3.2 Biological Resources

This section identifies and evaluates issues related to vegetation and wildlife resources, both aquatic and terrestrial, to determine whether the PCRP, including its revisions to the 2011 Creek Restoration Plan that are a component of the 2012 Reclamation Plan Amendment, would cause one or more new significant impacts or a substantial increase in the severity of significant impacts than were disclosed in the 2012 EIR. To do this, this analysis focuses on three things: (1) PCRP areas that are outside of the existing Reclamation Plan boundary (for which Grading Approval would be required); (2) PCRP areas within the Reclamation Plan boundary and within the 120-acre PCRA but outside of the PCRA's 49.2-acre disturbance area; and (3) more generally, whether the PCRP proposes work at greater intensity than previously considered in the 2012 EIR. As a result, Reaches 6–13 and Reaches 17 and 18 are key areas for evaluation.[1]

This section describes the physical and regulatory setting, the criteria used to evaluate the significance of potential impacts, the methods used in evaluating these impacts, and the results of the impact assessment relative to the 2012 EIR. The analysis is based in part on the technical reports listed below. These technical reports were prepared by or on behalf of Lehigh and reviewed by the County and its environmental consultant to ensure that they can be relied on (in combination with other materials included in the formal record) in the preparation of this Draft SEIR. A copy of each report is provided in Appendix E, *Biological Resources*.

- GEI Consultants, Inc. & AECOM. 2016. Revised Draft Biological Assessment for the Permanente Creek Restoration Project. Prepared for Lehigh Southwest Cement Company, May 2016 (Appendix E1).
- GEI Consultants, Inc. 2021. Aquatic Resources Report. Preliminary Delineation of Waters of the United States, Including Wetlands (Appendix E2).
- Waterways Consulting, Inc., 2022. Technical Memorandum, Permanente Creek Restoration Project: Temporary Riparian Vegetation Impact Assessment, August 26, 2022 (Appendix E3).
- GEI Consultants, Inc. 2022. Low-Effect Habitat Conservation Plan, Permanente Site Operation and Maintenance. Prepared for Lehigh Southwest Cement Company, Cupertino, CA.

The 2016 reports in Appendices E1 and E2 were based on an earlier design level than the Updated 90% Design Memo provided in Appendix C of this SEIR. Lehigh is in the process of updating these 2016 reports to reflect the current design; nonetheless, considered together with the Updated 90% Design Memo, the information contained in the 2016 reports in Appendix E1 and Appendix E2 remains informative.

[1] See Section 2.4, *Correlation between 2012 EIR PCRA and the PCRP*, for a cross reference between the restoration activities described and analyzed in the 2012 EIR and the restoration activities described in the PCRP and analyzed in this SEIR. Section 2.5, *Permanente Creek Restoration Plan*, details the PCRP's proposed activities on a reach-by-reach basis. See Section ES.1, *Introduction*, and Section 2.3, *Focus of the Supplemental EIR*, for additional details about the identification of these reaches as areas of focus for the SEIR.

The County received scoping input from the California Department of Fish and Wildlife (CDFW) (Letter H), the Midpeninsula Regional Open Space District (MidPen) (Letter F), and a member of the public (Letter E) regarding aquatic and riparian communities and habitats, special-status species, birds and nests, and other biological resources-related considerations. A copy of each of these letters is included in Appendix A, *Scoping Report*. These comments are considered in the analysis provided below.

3.2.1 Setting

3.2.1.1 Study Area

The "study area" for this analysis of potential impacts on biological resources consists of the Project site described in Section 2.3.2 of the Project Description and shown in Figure 2-3. As described in the Draft 2012 EIR Section 4.4.1.1 *Study Area* (page 4.1-1 et seq.), the study area is located in unincorporated western Santa Clara County, in the eastern foothills of the Santa Cruz Mountains, which are part of the California Coast Range. Natural communities in the region range from tidal salt marshes to chaparral to oak woodlands. The area surrounding the quarry remains generally undeveloped and contains high-quality habitat for a number of sensitive species. As stated above, Reaches 6–13 and Reaches 17 and 18 of Permanente Creek are the focus of this analysis.

3.2.1.2 Environmental Setting

Section 4.4.1 of the Draft 2012 EIR described the environmental setting for the 2012 EIR's consideration of biological resources, including biological communities and wildlife habitat types (Section 4.4.1.2, page 4.4-2 et seq.), jurisdictional waters and wetlands (Section 4.4.1.2, page 4.4-12), special-status species (page 4.4.1.2, page 4.4-2 et seq.), and sensitive natural communities (page 4.4.1.2, page 4.4-17). Rare plants were deemed absent from the site following two protocol-level rare plant surveys (page 4.4-13). Based on review of documents produced for the site in the intervening years (see Appendix G) and historical imagery on Google Earth, biological resources descriptions remain accurate for purposes of this analysis of the PCRP.

The listing status of five species in the Project region changed since publication of the 2012 EIR. The foothill yellow-legged frog (*Rana boylii*) Central Coast Distinct Population Segment (DPS) became a state-listed endangered species in 2020 and was proposed as a federal threatened species in December 2021. The mountain lion (*Puma concolor*) Southern California/Central Coast Evolutionarily Significant Unit (ESU) became a state candidate for listing as threatened in 2020. The monarch butterfly (*Danaus plexippus*) was named a candidate for federal listing status in December 2020. Two native bumblebees, western bumblebee (*Bombus occidentalis occidentalis*) and crotch bumblebee (*B. crotchii*), are candidates for state listing as of September 2022. These bumblebees have not been recorded in the PCRP area (CDFW 2022) and would be unlikely to be impacted by Project activities. Habitat for foothill yellow-legged frog does not occur in the Project area; hence, no changes are needed to reflect the Project baseline for this species. Mountain lions occur in remote habitats on the San Francisco Peninsula, potentially including forested areas surrounding the quarry; monarch butterflies are known to overwinter in

trees in San Mateo and Santa Cruz counties; hence, brief descriptions of these species are provided below.

Mountain Lion (Puma concolor) Southern California/Central Coast ESU

Mountain lions, or cougars, are solitary, opportunistic large predators that are often found in mountainous areas. They also occur in forests, wetlands, or deserts where they have adequate open space to range. Their home ranges are large, from 20 to more than 100 square miles. Cougars feed on deer and smaller mammals; females raise litters of one to four young every 2 years. They range from Canada into South America, but have declined greatly due to hunting, poaching, poisoning, and habitat loss and fragmentation. Cougars have low potential to occur at the Project site due to human traffic and disturbance, but they may occasionally cross the site between nearby areas of suitable habitat.

Monarch butterfly (Danaus plexippus)

The monarch butterfly is a federal candidate species and a California special animal. This species migrates along the Pacific Coast and often overwinters in wind-protected groves of trees, such as eucalyptus and Monterey cypress, between October and March. Their breeding and larval habitat is on milkweed plants in open fields and meadows. Monarch butterflies occur in the PCRP area; however, the area does not provide suitable overwintering roost trees, and no milkweed plants were observed during focused surveys in June 2021. Thus, monarchs are unlikely to overwinter or roost in the PCRP area.

3.2.1.3 Regulatory Setting

Section 4.4.1.3 of the Draft 2012 EIR (page 4.4-17 et seq.) described the regulatory setting for the analysis of potential impacts on biological resources, including federal, state, and local laws, regulations, plans, and policies applicable to the analysis of the proposed creek restoration and other Project components that were considered in the 2012 EIR. The section summarized provisions of the Federal Endangered Species Act and Federal Migratory Bird Treaty Act. It also summarized relevant provisions of the Surface Mining and Reclamation Act, CEQA, California Oak Woodlands Conservation Act, and California Fish and Game Code, including the California Endangered Species Act, California Native Plant Protection Act, and laws governing nesting birds, fully protected species, and sensitive natural communities. Section 4.4.1.3 of the Draft 2012 EIR (page 4.4-22 et seq.) further summarized provisions relating to jurisdictional waters subject to oversight by the U.S. Army Corps of Engineers (USACE), the San Francisco Bay Regional Water Quality Control Board (RWQCB), and the California Department of Fish and Game pursuant to the Clean Water Act and the Porter Cologne Water Quality Control Act; and local plans and policies such as the Santa Clara County General Plan (1994) and Santa Clara County Oak Woodlands Impact Guidelines (County of Santa Clara 2011). The description of the regulatory setting remains accurate for purposes of this analysis of the PCRP.

3.2.2 Significance Criteria

Consistent with the County of Santa Clara Environmental Checklist and the version of the CEQA Guidelines Appendix G Environmental Checklist that was in effect at the time, Section 4.4 of the 2012 EIR determined that the proposed Reclamation Plan Amendment, including creek restoration work within the PCRA, would have a significant impact if it would:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFW[2] or the USFWS.

b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS.

c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.

d) Have a substantial adverse effect on oak woodland habitat as defined by Oak Woodlands Conservation Law (conservation/loss of oak woodlands) (Pub. Res. Code §21083.4).

e) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

f) Conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan.

g) Conflict with any local policies or ordinances protecting biological resources:

   i. Tree Preservation Ordinance (Section C16)

   ii. Wetland Habitat (General Plan Policy R-RC 25-30)

   iii. Riparian Habitat (General Plan Policy R-RC 31-41)

The County prepared the 2012 EIR pursuant to the provisions of CEQA and the CEQA Guidelines that were current at the time. Since then, the Environmental Checklist Form in CEQA Guidelines Appendix G has been revised to address legislative changes to CEQA, clarify certain portions of the existing CEQA Guidelines, and update the CEQA Guidelines to be consistent with more recent court decisions. The thresholds and analyses contained in the 2012 EIR are supplemented in this SEIR to reflect the latest CEQA Guidelines, current as of the publication of this SEIR. Accordingly, criterion c) above is revised as follows:

c) Have a substantial adverse effect on *state or* federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.

CEQA Guidelines Section 15065 directs lead agencies to find that a project may have a significant impact if it has the potential to substantially degrade the quality of the environment;

[2] Since the 2012 EIR was published, on January 1, 2013 the California Department of Fish and Game changed its name to the California Department of Fish and Wildlife.

substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or wildlife community; or reduce the number or restrict the range of an endangered, rare, or threatened species. CEQA Guidelines Section 15380 provides that a plant or wildlife species, even if not on one of the official lists, may be treated as "rare or endangered" if, for example, it is likely to become endangered in the foreseeable future. In addition to the above, the CDFW and USFWS consider a project to have a significant impact if it were to cause a change in species composition or result in the measurable degradation of sensitive habitats, such as wetlands.

3.2.3 Direct and Indirect Effects

3.2.3.1 Methodology

The effects of implementing the Project are evaluated for biological resources that may be impacted during and as a result of the implementation of restoration proposed as part of the PCRP. Direct and indirect impacts on biological resources, including special-status plant and wildlife species and sensitive natural communities, could occur during on-land or in-water construction activities, or following the completion of restoration activities, as a result of alteration of the Permanente Creek channel, bed, banks, and floodplain. Effects following completion of the Project are expected to be beneficial to biological resources. The impact analyses determine whether the Project would cause one or more new significant impacts or a substantial increase in the severity of significant impacts than was identified in the 2012 EIR. The severity of an impact is determined based on the significance criteria identified in Section 3.2.2.

Compliance with applicable federal, state, and local laws and regulations is assumed in the analysis of impacts because these regulatory requirements are mandatory and the application of the associated protective measures (such as standard construction best management practices [BMPs], monitoring and reporting plans, and the application of corrective actions) are non-discretionary, and are proven to minimize and/or avoid biological resource impacts. Further, regulatory agencies with technical jurisdiction and authority for oversight would require adherence to regulatory requirements as a condition of Project or permit approval and would continue to enforce applicable requirements throughout Project construction/restoration and operation phases. The analysis considers whether compliance with regulatory requirements designed to protect biological resources would be adequate such that the PCRP would not cause a new significant impact or a substantial increase in the severity of a significant impact than was identified in the 2012 EIR related to biological resources.

3.2.3.2 Baseline

Section 3.0.1, *Environmental Baseline*, explains that, in the context of an SEIR, the CEQA baseline is adjusted such that the originally approved Project is assumed. Therefore, the baseline used in this analysis to evaluate the impacts of the PCRP and alternatives consists of existing environmental conditions plus the 2012 Reclamation Plan Amendment and 2012 EIR, and the creek restoration plans evaluated therein. For purposes of this analysis of potential impacts on

biological resources, the baseline includes the existing surface mining disturbance area, plus restoration of the full 49.2-acre disturbance area identified in the 2011 Creek Restoration Plan.

3.2.3.3 Discussion of Criteria with No Biological Resources Impact

Criteria e) and g) as set forth in Section 3.2.2 were eliminated from more detailed consideration in the 2012 EIR for the reasons explained in Draft 2012 EIR Section 4.4.4 (pages 4.4-31 and 4.4-32).

The reasons explained there apply also to this SEIR; thus, these criteria are similarly not considered further. As discussed in the 2012 EIR (page 4.4-31) for criterion e), creek restoration activities would be conducted for the most part in habitats already impacted by mining activities. Further, the applicant-proposed measures (APMs) identified in Section 2.5.9.2 of Chapter 2, *Project Description*, are consistent with the APMs that were evaluated as part of the 2012 EIR and similarly would protect nesting and breeding habitats. Ultimately, following construction, Project activities would result in beneficial effects to the Permanente Creek riparian corridor. No impacts were identified on mountain lion, which became a state candidate threatened species in 2020; hence, no APMs or mitigation measures are warranted to reduce impacts on this species. For criterion g), as discussed in the 2012 EIR (page 4.4-32), application for a tree removal permit would not be required by the Project. The Revegetation Plan for the Project would include replanting oak woodland.

3.2.3.4 Direct and Indirect Effects of the Project

This analysis evaluates the potential significance of the change in the physical environment that would be caused by implementation of the PCRP relative to the baseline condition, compares that impact conclusion with the impact conclusion reached in the 2012 EIR regarding the same consideration, and then makes a determination as to whether the implementation of the PCRP would cause one or more new significant impacts or a substantial increase in the severity of significant impacts than was disclosed in the 2012 EIR. For the reasons discussed below, implementation of the PCRP would not cause a new significant impact or a substantial increase in the severity of a significant impact than was disclosed in the 2012 EIR.

Impact 3.2-1: The Project may have a substantial adverse effect, either directly or through habitat modifications, on species identified as a candidate, sensitive, or special-status species.

California Red-legged Frog (CRLF)

This impact analysis corresponds to significance criterion a) as set forth in Section 3.2.2 and addresses impacts on sensitive aquatic species; California red-legged frog (CRLF) is the only sensitive aquatic species found at the Project site. In the context of Impact 4.4-4 (page 4.4-36 et seq.), the 2012 EIR concluded that the proposed reclamation activities, including creek restoration activities within the PCRA, would have less-than-significant impacts on CRLF, based on surveys showing that no frogs had been found within the 2012 Project area. Since the 2012 EIR, additional habitat assessments, surveys, and monitoring for CRLF during Lehigh's activities have provided additional information regarding the CRLF population currently found in and downstream of the PCRP area. This information is summarized in the Low-Effect HCP (LEHCP)

for ongoing routine operation and maintenance of existing facilities and associated Biological Opinion (USFWS 2022b). Specifically, CRLF were previously identified in Ponds 9, 14, 21, and 22 (see Figure 2-2), and downstream of the 2012 disturbance area, but the PCRA boundary extends farther downstream (Figure 2-3) and the Project would impact aquatic habitat for CRLF in Ponds 9 and 13.[3]

The new and expanded restoration area would require vegetation removal and grading in occupied CRLF habitat, temporarily affecting aquatic and upland habitat, as well as permanent removal of suitable aquatic habitat at Pond 13 (Appendix E1). To address this potential new significant impact of the PCRP, a new mitigation measure is identified below (Mitigation Measure 3.2-1, *California Red-legged Frog*). The implementation of Mitigation Measure 3.2-1 would ensure Lehigh obtains coverage for take of CRLF incidental to Project implementation and that appropriate impact avoidance and minimization measures are implemented. In addition, as described in the LEHCP, implementation of the PCRP would restore and enhance more CRLF habitat than was proposed in the 2012 EIR and would more than double the amount of suitable habitat for this species in the affected area, ultimately providing a beneficial effect to this species. Thus, with the implementation of Mitigation Measure 3.2-1 below, based on the Biological Opinion (USFWS 2022b), the impacts of the PCRP on CRLF and its habitat would remain less than significant.

Baseline Mitigation from 2012 EIR: None required.

Additional Mitigation:

Mitigation Measure 3.2-1, California Red-legged Frog. The Applicant shall obtain authorization for incidental take of CRLF through consultation under Section 7 of the federal Endangered Species Act between USACE and USFWS. All requirements imposed by USACE and USFWS under Section 7 shall be fulfilled by the Applicant. The Applicant shall also implement avoidance and minimization measures consistent with the 2014 Programmatic Biological Opinion for CRLF (USFWS 2014), the 2022 Section 10(a)(1)(B) Incidental Take Permit for the Lehigh Southwest Cement Company's Permanente Site Operation and Maintenance Project (USFWS 2022b), or alternative Project-specific measures identified in the formal Section 7 consultation with USFWS. At a minimum, the following measures shall be implemented:

- Qualified biologists and monitors approved by USFWS shall be retained to ensure all required impact avoidance and minimization measures are properly implemented. Biologists and monitors shall have authority to stop work if environmental requirements are not being fulfilled and if a CRLF is determined to be in danger.

- Employee education training shall be conducted for on-site employees working on PCRP activities. Personnel shall be required to attend the presentation, which shall

[3] Input received from the USFWS regarding Lehigh's Updated 90% Design Memo notes CRLF breeding habitat in Pond 14 (USFWS 2022a); however, the Project would not affect Pond 14, as that off-channel feature is downstream from the PCRP boundary. See Appendix C, which explains that Pond 14 is not involved in the proposed restoration work.

describe CRLF characteristics and natural history; avoidance, minimization, and conservation measures; legal protection of CRLF; and other related issues.

- To the extent practicable, restoration activities in the Permanente Creek channel and suitable pond habitats shall be conducted between August 15 and October 15, to minimize potential impacts on CRLF tadpoles.

- Specific methodology for capture and relocation of CRLF found in PCRP work areas shall be developed and approved by USFWS before on-site PCRP activities begin. This methodology shall identify the on-site location(s) to which CRLF shall be relocated.

- Preconstruction surveys for CRLF shall be conducted by a USFWS-approved biologist/monitor within 24 hours before the start of initial PCRP ground disturbance. If any CRLF adults, subadults, juveniles, tadpoles, or eggs are observed and determined to be in potential danger, a USFWS-approved biologist shall remove them from the work area and relocate them in compliance with established USFWS-approved methodology.

- To the maximum extent practicable, PCRP activities in CRLF habitat shall not occur during rain events or within 24 hours following a rain event. A USFWS-approved biologist/monitor shall inspect work areas and all equipment/materials for the presence of CRLF before Project activities resume after rain events. Any CRLF found in the work area shall be avoided and allowed to leave on its own or relocated in compliance with established USFWS-approved methodology.

- Restoration activities within suitable aquatic habitat for CRLF shall be conducted under the supervision of a USFWS-approved biologist/monitor. Aquatic habitat shall be surveyed for CRLF at the beginning of each day and periodically throughout the workday. Any CRLF in the work area and determined to be in potential danger shall be relocated in compliance with established USFWS-approved methodology.

- Plastic monofilament netting, loosely woven netting, or other materials using fixed weaves, polypropylene, polymer, or other synthetic materials shall not be used during Project implementation.

- For on-site storage of pipes, conduits, and other materials that could provide shelter for CRLF, an open-top trailer shall be used to elevate the materials above ground.

- Trenches or pits 1 foot or deeper to be left unfilled for more than 48 hours shall be securely covered with boards or other materials to prevent CRLF from falling into them. If this is not possible, dirt or wooden ramps or other structures of suitable surface that provide adequate footing for CRLF shall be placed in the trench or pit to allow for their unaided escape. The trench, pit, or hole shall be inspected by a USFWS-approved biologist/monitor each workday morning prior to initiation of work and in the late afternoon no more than 1 hour after work has ceased to determine if any individuals have become trapped. If the ramps fail to allow the animal to escape, a USFWS-approved biologist shall remove the CRLF and transport it to a safe location in compliance with established capture and relocation methodology.

- A USFWS-approved biologist shall remove aquatic exotic wildlife species such as bullfrogs and crayfish (if any) during PCRP activities.

With the implementation of Mitigation Measure 3.2-1, the Project's impacts on CRLF would be reduced to a less-than-significant level.

Aquatic Life

This impact analysis corresponds to significance criterion a) as set forth in Section 3.2.2 and addresses impacts on sensitive aquatic species. In the context of Impact 4.4-5 (page 4.4-37 et seq.), the 2012 EIR concluded that the proposed reclamation activities including excavation, grading, and boulder removal could result in exposing limestone from which selenium could leach into Permanente Creek. Selenium is a bioaccumulative pollutant that causes deformities in larval and juvenile fish and bird species which feed on them. The amount and extent of leaching was impossible to determine because it depended on the amount of limestone exposed, the amount of selenium present, and the amount of precipitation and other environmental conditions which promote leaching.

The potential for selenium toxicity was reduced by application of Mitigation Measure 4.4-5, *Selenium-related Impacts on Aquatic Habitat*, which applied stormwater control and monitoring to minimize runoff; however, because the potential for selenium-contaminated runoff could not be eliminated, the 2012 EIR determined this impact to be significant and unavoidable for the duration of Project implementation. For the reasons discussed below, the PCRP would cause **no new significant impact** and **no substantial increase in the severity of a significant impact** than was disclosed in the 2012 EIR for significance criterion a) with respect to aquatic organisms. The new restoration area is now subject to the facility-wide Individual National Pollutant Discharge Elimination System (NPDES) permit, Operations & Maintenance Plan, and Stormwater Pollution Prevention Plan (SWPPP), which implement safeguards to reduce contaminants in stormwater runoff from the newly constructed slopes and operate to reduce the risk identified in the 2012 Reclamation Plan Amendment. Further, recent analysis suggests that creek restoration excavation activity is unlikely to result in selenium mobilization in exceedance of RWQCB water quality standards (Golder 2022). Thus, the continuing potential for selenium reaching Permanente Creek in runoff is considered a less-than-significant impact with the implementation of Mitigation Measure 4.4-5 from the 2012 EIR.

> **Baseline Mitigation from 2012 EIR:** Mitigation Measure 4.4-5, the text of which is provided in Draft SEIR Table H1, *Impacts and Mitigation Measures for the 2012 Permanente Quarry Reclamation Plan Amendment*.
>
> **Additional Mitigation:** None required.

Nesting Birds

This impact analysis corresponds to significance criterion a) as set forth in Section 3.2.2 and addresses impacts on nesting birds. In the context of Impact 4.4-1 (page 4.4-32 et seq.), the 2012 EIR concluded that the proposed reclamation activities, including creek restoration activities proposed within the PCRA, would result in a less-than-significant impact with respect to nesting

migratory birds with application of APMs BIO-1 (Special Status Avian Species, Non-breeding Season) and BIO-2 (Special Status Avian Species, Breeding Season Surveys). For the reasons discussed below, the PCRP would cause **no new significant impact** and **no substantial increase in the severity of a significant impact** than was disclosed in the 2012 EIR for significance criterion a) with respect to nesting birds. The new restoration area would similarly require removal of trees, shrubs, and other vegetation capable of supporting nesting birds (as analyzed in the 2012 EIR). Pursuant to APM BIO-1 in Section 2.5.9 of Chapter 2, Lehigh would conduct vegetation removal outside the nesting season if possible. If vegetation removal is conducted during the nesting season, Lehigh would provide for preconstruction nesting surveys by a qualified biologist, avoidance of active nests with a suitable buffer identified by a qualified biologist, and monitoring by a qualified biologist to modify buffers if nesting birds appear distressed by Project activities. Nest buffers would be maintained until young have fledged or the nest is abandoned. These measures would ensure that Project impacts on nesting birds would be less than significant.

Baseline Mitigation from 2012 EIR: None required.

Additional Mitigation: None required.

Bats

This impact analysis corresponds to significance criterion a) as set forth in Section 3.2.2 and addresses impacts on special-status bat species. In the context of Impact 4.4-2 (page 4.4-34 et seq.), the 2012 EIR concluded that the proposed reclamation activities, including creek restoration activities proposed within the PCRA, would reduce impacts with respect to roosting bats with application of APMs BIO-3 (Roosting Bats, Non-roosting Season), BIO-4 (Roosting Bats, Non-hibernation and Non-maternity Seasons), and BIO-5 (Roosting Bats, Maternity Roosting Season). In addition to these APMs, to result in a less-than-significant impact, Mitigation Measures 4.4-2a, Use of Buffers Near Active Roosts; 4.4-2b, Roosting Bats, Maternity Roosting Season; and 4.4-2c, Bat Roost Replacement were applied. Each of these measures shall be implemented as part of the baseline condition for the PCRP. For the reasons discussed below, the PCRP would cause **no new significant impact** and **no substantial increase in the severity of a significant impact** than was disclosed in the 2012 EIR for significance criterion a) with respect to roosting bats. The new restoration area would require removal of additional mature trees, some of which may be capable of supporting roosting bats, while the 2012 restoration area required removal of trees and of structures capable of supporting roosting bats; these impacts are potentially significant, but, as in the 2012 EIR, impacts on roosting bats would be reduced to a less-than-significant level by the implementation of APMs BIO-3, BIO-4, and BIO-5 in Section 2.5.9 of Chapter 2, *Project Description*, and by the implementation of Mitigation Measures 4.4-2a, 4.4-2b, and 4,4-2c from the 2012 EIR.

Baseline Mitigation from 2012 EIR: Mitigation Measures 4.4-2a and 4.4-2c. The text of each is provided in Draft SEIR Table H1, *Impacts and Mitigation Measures for the 2012 Permanente Quarry Reclamation Plan Amendment*. Mitigation Measure 4.4-2b from the 2012 EIR also would contribute to a conclusion of less-than-significant impacts on roosting bats, but for purposes of this SEIR has been replaced by Mitigation Measure 3.2-2, *Roosting Bats, Maternity Roosting Season*. Mitigation Measure 3.2-2

reflects revisions made to the 2012 EIR's Mitigation Measure 4.4-2b to address input received from CDFW and USFWS in the context of this SEIR.

Additional Mitigation:

Mitigation Measure 3.2-2: Roosting Bats, Maternity Roosting Season. Nighttime evening emergence surveys, acoustic surveys, inspection for guano and culled insect parts, and/or visual inspection for roosts within large tree cavities shall be conducted by a qualified biologist during the maternity season (April 1 to August 31) to determine presence/absence of bat maternity roosts in and within 100 feet of Project work areas. All active roosts identified during surveys shall be protected by a buffer to be determined by a qualified bat biologist in consultation with CDFW. The buffer shall be determined by the type of bat observed, topography, slope, aspect, surrounding vegetation, sensitivity of roost, type of potential disturbance, etc. Each exclusion zone shall remain in place until the end of the maternity roosting season. If no active roosts are identified, then work may commence as planned. Survey results are valid for 30 days from the survey date. Should work commence later than 30 days from the survey date, surveys shall be repeated.

Operations may continue for many years. Surveys do not need to be repeated annually unless additional clearing of potential roosting or hibernation habitat could occur outside of the non-roosting season.

San Francisco Dusky-footed Woodrat

This impact analysis corresponds to significance criterion a) as set forth in Section 3.2.2 and addresses impacts on San Francisco dusky-footed woodrat, a special-status species. In the context of Impact 4.4-3 (page 4.4-36), the 2012 EIR concluded that the proposed reclamation activities, including creek restoration activities within the PCRA, had potential to disturb woodrat nests, but would result in a less-than-significant impact with respect to San Francisco dusky-footed woodrat with application of APM BIO-6, San Francisco Dusky-footed Woodrat. APM BIO-6 as set forth in Section 2.5.9.2 in Chapter 2, *Project Description*, is substantively similar to APM-BIO-6 from the 2012 EIR. For purposes of the PCRP, APM-BIO-6 requires surveys in all suitable habitat, avoidance of active woodrat stick nests where feasible, and dismantling and reconstructing any active woodrat stick nests where complete avoidance is infeasible. If young are found, the nests shall be reconstructed and left undisturbed until the young are independent. For the reasons discussed below, the PCRP would cause **no new significant impact** and **no substantial increase in the severity of a significant impact** than was disclosed in the 2012 EIR for significance criterion a) with respect to dusky-footed woodrat. The new, expanded restoration area similarly would require vegetation removal, grading, or other ground disturbance in wooded or scrub habitats where this species is known to nest, which has the potential to injure or disturb nesting woodrats. Impacts on dusky-footed woodrat would remain less than significant by application of APM BIO-6 in all suitable habitat where nesting woodrats may be found.

Baseline Mitigation from 2012 EIR: None required.

Additional Mitigation: None required.

Impact 3.2-2: The Project may have a substantial adverse effect on riparian habitat or other sensitive natural community.

This impact analysis corresponds to significance criterion b) as set forth in Section 3.2.2 and addresses riparian and other sensitive natural communities. In the context of Impact 4.4-6 (page 4.4-38 et seq.), the 2012 EIR concluded that boulder removal, vegetation removal, pipe installation, and soil treatment would temporarily disrupt riparian vegetation communities along Permanente Creek. This effect was considered less-than-significant because riparian tree removal was not expected, the disturbed area would be revegetated, and the long-term impact of the Project would be beneficial through creation of additional riparian habitat. For the reasons discussed below, the PCRP would cause **no new significant impact** and **no substantial increase in the severity of a significant impact** than was disclosed in the 2012 EIR for significance criterion b). The PCRP would similarly cause a temporary loss of riparian vegetation during ground disturbance activities associated with habitat restoration, such as from vegetation removal and grading; grading limits cover 13.4 acres for Reaches 8–13 and 7.72 acres for Reaches 17 and 18, including both riparian and upland areas. While individual trees would be removed, over the long term, the acreage of riparian community along Permanente Creek would increase as a result of Project implementation because the Project would improve riparian habitat conditions by connecting existing patchy riparian vegetation at the Project site into a more continuous corridor along the creek, which would be seeded with native species, improving habitat quality for wildlife (Appendix G1). Thus, the impact would remain less than significant with no mitigation required.

Baseline Mitigation from 2012 EIR: None required.

Additional Mitigation: None required.

Impact 3.2-3: The Project may have a substantial adverse effect on state or federally protected wetlands.

This impact analysis corresponds to significance criterion c) as set forth in Section 3.2.2 and addresses wetlands. In the context of Impact 4.4-8 (page 4.4-41 et seq.), the 2012 EIR concluded that the proposed creek restoration activities within the PCRA, including ground disturbance and revegetation adjacent to wetlands along the creek, could increase erosion into wetlands and waters. To reduce this impact to a less-than-significant level, the 2012 EIR identified Mitigation Measure 4.4-8a, Wetland Identification and Avoidance, and Mitigation Measure 4.4-8b, Wetland Monitoring Plan. For the reasons discussed below, the PCRP would cause **no new significant impact** and **no substantial increase in the severity of a significant impact** than was disclosed in the 2012 EIR for significance criterion c). The new restoration area would similarly have potential to impact wetlands and waters of Permanente Creek. The area of impact may be larger, as the PCRP implementation area extends farther downstream along Permanente Creek than the PCRA. The impacts on wetlands and waters along the creek would be temporary during construction; ultimately, restoration would improve conditions along the creek and allow for the creation of natural wetlands (see Appendices G1 and G3). As part of the baseline condition, the implementation of Mitigation Measure 4.4-8a would continue to require an updated wetland

delineation and permitting, which would avoid jurisdictional wetlands and waters when possible, while Mitigation Measure 4.4-8b would require monitoring and mitigation in accordance with permits, for areas where impacts could not be avoided. With the ongoing implementation of these measures, impacts on wetlands and waters of the PCRP would be less than significant.

> **Baseline Mitigation from 2012 EIR:** Mitigation Measures 4.4-8a and 4.4-8b. The text of each is provided in Draft SEIR Table H1, *Impacts and Mitigation Measures for the 2012 Permanente Quarry Reclamation Plan Amendment*.
>
> **Additional Mitigation:** None required.

Impact 3.2-4: The Project may have a substantial adverse effect on oak woodland habitat.

This impact analysis corresponds to significance criterion d) as set forth in Section 3.2.2 and addresses oak woodlands. In the context of Impact 4.4-7 (page 4.4-39 et seq.), the 2012 EIR concluded that ground disturbance, equipment use, and other reclamation activities within the PCRA could impact oak woodland habitat, and that this would result in a less-than-significant impact after replanting. Additional oak woodland habitat would be removed to implement the PCRP outside the existing Reclamation Plan boundary; however, the oak woodland habitat would be replanted and so the conclusion is the same as was reached in the 2012 EIR: less than significant after replanting. The 2012 EIR also noted that oak woodlands could be indirectly impacted by introduction of pathogens such as Sudden Oak Death (*Phytophthora ramorum*). To ensure that this impact would remain less than significant, the 2012 EIR required the implementation of Mitigation Measure 4.4-7, Sudden Oak Death Minimization Measures. With the continued implementation of the mitigation measure identified in the 2012 EIR and APM BIO-7 identified in Section 2.5.9.2 of Chapter 2, *Project Description*, the PCRP would cause **no new significant impact** and **no substantial increase in the severity of a significant impact** than was disclosed in the 2012 EIR for significance criterion d). The new restoration area similarly would temporarily impact oak woodland habitat during restoration activities, and have potential to spread pathogens from human and vehicle traffic during construction. With implementation of the APM and mitigation measures, impacts on oak woodlands would be less than significant.

> **Baseline Mitigation from 2012 EIR:** Mitigation Measure 4.4-7, the text of which is provided in Draft SEIR Table H1, *Impacts and Mitigation Measures for the 2012 Permanente Quarry Reclamation Plan Amendment*.
>
> **Additional Mitigation:** None required.

Impact 3.2-5: The Project may conflict with the provisions of an adopted habitat conservation plan.

As discussed in the 2012 EIR (page 4.4-32) the Project site is not within the boundaries of the Santa Clara Valley Habitat Conservation Plan. The Lehigh Permanente Site Operation and Maintenance Habitat Conservation Plan (LEHCP) was adopted in 2022 and includes portions of PCRP Reaches 8–12. The LEHCP provides measures for avoiding, monitoring, minimizing, and mitigating adverse effects on the CRLF from activities including stormwater capture/

sedimentation basin operation and maintenance, erosion control, material transport, vehicle and equipment operation, and road and vegetation maintenance. Monarch butterfly host plant and nectar plant surveys are also required. The LEHCP provides measures for the protection of CRLF, including relocation, in coordination with USFWS, to suitable on-site habitat outside the work area. The PCRP would adhere to all provisions of the LEHCP; thus, there would be no conflict with habitat conservation plan provisions, and no impact under this criterion. Accordingly, the PCRP would cause **no new significant impact** and **no substantial increase in the severity of a significant impact** than was disclosed in the 2012 EIR regarding conflict with the provisions of an adopted habitat conservation plan.

Baseline Mitigation from 2012 EIR: None required.

Additional Mitigation: None required.

3.2.4 Cumulative Analysis

The Draft 2012 EIR analyzed potential cumulative effects in Section 6.2.4, *Biological Resources* (page 6-17 et seq.), concluding that the Reclamation Plan Amendment, including creek restoration within the PCRA, would not result in a cumulatively considerable contribution to any significant cumulative effect. For the reasons discussed below, the PCRP would cause **no new significant impact** and **no substantial increase in the severity of a significant impact** in the cumulative context than was disclosed in the 2012 EIR.

With the implementation of the APMs and mitigation measures identified in this SEIR and the 2012 EIR (which would be independently enforceable obligations of the 2012 approvals and any future Project approvals), short-term and long-term impacts of the PCRP on biological resources would be less than significant or beneficial. Once reclamation is completed, woodland, grassland, and riparian areas would be increased in size, and aquatic habitat conditions would be improved as a result of the restoration of Permanente Creek, which would improve habitat for special-status species temporarily impacted by the Project.

The federal threatened CRLF is present within the new and expanded restoration area, and vegetation removal and grading would temporarily impact aquatic and upland habitat, and permanently remove suitable aquatic habitat at Pond 13. This represents a minor change in the impact analyzed in the cumulative context in the 2012 EIR. However, the implementation of new Mitigation Measure 3.2-1 would require Lehigh to obtain incidental take coverage for this species, while implementing conservation and avoidance measures for its protection. Given these measures and given the expansion of restored habitats that would support CRLF compared with the prior analysis, cumulative impacts on CRLF would remain less than significant. Following implementation of the Project, habitat restoration in the PCRP area would have beneficial effects for this species.

The cumulative projects listed for this SEIR (Table 3.0-2) include transportation demand management from the Midpeninsula Open Space District; this group of projects is projected but does not have a start date. Four additional projects in Mountain View include two trail

enhancements and a new bridge on Permanente Creek, and a baseball park/stormwater detention basin. These projects have the potential to contribute to cumulative impacts on CRLF, nesting birds, roosting bats, San Francisco dusky-footed woodrat, and aquatic organisms during Project construction/active restoration. As indicated in Section 3.2.3.1, *Methodology*, requisite compliance with applicable federal, state, and local laws and regulations would be mandatory for projects included in the cumulative scenario, and the application of associated protective measures (such as BMPs, monitoring and reporting plans, and the application of corrective actions) would be non-discretionary and shown to minimize and/or avoid significant impacts on biological resources. Further, as noted in the 2012 EIR Section 4.41.7 (pages 4.4-17 through -26), federal and state regulatory agencies with technical jurisdiction and authority for oversight of biological resources, such as the USACE for jurisdictional wetlands and waters and the USFWS for threatened and endangered species, would require adherence to regulatory requirements as a condition of their approval for the cumulative projects. In this regulatory environment, no significant cumulative effect is anticipated, and the PCRP's incremental impacts on affected resources would cause **no new significant impact** and **no more significant impact** in the cumulative environment than was disclosed in the 2012 EIR.

3.2.5 References

County of Santa Clara, 2011. Santa Clara County Planning Office Guide to Evaluating Oak Woodlands Impacts. July 28, 2011. https://stgenpln.blob.core.windows.net/document/Oakwoodlands_Guide.pdf

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U.S. Fish and Wildlife Service (USFWS), 2014. Programmatic Biological Opinion for Issuance of Permits under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, including Authorizations under the 22 Nationwide Permits for Projects that May Affect the Threatened California Red-Legged Frog in Nine San Francisco Bay Area Counties, California (Service file number 0SESMF00-2014-F-0389).

USFWS, 2022a. Email from Joseph D. Terry to Pat Angell, consultant to the County Planning Department regarding Lehigh Permanente Quarry - Revised Plans for Permanente Creek Restoration Project. November 15, 2022.

USFWS, 2022b. Formal Consultation on 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. Sacramento Fish and Wildlife Office, Sacramento, CA.