



Public Notice

U.S. ARMY CORPS OF ENGINEERS

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Subject: Public Notice of Permit Application

Action ID Numbers: SPK-2017-00826 & 12669-1

Comments Period: 28 March 2019 – 27 April 2019

SUBJECT: The U.S. Army Corps of Engineers (USACE), Sacramento District, is evaluating a permit application from the U.S. Bureau of Reclamation (requester/applicant) to construct the Nimbus Hatchery Fish Passage Project in the American River, which would result in the permanent discharge of fill material into approximately 3.35 acres of waters of the United States, as well as the temporary discharge of fill material into 3.42 acres of the United States subject to Section 404 of the Clean Water Act. In compliance with U.S.C. Title 33, Chapter 9, Subchapter 1, Section 408, the U.S. Bureau of Reclamation (requester) has also requested permission through the Central Valley Flood Protection Board (non-federal sponsor of the federally authorized project) from the USACE to alter the American River Flood Control Project an existing federal flood risk management project. This notice is to inform interested parties of the proposed activity and to solicit comments. This notice may also be viewed at the USACE's web sites at www.spk.usace.army.mil/Media/RegulatoryPublicNotices.aspx and <https://www.spk.usace.army.mil/408permissions/>

AUTHORITY: This application is being evaluated under Section 404 of the Clean Water Act for the discharge of dredged or fill material into waters of the United States. Additionally, the project is being review under the authority to grant permission for temporary or permanent use, occupation or alteration of any USACE civil works project is contained in Section 14 of the Rivers and Harbors Act of 1899, as amended, codified at 33 U.S.C. 408 ("Section 408"). Section 408 authorizes the Secretary of the Army, on the recommendation of the Chief of Engineers, to grant permission for the alteration or occupation or use of a USACE project if the Secretary determines that the activity will not be injurious to the public interest and will not impair the usefulness of the project. The Secretary of Army's authority under Section 408 has been delegated to the USACE, Chief of Engineers. The USACE Chief of Engineers has further delegated the authority to the USACE, Directorate of Civil Works and Division and District Engineers, depending upon the nature of the activity. A requester or applicant has the responsibility to acquire all other permissions or authorizations required by federal, state, and local laws or regulations, including any other required permits. In addition, an approval under from USACE does not grant any property rights or exclusive privileges nor does it authorize any injury to the property or rights of others.

APPLICANT: U.S. Bureau of Reclamation
Attn: Mr. Drew Lessard
7794 Folsom Dam Road
Folsom, California 95630
dlessard@usbr.gov

U.S. ARMY CORPS OF ENGINEERS – Sacramento District
1325 J Street, Room 1350, Sacramento, CA 95814-2922
<http://www.spk.usace.army.mil/Missions/Regulatory.aspx>

LOCATION: The approximately 74.0-acre project site is located in and along the American River, below Nimbus Dam, in Section 25, Township 9 North, Range 7 East, MDB&M, Latitude 38.63506°, Longitude -121.22317°, Nimbus Fish Hatchery, Rancho Cordova, Sacramento County, California, and can be seen on the Folsom USGS Topographic Quadrangle.

PROJECT DESCRIPTION: The applicant is proposing to construct a new fish passageway at Nimbus Shoals. The entrance to this fish passageway would be in the Nimbus Dam stilling basin. The new passageway would tie into the existing fishway at the top of the fish ladder section near the Nimbus Fish Hatchery. The existing diversion weir is proposed to be removed; therefore, Nimbus Dam would serve as the upstream barrier to fish migration. Other site improvements include upgrading the access road to Nimbus Shoals, re-aligning parts of the American River Bike Trail, and a visitor plaza with a pedestrian walkway at the existing hatchery. The total size of the work area for this project is approximately 8.6 acres. Permanent impacts to waters of the United States include the removal of 3,100 cubic yards of rock slope protection (RSP) and 6,500 cubic yards of soil. Additional permanent impacts include the addition of 1,050 cubic yards of RSP, 7,930 cubic yards of soil, and 1,595 cubic yards of concrete. The proposed action would include the temporary discharge of fill material into 3.41 acres waters of the United States, the American River, for the installation of a coffer dam to dewater approximately 0.20 acres of the American River for the construction of the fish ladder and the removal of the weir. An additional 0.01 acres of temporary discharge of fill material is proposed to ephemeral drainages to construct the new portion of the fish ladder. The proposed action would also result in a permanent discharge of fill material into 3.34 acres of the American River and 0.01 acre of ephemeral drainages. The applicant has stated that the purpose and need of the proposed project is to improve the spawning numbers of the listed fish species. The Corps has not yet made a determination on the purposes of the evaluation of the proposed action under Section 404 of the Clean Water Act. The attached drawings provide additional project details.

ADDITIONAL INFORMATION:

Environmental Setting. There are approximately 45.87 acres of waters of the United States within the project area. These waters of the United States include a reach of the lower American River and associated riparian habitat within the active river channel. The ephemeral drainage is located above the ordinary high water mark of the active river channel. The project site is at approximately 95 feet to 135 feet above mean sea level. The site is below the Nimbus Dam and within the American River Parkway. The majority of the site is the active river channel. This portion of the American River is a component in a National Wild and Scenic River System.

Alternatives. The applicant has provided information concerning project alternatives. These alternatives include keeping the current physical project design the same and changing when or if fishing will be allowed within the project area after the construction of the new fish ladder is completed. An additional alternative that has been presented by the applicant, is Alternative 2 which would keep most of the existing fish ladder and would add additional entrances to this ladder. The existing weir would be removed and a new weir would be constructed just upstream of the current weir. Additional information concerning project alternatives may be available from the applicant. Other alternatives may develop during the

review process for this permit application. All reasonable project alternatives, in particular those which may be less damaging to the aquatic environment, will be considered.

Mitigation. USACE requires that applicants consider and use all reasonable and practical measures to avoid and minimize impacts to aquatic resources. If the applicant is unable to avoid or minimize all impacts, the USACE may require compensatory mitigation. The applicant proposes that this project itself is self-mitigating, and is therefore not proposing compensatory mitigation. To reduce impacts to waters of the United States, the applicant is proposing to do the in river work during the driest part of the year, during the summer and fall months. The applicant is also placing their staging areas above the high water mark of the river, and using Best Management Practices (BMPs) to reduce impacts to the river. These BMPs include the placement of turbidity curtains, silt fences or other erosion control devices.

OTHER GOVERNMENTAL AUTHORIZATIONS: Water quality certification or a waiver, as required under Section 401 of the Clean Water Act from the California Regional Water Quality Control Board is required for this project. The applicant has indicated they have applied for this certification. A Streambed Alteration Agreement is required from the California Department of Fish and Wildlife for this project. The applicant and the California Department of Fish and Wildlife (Game) prepared an Environmental Impact Statement/Environmental Impact Report for this project which was finalized in 2011.

HISTORIC PROPERTIES: Potentially eligible cultural resources may be affected by the proposed project. The applicant, the Bureau of Reclamation, is the federal lead agency for this project and they are conducting consultation with the State Historic Preservation Officer under Section 106 of the National Historic Preservation Act, as appropriate. USACE will ensure that the consultation will meet the needs of potential impacts to waters of the United States as well.

ENDANGERED SPECIES: The proposed activity may affect Federally-listed endangered or threatened species or their critical habitat. Species of concern in the area include the California Central Valley steelhead (*Oncorhynchus mykiss*), the Chinook salmon (*O. tshawytscha*), Central Valley spring-run Chinook salmon (*O. tshawytscha*), and the valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*). Critical habitat for listed fish species occurs on-site. The applicant, the Bureau of Reclamation, is the federal lead agency for this project and they are conducting consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, as appropriate. USACE will ensure that the consultation will meet the needs of potential impacts to waters of the United States as well. The USACE will ensure consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service, pursuant to Section 7 of the Endangered Species Act is done, as appropriate.

ESSENTIAL FISH HABITAT: The proposed project may adversely affect Essential Fish Habitat. The USACE will ensure consultation with the National Marine Fisheries Service, pursuant to Magnuson-Stevens Fishery Conservation and Management Act is completed, as appropriate.

The above determinations are based on information provided by the applicant and our preliminary review.

EVALUATION FACTORS FOR SECTION 404: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the described activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the described activity, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the described activity will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The activity's impact on the public interest will include application of the Section 404(b)(1) guidelines promulgated by the Administrator, Environmental Protection Agency (40 CFR Part 230).

EVALUATION FACTORS FOR SECTION 408: The decision whether to grant the requested permission for project alteration under Section 408 will be based on several factors. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. Review of requests for alteration will be reviewed by a USACE technical review team considering the following factors:

1) Impair the Usefulness of the Project Determination: The review team will determine if the proposed alteration would limit the ability of the USACE project to function as authorized, or would compromise or change any authorized project conditions, purposes or outputs. In order for an alteration to be approved, the requester must demonstrate that the alteration does not impair the usefulness of the federally authorized project.

2) Injurious to the Public Interest Determination: Proposed alterations will be reviewed to determine the probable impacts, including cumulative impacts, on the public interest. Factors that may be relevant to the public interest evaluation depend upon the type of USACE project being altered and the nature of the proposed alteration and may include, but are not limited to, such things as conservation, economic development, historic properties, cultural resources, environmental impacts, water supply, water quality, flood hazards, floodplains, residual risk, induced damages, navigation, shore erosion or accretion, and recreation. This evaluation will consider information received from the interested parties, including tribes, agencies, and the public. The benefits that reasonably may be expected to accrue from the proposal must be compared against its reasonably foreseeable detriments. The decision whether to approve an alteration will be determined by the consideration of whether benefits are commensurate with risks and by the net impact of the alteration on the public interest using the public interest factors.

3) Environmental Compliance: A decision on a Section 408 request is a federal action, and therefore subject to the National Environmental Policy Act (NEPA) and other environmental compliance requirements. While USACE is responsible for ensuring environmental compliance, the requester is responsible for providing all information that the district identifies as necessary to satisfy all applicable federal laws, executive orders, regulations, policies, and

procedures. NEPA and other analysis completed to comply with other environmental statutes (e.g. Endangered Species Act) should be commensurate with the scale and potential effects of the activity that would alter the USACE project. The district will work with the requester to determine the requirements, which will be scaled to the likely impacts of the proposed alteration and should convey the relevant considerations and impacts in a concise and effective manner.

GENERAL EVALUATION FACTORS: The USACE is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the USACE to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

SUBMITTING COMMENTS: Written comments, referencing Public Notice SPK-2017-00826 and 12669-1 must be submitted to the office listed below on or before **27 April 2019**.

Kaleigh Maze, Biologist, 408 Permission Section
Email: Kaleigh.Maze@usace.army.mil
Kathy Norton, Sr. Project Manager, Regulatory Division
Email: Kathy.Norton@usace.army.mil
US Army Corps of Engineers, Sacramento District
1325 J Street, Room 1350
Sacramento, California 95814-2922

The USACE is particularly interested in receiving comments related to the proposal's probable impacts on the affected aquatic environment and the secondary and cumulative effects. Anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state, with particularity, the reason(s) for holding a public hearing. If the Corps determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act. If you have questions or need additional information please contact the applicant's representative, Ms. Sarah Perrin, U.S. Bureau of Reclamation, 916-537-7063, sperrin@usbr.gov, or the USACEs' Section 404 Regulatory project manager Ms. Kathy Norton, (916) 557-5260, Kathy.Norton@usace.army.mil, and the USACE's Section 408 biologist Ms. Kaleigh Maze, Kaleigh.Maze@usace.army.mil.

Attachments: 10 drawings



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Project Location

Nimbus Hatchery Fish Passage Project

Figure 1



Source: Reclamation 2009

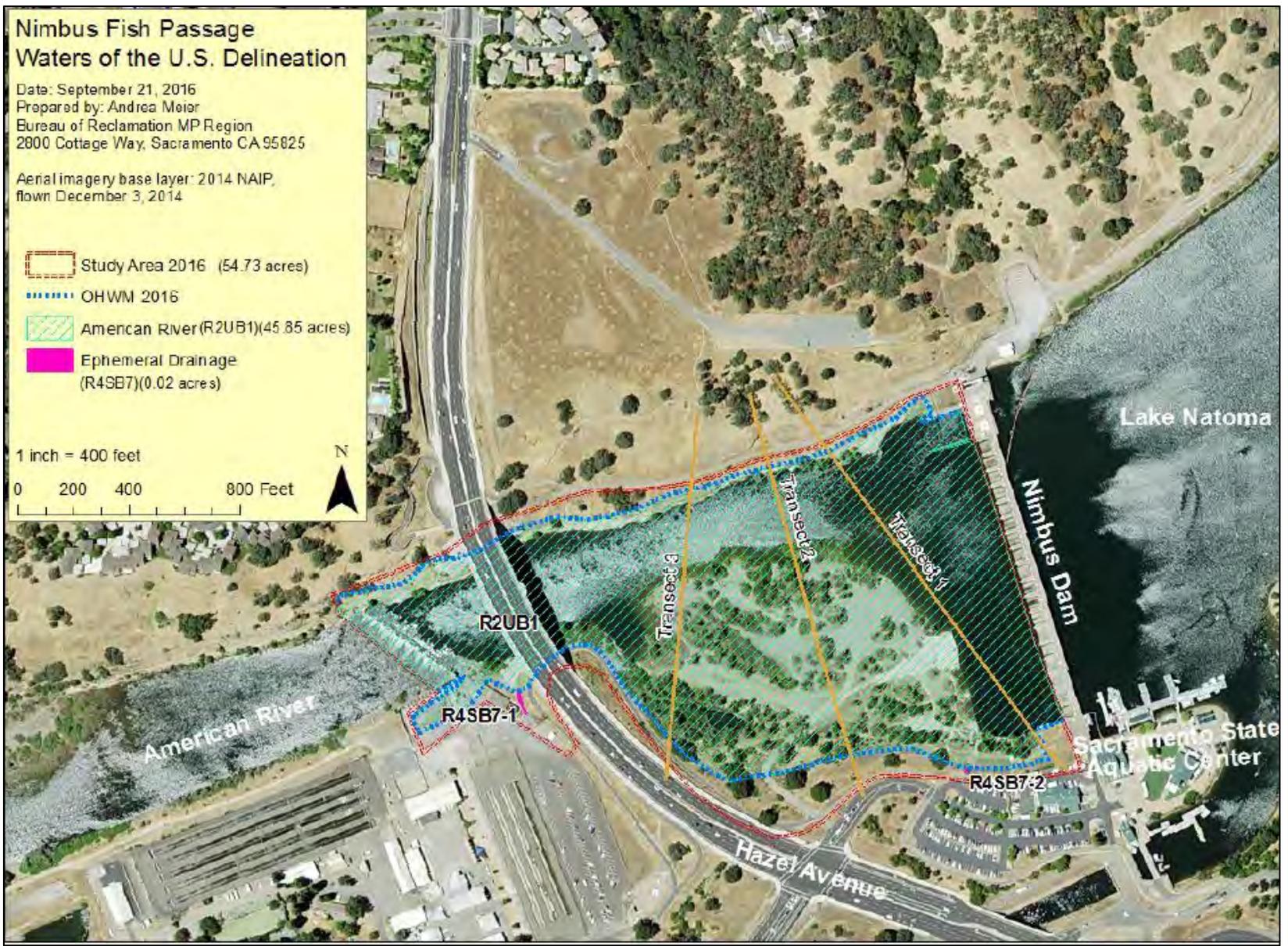
Legend

- Existing Diversion Weir
- Existing Fish Ladder
- USGS Cable

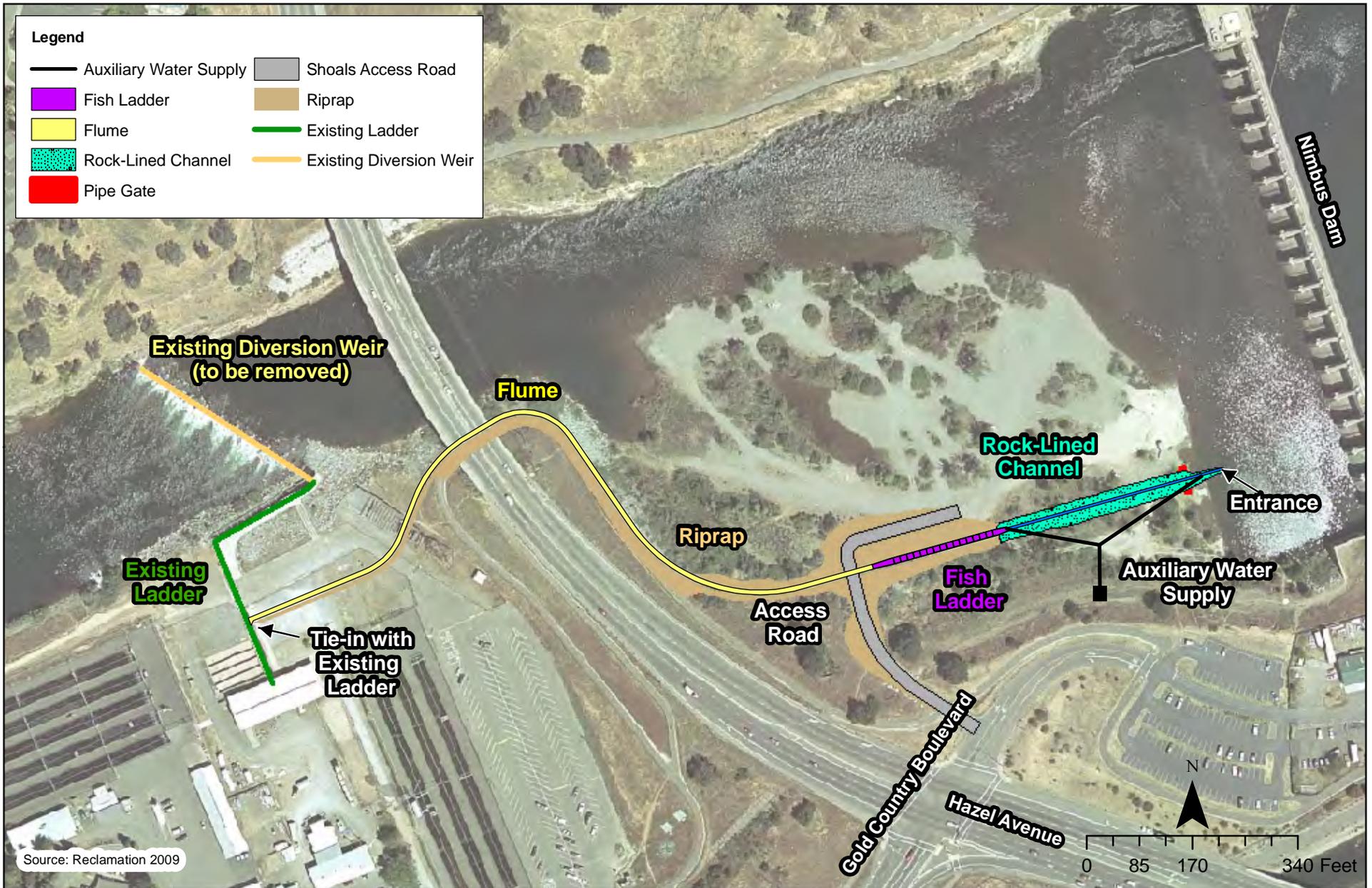
Project Area

Nimbus Hatchery Fish Passage Project

Figure 2



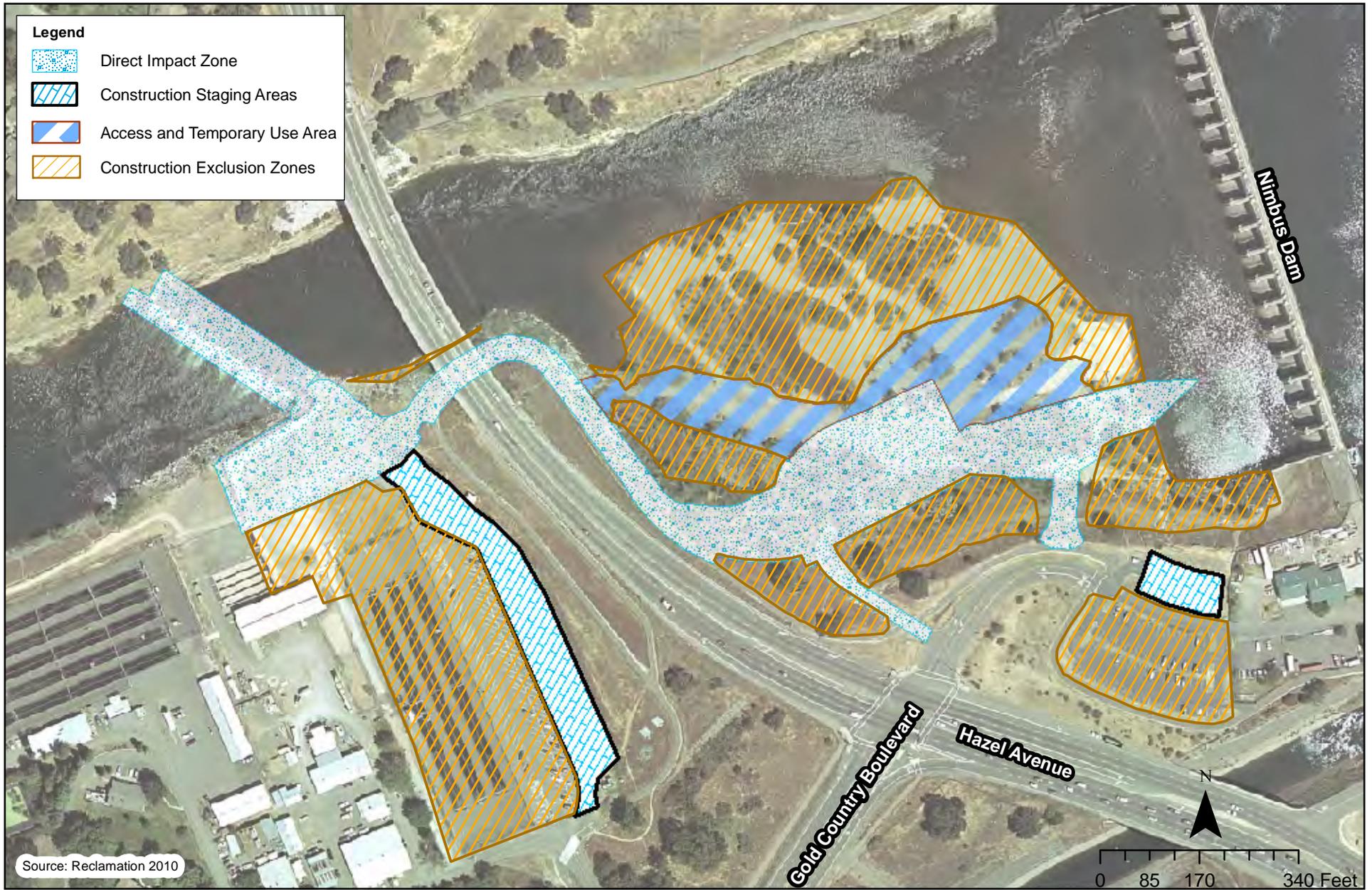
Waters of the U.S.
 Nimbus Hatchery Fish Passage Project
Figure 3



Alternative 1: Modified Fish Passageway

Nimbus Hatchery Fish Passage Project

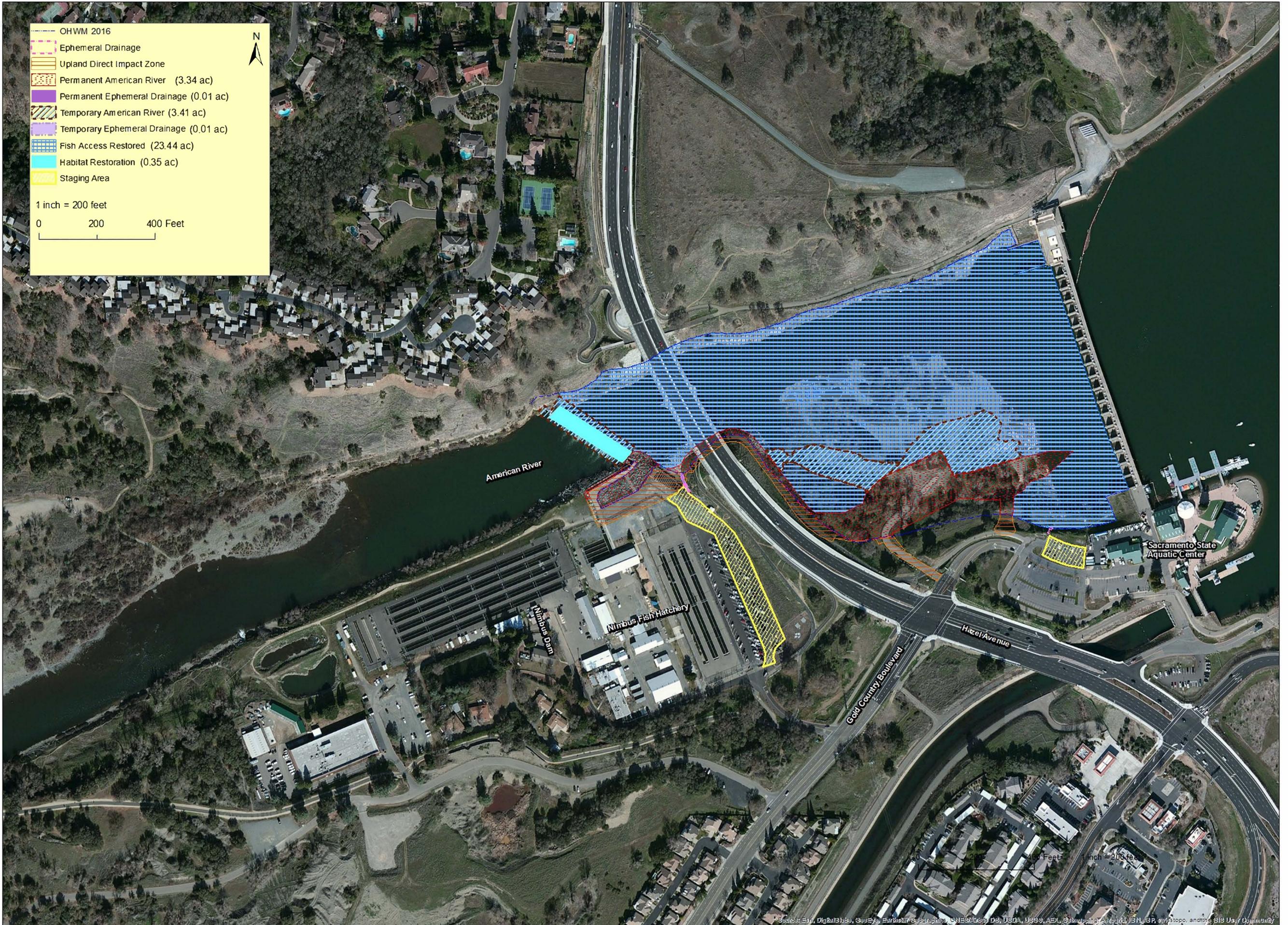
Figure 4

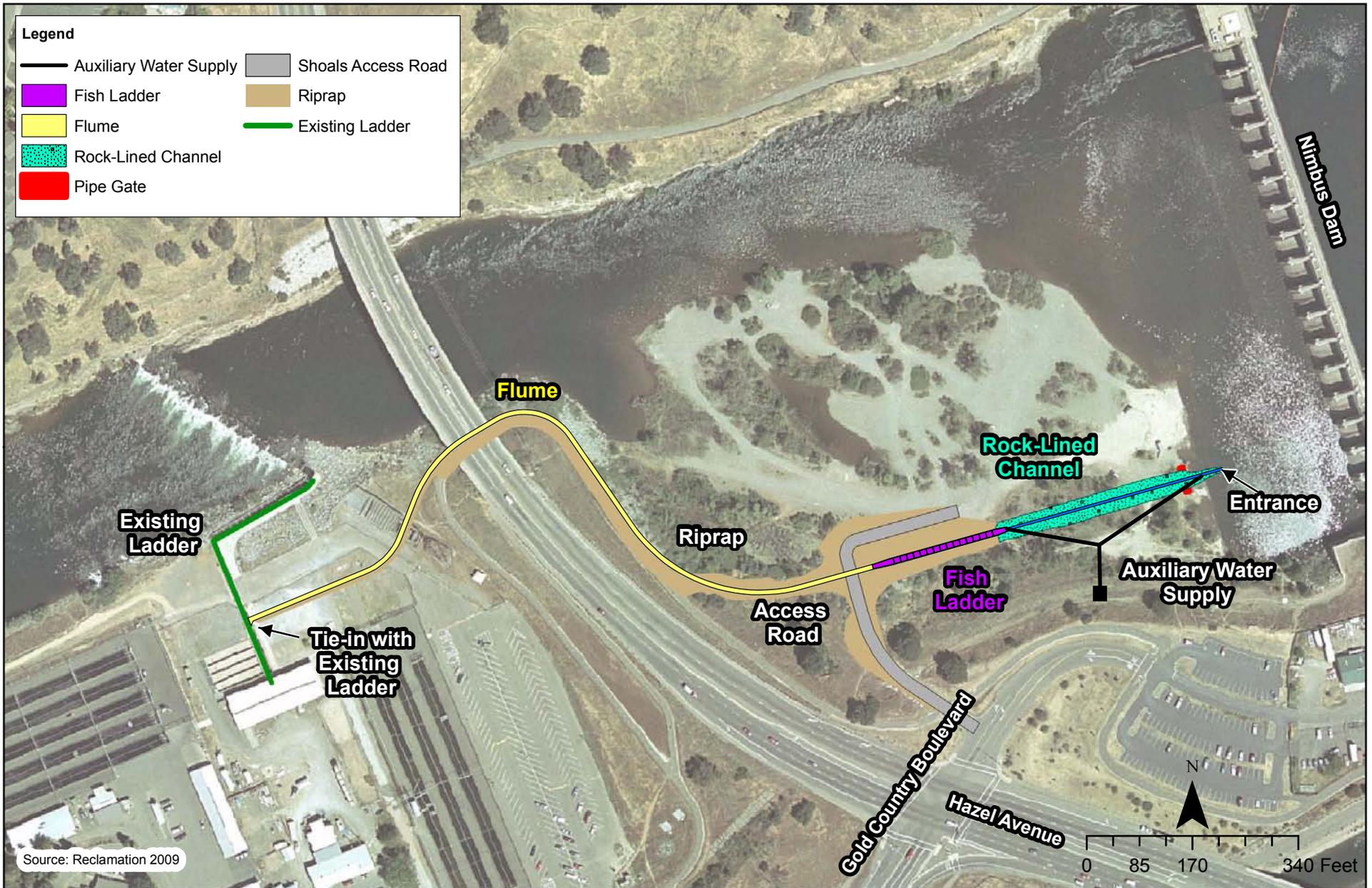


Alternative 1: Construction Staging and Impact Zones

Nimbus Hatchery Fish Passage Project

Figure 5

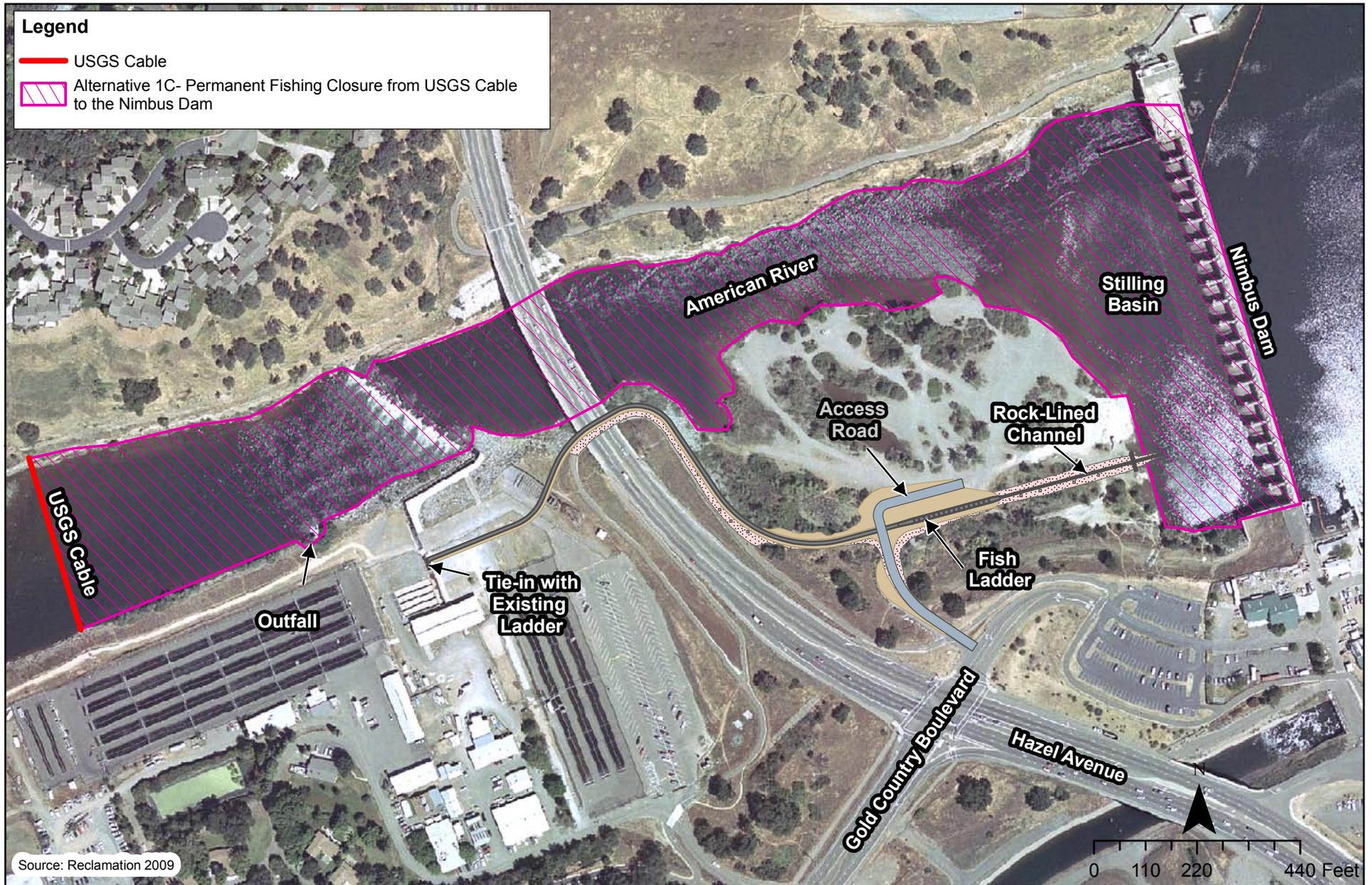




Alternative 1: Modified Fish Passageway

Nimbus Hatchery Fish Passage Project

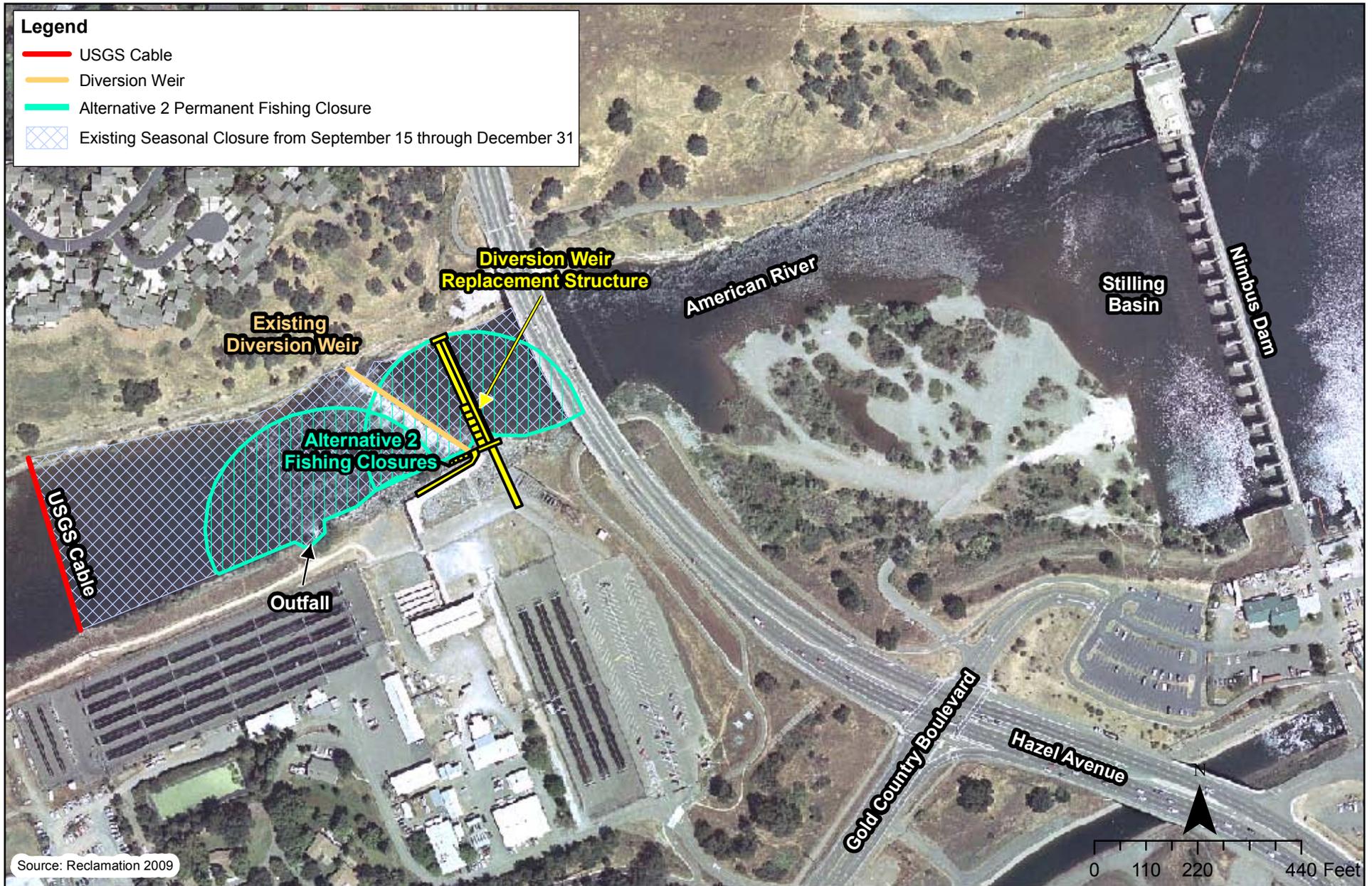
Figure 2-5



Alternative 1C: Modified Fish Passageway and Fishing Closures

Nimbus Hatchery Fish Passage Project

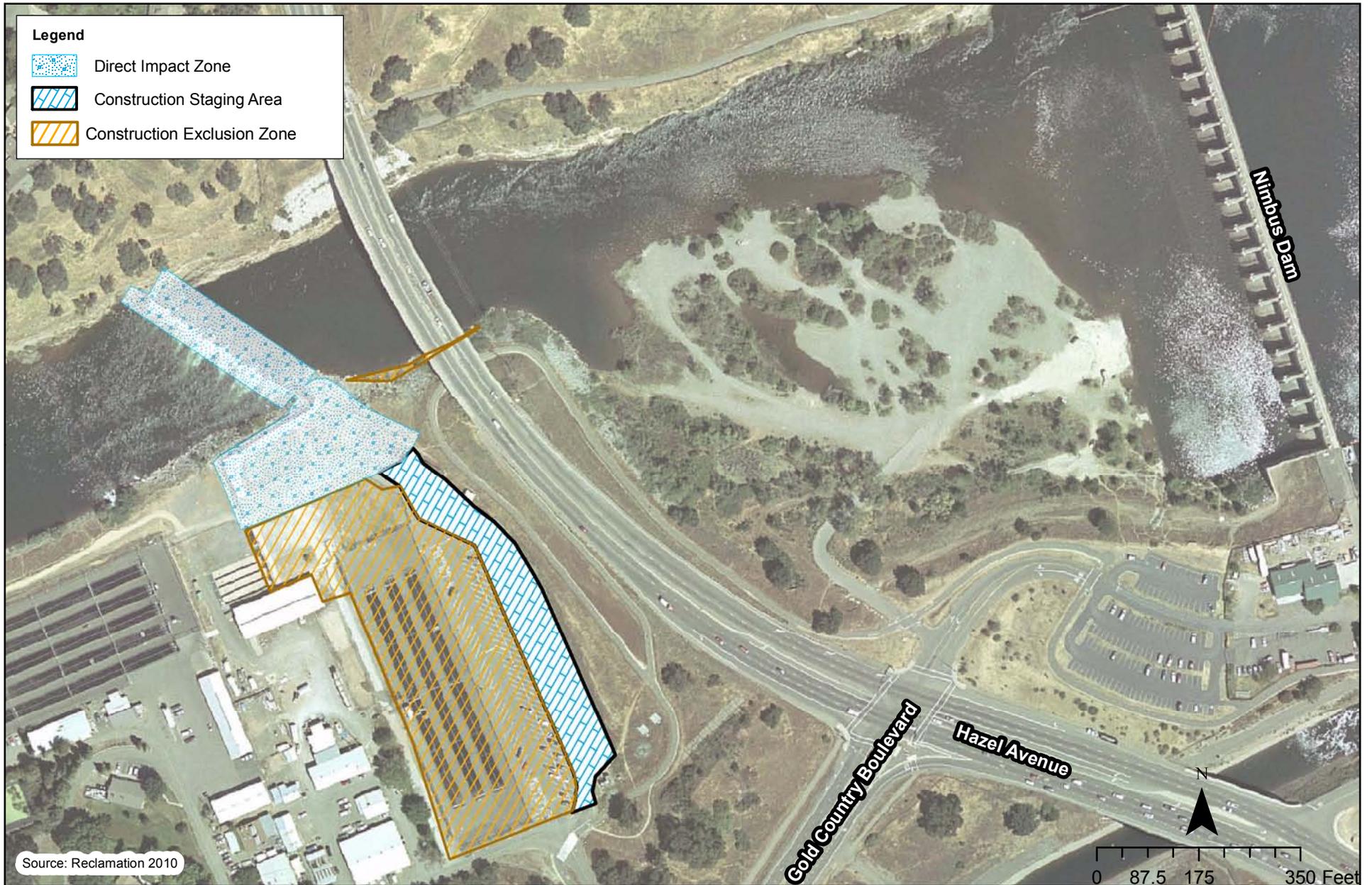
Figure 2-8



Alternative 2: Replacement of Existing Weir and Fishing Closures

Nimbus Hatchery Fish Passage Project

Figure 2-9



Alternative 2: Construction Staging and Impact Zones

Nimbus Hatchery Fish Passage Project

Figure 2-10