

1 THE COUNTY OF SANTA CLARA

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3 IN RE:)
4)
4 LEHIGH PERMANENTE QUARRY)
RECLAMATION PLAN AMENDMENT)
5 FILE NO: 2250-10P(M1)-10EIR)
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7
8 SANTA CLARA COUNTY PLANNING COMMISSION HEARING

9
10 DATE: May 24, 2012

11
12 TIME: 10:00 a.m.

13
14 LOCATION: BOARD OF SUPERVISORS CHAMBER
15 70 West Hedding Street
16 First Floor
San Jose, California

17 REPORTED BY: LISA R. KEELING
18 Certified Shorthand Reporter
19 License No. 10518
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A P P E A R A N C E S

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Planning Commission:

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Scott Lefaver, Chair

John Vidovich, Vice Chair

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Mary Ann Ruiz

Dennis Chiu

5

Theresa Couture

Jack Bohan

6

County Counsel:

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Nash Gonzalez

8

Nancy Clark

Elizabeth Pianca

9

Planning Department:

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Rob Eastwood

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Marina Rush

Gary Rudholm

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1 May 24, 2012

2 Santa Clara Planning Commission Hearing

3 San Jose, California

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5 GARY RUDHOLM: This is the call to order, please.

6 This is the County of Santa Clara Planning Commission and

7 Board of Zoning Adjustments Special Agenda for May 24th,

8 2012.

9 Planning Commissioners answering roll call,

10 please.

11 Commissioner Bohan?

12 JACK BOHAN: Here.

13 GARY RUDHOLM: Commissioner Chiu?

14 DENNIS CHIU: Here.

15 GARY RUDHOLM: Commissioner Couture?

16 THERESA COUTURE: Here.

17 GARY RUDHOLM: Chairperson Lefaver?

18 SCOTT LEFAVER: Here.

19 GARY RUDHOLM: Commissioner Ruiz? Absent.

20 Commissioner Schmidt?

21 KATHRYN SCHMIDT: Here.

22 GARY RUDHOLM: Vice Chair Commissioner Vidovich?

23 JOHN VIDOVICH: Present.

24 GARY RUDHOLM: The first item on the agenda this

25 morning is public comment. This portion of the meeting is

1 reserved for persons desiring to address the Commission on
2 any matter not on today's agenda.

3 Speakers are limited to one minute. The law does
4 not permit Commission action or extended discussion of any
5 item not on the agenda except under special circumstances.

6 All statements that require a response may be
7 placed on the agenda for the next regular business
8 meeting.

9 Are there any individuals here who wanted to
10 speak to the Commission on something that's not on today's
11 agenda? Seeing none, Mr. Chair, I'll move on.

12 SCOTT LEFAVER: This is for the -- this is for an
13 item not on the agenda.

14 GARY RUDHOLM: Okay. Cathy, you wanted to say
15 something that's not on the agenda? Now is your
16 opportunity. Okay. And you have one minute.

17 CATHY HELGERSON: Okay. First of all --

18 SCOTT LEFAVER: Hi. Oh, could you --

19 THE WITNESS: My name is Cathy Helgersen.

20 SCOTT LEFAVER: Thank you. And you'll have to --

21 CATHY HELGERSON: Cathy Helgersen.

22 SCOTT LEFAVER: And this item, you have one
23 minute, item not on the agenda.

24 CATHY HELGERSON: One minute?

25 SCOTT LEFAVER: Yes.

1 THE WITNESS: First of all, the cement plant's
2 not on the agenda, correct? That's what everybody keeps
3 saying. So I can talk. The cement plant, Lehigh.

4 SCOTT LEFAVER: I didn't hear you.

5 KATHY HELGERSON: Lehigh Cement Plant is not on
6 the agenda. You're using up my time.

7 Anyways, Petroleum Coke and Santa Clara County's
8 investigators are going up there to look at how they're
9 storing it. And that's not on -- not on the agenda, so I
10 can speak. Jim Blaney is going to be looking into that,
11 how it's stored and how it's transported to Lehigh and how
12 it's stored and how it's being dried out by the knocks and
13 socks.

14 We don't want that. We want it delivered dry.
15 We want it stored dry because it's a contaminant. It's a
16 hazardous contaminant, and we need to make sure that it's
17 not polluting anyone. So that's something that's off
18 the -- obviously is not included in today's program.

19 So I'd like the board to look into that, also,
20 and I will be also bringing up other issues and I will be
21 talking to him to find out what he's found out in getting
22 the report. So thank you.

23 SCOTT LEFAVER: Thank you. Does she need to fill
24 out --

25 CATHY HELGERSON: I already did.

1 SCOTT LEFAVER: I just want to make sure.

2 GARY RUDHOLM: Yes. We have her name. It is
3 part of the cards.

4 SCOTT LEFAVER: Okay. Thank.

5 GARY RUDHOLM: And we've got it recorded.

6 SCOTT LEFAVER: Very good.

7 GARY RUDHOLM: So Mr. Chair, I wanted to discuss
8 a little bit about today's protocol. We have the one
9 item, which is item three, which is the one business item
10 for today. So we have -- for today we do have a court
11 reporter taking the minutes. We'll be recording the audio
12 and video of the entire meeting as well and would like to
13 note for the recording that Commissioner Ruiz has arrived
14 and is part of the meeting.

15 We're going to have a presentation by staff
16 regarding the final EIR and staff report. They'll be
17 discussion by the Planning Commission, questions and
18 answers as necessary of the staff presentation. I've been
19 notified by the applicant that when we do open the public
20 hearing, they've requested some time, approximately
21 20 minutes, for presentation they would like to do.

22 And I'd like to ask for your direction on the
23 amount of time we would allot to individual and group
24 speakers as part of the public hearing. We have different
25 time frames typically for individuals and for groups.

1 Would you like to allot three minutes for
2 individual speakers?

3 SCOTT LEFAVER: Yes, that's fine.

4 GARY RUDHOLM: And then for group speakers, we
5 would allot seven minutes?

6 SCOTT LEFAVER: That's fine.

7 GARY RUDHOLM: Okay. Okay. I'll move on to the
8 next item on the agenda then, Mr. Chair.

9 Item number three is file 2250-13-66-10P. This
10 is a public hearing to consider the Environmental Impact
11 Report under State Clearing House number 2010042063 and
12 Reclamation Plan Amendment project file 2250-13-66-10P
13 10EIR(M1), to amend the 1985 Reclamation Plan for
14 Permanente Quarry.

15 The Permanente Quarry is a limestone and
16 aggregate mining operation. The Reclamation Plan
17 Amendment proposes to reclaim all mining disturbances on
18 the property. No new quarry pit is proposed, and the
19 owner of the operation is the HeidelbergCement,
20 Incorporated. The operator is Lehigh Southwest Cement,
21 Incorporated.

22 So Mr. Chair, I'll turn the floor over to you.

23 SCOTT LEFAVER: Okay. Thank you, Mr. Rudholm. I
24 want to, by the way, thank everyone for coming today to --
25 at this public hearing about the Reclamation Plan

1 Amendment and Environmental Impact Report for the Lehigh
2 Cement Company Permanente Quarry.

3 The Commission is only considering the
4 Reclamation Plan and the Environmental Impact Report that
5 goes along with that amendment to the Reclamation Plan and
6 the restoration of the land surrounding the quarry.

7 We're not -- we're only focused on that, not
8 focused on any other items.

9 The public hearing will be focused in the way
10 that the secretary of the Planning Commission indicated.
11 We're going to have a staff report. We're going to have a
12 report by the applicant's presentation and then -- and
13 then we'll have speakers, individuals and groups, people
14 representing groups come up before the Planning Commission
15 and give them -- give us and the public their thoughts on
16 the amendment to the plan.

17 As indicated, this Planning Commission meeting is
18 being videotaped, and we do have a court reporter with us
19 who is taking down your comments and our comments and
20 questions and so forth. About every hour she's requested
21 to have a break, and we're going to certainly make sure
22 that happens. So about every hour we're going to take
23 about a five-minute break or so.

24 We're going to go until noon today,
25 approximately, and then we're going to take a 30-minute

1 break for lunch and then come back and we will go to
2 approximately 3 o'clock this afternoon.

3 With that, I will now ask a presentation by
4 staff. Mr. Planning Director?

5 NASH GONZALEZ: Thank you very much, Mr. Chair.

6 Good morning. Members of the Planning
7 Commission, members of the public, good morning. Staff is
8 going to be providing an overview of the project this
9 morning, which includes the Reclamation Plan Amendment for
10 the Lehigh Permanente Quarry.

11 Next. Next slide. The idea here is to go over
12 the hearing objectives of today's meeting, provide you
13 with a scope of review of the Reclamation Plan, also to
14 talk about the Reclamation Plan itself and the EIR.

15 Also, I would want to point out that on May 18th
16 we conducted a workshop for the Planning Commission and
17 the public. Various questions were generated and the idea
18 is to go through and provide answers to those questions
19 that were not answered at the May 18th meeting. Also,
20 point out key issues, other key issues, and go over the
21 supplemental packet. And with that, we'll jump into the
22 hearing objectives.

23 Next slide, please. Okay. The hearing
24 objectives here again is the Reclamation Plan Amendment,
25 and whether or not this is in compliance with SMARA, the

1 Surface Mining and Reclamation Act. We're also going to
2 go through the EIR to determine whether or not it is in
3 compliance with CEQA, the California Environmental Quality
4 Act. Did it adequately disclose significant impacts and
5 identify mitigation? Also, all significant impacts
6 mitigated or unable to be mitigated. Again, this provides
7 for a full disclosure of the document.

8 Again, what I'd like to point out that this is
9 not a permit to mine, but it is a Reclamation Plan or what
10 we generally refer to as a closure plan for the mining
11 that is occurring at the site. So the Planning Commission
12 today's going to be conducting a hearing on the
13 Reclamation Plan Amendment, and after deliberating, they
14 will determine compliance with SMARA.

15 The Planning Commission is also going to consider
16 the Environmental Impact Report prepared for the
17 Reclamation Plan and determine whether or not the
18 environmental document is in compliance with the
19 California Environmental Quality Act.

20 Next slide, please. Okay. So one of the
21 questions that generally comes up with is what is
22 reclamation? And as stated in the slide here, "Every
23 surface mine must have a Reclamation Plan per state law."

24 In other words, this refers to as the closure
25 plan or an exit strategy for leaving a site in a useable

1 state, whether that state is a different land use. It
2 could be agricultural, could be open space, could be
3 residential. Again, the Reclamation Plan provides for
4 that useable use.

5 And again, what you see in the photograph here is
6 an abandoned talc mine in Death Valley. And, again, some
7 of the things that the State of California has had to deal
8 with is abandoned mines, when a mine operator opens up a
9 mine and then walks away without reclaiming the site. And
10 the purpose of SMARA is to provide for the end use, the
11 reclamation of a site.

12 And, again, what we're going to be considering
13 here today is a Reclamation Plan, a plan to ensure that
14 something like this does not occur out at the site.

15 All right. Next slide, please. Okay. State of
16 California has estimated that there are over 47,000
17 abandoned mines statewide. More than 39,400 or 84 percent
18 of them present a physical safety hazard and 11 percent of
19 them present an environmental hazard. Again, a lot of
20 these are abandoned mines where operators have walked away
21 from. There was no closure plan to establish an end use.

22 And so what you see here on the screen are
23 photographs of what is referred to as the new Almaden Mine
24 in Santa Clara County, also referred to as the Quick
25 Silver Mine. When we take a look at what these mines

1 represent, basically, it's a legacy that we today are left
2 with having to clean these sites up. This is an old
3 mercury mine that, again, is problematic for the County
4 and for the residents of California.

5 As noted up on the screen, it says County cost --
6 it's estimated that it's going to cost 7.5 million dollars
7 to clean up this site. The site is currently a park.
8 It's being remediated as a park, and mercury is an issue
9 here where, again, it leaches into the surface water. So
10 had a reclamation plan been prepared and approved and
11 adopted, we wouldn't be dealing with things like this.

12 So according to -- and again, these are more
13 statistics than anything else. According to a June 2000
14 report prepared by the State of California, 90 percent of
15 mercury that was mined in California -- or excuse me, in
16 the United States was mined in California.

17 This particular mine is one of the largest mines
18 in California dealing with mercury. And again, what we
19 want to try to do is avoid having to deal with a cleanup,
20 but again, a cleanup is part of the reclamation.

21 Okay. So with that let's go ahead and move on to
22 the next -- next slide. So, again, what is reclamation?
23 Well, reclamation means a combined process of land
24 treatment pursuant to Public Resources Code 2733 which
25 again deals with minimizing water degradation, air

1 pollution, damage to an aquatic or wildlife habitat,
2 flooding, erosion or other adverse effects from surface
3 mining operations, and it also indicates or states that
4 mine lands are reclaimed to a usable condition which is
5 readily adaptable for alternative land use and creates no
6 danger to the public health and safety.

7 So, again, that is the purpose of reclamation,
8 and, again, a reclamation plan is required per the Surface
9 Mining and Reclamation Act of 1976.

10 And with that could we go to the next slide.

11 Okay. SMARA provides for reclamation, and SMARA
12 has specific standards that have to be adhered to. Number
13 one, we have to deal with financial assurances. What is a
14 financial assurance? It's a bond or other financial
15 mechanism that is posted by the mine operator to ensure
16 that the site will be adequately cleaned up.

17 Okay. SMARA also deals with slope stability. In
18 other words, leaving the site in a useful but, again, a
19 safe state. And, again, we look at what is geologically
20 acceptable.

21 Okay. It also deals with the revegetation of the
22 site, and in many cases we're looking for end uses for
23 wildlife habitats. Is the appropriate vegetation
24 suitable? And again, we'll also deal with drainage and
25 stream protection, and again, there are several components

1 of SMARA that refer to various laws. And again, we need
2 to look at the end use, drainage stream protection as an
3 example.

4 So the scope of a Reclamation Plan as in this
5 case, if we go on to the next slide, basically we'll deal
6 with the Reclamation Plan Amendment. Okay. And, again,
7 one of the questions that is asked, does the Reclamation
8 Plan adequately clean up the site? Okay. Will it leave
9 the site in a usable end state? Will it remediate hazards
10 caused by surface mining? And again, these are things
11 that staff is going to go ahead and go through in their
12 presentation.

13 And, again -- and one of the final questions is
14 whether the Reclamation Plan substantially meets SMARA?
15 And with that, could we go on to the next slide.

16 And at this point, I'm going to go ahead and turn
17 it over to Rob Eastwood who will go through the proposed
18 project and speak to the scope of the Reclamation Plan for
19 the Lehigh Permanente Reclamation Plan.

20 ROB EASTWOOD: Thanks, Nash.

21 Rob Eastwood, principle planner with the planning
22 office, and just to introduce the rest of the staff, also,
23 here in support and able to answer questions in addition
24 to myself, Gary Rudholm is the senior planner in charge of
25 the SMARA program. He's also your Planning Commission

1 secretary.

2 Jim Baker, the County geologist is in attendance.
3 Pete Hudson, who works for ESA, our consultant on the
4 project, who has much knowledge of geology and the
5 selenium issue is here in attendance, as is Marina Rush to
6 my right, who is the project planner for the project.

7 So to continue with the presentation. Just to
8 reiterate, the Reclamation Plan does not focus on existing
9 mining. We talked about this last week in the workshop.
10 The mine at Permanente Quarry is a vested mine. It's an
11 existing mine, and the whole scope of the Reclamation Plan
12 is how that mine is cleaned up, not how that mine
13 continues to operate. So just to reiterate that point.

14 Cement plan operates under a separate use permit
15 separate from the mine, and again, is not the scope of
16 this Reclamation Plan. And to reiterate, we said this
17 several times, but to state again, there is no new quarry
18 pit proposed with this Reclamation Plan.

19 To walk through the Reclamation Plan Amendment,
20 this is an abbreviation of last week where all planning
21 commissioners had a much more elaborate presentation of
22 the Reclamation Plan. The Reclamation Plan before the
23 Planning Commission is intended to reclaim all mining
24 disturbances on site. So it does address two violations
25 issued by the County for mining that was conducted outside

1 of the existing Reclamation Plan, which dates from 1985.
2 This will bring the mine into compliance with SMARA and
3 address those violations.

4 One of the most important things to consider as
5 Nash talked about is it does bring into account a new
6 financial assurance. Today the financial assurance to
7 reclaim this mine, to restore this mine, is not adequate
8 based on what's been disturbed on site. So with approval
9 of this plan, put in place will be a new financial
10 assurance which is much greater than the one in place
11 which will assure that the land is restored after mining
12 occurs.

13 To walk through generally the components of the
14 Rec Plan and the main concepts, generally a new overburden
15 storage pile is proposed, which is currently taking place.
16 That is at the East Material Storage Area on the east side
17 of the site, also known as EMSA.

18 With respect to the quarry pit, which is a large
19 pit in the middle of the site, the proposal for
20 reclamation is to reclaim that or backfill the pit with
21 the overburden, which is currently in the West Material
22 Storage Area, a large overburden pile located on the west
23 side of the site.

24 So all of that overburden will be placed back
25 into the pit to backfill, create geologic slope stability

1 and reclaim the quarry pit.

2 Many disturbances from mining that affected
3 Permanente Creek will be reclaimed, restored. Certain
4 stretches of Permanente Creek will actually be recontoured
5 and restored with riparian vegetation installed. And,
6 again, this is a 20-year plan, so 20 years from the final
7 adoption is when the reclamation will be completed.

8 Again, just walking through the main concepts.
9 The graphic on your lower left shows the concept on
10 backfilling the pit. Again, the overburden from the West
11 Material Storage Area will be used to put -- place back in
12 the main pit from which it originally originated.

13 On the right is some photo simulation showing the
14 East Material Storage Area, which is a new overburden pile
15 located on the east side of the site. The two photos show
16 during reclamation what it's intended to look like from
17 areas off site, and finally following final revegetation,
18 what it will look like after that.

19 As Nash indicated, there are two main items
20 before the Planning Commission. First is will the
21 Planning Commission decide if the reclamation
22 substantially complies with SMARA, and can it approve the
23 Rec Plan? The item actually before it is a review of the
24 Environmental Impact Report.

25 So the task before the Commission is to look at

1 this document which is an informational document. It
2 doesn't have teeth in terms of policies. It's intended
3 just to disclose to the Commission in reclaiming the site
4 what are the environmental impacts from reclaiming the
5 site? Did it comply with CEQA and did it meet that
6 intent? Does the EIR adequately identify those
7 significant impacts? Does it adequately identify feasible
8 mitigations if there are significant impacts, and does it
9 adequately identify any alternatives that could reduce
10 significant impacts?

11 So those are the key questions the Commission
12 would consider in certify in the EIR. To reiterate, we
13 walked through this last week, there are in the EIR
14 identified from the reclamation itself 22 significant
15 impacts. Out of all of those, they can all be mitigated
16 through mitigation measures which are in the conditions of
17 approval to less than significant.

18 So they will not be significant with those
19 conditions in mitigations except in three main areas. Two
20 are generally during reclamation. As the East Material
21 Storage Area is reclaimed before revegetation, the EIR
22 discloses there will be a significant visual impact.
23 That's an interim impact.

24 The third one during reclamation the EIR
25 discloses that there will be interim selenium impacts.

1 Long-term following reclamation, the conclusion is water
2 quality impacts and selenium will be less than
3 significant, but during reclamation activities, there is
4 no feasible mitigation measures identified.

5 And then, finally, to reclaim the site, there
6 will be a loss of certain structures that are associated
7 with what is identified as the Kaiser Historic Mine
8 District, and to remove some of those components, not all
9 of the components of that historic mining district, there
10 is no identified mitigation measures.

11 So these three general areas, staff, consultants,
12 the EIR have not identified feasible mitigation measures
13 to address those.

14 Okay. So for the next couple of slides, we'd
15 like to circle back to the Commission on some of the
16 questions last week. Many of the questions that came up
17 we had dialogue and answered those in the hearing. There
18 were some which we said intentionally we would bring those
19 back to the Commission with some answers. So we'd just
20 like to walk through those.

21 The first question I think came from Commissioner
22 Bohan. It was the question on selenium concentrations in
23 Permanente Creek. We disclosed last week that as
24 Permanente Creek goes through the site, there is spikes in
25 selenium concentrations from water testing in the creek.

1 So near the West Material Storage Areas it's at
2 about seven. The Regional Board standard for selenium
3 concentrations is five, just for reference. So as it goes
4 through the quarry cite, Permanente Creek ranges from
5 seven up to 62 and then down to 24 and 9.9. So that's
6 sort of as it goes downstream adjacent to the quarry site.

7 Commission Bohan had asked what about downstream,
8 how is the selenium concentrations? And so we have
9 acquired that data. From 2003 testing at Charleston Road,
10 which is in Mountain View just a mile above where
11 Permanente empties into the bay, the average selenium
12 levels were at 2.9. So that is below Regional Water
13 Quality Control Board standards.

14 For reference, we did put up there just in other
15 creeks which are not noted as impaired for selenium what
16 are the concentrations. Coyote Creek has reported
17 averages of about 1.2, and Guadalupe Creek, and this is
18 about 15 years old data, but it's just for reference,
19 reports 2.7. So for references those are some of the
20 concentrations in other creeks in the South Bay.

21 Another question had come up on what are the
22 human health effects of excessive selenium? Now, the
23 previous Regional Board standard that was disclosed of
24 five micrograms per liter was for fish and wildlife, which
25 has a much lower tolerance for exposure to selenium.

1 The EPA has set a standard, which is higher, for
2 selenium for drinking water standard, and that's 50
3 micrograms per liter. That backwards U is a microgram.

4 Some of the information we found through studies,
5 there's not a lot out there, but that's available on
6 studies that were done we've summarized on the screen.
7 This is from a study done in Italy on exposure of humans
8 to excessive selenium, and the takeaway here is that if a
9 person was to consume over 300 micrograms of selenium per
10 day, which is a very high concentration, over a consistent
11 period, there could be toxic effects.

12 And some of those on are on endocrine function,
13 thyroid hormones, and some of the other adverse affects
14 have to do with the other issues listed up there.

15 So again, that's a very high concentration.
16 That's a chronic consistent consumption of selenium at
17 very high levels of over 300 micrograms per day.

18 The question had come up on the buttressing, and
19 the factor of safety. So the question as was received by
20 a member of the public was, is the factor of safety, which
21 is for stability, used for the reclamation and the slopes
22 following, is that adequate? Is it an adequate factor of
23 safety?

24 For reference sake, the factor of safety is a
25 conservative calculation of how stable slopes would be

1 following reclamation or any activity that's proposed,
2 what is the stability?

3 For reference, a factor of safety of equal or
4 over one in the industry is considered design adequate,
5 and that's acceptable to be stable. If a factor of safety
6 is over 1.25, that's considered much, much more stable and
7 even 25 percent above a generally accepted standard.

8 For reference sake, for the Permanente Quarry,
9 the geologic studies that were done, reviewed and approved
10 by the County geologist, the factor of safety is at 1.25,
11 which is very conservative and very stable level for the
12 static, and 1.0 for the pseudo static. And our County
13 geologist can elaborate on what those mean if there's
14 additional questions.

15 Questions had come up last week regarding the
16 scenic easement. So just a bit of history and to walk
17 through that question. The question was, why is the
18 scenic easement not included, not considered, not a
19 component of this plan? I think specifically why isn't
20 restoration of the scenic easement and the ridge line
21 included in that easement included in the Rec Plan?

22 For history sake, the easement -- the scenic
23 easement was dedicated to the County from the quarry
24 operator in 1972. The intent was to maintain the ridge
25 line that's out there above the main pit. In two

1 instances in 1987 and 2001, there were landslides that
2 lowered that ridge line down. Starting in 2002, the
3 County did conduct a series of studies and also the mine
4 operator submitted independent geologic studies. There
5 were reports actually to the Board of Supervisors that was
6 concerned about the status on a quarterly basis for a
7 number of years.

8 The conclusion of those studies, both from the
9 County contracted geologist and the geologist working for
10 the mine operator, was that to restore that ridge line
11 would be very difficult and by itself would likely cause
12 significant environmental impacts or costs that would
13 likely be larger -- have a larger impact than the existing
14 condition.

15 To restore a ridge line, we would have to
16 actually rebuild the ridge line or place fill to increase
17 the height of the ridge line. That is likely to cause
18 greater instability. There our landslides in that ridge
19 line. It's a fragile ridge line and to try to rebuild
20 that ridge line might cause further eroding or landslides
21 of that ridge.

22 And also the work to restore that ridge line over
23 a long interim period would likely have a greater impact
24 than what's there today. So to put fill up there and do
25 remediation would have a much larger visual impact.

1 The Reclamation Plan does propose some
2 remediation of the ridge line, not a restoration of the
3 original height. It lays back some of the unstable
4 landslides that are up there. By doing that, it actually
5 creates greater stability. So today the estimate is that
6 the factor of safety today for that landslide is less than
7 one, which is unstable.

8 With that proposed lay back under the Reclamation
9 Plan, it would be 1.57, which is 50 percent above
10 unaccepted standards. So it would be a very stable
11 condition following the proposed Reclamation Plan.

12 Just a quick graphic. Our County geologist put
13 that together. This is sort of a cross-section of what
14 that ridge line looks like. The peak there is the top of
15 the ridge. It is hard to see, but just to give a quick
16 cross section of the ridge we're talking about and where
17 it's at. The quarry is below that ridge to the right.
18 It's at Los Altos, Los Altos Hills, and those communities
19 are located to the left.

20 A quick zooming in of sort of what is proposed.
21 The predevelopment topography back before the quarry pit
22 was -- started work is on the top there. The existing
23 condition is the dashed line, which shows where it is
24 today, some of the benches and the landslide and the total
25 of the slide. The proposed regrading is showed on there,

1 grade under a slope above elevation. And then finally the
2 buttress you can see is the solid line, which is on the
3 right. There's a buttressing of -- below that ridge line.

4 Questions had come up about violations. And EMSA
5 violations, these have been consistent questions from the
6 public to the County over SMARA violations on the
7 property. And the question generally was why the did the
8 County allow past violations to continue? And again, this
9 Reclamation Plan will abate those violations, but I
10 believe the question was why are those ongoing?

11 For a quick oversight, in 2008 a violation was
12 issues to the mine operator for placing overburden in the
13 East Material Storage Area. And meeting with the mine
14 operator during that time, the operator stated that they
15 had run out of room in existing storage areas, that they
16 had met capacity, and this was their only options for
17 continuing to mine the site.

18 Under the circumstances the County did enter in
19 an agreement with the operator, but to abate that
20 violation they will propose a Reclamation Plan
21 immediately, maintain a schedule to have it processed and
22 approved and that would act to abate that violation. But
23 the County did allow the mine operator to continue to do
24 work in that area.

25 So today, this Reclamation Plan does abate that

1 violation, which has been ongoing, and that's the intent
2 to abate the violations that's going on.

3 Questions that came up on selenium treatment. I
4 believe the direct question from the speaker last week was
5 how much is too much? We walked through -- the EIR
6 discloses there are significant selenium impacts during
7 reclamation, and the study that was done by C.H. Hill
8 (unintelligible) on how much it would cost to install a
9 treatment plant, and the speaker had asked based on that
10 is that too much, or how much is too much?

11 Just to reemphasize. There are two conclusions
12 here. County staff, its consultants and the EIR have
13 concluded that long-term reclamation will restore water
14 quality at the site. So this is a historic condition ever
15 since limestone mining occurred on the site. There has
16 been contact with storm water. It's known to be in
17 Permanente Creek. It's a known issue in compliance with
18 SMARA.

19 This proposed Reclamation Plan with the backfill,
20 with the covering of limestone, will reduce under these
21 estimates under the EIR and the Rec plan water quality.
22 Our selenium concentrations and runoff from the site from
23 today which is about 80 micrograms per liter down below
24 five micrograms per liter. So that's a long post
25 reclamation.

1 The EIR did disclose of course, as I mentioned
2 earlier, during reclamation there are -- there could be
3 some exacerbations. So before it reaches that final end
4 stage just by moving material, moving overburden with
5 limestone, there could be some potential for spikes or
6 increased runoff just during that activity.

7 The tasks under the EIR is there a feasible way
8 to mitigate that. We did contract with CH Hill
9 (unintelligible), which has much experience nationwide and
10 throughout North America in looking at treatment on how
11 much it would cost. They concluded that additional
12 studies were needed, such as a water management, how to
13 manage water on site, some pre-engineering.

14 Initial estimated costs were between 33 and 127
15 million just to construct the plant and 6.5 million per
16 year to operate the plant, about a hundred million dollars
17 in today's dollars. At the top end, that is about
18 227 million dollars.

19 The determination in the EIR and by County staff
20 is that due to these uncertainties that all the studies
21 have not been completed. There's additional need to look
22 at how much that cost actually is, how would the water
23 actually be balanced on site, how could a treatment plant
24 be engineered, but today there's just not enough known to
25 require this as a feasible mitigation measure.

1 So to answer the speaker's question how much is
2 too much, that will be a determination that's made in the
3 future. A requirement under the mitigation measure and
4 the condition is that studies to determine how much it
5 cost, what is needed to balance or manage water on the
6 site, engineer site, will be done over the next two years,
7 and that will be coming back to the Planning Commission in
8 a feasible hearing. At that time, based on all those
9 factors, is a determination of feasibility which will
10 include costs.

11 Another question had come up last week is there
12 sufficient methods, means in the mitigation measures to
13 monitor water quality? We talked a bit about ground
14 water. Under the projections ground water will emerge
15 from the main pit after 14 years after the start of
16 reclamation.

17 County staff has looked at that, and there was a
18 clarification in the condition. There is a requirement to
19 monitor for at least five years beyond that date when
20 ground water is coming out to ensure that that water which
21 emerges from the pit, surface water, ground water, does
22 meet water quality standards.

23 The requirement is for five years that water must
24 meet water quality standards before the mine is deemed
25 reclaimed, and that's the surety.

1 A broader question that came up last week -- or
2 was touched on briefly but want to bring back to the
3 Commission is the scope of the Reclamation Plan, what's
4 before the Planning Commission, and is there the potential
5 to modify the Rec Plan? So if there's components the
6 Planning Commission wanted to modify, change, how and
7 under what parameters could that happen?

8 To reiterate before the Planning Commission
9 today, the Planning Commission's task is reviewing the Rec
10 Plan and make -- and in reviewing the Rec Plan, does it
11 substantially meet SMARA standards? If the Planning
12 Commission wanted to request a change, it would have to
13 determine that this Reclamation Plan does not
14 substantially meet SMARA standards, and Nash went over
15 what those standards are.

16 So there would be have to be grounds, and if
17 there was a request to change, it would have to be based
18 on that determination that what's proposed doesn't meet
19 those standards, and based on that, they could direct a
20 change to the applicant.

21 Another option or method of looking at a change
22 would be through the alternatives in the EIR. So the EIR
23 did disclose as a Rec Plan will have significant impacts.
24 What alternatives are there that will reduce those
25 impacts? Another method of looking at an alternative to

1 what's on the table would have to be identifying a new
2 alternative that wasn't identified.

3 So just to reiterate, if there is a different
4 alternative, a different method, something considered by a
5 Planning Commission, it would have to meet these standards
6 under CEQA. It would have to be feasible. It would have to
7 meet SMARA requirements and the objectives of the project
8 and it would have to reduce those significant impacts,
9 which we talked about earlier.

10 Some other key issues just to circle back to the
11 Commission. We talked about ground water last week. Just
12 to reemphasize that this quarry is in a bedrock aquifer.
13 It's in a bedrock bowl. There is very low permeability as
14 opposed to on the Santa Clara County floor wherein there
15 are soils that have clay or clay or sands are low.

16 Up in this bedrock there's very low permeability
17 and water permeating into the soil.

18 With respect to wells and recharge and the
19 potential for surface water or water to effect those
20 wells, the recharge zone for the Santa Clara Valley
21 alluvium aquifer where water enters in and recharges that
22 larger aquifer is over two miles from the site. Closest
23 ground water wells are over five -- four miles away from
24 the site, and that's to the east.

25 In looking at data, again, as we mentioned

1 earlier, selenium is an existing condition on the site.
2 So there has been concentrations in Permanente Creek for
3 many, many years since quarrying began. One indication if
4 there was an issue with ground water would be if selenium
5 shows up in those ground water wells as that's an existing
6 condition.

7 In the final EIR we looked at ground water wells
8 closest to the site just to see is there an existing
9 situation where surface water which contains selenium
10 could be impacting those ground water wells.

11 Between 1973 and 2007, over 25 years of data was
12 collected from the closest ground water wells. That
13 includes 359 wells. They were all sampled -- or the water
14 quality was looked at. In all instances except one there
15 was no instance of selenium exceeding the maximum -- the
16 MCL levels over the maximum containment levels in any of
17 those wells.

18 There was no evidence of any persistent or
19 contamination of any of those ground water wells with
20 selenium. So again, to reiterate to the Planning
21 Commission, this is a Reclamation Plan that is intended to
22 reclaim the site and actually reduce or restore the site
23 and reduce water quality concentration.

24 And so again, there's no evidence that today
25 there is an impact on those ground water wells, but just

1 also keep in mind that in all projections both ground
2 water and surface water following reclamation will be
3 reduced down below water quality levels or the accepted
4 regional board levels.

5 Other key issues just to consider. We talked
6 about this earlier. There are at least several
7 significance unavoidable impacts disclosed in the EIR. In
8 these three general areas staff has not identified, the
9 EIR has not identified any feasible mitigation measures.
10 There's some partial mitigation, but they are significant
11 and unavoidable.

12 With that there is the requirement under CEQA if
13 the Planning Commission adopts a project for which there
14 are significant impacts that cannot be mitigated, the
15 Planning Commission is tasked with adopting a statement of
16 overriding considerations. So this is acknowledging even
17 though there are still significant impacts, the economic,
18 social or other benefits of this project outweigh those
19 impacts.

20 Some of those are elaborated in your resolution
21 and there's additional information that has been submitted
22 from the applicant is that those overriding considerations
23 include the protection of the public health, safety and
24 welfare through reclaiming the site, providing an adequate
25 financial assurance.

1 Again, today we do not have that, but this will
2 provide an adequate financial assurance to reclaim the
3 site to continue local supplies and construction
4 materials, retain economic fiscal benefits to the County
5 and preserve local jobs.

6 And again, that's in your resolution, and there's
7 been additional information that's been submitted by the
8 applicant.

9 Also, to highlight, in your supplemental
10 packet -- and we do acknowledge a lot of this material has
11 been coming out late, but you should have with you today
12 the resolution. So the resolution before you today is
13 something that's different that the planning commission
14 does not normally have, but given sort of the magnitude or
15 the size of this project, that you have an EIR before you,
16 you have a statement of overriding considerations.

17 County Counsel did prepare that resolution, which
18 is the first attachment to your packet. With that there
19 are the conditions of approval which implement all the
20 mitigation measures and mandate that the Reclamation Plan
21 proceed as proposed.

22 The mitigation monitor reporting program that
23 ensures all mitigation measures are followed through it
24 with and that statement of overriding considerations.

25 There is some supplemental correspondence that has been

1 received, I'm noting continues to be received and passed
2 out by Michelle. And to note that, also.

3 Again, apologies by staff on the lateness of
4 getting this information. We have been working many hours
5 to put this together. We worked -- there was a bit of
6 back and forth between staff and the mine operators
7 specifically on the conditions and -- but I think we've
8 got to the point with there's no large outstanding
9 questions from the mine operator. So that's with your
10 packet. And again, all that information should be with
11 you today.

12 Finally, to bring this back. Again, the tasks
13 before the Planning Commission today is two broad issues:
14 Adoption of the Reclamation Plan, and does the Reclamation
15 Plan meet SMARA standards?

16 The limitation in your review is pretty limited.
17 This isn't a use permit to approve a new use. The scope
18 of your review is to evaluate this Reclamation Plan and if
19 it meets those standards?

20 Again, for the Environmental Impact Report, did
21 it comply with CEQA, does it adequately disclose the
22 significance impacts, and because there are significant
23 unavoidable impacts, do the benefits of the project
24 outweigh those environmental impacts?

25 Just to reiterate the order. You do have to take

1 an action on CEQA first. Again, you can't approve the Rec
2 Plan until the EIR is certified.

3 So you may want to consider when you get to
4 actions, if you want to break those actions apart -- and
5 again, just to go through those. First, would be the
6 certification of the EIR. Second is adoption of that
7 mitigation monitor reporting program. Third is making
8 those CEQA findings and adopting the statement of
9 overriding considerations, and finally is the Reclamation
10 Plan.

11 So that is staff presentation, and we are all
12 available here for questions. Thank you.

13 SCOTT LEFAVER: Thank you, Staff. I think this
14 is a good time to take a break according to those who are
15 saying yes. So let's take a five-minute break, and we'll
16 be back at 10 o'clock -- 11 o'clock. Five-minute break.
17 Thank you.

18 (Short break taken.)

19 SCOTT LEFAVER: So we've had our staff
20 presentation, and the next item is questions of staff at
21 this time. Do we have questions that we'd like to ask
22 staff?

23 So Commissioner Chiu?

24 DENNIS CHIU: Thank you, Mr. Chair. In the
25 supplemental packet it was attachment for correspondence

1 by Libby Lucas, May 18, 2012. She writes that under and
2 adjacent to Lehigh Quarry's northern operations is a mile
3 of unconfined zone where underflow will feed directly into
4 the Santa Clara aquifer just downhill.

5 I was wondering if you could respond to that
6 comment that we received from Ms. Lucas.

7 ROB EASTWOOD: Sure. I'll start and probably
8 have Pete Hudson elaborate, who's our geologist from ES
9 Air Consultant, but as discussed in the staff report and
10 the presentation, based on all the studies we've done, and
11 this is much more elaborated in -- in the final EIR,
12 there's a very elaborate discussion of ground water and a
13 master response to comments, is that this -- where the
14 quarry is, is a bedrock aquifer, and it's much different
15 from the Santa Clara Valley floor, which is alluvium, and
16 there's no way to rule out that water that contacts with
17 the mountains and the bedrock aquifer and could permeate
18 to the soil would never interface with the alluvium down
19 in the valley floor.

20 But for general purposes they are very much in
21 different contexts and separated, and the permeability or
22 the inter flow between ground water between those two
23 areas is much, much reduced. Now, on the valley floor
24 where it's the alluvium where the ground water -- ground
25 water -- supply wells are located -- ground water is sort

1 of in a big sponge. It's confined, of course, by bedrock
2 that surround it and under it.

3 Again, for this quarry, it's up in the bedrock
4 above it. And ground water in that case, number one, it's
5 very low permeability of water that hits the ground. It
6 mostly runs off because it's bedrock. And, two, water
7 that goes into the soil as much as in cracks and fissures
8 and there's no sort of direct -- direct connectivity down
9 into that.

10 So as shown in the slides, there is -- from all
11 the estimates that we've done from Water -- Santa Clara
12 Water District data and so forth, the area between where
13 there's contact -- there's no contact on site between the
14 quarry, quarry mine operations and the Santa Clara Valley
15 large alluvium aquifer, but that is at least a mile plus
16 away from the site to the west.

17 So I know it enough to be dangerous. You know,
18 that's about as far as I can go. I'm not sure -- Pete,
19 you want to elaborate a bit?

20 PETE HUDSON: Yeah, I'll add a couple things.
21 I'm Pete Hudson with ESA. The water contained within the
22 quarry pit, it is bedrock, and there was mottling done
23 based on subsurface information to determine what the
24 seepage rates out of that pit would be, and they're very,
25 very low. .4. I'm not going to quote numbers right now

1 off the bat, but it's -- I think it's .4 feet per year.
2 They're very slow, and water seeping -- if there would be
3 water seeping out of that pit, it would -- like Rob said,
4 it would be going through fractures and preferential
5 pathway. It's a very slow moving system in a bedrock
6 aquifer.

7 The other thing to consider is, again, we are
8 in -- the quarry is in, of course, bedrock. There is a
9 mile of -- there is a recharge area out about a mile.
10 That is correct. The Santa Clara formation -- the Santa
11 Clara formation in this area is more consolidated.

12 When we're talking about supply wells in Santa
13 Clara Valley, those are coming from the alluvium down in
14 the valley. It's a quite a distance for a drop of water
15 to travel from the quarry out to there. Not only will
16 that drop of water change its chemistry considerably on
17 its way out, if it would ever make it out there, the
18 probability for that to happen is very, very low. It's --
19 the recharge of that recharge area is coming possibly from
20 Permanente Creek, and that has been occurring for years
21 and years.

22 The data shows that the influence from the
23 recharge from Permanente Creek into that recharge area has
24 not contributed to high selenium. That will -- that
25 contribution, if there is any contribution of selenium

1 into that recharge area, will be quite reduced once the --
2 with the project.

3 The last thing to consider is the project
4 proposes to fill the -- to fill the pit. And once that
5 pit is full and the ground water in that pit, it's not
6 going to be exposed to the environment. It's not going to
7 oxidize. It's going to be in a reducing environment. Not
8 only will just the fact of burying -- putting that -- the
9 material into the pit and that -- having that ground water
10 in there, it's also -- the project proposes to place
11 organic material, which would further reduce the oxygen.

12 So once that water is in that pit, it's not going
13 to be generating any selenium. It's not going to be
14 oxidizing. And when it starts to flow out -- it has been
15 equilibrating within the pit for years, 14 years, and the
16 water quality will be, according to mottling and the
17 analysis, it's going to be very close to what is actually
18 there now.

19 DENNIS CHIU: So to make sure that I got
20 everything correct from all of the technical and your
21 expertise that you just displayed, because it would take a
22 lot of travel that -- from water coming from the sky, rain
23 coming from the sky to percolate through the various soils
24 to get to the various levels, even though it is correct
25 there's a mile of unconfined -- unconfined zone where

1 underflow may feed in the Santa Clara aquifer, by the time
2 it travels all that distance, it would have changed and
3 lessened and become in some degree not a danger to public
4 health as selenium?

5 PETE HUDSON: Correct. The underflow that will
6 be going through that recharge area most likely will not
7 be coming from the -- from the quarry pit, because the
8 seepage rates are so low, that that recharge area is
9 collecting rain -- rainwater and water from the creeks and
10 recharging into the -- into the lower aquifers of the
11 Santa Clara Valley.

12 There is the -- again, the probability for water
13 in the quarry pit to reach that recharge area is very low
14 due to the geology.

15 DENNIS CHIU: Right. I stand corrected. Yes,
16 it's not the rainwater, it would be the water in the pit
17 that's exposed to the limestone --

18 PETE HUDSON: Yes.

19 DENNIS CHIU: -- that would have to travel a long
20 way before it will hit the Santa Clara aquifer. Thank you
21 very much.

22 PETE HUDSON: You're welcome.

23 SCOTT LEFAVER: Commission Ruiz, you had a
24 question?

25 MARY ANN RUIZ: Thank you, Chair. I'd like to

1 disclose that I had a very brief conversation with a
2 representative from Lehigh who called to offer to ask --
3 to answer questions I had raised at last week's workshop,
4 and that was the extent of our discussion.

5 The question I have is how does the EIR comply
6 with SMARA particularly with water issues? I -- in the
7 presentation, we saw that SMARA requires compliance with
8 water quality, and I also saw how there's a shorter term
9 release of selenium. So how does this EIR ensure
10 compliance with SMARA?

11 ROB EASTWOOD: Sure. And it is two acts. I
12 mean, there's some interweaving here, but the EIR and the
13 determination the Planning Commission has to make is does
14 it comply with CEQA, California Water Quality Act? So the
15 Rec Plan before you today has to be in substantial
16 compliance with -- or substantially meet the SMARA
17 standards. And one of those is you're absolutely correct
18 does it provide maintenance of water quality over time?
19 So does reclamation of the site eliminate any hazardous
20 associated with mining? Does it bring water quality
21 impacts that could be happening today be down to
22 acceptable levels. That's a SMARA policy requirement.

23 CEQA is a bit different but really related in
24 this instance. CEQA is intended to disclose by reclaiming
25 the site itself does it have significant impacts to go out

1 and restore the site just by that action, not the mining,
2 the action of restoring the site. Will you have
3 significant impacts?

4 So the key water quality issue, again, long term
5 and short term. The conclusion under the studies done is
6 long-term selenium levels, which are historic, which exist
7 today, will reduce down as we just talked about to less
8 than significant standards.

9 What the CEQA document disclosed is the interim
10 period between now and 20 years from now. There was no
11 identified way to reduce water quality down to those
12 levels. So -- and the question does -- you know, in one
13 instance that is both the CEQA and a SMARA question.
14 SMARA requires you meet those standards. Staff's
15 determination is because it meets those standards long
16 term, it is in substantial compliance with SMARA.

17 One thing to consider is, is there any feasible
18 way to reduce that interim impact down to a less than
19 significant level. Because instance -- to meet that
20 long-term standard you have to move the overburden piles,
21 you have to create these overburden piles, move the
22 overburden into the pit and retain it. There's no magic
23 action that doesn't avoid -- that goes from today to
24 final. You have to do the construction interim.

25 And the EIR is disclosing during that even though

1 it's moving towards an end state where things will get
2 better, you cannot rule out the possibility that just
3 because you're disturbing material addition -- you know,
4 there could be additional runoff in selenium
5 concentrations.

6 We've looked for all feasible and available
7 mitigation measures, made a very, very conservative
8 estimate. There's best management practices that are
9 proposed to prevent contact with limestone. We're trying
10 to get more empirical data. We don't have enough today to
11 demonstrate that will work and that could work. I mean,
12 there actually could -- if those are implemented as
13 required, it could reduce this potential during interim to
14 have significant impacts.

15 But, again, it is the consideration of both the
16 planning commission of that CEQA disclosure and the SMARA
17 standard. Staff's conclusion is because the final
18 reclamation of the site will reduce those selenium levels
19 down to below five micrograms per liter, it does comply
20 with SMARA.

21 At the same time, conservatively it cannot rule
22 out all just by getting to that state, there's going to
23 be -- this is a disclosure issue, there's going to be some
24 potential for significant selenium concentration.

25 So, you know, absolutely the Planning Commission

1 could consider that in their -- in their final
2 determination, but because it's -- because of the end
3 state of reclamation does meet all those standards is what
4 staff is recommending that it meets the SMARA
5 requirements.

6 MARY ANN RUIZ: And is there -- I'm guessing
7 there's a description of how this would be monitored
8 within the conditions of approval?

9 ROB EASTWOOD: Yes.

10 MARY ANN RUIZ: I just haven't seen it yet.
11 Okay.

12 ROB EASTWOOD: Yeah, it is. We can find the
13 exact condition, if you'd like. It requires a -- there's
14 a two-step process. There's a series of best management
15 practices that is required. The quarry operator has to
16 put those in effect within 30 days of Reclamation Plan
17 approval. There is a requirement of monitoring, actually,
18 and County inspector's out there at the beginning of the
19 rainy season and monthly throughout the rainy season.
20 There's testing throughout the 20 years of reclamation,
21 and again, you know, the bigger condition is we have --
22 County staff can't determine today that a selenium
23 treatment plan is feasible. There's enough known as a
24 requirement to require selenium treatment. There is a
25 requirement that those studies continue over the next two

1 years and then two years come back to the commission based
2 on the knowns, can you manage the water on site, what is
3 the actual cost.

4 If there's a determination at that point that the
5 selenium treatment is feasible and these BMPs are
6 consistently put in but they're not lowering runoff to
7 water quality standards, the requirement is that some sort
8 of treatment method will be installed.

9 So there's no walking away from an alternative
10 method to deal with selenium concentrations during that
11 interim. It's just we don't have all the pieces of
12 information today. There's a requirement to continue that
13 process, and again, even if all those BMPs do not work and
14 that treatment method is deemed feasible, that that will
15 be installed.

16 SCOTT LEFAVER: Commissioner Vidovich, please.

17 JOHN VIDOVICH: We have a court reporter, so I
18 think people need to slow down. Right? We have heard
19 here a lecture why we must approve the reclamation plan.
20 I think all reasonable people, including the neighbors,
21 are -- want to approve it. I would like to approve it;
22 however, there seems to be a huge rush because of two
23 reasons.

24 One -- I'm making these statements in case they
25 need correction. One, is there is a threat by the State

1 Mining Board to take jurisdiction away from the County if
2 we do not timely approve it. In my opinion that is a
3 reason to get going because I think it's better to have
4 local control than have the State board do it.

5 Second of all, I understand that Lehigh is facing
6 a possible boycott by the State of their ability to sell
7 cement, which will deprive them of revenue due to
8 noncompliance, and that is a pretty unfair burden that
9 Lehigh would have to have. So there's good reason for us
10 to move quickly.

11 We want to approve a good and proper Reclamation
12 Plan, but I don't think we want to rush to the point where
13 we're doing an inadequate review. The conditions just
14 came out to most commissioners, were delivered here today,
15 and in getting back to the conditions and the materials
16 that we review, there's three comments I have.

17 One, is I would have liked to have seen
18 everything at a scale of a minimum of 1 to 200. I have
19 looked at the drawings in the scale of one to a thousand
20 and one to 1500, make the drawings very difficult to read.
21 I do realize that 1 to 200 is not going to fit on a
22 piece -- one solid piece of paper. It would have to be
23 combined, but I've done this before, and 1 to 200 you can
24 start measuring things and you can see things better.

25 I think the determination of the reclamation

1 boundary -- I won't say it's arbitrary, but it's
2 judgmental, and I think that's an issue that is still open
3 for the Commission. I look at some areas there, yes.
4 They may be part of the cement plant, but there's maybe a
5 mix of where we should look at as far as making sure it's
6 reclaimed. I think the determination of the boundary is
7 still up to some determination.

8 And then getting to the conditions of approval, I
9 think what would be most helpful is if the staff can go
10 through them in an order where we understand everything
11 that's incorporated. And I've been through the conditions
12 and, you know, there's a few questions I have on them, but
13 there's references -- for instance, one is a reference to
14 the water district conditions of approval or comments, and
15 if it could all be put together -- there's also references
16 that it incorporates other documents, and if those
17 documents can be put together in order so that we can
18 review them in total -- it's a lot of work to do and a lot
19 of the commissioners here, they're not full time. I know
20 it's a huge amount of work for the staff, and the rush is
21 what I think is killing us. I think the rush is killing
22 us from getting the work that normally the staff does.

23 And by the way, it's a huge project. The staff
24 has worked really, really hard on this, and I think
25 they've done a super job under the circumstances, this

1 rush. But the conditions of approval aren't really -- I
2 don't think they're that easy for us to look at, and if we
3 could go through them and identify when they refer to an
4 exhibit where we can find that exhibit so that we can see
5 what we're approving.

6 And it is the conditions of approval I think is
7 the heart of the Reclamation Plan that, you know, we have
8 to make judgment on.

9 SCOTT LEFAVER: Thank you. Commissioner Bohan?

10 JACK BOHAN: Just back to the question that was
11 raised earlier about the bedrock bowl, which isolates the
12 aquifer there from the valley floor aquifer. How is that
13 bowl determined? Was this done by core samples or what
14 was the process?

15 PETE HUDSON: Well, by the bowl. I think we're
16 talking about the existing quarry pit.

17 JACK BOHAN: So how is it determined? Do you
18 actually -- can you see it once it was excavated?

19 PETE HUDSON: Well, they're very familiar with
20 the geology in that pit because they're mining it, and
21 there was -- there has been some exploratory borings, but
22 mainly it is based on observations from the -- from the
23 sites of the pit.

24 JACK BOHAN: All right. Thank you.

25 GARY RUDHOLM: Mr. Chair, Commissioner Vidovich

1 made some statements, and he said that he made them to
2 give staff an opportunity to respond and possibly correct.

3 One of the things I heard was he understood the
4 State was considering assuming the County's authority to
5 implement SMARA, and that's not the case. If the State
6 Mining and Geology Board was considering that, they would
7 have notified us in writing and would have identified
8 deficiencies that they believe needed to be corrected, but
9 that is not the case.

10 A number of years ago the County had been
11 audited. The County responded, and there were public
12 hearings before the State Mining and Geology Board
13 regarding that particular issue, but the County did
14 respond. The SMGB found that the County was adequately
15 implementing and complaining with SMARA, and they withdrew
16 their letter of deficiencies.

17 So we are not under threat by the State Mining
18 and Geology Board to have our authority removed. There is
19 the potential by the State Office of Mining Reclamation,
20 which is a separate entity. It's a division of the State
21 Department of Conservation. They have the authority to
22 remove any mine from what's known as commonly the AB3098
23 list, which is a list of quarries that may sell material
24 to public agencies, state and local agencies, but right
25 now they have not taken an action to remove Permanente

1 from that list.

2 JOHN VIDOVICH: I'm glad you clarified that
3 because both of those threats have come to me as pressure
4 to move this along. So if those threats aren't there,
5 then I think maybe we have more time.

6 GARY RUDHOLM: And I appreciate the observation.
7 The Office of Mining Reclamation has been monitoring the
8 status of the Reclamation Plan Amendment process. We've
9 been keeping them up to date on a regular basis.

10 They -- they did advise the Permanente Quarry
11 that they might take them off the 3098 list, but there's
12 been a stay of that action. And, again, they're
13 monitoring the status of this, and they are anxious to see
14 this come to an end.

15 SCOTT LEFAVER: Commission Chiu?

16 DENNIS CHIU: To the Chair, I just wanted to say
17 before I forgot that I did have a conversation yesterday
18 by telephone with a representative from Lehigh, and we
19 basically discussed information provided in the slide in
20 the staff presentation on the human health effects of
21 selenium. Thank you.

22 SCOTT LEFAVER: Thank you. Any other comments
23 from Commissioners?

24 ROB EASTWOOD: Just a quick suggestion. You
25 might -- I know representatives from Lehigh are here

1 today, and there is -- as Gary mentioned, was initial
2 action by OMR on the 3098 list. If you wish, you could
3 follow up directly with Lehigh on the status of that. So
4 that's -- they'd be the most knowledgeable about the
5 status of OMR and the 3098 list and what's going on.

6 SCOTT LEFAVER: Thank you.

7 JOHN VIDOVIK: Mr. Chair?

8 SCOTT LEFAVER: Yes.

9 JOHN VIDOVIK: If they disagree with what our
10 staff said about the rush, maybe now would be the time,
11 because, I mean, that's been a big push for a lot of us
12 behind the scenes.

13 SCOTT LEFAVER: They're on next.

14 Commission Couture?

15 THERESA COUTURE: Mr. Chair, I just wanted to let
16 you know I had a conversation yesterday with Rhoda Fry.
17 She wanted to make sure I understood where she stood, and
18 she sent us an e-mail last night that we all received.

19 SCOTT LEFAVER: Thank you.

20 Commissioner Vidovich, I think, made a very good
21 point, and that is that with the conditions of approval
22 and the number of technical studies tied to those
23 conditions of approval, that we should be forwarded the
24 opportunity to go through those conditions, understand why
25 they are conditions of approval and then have the

1 information there that backs up those conditions of
2 approval or at least the ability to ask the question,
3 well, where does this come from?

4 So I think that we certainly should do that. We
5 should be -- and we should allocate the time to do that.

6 However, before we do that, and I think just as
7 important, is to hear both from the applicant and their
8 presentation as well as the public. That is, as we get
9 information from the public, it may add to our way that we
10 look at the conditions of approval as well as requesting
11 additional technical information or other information that
12 would somehow vary from the current conditions of approval
13 or add to the conditions of approval of the Reclamation
14 Plan.

15 So if we could do that and go in that way, I
16 think it would be very helpful.

17 Commissioner -- everybody okay with that?

18 (Consent by nodding.)

19 SCOTT LEFAVER: Thank you. So if there are no
20 more questions at this time from the commissioners of
21 staff -- again, we can always come back and ask staff
22 questions, we'll go on to our next phase of this public
23 hearing, and that is to open up the public hearing at this
24 time and to ask the applicants to come forth and give
25 their presentations.

1 So if they could do that.

2 GARY RUDHOLM: Okay. Mr. Chair, I have some
3 speaker cards from the applicant, and they have an order
4 they would like to make a presentation.

5 SCOTT LEFAVER: Good.

6 GARY RUDHOLM: The first speaker will be Mr. Kari
7 Saragusa followed by Marvin Howell.

8 SCOTT LEFAVER: Okay. Thank you.

9 KARI SARAGUSA: Thanks, Gary.

10 Mr. Chairman and the Commissioners, thank you for
11 the consideration you're giving us today. My name is Kari
12 Saragusa. I'm the president of Lehigh Southwest Cement
13 Company, and we are -- along with myself, Marvin Howell
14 will be speaking after me as well as Mark Harrison.

15 We're part of the HeidelbergCement Group, which
16 you heard, I think, during our introduction. That really
17 shouldn't mean a lot to you, 'cause what we are is we're a
18 local cement manufacturer. We're as a quarry to mine the
19 limestone to make that cement. We've been here since
20 1939. We're made up of about 150 employees along with a
21 few others like myself that support that quarry.

22 We make cement. That cement probably was used to
23 make the concrete that the homes that you all live in. If
24 you live in the Bay Area, you probably are sitting on a
25 foundation made with our cement. We think we provide a

1 very valuable product, sometimes misunderstood because the
2 public doesn't usually buy cement, they usually turn that
3 over to a contractor. But we think we're a valuable
4 product, and we want to be here for as long as we can to
5 provide that valuable product.

6 The one thing I think -- there's two points I
7 wanted to make this morning before I turn the microphone
8 over. To me the Reclamation Plan, most of us in this room
9 won't get a chance to see what the actual Reclamation Plan
10 looks like. It's about an 1800-page document, not
11 including the EIR. So it's voluminous. It's complicated.
12 It's complex.

13 If you look at the maps behind you, you can tell
14 this is not a simple site. I doubt that this Planning
15 Commission has ever heard or seen a Rec Plan quite of this
16 scope. If you have, I beg your pardon. You may never see
17 one of this scope, but it's important to us.

18 But the reason that 1800-page document, I think,
19 is important, it's a commitment from us along with our
20 partnership with the County to do the right thing, to make
21 sure that when we're done mining limestone out of that
22 quarry, that we return it to a responsible and sustainable
23 state forever. And that to me is a commitment that we're
24 here to make.

25 And I also -- my second point is, I want to thank

1 the County planning staff, because this has truly been a
2 partnership. I began working with Jody Hall Lesser and
3 Liz Ann Reynolds a couple years ago.

4 Now, we've been working on this as a company
5 since 2004. Jody and Liz Ann turned it over to
6 Mr. Gonzalez and Ms. Pianca, and they've done a great job
7 working with our crew, but I don't want to fail to mention
8 Rob Eastwood, Marina Rush, Jim Baker, Gary Rudholm.

9 They've done a tremendous job. They've carried a
10 burden, which I don't think they -- I think they'll be
11 glad when this is all over with because they have other
12 things they need to do, but they've been a tremendous
13 support. And I truly think it's been a partnership.

14 We enjoy them as our lead agency. We don't want
15 to turn this over to the State, because as Commissioner
16 Vidovich said, it should be local, because they understand
17 our conditions and what we're up against.

18 But we think this is a true partnership, so I
19 want to ask you to approve the Rec Plan as we've submitted
20 it, but I also want to thank all those involved and all
21 the hard work they've put into it. So thank you very
22 much, and I'd like to turn the mic over to Marvin Howell,
23 who's our director of land use.

24 SCOTT LEFAVER: Thank you. And thank you for
25 your kind words to the staff. I know they've worked very

1 hard on it.

2 MARVIN HOWELL: Good morning. My name is Marvin
3 Howell. I work for Lehigh Hanson's West Region. I
4 appreciate the opportunity to speak with you about this
5 Rec Plan that's before you today.

6 I know a few of you had the opportunity to visit
7 the quarry along with representatives from the Office of
8 Mining Reclamation. So as you heard from OMR staff,
9 Lehigh has been recognized by the Department of
10 Conservation and has actually received awards from the
11 State for our reclamation work. In fact, our OMR
12 currently uses photos of reclamation of our Redding
13 project in their training sessions that they put on around
14 the State. I'd like to point out, and I think it was
15 evident during the tour for those of you who were there,
16 but I'd also like to point out that OMR has been deeply
17 involved in the process from the start, and they have
18 provided a letter to the County after their review
19 indicating that this Reclamation Plan meets the standards
20 of -- required under SMARA.

21 I'd also like to point out a couple of key
22 aspects of the plan, which I think are probably different
23 than anything you've seen before. I also think they kind
24 of go above and beyond what's required by SMARA.

25 So as you know, the plan provides for the

1 reclamation of about 600 acres of active mining areas on
2 the site, but it also provides an additional 600 acres of
3 buffer areas, which will not be disturbed. And as staff
4 pointed out in their report, there's no new mining
5 proposed anywhere on this property.

6 Because the plan utilizes fill from the West
7 Material Storage Area, the views looking towards our site
8 from the north will be enhanced. And when that fill work
9 is completed, the -- what's known as the West Material
10 Storage Area will be returned to the approximate
11 elevations that were there in the late 1890s before mining
12 began.

13 Now, the East Material Storage Area portion of
14 the project is still a part of the project, which is
15 important for our neighbors that live in the valley floor
16 to the east of us. You know, we've taken that -- a
17 program around to the different homeowners associations
18 out in that area, and there are a lot of people out there
19 that are anxious to see that -- that portion of the Rec
20 Plan implemented.

21 In fact, the first two questions I always get
22 every time we've done the presentation is, can you make it
23 bigger and how fast can you get it done?

24 Our revegetation plan uses some very cutting edge
25 technologies. Just to point out a couple of them, we use

1 solar radiation studies to determine the best place to
2 plant trees and shrubs. And in fact, I think this is the
3 first time that's been done in a California Reclamation
4 Plan.

5 Very few Reclamation Plans have incorporated the
6 use of on-site seed spore, which is very important. So
7 those of you who have seen the test plots on site, we
8 explained to you that we've collected seed spore on site
9 for those test plots and cuttings from on site, which is
10 very important because those seeds, those plants are
11 developed specifically to thrive in those environments.

12 So the combination of the solar radiation study
13 using seed spore from on site is really going to enhance
14 the reclamation effort.

15 I guess to sum up, I would say I've been in the
16 mining industry for about 30 years now, and this is the
17 best Reclamation Plan I've ever seen. And I also want to
18 commend staff on the job they did. This is a very
19 thorough Environmental Impact Report, and I look forward
20 to working with you guys on implementing the Rec Plan.

21 I want to point out that we have brought our team
22 here today, so we're available to answer questions that
23 you may have. And with that, I'll turn it over to Mark
24 Harrison, counsel for Lehigh. Thank you.

25 SCOTT LEFAVER: Thank you.

1 MARK HARRISON: Chairman Lefaver and members of
2 the Planning Commission, my name is Mark Harrison, and I'm
3 counsel to Lehigh on this project. As a lawyer, I'm -- a
4 lot of my comments are going to be technical and legal in
5 nature, clarifications, but I do think I should begin with
6 the question that was asked by Commissioner Vidovich,
7 which is why are we on this schedule we are on and what is
8 the relationship between the Department of Conservation,
9 Lehigh and the County concerning this Reclamation Plan?

10 And everything I'm going to tell you is of the
11 public record, and so to be completely forthright about it
12 all, there's a statute, SMARA Section 2717, and it's been
13 on the books for a long time, and it is -- it indicates
14 that in order to be on a list to sell the state and local
15 entities, you have to have certain attributes. One of
16 them is a Rec Plan, and one of them is financial
17 assurance. And that's how that's been interpreted since
18 that law has been on the books. And there was an interim
19 short-term director that the Department of Conservation
20 who's no longer there who used that statute to send Lehigh
21 a letter without notice or an opportunity for hearing that
22 he felt we should be taken off the list of approved
23 vendors within 30 days.

24 So Lehigh brought legal action against the State
25 and resolved that legal action with an understanding that

1 as long as the County and as long as Lehigh was proceeding
2 at a pace with approving the appropriate Rec Plan
3 amendment, there would be no negative action taken against
4 the company.

5 And that's consistent not only with just basic
6 fundamental ideas of due process, but it's also consistent
7 with the way in which that statute had been implemented
8 since its adoption many years ago.

9 So the schedule that we're on, that we're all on,
10 is a schedule that has been developed by staff and has
11 been expressed to us, the hearing dates, and we've also
12 expressed that to the State as part of our understandings
13 concerning settlement of the case.

14 So that's why we're on this schedule, and it is
15 very important to us and we think it's important to the
16 State and I hope it's important to the County to have this
17 decision making process move as promptly as possible, of
18 course consistent with the commissioner's need to review
19 and understand everything.

20 So I don't know if there's any questions on that
21 point before I go on to other issues.

22 SCOTT LEFAVER: Any questions of counsel?

23 JOHN VIDOVIK: I have a question.

24 SCOTT LEFAVER: Commissioner Vidovich.

25 JOHN VIDOVIK: I don't know. Am I the only one

1 that can't hear very well? It just sounds like the -- can
2 you hear okay? Very faint? Yeah.

3 MARK HARRISON: Is the microphone not working?

4 SCOTT LEFAVER: No. Just you have to get closer.
5 Thank you.

6 Any questions of Lehigh's -- yes, Commissioner
7 Couture.

8 THERESA COUTURE: So going down the path here,
9 say we don't have an answer for you today and we don't
10 have an answer for you next week, do you feel threatened
11 that you might have a new letter sent to you?

12 MARK HARRISON: You know, I can't answer that
13 because I -- I don't feel threatened. I fell as if we
14 have a good working relationship with the County and the
15 State. I think the question would be, you know, why,
16 would be the first question, and we just have to talk it
17 through. No one has threatened us in that sense. Uh-huh.

18 SCOTT LEFAVER: Commissioner Vidovich?

19 JOHN VIDOVIK: I think what I'm hearing is that,
20 you know, we're moving forward and if we needed adequate
21 time, because it is a big project, your people testified
22 it's a big project, that we should have the time, us and
23 the staff to make sure that we're doing it properly. I
24 think that's what I'm hearing.

25 MARK HARRISON: Well, you didn't hear that from

1 me. I just tried to tell you what the schedule that we're
2 on, but obviously the time that this Commission needs is
3 your decision.

4 JOHN VIDOVICH: Well I did hear from you that we
5 should do a proper job, and if we need a certain amount of
6 time, we -- there's no threat that as long as we're moving
7 forward that we -- we're okay?

8 SCOTT LEFAVER: Yes. Okay. We'll take as much
9 time as we need and we'll get the information to make that
10 decision and we've said that all along. So I think we're
11 all in agreement with that.

12 JOHN VIDOVICH: Fair enough.

13 SCOTT LEFAVER: Okay. Thank you.

14 MARK HARRISON: As to the points that I wanted to
15 raise earlier, there's some points of clarification that I
16 think are important for the Commission to understand, and
17 one of them is purely legal, and that has to do with the
18 idea that Lehigh's been issued notices of violation for
19 the Rec Plan.

20 I just wanted -- I think it's important for you
21 to know that Lehigh does dispute those notices and has
22 disputed those notices of violation but decided long ago
23 that rather than fight about them, they wanted to put
24 their energies in producing a modern and up-to-date and
25 thorough Reclamation Plan.

1 So I just need to make my chalk mark on the
2 record for that if I could.

3 The second point that came up, I think, in
4 Mr. Eastwood's presentation is that the cement plant and
5 all of the operational aspects associated with the cement
6 plant are not part of the Reclamation Plan. And that
7 determination was made not only by the County but was made
8 by the Department of Conservation and is reflected in a
9 letter which we'll be submitting for the record.

10 Probably the biggest clarification that I wanted
11 to share with the Commission is that while staff, I think,
12 has correctly said that this project is not operations but
13 is reclamation, the reality is that staff perhaps, you
14 know, being as conservative as possible, I think staff did
15 an excellent and conservative job on this EIR, did blend
16 operations and reclamations on certain issues, and that
17 creates the impression that there are some environmental
18 effects here that are greater than they really are and
19 that -- that can't be mitigated.

20 And I'm just going to give you one example.
21 There was a significant and unavoidable impact identified
22 in the EIR for visual impacts in creating the East
23 Material Storage Area.

24 But the act of moving overburden to these
25 Material storage area is mining, it is not reclamation,

1 and all of the mining activities on this site are vested
2 and do not require a discretionary permit from the County.

3 So we're not contesting that, obviously, but it's
4 something that I think you need to be aware of, because as
5 a result of having significant and unavoidable impacts,
6 this Commission will need to make a statement of
7 overriding considerations.

8 And so in furtherance of that, we've submitted
9 documents in the record, I hope everybody's received them,
10 letters addressed to the commissioners identifying many of
11 the impacts, the positive impacts associated with this
12 project. And those include, as I think Mr. Saragusa
13 noted, 151 direct jobs, a thousand and seventeen indirect
14 jobs, a 30-million-dollar annual positive effect on the
15 County's economy and 130 million-dollar positive effect on
16 the nine region Bay Area area.

17 So those without question are substantial
18 evidence and facts to support a statement of override, and
19 I just wanted to make sure that the Commission was aware
20 of that.

21 The last point of clarification I'd like to raise
22 has to do with the Regional Board's letter. The Regional
23 Board wrote a lengthy letter in response to the EIR, and I
24 wanted to take just a moment to summarize the main points
25 it made and to respond to some of those points.

1 I will say that I think staff in the final EIR
2 did an excellent and very thorough job responding to the
3 Regional Board's letter going so far as to hire a national
4 expert on certain issues to make sure that the
5 investigation was done properly.

6 But one of the issues raised in the Regional
7 Board's letter is that the Rec Plan doesn't comply with
8 SMARA because it doesn't comply with certain Title 27
9 requirements, and what was cited was Section 3704.1 of the
10 SMARA regs.

11 I just wanted to make it clear that that
12 regulation applies to metallic mines and not to a
13 limestone mine like this.

14 Secondly, there was a suggestion made in the
15 Regional Board's letter that this Reclamation Plan could
16 not be approved until the Regional Board completes its
17 permitting process under Title 27 or otherwise, and we
18 don't believe under the law that that's the case, either.

19 In fact, the regulations which govern that state
20 as follows: Quote, the Regional Board shall issue waste
21 discharge requirements which incorporate the relevant
22 provisions of an approved mining and reclamation plan,
23 unquote. And that's Code of Regulation Section 22510.

24 Probably the thrust of the Regional Board's
25 letter was that more information had to be gathered

1 before this Commission could act on the Reclamation Plan.
2 And in that regard, we have to recognize the distinction
3 between the Regional Board's jurisdiction and their
4 permitting activities and what's required and necessary in
5 order to pass a Rec Plan.

6 And under CEQA, the amount of information that
7 has to be gathered, the cases have described it this way.
8 It is to, quote, analyze the environmental impacts of the
9 Rec Plan Amendment through a reasonable investigation,
10 unquote.

11 And in this case, in my 22 years of doing mining
12 law, this is the most thorough and the most documented Rec
13 Plan I've ever been a part of. So notwithstanding that
14 there might still be issues for the Regional Board to look
15 at as it goes forward in the fulfillment of its regulatory
16 responsibilities, there's no question that there's
17 enough -- in fact, more than enough information to take
18 action on this Rec Plan and on this CEQA document.

19 And lastly, the Regional Board raised a question
20 about the feasibility of selenium treatment, and I think
21 this is where Staff's work actually showed really the
22 best. So when that question is raised, Staff went out and
23 hired, I guess, the national expert from Florida on this
24 issue and had a thorough analysis done, the conclusion of
25 which is at this point it's not feasible to put in such a

1 plant, but the Staff didn't stop there and put forward a
2 schedule which requires Lehigh to do further pilot studies
3 and testing and so forth to continue to pursue that issue
4 in the future.

5 So those are my clarifications. And then I did
6 have one comment about the conditions, and I don't know if
7 this is premature 'cause it sounds as if maybe not all the
8 Commissioners have had the conditions yet, but there's
9 just one change that I'm going to be suggesting. So
10 did --

11 SCOTT LEFAVER: Why don't, I think, you submit
12 the request for change and why to us in written form, and
13 that way we can look at it and we can review it.

14 MARK HARRISON: Okay. I do have a written copy
15 that I've passed out so...

16 SCOTT LEFAVER: Okay.

17 MARK HARRISON: In short order what it is --

18 SCOTT LEFAVER: I know. So a summary is --

19 MARK HARRISON: Yeah. The summary --

20 SCOTT LEFAVER: We're just getting it so
21 that's -- so give us a summary.

22 MARK HARRISON: Okay. The summary is, is that
23 these set of conditions contain numerous deadlines and
24 requirements and reports and layers of reports for
25 different types of monitoring and mitigation, and some of

1 those actions that the company has to take is going to
2 depend on the involvement and the input from other
3 governmental agencies. And we just thought it would be
4 appropriate to give the planning manager some authority to
5 make adjustments in those small interim timelines because
6 bringing back a request to change a deadline from 60 days
7 to 90 days or 90 days to 120 days every time that might
8 come up over the next 20 years to the Planning Commission
9 we thought was not workable.

10 And with that, that's the extent of my comments
11 right now. I'd be happy to answer any questions that the
12 Commissioners have.

13 SCOTT LEFAVER: Commissioner Schmidt.

14 KATHRYN SCHMIDT: Just to clarify what you've
15 just given us is -- I guess it's the conditions of
16 approval, and your changes then are in various colors
17 here. It's not -- that's how we recognize what you're
18 asking?

19 SCOTT LEFAVER: Suggesting, yeah.

20 MARK HARRISON: That's right. And the only
21 significant change is the one I mentioned, and then
22 there's a couple of other almost typographical cleanups
23 that I've already shared with the County staff.

24 KATHRYN SCHMIDT: Thank you.

25 SCOTT LEFAVER: Thank you.

1 MARK HARRISON: Thank you very much.

2 SCOTT LEFAVER: Let's now continue until about
3 12 o'clock, and can we have our first speaker?

4 GARY RUDHOLM: Mr. Chair, the -- some individuals
5 advise me they have some time constraints, so I've moved
6 them sort of to the top of the list. And one individual
7 said she has until 12 o'clock, so I'll ask her to come
8 first if she would like to still make an oral
9 presentation, and that is Ms. Libby Lucas.

10 SCOTT LEFAVER: Okay, please.

11 GARY RUDHOLM: And she would be followed by
12 Shiloh Ballard.

13 SCOTT LEFAVER: Very good. Hi. Welcome.

14 LIBBY LUCAS: Hi, I'm Libby Lucas, Los Altos. I
15 guess my main concern is the representation of the impacts
16 that might happen to the drinking water aquifer, and I
17 think that there are three types of water runoff.

18 One is the underground that comes through the
19 lower underground confined zone and then there is what
20 comes along Permanente Creek and then there is just
21 overland flow that goes into this unconfined zone that is
22 right directly below the platt. And that's the area that
23 I feel is susceptible to whatever is happening upstream.

24 And I would like to -- I mean, that's just a mile
25 and it's an unconfined zone and that goes directly into

1 all different levels of the Santa Clara aquifer. And I
2 probably should have delivered some water resource mapping
3 of this, and I will try to get it to Staff just as
4 background material this next week, but I think that to be
5 safe, there really should be monitoring wells.

6 And I've said this to the Santa Clara Valley
7 Water District, and they haven't really responded they
8 wanted to do this, but I think within that mile in between
9 the northeastern terminus of the plant's land and with the
10 drinking water aquifer is at 280 and 85, to have a couple
11 of -- or maybe four monitoring wells would give you some
12 security that contaminants, not just selenium, are not
13 transmitted through that unconfined zone.

14 Another aspect that I think would give you a
15 little bit of security would be to have a retention basin,
16 and I think the water district may have asked for that for
17 a flood control backup, because when you do get storms,
18 they're very intense, and they come at very unusual times.

19 Like in '98, I believe that storm that flooded
20 San Francisquito Creek had a great downpour in this
21 particular area 'cause I was going over 280 and it was a
22 lake at that time, and it was just amazing that the
23 Permanente Creek was able to absorb it. So there was no
24 flooding in downtown Mountain View.

25 But I think that you do have sediment transfer

1 and other things up in the quarrying area, and I think you
2 have to have that buffer of a retention basin. And I
3 would like to see a vegetative circle of trees and rushes
4 and wetlands that would take some of the contaminants out
5 of any overland flow that would come from the material
6 storage areas. I think that might be your source.

7 With the Almaden Mines, it wasn't mining, it's
8 the tailings that are sitting around all over the place
9 that are causing all the problem. And when they're that
10 disbursed, it's very hard to, you know, pin them down and
11 remediate them.

12 And I think between the monitoring wells and this
13 retention basin with a, I say, 250 foot terracing of
14 vegetation, it would give you some protection.

15 And then the last thing would be to have a
16 monitoring of your red-legged frog because they are an
17 indicator species that would show problems before the
18 human problem would arise. Thank you.

19 SCOTT LEFAVER: Thank you. Just a quick question
20 on the monitoring the wells, which is your first -- not
21 but for you, but for Staff. Are there -- is there ongoing
22 monitoring -- are there wells that are being monitored
23 ongoing? Monitoring between -- in this famous mile?

24 ROB EASTWOOD: On the site there is not. Yeah,
25 there is the drinking wells that were tested I believe

1 will probably be continue to be tested, the ground water
2 wells and the aquifer, but specifically in a buffer zone
3 separate from that on this site, there is not.

4 SCOTT LEFAVER: Okay. But in between -- are
5 there wells in between?

6 ROB EASTWOOD: No.

7 SCOTT LEFAVER: No. Okay. All right.

8 LIBBY LUCAS: That's what I was hoping the Water
9 District would do because that would give you an early
10 heads up when you had a problem. Thank you.

11 SCOTT LEFAVER: Well, thank you. Oh, a question
12 from Commissioner Chiu.

13 DENNIS CHIU: I'm so sorry, I just wanted to ask
14 you what your background was.

15 LIBBY LUCAS: Yeah, I've been harassing the Water
16 District for 25 years. Anymore than that? No, my
17 background was advisory on the Santa Clara County Trails.
18 And once we got spread out all over the County learning
19 how the trails and the streams interacted, we sort of got
20 hooked on that subject and I've just been monitoring it.

21 And then I've been with the Native Plan Society
22 recently, and I was with the resource Conservation
23 district for four years, oh, some ten years ago. So it's
24 been a long-term exposure, but I think that this area is
25 just simply fascinating. I think you -- the Santa Clara

1 County has one of the most amazing geological formations,
2 and you want to treat it properly.

3 DENNIS CHIU: Thank you.

4 SCOTT LEFAVER: Thank you. Next speaker, please.

5 GARY RUDHOLM: Mr. Chair, the next speaker
6 represents a group and so would be allotted seven minutes
7 for presentation, and I would suggest we listen to her and
8 then break for lunch.

9 SCOTT LEFAVER: Okay. Very good.

10 GARY RUDHOLM: Next speaker is Shiloh Ballard who
11 represents the Silicon Valley Leadership Group.

12 SCOTT LEFAVER: Miss Ballard, hi.

13 SHILOH BALLARD: And I will not be taking seven
14 minutes. I'm sure you're relieved to hear that.

15 Again, my name is Shiloh Ballard. I'm here on
16 behalf of the Silicon Valley Leadership Group. For those
17 of you who aren't familiar with the leadership group, we
18 represent over 375 businesses in Silicon Valley. I work
19 on land use and housing issues and do so at the behest of
20 all those members helping to make sure that the quality of
21 life here and the policy and regulatory environment are
22 ones in which businesses can and do thrive.

23 As Commissioner Vidovich said, and I will be
24 brief since you do have a number of speakers, there's
25 probably little debate that we support -- I'm sorry, is

1 that better? There's probably little debate that we all
2 understand the importance of cement to our valley's
3 economy, and we want to make sure that we're creating an
4 environment here where Lehigh can continue to operate.

5 I'm here to underscore that point and support the
6 project going forward. And thank you for your very
7 thoughtful consideration of the environmental document as
8 you go forward. So we encourage your support of the
9 project, and thank you for your time.

10 SCOTT LEFAVER: Thank you.

11 Any questions of Ms. Ballard? I do see that we
12 do have a letter from the Silicon Valley Leadership Group
13 that was given to us and signed by Carl Gardina.

14 Are there other speakers that have time
15 constraints that we can --

16 GARY RUDHOLM: We do have one other speaker who
17 has a time constraint, and that's Ms. Karen Del Compare.

18 SCOTT LEFAVER: Okay. Please.

19 Hi. Welcome.

20 KAREN DEL COMPARE: Hi. Thank you. My name's
21 Karen Del Compare. I just wanted to clarify a few things.
22 The FACE, financial assurance cost estimate, is one of the
23 statement of overriding considerations as this plan is
24 necessary to pass to get a new FACE established, and I
25 just wanted to clarify that annually there are inspections

1 of the mine, and based on those inspections and other
2 factors, they recalculate the FACE annually at least. So
3 you do not need to approve this plan to have an adequate
4 financial assurances.

5 And in fact, a few years ago before we got
6 involved with this, Lehigh petitioned to have the FACE
7 reduced, and it was reduced by a substantial amount, less
8 than half a million dollars -- I want to say significantly
9 less than that, but I don't have the exact number in front
10 of me. And that was one of the reasons why the State
11 Mining Board was concerned about what was going on in
12 Santa Clara County. So that FACE is continually changing.

13 I only received the statement of overriding
14 considerations a few minutes before the meeting, but I'd
15 like to briefly go over some of those points.

16 The first one is under SMARA. Every person or
17 entity who operates a surface mining operation must
18 receive approval of a Reclamation Plan, but this plan is
19 also an expansion because it expands into the East
20 Material Storage Area, which is close to homes in
21 Cupertino.

22 And in essence, it allows the mining to continue
23 particularly in the main pit where they are below the
24 water level, and that's where a lot of the selenium
25 pollution is occurring because they're below the water

1 level, and particularly in the rainy season they're
2 pumping huge amounts of selenium tainted water directly
3 into Permanente Creek or through a pond that also gets
4 discharged into Permanente Creek.

5 And by approving the storage area of the EMSA,
6 you're letting the mining continue unabated in the main
7 pit where all this polluted water is running into
8 Permanente Creek.

9 Okay. The next overriding consideration. The 85
10 Reclamation Plan is inadequate and not sufficient -- does
11 not include sufficient mechanisms to protect the public
12 health, safety and welfare. The fact that the 85 plan is
13 inadequate, I don't think, is reason to approve another
14 plan that also is severely inadequate as well. And you
15 can read our letter which goes into detail that says why
16 it's not adequate.

17 SCOTT LEFAVER: So you're going to have to
18 summarize.

19 KAREN DEL COMPARE: Okay.

20 SCOTT LEFAVER: Thank you.

21 KAREN DEL COMPARE: Okay. That's pretty much it.
22 Thank you so much.

23 SCOTT LEFAVER: Okay. Thank you. Well, a
24 question that you brought up on the financial, if I can
25 ask Staff. She asked -- she's questioning it seemed like

1 the financial adequacy and making sure that that is being
2 met changes every year based upon certain factors. Maybe
3 you can address that.

4 ROB EASTWOOD: Sure. That is correct. I'll
5 start, and Gary could add in if I'm not accurately getting
6 all of it. That is correct. There's a FACE -- essential
7 part to SMARA is there's a financial assurance that the
8 mine be reclaimed. If the mining operator isn't able to
9 do so, the County would have to do so. It is monitoring
10 on an annual basis. It is updated on an annual basis.

11 What's at issue with this quarry is the
12 Reclamation Plan is from 1985. It does not cover all the
13 disturbed areas onsite, and the FACE originally associated
14 with that is inadequate to cover the entire reclamation of
15 the site.

16 So without this new Reclamation Plan and the
17 money required to restore all of the disturbed areas on
18 the site, to go forward with the FACE associated with the
19 1985 Reclamation Plan will not restore the site. It is
20 inadequate, and that's an existing liability.

21 So without a new FACE based on this Reclamation
22 Plan which adequately restores the entire site and all
23 those disturbances -- you know, without that there is that
24 potential to not have that restoration.

25 SCOTT LEFAVER: Commissioner Vidovich?

1 JOHN VIDOVIK: Yeah. I have a legal question
2 and then a comment. And the legal question is, is all the
3 property encumbered by the reclamation obligation? In
4 other words, if something happened, would we have access
5 to the value of the property? Is that encumbered? And if
6 it is, in my opinion just from my knowledge of the real
7 estate in the area, I just don't see that as being a big
8 issue for us.

9 The reclamation conditions are, but the security
10 bond if it's monetary or if it's land, I just don't see
11 it. I see it as more of an exercise if we have the land
12 as security. That's --

13 ROB EASTWOOD: Well, I don't believe we have the
14 land as security, but Gary can elaborate.

15 GARY RUDHOLM: Mr. Chair, the State Mining and
16 Geology Board issued guidelines for financial assurances
17 that must be posted, and it does not include posting or
18 providing a deed for your property. You have to have --
19 we have to be able to access cash in order to commence the
20 reclamation.

21 There's two things that are in play here. One,
22 is a financial assurance that is posted by the mine
23 operator. That is supposed to be posted and made payable
24 to the County or lead agency as well as the State
25 Department of Conservation, and that's there in case the

1 lead agency needs to step in and complete the reclamation
2 of this site.

3 So there's -- it acts as a form of insurance. If
4 the mine operator for whatever reason cannot financially
5 complete the reclamation, the lead agency can go in there
6 and do that.

7 The question then is, is how much needs to be
8 posted? And that's where the FACE comes in, the financial
9 assurance cost estimate. The F-A-C-E is reviewed each
10 year. The mine operator has to provide a new one each
11 year, and then we evaluate that.

12 The conclusion year by year may be that the
13 amount of financial assurances posted is adequate, or it
14 may be that it's not, and at that time we would require
15 the mine operator to adjust the financial assurance to
16 cover the amount of money that would be necessary to
17 complete the reclamation.

18 JOHN VIDOVIK: The question was -- I hear the
19 answer is that the State doesn't count the land. That's
20 the answer, but the question isn't what we need to satisfy
21 the State. The question is to protect the County. Do we
22 have -- and it's a legal question. Do we have recourse to
23 the land? Is that an obligation that runs with that land
24 reclamation, and if the obligation runs with the land, you
25 know, how far does it go out?

1 In other words, you have a Reclamation Plan.
2 It's a legal obligation. Does it -- just like you have
3 when you get a permit. That permit may run with the land.
4 Does that reclamation obligation run with the land, and do
5 we have then access to the land if for some reason the
6 financial assurances weren't -- weren't adequate?

7 ELIZABETH PIANCA: Yes. Following -- if the
8 Reclamation Plan Amendment is adopted, it's a document
9 that is recorded, and should the mine operator abandon or
10 is unable to reclaim the property, the County has the
11 authority to go in and conduct that work.

12 JOHN VIDOVIICH: Then the second question is,
13 what's the boundary of the -- they can use the land to do
14 it. What's the boundary of the land that we would have
15 security for? Would it be strictly the boundary that's
16 drawn on that yellow line and we wouldn't have access to
17 the land outside of that boundary?

18 GARY RUDHOLM: The financial assurance is based
19 on the amount of disturbed area, and the limit to the
20 disturbed area is shown in the boundary of the Rec Plan.

21 JOHN VIDOVIICH: I'm talking what kind of a lien
22 do we have on the land if there is inadequate financial
23 assurance? Does the lien go -- and it's a legal question,
24 I think. Does the lien go -- how far does that lien go?
25 Does it go outside of the --

1 ELIZABETH PIANCA: No.

2 SCOTT LEFAVER: Thank you. Okay. Okay. Sure.

3 MARVIN HOWELL: I just wanted to clarify
4 something about the existing financial assurance estimate.
5 The suggestion that it would be reviewed and based on the
6 approval of the Reclamation Plan, it would be increased.
7 I just wanted to make sure the Commissioners knew that we
8 had already agreed with the State and the County to adopt
9 a 47-and-a-half-million-dollar bond to cover reclamation
10 of the site, which was based on the plan that's before you
11 today.

12 So when it's adopted, it would be reviewed again
13 and adjusted if there were any conditions that the
14 Planning Commission added to it.

15 SCOTT LEFAVER: Good. Thank you. That was a
16 good question. Thank you.

17 Any other questions of staff on this particular
18 item?

19 Commissioner Schmidt.

20 KATHRYN SCHMIDT: I just wanted to clarify that
21 this financial assurance then works like a construction
22 bond that the mining company pays a fee every year in
23 order to maintain that?

24 NASH GONZALEZ: I can answer that if I can
25 through the Chair. It is very similar to a construction

1 bond in that they work with an insurance company that is
2 licensed to do work in the state of California. Part of
3 our annual review is to make sure that that insurance
4 company is solvent and licensed to practice in the state,
5 along with the financial assurance cost estimates.

6 And so, you know, the fee that the operator pays,
7 that's between the operator and the insurance company.

8 But yes. And then if for whatever reason they step away
9 from their obligations, the bond itself names the County
10 and the State of California as beneficiaries should they
11 walk away, so that we would be able to work with the
12 bonding company to take the cash and make sure that the
13 reclamation is completed.

14 SCOTT LEFAVER: Thank you. Any other questions
15 of this -- if not, it's --

16 JOHN VIDOVICH: Can I ask one question quick?

17 SCOTT LEFAVER: Yeah.

18 JOHN VIDOVICH: They're proposing a
19 47-and-a-half-million-dollar bond. That's a lot of money.
20 What's the current bond right now on the existing
21 Reclamation Plan?

22 NASH GONZALEZ: It's currently 47 million
23 dollars.

24 GARY RUDHOLM: That's correct. That is posted
25 now.

1 JOHN VIDOVIICH: That's what's posted now?

2 GARY RUDHOLM: Yes, it is.

3 JOHN VIDOVIICH: I thought that's what we get when
4 we approve it?

5 NASH GONZALEZ: No.

6 GARY RUDHOLM: Well, they actually jumped the
7 gun. They posted it prior to approval of their Rec Plan.
8 They would have otherwise done it afterwards.

9 NASH GONZALEZ: And if I could through the Chair
10 clarify. Once this Reclamation Plan goes through the
11 process and if the Commission approves it, it will trigger
12 another review of that Reclamation Plan and financial
13 assurance cost estimates, and it could be that the amount
14 may go up or may stay the same, but it does have to be
15 re-reviewed again.

16 SCOTT LEFAVER: Okay. Other questions? Well,
17 it's ten after 12:00, and let's -- we'll take a lunch
18 break at this time. We'll recess the public hearing of
19 this Planning Commission meeting, and we'll return in
20 approximately 30 minutes, which will be 20 until 1:00. So
21 we are in recess. Thank you.

22 (Lunch break taken.)

23 SCOTT LEFAVER: County of Santa Clara Planning
24 Commission will now come back from recess, and we are in
25 the middle of a public hearing. Well, let's have roll

1 call, please.

2 GARY RUDHOLM: Commissioner Bohan?

3 JACK BOHAN: Here.

4 GARY RUDHOLM: Commissioner Chiu?

5 DENNIS CHIU: Here.

6 GARY RUDHOLM: Commissioner Couture?

7 THERESA COUTURE: Here.

8 GARY RUDHOLM: Chairperson Lefaver:

9 SCOTT LEFAVER: Here.

10 GARY RUDHOLM: Commissioner Ruiz?

11 MARY ANN RUIZ: Here.

12 GARY RUDHOLM: Commissioner Schmidt?

13 KATHRYN SCHMIDT: Here.

14 GARY RUDHOLM: Commissioner Vidovich?

15 JOHN VIDOVIK: Here.

16 GARY RUDHOLM: All commissioners are present,
17 Mr. Chair.

18 SCOTT LEFAVER: Thank you, Mr. Secretary.

19 So this is the continuation of our public hearing
20 on the Lehigh Permanente Quarry, the Reclamation Plan
21 Amendment and Environmental Impact Report.

22 And who is our next speaker?

23 GARY RUDHOLM: Okay. I was approached by a
24 couple of individuals, and I moved their names up because
25 they also have time constraints.

1 Our first speaker is Paula Wallis, and she will
2 be followed by Pat Sausedo.

3 SCOTT LEFAVER: Thank you. Hi.

4 PAULA WALLIS: Good afternoon. Hello. Good
5 afternoon, Commissioners. My name is Paula Wallis, a
6 resident of Cupertino. I want to thank you for your
7 careful deliberation on this weighty document, and I would
8 respectfully urge you to not rush to make a decision
9 today. We have received an awful lot of information just
10 this morning that needs both your and the public's
11 consideration or ability to digest.

12 Mr. Eastman had his presentation earlier this
13 morning, and one of the first slides he put up was a slide
14 that said that the EIR must, and the word must was
15 underlined, comply with SMARA, but then later on it was
16 said that their decision before this board today or the
17 Commission today was to determine if this EIR
18 substantially complied with SMARA. And I'd like to say
19 what is it? Must it comply, or does it substantially have
20 to comply?

21 Mr. Saragosa said that the document was an
22 1800-page commitment to reclaiming this land, but I would
23 suggest that the 1985 Reclamation Plan was also a
24 voluminous document that was also a commitment that sadly
25 was broken.

1 So I think we need to be very careful about
2 giving them more assurances without really investigating
3 this document. I was at the 20 -- February 2011 SMGB
4 board meeting which the OMR gave a PowerPoint presentation
5 on Lehigh's status, and at the end it talked about its
6 noncompliance with AB3098 and the fact that it could be
7 taken off that list. And I do believe their attorneys
8 were in the room, so they were given fair warning.

9 It was several months after that that a letter
10 was sent to Lehigh threatening to take them off the list.
11 My contention is they knew that they were out of
12 compliance with AB3098 for ten years. They shouldn't be
13 notified. They should have got in compliance.

14 And so finally, I'd like to say that -- I would
15 hazard to say that this is one of the biggest decisions
16 you as commissioner will make and your careful
17 deliberation is greatly appreciated.

18 Thank you very much.

19 SCOTT LEFAVER: Thank you. Any questions of this
20 speaker? One of the questions you raised, and I'll
21 just -- substantial compliance versus otherwise.

22 ROB EASTWOOD: There are -- again, there are --
23 to remember it, the EIR and the Rec Plan are two different
24 things. The EIR has to comply with CEQA. We can bring up
25 the slide. I'm hoping the previous presentation didn't

1 blend these two.

2 The EIR has to comply with CEQA, California
3 Environmental Quality Act. I adequately disclosed
4 significant impacts as an informational document.

5 The Rec Plan -- not the EIR, the Rec Plan -- the
6 Reclamation Plan has to substantially conform, comply or
7 meet the SMARA standards. The Reclamation Plan has to be
8 in substantial compliance with the SMARA standards. So
9 that's the difference.

10 PAULA WALLIS: Okay. When you said that in terms
11 of the water issue they wouldn't be in compliance but they
12 would eventually get into compliance. They don't have to
13 be in compliance with SMARA? On the water issue.

14 SCOTT LEFAVER: Okay. Good question. And -- go
15 ahead.

16 ROB EASTWOOD: So through the chair you'd like --

17 SCOTT LEFAVER: Yes.

18 ROB EASTWOOD: So the question is compliance with
19 water quality standards. SMARA does require compliance
20 with water quality standards. The conclusion of the EIR
21 and all documents is that the reclamation of the site will
22 reduce selenium concentrations and comply with water
23 quality standards. It is a fact that the EIR discloses
24 that between now and then it cannot rule out there could
25 be some concentrations running off site. So the Planning

1 Commission has to consider that. We've identified no
2 feasible means to address that, no alternatives, no other
3 ways to reclaim the site. I mean, basically there's
4 nothing identified out there that would avoid that
5 situation.

6 But that is a statement in the EIR that the
7 interim there is that potential. We required as
8 conditions everything we can think of that is feasible,
9 commitment to study feasibility of selenium treatment and
10 require selenium treatment if it is deemed feasible. But
11 those are the conclusions of the EIR and to be considered
12 by the Commission in proving this planning.

13 SCOTT LEFAVER: Okay. Thank you.

14 GARY RUDHOLM: The next speaker is Pat Sausedo
15 who will be followed by Cathy Helgersen.

16 SCOTT LEFAVER: Thank you. Welcome.

17 PAT SAUSED0: Mr. Chair and Commissioners, thank
18 you. Pat Sausedo for the San Jose Silicon Valley Chamber
19 of Commerce. The San Jose Silicon Valley Chamber of
20 Commerce recommends the approval and recommendation of the
21 EIR under consideration.

22 We do believe upon review that it meets the
23 requirements of CEQA. It recognizes any potential
24 environmental impacts, has commented on public comments
25 and made responses, has made feasible -- noted feasible

1 mitigation measures identified to reduce significant
2 impacts, and we believe under the auspices of CEQA, the
3 EIR before you is complete and should be adopted.

4 On the long-term Reclamation Plan, the Chamber
5 believes that the Reclamation Plan before you will provide
6 a responsible implementation tool for Lehigh management,
7 the County, public agencies and the Silicon Valley
8 community to monitor and evaluate all future operations
9 through reclamation and restoration.

10 And on a parochial statement in regards to Lehigh
11 and Silicon Valley, you know, Lehigh has been a key core
12 infrastructure provider throughout Silicon Valley for many
13 years. We are recovering from a downturn in the economy,
14 and we believe that Lehigh's continued operation will be
15 very important as Silicon Valley companies continue to
16 come out of the economic decline that we've been in.

17 There are a number of projects we're looking
18 forward to, transportation projects. Lehigh's provision
19 of cement in this area goes a long way in leveraging very
20 few tax dollars available to build our core
21 infrastructure. We find Lehigh very important to Silicon
22 Valley's economy and recommend approval of the Reclamation
23 Plan. Thank you.

24 SCOTT LEFAVER: Thank you. Any questions of --
25 none. Thank you.

1 GARY RUDHOLM: Next speaker is Cathy Helgerson,
2 and she will be followed by Jane Alvarado.

3 SCOTT LEFAVER: Hi.

4 CATHY HELGERSON: Hi.

5 SCOTT LEFAVER: Welcome again.

6 CATHY HELGERSON: Three minutes. Okay. Good.
7 What I'd like to bring up is that, first of all, there was
8 a super fund site preliminary assessment done, and your
9 paperwork stated that there wasn't, and there was. I'm in
10 appeal, and I'm also going to Lisa Jackson's office so
11 that's what I'm doing now.

12 I propose that instead of a reclamation and an
13 EIR because they're not meeting the cleanup. They're not
14 cleaning up. None of it is. A super fund site would take
15 27 million -- or 47 and a half million dollars plus
16 whatever the EPA would put in plus whatever other agencies
17 could put in and clean up not only the reclamation but all
18 of the properties and the cement plant areas.

19 And we have to do this because the cement plant
20 will continually pollute. I don't care where it is. And
21 it pollutes not only selenium, it pollutes all kinds of
22 other things, which we've all talked about. And it's a
23 cumulative effect.

24 The Mid Peninsula District has mentioned how
25 terrible it is. They're a preserve. And what they're

1 going through, they've submitted letters. They've been
2 complaining for probably ten years trying to do something
3 about this, and no one does anything. There's no
4 enforcement. So the citizens have to count on Santa Clara
5 County in doing their job and helping us to be safe and
6 healthy and to promote a life here in the valley.

7 If we continue this with the possibility -- and I
8 strongly know that there is a possibility of a new mine.
9 There is no doubt in my mind that they will try to mine a
10 new mine as soon as all this is approved and the Title 5
11 permit has been put through and approved.

12 This is a nightmare. I've lived this nightmare.
13 You've heard of all of my problems with this and all of
14 the other people that come here. This is big business at
15 its best. The corruption, criminal acts. This is big
16 business at its finest.

17 Okay. We can't live here any longer with this.
18 And the buffer that the trees were will be gone. I see
19 truckloads of cut down trees being -- going down Foothill
20 Expressway and 30,000 trees later and 600 acres of mine
21 being put in the exploratory area. You got to take
22 everything into consideration. You can't just sit here
23 and say we can't consider the mine, we can't consider the
24 cement plant. I'm considering everything because
25 everything up there is polluting me and my family and the

1 people that live here in this valley, high tech valley
2 that we have to preserve.

3 I heard a lot from all these people that are
4 supporting Lehigh, but I don't think that we're worried
5 about a hundred jobs here when we've got 2 million people
6 that are suffering asthma, dyslexia, cancer, autism -- the
7 list goes on and on. Where do I end with this?

8 Please. You need to understand that if you
9 pulled all your resources to together, got with the super
10 fund people who will put more money into this, they have
11 resources, and clean this place up and shut this place
12 down -- you have to shut the place down and also the two
13 quarries because they're polluting the air, the water and
14 the soil. This cannot continue. Thank you.

15 SCOTT LEFAVER: Thank you. Any questions? Thank
16 you.

17 GARY RUDHOLM: Next speaker is Jane Alvarado
18 followed by Heather Zagar.

19 SCOTT LEFAVER: Miss Alvarado.

20 JANE ALVARADO: Commissioners, I'm speaking as an
21 employee. I am a 30-year employee of Lehigh. I think
22 Lehigh is a good company and the right company to be
23 running the cement plant at this time. I believe they
24 will make every effort to continue to be a good member of
25 the community.

1 Lehigh cares about its employees from 2008 until
2 the present in spite of a devastating economy that
3 severely impacted cement sales. Not one single employee
4 has been laid off. We have had production cuts, inventory
5 cuts, but no job cuts, and we still have medical and
6 dental benefits.

7 Lehigh supports the community. For the third
8 year in a row, Team Lehigh will be participating in the
9 American Cancer Society Relay for Life in Cupertino. We
10 have a goal to raise \$15,000, which is a combination of
11 the company donation and employees fundraising.

12 As a board member of the Cupertino Historical
13 Society, I can vouch for the number of years that we have
14 been receiving funding from Lehigh, not too mention many
15 other organizations in Cupertino that have benefitted from
16 Lehigh funding.

17 Henry Kaiser started this plant in 1939, and his
18 motto was "Together We Build," meaning it's not just a
19 company, it's a partnership of employees, other
20 businesses, organized labor, communities and governments
21 working together to solve problems and work for a better
22 future for everyone.

23 Thank you for your attention.

24 SCOTT LEFAVER: Thank you. Any questions? None.

25 Thank you.

1 GARY RUDHOLM: Next speaker is Heather Zagar who
2 will be followed by Tim Brand of the West Valley Citizens
3 Air Watch.

4 SCOTT LEFAVER: Okay. Hi.

5 HEATHER ZAGAR: Good afternoon.

6 SCOTT LEFAVER: Welcome.

7 HEATHER ZAGAR: Thank you. My name is Heather
8 Zagar, and I appreciate the opportunity to speak to you
9 today.

10 SCOTT LEFAVER: You're going to have to speak up.
11 There you go.

12 HEATHER ZAGAR: I grew up in Los Altos not far
13 from the plant, and every day when I came home from school
14 I would hear the plant whistle blow. And when I heard
15 that, I knew my dad would be coming home soon because like
16 his father before him, he worked at the Permanente
17 facility. I, too, am an employee there. I'm third
18 generation employee at Lehigh.

19 The Reclamation Plan is important to me as it is
20 to all of Lehigh's employees. It's also important to our
21 neighboring residential communities, but the Rec Plan is
22 also important to the environment. Safety and
23 environmental stewardship are important to
24 HeidelbergCement. When you come on to our mine site, you
25 are required to go through a safety training. One aspect

1 of that safety training covers the environment.

2 Our truly closest neighbors are the turkeys,
3 snakes, raccoons, bobcats, all the wildlife that you have
4 out there at that facility, and I believe that Rec Plan
5 will create an environment for those animals to continue
6 to live and thrive. Thank you.

7 SCOTT LEFAVER: Thank you. Any questions? Thank
8 you.

9 GARY RUDHOLM: Next speaker is Tim Brand who will
10 be followed by Jason Flanders. And Mr. Brand represents a
11 group, so he'll be afforded seven minutes.

12 SCOTT LEFAVER: Thank you. Mr. Brand

13 TIM BRAND: Good afternoon. I hope you'll bear
14 with me. I wasn't prepared for seven minutes. It's very
15 good to have that. Thank you.

16 First of all, Lehigh got up here and talked about
17 the benefit of their cement to the valley, to Santa Clara.
18 I think the number they used was 30-million-dollar benefit
19 to the valley. And although, you know, that cement
20 technically is not part of this Reclamation Plan I hear
21 repeated over and over, but in that same vain, I have a
22 report here. It's a citizen's report on the cement plant
23 and its damage to the community in terms of health costs,
24 and this is based on the Air District's own data, and I'll
25 leave a copy of that with you.

1 And it says that the cement plant effects caused
2 60 million dollars of healthcare costs based on air
3 district data. This is to all of Silicon Valley. And I
4 think that's important to not only the cumulative effects,
5 but also to keep in mind when you're thinking about the
6 benefits of cement, which we don't dispute.

7 You are being asked to approve construction of
8 900-foot mountain, but the construction of that mountain
9 is already complete. An NOV was grudgingly issued for it
10 by the County after repeated citizen complaints, but then
11 the County made an illegal agreement in violation of SMARA
12 behind closed doors with no public process in violation of
13 CEQA to allow the construction to continue.

14 Now that mountain is essentially completed and is
15 leaching selenium into the creek in violation of the
16 Federal Clean Water Act.

17 You are also being asked to allow an additional
18 200-foot depth of Lehigh's open pit mine. They have
19 already dug so deep that they have intercepted the natural
20 water flow inside the hill causing a toxic pond to form at
21 the bottom of their pit, which they quietly began to
22 illegally pump into the creek, and they want you to
23 approve this illegal dumping for the next 20 years.

24 The County's response to our questions about this
25 to the draft EIR are not adequate. Given the existing

1 selenium problem, it is largely due to the depth of the
2 pit which was -- which has intercepted the natural water
3 flow. The question of how much impact will occur from
4 digging even deeper deserves to be answered.

5 We asked that question, and I think that CEQA
6 requires that be answered in the final EIR. The County
7 just assumes that the proposed mitigation measure is
8 sufficient despite the fact that the interim impact from
9 the selenium is deemed significant and unavoidable.

10 Clearly digging deeper into the hillside makes
11 the problem worse and is avoidable. The EIR should
12 clarify how much of this impact is caused by digging
13 deeper into the hillside as requested in our comment.

14 You are told in the EIR that the selenium is an
15 existing baseline condition, and it says here a quote from
16 the County, "any liability that may be associated with
17 existing water quality conditions is not within the
18 County's purview in the context of SMARA or CEQA for this
19 project," and we disagree strongly.

20 You are also told you have no authority to limit
21 mineral extraction even though it might stop the bleeding,
22 and, you know, in this draft -- I'm sorry, in the workshop
23 I believe that's what I heard. I thought the words that I
24 was hearing were a little confusing on that issue.

25 I'm sorry. Bear with me for a minute. I'm

1 sorry. I'll just move on. Furthermore, the cement plant
2 must be included in this project or it is not compliant
3 with SMARA. We submitted four specifics reasons for this
4 in our draft EIR comments, and that's shown on page
5 3.3.187, and I'd appreciate if you would all read that.
6 The County chose to brush them aside by claiming that the
7 decision in an OMR staff letter was final and ignored our
8 comment.

9 CEQA requires that the County address these four
10 reasons in the EIR, and it cannot be certified without
11 that. Frankly, the reason why they won't address this is
12 because both the county and the OMR have been caught with
13 their pants down around their ankles.

14 We also commented about aggregate piles near the
15 cement plant, and the County wouldn't address that,
16 either. They said that the aggregate piles were outside
17 the boundary of the project. But that's what we're
18 complaining about, and that's what we want an answer to.

19 The County cannot dismiss this comment simply
20 because the subject aggregate storage piles are outside
21 the project boundary. These aggregate storage piles come
22 from the quarry and are not used in the manufacture of
23 cement. According to SMARA, stock piles need to be
24 reclaimed.

25 This is one more example of County negligence and

1 the reluctance to enforce SMARA since no notice of
2 violation has yet been issued.

3 The project before you today is substantially
4 different than the original proposal when the NOP was
5 published for the draft EIR. Numerous parties, including
6 the Regional Water Quality Control Board, have requested
7 that the new plan must therefore be recirculated for
8 public review in order to meet the process defined by
9 CEQA, but instead the County has embarked on a reckless
10 high speed course in violation of CEQA, and I am
11 encouraged today by some of what I hear because I think a
12 lot more time needs to be taken.

13 There's been a lot of information just
14 distributed in the last two weeks, in fact, just today,
15 and CEQA, the spirit of that, if not the letter, is that
16 the public needs to have time to review all of that, and
17 we haven't. And you haven't either, I guess.

18 And a little bit about enforcement. We asked
19 questions again to the draft EIR addressing enforcement
20 and asking how their record of enforcement would affect
21 what we might reasonably expect on enforcement in the
22 future on the new Reclamation Plan Amendment, and the
23 County failed to address this comment completely. They
24 claim that public -- and this is a quote, public and
25 private parties are entitled to a presumption that they

1 will comply with the applicable requirements.

2 And they refer to an explanation of this in the
3 master response section M3(A), but no such explanation is
4 contained therein.

5 They further claim that County enforcement can be
6 relied upon to regularly perform its official duties and
7 ignore the facts presented which provide a consistent
8 pattern to the contrary. The details provided in this
9 comment should be reviewed in the EIR, including,
10 particularly, the quote from the State Mining and Geology
11 Board which states: There is little evidence in the
12 administrative record demonstrating that the County has
13 the understanding or will to enforce SMARA.

14 And you heard today that since that time when
15 they were threatened with being taken over by the OMR,
16 that things have improved and that they were meeting SMARA
17 after that. But in fact, the OMR said that they were
18 improved.

19 And it was kind of shocking to us because at the
20 time we thought it was like, well, Your Honor, I'm only --
21 I'm robbing less banks per week, you know. It -- they
22 have to meet the law, not just be better at it. But they
23 took them off of their suspension or probation period for
24 the OMR taking over. But since then all these other
25 violations that we talked about have occurred.

1 That entire EMSA mountain was built, and they've
2 been pumping water out of that quarry, and that was all
3 after that time. So I think their record is -- on
4 enforcement needs to be addressed in the EIR seriously
5 because it really has a lot to do with -- I'm sorry.

6 SCOTT LEFAVER: Your time's up.

7 TIM BRAND: Okay. Well, thank you very much. I
8 appreciate your patience and --

9 SCOTT LEFAVER: I think you summarized.

10 TIM BRAND: Okay. You know, you cannot approve
11 the EIR or the EPA because they do not comply with the law
12 in so many ways, and I hope that you -- and it sounds like
13 maybe you will actually read the public's comments because
14 there's a lot in there that you need to know, and I really
15 don't think the County's taken the public comments
16 seriously in the final EIR. Thank you.

17 SCOTT LEFAVER: Thank you. Any questions?
18 Commissioner Chiu has a question for you.

19 DENNIS CHIU: From the study session and from
20 your comments today, you seem to be one of the most active
21 and knowledgeable people in opposition to the Reclamation
22 Plan. I wanted to ask you a question, and if you don't
23 know, that's okay.

24 Under Public Researches Code Section 21081(B), we
25 have to weigh the unmitigated impacts like the selenium

1 and other things -- and the visual impacts and other
2 things against whether there is an overriding economic,
3 social or other benefit, in other words, overriding
4 considerations for these unmitigated impacts.

5 What's your best argument that the benefit of the
6 quarry in considering how much it does for every
7 manufacturing project almost in this area, if not in many
8 parts of the country, and the benefits it's done to -- it
9 has for the community, what's your best answer that
10 responds to the overriding considerations don't apply
11 to -- to basically allow us to decide that some of these
12 issues that are unmitigated should go forward? Does that
13 question make sense?

14 TIM BRAND: Yeah. I don't know the PRC resource
15 code, obviously, but I think, first of all, that cement
16 has been touted as a local product. And it's a local
17 product, but generally it's a regional product. So the
18 world's not going to end if they stop making cement for a
19 little while.

20 When I had a tour of their plant, the -- I
21 can't -- I can't remember the gentleman's name that was
22 driving us around in the van. He was actually boasting
23 that they were shipping cement to China. This is when
24 they were building the big dam there.

25 So it's a little disingenuous for them to now say

1 that this is a local product and we're all depending on it
2 and we can't do anything that would threaten to make them
3 less profitable basically.

4 So that would be my first comment is I think it's
5 a regional product, and the world's not going to end if we
6 basically enforce the law here, because they're kind of
7 holding us hostage and saying -- like all these years they
8 went without obeying the law, and now off all of a sudden
9 there's a big panic and the AB3098 is being turned and its
10 ear and used as an excuse to ram through an RPA that's
11 inadequate.

12 And second of all, I'd say I want to see that
13 analysis of how much it benefits us and what it would cost
14 if, you know, we were to have to get our cement someplace
15 else, for example. But I'm not advocating for them to be
16 shut down, I'm advocating for them to comply with the law
17 and to clean up their act.

18 We're also asking for the Air District to ask
19 them to put in better pollution control. That 60 million,
20 if you look at the report that I'm going to submit, you'll
21 see that that can be cut in half easily. But that cost
22 them money, and they don't want to do that.

23 So we're asking them to clean up their act and
24 mostly obey the law because I think that it's been really
25 in your face to us. We were complaining about that EMSA

1 and their not complying with it loudly, and they continue
2 to build it to the point where they finished it.

3 So I think that that's -- that would be my second
4 argument is I just want to see that analysis. And I think
5 we deserve to see that really as part of the EIR and have
6 public discussion, and instead of all of that was
7 presented this morning. I mean, we were online looking
8 for all that information on this overriding declaration or
9 whatever it is, and you know, it wasn't there until this
10 morning.

11 DENNIS CHIU: Thank you.

12 SCOTT LEFAVER: Thank you.

13 TIM BRAND: Okay. Thank you very much.

14 GARY RUDHOLM: Next speaker is Jason Flanders
15 followed by Mark McNeil.

16 JASON FLANDERS: Good afternoon, Commissioners.

17 SCOTT LEFAVER: Hi. Welcome.

18 JASON FLANDERS: My name is Jason Flanders. I'm
19 the program director at San Francisco Bay Keeper, and I'm
20 really just going to pick up on a few recurring themes
21 that I think we're hearing throughout all the testimony.

22 I'll just start with the most recent, which is,
23 you know, how is the Commission to weigh the environmental
24 impacts versus the economic benefits in making its --

25 SCOTT LEFAVER: You're going to have to speak --

1 JASON FLANDERS: Sure -- in making its statements
2 of overriding considerations, and I feel that you're not
3 in a position right now to be able to fully weigh the
4 environmental impacts because there has been so much new
5 information and new analysis that's been put forward, and
6 even some that, for example, with regard to the
7 feasibility study for selenium treatment, that's just
8 being kicked, you know, to the future, which we think
9 doesn't comply with CEQA.

10 So you know, we're not naive enough to think
11 that, you know, there's any reason to stop the project,
12 but this really is your best chance to fully characterize
13 the impacts and to -- and to mitigate them, and we really
14 ask you to take that opportunity. And instead, it does --
15 there's a feeling that the project's being fast tracked,
16 you know, that you might -- you or the County might want
17 to make a decision before all the information has been
18 fully vetted.

19 You know, we commented on the EIR that there
20 weren't -- there wasn't an analysis of downstream impacts,
21 Stevens Creek or San Francisco Bay. And the response to
22 comments agreed with that and added in that there's
23 potential impacts to those water bodies and those were
24 discussed a little bit this morning, but you know, that's
25 a potentially significant impact that really needs to be

1 vetted through an appropriate public review process.

2 We've heard there's even dispute, ongoing
3 dispute, about the project boundary about what the
4 conditions of approval should be, and we need more time to
5 consider those. And most importantly, we're very
6 concerned with the comments submitted by the Regional
7 Water Board.

8 While you heard counsel for Lehigh say that Water
9 Board approval will happen, you know, after the project is
10 approved, not during the CEQA process, it's still very
11 germane to the CEQA analysis to consider whether or not
12 the facility will be able to perform all the mitigation
13 measures to meet water quality standards that -- and
14 whether they have accurately characterized all of the
15 impact.

16 I mean, those are questions that have to be
17 answered during the CEQA process. And the Water Board's
18 pointed out a number of instances where there's been
19 inadequate information, inadequate analysis, potentially
20 problematic monitoring methodologies, potentially
21 insufficient BMPs for erosion and sediment control.
22 Excuse me.

23 And while Staff took, you know, great labors to
24 respond to all of those comments, we really need a full
25 opportunity to have a round of public review and comment

1 on those points. And I think you need that opportunity,
2 too, before weighing the actual environmental impacts of
3 the project.

4 SCOTT LEFAVER: Thank you.

5 JASON FLANDERS: Thank you.

6 SCOTT LEFAVER: Any questions? Thank you.

7 GARY RUDHOLM: Next speaker is Marc McNeil
8 followed by Bud Olive.

9 MARC McNEIL: Good day, Commissioners.

10 SCOTT LEFAVER: Welcome.

11 MARC McNEIL: Thank you. My name is Marc McNeil.
12 I'm an employee of the plant. I'm the maintenance manager
13 there. I began my career there 16 years ago at the ripe
14 age of 21. I'm a -- I was a contract electrician out
15 there and an avid lover of the outdoors.

16 Over the years as I grew up out there in my
17 career, we've been taught over and over again and continue
18 to train our employees to be good stewards of what has
19 been entrusted to us, which is the health and safety of
20 our people and those around us, as well as taking care of
21 the environment in which he operate.

22 The approval of this Reclamation Plan will afford
23 us the opportunity to continue to provide our quality
24 cement products to the community around us for new
25 projects, such as the 49er stadium that's to go up, the

1 new Apple's campus only while disturbing less than
2 20 percent of the owned property there.

3 A quote from Heidelberg's Biodiversity web page
4 says, "From the first stages of quarrying,
5 HeidelbergCement strives to protect the variety of animals
6 and plants. Appropriate reclamation actions finally
7 contribute to the creation of a mosaic of specified
8 biotopes from small ponds to forest."

9 I appreciate the changes I've seen in our plant
10 over the past decade and a half in a continued focus to
11 return the land to a thriving home for native plants and
12 animals, and I look forward to seeing the conceptual
13 design continue to literally come to life.

14 Thank you for listening and hearing what I have
15 to say about our little gem we call Permanente.

16 SCOTT LEFAVER: Thank you.

17 MARC McNEIL: You're welcome.

18 SCOTT LEFAVER: Any questions? Thank you very
19 much.

20 GARY RUDHOLM: Next speaker is Bud Olive followed
21 by Rhoda Fry.

22 BUD OLIVE: Hi. My name is Bud Olive.

23 SCOTT LEFAVER: Hi.

24 BUD OLIVE: We have lived in Los Altos for
25 45 years, and we live near Foothill Expressway and 280

1 north of the quarry. But we all live in Silicon Valley,
2 the technology center of the world. And I think we live
3 in a very beautiful area, and I hate to see it being
4 marginalized or destroyed by the quarry.

5 Now, we are lucky where I live because we're on
6 the north side of the quarry and we have a pool in the
7 backyard. And we can tell by the debris on the pool which
8 way the wind is blowing, and it blows predominantly from
9 the north to the south. But when it does reverse, it's a
10 whole different story as far as the pollution that we have
11 on our car, for example, the noise we get and so forth.

12 So I think that the one thing we don't need in
13 this beautiful area is the pollution, the noise and the
14 traffic and trucks that it has. So I think that Lehigh at
15 one time maybe was a good fit for this community, but now
16 I think it's ready for them -- they should be finding a
17 better location with a smaller population density around.
18 Thank you.

19 SCOTT LEFAVER: Thank you. Any questions? Good.
20 Thank you.

21 GARY RUDHOLM: Next speaker is Rhoda Fry, and she
22 will be followed by Rod Sinks.

23 SCOTT LEFAVER: Ms. Fry. Hi.

24 RHODA FRY: Officials from Cupertino, Los Altos,
25 Los Altos Hills have serious reservations about this

1 project, and so do I. The OMR requires the cement -- that
2 the cement plant must be part of the RPA, and it is not.

3 The RPA also must meet SMARA, not substantially
4 meet it, but meet it. A no vote from you could mean many
5 things, but it doesn't necessarily mean you think this is
6 a bad project. It could mean the County must recirculate
7 the EIR because significant new information like water has
8 been added to the EIR after public notice has been given
9 of the draft EIR, that's CEQA law, or comment responses
10 are not reasoned or are conclusory, CEQA law, or we must
11 not wait at last 38 years for the operator to clean up the
12 selenium pollution that is created by pumping affluent
13 into our creeks and water shed, or digging yet another
14 200 feet in the quarry below the water table which would
15 add cumulative interim if not permanent impacts, or
16 there's an intent to piece-meal CEQA or viable options
17 such as those described by Commissioner Vidovich have not
18 been explored.

19 It is disturbing that County Staff has buckled
20 under political pressure and ignored comments by citizens
21 and objective government agencies, such as Mid Pen, with
22 health issues and our scenic easement.

23 The 2002 emergency repairs never occurred on the
24 landslide. Landslides onto our parkland and elsewhere
25 occurred due to slope stability problems in violation of

1 SMARA. The slopes should have withstood the rain.

2 Also, the Water Board's -- quote from the Water
3 Board. The Water Board does not find an onerous schedule
4 a valid reason for minimizing impacts to the environment.
5 For by far too long Lehigh Southwest has been given a
6 regulatory free ride across numerous agencies.

7 The OMR has been ten years out of compliance.
8 The County failed to do SMARA inspections for several
9 years, failed to conduct building and demolition
10 inspections, and approved the most recent SMARA inspection
11 without the compulsory operator biannual report. With
12 chronic labor safety violations, the Mining Safety and
13 Health Administration reports that this company relies on
14 an egregious violation record as a cost of doing business.

15 The company claims that limestone from this
16 quarry is vital to the Bay Area economy. It has declared
17 that -- it has also declared that the cement plant will
18 continue to operate when the local limestone is exhausted.

19 This is from a letter from Mark Harrison which
20 you have in your hands. They can't have it both ways. In
21 fact, for eight years the plant has relied on imported
22 limestone to supplement the local substandard limestone.
23 Since the tragic labor-related killings last year, the
24 aggregate plant has closed, and the company has relied on
25 more high-grade imported limestone from Canada, which is

1 lower in toxic substances such as mercury by an order of
2 magnitude and sulfur. So perhaps we should Sunset the
3 quarry now.

4 So please end the regulatory free ride and choose
5 our protected view shed easement and water quality over
6 the stockholders of HeidelbergCement Germany. Thank you.

7 SCOTT LEFAVER: Thank you. Any questions? No
8 questions. We have the next speaker and then we're going
9 to take a break, five-minute break for our --

10 GARY RUDHOLM: Okay. That's a good idea. The
11 next speaker that was scheduled is Mr. Rod Sinks; however,
12 I understand Mr. Sinks had to leave and had asked
13 Mr. Barry Chang to speak on his behalf in order to
14 represent the Bay Area Clean Environment Group.

15 SCOTT LEFAVER: Okay. Who do we have next? The
16 next speaker.

17 GARY RUDHOLM: Okay. I'll move Mr. Sinks to
18 later in the line then.

19 SCOTT LEFAVER: Okay.

20 GARY RUDHOLM: So keeping things in line in the
21 order I received the cards, next speaker would be Dyan
22 White of the California Water Control Board.

23 SCOTT LEFAVER: Okay. Thank you. Dyan? And
24 then after you we're going to take a break. Thank you.
25 Hi.

1 DYAN WHITE: Hi, there. I'm Dyan White. I'm the
2 executive officer at the California Regional Water Control
3 Board of the San Francisco Bay region. Our name has been
4 bantered around quite a bit, so I felt it would be
5 appropriate for us to come up and answer any questions and
6 say a few words before you.

7 We recognize that the challenge before you is --
8 is the exit strategy and making sure that the exit
9 strategy fully protects water quality. Our job also not
10 only encompasses the exit strategy but the operation
11 strategy and that's what we're really working on at this
12 point in time. So I wanted to just give you a little bit
13 of background about what's happening at our office.

14 I've got five technical staff involved with
15 Lehigh right now from just about every program area that
16 we regulate. There's a lot to be learned. There's a lot
17 going on. And you often hear within environmental issues
18 that there's a need for more data. But in this situation
19 for us, there truly is.

20 It was less than two years ago when I learned and
21 my staff became aware of the fact that the water from the
22 quarry which constitutes millions of gallons was being
23 discharged into the creek without what we thought was
24 sufficient permitting authority.

25 So our efforts in the last two years have been

1 working with Lehigh and our staff to essentially figure
2 out how to fully regulate this type of facility and bring
3 them into water -- in compliance with water quality laws.
4 And that's, in fact, what we are doing.

5 We've expressed some concern concerns with the
6 EIR and with the Reclamation Plan mainly in regard to the
7 lack of information before you and before us, and we're
8 aggressively moving forward to obtain the information we
9 need to make our own regulatory decisions.

10 And so we recognize nothing that you do today
11 will override our authority or limit our authority to go
12 forward, and we will continue to do so. But what I want
13 to stress for you is what we see is the importance of
14 really making sure that the financial assurances are
15 adequate to address water quality needs. That's really
16 what I see as the critical piece here.

17 And with that, I point to the conditions for your
18 approval. I don't have that in front of me. I saw an
19 earlier draft. It's not in the back for an exhibit. But
20 I cannot stress enough we are here to work with you moving
21 forward. We are doing the best we can with the resources
22 we have to do our job, but I think we all want to make
23 sure that the environment is protected both now and down
24 the road.

25 And what that is going to entail is uncertain

1 from our perspective, and so we want to make sure that
2 there's flexibility in any approvals that you make here
3 today such that if we determine that additional measures
4 are needed above and beyond what you're currently looking
5 at, such as selenium removal and selenium treatment, that
6 there is someone who is going to pay for those. And I
7 think the public is looking for that type of assurance as
8 are we.

9 So again, I'd be happy to talk with you more, but
10 for us it comes down to those conditions and the
11 flexibility down the road to modifying the financial
12 assurances so we can all rest easy at the end of the day
13 when there is indeed -- when it is indeed time to exit.

14 Now, there were other references that were made
15 in terms of water quality concentrations and conditions
16 out there, but I just need to point out a few things. For
17 us the baseline is our water quality standards, and that's
18 what we're grappling right now and working with Lehigh on
19 in the permitting process to figure out how they can
20 comply with them.

21 But there's also another piece of this, and
22 that's that Permanente Creek is listed as impaired by
23 selenium. And that requires us under federal law to
24 develop what's called a total maximum daily load, and
25 we're just starting that process. We're going to -- we're

1 getting additional information, but it's not just
2 concentration.

3 At the end of the day, when it comes to
4 bioaccumulative pollutants, it's also the overall load.
5 So in addition to the concentration values that you saw
6 what we will be grappling with over the next few years
7 through our permitting authority and our regulatory
8 authority is figuring out what type of mass loading would
9 also be acceptable for this facility in particular in
10 order to provide water quality assurances in addition to
11 any concentration base limits.

12 And quite frankly, I'm not sure what the final
13 remediation plan is going to look like based on that. And
14 so, again, I point to the need for flexibility and
15 assurances that the financial assurances will be modified
16 as appropriate and also to say that our staff -- you know,
17 we will make ourselves available and we keep doing our
18 work to plug in every bit of information that we learn out
19 of this process and feed it back to you so we can move
20 forward on that. Thank you.

21 SCOTT LEFAVER: Thank you. I think you're going
22 to get some questions. So, please.

23 Commissioner Chiu.

24 DENNIS CHIU: Thank you for coming. Are you in
25 your capacity representing the California Water Resources

1 Board?

2 DYAN WHITE: Yes. I'm the deputy director.

3 DENNIS CHIU: Thank you. It appears that
4 everyone agrees that selenium cannot be mitigated in the
5 water supply. And do you -- do you agree with that, or
6 you're just -- you say you can't --

7 DYAN WHITE: I don't have sufficient information
8 now to say that I fully agree with that. We have a lack
9 of understanding even in terms of particulate versus
10 dissolved selenium and how various BMPs out there would be
11 able to address that.

12 We're still unclear, quite frankly, of the
13 various sources of selenium that exist on the facility as
14 a whole, and I will say that we regulate the facility as a
15 whole. Your scope is obvious smaller, at least as I've
16 heard that spoken about today.

17 DENNIS CHIU: And just so I'm clear, the bottom
18 line is that it didn't sound like you were against
19 approval of the Reclamation Plan in that it seemed, and
20 correct me if I'm wrong, that you were interested in
21 making sure that the conditions of approval had enough
22 flexibility to so that a future monitoring and abatement
23 or, you know -- or some actions can be taken to lessen the
24 impact of selenium in -- and other chemicals in the water
25 supply; is that correct?

1 DYAN WHITE: Well, I'd say that I'm not
2 authorized and in a position to say whether you should or
3 should not move forward with approval of the Reclamation
4 Plan. I really feel that's in your purview and within
5 your scope and not within mine, but what I guess I'm
6 pointing to is the need to have flexibility in what you do
7 such that your actions down the road are sufficient that
8 they could be modified based on any findings that we have
9 based on the needs for water quality and water quality
10 protection.

11 As a scientist, I say that I cannot fully endorse
12 the Reclamation Plan from the perspective to say that I
13 agree that it will attain our standards because some of
14 them are still involving in terms of mass limits and we
15 don't have a mass load limit yet there.

16 We do have concentration limits that are on the
17 books today, and I am not convinced that the BMPs that are
18 currently as proposed sufficient to meet those standards,
19 but that again, is the work that we're involved with right
20 now in trying to better understand.

21 So I do recognize that decisions often need to be
22 made in the face of uncertainty, so I'm not -- I'm just
23 giving you the information to help you I think make the
24 judgment that you need to make.

25 DENNIS CHIU: Thank you.

1 SCOTT LEFAVER: Commissioner Vidovich was -- go
2 ahead.

3 JOHN VIDOVICH: Have you -- and this is just a
4 question obviously.

5 Have you looked at the idea of containment of low
6 flows? Apparently it's the low flows that have the
7 highest concentration of selenium and occur the longest in
8 the creek. Have you looked at containment such as putting
9 in a pipe, maybe a 12-inch pipe, and passing it five or
10 six miles farther downstream? I think Permanente Creek is
11 cemented after awhile.

12 Have you looked at that idea as a temporary
13 measure? At least it moves the selenium out of the upper
14 reaches.

15 DYAN WHITE: I am not aware of that, and I'm not
16 sure how that refers to what I've observed out there today
17 in place of where you would be considering that. I mean,
18 we do -- the ponds that are out there today in the lower
19 reaches essentially to the left as you enter the facility
20 are the -- are waters -- are waters of the State.

21 And so those are functioning as aquatic
22 ecosystems right now, so I'm not sure if you're talking
23 about eliminating those or just treatment technologies
24 further upstream in terms of detention, which typically
25 would drop out the particulate phases, that type of a

1 practice, those sediment detention basins, but I'm not --
2 I don't myself have a clear understanding of the
3 conceptual model as it would relate to the dissolved
4 versus the particulate fractions. Am I answering your
5 question or --

6 JOHN VIDOVIICH: So you're giving information.
7 There's two types of selenium that concern you. One is
8 the particulate --

9 DYAN WHITE: Yes.

10 JOHN VIDOVIICH: -- the other is dissolve.

11 DYAN WHITE: Right.

12 JOHN VIDOVIICH: If you put a sediment basin up
13 there, you believe you can -- over time those little
14 particulates will sink to the bottom.

15 DYAN WHITE: Right.

16 JOHN VIDOVIICH: And the water that comes out will
17 have only have dissolved selenium.

18 DYAN WHITE: Right.

19 JOHN VIDOVIICH: Right now I know Permanente
20 Creek, that area, is fairly dead, and that's one of the
21 complaints the neighbors had have had is it's dead. And
22 most of those creeks, naturally they flow for a while when
23 it's raining, and the water tends to go under the surface.
24 In the summer months they wouldn't flow.

25 When you have a quarry, because they intercept

1 the aquifers and they have to pump the pit out, they're
2 suddenly creating all-year flows which are not natural.

3 I'm just saying if we put in a pipe during those
4 periods, and those are low flow periods, you'd bypass the
5 creek. That's all. Just a suggestion. We're in these
6 hearings. Just a suggestion.

7 SCOTT LEFAVER: I don't think she can comment. I
8 don't think she can

9 JOHN VIDOVICH: Well, I just asked if they
10 considered it. That's all.

11 SCOTT LEFAVER: I'm sure they will consider it.
12 I'm not answering for you --

13 DYAN WHITE: Okay. Thank you.

14 SCOTT LEFAVER: -- I just -- getting from your
15 presentation I think that's what you said so -- okay.
16 Commissioner Schmidt and then -- go ahead.

17 KATHRYN SCHMIDT: Do you know of any other
18 similar situations where selenium has been treated and
19 removed from water anywhere in California or anyplace that
20 you know of?

21 DYAN WHITE: I'm going to just -- hold on for a
22 second if you don't mind. It's not something I have
23 personally researched, but I'll --

24 JULIE MACEDO: No. Hi. I'm Julie Macedo. I
25 represent the Water Board. No, the studies right now the

1 Water Board was able to find and cite in our February 21st
2 comment letter dealt with mines up in Canada. So we are
3 aware that it's a developing technology, but it's being
4 used to remove selenium from water.

5 KATHRYN SCHMIDT: So you're saying that in Canada
6 they are attempting to do this or they're --

7 JULIE MACEDO: Right. Yeah, the technology is
8 still developing.

9 KATHRYN SCHMIDT: Okay. Thank you.

10 JULIE MACEDO: You're welcome.

11 SCOTT LEFAVER: Commissioner Couture?

12 THERESA COUTURE: I don't know which one of you
13 boards are responsible for, but who tests wells? Is it --
14 do you know?

15 DYAN WHITE: We -- it's typically done depending
16 on the type of well and what it's used for either by the
17 water purveyor or the Department of Health Services if
18 it's direct -- for direct potable use. The Regional Water
19 Board comes into play with the overall ground water
20 quality as a resource, and so we -- we will be -- we are
21 involved in testing of wells. Typically it has to do with
22 the cleanup of contaminated cases, but more so we looked
23 for the Department of Health Services and entities like
24 the Santa Clara Valley Water District who will be -- you
25 know, provide the water as well as a number of other

1 monitoring efforts that are done by USGS and others. So a
2 mixture.

3 SCOTT LEFAVER: Thank you. Any other questions?
4 I'm sure we'll have some other ones later on, but thank
5 you very much for being here and talking with us and
6 giving your perspective.

7 All right. Let's -- it is now 20 until 2:00.
8 Let's take a five-minute break and -- for all of us, and
9 we'll be back.

10 (Short break taken.)

11 SCOTT LEFAVER: Commissioner Ruiz?

12 MARY ANN RUIZ: Thank you. This is following up
13 from the comments from the Regional Water Board. I'd like
14 to request if -- first of all, thank you for the
15 information, and if you have any suggestions or conditions
16 you would like for us to consider, it would be helpful for
17 our discussion. If that's something that you can provide,
18 that would be appreciated.

19 SCOTT LEFAVER: Thank you, Commissioner. I think
20 we will all appreciate that.

21 All right. Could we please have our next
22 speaker?

23 GARY RUDHOLM: Next speaker is Manual Rodriguez
24 followed by Kevin McClelland.

25 SCOTT LEFAVER: Hi. Welcome.

1 MANUEL RODRIGUEZ: Hi, I'm Manuel Rodriguez. I'm
2 one of the 150 employees at Lehigh. I grew up in
3 Cupertino. As a kid I caught snakes out of that
4 Permanente Creek. I went to Kennedy in Monte Vista. My
5 parents own a home in Cupertino. I own a home in
6 Cupertino about a mile from the plant. I have two
7 brothers that work at the plant. I've worked at the plant
8 for 27 years, 15 years without a sick day. I like my job.
9 Lehigh has been an important part of my family, this
10 community and the County for 70 some-odd years. Thank
11 you. Do you have any questions?

12 SCOTT LEFAVER: Any questions? Well, thank you,
13 and thank you for working there and living in Cupertino.

14 MANUEL RODRIGUEZ: Okay. Thank you.

15 GARY RUDHOLM: Next speaker is Kevin McClelland
16 who will be followed by Barry Chang.

17 SCOTT LEFAVER: You want to say that -- the last
18 person again?

19 GARY RUDHOLM: Kevin McClelland --

20 SCOTT LEFAVER: Kevin, are you here?

21 GARY RUDHOLM: -- of the Cupertino Chamber of
22 Commerce.

23 SCOTT LEFAVER: Okay. Are you here?

24 GARY RUDHOLM: I can reserve that name to the end
25 in case he comes back.

1 SCOTT LEFAVER: Okay. Well, let's go on to the
2 next one, please.

3 GARY RUDHOLM: Okay. The next speaker card I
4 have is from Barry Chang.

5 SCOTT LEFAVER: Mr. Chang?

6 GARY RUDHOLM: And he will be followed by
7 Victoria McCarthy. And he says he's representing himself
8 so three minutes.

9 SCOTT LEFAVER: Hello.

10 BARRY CHANG: Good afternoon. Thank you very
11 much, Scott and John and all the commissioners. I know
12 you spend a lot of time. This is very important project
13 and all the document you have to review. I really
14 appreciate your time, and I especially appreciate your
15 comment. This is such an important project. You need to
16 take time to really sort through it and then give your
17 thought to see how you want to handle all the different
18 area, different problem.

19 My concern is with this report from the staff is
20 SMARA specifically require that any Reclamation Plan
21 approval has to subject to meet the Federal Clean Water
22 Act. And what I heard today is really nervous because you
23 make me concerned that the County can override the State
24 law, the State law can override the federal law. That
25 doesn't -- doesn't make sense to me.

1 Okay. So I want you to look into that because
2 SMARA clearly specify that any approval of Reclamation
3 Plan has to meet the Federal Clean Water Act.

4 And then the planner, Rob, mentioned about how
5 much is too much for the selenium? The federal
6 requirement is very clear. Five microgram per liter.
7 And this cement plant has somewhere between -- much more.
8 Like the highest one was 62. I mean, wouldn't that be too
9 high? You're talking about five as the maximum, and then
10 your total time higher than the maximum limit and they've
11 been illegally dumping into Permanente Creek.

12 And the problem is not in the pit. The pit of
13 course have the layer that cannot be permeated. So that's
14 why they have the water. I mean, you go there, you look
15 at the water, you can put the ivory tower in there and
16 will submerge the whole thing in there. And that's why
17 they cannot go anywhere, and that's why they illegally
18 pump in the Permanente Creek and which percolate into the
19 underground aquifer.

20 And then we are all drinking this water mixed up
21 with our drinking water. And would I be better off not to
22 have those, or we should be -- handle this a more prudent
23 way?

24 Okay. So take your time, do a good job because
25 all the residents in Silicon Valley is relying on you.

1 This is not only the 151 employee. You're talking about
2 1.2 million employees in the Silicon Valley. I don't want
3 we wake up one day and we lose all this high tech
4 innovative people to other people, other country and then
5 we wake up one day and then there's no job, it's gone, we
6 lost the competitive edge, and then we lost. Then we have
7 nothing. We don't need the cement. Thank you.

8 SCOTT LEFAVER: Thank you very much, Mr. Chang.
9 Any questions? Okay.

10 GARY RUDHOLM: I'm sorry, Mr. Chair, I'll get it
11 figured out.

12 SCOTT LEFAVER: That's my heart beating, right?
13 Am I normal?

14 GARY RUDHOLM: Well, I'll use my watch,
15 Mr. Chair.

16 The next person to speak is Victoria McCarthy who
17 will be followed by David Peavey. And Victoria has three
18 minutes.

19 SCOTT LEFAVER: Welcome, Ms. McCarthy. Hi.

20 VICTORIA MCCARTHY: Thank you. And good
21 afternoon, Chairman and Plan Commissioners. I must
22 commend you for taking such great time to investigate
23 every aspect of this reclamation project, and I urge you
24 to pass it.

25 May 7th, 1974 is the date I started my excellent

1 adventure at Kaiser Cement. 38 years ago I got my first
2 hard hat and steel-toed boots and joined the Cement Lime
3 and Gypsum Union. I told my husband I would just work ten
4 years, but with the death of two husbands in my past, this
5 company has been a wonderful support system for me. I
6 have been a part of the changing face of the facility
7 throughout the modernization of the plant in 1982.

8 I have been a part of the working family that we
9 have here. We work holidays and weekends when everybody
10 else is at home to provide cement to build this valley.
11 Think about all the places you visit, work and travel that
12 have been built with my cement.

13 I applaud Lehigh for tackling so many of the
14 environmental issues that have been presented to them
15 throughout the years. Their proposals for projects in the
16 future are most remarkable to me. To see yet another
17 upgrade of this plant in this difficult economy is truly
18 amazing.

19 I was born in Oakland and moved to Santa Clara in
20 1952, and throughout the years I've enjoyed hiking and
21 fishing in this whole area in the Bay, in the dam, and
22 I'm -- I really recommend that you approve this project
23 for my son's and my grand daughter's future. Thank you.

24 SCOTT LEFAVER: Thank you. Any questions? Thank
25 you.

1 GARY RUDHOLM: Next speaker is David Peavey who
2 will be followed by Ricardo Del Valle.

3 DAVID PEAVEY: Good afternoon.

4 SCOTT LEFAVER: Good afternoon.

5 DAVID PEAVEY: My name is Dave Peavey. I grew up
6 in Cupertino and now currently I live there. I have an
7 interest in what goes on in the community I live in. I've
8 been with the Permanente plant for 32 years. I work in
9 mobile equipment department, and for the past 18 I've been
10 a supervisor of that department. I'm involved in many
11 areas of Lehigh operation including the maintenance of
12 industrial sweepers and water trucks for dust control at
13 our site.

14 I've been made clear these pieces of equipment
15 are a number one priority. They come above any production
16 equipment. They show that that's our commitment to doing
17 what's right for environmental issues.

18 Over the years there have been many changes with
19 laws, regulations and agencies we work with. Our company
20 has always been proactive in responding to these changes.
21 We work hard to make sure that we meet or exceed any of
22 these new safety environmental requirements requested of
23 us. I like the fact that I work for a company with
24 integrity, put safety environmental issues first.

25 This is a positive attribute for employees of

1 Lehigh as well as the surrounding community around the
2 plant. Thank you.

3 SCOTT LEFAVER: Thank you. Any questions? Thank
4 you very much.

5 GARY RUDHOLM: Next speaker is Ricardo Del Valle,
6 and he will be followed by Mr. Kevin McClelland, who is
7 now here.

8 SCOTT LEFAVER: Welcome. Hi.

9 RICARDO DEL VALLE: Welcome. Thank you,
10 Chairman, Commissioners. Well, first of all, I'm a
11 resident of Cupertino, so I try to keep up with all the
12 issues as best as I can. I have a two-year old and a
13 four-year-old daughter, so that's not a lot of time, but I
14 do my best.

15 On the other hand, I'm an employee of Lehigh.
16 I'm a production engineer of the plant, so my
17 responsibility is to basically make cement, ensure that
18 it's produced according to quality standards and goes out
19 the gate.

20 But before any of that, I can tell you right now
21 that the pressure -- or the effort management puts into
22 making that safely, first of all, that's priority.

23 Number two, we have to be an environmental
24 family. That's not an option. That's something that
25 since day one. I've been working there for six years, and

1 they've always said that. And sometimes it's difficult,
2 but we do it. Sometimes if we're producing cement,
3 something happens, it's not the best for the environment,
4 you know, we shut down immediately. That's a lot of work
5 for me. That's a lot of work for my team, but we do it.
6 We do it gladly. That's what we have to do.

7 And I can tell you firsthand I witness what they
8 do. The seriousness they give to these matters, and I
9 have no doubt that they will follow the Reclamation Plan
10 the best they can and according to the law. That's all I
11 have to say.

12 SCOTT LEFAVER: Thank you. Any questions? Thank
13 you for coming.

14 GARY RUDHOLM: Next speaker is Mr. Kevin -- no,
15 excuse me. Yes, Kevin McClelland, and he will be followed
16 by Bill Almon.

17 KEVIN MCCLELLAND: Hi. Good afternoon. My name
18 is Kevin McClelland, and I'm here on behalf of the
19 Cupertino Chamber of Commerce. We are urge you to approve
20 the Reclamation Plan Amendment for Lehigh Cement
21 Permanente Quarry. The Chamber believes that the
22 Reclamation Plan is another part of their commitment to do
23 the right thing for our community, and I just want to say
24 that as I've listened to a lot of the detractors, the
25 people that oppose just about everything that has to do

1 with Lehigh, it's my belief that any decision you make
2 short of closing down the plant is not going to be
3 respected by these people.

4 You know, I'm here on behalf of the Chamber not
5 as a rubber stamp. You know, I've actually done my
6 homework. I visited the quarry twice over the last year
7 and a half, done my research, looked into a lot of the
8 claims that these people have made. And as I've looked
9 into and become informed, I actually have become more of a
10 support of Lehigh, because the reality of it is, they are
11 trying to do the right thing. They are exceeding
12 standards of expectation. They are trying to do the right
13 thing for the environment and for the community, and it's
14 kind of hard for me to fault and stand in opposition of
15 that no matter who that would be. So thank you.

16 SCOTT LEFAVER: Thank you. Any questions? Thank
17 you.

18 GARY RUDHOLM: Next speaker is Bill Almon
19 followed by Josh Bennett. And Mr. Almon represents a
20 group, so he'll be afforded seven minutes.

21 SCOTT LEFAVER: Hi, Mr. Almon. Welcome back.

22 BILL ALMON: Thank you.

23 SCOTT LEFAVER: And by the way, I received a very
24 informative e-mail from Mr. Almon earlier this week.

25 BILL ALMON: I'm glad it was informative.

1 SCOTT LEFAVER: Thank you.

2 BILL ALMON: I'm Bill Almon. I'm the founder of
3 a group called Quarry No. We have 500 members in Los
4 Altos, Los Altos Hills, Cupertino and Sunnyvale, a number
5 of other areas close by. Our focus is obviously from the
6 name on the Lehigh Quarry. I would like to start by
7 thanking everyone, the staff, you all, the Lehigh
8 representatives that are here, the community
9 representatives that are here, the Water Board, et cetera,
10 for all the effort being put into this. It's truly
11 important, but a lot of times important things don't get
12 the attention, and we should celebrate that here today.

13 We've had great progress so far. I think that we
14 also are benefiting because what I hear today is that we
15 do have time to make it right, and that's very, very
16 important. What is missing? What do we think is still
17 missing, and why is it missing? Well, we think that the
18 cement plant should be incorporated into the EIR. The
19 trucks should be incorporated. The scenic easement should
20 be addressed and Permanente Creek.

21 And why do I say that? Well, as we've heard from
22 the staff, this cement plant cannot be considered. The
23 office of Mine Reclamation said that it's not part of the
24 Reclamation Plan. That was their last letter.

25 Their first letter, September 22nd, '06, said

1 that the cement plant was part of the reclamation plan.
2 And you all have a copy of that letter in your handouts.
3 I think it's Appendix D.

4 When you look at that, how could they say in
5 September -- and I can read you the actual sentence, if
6 anyone is concerned. It's unequivocal. What they say is,
7 "OMR directs the County to include the area occupied by
8 the cement plant in a required amendment to the
9 Reclamation Plan for this surface mining operation."

10 That's the letter from OMR September 22nd, 2006. What
11 happened? Well, the operator of the quarry went back and
12 said, oh, wait a minute, we're not part of the quarry. I
13 mean, we're not part of -- the quarry is not part with the
14 cement plant. We're separate. And even the land, the
15 land that were on, it's never been disturbed by mining,
16 and we're separate from the quarry.

17 And so OMR said, well, okay, fine, we accept
18 that, and the County accepted that.

19 The next thing that happens is we have a vesting
20 hearing by Lehigh, and these very people here in this very
21 room came in and testified what? They testified that
22 their entire operation is totally integrated. The cement
23 plant is part of the quarry. The quarry is part of the
24 cement plant.

25 And they further testified that all of the area,

1 all the parcels of land up in that area have been
2 disturbed by mining and hence had to be vested. So the
3 supervisors agreed and voted for vesting.

4 Another justification for excluding the cement
5 plant is CEQA. CEQA states you must have a reasonable
6 relationship to bring something in.

7 Well, we talk about the State Mining Board 3098
8 regulation, et cetera, qualified supplier. A qualified
9 supplier of what, limestone? No, cement.

10 Further on, you get into the regulating. The
11 cement plant is regulated by the Air District. However,
12 the Air District also regulates the trucks, the dust from
13 the trucks, and the dust -- was that the buzzer?

14 GARY RUDHOLM: No, you're still good.

15 BILL ALMON: Oh -- and it regulates that, the
16 dust from the trucks, et cetera. However, the County also
17 regulates certain items in the cement plant, such as lime
18 slurry, leaks, et cetera. So you have a joint effort by
19 all the regulatory authorities. There is that -- not that
20 much distance between the cement plant and the quarry.
21 The trucks are thrown out on the basis that it's a cement
22 plant. Been thrown out. We don't have to count the
23 trucks because we're not going to count the cement plant.
24 Their pollution is equal to what's put out by the kiln and
25 the cement plant is equal to what the trucks -- the

1 greenhouse gases from the trucks are overwhelming. They
2 will overwhelm this County in trying to establish new
3 programs and will probably lead -- if you want the trucks,
4 you're going to have to reduce the commuting.

5 The Port of Oakland has gotten \$25 million each
6 year to reduce diesel emissions. Port of Oakland. Came
7 from the Air District. What has Lehigh gotten? What have
8 Lehigh trucks got? Nothing. Because no one ever said the
9 trucks are a problem.

10 Scenic easement. It was an act of God. It was
11 an earthquake. Well, not actually. All right. There was
12 quarrying too close to the rim, and when the earthquake
13 came, the sidewall went and the ridge line went, and
14 hence, it now is thrown out on the basis that it's
15 unaffordable to re -- go back in.

16 SCOTT LEFAVER: You're going to need to summarize
17 now.

18 BILL ALMON: Okay. Well, anyway the creek
19 process, it's very simple. Lehigh has a process, a
20 production process, for producing limestone. It requires
21 that they dump pit water into Permanente Creek. That is a
22 process. I run companies. They cannot follow that
23 process. They cannot continue to dump pit water into
24 Permanente Creek, and that's the end of it.

25 And that's their problem, and they need to solve

1 that. It's helpful for you all of us to help them solve
2 it, but it's their problem, not the County problem, not
3 the residents' problem. And if you had a dry cleaner that
4 had a process that was hurting the air, the water, you
5 shut them down. Thank you.

6 SCOTT LEFAVER: Thank you. Any questions of
7 Mr. Almon? No questions. Thank you.

8 Next speaker?

9 GARY RUDHOLM: Next speaker is Josh Bennet, who
10 will be followed by Dan Zacharisen.

11 JOSH BENNET: Good afternoon. My name is Josh
12 Bennet. I'm a local resident of Los Altos. My --

13 SCOTT LEFAVER: I didn't hear you. Who are you
14 from? I'm sorry.

15 JOSH BENNET: I'm a resident of Los Altos.

16 SCOTT LEFAVER: Okay. Thank you.

17 JOSH BENNET: Good afternoon. My comments today
18 pertain to the scenic easement, which has encumbered
19 Lehigh's property since about early 1970s to maintain the
20 ridge line as you are all aware. The whole purpose of the
21 ridge line -- the easement is to maintain the ridge line
22 so we don't have to look up and see this nasty scar in
23 this air. But in the early 80s and beginning in 2000
24 there were landslides caused by Lehigh's mining, and
25 apparently there are other contingent landslides that are

1 supposedly yet to occur but are out there at the foot of
2 that.

3 Now, both of these considerations are supposed to
4 be covered under the Reclamation Plan currently in effect
5 and this easement is part of that. And from what I gather
6 today, that the easement has been removed and it's not
7 under consideration in the amendment of the Reclamation
8 Plan or the EIR, the final EIR due to cost.

9 And that strikes me as odd. It is kind of akin
10 to a developer or some other private landowner that has --
11 is operating pursuant to a permit and a plan on a piece of
12 property and dedicated a portion of the land as scenic
13 easement and then decides to build something on there and
14 maybe even to a great cost and the building's on there.
15 And it seems to me that the County would require some kind
16 of concession or otherwise or possibly remove the
17 obstruction on the easement and wouldn't just let it go
18 due to cost.

19 Now, here we have Lehigh saying that it's too
20 expensive to repair and, therefore, we should just ignore
21 it and not have to abide by its terms because it's too
22 expensive when the very purpose of the Reclamation Plan
23 was to include the protection of the ridge line.

24 I think at the very least there should be some
25 kind of concession from Lehigh and that the concession and

1 compliance therewith is considered in the Amended
2 Reclamation Plan and any kind of final EIR that comes out
3 before anything is approved. It just seems fair. Thank
4 you.

5 SCOTT LEFAVER: Thank you. Any questions? No
6 questions. Okay. Thank you.

7 JOSH BENNET: Thank you.

8 GARY RUDHOLM: Next speaker is Dan Zacharisen
9 followed by Axel Coniads.

10 DAN ZACHARISEN: Good morning, Commissioner -- or
11 good afternoon.

12 SCOTT LEFAVER: Hi. Welcome. It is afternoon.

13 DAN ZACHARISEN: Yeah. It's been a long day.

14 My name is Dan Zacharisen, and I'm proud to say
15 I've been an employee of the Permanente Plant for more
16 than 22 years. I'm one of four generations dating back to
17 1939. My dad retired from the plant after 36 years. My
18 grandfather worked there for 30 years and retired. My
19 great grandfather was hired by Henry Kaiser himself before
20 the plant was done being built.

21 I'm proud to say that including aunts, uncles,
22 cousins and brothers, we've amassed more than 180 years of
23 service, and since day one there's always been a member of
24 my family employed at the plant. I've worked more than
25 half my life in the quarry and have been directly involved

1 in various reclamation projects, including surveying,
2 grating, sloping, annual revegetation and hydroseeding and
3 stock piling thousands of yards of top soil used to return
4 the property to its natural environment.

5 I'm proud of the reclamation efforts we're
6 currently making and will continue to make, and I'm
7 looking forward toward another 22 years at Permanente and
8 hopefully if I can convey to my little girls what a great
9 place it is to spend a lifetime, a fifth generation.

10 Thank you.

11 SCOTT LEFAVER: Thank you. Any questions? Thank
12 you.

13 GARY RUDHOLM: Next speaker is Axel Coniads who
14 will be followed by Alan Sabawi.

15 SCOTT LEFAVER: Hi. Welcome.

16 ALEX CONIADS: Thank you, Mr. Chairman, planning
17 commissioners. I want to, first of all, thank you for
18 giving me the opportunity to speak here this afternoon.
19 My name, as you mentioned, is Alex Coniads, and I'm the
20 vice president of cement operations for region west for
21 Lehigh Hanson. I've been in that position for more than
22 close to two years now. Currently I'm the acting plant
23 manager of the Permanente Cement Plant as well.

24 I had the opportunity to review the Reclamation
25 Plan, and I'm very impressed with the work our employees

1 as well as our consultants have done in preparing this
2 Reclamation Plan application. I would also like to
3 commend the planning department for their hard work on the
4 project before you.

5 As you're well aware, the Permanente Plant has
6 worked very hard to be an active part of the community and
7 to be a responsible steward for the environment. Our
8 mercury reduction program is just one example of our
9 ongoing commitment for the environment. I'm proud that
10 our company's on the cutting edge of developing new
11 technologies to address environmental issues and that
12 we're an industry leader in this area.

13 I want to assure you that you have the company's
14 and my personal commitment to make sure that this plant is
15 implemented effectively. Thank you very much.

16 SCOTT LEFAVER: Thank you. Any questions? No.
17 Thank you very much.

18 ALEX CONIADS: Thank you.

19 GARY RUDHOLM: Next speaker is Alan Sabawi.

20 SCOTT LEFAVER: Mr. Sabawi, welcome.

21 ALAN SABAWI: My name is Alan Sabawi. I'm the
22 production and quality control manager at the Lehigh
23 Permanent facility. I have been working at this facility
24 for eight years. I've been in the cement industry for
25 13 years. Prior to that I worked for the Water Board down

1 in Southern California while earning my degree in chemical
2 engineering.

3 All these numbers that are mentioned here are not
4 an abstract concept to me. This is what I have to monitor
5 on a daily basis. When there is a new technology, I'm the
6 one, along with my team, who are charged with implementing
7 it, integrating it, monitoring it and remaining within
8 those limits.

9 Given my background and current position, I know
10 the amount of effort and dedication that this company
11 expects from its employees, especially in operations, to
12 ensure continuing environmental compliance.

13 My set of objectives on which my performance is
14 based lists production as fourth on that list. Top
15 billing has and always has gone and will always continue
16 to go to safety and environmental goals. That is how it's
17 always been, and that's how it's going to continue to be.

18 I'm proud to be part of this organization and a
19 member of the Permanente team. What this facility
20 achieves continuously proves that industry and
21 environmental compliance and a clean environment are not
22 an either/or proposition. What we prove on a daily basis
23 is how both can be integrated.

24 The Bay Area is very proud of its technical -- or
25 technology sector, and I think one day when all is sorted

1 out, they'll be just as proud of their industrial sector
2 as well. Thank you for your time.

3 SCOTT LEFAVER: Good. Thank you. Any questions?
4 Thank you.

5 GARY RUDHOLM: And, Mr. Chair, the final speaker
6 card we have is for Mr. Rod Sinks.

7 SCOTT LEFAVER: Mr. Sinks.

8 GARY RUDHOLM: And Mr. Sinks represents a group,
9 so he'll be afforded seven minutes for his presentation.

10 SCOTT LEFAVER: Welcome.

11 ROD SINKS: Thank you so much. Appreciate the
12 opportunity, and I understand you called me before and
13 have given me an opportunity to go at the end.

14 I'm Rod Sinks, a City Council member from
15 Cupertino, but I'm here as an individual representing Bay
16 Area Clean Environment rather than as a representative of
17 the City.

18 I certainly -- I've heard the comments here. I
19 certainly am not interested in closing down the plant, but
20 I would like to protect our air, water and land.

21 Now, Lehigh has fought at every turn with the
22 best attorneys available. Mr. Harrison is very skilled
23 and, in fact, Lehigh's president was up on Capitol Hill in
24 September arguing against the modest measures that would
25 control air pollution, really the first significant

1 monitoring since the Clean Air Act was signed by President
2 Nixon in 1970.

3 Water quality here has not been addressed in any
4 meaningful way. And if you take a look at the artificial
5 shape and lack of vegetation on the supposedly reclaimed
6 West Material Storage Area, as my scouts and I do when we
7 hike up to Black Mountain, you can well understand that we
8 are very skeptical of any pile of waste that Lehigh
9 proposes to leave with a foot of dirt and then call it
10 reclaimed.

11 So let's talk a little bit about water. My
12 understanding of SMARA is that it requires ongoing
13 progress toward reclamation during operation. As you've
14 heard, there are proven technologies to take water that's
15 highly concentrated in selenium and extract the selenium
16 on an ongoing basis prior to pumping it into the creek.

17 Now, we've seen evidence that it might cost 33 to
18 127 million, but I believe that assumes a flow rate that's
19 substantially higher and really worst case than the actual
20 flow rate. And of course, that greatly inflates the cost
21 of a pond needed for containment, and it also inflates the
22 ongoing cost of construction and operation.

23 And if that's a big capital cost, we've seen no
24 evidence that that amount of money is not feasible for a
25 company that operates decade after decade apparently at a

1 substantial profit. I asked this body last Friday and I
2 ask again, what's the ruler for deciding how much money is
3 too much? Can the applicant or the County tell us how
4 much cement prices would increase if selenium mitigation
5 was done by active treatment rather than waiting the 20
6 plus years to see how much of the stuff seeps out of the
7 ground, at which point, you know, what are you really
8 going to do at that point?

9 So at a minimum you should not preclude other
10 agencies from doing a good job to tackle the water
11 pollution challenge.

12 I suggest language be added to the conditions as
13 follows. And I quote, the mitigation measures required in
14 this approval are not intended by the Planning Commission
15 to prevent or interfere with any more stringent
16 requirements imposed by the Regional Water Quality Control
17 Board or any other agency or court."

18 And I note the Sierra club has a pending suit
19 with regard to the pollution that's quite active at the
20 moment.

21 Last Friday Rob spoke of notices of violations,
22 including the one in 2008 that the use of EMSA as waste
23 storage was not legal at that time. How have we gotten to
24 accept this pile of rubble as a permanent feature? Why
25 not fill in the pit with this waste? Stop it growing now.

1 Put it -- put the waste in the west, away from residents
2 where they won't have the dust and noise impacts and make
3 that EMSA pile the first to go back into the pit when
4 extraction is done. Thank you very much.

5 SCOTT LEFAVER: Thank you. Any questions?

6 JOHN VIDOVIK: I have some questions.

7 SCOTT LEFAVER: Commissioner Vidovich has some
8 questions.

9 JOHN VIDOVIK: I don't disclose who I talk to,
10 but I did speak to Martin Howell. It was yesterday -- I
11 think it was yesterday regarding the East Side Materials
12 Yard. And one claim that they have made is that -- and I
13 think they made it here today, was that the homeowners
14 like that pile because it blocks the view. So you're
15 saying that -- somebody --

16 ROD SINKS: Yeah, I'm saying that there are a lot
17 of people who live very close to that pile who never want
18 it built who were the ones that fought it all the way who
19 brought this to the attention of the County in 2008,
20 notice of violation was issued. The County has not fined
21 this operator once, nor made that pile cease.

22 So the people I represent that live the closest,
23 and I frankly don't, want that pile stopped. They want
24 the pile stopped now. They want it removed.

25 JOHN VIDOVIK: All right. What we're hearing

1 is, and we heard it at the hearing, is that there are a
2 group of people that the pile benefits, that the pile is a
3 blockage. Now, I don't know which -- which is overriding.
4 You're close to the people there. They don't like the
5 pile because they say it's causing them some damage?

6 ROD SINKS: There are dust consequences. There
7 are noise consequences, and it really is an unsightful
8 thing. And, you know, even the picture that was showed
9 last Friday showing the supposed vegetation really doesn't
10 mitigate the scenic view in my view. So that's where I'm
11 coming from. I mean, I'd be -- I'd be more than willing
12 to have you consider, you know, polling the folks that
13 live closest to the plant and see what they think about
14 it.

15 And I'm only one person. I'm representing a
16 small group of people, but from what I've heard over and
17 over since we got started here, and we've had a growing
18 pile of rubble and no willingness to consider getting rid
19 of it, moving it elsewhere.

20 And that was the thing, frankly, that brought a
21 lot of residents out very irritated following no action in
22 2008. Residents had to, again, come to the County in
23 2010.

24 JOHN VIDOVIK: You know, I don't mean to go on,
25 but if the pile -- if the pile bothers the local

1 residents, at least I think we should consider it
2 differently than if the pile is a benefit, because that's
3 what's we've been told is a benefit.

4 And I have some other questions. You're going
5 to -- will you give us a written copy of the suggested
6 condition?

7 ROD SINKS: Yes.

8 JOHN VIDOVIICH: -- or any other conditions that
9 you have? Will you give it to the staff, and the staff
10 could at least circulate it to the Commission so we can --
11 it's easier to consider it if we have it in writing.

12 ROD SINKS: Surely. Although your court reporter
13 probably has it verbatim but --

14 JOHN VIDOVIICH: Pardon me?

15 ROD SINKS: I assume you may have it verbatim.

16 SCOTT LEFAVER: Yeah, we better get it from you
17 just in case.

18 ROD SINKS: All right.

19 JOHN VIDOVIICH: And there may be more. I think
20 that's it, yeah.

21 ROD SINKS: Thank you, John. I appreciate
22 everybody's time. I appreciate your listening. I know,
23 you know, you're here like as ordinary citizens who are
24 trying to make a difference in public service, and I
25 appreciate the role that you're playing here. Thank you

1 so much.

2 SCOTT LEFAVER: We got a question from
3 Commissioner Bohan.

4 JACK BOHAN: Yes. You indicated that this
5 Eastern Storage Area is being added to at the present time
6 and will continue to be added to. Is that your
7 impression?

8 ROD SINKS: My impression is it is currently the
9 place where the waste is going, yes.

10 JACK BOHAN: And I got a question of staff. I
11 notice on the last page of the staff report that
12 additional stock piling and continue mining operations
13 within the quarry pit will be placed in the southwest area
14 from the pit. Is that true or is that going on now?

15 ROB EASTWOOD: What section of the report are you
16 referring to?

17 JACK BOHAN: Page 12, paragraph I.

18 ROB EASTWOOD: I'm sorry, one more time?

19 JACK BOHAN: Paragraph I, second sentence,
20 additional stock piling.

21 ROB EASTWOOD: That's correct.

22 JACK BOHAN: And continuing mining operations
23 will be placed southwest of the quarry pit. Is that where
24 it's going now?

25 GARY RUDHOLM: Mr. Chair, I believe I may be able

1 to answer that question. I don't believe they're stock
2 piling in the southwest corner of the pit just yet. I
3 think they anticipate doing that in July of this year or
4 sometime during the summer of this year.

5 ROD SINKS: Well, that would be welcome relief to
6 residents in Cupertino, that it be brought all the way up
7 the highly and piled right at their doorsteps basically.

8 JACK BOHAN: And the sentence before that states
9 that -- it sounds like this -- it's the eastern area
10 unlike the western area will now be pushed into the pit
11 but it will be left there and capped; is that right?

12 ROB EASTWOOD: That's correct. The overburden
13 put in the eastern area is intended to be permanently
14 placed there and will be capped.

15 JACK BOHAN: And would that be a problem?

16 ROD SINKS: Yes. We want the pile gone. If
17 there's a pile -- if you all have a photo of the West
18 Material Storage Area in its current state with its very
19 artificial flattop, with its barren vegetation --
20 supposedly it had been planted and all these clever things
21 were done, and what did we get? An artificial pile of
22 rock with an artificial shape and no real vegetation.

23 So, you know -- and yeah, I got a note here that
24 the Mid Peninsula Open Space District also wants the pile
25 gone. So I can't validate that, but that's my -- that's

1 somebody's understanding here.

2 JACK BOHAN: All right.

3 ROD SINKS: We'd like the land there to return to
4 its natural state. And if you think about it, you've dug
5 up this deep pit, you're extracting the limestone to make
6 good concrete -- we need concrete. I'm not arguing we
7 don't need concrete, but I think we all may be willing to
8 pay a little bit more for that concrete if there's
9 effective remediation and we get our air cleaned up and we
10 get our water cleaned up and we get our land truly
11 reclaimed.

12 And I know the cheapest thing is to put a foot of
13 dirt over it, but I don't think our residents, frankly,
14 want that solution. I think they want everything that
15 came out of that pit, obviously excluding the limestone,
16 to be put back into the pit. And that's only fair.

17 JACK BOHAN: Another question of staff, and that
18 is, the Reclamation Plan we're looking at deals with the
19 western overburden, right?

20 ROB EASTWOOD: It entails both. The Western
21 Material Storage Area would be currently used to backfill
22 the pit, yes.

23 JACK BOHAN: And the eastern will come up later?

24 ROB EASTWOOD: The eastern is proposed to stay
25 where it is and, as the speaker indicated, it would be

1 capped with at least a foot of soil and vegetation on top.

2 JACK BOHAN: But that will require a future

3 Reclamation Plan, right?

4 ROB EASTWOOD: No, it's part of this Reclamation

5 Plan.

6 JACK BOHAN: Part of this one?

7 ROB EASTWOOD: Yes.

8 ROD SINKS: It is. I just argue that -- my

9 belief is that residents want that pile gone. They want

10 it to stop growing as soon as possible, and then they want

11 the pile gone as part of reclamation.

12 SCOTT LEFAVER: Okay. Commissioner Vidovich,

13 please.

14 JOHN VIDOVICH: The issue -- Jack, the issue I

15 have is, is we're hearing that that's a benefit to the

16 community. I mean if it is, it is, but then I haven't

17 heard that. I've heard all the testimony from people

18 saying they don't want it there. That doesn't mean we're

19 going to move it, but at least make the decision based on,

20 you know, what the facts are. I think that at least what

21 I'm hearing, it's a negative.

22 JACK BOHAN: My recollection was that the western

23 portion, they can't quite bring it back to its natural

24 contours, and people don't like that. And now we got one

25 where it's too high, and they want it brought back to a

1 lower contour.

2 JOHN VIDOVIICH: The hole has plenty of room.

3 JACK BOHAN: Yeah.

4 JOHN VIDOVIICH: So it's not -- you know, they
5 export a lot. There's plenty of room in the hole. I
6 don't know what the cost of moving it back there is, but I
7 don't see the reason to leave it there is if that it's
8 benefitting anybody. I don't see that as the reason.

9 If there's a cost reason to leave it there, then
10 they should argue that reason. I think they're arguing
11 that it's a benefit, and I haven't heard -- I haven't
12 heard any evidence, and the evidence you're presenting is
13 it's not a benefit to leave it there.

14 ROD SINKS: I think if you did a wide survey, you
15 would find people want the pile gone in the western end of
16 Cupertino. That's all I know.

17 JOHN VIDOVIICH: And they are the neighbors, the
18 direct neighbors. They do get the dust. There is a hell
19 of a lot of dust at night. Most of that operation is at
20 night. It produces a lot of dust, and some of that stuff
21 it is unavoidable. A lot of it is unavoidable, but they
22 are living with it, and I think there should be some
23 consideration for the people that have to look at it.

24 SCOTT LEFAVER: Okay. Any other questions?

25 Thank you.

1 ROD SINKS: Thank you, Mr. Chair, and thank all
2 for your public service on these tough issues.

3 SCOTT LEFAVER: Well, we have a question. I knew
4 if I hesitated long enough, there would be another
5 question.

6 MARY ANN RUIZ: I do appreciate what you said
7 today because, like John, this is the first I've heard
8 that the east pile needed to be lowered. In everything
9 I've read, I didn't get that the citizens didn't want it
10 lowered. I thought they just want it, you know, to look
11 back like a hill again.

12 ROD SINKS: Well, in my view it's not going to
13 look like a hill again. It doesn't look like a hill now.
14 I urge you to get a picture up. Maybe the staff can do it
15 while I'm talking here -- urge you to take a look at the
16 West Material Storage Area as an example of how land is
17 reclaimed at this project. That's -- that's basically the
18 issue that we have. Thank you so much.

19 SCOTT LEFAVER: Thank you.

20 GARY RUDHOLM: Mr. Chair, we did receive one more
21 speaker card. Next speaker is Peg Champion.

22 SCOTT LEFAVER: Hello. Hi.

23 PEG CHAMPION: Thank you so much for letting me
24 speak.

25 SCOTT LEFAVER: Sure.

1 PEG CHAMPION: I ran right down here from work,
2 and this is as soon as I could get here.

3 SCOTT LEFAVER: Well, we're glad you're here.

4 PEG CHAMPION: Appreciate it. Thank you,
5 everyone. My name is Peg Champion. I promise to be very
6 brief. I appreciate you allowing me to speak here today
7 on such an important issue to the health of our community.
8 I'm a resident of Los Altos. I don't want work for
9 Lehigh. I'm not a scientist. I'm not an engineer. I'm
10 just a citizen. I'm a citizen who's requesting that the
11 Planning Commission fulfill their mission to protect Santa
12 Clara County, their residents, our natural resources and
13 our -- the health of the public. I ask the Commission to
14 consider the trucks, the cement plant and the quarry as
15 one entity for the purposes of the EIR.

16 Finally, clean air and our precious water
17 resources must not be sacrificed for the benefit of a
18 single industrial entity. Thank you.

19 SCOTT LEFAVER: Thank you. Questions?
20 Questions? There have been a number of certainly
21 questions raised and so forth. I had some questions of
22 the applicant if they could possibly respond to some of
23 these things particularly dealing with the -- with the --
24 yeah, the piling up of waste and so forth on the east
25 versus the west and what all that could mean or would mean

1 and give us a sense of what's -- what's your opinion of
2 that.

3 MARK HARRISON: Sure. Mr. Chairman, I'm Mark
4 Harrison. Again, I'm here with Marvin Howell. There was
5 a number of comments about the East Material Storage Areas
6 that I think we need to clarify.

7 First, the placement of that material there is
8 mining activity that's included within the vested right
9 that this Board's determined to exist. So the placement
10 there is something that we're entitled to do. We're going
11 to continue to do, and it is close to being finished.

12 I think the fundamental concern that we heard is
13 the quality of the reclamation, and I think that is a very
14 fair question. And for that and the particulars of that,
15 I'd like to pass it to Marvin Howell.

16 MARVIN HOWELL: Thank you, Mark. I wish I had
17 exhibits with me today so that I could show you not only
18 our projected views of that hillside once it's -- we
19 finish reconstructing it. But we also have photos, and
20 unfortunately you're not going to be able to see that very
21 well. But we also have photos of another hillside that
22 was revegetated in the same area.

23 That backfill was actually first placed there
24 going back to the 1940s, and the reason Henry Kaiser
25 decided to place that material there is because he wanted

1 to provide the benefit of obscuring the views into the pit
2 itself from the people that lived in the valley floor.

3 And that's exactly what it did. The reason that
4 you can't see into the mining pit today is because that
5 hillock was placed there starting in sometime in the
6 1940s. It was revegetated in the late 1970s, and today if
7 you can blow that photo up, you wouldn't be able to pick
8 it out from the surrounding naturally vegetated hillsides.
9 We had a very hard time trying to locate it as we were
10 preparing our presentation to take out to the community.
11 And, in fact, I had to have the engineers locate it.

12 We're very confident about our ability to do even
13 a better job with the MSA, and I say that because if you
14 go out to the hillock that was revegetated starting in the
15 late 1970s, you'll see that it's primarily vegetated with
16 native species. It was planted entirely with nonnative
17 species when it was first planted. And what happened over
18 time is native species have kind of taken it over.

19 In our case, we're going to be using the solar
20 radiation study that I spoke about earlier. We're going
21 to be using not only native species, but we're actually
22 hand collecting the seed spore, as I explained. So we're
23 revegetating that hillock with the specific plants that
24 have evolved over time to thrive in that specific
25 environment.

1 So today you can go out there, and I challenge
2 you to pick out the hill that Henry Kaiser built out of
3 the same material and reclaimed. And so I'm very
4 confident that our -- in our ability to reclaim it. And
5 you know, I -- you know, I can tell you that we've taken
6 this presentation out to numerous homeowners association
7 and groups of people who live in that area, and I think
8 they're very excited about the prospect of seeing us
9 complete this portion of the project.

10 And the reason for that is from the valley, from
11 the people that live on that side, right now they can look
12 in, they can see the large dome, the conveyors.

13 When the EMSA is completed, they'll be looking at
14 a revegetated hillside instead of at the industrial still
15 operation.

16 SCOTT LEFAVER: Okay. Questions?

17 JACK BOHAN: Now, how much longer will you be
18 using the eastern area for overburden?

19 MARVIN HOWELL: I don't work in operations, but
20 my understanding is that they're preparing the pit, the
21 main quarry to start accepting fill in June or July.
22 The -- currently we're somewhat limited as to how much
23 more fill we can place in the East Material Storage Area.
24 So right now completion of that area is really pending
25 approval of this Rec Plan.

1 So as soon as the Rec Plan is approved, we'll
2 finish up filling in that area. That will happen very
3 quickly over the next year to two years. Revegetation
4 doesn't wait until -- until fill is completed. It's been
5 designed to be filled, and finished fill and fine grading
6 and the cap that was described, top soil, if you will,
7 placed over the top of it.

8 That's being done in three phases so that as one
9 phase is completed, we'll move to an alternate phase.
10 We'll finish revegetation of the completed phase and then
11 move again. So as soon as the fill is completed in one of
12 the three phases, it will be revegetated.

13 JACK BOHAN: All right. So in July you'll stop
14 bringing material into the eastern area and start moving
15 it into the southwestern?

16 MARVIN HOWELL: We'll start moving into the main
17 quarry pit this year, sometime June or July of this year.
18 They'll still be some material to go into the east
19 material storage area, but that is not far from being
20 completed. As I say, I would say two years maximum.

21 JACK BOHAN: Okay.

22 SCOTT LEFAVER: Question Commissioner Vidovich,
23 please.

24 JOHN VIDOVIK: What -- what specific groups of
25 have supported this blockage? You say have you have home

1 owner groups that support it. Which groups?

2 MARVIN HOWELL: Primarily people that live out in
3 that area directly out to the east so --

4 JOHN VIDOVIICH: Because it seems like all those
5 people are against it. It seems like it.

6 MARVIN HOWELL: Forum, DeAnza Oaks, Stonebridge.

7 SCOTT LEFAVER: Okay. Excuse me. You're out of
8 order. Thank you.

9 JOHN VIDOVIICH: So what groups? You say The
10 Forum?

11 MARVIN HOWELL: Yes.

12 JOHN VIDOVIICH: Which other groups?

13 MARVIN HOWELL: DeAnza Oaks.

14 JOHN VIDOVIICH: Okay. Any others?

15 MARVIN HOWELL: Stonebridge?

16 JOHN VIDOVIICH: Stonebridge?

17 MARVIN HOWELL: Yes. And we've also presented it
18 to the Lehigh Permanente Community Council, which has
19 members from those groups and others. They've also
20 expressed an interest in seeing it completed. And if --
21 you know, I mean, if you were looking at a picture of it,
22 from the east of the property prior to any fill being
23 placed there versus what it will look like as a
24 revegetated hill -- like I think if you lived there, you'd
25 want to see it done, too.

1 SCOTT LEFAVER: Have we gotten any comments from
2 any of the homeowners associations in this area?

3 ROB EASTWOOD: I believe not. All the comments
4 we have, you either have on the draft EIR or supplemental
5 correspondence. I don't recall seeing any homeowners
6 association specifically.

7 SCOTT LEFAVER: Okay. Thank you.

8 MARVIN HOWELL: Thank you.

9 SCOTT LEFAVER: Any other questions from the
10 Commissioners for right now?

11 I have a couple questions, if you don't mind.

12 Again, the issue came up -- has come up about
13 including the cement plant as part of the environmental
14 impact report and so forth. Can you please -- and we've
15 been urged to include it as part of our scope.

16 Can you please go over that one more time -- one
17 more time, please.

18 ROB EASTWOOD: Sure. The issue, as mentioned by
19 speakers, and in previous staff presentation was asked and
20 addressed both by County and Office of Mining Reclamation
21 Circuit 2006, 2007. So the most pertinent -- and it is
22 attachment to your staff -- to the staff report is a
23 letter from the Office of Mining Reclamation who based on
24 a variety of factors determines and sent a letter to the
25 Director of the Department of Planning Development in 2007

1 opining that based on numerous factors, that the cement
2 plant was an independent operation, is separate from
3 surface mining activities on the site, and thus, is not
4 subject to reclamation in this Reclamation Plan

5 SCOTT LEFAVER: Which is different than the 2006
6 letter that was quoted?

7 ROB EASTWOOD: As the speaker indicated, there
8 was an earlier correspondence from OMR. Of course the
9 later correspondence coming from the same agency
10 superceded that earlier correspondence.

11 SCOTT LEFAVER: Okay. Thank you.

12 The other -- the other issue was trucks, and
13 that, again, is --

14 ROB EASTWOOD: Trucks -- again, the focus of the
15 Reclamation Plan is reclamation. It's not trucks to
16 purchase lime -- to purchase cement that goes offsite.
17 That's associated with the cement plant. It's not to --
18 or associated with another activity.

19 The trucks associated with reclamation to reclaim
20 this site were evaluated. And Notably, as we talked about
21 last week, there is a requirement to import a certain
22 amount of organic material, and that was a key focus in
23 looking at how much organic material had to come into the
24 site and the trucks associated with it.

25 So all -- all truck operations are foreseeable.

1 Truck traffic associated with rec reclaiming the site have
2 been evaluated in the EIR.

3 SCOTT LEFAVER: Okay. Thank you. One of the
4 issues that Mr. Sink brought up was that -- and he
5 included it in the requested condition, was that if other
6 agencies had other requirements that they would be
7 included.

8 What I got particularly from the Water Quality
9 Control Board was that they're their own independent
10 agency in that whatever requirements they would come up
11 with would be those requirements. Is that your -- is that
12 what you --

13 ROB EASTWOOD: That is correct. And their
14 purview, oversight and regulatory oversight, again, as
15 stated by the Regional Board representative, is much
16 broader than what's before -- our focus here is
17 reclamation, but reclamation does have a SMARA standard
18 for water quality. The Regional Board's oversight is much
19 broader. It's the operations of the site. It's the
20 cement plant, the mining operations. It's the whole
21 thing. They focus on water quality.

22 With respect to the condition and the request by
23 the representative from the Regional Board to be flexible,
24 we did have previous conversations with the Regional Board
25 on that concept. That's from staff's perspective more

1 than acceptable as they continue to characterize the site
2 and get new information.

3 If based on that information there's information
4 that prescribes a certain treatment approach or method,
5 and if it needs to change the Reclamation Plan, that's
6 more than fine.

7 Many conditions in -- the conditions of approval
8 defer to the authority of the Regional Board with respect
9 to water quality and any sort of treatment approach,
10 mitigation that might come out of that strategy.

11 SCOTT LEFAVER: Okay. The difference between --
12 I think I may have asked this question before, but it
13 seems to be coming up, and that is the difference between
14 substantial compliance on the one hand and specific
15 compliance on the other.

16 So maybe you can go over that compliance with
17 CEQA on the one hand and substantial compliance with SMARA
18 on the other.

19 ROB EASTWOOD: Okay. We'll read right from the
20 statute.

21 SCOTT LEFAVER: I'm sure you will.

22 ROB EASTWOOD: Elizabeth, do you want to find the
23 SMARA section perhaps?

24 Well, I'll start on the EIR and CEQA, and
25 Elizabeth will finish with SMARA. The requirements -- the

1 first task before the Planning Commission is to certify
2 the EIR. So did the EIR as an informational document
3 comply with the California Environmental Quality Act? Did
4 it do a good faith effort and adequately disclose the
5 significant impacts in this case associating with
6 reclaiming this site?

7 And so the determination to be made by this Board
8 is does it comply, not a substantial -- but does it comply
9 the California Environmental Quality Act. So that's with
10 respect to CEQA.

11 LIZ PIANCA: And with respect to SMARA, the
12 standard is that the Reclamation Plan substantially meet
13 the standards that are set forth in SMARA.

14 SCOTT LEFAVER: Okay. Okay. Are there
15 questions, please? Commissioner Chiu.

16 DENNIS CHIU: This is a question for County
17 Counsel. A lot of the testimony that we've heard today
18 focused on the unmitigated impacts. Can County Counsel
19 just give us a brief overview of how the EIR can be
20 certified with a statement of -- a statement of overriding
21 considerations and whether or not that's a requirement of
22 the Commission to decide?

23 LIZ PIANCA: So as has been discussed previously,
24 there are impacts that are identified in the EIR which are
25 considered significant and unavoidable impacts, and there

1 are no feasible mitigation measures or project
2 alternatives that will reduce those impacts to a less than
3 significant level; nevertheless, CEQA recognizes that an
4 EIR may be certified despite the existence of impacts that
5 are significant and unavoidable.

6 And part of that process is a finding that the
7 Planning Commission will make determining based on the
8 evidence and the record and the statement of overriding
9 considerations that the overall benefits of the project
10 outweigh those impacts that are of -- environmental
11 impacts that are identified in the EIR.

12 DENNIS CHIU: So that just so it's clear,
13 everybody can be right here where there are significant,
14 unavoidable impacts into the water and scenic views and
15 other parts of the -- but this Commission can still in
16 order to approve the final EIR needs to consider whether
17 or not their overriding considerations is the general
18 benefit of the project that outweighs the unavoidable,
19 unmitigated impacts; is that correct?

20 LIZ PIANCA: For the Commission to certify the
21 EIR, one of the findings that needs to be made is a
22 finding -- a statement of overriding considerations which
23 determine -- make a determination that the overall
24 benefits of the project outweigh those impacts that have
25 been identified as significant and unavoidable.

1 DENNIS CHIU: So if the Planning Commission does
2 not find sufficient overriding considerations, it cannot
3 certify the EIR because they are -- there are unavoidable
4 unmitigated, significant impacts?

5 ROB EASTWOOD: Just a quick disclosure. The EIR
6 certification would happen ahead of time. Did it comply
7 with CEQA? To move forward with the project, you have to
8 make these findings. Even though the project might have
9 significant, unavoidable impacts, the benefits of the
10 project outweigh that. So those are two distinct actions.

11 As an informational document, you would certify
12 the EIR first, then those findings -- there's a bridge to
13 approving the project.

14 DENNIS CHIU: Okay. That's how that works.
15 Okay. So --

16 SCOTT LEFAVER: We have to remember that the EIR
17 is an informational document, not a decision making
18 document.

19 DENNIS CHIU: All right. So the -- anyone in the
20 audience that testified today or last Thursday or any of
21 the other sessions that indicated there's definitely these
22 environmental impacts, can be correct, and the Planning
23 Commission can certify the EIR with those -- with that
24 understanding.

25 Then it falls -- the decision making process

1 falls to step two, which is to approve the project where
2 we would have to find that despite the unavoidable,
3 unmitigated, significant impacts, that the project has
4 overriding considerations that make it worthy. That's
5 correct? Is that correct?

6 LIZ PIANCA: The EIR will be certified. There
7 will be a number of findings that the Planning Commission
8 moves toward certification of the EIR. Among those
9 findings is a statement of overriding consideration. The
10 next step in the process is to look at the actual project
11 approval. Before you can get to the step of project
12 approval, you must certify the EIR.

13 DENNIS CHIU: Okay. I think that was a yes to
14 my --

15 SCOTT LEFAVER: Yeah. So we got all the
16 information. We say yes, we have the information. We
17 certify we have the information. Then we go on to the
18 approval or otherwise of the Reclamation Plan and then
19 that's the decision point.

20 DENNIS CHIU: Thank you. So as part of the
21 question that we're trying to deal with is, do we have
22 enough information in the EIR in which to certify the EIR?

23 SCOTT LEFAVER: I would say yes.

24 ROB EASTWOOD: Well, I mean, that's the first
25 question before you. Does the EIR as an informational

1 document adequately disclose all those significant impacts
2 and adequately disclose all the feasible mitigation
3 measures? Is it an informational document that complies
4 with CEQA?

5 DENNIS CHIU: Thank you.

6 SCOTT LEFAVER: And sometimes it makes very clear
7 there are no mitigations.

8 Okay. Any -- any other questions of staff?

9 Any -- Commissioner Vidovich.

10 JOHN VIDOVIK: I assume now -- between now and
11 the next hearing that we'll have a copy of the proposed
12 conditions of approval --

13 SCOTT LEFAVER: I will guarantee it.

14 JOHN VIDOVIK: Yeah. I'm going slow, not just
15 for the reporter, but for my brain.

16 SCOTT LEFAVER: Okay.

17 JOHN VIDOVIK: A copy of the conditions of
18 approval, a copy of any suggested changes particularly
19 from some of the speakers here, if we could have that.

20 There are references in the conditions of
21 approval such as the references -- Santa Clara Valley
22 District report January 16th, 1985, a copy of those
23 attached, so we could see them. That's a referenced
24 condition.

25 I assume we all have the 3C sheets that we're

1 approving, that's the drawings that we're approving, and
2 the 4L sheets that we're approving?

3 There's reference to the mitigations in here that
4 they are part of the conditions, the mitigations, and if
5 there's an easy way those can be outlined for us dumb
6 commissioners -- you guys are more familiar with it, so we
7 can just make sure we know what we're voting on. That's
8 what I'm hoping to get. It makes it easier for me.

9 SCOTT LEFAVER: Sure. Good. Good points.

10 Commissioner Couture?

11 TERESA COUTURE: Do you think we can get all that
12 by Monday?

13 SCOTT LEFAVER: That's a lot of work, so I'm
14 not -- I'm sure they'll get it to us as quickly as they
15 can.

16 JOHN VIDOVICH: Well, and if we can't, why
17 couldn't we just delay a little bit? What's the time that
18 we have to jam it so much? And I think the public feels
19 that, too.

20 SCOTT LEFAVER: Well, let's see what we get.
21 We're going to have -- we do have a scheduled meeting a
22 week from today, and we can certainly take up, if not all
23 the issues, some of the issues at that time.

24 DENNIS CHIU: I just wanted to -- through the
25 chair, I just wanted to add to Commissioner Vidovich's

1 request that it doesn't seem like Lehigh's proposed
2 changes, the conditions of approval, are that significant,
3 but I assume that the staff will either agree or disagree
4 and provide comments to the conditions of approval?

5 ROB EASTWOOD: Sure. Just to add from staff,
6 most of this information you have today, I think it's
7 repackaging and a consolidation. The conditions you have,
8 the suggested changes, have come in today. References of
9 reports we can get together. The C and L sheets, I'm
10 looking to Gary. I'm assuming those are part of the Rec
11 Plan? We did distribute to all the commissioners sheets
12 out of the Rec Plan. Are there subsequent sheets?

13 GARY RUDHOLM: Actually, I think those may be
14 references made under the '85 Reclamation Plan. I don't
15 remember those being a reference made in the conditions
16 that are proposed for the current Reclamation Plan. I
17 provided that information that was requested of me.

18 I was asked for the current conditions, so I
19 forwarded those, and I think you may be remembering those
20 references. 'Cause we don't have the sheets identified as
21 L, as in landscape, or C, as in civil engineering.

22 JOHN VIDOVICH: So the only thing is you're
23 asking us to approve something based on those sheets. And
24 I'm not just saying it for me, too. I mean, the public
25 has a right to -- there's a lot of people that are

1 engineers or detailed -- they have a right to see these
2 conditions of approvals and give us constructive comments,
3 too.

4 GARY RUDHOLM: Right. And we have the proposed
5 conditions posted as well as the full Reclamation Plan,
6 including all the drawings and all the illustrations.

7 SCOTT LEFAVER: Okay. Good.

8 JOHN VIDOVIK: I'm -- we're not going to get
9 those sheets then, the C ones and the Ls referenced in
10 here 'cause they don't exist anymore?

11 SCOTT LEFAVER: Well, we need the sheets. We
12 will get the sheets.

13 JOHN VIDOVIK: Well --

14 SCOTT LEFAVER: No, no, no, no. You don't -- we
15 will get the sheets. If we have to approve it, we'll get
16 them. Okay.

17 GARY RUDHOLM: I'll make sure everybody has them,
18 Mr. Chair.

19 SCOTT LEFAVER: Thank you

20 DENNIS CHIU: I just wanted to add -- excuse me,
21 through the Chair, I apologize -- my comments to
22 Commissioner Vidovich's, that if we don't get the
23 information and the staff needs a little bit more time,
24 our next meeting is just the first week of -- the first
25 Thursday of June, so I'd be willing to push it to the --

1 SCOTT LEFAVER: We will take as much time as we
2 need.

3 DENNIS CHIU: Thank you.

4 SCOTT LEFAVER: Any other questions?
5 Commissioner Bohan?

6 JACK BOHAN: You know, one point of clarification
7 I need from the staff. Again, looking at page 12 of the
8 staff report, and it's paragraph J, closure of surface
9 openings. It says in here, "In addition all drill holes,
10 water wells and monitoring wells must be abandoned, sealed
11 and reclaimed. The exploration area reclamation includes
12 backfilling the drill holes and revegetation."

13 The previous sentence says these holes will be
14 sealed. This one says these drilled will be backfilled.

15 If we're drilling at all into an area which is
16 this hard panel we're talking about that makes a bowl,
17 that you want to avoid hydraulic connection between
18 that -- that aquifer and the aquifers in the valley.

19 And so maybe I want to understand if the
20 backfilling of the drilling holes really should be sealed?

21 GARY RUDHOLM: Mr. Chair, I can respond to that.

22 So there were some drilling for exploratory
23 purposes done not to find water. So those would be, I
24 think, backfilled and then reclaimed. I think a well that
25 was dug for water would have to be sealed appropriately

1 depending on the Water District requirements or the health
2 requirements, but we understand the distinction, and
3 that's how it would progress.

4 JACK BOHAN: All right.

5 SCOTT LEFAVER: Okay. Well, it's almost
6 3 o'clock. What I'd like to do with the -- with the
7 concurrence of the Commission is to continue this public
8 hearing until a date certain, and that is Friday -- next
9 Thursday --

10 NASH GONZALEZ: Next Thursday, May 30th -- May
11 31st.

12 SCOTT LEFAVER: It's May 31st at 5:30 p.m.

13 JOHN VIDOVICH: And I would suggest, I may be the
14 minority, that we kick it over another week just -- unless
15 there's something jamming us on that agenda. Is that why
16 you want to have it -- it just seems like too short of a
17 time.

18 SCOTT LEFAVER: I think that we can start
19 discussing a number of these issues next Thursday, and if
20 we need to go to our regular meeting, we can completely
21 devote that particular meeting to this item. And we'll
22 just -- anything -- any other items at that meeting can
23 be -- I don't think there are any major items coming up,
24 so we can just continue to talk and to discuss and to
25 better understand.

1 So I will continue the public hearing to May 30th
2 at 5:30. Thank you.

3 ROB EASTWOOD: May 31st.

4 GARY RUDHOLM: Mr. Chair --

5 SCOTT LEFAVER: May 31st. Sorry.

6 ROB EASTWOOD: Thank you.

7 GARY RUDHOLM: Okay. Thank you for that.

8 (The hearing concluded at 2:58.)

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1 STATE OF CALIFORNIA,)
) ss.
2 COUNTY OF SANTA CLARA)

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4 I, LISA R. KEELING, a Certified Shorthand
5 Reporter in and for the State of California, hereby
6 certify that the foregoing is a full, true and correct
7 transcript of the proceedings had at the taking of said
8 hearing, reported to the best of my ability and
9 transcribed under my direction.

10

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13 Date _____, 2012

LISA KEELING, CSR NO. 10518

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