

Janna Scott

From: Terry, Joseph D <Joseph_Terry@fws.gov>
Sent: Tuesday, November 15, 2022 2:28 PM
To: Pat Angell
Cc: Salisbury, Robert; Saba Asghary; Janna Scott; Ryan Olah; Keith D SPN Hess; Katerina SPN Galacatos
Subject: Re: [EXTERNAL] RE: Lehigh Permanente Quarry - Revised Plans for Permanente Creek Restoration Project

Pat and all,

Below are my comments on the August 26, 2022, Updated 90% Design Plans and Associated Technical Memoranda
Permanente Creek Restoration Project.

- p. 1: "eliminate the need for installation of a retaining wall along the north toe of slope below Pond 1250 due to Lehigh's commitment to relocate Pond 1250 rather than leave it in place and require an extensive retaining structure in the creek and include additional project details responsive to reviewing agency comments on the project to date."* Comment: Is Pond 1250 a suitable breeding pond for California red-legged frog (CRLF) (e.g. retain water through July-August to support the completion of metamorphosis of tadpoles)? Where would Pond 1250 be relocated to? Further from occupied CRLF aquatic habitat? Would the relocated pond support CRLF breeding? Does Pond 1250 provide suitable non-breeding aquatic habitat for CRLF; how long does it stay wet? Would the relocated Pond 1250 provide suitable non-breeding aquatic habitat for CRLF? Would Pond 1250 be relocated closer to active quarry activities resulting in an increase in the potential for injury or mortality of dispersing CRLFs? Would the relocated Pond 1250 be a population "sink" for CRLF by encouraging CRLF to breed there only for the pond to dry out stranding tadpoles or have elevated levels of selenium resulting in toxic effects to CRLF and their offspring?
- p. 2: "For example, a primary objective of the Restoration Plan as recently as 2014 was to modify Permanente Creek within the quarry property to allow the passage of anadromous salmonids. Following subsequent detailed analysis of existing and historic site constraints and consultation with resource agencies, anadromous fish passage has been removed as a design objective."* Comment: Since anadromous fish passage is no longer a design objective, the creation, restoration, and enhancement of breeding, foraging, and sheltering aquatic and riparian habitat for the federally threatened California red-legged frog (CRLF) should be a primary objective since it is the one federally listed species that actually occurs in the project area. Does the federally petitioned western pond turtle occur in the project area? The listing decision for the western pond turtle is due October 2023. If proposed to be listed, the U.S. Army Corps of Engineers will need to consult on the western pond turtle; therefore, the project should incorporate measures for the benefit of western pond turtles (e.g., installing basking habitat (e.g., logs, boulders, etc) in sunlit areas; preventing overshading of the creek; enhancing suitable nesting habitat (sunny, grassland slopes on south-facing slopes near the creek). The project should also incorporate measures for the benefit of the federal candidate monarch butterfly whose listing decision is due in 2024. See the USFWS's conservation recommendations for the western

monarch butterfly at the following link (<https://xerces.org/publications/planning-management/western-monarch-butterfly-conservation-recommendations>) which includes planting suitable nectar and milkweed plant species; flagging milkweed for avoidance and only removing milkweed between November 1 - March 15 when monarchs are likely to be absent; avoid herbicide use on blooming plants; planting early-emerging species of milkweed and nectar plants to combat the effects of climate change on the monarch butterfly, etc.

3. p. 2: *"Encourage development of mature riparian canopy along the southern bank to shade the concrete channel to reduce solar heat gain on instream flow and discourage the establishment*

of tules" Comment: Should avoid overly shading the stream throughout the project reach and provide sufficient sunlit areas for basking and thermoregulation by western pond turtles and CRLFs. Discouraging the establishment of tules will remove emergent vegetation that supports CRLF breeding. Therefore, should compensate for the loss of CRLF breeding habitat by creating suitable off-channel breeding habitat for CRLF (e.g. off-channel ponds like Pond 14, backwater areas) in several locations along the project reach that excludes fish and bullfrogs. The availability of breeding habitat is a limiting factor for CRLF along the project reach as evidenced by CRLF use of subpar aquatic habitat in the stormwater detention basins at the quarry and the need to rescue and relocate >600 juvenile and tadpole CRLFs when breeding habitat was unintentionally created in a flood detention basin downstream by the Santa Clara Valley Water District in the Permanente Creek Restoration Project.

4. p. 2: *"Construction of floodplain bench areas with habitat elements and reduction of access road width."* Comment: Suitable off-channel breeding habitat for CRLF that excludes fish and bullfrogs should be created in the floodplain benches.

5. p. 3: *"Removal of overburden/fill and a relic concrete structure and moving the north toe of slope*

northward 25 feet along the majority of the project area. Pond 4A is decommissioned. Lehigh

will relocate Pond 1250 and the Upper Treatment Facility, as needed." Comment: Would the loss of Pond 4A and relocation of Pond 1250 represent a loss of breeding habitat for CRLF that would need to be mitigated?

6. p. 18: *"The primary concerns at this site include limiting disturbance to adjacent riparian areas, avoiding*

episodic or chronic release of sediments to the creek, and quickly reestablishing a dense riparian canopy

within disturbed work areas." Comment: Also the release of toxic levels of selenium and heavy metals into aquatic habitat after being exposed after excavation is a concern for aquatic life including CRLF and fish and their prey species.

7. p. 18: *"and fish and other aquatic organisms will be removed and relocated by a qualified biologist, prior to the installation of dewatering facilities."* Comment: Any nonnative bullfrogs, fish, crayfish, and turtles observed should be permanently removed from the site. Due to the length of time it takes to get a permit from CDFW to remove nonnative species (e.g. Scientific Collection Permit) as observed in the Anderson Dam Seismic Retrofit Project, the applicant should start the process now for applying for a Scientific Collection Permit for the removal of nonnative species.

8. p. 19: *"At the completion of construction, all accumulated sediment will be removed from the work area, characterized, and, if appropriate, placed elsewhere at the Facility in a manner that will not result in erosion or mobilization of sediment to Permanente Creek, and that will be consistent with applicable Waste Discharge Requirements."* Comment: Due to the occurrence of toxic levels of selenium and heavy metals in sediment and rocks that have fallen into the creek from adjacent quarrying activities, any sediment or rock containing elevated levels of selenium or heavy metals should be treated as hazardous waste and prevented from leaching selenium and heavy metals into any aquatic habitat (including detention basins utilized by CRLF).
9. General Comment: USFWS needs for the Section 7 Endangered Species Act consultation the total acres of each habitat type for CRLF that would be temporarily disturbed or permanently lost, and the total acres of each habitat type for CRLF that will be restored, enhanced, or created in order for USFWS to determine whether the amount of each habitat type being restored, enhanced, and created for CRLF is sufficient.
10. p. 21: *"The water quality evaluation assesses geologic units (e.g. limestone bedrock) likely to be uncovered in the creekbed by project implementation and found no significant impacts to water quality. The evaluation also determined that the locally available greenstone and graywacke encompassing the majority of the Permanente Creek basin is not detrimental to water quality if used as backfill and that from a water quality perspective can also be used as engineered streambed material and floodplain armor in the restored channel reaches."* Comment: I thought that the elevated levels of selenium and heavy metals in the mined materials at the quarry, some of which have fallen into the creek, were a concern for water quality effects to aquatic species (e.g. the Yeager Yard slide seep found selenium concentrations about water quality standards). See USFWS's Intra-Service biological opinion for the *Issuance of a Section 10(a)(1)(B) Incidental Take Permit for the Lehigh Southwest Cement Company's Permanente Site Operation and Maintenance Project Low-Effect Habitat Conservation Plan, Santa Clara County, California* (pp. 19-22 and 29-30 at: https://ecos.fws.gov/ecp/report/conservation-plan?plan_id=4855) which discusses the water quality concerns of elevated levels of selenium in Permanente Creek on CRLF.
11. p. 23: *"The newly excavated floodplain benches will be lined with a mixture of coarse alluvial materials sized to resist mobilization"* Comment: Any materials placed in the floodplain should be screened for contaminants and not have elevated levels of selenium or heavy metals.
12. p. 27: *"However, sediment mobilized from project areas or from areas outside the influence of project construction may accumulate in undesirable locations within the reconstructed channel segments."* Comment: Will there be any sedimentation within CRLF breeding habitat at Pond 14 that could result in suffocation of egg masses or deterioration of water quality for CRLF? Lehigh committed under the *Permanente Site O&M Habitat Conservation Plan* to restore and maintain breeding habitat for CRLF at Pond 14 (https://ecos.fws.gov/docs/plan_documents/thcp/thcp_3496.pdf). Thus must evaluate under CEQA whether there would be any conflicts with the *Permanente Site O&M Habitat*

Conservation Plan. Also would breeding habitat for CRLF created by Santa Clara Valley Water District in the flood detention basin in the Permanente Creek Flood Control Project downstream of the quarry be degraded by sedimentation and CRLF egg masses be suffocated? Need to define the size of the action area for direct and indirect effects for the Section 7 consultation under the Endangered Species Act (i.e., how far downstream would effects occur). Would there be any effects to federally listed or proposed tidal marsh species downstream (e.g. California clapper (Ridgway's) rail, salt marsh harvest mouse, California least tern, western snowy plover, longfin smelt)?

13. p. 27: *"The plants selected for the revegetation effort were chosen based on experience revegetating other*

areas of the project site. Although a certain percentage of die-off is typical with any native revegetation

effort, it is expected that the selected species will do well along the restored project areas." Comment:

Should include milkweed and nectar plants for monarch butterfly in the revegetation effort (see suitable milkweed and nectar species at the links in the document at:

<https://xerces.org/publications/planning-management/western-monarch-butterfly-conservation-recommendations>).

14. Appendix J, pp. 5-6: *"Molybdenum and selenium leachate concentrations were generally greater in limestone samples compared to the other samples from greenstone and graywacke. Selenium leachate from the limestone has been detected above the Freshwater Aquatic ESL of 5 µg/L consistent with limestone wall washing results. The selenium data supports the premise that the oxidation of sulfides in the limestone is the primary mechanism of generating leachable selenium. . . .Limestone material is a potential source of selenium, though the potential is lesser in combined quantities and in a dynamic environment of a moving stream/creek. . . .The data supports the premise that the oxidation of sulfides in the limestone is the primary mechanism of generating leachable selenium—the primary constituent of concern. Following sulfide oxidation, water flow and/or infiltration is the primary transport mechanism for selenium transport."* Comment: Does this mean the limestone in the creek that is excavated or otherwise disturbed or exposed could result in elevated levels of selenium that are toxic to CRLF, western pond turtle, or the tidal marsh species downstream (California clapper (Ridgway's) rail, salt marsh harvest mouse, California least tern, western snowy plover, longfin smelt)?

15. Appendix J, p. 6: *"The upstream surface water results for selenium are consistently less than 1 ug/L. As noted in Section 1.2, bedrock limestone and associated travertine deposits are present in these areas. The results further support the premise that selenium production from oxidized limestone already present in the creek channel is finite. For this reason, we expect that the PCR as designed, which proposes to remove material and follow the existing bedrock contours for the restored creek channel grade and elevation, will not contribute to increased in-stream concentrations of constituents of concern."* Comment: But could there be short-term pulses in selenium levels in Permanente Creek due to construction activities exposing and disturbing limestone that could result in toxic effects to CRLF, western pond turtle, or the tidal marsh species downstream (California clapper (Ridgway's) rail, salt marsh harvest mouse, California least tern, western snowy plover, longfin smelt)?

Thanks,

Joseph

Joseph Terry (he/him)

Senior Fish and Wildlife Biologist
Coast Bay Division
U.S. Fish and Wildlife Service
Sacramento Fish and Wildlife Office
2800 Cottage Way, Suite W-2605
Sacramento, CA 95825

Work cell phone (916)943-6721
email address: joseph_terry@fws.gov

From: Pat Angell <pat.angell@ascentenvironmental.com>
Sent: Thursday, November 3, 2022 12:35 PM
To: Terry, Joseph D <Joseph_Terry@fws.gov>
Cc: Salisbury, Robert <robert.salisbury@pln.sccgov.org>; Saba Asghary <saba.asghary@ascentenvironmental.com>; Janna Scott <JScott@esassoc.com>
Subject: [EXTERNAL] RE: Lehigh Permanente Quarry - Revised Plans for Permanente Creek Restoration Project

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Hi Terry:

The County has extended the agency review period of the revised plans to November 28th.

If you have any questions or concerns, feel free to contact myself or Rob Salisbury.

Patrick Angell

Principal

Pronouns: he/him/his – [Why do pronouns matter?](#)

D 916.732.3324 | C 916.764.0108

E Pat.Angell@AscentEnvironmental.com



Ascent Environmental, Inc.
455 Capitol Mall, Suite 300
Sacramento, CA 95814
O 916.444.7301



From: Pat Angell
Sent: Thursday, October 27, 2022 10:09 AM
To: Joseph_Terry@fws.gov
Cc: Salisbury, Robert <robert.salisbury@pln.sccgov.org>; Saba Asghary <saba.asghary@ascentenvironmental.com>;

Janna Scott <JScott@esassoc.com>

Subject: Lehigh Permanente Quarry - Revised Plans for Permanente Creek Restoration Project

Good morning Terry:

Santa Clara County has received revised plans for the Permanente Creek Restoration Project. These updated plans are located here: [Introduction \(windows.net\)](#)

The County is very interested in USFW input in the updated plans, especially any issues associated with the environmental review process. Please provide comments to the County no later than November 14. Please note that the County is evaluating the updated plans and will be working with our EIR consultant to complete the Draft Subsequent EIR for future public release.

If you have any questions or concerns, please contact Rob Salisbury (robert.salisbury@pln.sccgov.org).

Thanks!

Patrick Angell

Principal

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D 916.732.3324 | C 916.764.0108

E Pat.Angell@AscentEnvironmental.com



Ascent Environmental, Inc.
455 Capitol Mall, Suite 300
Sacramento, CA 95814
O 916.444.7301

