

2.3.2 WETLANDS AND OTHER WATERS OF THE UNITED STATES

REGULATORY SETTING

Federal

Waters of the United States

The United States Army Corps of Engineers (USACOE) regulates discharge of dredged or fill material into waters of the United States under Section 404 of the CWA. “Discharges of fill material” is defined as the addition of fill material into waters of the U.S., including, but not limited to the following: placement of fill that is necessary for the construction of any structure, or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; and fill for intake and outfall pipes and subaqueous utility lines [33 C.F.R. §328.2(f)]. In addition, Section 401 of the CWA (33 U.S.C. 1341) requires any applicant for a federal license or permit to conduct any activity that may result in a discharge of a pollutant into waters of the United States to obtain a certification that the discharge will comply with the applicable effluent limitations and water quality standards.

Waters of the U.S. include a range of wet environments such as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, and wet meadows. Boundaries between jurisdictional waters and uplands are determined in a variety of ways depending on which type of waters is present. Methods for delineating wetlands and non-tidal waters are described below.

- Wetlands are defined as “those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions” [33 C.F.R. §328.3(b)]. Presently, to be a wetland, a site must exhibit three wetland criteria: hydrophytic vegetation, hydric soils, and wetland hydrology existing under the “normal circumstances” for the site.
- The lateral extent of non-tidal waters is determined by delineating the ordinary high water mark (OHWM) [33 C.F.R. §328.4(c)(1)]. The OHWM is defined by the USACOE as, “that line on shore established by the fluctuations of water and indicated by physical character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas [33 C.F.R. §328.3(e)].”

On January 9, 2001 the U.S. Supreme Court rendered a decision that has greatly reduced the USACOE’s ability to regulate isolated wetlands/waters under the CWA. Based on review of that decision and other relevant documents, Whitehouse Creek would still remain regulated due to its status as a named water of the U.S. Note that the USACOE has not yet issued formal policy guidance based on the Supreme Court’s decision. Until such guidance is issued, the jurisdictional status of isolated wetlands remains unclear.

State

Streambed Alternation Agreement

The CDFG has jurisdiction under Section 1600 *et seq.* of the California Fish and Game Code over fish and wildlife resources of the state. Under Section 1603, a private party must notify the CDFG if a proposed project will “substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by the department, or use any material from the streambeds...except when the department has been notified pursuant to Section 1601.” If an existing fish or wildlife resource may be substantially adversely affected by the activity, the CDFG may propose reasonable measures that will allow protection of those resources. If these measures are agreeable to the party, they may enter into an agreement with the CDFG identifying the approved activities and associated mitigation measures.

Local

General Plan policies and action items for the City of Elk Grove and the City of Sacramento that relate to wetlands and other waters issues within the cities, as they relate to the proposed project, are identified in Section 2.3.1 Natural Communities.

AFFECTED ENVIRONMENT

Jurisdictional Waters of the United States

A wetland delineation for the study area was completed on May 22, 2002 and submitted to the USACOE on July 25, 2002. The field work and delineation map accompanying this document were prepared in accordance with the 1987 *Corps of Engineers Wetland Delineation Manual*.

In November 2002 the USACOE requested additional information to complete the assessment of wetlands occurring within the study area. In September and October of 2003, Foothill Associates revisited the site to further assess additional areas of study, and an updated wetland delineation was completed June 22, 2004. According to this most recent wetland delineation a total of 0.747 ha (1.86 acres) of Waters of the U.S. are located on the project site.

Vernal Pools

A total of 0.24 acres of vernal pools were mapped within the study area. Vernal pools are defined by a hydrologic regime dominated by inundation. Typically, the presence of vernal pools in a given area is a result of depressions within the topography and the presence of a restricting layer in the soil that causes the depression to remain inundated after storms events for periods of varying duration.

2.3 BIOLOGICAL ENVIRONMENT

Seasonal Wetlands

Depressional Seasonal Wetlands

A total of 0.91 acre of depressional seasonal wetlands was mapped within the study area. Depressional seasonal wetlands are defined by a hydrologic regime that is dominated by saturation, rather than inundation. Depressional seasonal wetlands inundate for short periods of time following a storm event but the primary hydrologic regime is one of saturation.

Riverine Seasonal Wetlands

A total of 0.09 acre of riverine seasonal wetlands was mapped within the study area. Riverine seasonal wetlands are defined by a hydrologic regime dominated by unidirectional flow of water. These features typically occur in topographic folds or swales and represent natural drainages that convey sufficient water to support wetland vegetation

Perennial Creek

A total of 0.62 acre of perennial creek was mapped within the study area. Perennial creeks maintain water throughout the year, growing large within the wet season and may support various fish species. They have defined beds and banks with a flood plain that supports hydrophytic plants.

IMPACTS

No Build Alternative

Under the No Build alternative, because the project would not be implemented, there would be no impacts to wetlands or waters of the U.S.

Build Alternatives (2A and 3A) Impacts

Permanent Impacts

Impact 2.3.2-1 Project implementation would result in impacts to jurisdictional waters of the U.S. Potential impacts to jurisdictional waters would be the same for both Alternative 2A and 3A. Foothill Associates conducted an initial survey of the project area in May of 2002 and September and October of 2003. A wetland delineation completed on June 22, 2004 determined that the project would impact approximately 0.24 acre of vernal pools, and directly impact 0.03 acre of seasonal wetlands. Laguna Creek would not be impacted by the project.

Prior to construction, the City will apply for a Section 404 permit.

A Streambed Alteration Agreement will be obtained from CDFG, pursuant to Section 1600 of the California Fish and Game Code, for each stream crossing and any other activities affecting the bed, bank, or associated riparian vegetation of the stream. If required, the City will coordinate with CDFG in developing appropriate mitigation, and shall abide by the conditions of any executed permits. Also, a Section 401 water quality waiver of certification from the RWQCB will be obtained for the project.

MITIGATION MEASURES

MM 2.3.2-1 Any waters of the U.S. that would be lost or disturbed shall be replaced or rehabilitated on a “no net loss” basis in accordance with the USACOE mitigation guidelines. Onsite creation of wetland habitat is preferred to offsite mitigation. Habitat restoration, rehabilitation, and/or replacement shall be at a location and by methods agreeable to the Corps. The City of Elk Grove Planning Department shall verify successful mitigation of any wetlands impacts.

Due to the nature of the project and the project area, effective on-site creation of wetlands is unlikely. Therefore, the project would purchase wetland credits from a Corps-approved preservation bank to mitigate for impacts to wetlands.

CEQA FINDINGS

Impacts to Waters of the US may be considered significant if:

- The project would have a substantial adverse effect on a federally protected wetland, as defined by Section 404 of the CWA.

The project would impact approximately 0.24 acre of federally jurisdictional wetlands, which would be considered a **potentially significant impact** without mitigation. Implementation of mitigation measure **MM 2.3.2-1** would ensure that impacted wetlands would be replaced or rehabilitated in accordance with USACOE mitigation guidelines to ensure that “no net loss” of wetlands would occur. Therefore the proposed project would have a **less than significant impact** on wetlands.