

## JURISDICTIONAL DETERMINATION

U.S. Army Corps of Engineers  
Sacramento District

**File Number: SPK-2005-01007**

### PROJECT LOCATION INFORMATION:

State: California  
County: Placer  
Center Coordinates of Site: Latitude 38.881637° North, Longitude 121.110259° West  
Approximate size of area (parcel) reviewed, including uplands: 5 acres  
Name of nearest waterway: Auburn Ravine  
Name of watershed: Upper Coon-Upper Auburn

### JURISDICTIONAL DETERMINATION

**Completed:** Desktop determination [X] Date: July 17, 2008  
Site visit [X] Date: April 11, 2008; May 25, 2006

#### Jurisdictional Determination (JD):

Preliminary JD - Based on available information,  *there appear to be* (or)  *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).

*There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area.  
Approximate size of jurisdictional area:

*There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area.  
Approximate size of jurisdictional area:

*There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.

Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

### BASIS OF JURISDICTIONAL DETERMINATION:

#### A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":

The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

#### B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":

(1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

(2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

(3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

(i) which are could be used by interstate or foreign travelers for recreational or other purposes.

(ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

(iii) which are or could be used for industrial purposes by industries in interstate commerce.

(4) Impoundments of waters otherwise defined as waters of the U.S.

(5) The presence of a tributary to a water identified in (1) - (4) above.

(6) The presence of territorial seas.

(7) The presence of wetlands adjacent<sup>2</sup> to other waters of the U.S., except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:*

**Lateral Extent of Jurisdiction:** (Reference 33 CFR parts 328 and 329)

- Ordinary High Water Mark indicated by:
  - clear, natural line impressed on the bank
  - the presence of litter and debris
  - changes in the character of soil
  - destruction of terrestrial vegetation
  - shelving
  - other:
- High Tide Line indicated by:
  - oil or scum line along shore objects
  - fine shell or debris deposits (foreshore)
  - physical markings/characteristics
  - tidal gages
  - other:
- Mean High Water Mark indicated by:
  - survey to available datum;
  - physical markings;
  - vegetation lines/changes in vegetation types.
- Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- The reviewed area consists entirely of uplands.
- Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
  - Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - Isolated, intrastate wetland with no nexus to interstate commerce.
  - Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - Other (explain):

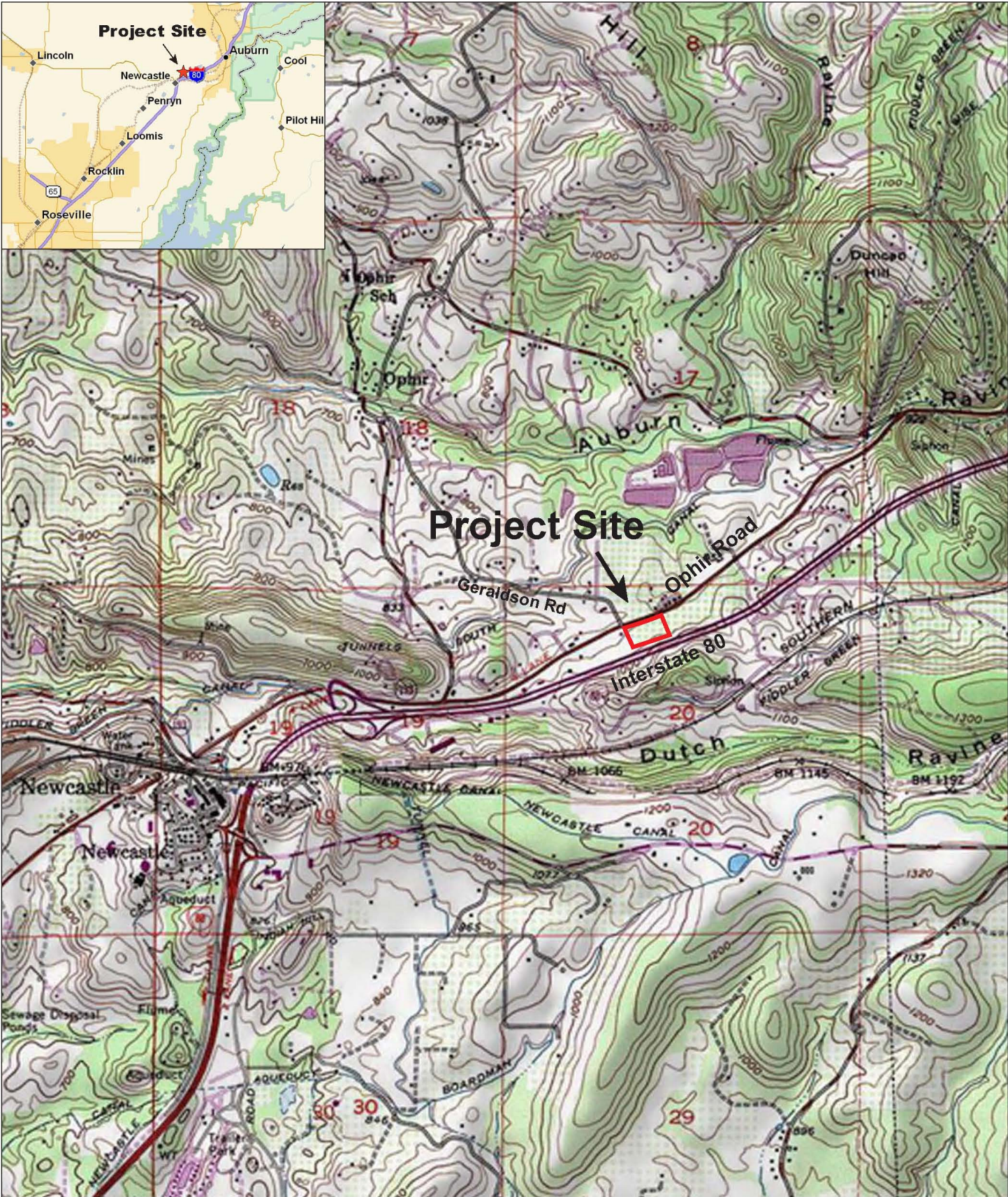
**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply)**

- Maps, plans, plots or plat submitted by or on behalf of the applicant.
- Data sheets prepared/submitted by or on behalf of the applicant.
  - This office concurs with the delineation report
  - This office does not concur with the delineation report, dated October 12, 2005, revised July 14, 2008, prepared by North Fork Associates.
- Data sheets prepared by the Corps.
- Corps' navigable waters' studies:
  - U.S. Geological Survey Hydrologic Atlas:
  - U.S. Geological Survey 7.5 Minute Topographic maps: Auburn, California
  - U.S. Geological Survey 7.5 Minute Historic quadrangles:
  - U.S. Geological Survey 15 Minute Historic quadrangles:
  - USDA Natural Resources Conservation Service Soil Survey: Soil Survey of Placer County, California, Western Part, 1970
  - National wetlands inventory maps: Auburn Quadrangle
  - State/Local wetland inventory maps:
  - FEMA/FIRM maps (Map Name & Date):
  - 100-year Floodplain Elevation is: (NGVD)
  - Aerial Photographs (Name & Date): provided by consultant, November 2004; August 2005
  - Other Photographs (Date):
  - Advanced Identification Wetland maps:
- Site visit/determination conducted on: April 11, 2008
- Applicable/supporting case law:
- Other information (please specify): This office does not concur with the delineation report dated October 12, 2005, revised July 14, 2008, prepared by North Fork Associates. However, this office does concur with Appendix C Wetland Delineation Map, Livingston's Concrete Batch Plant Project, dated September 26, 2005, revised July 14, 2008. The wetlands onsite formed as a result of a broken water pipe, which has since been repaired. The wetlands are reverting to uplands as evidenced by the change in hydrophytic vegetation extent between the May 25, 2006, site visit and the April 11, 2008, site visit. Wetland vegetation within the Roadside Ditch is no longer present except for a single *Juncus xiphioides* occurrence. Hydrophytic vegetation is also no longer present in Seasonal Wetland 2, although dead hydrophytic vegetation was observed (most likely died from lack of soil saturation). Likewise, Seasonal Wetland 1 has also shrunk considerably in size (0.18 acre of hydrophytic vegetation has died). This supports the conclusion that the principal source of water onsite was the broken water

pipe and that the seasonal wetlands are reverting to uplands upon repair of the broken pipe and removal of the water source.

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.



0 1000 2000  
Approximate scale in feet



Base map: Auburn, CA, USGS  
7.5 minute topographic quadrangle

Figure 1

**SITE & VICINITY MAP**

*Livingston's Concrete Batch Plant Project*

Placer County, California



| <b>PREPARED BY:</b><br><br>110 Maple Street<br>Auburn, CA 95603                |   | <b>PREPARED FOR:</b><br>PLACER COUNTY PLANNING DEPARTMENT<br>11414 B Avenue<br>Auburn, California, 95603<br>530.886.3000<br>Contact: Leah Rosasco |    |
|---|---|---|----|
| <b>DRAWN BY:</b> D. Cao<br><b>DELINEATORS:</b> S. Frazier, E. Gottschalk, M. Hostler, P. Britton<br><b>DATE OF FIELDWORK:</b> 8-23-05, 8-24-08, 5-25-06 & 6-26-08 |   | <b>USACE REGULATORY FILE#:</b> 200501007<br><b>DATE OF FIELD VERIFICATION:</b> April 11, 2008   |    |
| REVISIONS   |   |   |    |
| DATE  | DESCRIPTION                                 |   | BY |
| June 23, 2006   | Changes based on wetland field verification |   | DC |
| June 30, 2008   | Changes based on wetland field verification |   | DG |

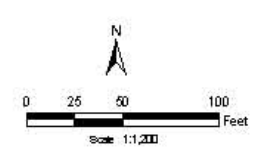
| WATERS OF THE UNITED STATES |             | ISOLATED WATERS OF THE UNITED STATES |             |
|-----------------------------|-------------|--------------------------------------|-------------|
| WETLANDS                    | ACREAGE     | WETLANDS                             | ACREAGE     |
| None                        | 0.00        | Seasonal Wetland SW-1                | 0.07        |
| <b>TOTAL</b>                | <b>0.00</b> | <b>TOTAL</b>                         | <b>0.07</b> |

NOTES: 1. Aerial photograph date: August 2005  
 2. Wetland field verification conducted April 11, 2008.

**APPENDIX C**

**WETLAND DELINEATION MAP**  
*Livingston's Concrete Batch Plant Project*  
 Placer County, California  
 September 26, 2005  
 Revised: July 14, 2008

- Project Site Boundary
- Wetland Data Point
- Upland Data Point
- Culvert
- Roadside Ditch



Scale: 1:1,200