Agencies, in the performance of the OMRR&R Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
15. CONFLICT OF INTEREST
  - a) Current State Employees: No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
  - b) Former State Employees: For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.
  - c) Employees of the Local Maintaining Agency: Employees of the Local Maintaining Agency shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act, Cal. Gov't Code § 87100 *et seq.*
  - d) Employees of and Consultants to the Local Maintaining Agency: Individuals working on behalf of a Local Maintaining Agency may be required by the Department to file a Statement of Economic Interests (Fair Political Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.
16. WORKERS' COMPENSATION: Local Maintaining Agency affirms that it is aware of the provisions of Labor Code Section 3700 *et seq.*, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Local Maintaining Agency affirms that it will comply with such provisions before commencing the performance of the work under this OMRR&R Agreement and will make its contractors and subcontractors aware of this provision.

17. AMERICANS WITH DISABILITIES ACT: By signing this OMRR&R Agreement, Local Maintaining Agency assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C., 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
18. NONDISCRIMINATION CLAUSE: During the performance of this OMRR&R Agreement, Local Maintaining Agency and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Local Maintaining Agency and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Local Maintaining Agency and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Local Maintaining Agency and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Local Maintaining Agency shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the OMRR&R Agreement.

#### 19. DRUG-FREE WORKPLACE CERTIFICATION

Certification of Compliance: By signing this OMRR&R Agreement, Local Maintaining Agency, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and, if such Act applies to Local Maintaining Agency, have or will provide a drug-free workplace by taking the following actions:

a) Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code Section 8355(a)(1).

b) Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:

1. The dangers of drug abuse in the workplace,
2. Local Maintaining Agency's policy of maintaining a drug-free workplace,
3. Any available counseling, rehabilitation, and employee assistance programs, and
4. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.

c) Provide as required by Government Code Sections 8355(a)(3), that every employee, contractor, and/or subcontractor who works under this OMRR&R Agreement:

1. Will receive a copy of Local Maintaining Agency's drug-free policy statement, and
2. Will agree to abide by terms of Local Maintaining Agency's condition of employment, contract or subcontract.



Suspension of Payments: This OMRR&R Agreement may be subject to suspension of payments or termination, or both, and Local Maintaining Agency may be subject to debarment if the State determines that:

- a) Local Maintaining Agency, its contractors, or subcontractors have made a false certification, or
- b) Local Maintaining Agency, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted above.

20. UNION ORGANIZING: Local Maintaining Agency, by signing this OMRR&R Agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this OMRR&R Agreement. Furthermore, Local Maintaining Agency, by signing this OMRR&R Agreement, hereby certifies that:

- a) No State funds disbursed by this OMRR&R Agreement will be used to assist, promote, or deter union organizing.
- b) Local Maintaining Agency shall account for State funds disbursed for a specific expenditure by this OMRR&R Agreement to show those funds were allocated to that expenditure.
- c) Local Maintaining Agency shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.
- d) If Local Maintaining Agency makes expenditures to assist, promote, or deter union organizing, Local Maintaining Agency will maintain records sufficient to show that no State funds were used for those expenditures and that Local Maintaining Agency shall provide those records to the Attorney General upon request.

21. COMPUTER SOFTWARE: Local Maintaining Agency certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this OMRR&R Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

22. DELIVERY OF INFORMATION, REPORTS, AND DATA: Local Maintaining Agency agrees to expeditiously provide, during work on the Urban Flood Risk Reduction Program and throughout the term of this OMRR&R Agreement, such reports, data, information, and certifications as may be reasonably required by State.

23. RIGHTS IN DATA: Local Maintaining Agency agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this OMRR&R Agreement shall be made available to the State and shall be in the public domain to the extent to which release of such materials is required under the California Public Records Act, Cal. Gov't Code §§ 6250 *et seq.* Local Maintaining Agency may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this OMRR&R Agreement, subject to appropriate acknowledgement of credit to State for financial support. Local Maintaining Agency shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this paragraph for any public purpose.

23. CHILD SUPPORT COMPLIANCE ACT: For any OMRR&R Agreement in excess of \$100,000, the Funding Recipient acknowledges in accordance with Public Contract Code 7110, that:

- a) The Funding Recipient recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings

assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b) The Funding Recipient, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

24. PRIORITY HIRING CONSIDERATIONS: If this OMRR&R Agreement includes services in excess of \$200,000, the Funding Recipient shall give priority consideration in filling vacancies in positions funded by the OMRR&R Agreement to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code § 10353.
25. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the Funding Recipient certifies by signing this OMRR&R Agreement, under penalty of perjury under the laws of State of California that Funding Recipient is in compliance with Public Contract Code section 10295.3
26. LOCAL MAINTAINING AGENCY NAME CHANGE: Approval of the State is required to change the Local Maintaining Agency's name as listed on this OMRR&R Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
27. AIR OR WATER POLLUTION VIOLATION: Under State laws, the Local Maintaining Agency shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution

## General Manager's Meeting Summary

August 2019

**8/5: SAFCA Agency Staff meeting.** I attended this meeting to coordinate on local flood control topics. Items of discussion included a contract bid opening for the remaining SAFCA work on the North Sac Streams Project, FMAP Grant funding, Pipe location with Ground Penetrating Radar, and the Two River's Trail through River park.

**8/9: American River Flood Control District Board of Trustees meeting.** The Board met in regular session. The agenda items included a permit for a pipe abandonment for PG&E, a scope of work for a roof replacement design from Lionakis, and a Sheriff Work Crew labor contract.

**8/13: ARFCD Policy Committee meeting.** The Policy Committee met to review the District Recreational Trails Policy.

**8/23: Assembly Bill 137 Conference Call.** I participated in this call with staff from the Central Valley Flood Protection Board, the City of Sacramento, and Assemblyman Cooper's office to work on responses to comments on the draft legislation.

**8/27: CalPERS Prefunding OPEB Workshop.** I attended this training workshop at CalPERS to learn about their prefunding opportunities in the California Employers' Retiree Benefit Trust (CERBT) Fund.

**8/27: ARFCD Newsletter meeting.** The Office Manager Chapman and I met with Robin Hardy and Vicki Mongan to lay out ideas for the 2019/20 Newsletter.