

Appendix C

Summary of Regulatory Agency Coordination

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U.S. Fish and Wildlife Service

The design alternatives were reviewed with U.S. Fish and Wildlife Service (USFWS) staff on October 1, 2020. Since the concept of a trail through the Study Area was included in the OSPOMP, further consultation with the USFWS is not required unless a vernal pool is directly impacted. Since the vernal pools in the Study Area were preserved as part of previously permitted projects, any impacts to these features may require a higher than usual mitigation ratio so that the total mitigation incorporates this project and that required for the previous project. Consultation with the USFWS for impacts to vernal pools would be done through the Section 10 process by developing a small-project Habitat Conservation Plan. Consultation with the USFWS for impacts to VELB may be done through the Section 10 process or through Section 7 as part of a permit from the U.S. Army Corps of Engineers (USACE), depending on whether the impact to VELB is a result of impacts to federally jurisdictional waters (USFWS 2020).

U.S. Army Corps of Engineers (USACE)

Under the current Navigable Waters Protection Rule, which was adopted January 23, 2020 and went into effect June 22, 2020, the creeks and drainages and immediately adjacent wetlands may be considered waters of the U.S. and subject to federal jurisdiction. The vernal pool and seasonal wetland complexes may not be waters of the U.S. Although the USACE did review and approve the OSPOMP at a time when vernal pools were subject to federal jurisdiction, their interest in any future projects in the open space preserve will be limited to waters within their jurisdiction (USACE 2020). Any impacts to creek channels or other jurisdictional waters will require a permit under Section 404 of the Clean Water Act. Since these impacts are expected to be small, they are expected to qualify for a Nationwide permit.

California Department of Fish and Wildlife

The design alternatives were reviewed with California Department of Fish and Wildlife (CDFW) staff on September 30, 2020. If there are impacts to riparian areas and creeks, the standard Lake and Streambed Alteration Agreement (LSAA) application will be required. Additionally, if any state listed special-status species are identified in the Study Area prior to construction, CDFW should be consulted to determine appropriate avoidance measures or if an Incidental Take Permit (ITP) might be necessary (CDFW 2020).

Regional Water Quality Control Board

The Regional Water Quality Control Board (RWQCB) regulates impacts to waters of the state. Under the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Water of the State, adopted on April 2, 2019 which went into effect on May 28, 2020, all surface waters in the Study Area, including vernal pools, seasonal wetlands, and drainages are considered waters of the state. An application will be required to be filed with the RWQCB prior to impacting any water of the state.

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