

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 03-Sep-2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, SPK-2007-01072-JD2

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : CA - California
County/parish/borough: Sacramento
City: Folsom
Lat: 38.629167
Long: -121.131944
Universal Transverse Mercator

Folder UTM List

UTM list determined by folder location

- NAD83 / UTM zone 37S

Waters UTM List

UTM list determined by waters location

- NAD83 / UTM zone 37S

Name of nearest waterbody: Alder Creek

Name of nearest Traditional Navigable Water (TNW): American River

Name of watershed or Hydrologic Unit Code (HUC): 18020111

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office Determination Date: 03-Sep-2008

Field Determination Date(s): 28-Apr-2008

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.**a. Indicate presence of waters of U.S. in review area:¹**

Water Name	Water Type(s) Present
ED-2, 3; 2007-01072	Non-RPWs that flow directly or indirectly into TNWs

b. Identify (estimate) size of waters of the U.S. in the review area:Area: 377 (m²)

Linear: 200 (m)

c. Limits (boundaries) of jurisdiction:

based on: 1987 Delineation Manual.

OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:³**Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:**

The wetlands VP-1, SW-1 and SW-2 are located upslope from Pond-2 and are small, man-made depressions that were constructed entirely within uplands. The wetlands total 0.006 acre of the site. VP-1 is a 0.004 acre depression located approximately 200 feet north-east of SWS-3, SW-2 is a 0.001 acre depression located approximately 100-feet north-west of SWS-1, and SW-1 is a 0.001 acre depression located approximately 50-feet north of ED-3. The wetlands collect water for a sufficient period of time to establish hydrophytic vegetation and soils, however, none of these wetlands have an outlet or other hydrologic connection to the on-site relatively permanent waters (i.e. Pond-1, Pond-2 or ED-1), or navigable waters.

SECTION III: CWA ANALYSIS**A. TNWs AND WETLANDS ADJACENT TO TNWs****1. TNW**

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**1. Characteristics of non-TNWs that flow directly or indirectly into TNW****(i) General Area Conditions:**

Watershed size: 299 square miles

Drainage area: 9 square miles

Average annual rainfall: 19 inches

Average annual snowfall: 0 inches

(ii) Physical Characteristics**(a) Relationship with TNW:** Tributary flows directly into TNW. Tributary flows through [] tributaries before entering TNW.

:Number of tributaries

Project waters are 2-5 river miles from TNW.

Project waters are 2-5 river miles from RPW.

Project Waters are 2-5 aerial (straight) miles from TNW.

Project waters are 2-5 aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:⁵

Ephemeral Drainages (ED) 2 and 3 flow directly into Pond-1 a perennial RPW that is connected via a culvert to Pond-2, which is also a perennial RPW. Pond-2 flows through the seasonal drainage ID-1, which is part of Alder Creek, a tributary to the American River. At Alder Creeks confluence, the American River is a TNW, as determined by the Sacramento District on February 4, 2008 (file number SPK-2008-00099). The American River is a tributary of the Sacramento River, a navigable water subject to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act.

Tributary Stream Order, if known:

Order	Tributary Name
-	ED-2, 3; 2007-01072

(b) General Tributary Characteristics:

Tributary is:

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
ED-2, 3; 2007-01072	X	-	-	-	-

Tributary properties with respect to top of bank (estimate):

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
ED-2, 3; 2007-01072	5	2	2:1

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
ED-2, 3; 2007-01072	-	-	-	-	-	-	-	X	-

Vegetation Explained:

Tributary Name	Percent Cover	Vegetation Explained
ED-2, 3; 2007-01072	95	Hydrophytic Vegetation

Tributary (conditions, stability, presence, geometry, gradient):

Tributary Name	Condition\Stability	Run\Riffle\Pool Complexes	Geometry	Gradient (%)
ED-2, 3; 2007-01072	The tributaries are stable and well vegetated.	-	Relatively straight	5

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
ED-2, 3; 2007-01072	Ephemeral flow	11-20	The tributaries collect rainfall from adjacent areas, and flow into Pond-1 and Pond-2, which flow into Alder Creek, a tributary of the American River, a traditional navigable water.	-

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
ED-2, 3; 2007-01072	Confined	The tributaries have a confined channel with bed and banks.

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
ED-2, 3; 2007-01072	No	-	-

Tributary has:

Tributary Name	Bed & Banks	OHWM	Discontinuous OHWM ⁷	Explain
ED-2, 3; 2007-01072	X	X	-	-

Tributaries with OHWM⁶ - (as indicated above)

Tributary Name	OHWM	Clear	Litter	Changes in Soil	Destruction Vegetation	Shelving	Wrack Line	Matted/Absent Vegetation	Sediment Sorting	Leaf Litter	Scour	Sediment Deposition	Flow Events	Water Staining	Changes Plant	Other
ED-2, 3; 2007-01072	X	-	-	-	-	-	-	X	-	-	-	-	-	-	-	-

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:**High Tide Line indicated by:**

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Tributary Name	Explain	Identify specific pollutants, if known
ED-2, 3; 2007-01072	There was no flow within the channels at the time of the site visit or wetland delineation conducted by the consultant.	-

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
ED-2, 3; 2007-01072	-	-	-	-	-

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**(i) Physical Characteristics:****(a) General Wetland Characteristics:****Properties:**

Not Applicable.

(b) General Flow Relationship with Non-TNW:

Flow is:
Not Applicable.

Surface flow is:
Not Applicable.

Subsurface flow:
Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:

Not Applicable.

(d) Proximity (Relationship) to TNW:

Not Applicable.

(ii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Not Applicable.

(iii) Biological Characteristics. Wetland supports:

Not Applicable.

3. Characteristics of all wetlands adjacent to the tributary (if any):

All wetlands being considered in the cumulative analysis:
Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Findings for: ED-2, 3; 2007-01072

The tributaries ED-2 and ED-3 drain directly into Pond-1 and Pond-2, which flow into Alder Creek, a tributary to the American River, a TNW. The ephemeral drainages flow during the winter, during and immediately following rainfall. The project is located on a property that is currently operated as a horse ranch. Pollutants that drain into the drainage would flow into Pond-1 and Pond-2, Alder Creek and into the American River. Therefore, ED-2 and ED-3 have a significant nexus to navigable waters of the U.S.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:

1. TNWs and Adjacent Wetlands:

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:⁸

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Tributary Name	Type	Size (Linear) (m)	Size (Area) (m ²)
ED-2, 3; 2007-01072	Non-RPWs that flow directly or indirectly into TNWs	-	315.654768
Total:		0	315.654768

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs:

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs:

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Not Applicable.

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS:¹⁰

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements:
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce:
- Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR):
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (Explain):

There is no visible surface or subsurface connection of VP-1, SW-1 or SW-2 to any relatively permanent waters or navigable waters. These wetlands are small, man-made depressions that were constructed within and entirely surrounded by uplands. There is no outlet from these wetlands to any waters. Therefore, there is not a significant nexus to navigable waters.

Other (Explain):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment:

Water Name	Type	Size (Linear) (m)	Size (Area) (m ²)
ED-2, 3; 2007-01072	Non-RPWs that flow directly or indirectly into TNWs	-	315.654768
Total:		0	315.654768

Provide acreage estimates for non-jurisdictional waters in the review area, that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.

Water Name	Type	Size (Linear) (m)	Size (Area) (m ²)
ED-2, 3; 2007-01072	Non-RPWs that flow directly or indirectly into TNWs	-	315.654768
Total:		0	315.654768

SECTION IV: DATA SOURCES.**A. SUPPORTING DATA. Data reviewed for JD**

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	Wetland Delineation fo Folsom South Owners Group Javanifard and Zargami Parcel	Prepared by ECORP Consulting, Inc. on 13 June 2007.
--Data sheets prepared/submitted by or on behalf of the applicant/consultant	Wetland Determination Data Form	Prepared 13 June 2007 by ECORP Consulting, Inc.
----Office does not concur with data sheets/delineation report	Wetland Delineation Map for Javanifard and Zargami	Final Revised Map 29 July 2008 prepared by ECORP Consulting, Inc.
----Office does not concur with data sheets/delineation report	Wetland Delineation fo Folsom South Owners Group Javanifard and Zargami Parcel	Prepared 13 June 2007 and Revised 28 May 2008 by ECORP Consulting Group
--U.S. Geological Survey Hydrologic Atlas	-	-
----USGS 8 and 12 digit HUC maps	-	-
--National wetlands inventory map(s).	Folsom CA	-
--Photographs	-	-
----Aerial	AirPhoto USA	Dated March 2004, submitted by ECORP Consulting Group
----Other	Site Visit Photographs	Taken 28 April 2008

B. ADDITIONAL COMMENTS TO SUPPORT JD:**Description**

ED-2 and ED-3 flow into and have a significant nexus with Pond-1 which is a perennial RPW that connects via a culvert to Pond-2, a perennial RPW which flows into Alder Creek, an RPW that is a tributary to the American River. The American River is a TNW, as determined by the Sacramento District on February 4, 2008 (file number SPK-2008-00099) and is a tributary to the Sacramento River. The Sacramento River is a navigable water subject to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act.

¹-Boxes checked below shall be supported by completing the appropriate sections in Section III below.

²-For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³-Supporting documentation is presented in Section III.F.

⁴-Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵-Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶-A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷-Ibid.

⁸-See Footnote #3.

⁹-To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰-Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.