

THE COUNTY OF SANTA CLARA

--o0o--

In re:

LEHIGH PERMANENTE QUARRY

RECLAMATION PLAN AMENDMENT

FILE NO: 2250-10P(M1)-10EIR

_____ /

SANTA CLARA COUNTY PLANNING COMMISSION HEARING

DATE: May 31, 2012

TIME: 5:30 p.m.

LOCATION: BOARD OF SUPERVISORS CHAMBER
70 West Hedding Street
First Floor
San José, California

REPORTED BY: PATRICIA GOULET
Certified Shorthand Reporter
License No. 8315

1

A P P E A R A N C E S

2

PLANNING COMMISSION:

3

Scott LeFaver, Chair

John Vidovich, Vice Chair

4

Mary Ann Ruiz

Dennis Chiu

5

Theresa Couture

Jack Bohan

6

County Counsel:

7

Orry R. Korb, Assistant County Counsel

8

Elizabeth Pianca, Assistant County Counsel

Nancy J. Clark, Assistant County Counsel

9

Planning Department:

10

Nash Gonzalez, Planning Director

11

Gary Rudholm

Rob Eastwood

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 May 31, 2012 San José, California

2 P R O C E E D I N G S

3 CHAIR PERSON LeFAVER: Good evening.

4 Welcome to the County of Santa Clara Planning
5 Commission and Board of Zoning Adjustments. Today
6 is May 31st, and this is a regular business meeting
7 of the County Planning Commission. I will now call
8 the meeting to order, and if I could have roll call,
9 please.

10 MR. RUDHOLM: Commissioner Bohan.

11 COMMISSIONER BOHAN: Here.

12 MR. RUDHOLM: Commissioner Chiu.

13 COMMISSIONER CHIU: Here.

14 MR. RUDHOLM: Commissioner Couture.

15 COMMISSIONER COUTURE: Here.

16 MR. RUDHOLM: Chair Person LeFaver.

17 CHAIRMAN LeFAVER: Here.

18 MR. RUDHOLM: Commissioner Ruiz.

19 COMMISSIONER RUIZ: Here.

20 MR. RUDHOLM: Commissioner Schmidt.

21 COMMISSIONER SCHMIDT: Here.

22 MR. RUDHOLM: And Commissioner Vidovich.

23 COMMISSIONER VIDOVICH: Here.

24 MR. RUDHOLM: Mr. Chair, I'd like to note
25 that we have a court reporter here again, and so we

1 should periodically take about a five-minute break
2 to give that individual an opportunity to rest their
3 wrists.

4 CHAIR PERSON LeFAVER: Thank you.

5 MR. RUDHOLM: We are also recording the
6 audio and the video, as well, for archival purposes.
7 I just want to make everybody aware of that, too.

8 And if you don't mind, I'll go ahead and
9 read the items from the agenda as we go through the
10 agenda.

11 (After other items were heard, the matter
12 of Lehigh Permanente Quarry Reclamation Plan
13 Amendment was heard:)

14 MR. RUDHOLM: Item number 3, file number
15 2250-13-66-10P. Property owned by Heidelberg
16 Cement, and the applicant is the Lehigh Southwest
17 Cement Company.

18 This is a continued public hearing to
19 consider the Environmental Impact Report referenced
20 under State Clearing House Number 2010042063, and
21 Reclamation Plan amendment project file referenced
22 above to amend the 1985 Reclamation Plan for the
23 Permanente quarry.

24 The Permanente quarry is a limestone and
25 aggregate mining operation, and the Reclamation Plan

1 amendment proposes to reclaim all mining
2 disturbances on the property. No new quarry pit is
3 proposed.

4 And, Mr. Chair, there is a staff
5 presentation ready, and if you don't mind, I'll turn
6 the floor over to Rob Eastwood for the staff
7 presentation.

8 CHAIR PERSON LeFAVER: Very good. Thank
9 you.

10 Mr. Planning Director.

11 MR. EASTWOOD: Nash will go ahead and
12 start.

13 MR. GONZALEZ: Mr. Chairman, Members of
14 the Planning Commission, Members of the Public:
15 This first slide -- could you'll go ahead and
16 move -- thank you.

17 This first slide will basically serve as a
18 recap of what took place, or what has taken place to
19 date.

20 As the Planning Commission will recall,
21 there was a workshop on May 18th that provided an
22 opportunity for the Planning Commission and members
23 of the public to put forth questions, and it also
24 served as an opportunity for staff to answer
25 questions related to the Reclamation Plan and what

1 is a Reclamation Plan, and what the purpose of this
2 process is, including the Environmental Impact
3 Report.

4 Last week, May 24th, Planning Commission
5 conducted its first hearing on the Environmental
6 Impact Report and Reclamation Plan.

7 So with that, could we move to the next
8 slide.

9 This next slide basically summarizes this
10 evening's presentations and objectives for the
11 hearing, basically looking at what is the scope of
12 the Reclamation Plan, the removal of the EMSA, EIR
13 alternatives, SMARA requirements, CEQA, Conditions
14 of Approval, and then the hearing objectives for
15 this evening.

16 Next slide, please.

17 As noted last week, the Planning
18 Commission is conducting a hearing on a reclamation
19 plan amendment only, not whether Lehigh has the
20 ability to mine or not mine. And, again, we are not
21 considering the cement plant, but, again, the
22 Reclamation Plan is what's being considered here
23 this evening.

24 And then after that, and after
25 deliberating, the Planning Commission is to make a

1 determination of whether or not the Reclamation Plan
2 is in substantial compliance with SMARA.

3 Second of all, the Planning Commission is
4 also considering the Environmental Impact Report
5 prepared for the Reclamation Plan and determine
6 whether or not the environmental document is also in
7 compliance with CEQA.

8 Next slide, please.

9 Again, this slide provides a definition of
10 what is reclamation, and what is addressed in a
11 reclamation plan. So again, we're limited to the
12 scope under Section 2733 of SMARA as far as how we
13 look at a reclamation plan.

14 Next slide, please.

15 The site in question is already covered by
16 a reclamation plan, and what is before the
17 Commission this evening is a reclamation plan
18 amendment. And, again, I'll reiterate that the
19 mining again, mining operations of the cement plant
20 are not included in the reclamation plan. It's
21 merely, as I indicated at the last meeting, what a
22 reclamation plan basically is is to close out the
23 site, is to bring the site to an end use.

24 And with that, I'm going to go ahead and
25 turn it over to Mr. Eastwood.

1 MR. EASTWOOD: Sure. Thanks, Nash.

2 Our presentation tonight is pretty brief.

3 The Planning Commission has seen this at least twice
4 so, we just have a few more slides to recap on the
5 major issues.

6 Just to tail off what Nash said, the scope
7 of review is for the Planning Commission to
8 determine if the reclamation plan amendment before
9 you does substantially meet SMARA standards.

10 Directly out of the Public Resources Code we wanted
11 to provide this quote of what that means and what
12 it's defined in State Code. Reclamation plans
13 determined to substantially meet the requirements of
14 SMARA shall be approved by the lead agency.

15 So, again, this is somewhat different from
16 other projects that come to the Planning Commission
17 such as use permits or subdivisions. The scope of
18 review is narrow. The Planning Commission is only
19 determining if this reclamation plan substantially
20 meets those standards, and if it does, the mandate
21 is per State law to approve that plan.

22 This is going back to some slides we had
23 last week. Just a quick recap of the scope of the
24 reclamation plan that's before the Planning
25 Commission covers all mining disturbances that are

1 on the Lehigh Quarry. It does address at least two
2 violations that have been issued by the County for
3 mining outside the existing 1985 Reclamation Plan
4 boundaries, and this reclamation plan will allow to
5 go into place a new financial assurance which covers
6 all of mining disturbances and reclamation of the
7 site as proposed in the plan.

8 I know staff is starting to sound like a
9 broken record, but, again, for the audience and the
10 Commission, included not in the scope is mining.
11 The Board of Supervisors last year determined that
12 mining operations on the site are vested, and that
13 is not in the scope of this reclamation plan. The
14 cement plant operates under its separate use
15 permits.

16 And I know the Planning Commission's seen
17 this a couple times, but there is no new quarry pit
18 proposed with this plan. And it's only to reclaim
19 only areas that have been disturbed by existing or
20 past mining operations.

21 Last week there was some substantial
22 discussion on an alternative approach to reclamation
23 of the site that would entail removal of the EMSA.
24 So one integral part of this reclamation plan is
25 proposal to create a permanent overburden storage

1 pile on the east side of the property. East
2 material storage area is the name, EMSA is the
3 acronym.

4 The Planning Commission accepted some
5 public testimony inquiring if that overburden pile
6 could be removed, not be placed there permanently,
7 and instead, the overburden be placed back into the
8 main pit to backfill the pit. There was some
9 substantial discussion.

10 Staff wanted to circle back to the
11 Planning Commission and actually allow the
12 Commission to know that this alternative was
13 evaluated in the Environmental Impact Report. The
14 Environmental Impact Report looked at alternatives
15 that could reduce any significant impacts associated
16 with reclamation, and this was one of the
17 alternatives considered. It was called the complete
18 backfill alternative. And collectively, with two
19 other alternatives: the central storage area which
20 was an alternative that had the storage of
21 overburden in an area between the main pit and the
22 east material storage area, that was another
23 alternative that was considered.

24 And then finally, per CEQA we are required
25 to evaluate a no-project alternative. In this case

1 there is not an option of not having a reclamation
2 plan, so the EIR evaluated if there was a delay in
3 approving a reclamation plan if for some reason this
4 reclamation plan was denied, what would be a
5 foreseeable scenario of what could happen at the
6 site.

7 The no EMSA alternative or complete
8 backfill alternative instead of what's proposed as a
9 permanent overburden stockpile, it would be a
10 temporary stockpile where the overburden would be
11 taken and placed back into the main pit. So after
12 mining is complete and all overburden is taken out
13 of the main pit, in order to backfill the pit, that
14 storage of overburden on the east side of the site
15 would be put back into the pit.

16 The EIR evaluated would this alternative
17 have less environmental impacts than the proposal.
18 That's the chore of CEQA, would an alternative
19 decrease or minimize environmental impacts.

20 The conclusion in the EIR was that this
21 alternative actually would not decrease
22 environmental impacts on several counts. Because of
23 the level of work that was required not only placing
24 the overburden in this area, but going back in,
25 reexcavating that material, taking it back into the

1 main pit would entail a much prolonged construction
2 schedule, and much more construction activity.

3 The conclusion in the EIR is that would
4 result in greater air quality impacts. As that area
5 is closer to residents in Cupertino, there was a
6 greater increase for health hazard impacts to
7 adjacent residences, and noise impacts.

8 And probably the most pertinent was the
9 potential to exacerbate selenium impacts into the
10 creek was increased through this.

11 The EIR does conclude long-term selenium
12 into the creek will decrease, and after final
13 reclamation, it will meet water quality standards,
14 but it's during construction and during reclamation
15 whether there's a chance for additional selenium to
16 go into the creek.

17 If the EMSA area is taken and put back
18 into the pit, there's a longer construction schedule
19 in which that area is not capped, it's exposed to
20 the environment, and any limestone that's within
21 that overburden area has the potential for water to
22 contact it and run into Permanente Creek. So the
23 impacts under this alternative as concluded in the
24 EIR were actually worse than the project.

25 The EIR did conclude that the project is

1 environmentally superior to this alternative, and so
2 the conclusion was that this alternative was not
3 preferable to what's proposed under this reclamation
4 plan.

5 I wanted to talk about one more important
6 discussion topic that came up last meeting, and
7 that's the question of SMARA and significant
8 impacts. So -- and the question that seemed to be
9 percolating about was if the EIR discloses
10 significant impacts, how does that allow a rec plan
11 to comply or be, or substantially meet SMARA
12 standards? If there's a disclosure of significant
13 unavoidable impacts, how can you reconcile that with
14 the rec plan meeting SMARA standards?

15 To reiterate, the EIR disclosed three
16 general areas of significant unavoidable impacts.
17 Those were visual impacts during reclamation. Those
18 were an adverse impact to historic resources, one --
19 a few resources that were associated with a resource
20 district that's out at the site. And then, finally,
21 the more important one was what I just talked about,
22 the interim selenium concentrations during
23 reclamation.

24 So two of those significant impacts were
25 interim impacts. On both counts for visual and

1 selenium, the EIR conclusions was following
2 reclamation, the impacts would be less than
3 significant.

4 With respect to SMARA standards, the
5 requirement is that the rec plan substantially meets
6 these standards which have to do with financial
7 assurance, slope stability, revegetation, drainage
8 and water quality.

9 Now, reconciling those significant
10 unavoidable impacts, there's really just one SMARA
11 standard where there is a crosswalk or a comparison
12 between those two, and that's water quality. SMARA
13 does not set out specific policies and standards for
14 visual impacts, or for historic, but it does send
15 out a standard for water quality.

16 So things to consider for the Planning
17 Commission reconciling the disclosure of significant
18 unavoidable impacts in the interim with water
19 quality, with the requirement that a rec plan meets
20 water quality standards.

21 Number 1 is a reclamation plan is
22 required, so there's not an option before the
23 Planning Commission to where a reclamation plan will
24 not be applied to this site.

25 Number 2 being the impacts disclosed were

1 interim, so those are impacts that are happening
2 today. The selenium impacts into Permanente Creek
3 are historic. They've been happening at the site
4 since mining started many years ago, and so this is
5 an interim impact.

6 Again, the conclusion of the EIR and all
7 the technical studies, following reclamation, the
8 project will comply, the mine will comply with water
9 quality standards. So this is an interim impact.

10 And SMARA does focus on that end state.
11 Again, the intent of SMARA is that after mining, a
12 site be reclaimed to meet stability standards, to
13 minimize hazards, and it meets and end use where
14 someone can walk away from a site, does not leave
15 those hazards. And the conclusion of this EIR, and
16 the technical studies is that following reclamation,
17 water quality standards will be met.

18 And the last point I wanted to make is
19 that the impacts disclosed are unavoidable. So one
20 question would be: Is there any means out there to
21 avoid this impact? Is there another means to
22 reclaiming the site? Is there another mitigation
23 measure? Is there anything that can be done to
24 address these unavoidable impacts for interim water
25 quality and visual impacts? And the conclusion was

1 that there was none. So that's an important thing
2 to consider.

3 And almost the mandate is: Does, is this
4 the best reclamation plan available that can address
5 impacts? The conclusion of the EIR and staff is
6 yes, but these impacts are identified as
7 unavoidable, that there just are not means to
8 address them.

9 Last, staff just wanted to touch on the
10 Conditions of Approval, and am available to walk
11 through those in more detail. Generally the
12 conditions you have before you, and I believe there
13 are over 90 conditions, touched on three general
14 areas, and this is what they are.

15 First is just requiring that the
16 reclamation plan be completed as proposed. And this
17 requires updating of the financial assurance, annual
18 reporting back to the Planning Commission with
19 training of staff on the conditions, staking of
20 boundaries to make sure that mining activities don't
21 go beyond those boundaries.

22 The second general area is SMARA
23 requirements in general. So per the State Code
24 requiring that the reclamation plan meet those
25 requirements, which includes revegetation and the

1 maintenance of drainage basins.

2 And then finally, the remainder of the
3 conditions that are in your Conditions of Approval
4 are simply requirements that all the mitigation
5 measures from the EIR be met, and they be codified
6 and required of this project.

7 So generally those conditions are just in
8 three general areas and they're just to ensure that
9 these areas are met.

10 In your supplemental packet -- and I
11 believe Marina is passing those out as we speak, are
12 some recommended changes. Those come from a few
13 sources. Last week prior to the May 24th hearing,
14 the Commission did receive a request for a few
15 changes from Lehigh Permanente.

16 In addition, at the hearing last week, a
17 council member from Cupertino Rod Sinks requested a
18 change in a condition of approval.

19 And then finally today staff did receive
20 from the Regional Water Quality Control Board some
21 requests for changes.

22 So what staff has handed out is a packet
23 that includes those separate requested changes from
24 those bodies. Staff has reviewed those changes, and
25 in many areas we've agreed with some of the changes,

1 and in some areas we have not. And what we can do
2 when it's at the right time is walk a bit through
3 some of those changes, and where staff is suggesting
4 to the Commission those changes be appropriate, and
5 be a change in the Conditions of Approval, and areas
6 where staff does disagree, and believes that those
7 changes should not be made Conditions of Approval.
8 But those are before you. That was handed out in
9 the supplemental packet.

10 Finally, what's being provided to the
11 Planning Commission is an optional condition for
12 your consideration. Last week there was some
13 substantial discussion on groundwater, would
14 reclamation of the site potentially affect
15 groundwater in any way, the water quality of
16 groundwater.

17 The conclusion of the EIR and all the
18 technical studies that have been done by consultants
19 to the County is that the reclamation of the site
20 would not affect groundwater. However, for your
21 consideration, staff has worked with the water
22 district, and in response to a public comment last
23 week to craft a condition for your consideration
24 which would require the installation of a monitoring
25 well.

1 So, again, the conclusion of our EIR is
2 that there is not an impact to groundwater, but as
3 an extra precautionary measure, if the Commission
4 would like, there is a condition crafted for your
5 consideration which would require the installation
6 of a well between the quarry site and the Santa
7 Clara Valley floor which would monitor groundwater
8 to ensure that there is no contamination of
9 groundwater.

10 To summarize, and I know we've stated this
11 several times, but the task before the Commission
12 tonight is these two main items: To adopt the
13 reclamation plan, and, again, the parameters in
14 which you're reviewing this are somewhat narrow,
15 does it substantially meet the SMARA standards; and
16 if it does, the mandate under State law is that the
17 Planning Commission does adopt the rec plan.

18 With respect to the Environmental Impact
19 Report, your determination is if it complies with
20 CEQA, has it adequately disclosed those significant
21 impacts associated with reclamation. And in the
22 instances where there is significant unavoidable
23 impacts, do the benefits of the project and the
24 statement of overriding considerations outweigh
25 knowing that there are some significant unavoidable

1 impacts.

2 Specifically, the actions before you are
3 first, certification of the EIR in compliance with
4 CEQA, adoption of that mitigation monitoring
5 reporting program that requires that all the
6 mitigation measures be adhered to, making the CEQA
7 findings and the statement of overriding
8 considerations, and finally, consideration of the
9 reclamation plan.

10 Again, that's the staff presentation.
11 I'll hand it back to Nash, if he has anything to
12 add.

13 MR. GONZALES: Thank you very much, Rob.

14 Basically the Planning Commission has
15 received to date the Draft EIR, the Final EIR, the
16 Reclamation Plan in its entirety. It has received
17 public testimony from both the Applicant, the public
18 in general, public agencies as Rob noted that, we
19 had the Regional Water Quality Control Board here
20 last week. We've had input from various other
21 agencies on this project. And the Commission has
22 also been given the opportunity to visit the site
23 and physically conduct a site view. And again this
24 evening you will consider additional public
25 testimony.

1 And so the question really is, at this
2 point is: Staff is asking, is there any additional
3 information that the Planning Commission needs at
4 this point in time to be able to move forward in
5 conducting your deliberations on this Reclamation
6 Plan at this point.

7 So with that, I'll turn it over to the
8 chairman.

9 CHAIR PERSON LeFAVER: Thank you,
10 Mr. Planning Director.

11 Any questions of staff at this time?

12 Commissioner Vidovich.

13 COMMISSIONER VIDOVICH: One of the
14 conclusions of the EIR is that moving the east side
15 material would create more dust, in your judgment
16 that it would be more negative to the people who
17 think differently, but -- who live there, but there
18 is still more material that is proposed to be added
19 to it. So if we lessened the size of that hill,
20 wouldn't that seem to be -- it wouldn't be an
21 environmental impact if we lessened it; in other
22 words, we didn't keep bringing material there.

23 I don't know how -- in this drawing it's
24 got blue, yellow and green. The blue is the last
25 phase. I don't know how much more material is

1 planned to go there in cubic yards from what's there
2 now. I don't know if we could get that information.

3 MR. GONZALEZ: I can go ahead and respond.

4 We don't have the cubic yards in front of
5 me. We can research that get it back to you.

6 There is additional material proposed to
7 put at the EMSA, and that material comes out of
8 continued mining, out of the main pit. The proposal
9 for mining, and again mining's not part of this
10 Reclamation Plan, is to extend mining a couple
11 hundred feet further down into the pit. And so in
12 doing so, the quarry operator is obtaining
13 limestone, but it's the overburden which is, I guess
14 you'd say, in the way and needs to go somewhere. So
15 the question would be: Where does that overburden
16 go?

17 The proposal under the Rec Plan is to take
18 that overburden and continue to place it in the
19 EMSA. So I'm not sure if there's -- there's a
20 option we're requesting of having less overburden in
21 the EMSA. The question would be, where would it go
22 instead?

23 COMMISSIONER VIDOVICH: My assumption
24 would be, you know, they're putting it here for
25 convenience of mining economy. And my assumption,

1 and this is a question to make, so we can make a
2 good decision, isn't it -- couldn't they put that on
3 the east side or somewhere in a different location
4 where if they were going to put it back in the hole,
5 it would be easier, maybe it's a little more
6 expensive right now, couldn't it be put, say, in the
7 east storage area, which is already pretty big?

8 MR. GONZALEZ: Do you mean the west?

9 MR. RUDHOLM: It is proposed for the east.

10 COOMMISSIONER VIDOVICH: When I said
11 "east," I meant "west." Sorry.

12 MR. EASTWOOD: My understanding is, and
13 Gary can elaborate more, is on the west material
14 storage area, they're hit their capacity in terms of
15 its geotech ability, and its ability to go up, and
16 meeting slopes for slope stability, that there is no
17 capacity left in the west material storage area from
18 overburden.

19 MR. RUDHOLM: And, Mr. Chair, I concur
20 with the statement that Mr. Eastwood made. We've
21 been doing inspections and we've been using the
22 services of the county surveyor to ensure that
23 they're not exceeding the capacity of the west
24 material storage area.

25 There is a little bit of room, but not a

1 lot more room. They're almost maxed out at the west
2 material storage area.

3 And I think a partial response to the
4 potential impact of bringing down the east material
5 storage area, the Rec Plan Amendment shows the east
6 material storage area going in, so there would be
7 time and energy expended on putting the material
8 there, and the potential for the environmental
9 impact.

10 If the decision were to then take that
11 down, we would basically be going in reverse, so all
12 the activity necessary to take the material out,
13 would then continue to go rather than stop near
14 term.

15 And so I think that's a partial
16 explanation as to why it's the more environmentally
17 preferred approach to leaving it there and have it
18 then reclaimed, fully revegetated.

19 COMMISSIONER VIDOVICH: I think part of
20 the question is that not to not have the east
21 material storage area and have it reclaimed, but
22 maybe the magnitude of it is severe. It is two to
23 one. It kind of comes out like a hot dog towards
24 the neighbors there. And I'm listening to the
25 neighbors.

1 If it was moderated a little bit, and if
2 there is room, I don't know as they dig down to this
3 declining hole if they're going to be able to start
4 putting material in the hole itself as they mine,
5 the tailings as they mine. I don't know. It's a
6 question. Maybe they have the answer of it. If
7 they could moderate it. And I've been listening to
8 the public about, they seem to be more disturbed
9 about this west hill that's being built.

10 MR. RUDHOLM: Regarding the feasibility of
11 starting to fill the pit before they finish
12 excavation, they might be able to do that, but I
13 think they still need from an operational standpoint
14 to use the east material storage area, and do
15 anticipate filling it out.

16 I was just pointing out that by undoing
17 it, by taking it back out would then extend the time
18 where there's loose material moving from one point
19 to another; whereas, if it were to stay there, then
20 finished slopes would get cut sooner, the
21 revegetation would begin sooner, and that would then
22 be in place to mitigate the noise and the dust.

23 COMMISSIONER VIDOVICH: I agree with you
24 if the only place to put it is the east side storage
25 area, but if there are alternative places that they

1 could put it, it might moderate the size of the
2 hill. And I don't know, maybe the public's going to
3 speak about it, but I'm just -- and it may be a
4 question for the Applicant. I don't know if he
5 wants to speak or not.

6 CHAIR PERSON LeFAVER: I think we'll ask
7 the Applicant, as well.

8 MR. EASTWOOD: And I'll just -- just a
9 quick appendage.

10 So that was one of the objectives of the
11 EIR analysis was to evaluate are there alternatives.
12 And one that was considered is called the central
13 material storage area, and so it was actually
14 placing overburden between the east material storage
15 area and the pit, and so there was capacity for
16 that. That was actually deemed feasible, feasible,
17 you could store overburden there. But in comparing
18 it with the projects for a variety of reasons it was
19 actually determined that concept or that approach
20 would be more, it would have more environmental
21 impacts than the project itself.

22 CHAIR PERSON LeFAVER: Thank you.

23 Any other questions of staff at this time?

24 (No response.)

25 CHAIR PERSON LeFAVER: No questions of

1 staff?

2 (No response.)

3 CHAIR PERSON LeFAVER: We'll open up the
4 public hearing at this time. And, Mr. Rudholm,
5 Mr. Secretary --

6 MR. RUDHOLM: The first speaker we have
7 then is the Applicant, representing Lehigh Southwest
8 Cement Plant, and Mr. Marvin Howell.

9 CHAIR PERSON LeFAVER: Hello.

10 MR. HOWELL: Hello. Good evening. As he
11 said, I'm Marvin Howell. I'm here representing
12 Lehigh Hanson. I'm the director --

13 CHAIR PERSON LeFAVER: You're going to
14 have to speak up. There you go.

15 MR. HOWELL: -- director of land use
16 planning and permitting for Lehigh Hanson for the
17 west region. I'm pleased to be here with you again
18 tonight, and, John -- I'm sorry, Commissioner, I'll
19 try to answer your questions as I can get to them.

20 I have a handout that I believe has been
21 distributed to you, so it looks like this
22 (indicating). It's got four photographs. And I'd
23 like to kind of walk through those with you so that
24 I can talk to you a bit about some reclamation work
25 that's already been completed in the same general

1 area as the east material storage area. And I've
2 also got a couple photographs of the proposed
3 reclamation work on the EMSA. So do you have those.

4 Page 1 is an oblique aerial photo that was
5 taken sometime during the 1940s, so it was taken
6 shortly after the site was acquired by Henry Kaiser
7 in 1939.

8 As you can see on that photograph, all of
9 the significant portions of the active mining
10 operation were already taking place. If you start
11 at the top of the photograph, you can see the
12 beginnings of the west material storage area.

13 Just to the west -- I'm sorry, to the east
14 of that, you can see the quarry area starting up.

15 You can, then, just to the east of that,
16 you can see storage area C. I'm going to come back
17 to that. It was actually included in the 1985
18 reclamation plan.

19 And then, of course, you can see the
20 industrial operations on the location of the current
21 east material storage area.

22 Now, area C, you can see that they started
23 placing overburden material in area C all the way
24 back in the early 1940s. That's the same kind of,
25 same exact material that was later placed in the

1 west material storage area, same material that we're
2 placing now in the east material storage area.

3 Why did they place it there? They placed
4 it there because Henry Kaiser was trying to obscure
5 views into the quarry pit from the valley below
6 because he knew that was going to be developing.
7 And that's the reason why you cannot see into the
8 main pit today.

9 If you turn to page 2 you can see a
10 photograph of what area C looks like today. The
11 County in 2005 actually signed off reclamation on
12 area C. It's virtually indistinguishable from the
13 surrounding natural hillsides.

14 And I'd like to point out that this
15 revegetation effort which started just before the
16 1985 reclamation plan was approved, didn't involve
17 any of the new technologies being adopted by this
18 plan. It was entirely planted with nonnative
19 species. There was no monitoring and maintenance
20 program that went along with it.

21 And what happened over time, because they
22 didn't irrigate it, the native species were able to
23 out compete with the nonnatives that were planted
24 there. So if you go out there today you'll see
25 primarily native species that have taken over. So

1 that really gives us considerable confidence with
2 what our plan is for the east material storage area
3 because we've seen it, we've seen nature do it
4 before.

5 We think by adopting the new strategies
6 that we talked about last week: the solar radiation
7 studies, using seed spore that's collected onsite,
8 cuttings that's collected onsite, using an adaptive
9 management program that we've developed through the
10 test plot program, we're pretty confident that we
11 can do an even better job than what you see here.

12 Now, if you turn to the next page, this is
13 a view of the east material storage area where it
14 would be located. You can see it had just started
15 to be filled at that time, so this is really kind of
16 a before photo. This photo was taken from -- in the
17 community of Los Altos. It's, I believe the road is
18 called Canyon Oak Road. There is a trail that's
19 just off there, so it's directly to the east of our
20 property. You can see some of the residents in the
21 foreground, and you can see that there are
22 unobstructed views into the industrial operations
23 behind it, the conveyors, the plant equipment, the
24 dome, et cetera.

25 And if you turn to the final page, you'll

1 see a rendering of the reclaimed east material
2 storage area. So you can see the benefit of its
3 obstructing views into those industrial operations.

4 I would also like to address the questions
5 from Commissioner Vidovich. He had asked how much
6 more material was to be placed there. Our estimate
7 is about 500,000 cubic yards. The total east
8 materials storage area is about 4.8 million cubic
9 yards, so the relocation of that material certainly
10 would have significant environmental impacts if we
11 were to move it to another location.

12 So the work that is yet to be done there
13 is really the fine grading and recontouring. We've
14 been restricted as to the footprint under an
15 agreement with the County which has allowed us to
16 continue to place material there. So there will be
17 some grading work that remains. That will be done
18 in basically three stages so that we can start
19 vegetating the site immediately. We'll go finish
20 the top, revegetate it, move to the toe, revegetate
21 that, and then move to the central portion.

22 We estimate that we'll be ready to
23 revegetate the top within six to eight months of
24 approval of the Reclamation Plan, and I would guess
25 that in total we would probably have the whole thing

1 revegetated within a couple years.

2 So it's somewhat dependent on our business
3 and our ability to apply equipment to it. Also
4 we're still going through some of the conditions
5 which will have some restrictions on the number of
6 pieces of equipment and the hours that they can
7 operate. So we haven't sorted through all of that,
8 but I think we can have it finished up in a couple
9 years.

10 As for where material can go, believe me,
11 we tried very, very hard to find alternative
12 locations for storage, and we just were not able to
13 find anything that was suitable.

14 Now, I can tell you that we have opened up
15 the main quarry area so that it's now accepting
16 backfill, and that's where backfill would be taken
17 in the future, probably by the end of June or early
18 July.

19 CHAIR PERSON LeFAVER: Commissioner
20 Vidovich.

21 COMMISSIONER VIDOVIK: So you are
22 starting to backfill the --

23 MR. HOWELL: Yeah.

24 COMMISSIONER VIDOVIK: -- the main hole.

25 MR. HOWELL: Yes. And Commissioner

1 Schmidt was out there today, so she was able to see
2 the rock trucks taking material down and filling
3 there.

4 CHAIR PERSON LeFAVER: Any other questions
5 of the Applicant?

6 Commissioner Couture.

7 COMMISSIONER COUTURE: I have a couple
8 questions. Just some clarification on condition
9 number 45, which is planning manager satisfaction
10 that there's legally binding restrictions precluding
11 any occupancy of a caretaker's residence. So is
12 somebody living there now?

13 MR. HOWELL: I believe that the Historical
14 Society has terminated that lease. I really don't
15 know if there's somebody living there now or not.
16 But we have --

17 COMMISSIONER COUTURE: And this means that
18 you -- no one will be living there once the
19 reclamation goes on.

20 MR. HOWELL: No. That's an alternative.

21 We have determined that we can conduct
22 operations over there through other mitigations that
23 are available, and that suite of mitigations in that
24 condition.

25 COMMISSIONER COUTURE: Thank you.

1 So I have another question. On the 42, it
2 says, no light, no night lighting shall be allowed
3 or permitted on the east facing slope of the EMSA,
4 or any other location with the EMSA that would be
5 visible from the public locations on the Santa Clara
6 Valley floor.

7 I'm concerned that that might be a little
8 too restrictive. I see, every time I drive west, I
9 see lights, and they're reflecting from other
10 places. And I'm worried, if you say no lights,
11 you're going to get calls daily.

12 MR. HOWELL: I think initially I had some
13 concerns with the inability to have lights out there
14 during a second shift, but I think since the
15 majority of the work we have left is really kind of
16 recontouring the material that's already there, that
17 we should be able to do that during daylight,
18 daylight hours.

19 CHAIR PERSON LeFAVER: Other questions of
20 the Applicant?

21 (No response.)

22 CHAIR PERSON LeFAVER: I'm sure there will
23 be more questions later.

24 MR. HOWELL: Thank you.

25 CHAIR PERSON LeFAVER: Thank you.

1 Next speaker.

2 MR. RUDHOLM: Mr. Chair, I neglected to
3 check in with you on the time limitations we wanted
4 to establish for speakers.

5 CHAIR PERSON LeFAVER: I think our next
6 speaker is from the State --

7 MR. RUDHOLM: That's correct.

8 CHAIR PERSON LeFAVER: -- agency, so after
9 that I will --

10 MR. RUDHOLM: Okay. We do have from the
11 State Office of Mine Reclamation, Mr. Jim Pompy.

12 CHAIR PERSON LeFAVER: Thank you.

13 MR. POMPY: Good evening --

14 CHAIR PERSON LeFAVER: Welcome.

15 MR. POMPY: -- Mr. Chairman and members of
16 the Planning Commission. My name is Jim Pompy. I'm
17 the assistant director in charge of the Office of
18 Mine Reclamation, and we're the State agency that
19 administers SMARA. We have certain
20 responsibilities, just as the county, Santa Clara
21 County does have certain responsibilities as the
22 lead agency under the Surface Mining and Reclamation
23 Act, or as we call it, SMARA. And I've been doing,
24 I've been working in the Office of Mine Reclamation
25 for over 25 years.

1 I only recently became the assistant
2 director in charge, but prior to that I was in
3 charge of the reclamation unit, and that's the unit
4 that all reclamation plans are required by SMARA to
5 be sent to our office for a 30-day review, and the
6 reclamation unit is the unit that reviews those from
7 a technical perspective and to assure that they meet
8 the minimum requirements or substantially conform
9 with SMARA. So I've had a lot of experience in that
10 capacity. We've reviewed hundreds of reclamation
11 plans. Probably about a hundred of them go through
12 our office a year. This is definitely one of the
13 more comprehensive reclamation plans that we've seen
14 at least this year.

15 As I said, SMARA requires three things
16 prior to conducting surface mining operations. A
17 permit to mine. In this case that's not required
18 because Lehigh Quarry has a vested right to mine.
19 That means they were a legal, nonconforming use
20 prior to 1976 when SMARA became effective. But they
21 still are required to have a reclamation plan to
22 show how any areas that are disturbed by surface
23 mining operations will be reclaimed in accordance
24 with SMARA. And they have to have a financial
25 assurance in place to assure that either the County,

1 the lead agency, or the Office of Mine Reclamation
2 could conduct, fulfill the requirements of the
3 reclamation plan should the operator not be in a
4 position to do it.

5 So why we're here, why you're here and, I
6 guess, why I'm here tonight is because Lehigh does
7 have a reclamation plan that was approved in 1985.
8 However, the law also requires that prior to a
9 substantial deviation from that plan, that it be
10 amended, and that amendment be approved by the lead
11 agency to -- before they commence that change.

12 And in this particular case, there's been
13 several substantial changes that were never
14 incorporated into the approved rec plan, so the rec
15 plan before you tonight is a comprehensive plan
16 intended to bring the quarry into compliance with
17 the Surface Mining and Reclamation Act.

18 And as I mentioned earlier, prior to
19 approving it, that plan had to come to the Office of
20 Mine Reclamation for a 30-day review. When it comes
21 to our office, it's assigned to a team. On that
22 team is a geologist, someone that's licensed to
23 practice geology in the State of California, and a
24 biologist with expertise not only in biology, but in
25 revegetation of mine lands.

1 And so that team, we did get -- this plan
2 was reviewed, reviewed by the Office of Mine
3 Reclamation, by a team including a geologist and a
4 revegetation specialist.

5 And again, when we're reviewing it we're
6 looking to see -- we're looking for two things:
7 that it substantially complies with SMARA, and that
8 technically it's a plan that can be achievable. For
9 example, a geologist would look at -- and in this
10 particular case there were slope stability analyses
11 attached, or provided in conjunction with the
12 reclamation plan, so our geologist would look at
13 that to ensure that, yes, all of the assumptions
14 made, that the calculations were done properly. And
15 so that was done. We commented in a letter on
16 January 13th of this year. And we had quite a few
17 comments.

18 And prior to taking action on the
19 reclamation plan, the lead agency has to respond to
20 our comments. So the County did respond. We
21 actually had comments in a letter on January 13th,
22 and then we followed up with, we had a conference
23 call with the operator, I believe, and the County.
24 And we had some additional clarifying comments. But
25 all of those comments that the lead agency is

1 required to respond, provide us with a draft
2 response to those comments. And so that has also
3 been done.

4 And we've -- we did review the draft
5 response to comments that was provided by the
6 County, and we are satisfied that all of the issues
7 that we raised have been addressed to our
8 satisfaction.

9 And I think our final letter was on
10 February 21st when OMR responded saying that, just
11 as a follow-up to the County's response to comments,
12 that we agreed that all of our issues had been
13 satisfactorily resolved.

14 So as I said earlier, this is one of the
15 more comprehensive plans that we've seen. It's --
16 and I would say it's one of the better reclamation
17 plans we've seen. And in our opinion, it
18 substantially meets the requirements of the
19 California's Surface Mine and Reclamation Act, and
20 I'm here to recommend that you move forward with
21 approval of this plan.

22 CHAIR PERSON LeFAVER: Thank you.

23 Any questions of the deputy director?

24 Commissioner Schmidt.

25 COMMISSIONER SCHMIDT: I'm just curious.

1 How often do mining organizations update their
2 reclamation plans?

3 MR. POMPY: It's done fairly -- it should
4 be done fairly frequently. And in this case, it
5 probably should have been done more often over the
6 years. But it's supposed to be, as I explained, it
7 was supposed -- it's supposed to be done prior to
8 any -- you can change a rec plan any time you want,
9 but prior to making a change on the ground, you're
10 supposed to come to the lead agency and ask for
11 approval. You submit an amended plan, the lead
12 agency looks at it, they have to send that amended
13 plan to OMR to review. We look at it. And if
14 everything's fine, they approve it.

15 And so it's a fairly routine, reclamation
16 plans aren't necessarily designed to be approved
17 forever, and then implemented in the approved
18 condition. A lot of mines last 50, some of them a
19 hundred years, and there's always substantial
20 changes to a mining operation that happen. And so
21 we review probably more amended reclamation plans
22 than we do new reclamation plans.

23 COMMISSIONER SCHMIDT: Thank you.

24 CHAIR PERSON LeFAVER: Other questions
25 from staff?

1 Are you going to be around for a little
2 bit, I hope.

3 MR. POMPY: I will, yes.

4 CHAIR PERSON LeFAVER: I'm sure there will
5 be other questions.

6 MR. POMPY: Thank you for letting me talk.

7 CHAIR PERSON LeFAVER: Thank you for
8 coming.

9 We'll continue with the public hearing.

10 Those who wish to address the Commission,
11 if you have not addressed the Commission prior to
12 this evening, you will have three minutes in order
13 to address the Commission, or if you're a group, it
14 will be seven minutes.

15 If you have addressed this Commission and
16 wish to address it again, you can certainly do so.
17 You'll have two minutes in order to present what
18 other information, additional information that you
19 wish to present to the Commission.

20 MR. RUDHOLM: Mr. Chair, do you want to
21 have a similar modification to the time limits for
22 groups?

23 CHAIR PERSON LeFAVER: Yes, if they have
24 addressed us before.

25 MR. RUDHOLM: So seven if they have not,

1 and five if they did?

2 CHAIR PERSON LeFAVER: Yes.

3 And if we could, Mr. Secretary, if we
4 could have the ones that have not addressed us come
5 in first, I think it would be beneficial if you can
6 do that.

7 MR. RUDHOLM: I'll do my best.

8 The first speaker has indicated they have
9 a time limitation, so we'll go with this person.
10 And I don't believe they spoke last week, so they'll
11 be allowed three minutes. And that would be
12 Mr. Dean Urbanik.

13 CHAIR PERSON LeFAVER: Hello. Welcome.

14 MR. URBANIK: Good evening, members of the
15 Planning Commission. I'm here in support of the
16 company I work for, Lehigh Permanente Cement. I've
17 worked for them for 17 years as a process engineer,
18 and during that time the name has changed from
19 Kaiser to Hanson, and now Lehigh.

20 One thing is they've always tried to be a
21 good neighbor to the community. And they've done
22 that by supporting charities, supporting town
23 functions and group functions. So it's my sincerest
24 belief that this reclamation plan that they're
25 proposing will bring the site up to what it needs to

1 be, and I hope that you feel the same way.

2 Thank you.

3 CHAIR PERSON LeFAVER: Thank you.

4 MR. RUDHOLM: Mr. Chair, the next speaker
5 is Mathew Grissom, who I believe we did not hear
6 from last week.

7 CHAIR PERSON LeFAVER: Perhaps you can
8 tell us who the next speaker is after that, as well.

9 MR. RUDHOLM: Mr. Grissom would be
10 followed by Ken Yew.

11 CHAIR PERSON LeFAVER: Very good.

12 Mr. Grissom, welcome.

13 MR. GRISSOM: Thank you. Good evening.

14 My journey with my Permanente family began
15 in 1987. I was a young man in high school and I
16 took a summer job. I was out of the plant for five
17 years, and came back in 1992. And the days that I
18 waited to get back into the plant, it seemed like it
19 just took forever.

20 I fell in love with this place the day I
21 worked there. I'm still in love with this place and
22 I'm extremely proud of all that we do for our
23 community, for the City of Cupertino, for the County
24 of Santa Clara, for the State of California. We
25 always do our best to do above and beyond what's

1 required of us from all of the agencies.

2 I'm a production supervisor, and excluding
3 the summer of '87, I've been working there for 20
4 years. It's not just about big business and
5 corporations. It's about families. I met my wife
6 working at that cement plant. She worked at the
7 cement plant. I had three wonderful children who
8 are now 16, 14, and on the 4th of June, 13.

9 I was able to buy a beautiful home and
10 provide for my family with wonderful medical
11 benefits. And I can't say enough about what
12 everybody at my Permanente family has done for me
13 and for the community. I hope that someday that my
14 son will get a chance to come out and be a part of
15 the Permanente family.

16 I feel that what we're doing with this
17 reclamation plan is going to bring us up to standard
18 that everybody thinks we need to be at. We strive
19 every day to make this happen, and we really hope
20 that you feel the same way, and everybody votes in
21 favor of it.

22 Thank you very much.

23 CHAIR PERSON LeFAVER: Thank you.

24 Any questions?

25 (No response.)

1 CHAIR PERSON LeFAVER: Thank you.

2 MR. RUDHOLM: The next speaker is Ken Yew,
3 followed by Brad Whitworth. And Mr. Yew will have
4 three minutes.

5 CHAIR PERSON LeFAVER: Mr. Yew.

6 MR. YEW: Hello. Thank you. I'm from
7 West Valley Citizens Air Watch.

8 A lot of these things that I bring up
9 you've probably heard before.

10 One of the things that we have an
11 objection to is in the Lehigh's proposed changes to
12 the Conditions of Approval. It's highlighted in
13 blue on their very first page which it states, upon
14 request of the mine operator, the planning manager
15 is authorized to make any and all necessary
16 adjustments to these Conditions of Approval.

17 Our major objection is it gives a single
18 person in the planning office basically carte
19 blanche to do whatever they want without
20 coordinating with any other person, and so we urge
21 you not to accept this as a change in the Conditions
22 of Approval.

23 The other thing which we will reiterate,
24 and perhaps Mr. Pompy could clarify this, is that we
25 still feel that the cement plant ought to be

1 included as part of the project.

2 According to SMARA, a cement operator has
3 to fulfill all four criterion, such as the plant
4 site is located on lands designated for industrial/
5 commercial use, it has to be in the proper zoning
6 category. Particularly none of the minerals being
7 processed are being extracted onsite, which is
8 clearly incorrect in this case, so I would like some
9 clarification on this issue, perhaps, from the
10 representative from OMR. So we feel that the cement
11 plant must be included in the project.

12 Notably, in the section on overriding
13 conditions that Lehigh wrote, the -- they bring up
14 all of these economic benefits of cement, and I'm
15 not denying that there are, in fact, economic
16 benefits of cement, but the public was not allowed
17 to comment on the economic negative impacts of
18 cement, because we were admonished several times
19 that cement was not included in the EIR.

20 I think that this opens the door for the
21 fact that the cement plant ought to be part of the
22 EIR and, therefore, should be recirculated and
23 presented for public comment.

24 And also, we urge once again that the
25 cement plant be modernized, reduce pollution. And

1 it should be, in order to reduce the negative
2 impacts of the cement plant, the County ought to
3 require that Lehigh submit to new source performance
4 standards.

5 Thank you very much.

6 CHAIR PERSON LeFAVER: Thank you.

7 I just do want to reiterate, we are not
8 considering the cement plant. Okay. Thank you.

9 MR. RUDHOLM: Mr. Chair, I'd like to call
10 next Alice Kaufman who represents the Committee for
11 Green Foothills. She did not speak last week, so
12 she would be afforded seven minutes.

13 CHAIR PERSON LeFAVER: I think somebody
14 else thought they were going speak.

15 MR. RUDHOLM: I beg your pardon.

16 CHAIR PERSON LeFAVER: C'mon. Yeah. Go
17 ahead. We're on top of it.

18 MR. WHITWORTH: I'm Brad Whitworth. Good
19 evening, Chairman, rest of the Planning Commission:
20 I'm a Los Altos resident. I live downhill, down
21 wind and downstream from the Lehigh complex.

22 I guess my reason for coming tonight is
23 just to express my concern that the reclamation plan
24 does little to, I think, repair the damage that has
25 been done, or more importantly, that continues to be

1 done by the complex.

2 And I understand it's trying to separate
3 the cement plant from the quarry, from the trucks
4 that are going up and down where, you know, next to
5 where I live. But that's like trying to segregate
6 the issues and say, Fox Con conditions in a
7 manufacturing facility in China are not related to
8 Apple's production of iPads or iPhones. You really
9 can't separate the two, and I think it's been
10 clearly shown by people that these issues are really
11 joined at the hip.

12 I guess my real concern is that we're
13 looking at an organization that I applaud the kinds
14 of things that they do for the community, I applaud
15 the economic impact. But I'm concerned that they
16 are now coming back and trying to sort of shoehorn
17 in things that should have been done sometime ago,
18 sort of making amends for things that they should
19 have put before this body many, many years ago in
20 terms of the changes they want to make.

21 I'm not sure that I have as much faith in
22 the management's commitment to the current
23 reclamation plan, any more so than I do what it is
24 that they should have been doing all along. So I'm
25 concerned that even interim selenium runoff doesn't

1 make life any healthier for any of us downstream,
2 and down wind from what it is that we're living
3 with.

4 And I'm concerned when I hear an employee
5 talk about his company's plan as their plan and not
6 our plan. It does seem to me a little bit of a
7 disconnect that I hope the Commission will take into
8 account as they look at the total package.

9 So thank you.

10 CHAIR PERSON LeFAVER: Thank you.

11 Do you have a question?

12 COMMISSIONER VIDOVIICH: I'm just curious
13 where his address is. That's all.

14 CHAIR PERSON LeFAVER: You said Los Altos
15 Hills, did you not?

16 COMMISSIONER VIDOVIICH: No, he didn't say
17 Hills.

18 THE WITNESS: No. Los Altos.

19 CHAIR PERSON LeFAVER: Los Altos. Sorry.

20 MR. WHITWORTH: Homestead, Foothill, 280.

21 COMMISSIONER VIDOVIICH: Homestead,
22 Foothill, 280. Okay.

23 CHAIR PERSON LeFAVER: Thank you.

24 MR. RUDHOLM: Next speaker, then, would be
25 Alice Kaufman representing the Committee for Green

1 Foothills, and she'll be afforded seven minutes.

2 Ms. Kaufman would be followed by

3 Marylin McCarthy.

4 CHAIR PERSON LeFAVER: Ms. Kaufman. Hi.

5 Welcome.

6 MS. KAUFMAN: Good evening. Good evening,
7 Chair and Commissioners. I have attended both the
8 workshop and the last week's hearing on this issue,
9 and each time I've intended to submit a comment but
10 I didn't or speak, I didn't because I felt that I
11 didn't have a sufficient grasp of the issues and I
12 didn't want to comment if I didn't know what I was
13 talking about. And each time there's also been a
14 pile of additional information presented that, you
15 know, again I felt that I needed to assimilate.

16 So my feeling at this point is that the
17 more information becomes available, the clearer it
18 becomes this project is too complex, and encompasses
19 too many important issues to be resolved today.

20 This is particularly true of the input
21 from government agencies such as the Regional Water
22 Quality Control Board that have expertise in various
23 issues relevant to quarry operations and
24 jurisdiction over aspects of those operations. So I
25 would urge you tonight to not rush to reach a

1 decision on this. It seems like there's a lot of
2 complex issues that need to be resolved and that
3 could potentially benefit from further analysis. So
4 I would urge you not to rush to approve the RPA or
5 certify the EIR until more analysis of the issues
6 has been completed.

7 Thank you.

8 CHAIR PERSON LeFAVER: Thank you.

9 Any questions?

10 Thank you.

11 Commissioner Chiu. Sorry. I didn't mean
12 to rush you through.

13 COMMISSIONER CHIU: Not at all.

14 Thank you. Good evening.

15 The Committee for Green Foothills and the
16 Planning Commission have worked years together, so I
17 just wanted to ask you as a representative for the
18 environmental community, having heard the testimony
19 at the previous meeting from the State Water Control
20 Board, that there currently is not the technology
21 available to treat selenium in the water, and that
22 there possibly are two plants in Canada which are
23 attempting to do this or are in construction, how
24 would you address the situation that the selenium in
25 the water is unmitigated, unmitigatable impact? Do

1 you want us to use that -- would you suggest that we
2 use that information to just deny the reclamation
3 plan, or is there -- have you come across any
4 information at all to treat the selenium? I just
5 wanted to hear your thoughts about the unmitigatable
6 impact.

7 MS. MCCARTHY: You know, I wish I could
8 answer that. I wish that I had that information.
9 This is part of, you know, why I haven't spoken
10 before, and why I'm coming up here saying I just,
11 you know, I can't give an opinion on that.

12 I'll say that I have been, you know, very
13 swayed by the opinions and the information provided
14 by the Water Quality Control Board. I feel that
15 they're an agency that is responsible for this,
16 they're clearly going to be responsible for, you
17 know, regulating these discharges in the future.
18 And if they're expressing significant concerns with,
19 you know, the potential, the potential lack of
20 adequacy of the mitigations that have been proposed,
21 I think that those should be given a great deal of
22 weight because that's -- they're responsible for the
23 water quality of the creek. And once this is done,
24 it's done. Correct. I mean, it's -- we're looking
25 for a permanent solution here, so that's why I think

1 that we shouldn't rush into it.

2 COMMISSIONER CHIU: So you would support
3 what monitoring they would ask, and whatever
4 conditions they would like to add to the Conditions
5 of Approval, or you don't have --

6 MS. McCARTHY: I haven't read their
7 comments close enough to know if I could throw
8 unconditional support behind them.

9 COMMISSIONER CHIU: Thank you.

10 MS. McCARTHY: Thanks.

11 CHAIR PERSON LeFAVER: Thank you.

12 MR. RUDHOLM: Next speaker, Mr. Chair, is
13 Marylin McCarthy.

14 CHAIR PERSON LeFAVER: It's now been an
15 hour, and I'm looking at our -- she says continue.
16 So we're going.

17 MR. RUDHOLM: Marylin McCarthy. She'll be
18 given, or allowed three minutes. And she will be
19 followed by Kathy Helgersen.

20 MS. McCARTHY: Well, thank you for
21 allowing me to speak.

22 CHAIR PERSON LeFAVER: Hi.

23 MS. McCARTHY: Good evening, everyone.

24 I'm going to repeat a little bit what's said, but I
25 think it's necessary to emphasize this point.

1 CHAIR PERSON LeFAVER: Bring the mike to
2 you. There you go. Thank you.

3 MS. MCCARTHY: CEQA requires that a
4 statement of overriding considerations should be,
5 quote, a statement of the responsible agency's
6 views on the ultimate balancing of the merits of
7 approving a project, despite its environmental
8 damage, unquote.

9 The statement submitted and written by
10 Lehigh in Exhibit 5 is falsely made to appear that
11 it was written from the County's perspective. Why
12 should the public expect Exhibit 5 to meet the
13 ultimate balancing of competing public objectives as
14 required by CEQA?

15 Most importantly, the Exhibit 5 section of
16 the statement of overriding considerations is only
17 part -- is the only part that discusses the economic
18 benefits, and we think that Lehigh's fiduciary
19 responsibility to their shareholders might conflict
20 with Santa Clara County's interests.

21 Exhibit 5 also elaborates on the benefits
22 of cement to the County, even though the County has
23 stated repeatedly that the cement plant and its
24 impacts are precluded from the impacts the public
25 has been allowed to consider.

1 As stated in the Final EIR, page 3.1-18
2 section B, the cement plant is not a component of
3 the project.

4 After the May 24th meeting started, the
5 County released all the arguments for the benefit of
6 the cement plant on neglecting to offer any critical
7 arguments of their own or allow any from the public.

8 The public is entitled to participate in
9 the evaluation of the full economic impacts of the
10 cement operation including the substantial negative
11 affects on health and the environment. For example,
12 note that the health impact from SO2 alone is
13 \$35 million. This is from the "Citizens' Report on
14 the Cement Plant Regulation" in the San Francisco
15 Bay Area by Gary Latshaw.

16 This cost is a small fraction of the
17 overall health impact from a vast array of other
18 pollutants from the kiln, and includes nothing from
19 the thousands of antiquated trucks servicing the
20 plant. The County must include all the impacts from
21 the cement plant and recirculate the EIR.

22 Don't rush into this. Take your time, and
23 allow the opportunity for the public to really
24 comment on the full scope of what goes up up there.

25 And on a lighter note, I'd like to also

1 comment that in the Conditions of Approval there is
2 quite a bit of talk about avian species, bats, and
3 other creatures that are disturbed. Their natural
4 habitat is disturbed, but there is nothing that
5 details what happens to these creatures if they're
6 found wounded or injured. So I'd like to recommend
7 that it be added that these creatures be humanely
8 trapped, taken to the Wildlife Center of Silicon
9 Valley on Penitencia Creek, and a generous donation
10 be made by Lehigh to that organization to foster for
11 their care and eventual re-release or rehabilitation
12 if it's possible.

13 Thank you.

14 CHAIR PERSON LeFAVER: Thank you.

15 COMMISSIONER RUIZ: Chair --

16 CHAIR PERSON LeFAVER: Yes.

17 COMMISSIONER RUIZ: Excuse me, ma'am.

18 CHAIR PERSON LeFAVER: You have a question
19 from one of the commissioners.

20 COMMISSIONER RUIZ: Thank you. I was
21 unclear of the, can you please repeat the condition
22 that you're recommending regarding the species, the
23 animals.

24 MS. MCCARTHY: Well, they talk about that
25 a biologist will go out and look at nesting sites,

1 that certain disturbances are only allowed from
2 month to month to allow for migration, nesting,
3 maturity of pups or whatever these little creatures
4 are called. But there's nothing that says what
5 happens if the work that's being done, or the
6 disturbance that's being done in these native
7 habitats injures or orphans young animals or birds
8 or bats, So I'd like some kind of mitigation put in
9 place that allows for humane rescue, maybe education
10 from the Wildlife Center of Silicon Valley. I'm
11 sure they'd be willing to come out and talk to
12 Lehigh. And I think Lehigh should make a generous
13 donation to this organization to -- for all the
14 things that are necessary to see that these native
15 species are taken care of to the point of being
16 rereleased, and if not rereleased, then support for
17 their care in a native museum or a training center,
18 teaching center. I just think that's only fair.

19 COMMISSIONER RUIZ: Thank you.

20 CHAIR PERSON LeFAVER: Thank you.

21 MR. RUDHOLM: Mr. Chair, the next speaker
22 provided some documents that I distributed earlier,
23 and she also provided a set of photographs, but we
24 have the one set that needs to be shared among all
25 the commissioners, and she's going to refer to those

1 photographs, I think, as part of her presentation.

2 And the next speaker is Cathy Helgersen
3 representing Citizens Against Pollution. But she
4 spoke last week, so she'll be allowed five minutes.

5 MS. HELGERSON: Thank you.

6 I submitted paperwork with an old
7 petition, because John was wondering about the oaks
8 and the people there. And you can see that there
9 are 73 people that signed the petition. It's a
10 petition, like this (indicating). It's attached to
11 your packet that I gave you with my list of eight
12 items.

13 Anyways, the petition is signed 2009 by
14 citizens against the proposed reclamation with a
15 protest against Lehigh Quarry and the cement plant.
16 73 people signed it, and the majority of them were
17 from the Oak condos that is right next door to
18 Lehigh cement and quarry.

19 Santa Clara County was sent a copy of this
20 petition but never acknowledged it at the time, nor
21 have they made any mention of it in the 2012 new
22 proposed EIR or Reclamation Plan. The citizens are
23 very upset about this serious lack of consideration
24 of health, safety and the well being.

25 And as Santa Clara County Planning

1 Commission at the time asked -- excuse me, ask that
2 Santa Clara County Planning Commission at this time
3 stop the covering up of the pollution, and impose a
4 major cleanup as I've mentioned with the Super Fund
5 site or whatever.

6 We ask that this petition be transferred
7 over as it should have been in the formation --
8 excuse me -- have been in the information supplied
9 to the Commission for review and implementation of
10 our request.

11 We also ask that the cement plant be part
12 of the EIR and the Reclamation Plan as it should
13 have been all along. Lehigh cannot operate without
14 polluting. Deny the reclamation plan. Clean up,
15 not cover up.

16 John, I hope this may convince you that
17 the Oaks people are very upset about Lehigh in
18 general, so I don't think I need to go back around
19 and visit them again. I'm sure if I did, I'd get
20 the same response.

21 I want to bring up Exhibit 47, which is
22 part of the packet. And it talks about what's
23 underneath the east material storage area. It's the
24 aluminum plant and the ammunitions plant. As you
25 can see, there's a picture there of when it first

1 started, one and two, how low everything was, and
2 now we're up to over 800 feet high.

3 I have a picture here. You have a similar
4 picture.

5 There's room down here to put more
6 overburden, but we don't want to do that. We would
7 like to stop all of this.

8 I'd like to know how much is left as far
9 as mining in the quarry. Nobody seems to be telling
10 us anything about that. We are threatened by the
11 new pit. All hell will break loose if that starts
12 to come through.

13 MR. RUDHOLM: Mr. Chair --

14 CHAIR PERSON LeFAVER: Yes.

15 MR. RUDHOLM: I'm sorry, Kathy. We do
16 have a device that could display the picture she has
17 in her hands if that would be helpful.

18 MS. HELGERSON: It's pretty big.

19 MR. RUDHOLM: We can set it on
20 the overhead.

21 CHAIR PERSON LeFAVER: Sure.

22 MS. HELGERSON: Do you want this also.

23 That's the area that talks about -- it's hard to
24 see, but as you can see, there's room up in front.

25 The trucks go up that little hill and they deposit,

1 I don't know how they got up there, believe me, it's
2 just crazy, but they're spreading out, and they
3 could go higher and they could spread out more. And
4 that's what they're doing. And I don't know how
5 long this is going to continue. Gary knows more
6 about this because he goes out there with the
7 surveyor all the time. I've been taking these
8 pictures ongoingly. The ones you have are even more
9 so.

10 I also gave you pictures of the pollution
11 that is all over the place. This gray matter, I
12 want you to look at the gray matter, because that is
13 the pollution. It's loaded with all kinds of --
14 where do I start.

15 So we're going to cover this up, and we're
16 not going to deal with what's under it, which we
17 need to clean this up. We need to get rid of this
18 and clean up what's under it to make sure it's not
19 going into the Permanente Creek. All of the water
20 rushes down into the Permanente Creek. Everything
21 drains down there. I don't care where you are on
22 the site. And it's getting reexposed, the
23 reclamation area will be reexposed to the pollution
24 from the cement plant, just like the Mid Peninsula
25 District that's being reexposed to this

1 continuously, and they have testified over and over.

2 This is not going to be a resolution to
3 cleanup. This is not a cleanup. Please. You have
4 to understand. The cleanup comes first.

5 And as far as what's going on with digging
6 of this old pit that they have, it's time to stop,
7 put the brakes on that and start to take the east
8 material storage area out of there, put it into the
9 pit, and then start cleaning up what's under there.

10 And I've asked Planning Department to test
11 this. And the reason that this whole thing was put
12 out there, I have to be suspicious about this, is to
13 cover up what's underneath. This is a serious
14 matter. I brought this up with the Super Fund
15 people. I'm still working on that. And also the
16 Federal EPA, Lisa Jackson's office.

17 We have got to clean up this area.
18 There's gray matter everywhere. It's on the roads.
19 We're breathing it. The trucks are releasing all of
20 this pollution on the road all the way down Foothill
21 and Stevens Creek. I go up there continually.

22 You can see the pictures I've given you.
23 You can't even see, from Stelling you can't even see
24 the hill it's so polluted and so thick, so I don't
25 understand why no one realizes how much pollution

1 there is. We have to look at this and clean this
2 mess up.

3 I wanted to show you this one last
4 thing --

5 CHAIR PERSON LeFAVER: Your time's up.

6 MS. MCCARTHY -- but I can't do that.
7 Okay.

8 CHAIR PERSON LeFAVER: So thank you.

9 MR. RUDHOLM: Mr. Chair, the next speaker
10 is Mr. Bill Almon representing Quarry No, and
11 Mr. Almon will be followed by Barry Chang.
12 Mr. Almon spoke last week, so he will be afforded
13 five minutes.

14 CHAIR PERSON LeFAVER: Thank you.

15 MR. ALMON: Thank you for the opportunity
16 to be here again.

17 We have a little bit of new information,
18 and we have a lot of prior conclusions.

19 I look out on the west material storage
20 area. I've looked out on it for over 15 years.
21 There is no reclamation there.

22 In the 2007, 2008, 2010 reclamation plans,
23 there was reclamation to start. In the 1985 plan
24 reclamation would start immediately. There is no
25 reclamation started yet. Consequently, we look upon

1 all of this as somewhat questionable.

2 I know you have to accept it, but to us
3 who look at it, hopefully Mr. Howell's comments
4 about reclamation starting in a couple of months,
5 that's not in the reclamation plan. Hopefully after
6 he says it tonight, it will be. And his reclamation
7 starting in two years that he said hopefully will be
8 in the reclamation plan.

9 Briefly I'd like to cover a couple of
10 prior points with new information. Number one, the
11 cement plant, the inclusion. We've talked about it
12 before. What is the new information.

13 OMR originally said the cement plant was
14 to be included. It was taken out on the basis of
15 representation by Lehigh that it was independent and
16 undisturbed by mining activity. In this very room,
17 Lehigh then came in last year and told the
18 supervisors the direct opposite.

19 However, the new information, is I
20 understand that, and possibly Jim can talk to it,
21 that in other reclamation plans of other quarry
22 cement plants have been included, so there is no OMR
23 regulation that cement plants will not be included.
24 It was thrown out here because of the
25 representations made by Lehigh to the supervisors.

1 Trucks, just one mention of trucks.

2 You'll see it in tomorrow's paper. One of the
3 cement trucks was involved in quite a significant
4 accident this morning and shut down the intersection
5 between 85 and 280 for approximately five hours.
6 Morning commute.

7 Lastly, on Permanente Creek and selenium,
8 there is some new information. There has been
9 exhaustive studies, et cetera, et cetera. Based
10 upon those studies, you are all comfortable that
11 there is no feasible way to take selenium out of the
12 pit water. And, hence, you all can very calmly
13 allow that to continue for another 20 years.

14 I was out of the country until yesterday.
15 Between last night and today, I have a comment from
16 a company that there is operating a water treatment
17 plant reducing selenium, reducing it below the EPA
18 standard. I have not had the time to pursue that
19 further, but they are adamant that that is the
20 situation, and that is what their business is.

21 Finally, with all this, with this
22 reclamation plan, with the financial assurance, how
23 do we really know, since there's been no reclamation
24 to date, how do we really know this will all occur?
25 Mr. Howell will be somewhere else in 20 years. How

1 do we know?

2 I suggest you put a lien on the Lehigh
3 property, just like the County would put a lien on
4 property with unpaid taxes. The County has not only
5 the authority to do that, you also have the
6 mechanism to do that. Far more powerful than every
7 year trying to argue with Lehigh about financial
8 assurance. And when the reclamation comes in 20
9 years, do any of you think that Lehigh will still be
10 there? They will have sold the property probably
11 several times over.

12 Thank you.

13 CHAIR PERSON LeFAVER: Thank you.

14 Any questions?

15 One, I do have a question, and it's just a
16 comment you made. On the financial assurance, can
17 you explain how that works, Mr. Director?

18 MR. GONZALEZ: If I can, Mr. Chairman,
19 Members of the Planning Commission: What happens
20 with a financial assurance mechanism, and I went
21 through this last week but I'll go ahead and
22 summarize this, is every year, a mine operator is
23 required to submit a financial assurance cost
24 estimate to be reviewed by the Department of
25 Planning and Development, the County. What is also

1 involved in that review is forwarding a copy of that
2 to the State Office of Mine Reclamation. This has
3 to be done on an annual basis.

4 Once that document is reviewed and
5 approved by all parties, then a financial assurance
6 mechanism would be put in place. However, it does
7 take review of this document by staff, which would
8 include planning, the county geologist, our
9 engineering staff. Basically it's a thorough review
10 to determine what areas that are going to be
11 disturbed in the upcoming year are appropriately
12 calculated and covered so that there will be enough
13 monies there to ensure that the site is adequately
14 reclaimed.

15 As Mr. Pompy indicated earlier, every
16 site, every mine needs three things, and one of them
17 is a financial assurance mechanism in place before
18 they're allowed to disturb a mine.

19 So there is no provision in SMARA for
20 lienning property. What we're doing is basically
21 calculating ahead of time for those areas that will
22 be disturbed, collecting a financial assurance up
23 front before those areas are disturbed. And then
24 next year as new areas are to be disturbed according
25 to the reclamation plan, then those figures will be

1 adjusted to account for those newly disturbed areas,
2 and then the Applicant would have to go through the
3 same process every year, and basically prove that
4 they will have enough financial backing there to
5 cover in case they walk away or they are unable to
6 finish the reclamation so the County has that
7 funding ahead of time.

8 CHAIR PERSON LeFAVER: And how much
9 funding are we anticipating, or do we have right
10 now?

11 MR. GONZALEZ: If could refer that to
12 Mr. Rudholm, but I think it's in the 47 million?

13 MR. RUDHOLM: Yes. I believe we had
14 mention in the staff report, but I believe it's
15 \$47.7 million that's been posted.

16 CHAIR PERSON LeFAVER: So I just wanted to
17 go through that.

18 And you made a very good point, but I
19 think that there is by law financial amounts that
20 will cover making sure that this happens, and that's
21 why it's in there.

22 MR. ALMON: I would wear belts and
23 suspenders, the County has the authority to put on a
24 lien.

25 CHAIR PERSON LeFAVER: Well, thank you.

1 MR. ALMON: Thank you for the opportunity
2 to speak.

3 CHAIR PERSON LeFAVER: Okay.

4 Commissioner Vidovich wants to know where
5 you live.

6 MR. ALMON: Los Altos Hills. I look out
7 on the west material storage area.

8 MR. RUDHOLM: Mr. Chair --

9 CHAIR PERSON LeFAVER: I'm sorry.
10 Commission Ruiz.

11 COMMISSIONER RUIZ: Thank you. I have a
12 question about the financial assurance.

13 You said that it covers the areas that are
14 newly disturbed. Is that cumulative; for example,
15 it would cover the areas disturbed, and then the new
16 areas disturbed, and so it increases over time?

17 MR. GONZALEZ: If I may through the Chair,
18 yes, any areas that are currently disturbed, and any
19 areas that are going to be disturbed are covered by
20 the financial assurance mechanism.

21 COMMISSIONER RUIZ: And during the
22 presentation, staff presented that there would
23 continue to be the runoff of selenium. Does it
24 cover those type of releases, as well as selenium in
25 the water?

1 MR. GONZALEZ: Any areas of disturbance or
2 any items that are listed in the Conditions of
3 Approval that are part of the mitigations that are
4 related to any disturbances or any issues out there,
5 those would be covered.

6 Again, when we're dealing with water
7 quality issues, we also have to keep in mind that
8 any permits that would be required by the regional
9 board or any other agency would be the
10 responsibility of those other agencies.

11 We're basically looking at those items
12 that are covered under the Reclamation Plan, and not
13 necessarily those items that would be covered by
14 another agency's permit or another agency's
15 oversight.

16 MR. EASTWOOD: It does require that the
17 mitigation measures to reduce selenium to finally
18 reclaim the site go into effect. So if the quarry
19 operator was to walk away, the bond covers the means
20 to cap the MSA, to backfill the pit, and to put all
21 the means in necessary to reduce selenium.

22 COMMISSIONER RUIZ: Because during the
23 presentation, we don't -- there was a discussion
24 about the selenium impacts, that in some cases we
25 don't know, so to cover those potential impacts is

1 what I would be looking for in the financial
2 assurance.

3 MR. EASTWOOD: One thing to consider is,
4 one of the conditions is the determination today was
5 that the ability to apply selenium treatment is
6 infeasible. There's just not enough information,
7 and more study's needed.

8 Now, if it's determined in the next two
9 years, and there is a requirement for a hearing
10 before the Planning Commission to make that
11 determination if selenium treatment is feasible, and
12 if that happens, and at the same time the BMPs do
13 not work, that there is a continual exceedance, there
14 is the requirement that a treatment facility be
15 placed on-site. The financial assurance would have
16 to cover both the installation of that treatment
17 facility, and eventually its removal.

18 CHAIR PERSON LeFAVER: Thank you.

19 Any other questions?

20 COMMISSIONER RUIZ: So just to further
21 clarify for my feeble mind, say the selenium, they
22 decide that, they find that there is a way to
23 contain selenium and take it from the water, and
24 they find out it's \$47 million, so there would be
25 another \$47 million that would be added to the

1 surety bond?

2 MR. EASTWOOD: That is correct.

3 COMMISSIONER COUTURE: Thank you.

4 MR. EASTWOOD: And if I could direct you
5 to the staff report, staff report on page 9, last
6 paragraph, it very clearly states that very thing.

7 And the last sentence or two, says, if the
8 applicant fails to satisfy applicable water quality
9 standards for two consecutive years through the use
10 of the best management practices, then installation
11 of a treatment facility will result if the Planning
12 Commission has determined the treatment facility is
13 feasible. It's very clear.

14 COMMISSIONER COUTURE: I just wanted it
15 for the record.

16 CHAIR PERSON LeFAVER: Thank you.

17 Commissioner Ruiz.

18 COMMISSIONER RUIZ: I wanted to make the
19 same comment. In addition, it wasn't clear to me
20 that the financial assurance would be covering that
21 activity.

22 And I also had a question about the two-
23 year monitoring. I'm concerned of that length of
24 time. I was wondering why not one year or less, but
25 we can come back to that because I know we're in a

1 public hearing.

2 CHAIR PERSON LeFAVER: Thank you.

3 MR. RUDHOLM: Mr. Chair, the next speaker
4 will be Barry Chang, who will be followed by
5 Rod Sinks. And Mr. Chang spoke last week. He's
6 submitted a request as an individual, and so he will
7 be afforded two minutes.

8 I a need moment, though, to go help him
9 get tee'd up, because I have a --

10 CHAIR PERSON LeFAVER: You know, why don't
11 we take a five-minute break. Five-minute break.

12 (Recess had.)

13 CHAIR PERSON LeFAVER: The Planning
14 Commission is now back in order.

15 MR. RUDHOLM: Mr. Chairman, the next
16 speaker is Mr. Barry Chang, and he spoke last week
17 so he's afforded two minutes as an individual.

18 CHAIR PERSON LeFAVER: Very good. Thank
19 you.

20 Mr. Chang, please.

21 MR. CHANG: Thank you, Chairman. Thank
22 you commissioners. Thank you for having this
23 opportunity. My name is Barry Chang. I'm a
24 Cupertino City Council member, but I'm here for
25 myself, not representing the entire council. Okay.

1 That's number one.

2 Number two, I'm also running for County
3 Board of Supervisors to replace Liz Kniss, but I'm
4 not campaigning. I'm a candidate, but I'm not using
5 it for the campaign. I'm here for myself.

6 I just want to tell you that the main
7 problem with Lehigh is the trust, the public trust.
8 There is no public trust because they keep saying
9 one thing, do the other.

10 The violation for the reclamation plan,
11 1985. It's 27 year, keep violating and violating.
12 And now the County send them the notice of violation
13 in 2006 and 2008. In 2008 one specifically say they
14 have to cease depositing the material in the east
15 material storage. Look at the east material
16 storage. That's quite different.

17 You can dim the light.

18 Look at there. It's quite different than
19 what Lehigh presented to you. It's just a pile of
20 dirt. Nothing. Nothing is done to it. Look at it
21 now. That's from Stevens Creek.

22 The next one. That was last year. This
23 year is much bigger pile.

24 Look at now. Tell me this is reclamation.
25 Reclamation mean it's in the progress. Nothing has

1 been done for couple years.

2 West material storage area, the same. If
3 you get the chance to hike up that mountain to the
4 trail, you will see it. It's like this. So what is
5 the trust.

6 Next question is water. Next one -- I
7 agree with Commissioner Mary Ann. Assured two
8 years. Two years, too long. You allow them to
9 continue to poison the residents nearby. This sign,
10 if you go to Stevens Creek you will see this sign
11 from Santa Clara Valley Water District. It says the
12 water, the water, much of the water used in home in
13 this area is come from the underground aquifer. So
14 that means here's people drinking this selenium
15 polluted water from Permanente Creek. And then you
16 allow for another 17 years, 20 years, to find out if
17 there's a solution, I think that's terrible. Okay.

18 So my request is we can put, ask them to
19 put up a bond, \$50 million bond for the selenium
20 treatment. Number two, shorten time for two years.
21 Instead of two years, you probably need review it
22 every six months. Make sure there's a way -- my
23 understanding, there's a way to treat selenium
24 called reverse osmosis. So it's not total, it's
25 just expensive. But there is a way to do it.

1 So please slow down. If you did not get a
2 chance to see the plant, you should go look at that
3 east material storage yourself. This is much worse
4 now. No reclamation, and that alone west material
5 storage is same. For 70 years, nothing.

6 Thank you.

7 CHAIR PERSON LeFAVER: All right. Thank
8 you.

9 MR. RUDHOLM: Mr. Chair, the next speaker
10 is Mr. Rod Sinks who represents a group. He will
11 be, he spoke last week, he'll be afforded five
12 minutes. Mr. Sinks will be followed by Tim Brand.

13 CHAIR PERSON LeFAVER: Thank you.

14 MR. SINKS: Thank you, Planning
15 Commissioners. I appreciate the opportunity. I'm
16 Rod Sinks, I'm a Cupertino City Council member, but
17 not here as a representative of the city, rather as
18 a member of BACE.

19 The survey results I sent you earlier this
20 morning demonstrate that residents overwhelmingly do
21 not want the pile of mining waste on EMSA as it
22 should stay as a view shed during reclamation.

23 Of the 230 people surveyed, 90 percent
24 want the pile on EMSA removed. Given its proximity
25 to residents, it is no surprise that even more do

1 not want the pile to grow any further. They do not
2 want the so-called view shed that's been proposed.

3 You, as representatives of the people,
4 should honor the wishes of the residents. They have
5 spoken loud and clear.

6 If west material storage area and east
7 material storage area piles came out of the pit,
8 they can damned well go back into the pit.

9 Now, if Lehigh or the County contend that
10 the survey wasn't fair, it wasn't scientifically
11 designed, who has time to do that in the five days
12 or six days between your meetings. This is
13 something the County could have done. An objective
14 survey could be designed. If you want more input, I
15 think the results are pretty clear, but by all
16 means, if you want to do a real survey, the citizens
17 that I represent would welcome such a survey. And
18 my suggestion then is to design it with residents'
19 input and not simply put out another sell job
20 created by Lehigh.

21 Lehigh has had and has used their ample
22 opportunity and PR dollars to promote their plans,
23 including quarterly color mailers to residents. But
24 we see what objective input looks like.

25 Now, with regard to the statement that

1 Bill made, we have been made many promises over the
2 years. In 2004 Hanson's vice-president said, and I
3 quote, about 80 percent of the exposed five acres,
4 this is in EMSA, has now been planted with that
5 wooded vegetation. We will increase density of the
6 woody vegetation. We are supplying water and taking
7 other steps to accelerate growth in order to
8 diminish the visual distinction from the surrounding
9 hillside. The results of that effort should be
10 visible in three to five years.

11 I wonder if Mr. Rudholm might assist me.
12 Is there a way to get my iPhone image up on the
13 screen here? I realize it's probably --

14 I wouldn't mind you just flashing it in
15 front of our directors, then, if nothing else works.

16 CHAIR PERSON LeFAVER: I don't think it's
17 going to work.

18 MR. SINKS: So why don't you just take a
19 look at this, which is on the cover of your book,
20 then, and take a look at that far back corner, that
21 exposed scarred area. That is the west materials
22 storage area.

23 So if you look at this close-up, you will
24 see an artificially shaped barren pile of dirt. Is
25 it really any surprise if you extract limestone,

1 sand and aggregate materials, they've largely been
2 removed, you yield the soft material that can't be
3 used to make cement or concrete products. Basically
4 it's a lot of clay. So how many of you could
5 imagine in your back yard growing anything like the
6 mature trees and vegetation that you see in the
7 surrounding hillsides with just a foot of dirt and
8 no long-term irrigation.

9 Finally, please consider my other email of
10 Tuesday with substitutes for conditions number 21
11 and 77 to better ensure that our water will be
12 protected.

13 Thank you very much.

14 CHAIR PERSON LeFAVER: Thank you.

15 Any questions of Mr. Sinks?

16 Commissioner Vidovich.

17 COMMISSIONER VIDOVIK: Rod --

18 MR. SINKS: Yes, sir.

19 COMMISSIONER VIDOVIK: One of the things
20 I heard is, we're looking at this west material
21 yard, and you're familiar with it obviously. Other
22 than moving it all into the hole, is there a
23 suggestion, a compromise suggestion for that area
24 that would reduce the amount of trucking of the
25 tailings into the hole, reduce that, that would

1 still work out? Could it be a hill there, but maybe
2 not --

3 MR. SINKS: I quite frankly think you have
4 hillsides that are beyond critical there, and those
5 are at the top of the pit. So I would contend that
6 if you're really going to do the job that SMARA
7 requires you to do with respect to those failing
8 hillsides, you really need to fill in that pit
9 effectively. And I don't know how you do it other
10 than by taking what's in the west materials area
11 now, taking that pile, taking the pile in the east
12 material storage area, and using it all to fill it
13 in. You've already got a large volume taken out in
14 aggregate, sand, and limestone obviously.

15 COMMISSIONER VIDOVIICH: You're talking
16 about the north, the main quarry that they're --

17 MR. SINKS: Yeah. I'm talking about the
18 main quarry pit where their land slides
19 predominantly in the top part there bordering
20 valuable parkland.

21 CHAIR PERSON LeFAVER: Thank you.

22 MR. SINKS: Thank you very much.

23 MR. RUDHOLM: The next speaker is
24 Tim Brand, and he will be followed by
25 Matt Baldzikowski. And Mr. Brand spoke last week,

1 so he will be afforded two minutes.

2 CHAIR PERSON LeFAVER: Thank you.

3 MR. BRAND: Good evening.

4 The advantages of having a rec plan cannot
5 be construed as a benefit for an overriding
6 condition, because we will have a rec plan
7 regardless of whether you pass this one. And the
8 first five bullets in the County's statement of
9 overriding considerations are just that. They
10 didn't say that we need this rec plan. They just
11 say that they've discussed the benefits of a rec
12 plan.

13 Ironically, AB3098, which is supposed to
14 help regulate quarries, isn't. Now it's resulting
15 in a plan which is rushed through and is not as good
16 as it should be.

17 There are really two questions, and then
18 I'll sit down there. There's two questions we've
19 asked for a long time, and I don't mean to be
20 insistent, but I think tonight would be a good time
21 to answer 'em. One, the County stated the selenium
22 condition existed since mining began. They stated
23 that tonight.

24 We've asked questions about the baseline
25 for selenium which were never answered. How much

1 contamination is due to the depth of the mine, and
2 how does the discharge correlate to the pumping
3 activities? How much would be mitigated if they
4 don't continue extracting another 200 feet?

5 I asked a question in the first workshop
6 and I think the answer I heard was in the
7 affirmative, can the County limit extraction as a
8 mitigation measure? I think they can; therefore, it
9 isn't right to say that the selenium is
10 unavoidable.

11 And if they limit the extraction from the
12 main pit, you might solve the complaint about the
13 MSA that's been discussed here tonight, and mitigate
14 at least a large part of the selenium problem.

15 The next thing is about the cement plant.
16 And I'm sorry, but we've asked this specifically a
17 couple times, and Lehigh has used an exemption in
18 SMARA that says, operation of a plant site used for
19 mineral processing including associated on-site
20 structures, equipment, machines, et cetera, is
21 subject to all of the following conditions. To be
22 exempt, you have to meet all four of the following
23 conditions, and I'm just going to read one for
24 simplicity. This is Section 2714C, and number 3 is,
25 none of the materials being processed are being

1 extracted on-site. They certainly don't meet that
2 condition. Mr. Pompy is here tonight. Maybe we can
3 get an answer to this question tonight.

4 I appreciate the opportunity to speak
5 again. Thank you.

6 CHAIR PERSON LeFAVER: Thank you.

7 Any questions of the speaker?

8 (No response.)

9 CHAIR PERSON LeFAVER: None. Thank you.

10 MR. RUDHOLM: The next speaker is
11 Matt Baldzikowski of Mid Peninsula Regional Open
12 Space District. And he did not speak last week, so
13 he'll be afforded seven minutes.

14 CHAIR PERSON LeFAVER: Hi. Welcome.

15 MR. BALDZIKOWSKI: Good evening. Thank
16 you.

17 My name is Matt Baldzikowski with the Mid
18 Peninsula Regional Open Space District. I'm a
19 resource planner 3 there with the District. I did
20 submit some additional comments today for the
21 hearing based on what I heard last week.

22 The issues that I raised regard the
23 selenium treatment and the conclusion by the County
24 that the quarry will meet water quality standards at
25 the completion of reclamation. As the district in

1 the San Francisco Regional Water Control Board
2 previously stated, this conclusion remains
3 speculative, at best.

4 Planning staff has also stated that the
5 selenium issue is an existing historic condition
6 since mining began. There is no evidence that was
7 presented to substantiate that comment.

8 The possibility exists that the high
9 levels of selenium documented is instead, a
10 relatively recent phenomena related to the recent
11 deepening of the quarry, interception of
12 groundwater, and the substantial new area of quarry
13 disturbance.

14 References to samples from existing
15 groundwater wells were presented to show that
16 selenium has not historically impacted the vast
17 majority of the wells. While this information is
18 encouraging, it's possible that given recent
19 extensive quarry disturbance, deepening of the
20 quarry pit and unauthorized polluted discharges,
21 that the selenium pollution documented is a more
22 recent phenomenon which has not yet been detected at
23 the wells sampled.

24 Regarding the Permanente re of scenic
25 easement, planning staff stated that the analysis

1 was undertaken which concluded that restoration of
2 the existing impacts to the scenic easement was
3 determined to be infeasible. This analysis was not
4 presented in the EIR, so we can't offer an opinion
5 on that.

6 The more pressing issue for us is that
7 future impacts to this public easement must not be
8 allowed to continue to occur. We do not feel that
9 it's appropriate for the County and the quarry to
10 allow this condition to persist well into the future
11 until final reclamation is proposed.

12 The EIR should include an analysis on how
13 best to immediately protect this public resource
14 held in public trust by the County for 40 years.

15 The east material storage area. We've
16 submitted numerous comments on that. Planning staff
17 stated that the County allowed quarry waste disposal
18 at the east material storage area because Lehigh was
19 unable to continue mining without more storage, and
20 because it was the only option.

21 There were, in fact, other options. A
22 rail line serves the facility. These waste
23 materials could have been hauled away. Placement
24 within the pit is also an option.

25 Regarding economic impacts. Lehigh

1 submitted to the Planning Commission Exhibit 5
2 supplemental packet from last week. This presents
3 beneficial impacts of the quarry in the county and
4 the region to support a statement of overriding
5 determination by the County. The point that we must
6 make is per Lehigh's past submittal, this is
7 Diepenrock, Harrison, August 10th, 2006, the cement
8 plant is a standalone facility that is operated
9 distinct from the quarry. The cement plant
10 processes limestone not only from the quarry, but
11 also from other sites. Indeed, when the Permanente
12 limestone is exhausted, the cement plant will
13 continue to operate by processing material from
14 other sources.

15 For the statement, the positive economic
16 impacts noted are a combined result of the quarry
17 and the cement plant operation. The cement plant is
18 not a part of the project EIR. These beneficial
19 economic impacts from the cement plant would
20 continue well into the future regardless of
21 quarrying on the site, and shouldn't be misconstrued
22 or used in support of a statement of override.

23 Similarly, Lehigh submitted to the
24 Planning Commission that the quarry currently
25 generates approximately two and a half million in

1 annual property taxes to the County, and
2 approximately 135 and a half in total sales
3 collection from the counties. These figures appear
4 to also blend the economic benefits of the quarry
5 with the cement plant, which as stated repeatedly in
6 the EIR, is not part of the Reclamation Plan.

7 The County can't rely upon economic
8 benefits outside of the project to justify an
9 override.

10 Cost for scenic degradation to the region,
11 and the air and water pollution impacts to human and
12 wildlife should be analyzed, calculated and
13 presented in a thorough economic impact analysis to
14 balance the skewed analysis presented by Lehigh.
15 The economic return to the project brings
16 significant environmental impacts that have not been
17 economically analyzed or calculated.

18 Finally, we concur with the comments of
19 the San Francisco Regional Water Quality Control
20 Board that the financial assurance posted by Lehigh
21 must include the cost of water treatment to assure
22 that water quality objectives will be met upon
23 reclamation.

24 In closing, the District believes that the
25 FEIR is deficient in many critical areas with both

1 SMARA and CEQA. Additionally, inappropriate,
2 incomplete and misleading information continues to
3 be interjected into the process. We respectfully
4 request that the County Planning Commission deny the
5 permit -- deny the Permanente Quarry Reclamation
6 Plan and FEIR.

7 I've got a minute-20 still.

8 I heard a couple new things tonight that
9 are of interest. There's a monitoring well that's
10 being proposed? I think that monitoring wells are a
11 good idea. I can't see how a monitoring well can
12 monitor 1,200 acres of disturbance. I've worked at
13 quarries in Santa Cruz County, and I can tell you
14 they require numerous monitoring wells associated
15 with quarries, not a single one.

16 Mr. Howell talked about the 1939 aerial.
17 He correctly identified the east material storage
18 area as an area of industrial operations. That area
19 was not a part of quarry operations until very
20 recently.

21 In 2006 the quarry submitted information
22 that discusses 153 acres of metals plants adjacent
23 to the cement plant. I'm interested in seeing
24 Lehigh identify that 153 acres.

25 The Kaiser knoll was discussed.

1 Henry Kaiser understood the visual impacts
2 associated with the quarry, and the scenic value
3 that it has to the community. I hope everybody else
4 still does.

5 With regard to the treatment condition,
6 this is what I'm just hearing -- or I'm just hearing
7 about the treatment condition that Commissioner
8 LeFaver just read, and I haven't had a time, chance
9 to look at that. I am interested in that. That
10 seems like things are in, with regard to water
11 quality, are moving in the right direction.

12 I do have concerns with two-year time
13 limits. Two years of implementing BMPs. Are those
14 additive? So again, I would still have to go back
15 to the comments of the regional board last week,
16 that that should be included in the financial
17 assurance up front now.

18 Thank you very much.

19 CHAIR PERSON LeFAVER: Thank you.

20 Are there any other speakers.

21 MR. RUDHOLM: The only card I have,
22 Mr. Chair, is one with written comments. I've made
23 copies and I'll pass them out. Those came from
24 Mr. Jorge Perez.

25 CHAIR PERSON LeFAVER: Very good.

1 Are there any questions from the
2 Commission to any of the -- to the Applicant or to
3 the -- anybody here? Or I -- you're pointing and
4 I'm --

5 COMMISSIONER CHIU: (Indicating.)

6 CHAIR PERSON LeFAVER: I do -- yes.

7 MR. HARRISON: Mr. Chairman, I just wanted
8 to let you know -- I'm Mark Harrison representing
9 Lehigh, and I have some concluding remarks where I
10 was going to hope to respond to some of the comments
11 raised on behalf of the company.

12 CHAIR PERSON LeFAVER: Go ahead.

13 MR. HARRISON: First, we've carefully
14 followed this process, as you might expect, followed
15 by the -- taken the process that this staff
16 followed, and we do support staff recommendations
17 largely. We wanted to clarify a couple things.

18 As far as the EMSA and removing that
19 material potentially and putting it in the main pit,
20 that was analyzed in the EIR, and it was determined
21 not to be environmentally superior.

22 More importantly, we think there's
23 questions of feasibility with that associated with
24 the company's vested rights to operate in that area.
25 And that's an important point for us.

1 As far as the conditions are concerned, we
2 support the conditions that are being recommended by
3 staff in their supplemental submittals today, with
4 the exception that we don't think the groundwater
5 monitoring that's been suggested is warranted,
6 simply because nothing in the EIR suggests that
7 there's a potential impact in that area, and we
8 don't think it's sufficiently flushed out to
9 indicate what it would actually add to the process.

10 As respects to the DOC's position on the
11 cement facility and whether or not that should or
12 should not be subject to the reclamation permitting
13 process, we wanted to make it clear that that's not
14 Lehigh's position, and it's not just staff's
15 position, but that's the formal position that the
16 director, the assistant director of the DOC has
17 taken on that point. And that letter is in the
18 record of your proceedings.

19 As respects to the comment that the site's
20 a Super Fund site, I believe we had passed out to
21 the Commission a recent determination by the EPA
22 actually just today that the site does not warrant
23 Super Fund treatment, and does not present a threat
24 that would warrant that treatment as contended.

25 And then lastly, there was a comment made

1 by Mr. Howell concerning the timing of the
2 reclamation of the EMSA, and then there was a
3 following comment that this was different than that
4 which was set forth in the Rec Plan, but actually
5 it's pretty identical to what was set forth in the
6 Rec Plan. And I direct your attention to page 44 of
7 the Rec Plan, and page 214 of the EIR which
8 indicates that final reclamation of the EMSA will
9 commence by 2015, approximately two years from now,
10 and I think that's consistent with what Mr. Howell
11 said.

12 And finally, as respects economic
13 benefits, the economic benefits of the cement plant
14 are looked at in terms of the economic benefits
15 supporting an override for this project. And the
16 reason that's the case is because while the cement
17 plant and the quarry are subject to separate
18 permitting, their economic impacts are, indeed,
19 blended.

20 So I'd be happy to answer questions that
21 the Commission may have.

22 CHAIR PERSON LeFAVER: Any questions?

23 Commissioner Vidovich.

24 COMMISSIONER VIDOVIK: What is the
25 economic harm to Lehigh if the Reclamation Plan

1 encompasses non-quarried areas that are subject to
2 land sliding because of the quarrying, or if they
3 include the cement plant and the reclamation result
4 is a cement plant, you don't have to have it open
5 space, but the reclamation result is a cement plant,
6 then it can be dealt with in an entirety. Just to
7 include that in the reclamation boundary, what is
8 the economic harm to Lehigh?

9 MR. HARRISON: As respects disturbed
10 areas, all disturbed areas, I think identified by
11 Mr. Pompy, EOC and the staff have been included in
12 the rec plan.

13 The reason why -- I can't speak to the
14 economic harm of not putting the cement plant in the
15 rec plan, I can only speak to the legalities which
16 drive that process. And under SMARA, it's not to be
17 included in the reclamation plan because it's
18 specifically exempted from SMARA. So one puts into
19 SMARA the things that are required to be put into
20 SMARA.

21 COMMISSIONER VIDOVIK: So you don't have
22 any evidence that there's any economic harm if the
23 decision making body decided to include some areas
24 that may be on the edge of inclusionary discussion?

25 MR. HARRISON: Yeah. What I can say, as a

1 legal matter, I don't believe this body has the
2 authority to put the cement plant in the reclamation
3 plan.

4 CHAIR PERSON LeFAVER: Questions, other
5 questions.

6 Commissioner Chiu.

7 COMMISSIONER CHIU: Good evening.

8 MR. HARRISON: Good evening.

9 COMMISSIONER CHIU: Actually, I was
10 writing down this question, so -- based on your last
11 statement. So your belief as a matter of law that a
12 reclamation plan is a separate project from mining
13 operations, what law? It's been kind of a
14 fundamental threshold issue, one that the EIR is
15 sufficient or not as to whether or not it should
16 include the cement operation or not. Several
17 speakers talked about that.

18 Can you just -- so that it doesn't sound
19 conclusory, through the Chair and various members of
20 the staff that said, we're not considering the
21 mining operations, we're just considering the
22 Reclamation Plan. Can you just state for the record
23 what the -- why that is so.

24 MR. HARRISON: The primary reason that
25 it's so is based on Constitutional law that flows

1 from the Federal and State constitutions, and has
2 been discussed in numerous cases. But the leading
3 case in California is a case called Hanson Brothers
4 Enterprises. County Counsel is very familiar with
5 it and analyzed it in detail as they've developed, I
6 believe, their legal approach to this. And it's
7 based on the fact that when one has an operation
8 that's a legally vested right; and in this case,
9 February of last year the Board of Supervisors
10 determined that mining operations were legally
11 vested and entitled to continue without a permit,
12 then you can't require an additional permit to
13 entitle them and so forth.

14 So what SMARA did, and SMARA has a
15 specific provision in it that says nothing in SMARA
16 is intending to abridge Constitutional rights. That
17 was necessary to make it legal. It said, it can
18 control the way that you treat the land after it's
19 mined, but you cannot control a preexisting vested
20 mining rights through the operation of SMARA. So
21 it's both in the Federal, State Constitution, and
22 it's in SMARA, and it's in cases construing it.

23 COMMISSIONER CHIU: Thank you.

24 CHAIR PERSON LeFAVER: Commission Bohan.

25 COMMISSIONER BOHAN: Yes. Today in our

1 supplemental packet received something from the
2 staff that's dated May 31st, and it has in blue, the
3 changes that would be put into the Conditions of
4 Approval. There are a number of them which you had
5 suggested, and I think they did not recommend going
6 along with any of those except one. What kind of
7 problems will that create from your standpoint?

8 MR. HARRISON: Probably, we suggested two
9 significant changes to the conditions. The first
10 was that the planning manager in this case, I
11 believe Mr. Gonzales, would be authorized to make
12 minor adjustments to the schedule. And here's the
13 reason for that, is this rec plan has to come before
14 the Planning Commission in an annual report every
15 year. So every year this Commission gets a chance
16 to look at everything.

17 But given the number of conditions and the
18 details of the conditions, and the specific timing
19 for specific activities, we thought it was very
20 important that we have an opportunity to work with
21 Mr. Gonzales and the staff, and he's authorized to
22 make adjustments.

23 And what we think the most common thing
24 would come up is, a lot of our activities will be
25 subject to consultation or review by other agencies,

1 such as the Department of Fish and Game. And if
2 they delay, and sometimes due to staffing reasons or
3 others they do delay, we might have to miss a
4 deadline and we have no recourse but to schedule a
5 hearing before this body to make a change. So we
6 think that's important.

7 And the other one that we thought was
8 important is the conditions now talk about
9 consultation with Fish and Game, and we wanted to
10 make it notification of Fish and Game, because
11 that's primarily how the process works. You notify
12 them of what's going on, they respond with concerns
13 or comments. I'm more comfortable with that than
14 consultation, because I don't know when consultation
15 ends when it's informal, and I don't want the
16 company to be in a position of it being said, you
17 didn't fulfill a condition.

18 CHAIR PERSON LeFAVER: Okay. Commissioner
19 Bohan, any other questions?

20 COMMISSIONER BOHAN: Uh-huh.

21 CHAIR PERSON LeFAVER: Any other
22 questions. Thank you.

23 MR. HARRISON: Thank you. And,
24 Mr. Chairman, I do have a write-up of some of my
25 testimony I'd like to put in the record.

1 CHAIR PERSON LeFAVER: Thank you.

2 I have a question of Mr. Pompy from the
3 State since you're here.

4 You've heard some testimony about, again,
5 including or not including the ongoing quarry
6 operations within the reclamation plan. And you've
7 generally talked about it in your statement and so
8 forth, and the reasons why it was not. And,
9 perhaps, you could again go over that a little bit
10 given the testimony that's been given here this
11 evening, if you would, please.

12 MR. POMPY: Yeah. I think you're
13 referring to the cement plant operations.

14 CHAIR PERSON LeFAVER: Yes.

15 MR. POMPY: And I think what happened over
16 time, this is, you know, somewhat of a unique
17 situation. It's a very old quarry, opened a long
18 time ago. And when it was originally came under
19 SMARA in 1985 and the Rec Plan was approved, cement
20 plant operations were not part of that reclamation
21 plan. And then it came up again when this process
22 started to get this reclamation plan going. And I
23 think it was the quarry operator working with the
24 County. The County, the quarry operator has
25 maintained that that's a separately permitted, or

1 separate operation, separate from the quarrying
2 operation and the mining, and the County concurred
3 that the cement plant would not be part of the
4 reclamation plan.

5 And we did, the County did discuss it with
6 the Office of Mine Reclamation and eventually, based
7 upon further information provided by the operator,
8 it was the Office of Mine Reclamation's decision to
9 concur with the County's decision.

10 CHAIR PERSON LeFAVER: So you're satisfied
11 that -- because you did indicate -- it did indicate
12 that all issues raised have been addressed, and that
13 this is one of the better plans for reclamation that
14 the State has seen and your office has seen, that
15 the path that they've taken is the correct one.

16 MR. POMPY: Yes.

17 CHAIR PERSON LeFAVER: Thank you.

18 MR. POMPY: And I think -- I would also
19 add that in approving this reclamation plan, it does
20 give the County a way of more -- a more of an
21 ability to regulate the what's going on out there.

22 In the past, because there was lack of a
23 good reclamation plan, things like the east material
24 storage area happened. Now with this plan, those
25 kind of things cannot happen without coming back to

1 the County and asking for an amendment to that
2 particular plan. So I think there's some bene- --
3 there's a lot of benefit to the community and to the
4 County in getting this reclama- --and getting this,
5 bringing this mine into compliance with SMARA.

6 CHAIR PERSON LeFAVER: Thank you.
7 Commissioner Vidovich.

8 COMMISSIONER VIDOVICH: Thank you for
9 coming, sir.

10 The east materials yard did occur, and
11 there was a reclamation plan that didn't allow it,
12 and they got cited for it. I mean, so things
13 happen. I think they put it there because they were
14 running out of room, and it's better to ask for
15 forgiveness than permission, so -- and our County
16 is, you know, we're pretty lenient, I think, and
17 we're -- it takes a long time to get through the
18 system here, but I think everybody here wants to
19 work together.

20 What's -- I see that your first call was
21 to put the cement plant in, and I'd heard a lot
22 people talk about it. And to me to it looks like
23 it's an integral operation. It looks like on the
24 north side they cut pretty steep, definitely steeper
25 than would ever be stable. That will never, never

1 be stable because it's so far down and steep.

2 But it seems to me that if you're going to
3 have a reclamation plan, you might want your
4 boundary to include areas that could be affected.

5 And the cement plant's right in the middle of
6 everything, but reclamation allows you to say, okay,
7 my reclamated use is a cement plant there,
8 and we'll bring the material from outside.

9 It seems to me that if I was not hurting
10 Kaiser, and they haven't had any objection, or
11 saying there is any objection or harm by including
12 those areas, and the reclamation plan is recorded
13 against those areas, it just gives us a little bit,
14 you know, what you're saying, more control over what
15 could happen there. And so I don't -- would you see
16 it a harm to include those areas as part of the
17 reclamation plan?

18 MR. POMPY: Well, again, this is a
19 decision of the lead agency, the County, and the
20 County has made a decision to not include the cement
21 plant in, as part of the reclamation plan. And our
22 office has made a determination that that's not
23 inconsistent with the Surface and Mining Reclamation
24 Act, the County's decision on -- in this particular
25 case.

1 COMMISSIONER VIDOVICH: But actually,
2 we're the final decision makers, I think.

3 MR. POMPY: Yes, the County is,
4 definitely.

5 COMMISSIONER VIDOVICH: Four of us are.

6 AUDIENCE MEMBER: Do the right thing.

7 CHAIR PERSON LeFAVER: Any other
8 questions.

9 Commissioner Ruiz.

10 COMMISSIONER RUIZ: I have a follow-up
11 question.

12 Previously we heard from the Lehigh legal
13 counsel that the decision was made by DOC to not
14 include the cement plant, but I thought you heard
15 that the -- your statement is that the County. So
16 I'm unclear of whose decision it has been to not
17 include the cement plant. And maybe I just missed
18 that information, but I'm unclear.

19 MR. POMPY: Okay. Going back in history a
20 little bit, our office does have oversight
21 authority, so we can disagree with the lead agency
22 and take independent enforcement action against a
23 mining operation.

24 And I think what happened in this
25 particular case a few years back under a different

1 assistant director who was newly appointed, started
2 down the path of saying that in OMR's opinion, that
3 the cement plant should be part of the reclamation
4 plan. And, again, based upon further information
5 provided by the mine operator, our office, the
6 Office of Mine Reclamation, reversed the decision on
7 whether or not the cement plant should be, and
8 concurred with the County determination that it
9 doesn't have to be part of the Reclamation Plan.

10 MR. RUDHOLM: Mr. Chair --

11 CHAIR PERSON LeFAVER: Yes.

12 MR. RUDHOLM: -- I have to concur with the
13 way it was characterized by Mr. Pompy. When we were
14 looking at this situation in 2006 under the director
15 that was here at the time, we looked at the
16 information, I think, very carefully, and came out
17 on the side that it clearly is a distinct land use.
18 The cement plant, while it's a beneficiary of the
19 quarry by the fact that it uses the minerals, it's a
20 distinct land use separately permitted, and
21 separately subject to CEQA. And because there's
22 manufacturing that takes places, it's not directly
23 involved in the actual mineral extraction process,
24 that it was not to be included in the rec plan when
25 we had them submit for an amendment to the rec plan.

1 CHAIR PERSON LeFAVER: Thank you.

2 And you concur with that, I assume,
3 because the State did come back in a letter in 2007?

4 MR. POMPY: Yes, that's correct.

5 CHAIR PERSON LeFAVER: Okay. Thank you.

6 Other questions.

7 (No response.)

8 CHAIR PERSON LeFAVER: No other questions.

9 Thank you.

10 MR. POMPY: Thank you.

11 CHAIR PERSON LeFAVER: Other questions of
12 people that are here?

13 Do we have any other speakers?

14 Commissioner Ruiz.

15 COMMISSIONER RUIZ: One of the actions
16 that we're asked to take is to make a finding of, a
17 statement of overriding considerations, and one of
18 those overriding considerations would be the
19 economic benefit, and I'm understanding that the
20 economic benefit includes the cement operations
21 and -- or am I misunderstanding that? I think it's
22 including and I think that's what I've heard.
23 However, throughout this process we're asked to
24 focus only on the reclamation plan limited to -- and
25 to exclude the cement operations. So it's confusing

1 for me.

2 CHAIR PERSON LeFAVER: So why don't you,
3 staff, explain.

4 MR. EASTWOOD: I'll start, but then give
5 it to County Counsel.

6 So in the resolution you have, there's
7 actually two areas where there's a statement of
8 overriding considerations. Staff and Counsel has
9 prepared within the resolution itself a series of
10 findings made by staff of overriding considerations,
11 and they mainly have to do with reclaiming the site,
12 that reclaiming the site, posting a financial bond.
13 Meeting the intent of SMARA is the overriding
14 consideration in lieu of knowing there are
15 significant interim impacts. So know that within
16 the resolution itself, there are overriding
17 considerations that were put together by county
18 counsel that talks about reclamation by itself.

19 Now, the mine operator has submitted
20 independently from County Counsel and County staff
21 their own statement of overriding considerations,
22 and that's very common throughout California. And
23 in the county in the past when the objective of CEQA
24 is to reconcile what are the benefits of the project
25 versus knowing there's significant impacts, it's

1 very traditional to ask the proponent, be it the
2 applicant, the owner, the mine operator to submit
3 their own statement of why they believe their
4 project has its benefits.

5 So separate from the statement that's
6 prepared by county counsel, there is as an
7 attachment, which has been alluded by many speakers,
8 a statement put into the record by the mine operator
9 which alludes to those economic benefits.

10 And, again, that's for the consideration
11 of the Planning Commission. When you say what are
12 the benefits of the project, in making that
13 statement of overriding considerations, you can
14 consider that also as a submittal from the mine
15 operator as benefits, also.

16 CHAIR PERSON LeFAVER: Did you understand
17 that? It wasn't very clear. I'm sorry.

18 MR. KORB: Let me just take a shot at it.
19 Not because the issue wasn't well explained, but
20 because it's just a complicated issue.

21 But you're required under CEQA to make a
22 the statement of overriding considerations for any
23 impact, significant impact that cannot be mitigated
24 as a consequence of your approval of the project if
25 you're going to approve the project.

1 The contents of the statement are yours.
2 You can use the contents that are suggested in the
3 resolution by staff in whole or in part. You can
4 add any additional factors that you believe based on
5 your experience and the testimony and the other
6 evidence that has been presented in this hearing,
7 you may wish to add. That includes the information
8 that is suggested by the quarry operator. But
9 you're not required to add any of it, you're not
10 required to use all of what has been recommended by
11 staff. You can use any portion of it that you think
12 is significant or sufficient to constitute a
13 statement of the reasons why it is necessary in your
14 opinion, if that is your opinion, to go forward and
15 approve the project, notwithstanding the fact that
16 the environmental process has identified
17 environmental impacts that cannot be mitigated to a
18 less than significant impact.

19 COMMISSIONER CHIU: Mr. Chair.

20 CHAIR PERSON LeFAVER: Go ahead.

21 COMMISSIONER CHIU: Since there are no
22 more speaker cards, and I don't know if the -- my
23 colleagues have any other questions of anyone in the
24 audience, can we -- can I move to close the public
25 hearing so we can begin discussion on the positions.

1 CHAIR PERSON LeFAVER: Well, I just want
2 to make sure that if anybody has any questions, or
3 need clarification while the public hearing is open,
4 and the people out here, that we can do so. So if
5 there are none, at this point, I'll close the public
6 hearing.

7 Thank you.

8 The public hearing is now closed. We have
9 discussion.

10 The -- if you'll look on page 7 of your
11 staff report, which is item number 1, you'll notice
12 that there are four recommended actions concerning
13 the -- this particular project. And item number 1
14 is to certify the Final Environmental Impact Report.
15 Number 2 is to make the required findings per the
16 California Environmental Quality Act, CEQA, and
17 adopt a Statement of Overriding Considerations.
18 Number 3 is adopt the proposed mitigation monitoring
19 and reporting program. And then number 4, which
20 would be to approve the Reclamation Plan subject to
21 compliance with Conditions of Approval.

22 Within that item number 4, compliance with
23 Conditions of Approval are all the proposed
24 mitigation monitoring and reporting program.

25 So let's start our discussion with the

1 Environmental Impact Report. And the reason I say
2 that is because, number one, it's first on the
3 agenda. And number two, it is an information
4 document; that is, in the information that has been
5 presented to us, it gives you information about the
6 project as much as it can, and it is not a
7 de-decision making document. That is, it is only an
8 information document and includes items that would
9 formally be adopted under the approval of the
10 Reclamation Plan.

11 So let's start with you. And the basic
12 question there in the Environmental Impact Report
13 is: Does it give you all the information you need.
14 So let's start from there.

15 Go ahead, Commissioner Vidovich.

16 COMMISSIONER VIDOVICH: All right. And I
17 asked the question how we're going to proceed, and I
18 think there's -- the environmental document covers a
19 project, And I think there are issues that the
20 conditions relate to what the project is, what we're
21 approving that we need to decide.

22 One of them, I made some, you know,
23 discussion and argument about, and maybe we can take
24 these one at a time and the Commission can talk
25 about them, because it's a very, very important

1 project. It's a worthwhile endeavor, but it's also
2 smack in the middle of, you know, a very special
3 area.

4 The first thing I would say, you know, is
5 what is the size of the reclamation area? And I
6 asked the staff, you know, what, you know, what do
7 we have control over? And they were very specific
8 that we only have control over that boundary.

9 I know as a fact, and there's testimony,
10 that outside of the north boundary there are slides
11 that are being caused, or there's instability, it
12 may not be sliding, it's natural ground, but there's
13 instability that exists because you have a thousand
14 foot wall where the main hole is. And so I think,
15 and I'm only one person, I think that we should look
16 at the size of the reclamation area to include that
17 north area.

18 I also think that the cement plant is a
19 fine end use. It's allowed under reclamation. We
20 don't have the choice of what the end use is, but I
21 think the cement plant, it is better to include it
22 in as part of the scope of reclamation that's there.
23 And if the end result is for the cement plant to
24 stay, you know, you can have an overlay or something
25 that has separate zoning. And I think it's within

1 our jurisdiction.

2 So I would ask this Commission if they
3 want to increase the boundary of the reclamation
4 area to include the entire north area of the quarry
5 to the property line which abuts open space, which
6 abuts our easement, and to include the cement plant
7 and possibly some land to the south where there is
8 impact. And I don't know what the other
9 commissioners think about it, but that's -- I'd like
10 to see what that is first.

11 CHAIR PERSON LeFAVER: Commissioner Chiu.

12 COMMISSIONER CHIU: Thank you, Mr. Chair.

13 Commissioner Vidovich, I don't know if you
14 know, and I would throw this out to staff as well,
15 if we change the boundary areas, would the EIR still
16 be sufficient, or would the new area need to be
17 included which would require either a supplemental
18 or an additional EIR, and whether or not that has to
19 be recirculated?

20 COMMISSIONER VIDOVICH: My reason to
21 change it is basically from the information the EIR
22 gave me. The EIR gave me this information that we
23 have instability at the north. The cement plant is
24 there. There's been controversy whether it should
25 be included or not. I don't see that you -- I see

1 the EIR as valid and it's doing its job. That's
2 what I see.

3 COMMISSIONER CHIU: So you're saying that
4 since the EIR tipped you off to the northern area,
5 that it by definition includes the northern area, so
6 it would be sufficient.

7 COMMISSIONER VIDOVICH: I think it's a
8 proper justification for our making a slightly
9 different decision than the staff to be conservative
10 and include those areas.

11 CHAIR PERSON LeFAVER: Staff?

12 MR. KORB: I may screw this up, so I'm
13 waiting for staff to jump in just in case.

14 But under SMARA as has been described to
15 you already, the operator is required to have a
16 reclamation plan that covers the area in which
17 mining operations have occurred, in which there has
18 been land disturbance as a consequence of mining
19 operations. And that is the extent of the area in
20 which reclamation is required to occur.

21 If Lehigh, for example, were to expand or
22 want to expand its mining operations beyond the area
23 of its defined reclamation plan into other areas
24 that they own, and other areas where they may be
25 vested to operate, but, in fact, have not operated

1 yet, then Lehigh would be required to seek an
2 amendment to their reclamation plan before they
3 initiate mining operations.

4 In fact, that is one of the reasons why
5 this process has been as controversial as it is, and
6 that is because Lehigh actually had been operating
7 outside of its original reclamation plan. That
8 cannot occur. We cannot allow that to occur in the
9 future.

10 So the notion of expanding the boundary of
11 a reclamation plan really suggests that there is
12 mining activity occurring there, and that there has
13 to be reclamation activities defined for that area.
14 Nothing in the EIR addresses that. I mean, moving a
15 boundary, as staff mentioned, doesn't really make a
16 difference with regard to environmental evaluation.
17 But implying that a boundary for reclamation has
18 been moved is implying that there has to be
19 reclamation activity within that additional area,
20 and nothing has been defined in the project or
21 studied with regard to reclamation in an area beyond
22 the boundaries that are in the plan that is before
23 you now.

24 COMMISSIONER VIDOVICH: So if you ask two
25 lawyers you get two different opinions.

1 But if their mining has created
2 instability, to me that's an impact. And so their
3 mining has created instability that spreads to the
4 an area that they're not allowed to mine in, I would
5 say you would want to include that area for
6 jurisdictional purposes into the reclamation plan.

7 And the testimony has been, and the
8 reports all say that the instability goes all the
9 way out there, it goes beyond to the County property
10 and the instability was created by the removal of
11 material in a severe way, steep.

12 MR. KORB: Okay. Then the simple answer
13 to your question is that reclamation activities in
14 that area have not been studied in this
15 environmental document. So in order to expand the
16 boundary to do additional reclamation in the area
17 that you're referring to, it would be necessary to
18 go back and amend the EIR, recirculate it, take
19 additional comments, respond to the comments, and so
20 on.

21 COMMISSIONER VIDOVIK: I disagree.

22 CHAIR PERSON LeFAVER: Okay. County
23 Counsel indicated.

24 Go ahead.

25 COMMISSIONER CHIU: I wanted to -- well,

1 when the public hearing was closed, I want to ask
2 County Counsel if they concurred with counsel for
3 Lehigh in their response to my last question to the
4 counsel for Lehigh, which was that as a matter of
5 law, the reclamation plan is a separate project from
6 the mining operations.

7 MR. KORB: In general, yes, we do concur
8 with that. That is the reason why the project is
9 defined as reclamation and not as operations in the
10 EIR.

11 COMMISSIONER CHIU: So just to be
12 perfectly clear, so that we do not run afoul of the
13 Federal Constitution, the State Constitution, and
14 the State Mining Act, Reclamation Act, we must
15 consider the project as limited to the reclamation
16 plan. And so that -- is that correct?

17 So we cannot include the cement and the
18 quarry as some of the speakers have requested as a
19 matter of law?

20 MR. KORB: That's correct.

21 COMMISSIONER CHIU: Thank you.

22 CHAIR PERSON LeFAVER: Commissioner
23 Couture.

24 COMMISSIONER COUTURE: So going back to
25 the EIR, and they said that there were -- the

1 findings were that there were -- to move the EMSA
2 back into the quarry was not economically feasible.
3 If it -- I'm trying to understand why that wouldn't
4 be economically feasible from the standpoint of if
5 it went out, it could go back in. It doesn't seem
6 like it's that big of a deal. I don't -- and it
7 seems like it's already been studied with the EIR so
8 it could be done if we thought it should be done.
9 Am I mistaken?

10 MR. EASTWOOD: I'll start.

11 The backfill alternative was evaluated in
12 the EIR. But keep in mind, it didn't receive a full
13 environmental analysis. It was used for comparison
14 purposes. So the EIR itself did not include a full
15 CEQA disclosure, environmental analysis of an
16 alternative reclamation plan that would entail
17 backfill. If that is the proposal on the table, it
18 would require a new CEQA analysis and likely a new
19 EIR.

20 COMMISSIONER COUTURE: Thank you.

21 CHAIR PERSON LeFAVER: Commissioner Chiu.

22 COMMISSIONER CHIU: Thank you.

23 One of the speakers, I believe it was
24 either Council Member Chang or another speaker
25 indicated that there's a possibility that reverse

1 osmosis may be a process that could be used in the
2 treatment of selenium. Does the staff have any
3 research on that, and was that included in the EIR?

4 MR. EASTWOOD: It was in attachment --
5 attachment to your staff report, I'm sorry. Your
6 resolution is the feasibility study that was
7 conducted by CH Tom Hill at the request of the
8 County to evaluate the full range of treatment
9 options that exist today that are technically
10 feasible to treat selenium, and one of those
11 treatment options was reverse osmosis.

12 My recollection generally is reverse
13 osmosis is much costlier than some of the other
14 treatment methods that are out there. The
15 consultant looked at a variety of methods that go
16 from wetlands to biological treatment to chemical
17 treatment to reverse osmosis in terms of a cost
18 benefit analysis, /my recollection, and again it's
19 in an attachment to your resolution, is that
20 specific technology was much more expensive than the
21 other ones that were out there.

22 And as a preferable technology, whether
23 the costs were still very high and still a lot of
24 unknowns was a different type of treatment method.

25 COMMISSIONER CHIU: And the standard that

1 we have to use with evaluating whether or not there
2 are mitigation options for environmental impact is
3 its feasibility both financially and in
4 scientifically, or could -- if staff wants to just
5 clarify what the standard is.

6 MS. PIANCA: The standard is whether or
7 not the proposed mitigation measure or project
8 alternative is feasible. And "feasible" means
9 capable of being accomplished in a successful manner
10 within a reasonable period of time, taking into
11 account economic, environmental, legal, social and
12 technological factors.

13 COMMISSIONER CHIU: So understanding that,
14 so it's a requirement of this Planning Commission to
15 determine whether or not the EIR in certifying it
16 and accepting it as an environmental document has
17 adequately addressed reverse osmosis as well as the
18 other technologies that have been looked at to try
19 and mitigate the selenium issue. And the EIR has
20 come to the conclusion that there are no feasible
21 options considering all -- consider the definition
22 of "feasibility" which County Counsel has just
23 described. Thank you.

24 CHAIR PERSON LeFAVER: And, Commissioner
25 Chiu, again I would read page 7 where the staff

1 summarized that very specifically, and they did look
2 into it quite heavily.

3 COMMISSIONER CHIU: Yes. Thank you.

4 I'm saying certain things so that the
5 public can be fully aware of how I'm, at least for
6 myself, how I'm step-by-step coming to each
7 conclusion that, for example, the public has asked,
8 well, can we -- why is it limited to the Reclamation
9 Plan, so I've tried to provide those that have
10 suggested that an answer under the law and we have
11 to follow the law that we can't. And so I
12 appreciate that.

13 And also for the public's benefit, there
14 has been suggestions that, well, you know, there's a
15 possibility to treat the selenium in the water, and
16 there is reverse osmosis, there's other options and
17 things like that. And, again, as the Chair just
18 pointed out, the staff and the EIR have indicated
19 that much to my regret, my deep, deep concern and
20 regret, that the technology and the application of
21 that technology to create a feasible option to take
22 care of the selenium in the water at this time does
23 not exist.

24 And so although that -- I've heard over
25 and over and over again that you're extremely

1 concerned by the selenium in the water, and we are,
2 that at this time the best we can do is to keep
3 checking to see if it becomes feasible under the
4 definition provided under the law, and to keep
5 monitoring and checking. That seems like the best
6 we can do. So that's the purp-, that was the
7 purpose of my comment.

8 Thank you, Mr. Chair.

9 CHAIR PERSON LeFAVER: Thank you.

10 Other questions about the Environmental
11 Impact Report.

12 And again, the question here is: Does it
13 give you all the information that you need? Has it
14 covered all the information that you want? Is there
15 any additional information that could have been, or
16 should have been brought forth in your opinion? And
17 does it adequately give you, A, the mitigation
18 measures, or -- and, B, if it's not the mitigation
19 measures, reasons why there are such significant
20 impacts that they cannot be overcome.

21 Commissioner Vidovich.

22 COMMISSIONER VIDOVIK: Just as a matter
23 of process, the conditions seem to be tied with the
24 EIR. Can we go through motions on the conditions?
25 Because some of us, you know, if we just have it

1 done then we could vote for the -- we gotta vote for
2 the EIR, but we want to know what we're voting for.
3 And I think the conditions, I don't want the
4 attorneys to say, well, you voted for the EIR, now
5 you can't change the conditions. I don't know what
6 he's going to say --

7 MR. KORB: I'm not going to say that.

8 COMMISSIONER VIDOVICH: Pardon me?

9 CHAIR PERSON LeFAVER: He's not going to
10 say that.

11 COMMISSIONER VIDOVICH: I don't know what
12 he's going to say, but I think one easy process if
13 we're going to have a consensus because we all have
14 different ideas is to maybe go through a motion and
15 dispose of, you know, if I have a crazy idea,
16 dispose of it so we can just move on and see where
17 the Commission is.

18 CHAIR PERSON LeFAVER: We actually, we can
19 do it that way.

20 Counsel.

21 MR. KORB: You can. What I would -- I
22 would strongly suggest first that you take action on
23 the EIR, which then makes it possible for you to
24 take whatever action you wish to take on the plan,
25 including the Conditions of Approval.

1 COMMISSIONER VIDOVICH: Including making
2 it a bigger area if we wanted to, anything we want.

3 MR. KORB: Yes --

4 COMMISSIONER VIDOVICH: Okay. Thank you.

5 MR. KORB: -- that would be an issue, yes.

6 CHAIR PERSON LeFAVER: Commissioner
7 Schmidt.

8 COMMISSIONER SCHMIDT: I just have a sort
9 of general kind of question here.

10 If we approve this, whatever we approve,
11 we will be reviewing annually what's happening out
12 there. Will we be able to in the future add more
13 mitigating measures, more conditions if things are
14 not proceeding well?

15 MR. EASTWOOD: There is no requirement for
16 an annual status report. If it's found that the
17 reclamation plan needs to be modified, the Planning
18 Commission could schedule a compliance hearing to
19 review that reclamation plan, and if there -- you
20 know, one salient term is the requirement to
21 evaluate selenium treatment, and if it's deemed
22 feasible and if BMPs aren't working, that that's a
23 reality, that's presumed in the -- presumed in the
24 mitigation measures and the conditions.

25 So parallel with that, again, if during

1 that annual monitoring it's discovered that the
2 reclamation plan is not working, or it needs to be
3 changed to be consistent with SMARA, there could be
4 scheduled a compliance hearing, somewhat similar to
5 what you have with reaffirmation modification
6 hearings with use permits to evaluate if the
7 reclamation plan needs to be changed.

8 MR. RUDHOLM: Mr. Chair, I'd like to add
9 on some comments, too. What Commissioner Schmidt
10 was alluding to is an enforcement action, and we
11 wouldn't have to wait for a hearing or a meeting
12 before the Planning Commission. That type of
13 process could get initiated following an inspection,
14 which we do every year.

15 CHAIR PERSON LeFAVER: Commissioner
16 Vidovich.

17 COMMISSIONER VIDOVICH: Okay. If we're
18 ready, then, we're saying that the conditions are
19 open season, so I would move to certify the
20 Environmental Impact Report. I make the required
21 findings for the California Environmental Quality
22 Act, including the adoption of the Statement of
23 Overriding Considerations. And I, in this case, I
24 specifically would make theirs and ours, because I
25 think that gives us a more bulletproof document.

1 And that would be my motion.

2 CHAIR PERSON LeFAVER: I'm not quite -- I
3 want to clarify the "ours" and "theirs." I wasn't
4 quite sure.

5 COMMISSIONER VIDOVIICH: The County created
6 overriding consideration language.

7 CHAIR PERSON LeFAVER: Yes.

8 COMMISSIONER VIDOVIICH: The Applicant, and
9 they're worried about a legal challenge, they spent
10 time and wrote their overriding consideration
11 language.

12 CHAIR PERSON LeFAVER: Okay.

13 COMMISSIONER VIDOVIICH: I haven't heard
14 anything from the County objecting to theirs. So
15 that is protection from being sued, that language, I
16 think, and, you know, we have to make them to be
17 able to certify the plan because there are impacts
18 that can't be mitigated.

19 CHAIR PERSON LeFAVER: Okay. There's a
20 motion.

21 MR. KORB: Mr. Chair --

22 CHAIR PERSON LeFAVER: Go ahead, please.

23 MR. KORB: Through the maker of the
24 motion, would you be adding to go that motion the
25 adoption of the proposed mitigation monitoring and

1 reporting program which it comes under the
2 environmental --

3 COMMISSIONER VIDOVIICH: I was going to do
4 it as a second motion because usually you guys say
5 do that as a separate motion.

6 MR. KORB: Any way you want it. I just
7 want to make sure it gets covered.

8 COMMISSIONER VIDOVIICH: But we can add
9 that in as part of the motion.

10 CHAIR PERSON LeFAVER: Is there a second?

11 COMMISSIONER BOHAN: Clarification. This
12 does not modify the reclamation area, as you were
13 discussing earlier?

14 COMMISSIONER VIDOVIICH: We're going to do
15 that -- we're going to discuss that as --

16 COMMISSIONER BOHAN: Yeah, but it's not in
17 this.

18 COMMISSIONER VIDOVIICH: No this doesn't do
19 any of that.

20 COMMISSIONER BOHAN: Not in this motion.
21 I just want to make sure we all understand that.

22 CHAIR PERSON LeFAVER: Do I get a second
23 from you?

24 COMMISSIONER BOHAN: Yeah, second.

25 CHAIR PERSON LeFAVER: Okay. Sorry. He

1 looked like -- there's a motion and second to
2 certify the Final Environmental Impact Report, make
3 the required findings per the California Quality,
4 Environmental Quality Act, CEQA, and adopt a
5 Statement of Overriding Considerations for those
6 environmental impacts identified as significant and
7 unavoidable, and, three, adopt a proposed mitigation
8 monitoring and reporting program. There has been a
9 motion and a second.

10 Question?

11 Commissioner Schmidt.

12 COMMISSIONER SCHMIDT: We can ask
13 questions, I presume.

14 CHAIR PERSON LeFAVER: Yes.

15 COMMISSIONER SCHMIDT: Does staff want to
16 see the statement of overriding considerations from
17 the Applicant included? What does staff have to say
18 about that?

19 MR. KORB: Well, I'm not going to speak
20 for the staff, but what I believe I heard was that
21 staff brought it forward, that they made -- pointed
22 out the fact that it is not unusual for the
23 proponent of a project that's subject to
24 environmental review to recommend their own. And as
25 far as I could tell, staff could take it or leave

1 it. If the Commission wishes to include it, I think
2 staff is satisfied, but if they want to say
3 something, they should.

4 MR. EASTWOOD: As your counsel told you,
5 it's your overriding statement of overriding
6 considerations to make, so there's no opinion from
7 staff.

8 CHAIR PERSON LeFAVER: Question. Okay,
9 question, Commissioner Chiu, any question?

10 COMMISSIONER CHIU: No, I have no
11 question.

12 CHAIR PERSON LeFAVER: Commissioner Ruiz,
13 do you have a question?

14 COMMISSIONER RUIZ: Yes.

15 So the action, just so I'm clear, is the
16 certification of the EIR, and also the, did you say
17 the adoption of the mitigation monitoring?

18 CHAIR PERSON LeFAVER: Yes.

19 COMMISSIONER RUIZ: So we are planning to
20 come back to that. Is that the process that you're
21 suggesting?

22 CHAIR PERSON LeFAVER: We will come back.
23 The next item that we'll talk about is the
24 Conditions of Approval, which are set for the
25 reclamation plan, which are more specific and

1 related to a lot of items that you're interested in.

2 COMMISSIONER VIDOVICH: And the attorney
3 said, it's open season for us. I mean, normally,
4 normally you sort of would resolve these things
5 before you adopted the monitoring.

6 CHAIR PERSON LeFAVER: Thank you,
7 Commissioner Vidovich.

8 COMMISSIONER CHIU: I have a question for
9 the maker of the motion and staff. In our
10 supplemental packet, item 1, attachment A, there's a
11 resolution certifying the Environmental Impact
12 Report with exhibits A1 through A5, including the
13 Statement of Overriding Considerations with the
14 applicant as Exhibit 5. And are we -- is that going
15 to be our official statement, the drafted resolution
16 from staff as attachment A? That's my question.

17 CHAIR PERSON LeFAVER: The, what we'll do,
18 and I was talking with County Counsel at this time,
19 at the end of this process we will adopt a
20 resolution. So our motion right now is a separate
21 motion, and that will be included in the resolution
22 which we'll adopt everything together.

23 COMMISSIONER CHIU: Okay. So we're going
24 to do this in two motions. The specific, this is
25 the concept of the motion now, and then we'll adopt

1 the exact language of our findings and --

2 CHAIR PERSON LeFAVER: Under resolution.

3 It was explained to me by staff, this is
4 rather unusual. We don't usually get resolutions,
5 but this, we get it this time.

6 COMMISSIONER CHIU: I understand. Thank
7 you.

8 CHAIR PERSON LeFAVER: So we have a motion
9 and a second.

10 COMMISSIONER RUIZ: Just to make a
11 comment. In terms of the mitigation monitoring and
12 reporting, I'm not clear on the program enough to
13 feel comfortable to make a vote to move forward with
14 that without us going through that, because in my
15 understanding, that would be part of the conditions
16 of approval.

17 COMMISSIONER VIDOVICH: Correct.

18 CHAIR PERSON LeFAVER: That is correct.

19 COMMISSIONER RUIZ: So based on
20 information we've heard today and that we plan to go
21 over at a later date, I don't feel comfortable
22 voting for it now. Not -- I do agree that the
23 environmental impacts have been revealed as part of
24 the EIR; however, that part of the mitigation
25 monitoring and reporting program, I'm not

1 comfortable enough to vote for the full motion, so I
2 won't be voting for it.

3 CHAIR PERSON LeFAVER: Thank you.

4 We have a motion and a second. All those
5 in favor say "aye." And could you please raise your
6 hand.

7 COMMISSIONER SCHMIDT: Aye.

8 COMMISSIONER VIDOVICH: Aye.

9 COMMISSIONER COUTURE: Aye.

10 COMMISSIONER BOHAN: (Hand raised.)

11 CHAIR PERSON LeFAVER: Those opposed.

12 COMMISSIONER RUIZ: (Hand raised.)

13 COMMISSIONER CHIU: (Hand raised.)

14 CHAIR PERSON LeFAVER: Okay. The motion
15 passes.

16 Okay. The next item to talk about are the
17 Conditions of Approval, and included in the
18 Conditions of Approval are the various mitigation
19 measures.

20 I think the way to start this conversation
21 is to start looking at the Conditions of Approval,
22 and at that time, I'm sure we'll get to the point
23 where it should or should not include various parts
24 of the -- whether the area should be expanded or
25 not.

1 So let's start on page 1 of the -- which
2 is Exhibit 1, Conditions of Approval. Items 1
3 through 14 deal with the general requirements of the
4 Conditions of Approval for the Reclamation Plan.

5 COMMISSIONER VIDOVIICH: Do you want us to
6 reverse that one? Do you want a reconsideration?

7 MR. KORB: No. I think that you can amend
8 the mitigation monitoring plan as may be necessary
9 based on the decisions made regarding the Conditions
10 of Approval. So I don't think that's irreparable,
11 but I understand what you were thinking with regard
12 to the order and it probably should have been
13 separated. I think you're right about that.

14 COMMISSIONER VIDOVIICH: Well, I've got a
15 commissioner here that doesn't feel comfortable.
16 Why don't I just make -- if the Chair lets me, why
17 don't I make a motion to rescind it?

18 MR. KORB: If you want, if you wish to
19 make that motion --

20 COMMISSIONER VIDOVIICH: Would that make
21 you feel more comfortable?

22 MR. KORB: That would be fine. You can do
23 that. As long as you've taken your action on the
24 EIR, you can deal with the mitigation monitoring
25 program after you've dealt with the conditions.

1 COMMISSIONER VIDOVIICH: I'll make a motion
2 of reconsideration, to have a reconsideration on the
3 mitigation monitoring.

4 COMMISSIONER CHIU: Second.

5 CHAIR PERSON LeFAVER: Actually, it has to
6 be a person that voted in the positive.

7 So we have a motion of reconsideration.

8 COMMISSIONER COUTURE: I'll second it.

9 CHAIR PERSON LeFAVER: So the motion of
10 reconsideration will to not at this time adopt --

11 COMMISSIONER VIDOVIICH: No, no. It's a
12 motion to reconsider that motion. You have to then
13 consider it.

14 CHAIR PERSON LeFAVER: Bear with me.

15 The motion to reconsider the last motion
16 which was to adopt the proposed mitigation
17 monitoring and reporting program to make required
18 findings of the Environmental Impact Report through
19 CEQA, and to certify the Environmental Impact
20 Report. That was the motion.

21 COMMISSIONER VIDOVIICH: It was only the
22 mitigation monitoring.

23 CHAIR PERSON LeFAVER: No, no. We have --
24 you have to take the whole thing.

25 COMMISSIONER VIDOVIICH: The whole motion?

1 CHAIR PERSON LeFAVER: Yes. So it's a
2 motion for reconsideration of that motion.

3 All of those in favor of reconsidering say
4 "aye."

5 PLANNING COMMISSIONERS: (In unison) Aye.

6 CHAIR PERSON LeFAVER: Thank you. It's
7 now being reconsidered.

8 COMMISSIONER VIDOVICH: I'll make a motion
9 to adopt the environmental report as I did
10 previously without the mitigation monitoring.

11 CHAIR PERSON LeFAVER: Okay. So it's
12 recommended that the Planning Commission -- is there
13 a second?

14 COMMISSIONER BOHAN: (Hand raised.)

15 COMMISSIONER COUTURE: I second it.

16 CHAIR PERSON LeFAVER: Commissioner Bohan
17 raised his hand quickly.

18 It is recommended that the Planning
19 Commission certify the Final Environmental Impact
20 Report; that it make required findings per the
21 California Environmental Quality act, CEQA; and
22 adopt the Statement of Overriding Considerations for
23 those environmental impacts identified as
24 significant and unavoidable.

25 Yes.

1 MR. RUDHOLM: Mr. Chair, could you please
2 state so we have it clear on the record who is the
3 maker and the second.

4 CHAIR PERSON LeFAVER: Commissioner
5 Vidovich was the maker, and the second was
6 Commissioner Bohan.

7 MR. RUDHOLM: Bohan. Okay. Thank you.

8 CHAIR PERSON LeFAVER: So we have a motion
9 and a second. All those in favor say "aye."

10 PLANNING COMMISSIONERS: (In unison) Aye.

11 COMMISSIONER RUIZ: I'm sorry.

12 CHAIR PERSON LeFAVER: It's favorable.
13 You got it? Okay.

14 MR. RUDHOLM: Mr. Chair, I've got the vote
15 at unanimous, no commissioners voting against the
16 motion.

17 CHAIR PERSON LeFAVER: That's correct.

18 So what we will do is take up both the
19 Conditions of Approval under Exhibit 1, as well as
20 the mitigation measures and monitoring and reporting
21 program at the same time. All right.

22 And under the Conditions of Approval there
23 is a specific point within the Conditions of
24 Approval where it adopts those mitigation and
25 monitoring reporting programs. So as we go through

1 the Conditions of Approval, we can then talk about
2 it. When we get to that point, we can talk about
3 it.

4 Commissioner Bohan.

5 COMMISSIONER BOHAN: Yes. Before you
6 mentioned starting out with general requirements.
7 We need to back up to project description because
8 that has the acreage in it.

9 CHAIR PERSON LeFAVER: Okay. Well, that's
10 a good point. And it's the first paragraph.

11 COMMISSIONER VIDOVICH: I'm the one who's
12 going to lose or win that one. So do you want me to
13 make it as a motion or what?

14 CHAIR PERSON LeFAVER: Is there any
15 additional discussion on the project description?

16 COMMISSIONER RUIZ: What was the, what are
17 we discussing?

18 COMMISSIONER VIDOVICH: Yeah. You can
19 make a motion and then discuss it. That's usually
20 the way it is. Can I do that?

21 CHAIR PERSON LeFAVER: Go ahead.

22 COMMISSIONER VIDOVICH: Okay.

23 My motion is that any and all references
24 to the size of the reclamation area being 1,238
25 acres shall be deleted, and the reclamation area

1 shall be increased to include the area considered
2 the cement plant, and that the reclamation plan is
3 that that shall be a cement plant.

4 It also will include the area north of the
5 proposed reclamation line to the Kaiser boundary,
6 and it's including that because --

7 CHAIR PERSON LeFAVER: No, no, don't say
8 that. Just go on with your motion.

9 COMMISSIONER VIDOVIICH: It's part of my
10 motion. It's part of the motion, and it's being
11 included because of evidence that the mining has
12 created landslide instability there, and so that
13 that area is able to be mitigated if slides come
14 through the mitigation plan. And I think the area
15 will be a little bit bigger, it will be somewhere
16 close to 2,000 acres. That's my motion. I don't
17 know if I'll get a second.

18 CHAIR PERSON LeFAVER: So in essence, your
19 motion is, as you stated on the modifications to
20 conditions that you handed to us earlier?

21 COMMISSIONER VIDOVIICH: It's similar to
22 that, yeah.

23 CHAIR PERSON LeFAVER: Is there a second?

24 COMMISSIONER COUTURE: I second the
25 motion.

1 CHAIR PERSON LeFAVER: Okay. Any
2 discussion?

3 Commissioner Bohan.

4 COMMISSIONER BOHAN: I have difficulty at
5 this time changing the area from the 1,238.7 acres
6 to something different. That's what's been in this
7 report from the beginning.

8 And we were handed out today information
9 packages of what happened in the history of this
10 thing going all the way back to 1985, and the very
11 first paragraph in the report 1985, project detail,
12 it says, it should be noted by the commission that
13 this approval for reclamation aspects of the quarry
14 area and not the operational activity.

15 And I think that's correct, because what
16 we're dealing with here is where they dug a hole in
17 the ground in order to get the minerals out that
18 they need to make cement. And the part that
19 actually processes that is on an area that really
20 isn't being excavated or modified to the extent
21 other than just to get the equipment in there and
22 run it. And it could be that once they run out of
23 materials there, they could be bringing in materials
24 from another area and continue to process there. So
25 I think it is a separate and distinct -- -

1 COMMISSIONER VIDOVIICH: And that's your
2 objection on the cement plant. But what about --

3 COMMISSIONER BOHAN: Well, see, you
4 included so much in here, I think it would good if
5 you broke it down.

6 COMMISSIONER VIDOVIICH: Okay. So can I
7 change the motion. We'll make it in two motions.
8 And we'll make a motion to the north area's unstable
9 because of the steep mining, so to move the
10 reclamation boundary all the way to the property
11 line because of the instability.

12 COMMISSIONER COUTURE: But you have to
13 withdraw that first motion.

14 CHAIR PERSON LeFAVER: So you're going to
15 withdraw your first motion?

16 COMMISSIONER VIDOVIICH: I don't know. The
17 second holder has to withdraw hers first.

18 COMMISSIONER COUTURE: I withdraw.

19 COMMISSIONER VIDOVIICH: I'll withdraw it.

20 CHAIR PERSON LeFAVER:

21 COMMISSIONER VIDOVIICH: So do I have to
22 repeat my motion again?

23 CHAIR PERSON LeFAVER: Yes, yes.

24 COMMISSIONER VIDOVIICH: The motion is to
25 include the north area, that is subject to the north

1 area because it's subject to instability because of
2 overly steep mining. And in the environmental
3 document, some of this is argument, but in the
4 environmental document it says that it's sliding
5 down, it's dangerous, it's sliding down, and so
6 include that in the area which then the County will
7 have jurisdiction over it.

8 CHAIR PERSON LeFAVER: By "north area,"
9 what do you mean specifically?

10 COMMISSIONER VIDOVIK: The map says
11 north, so, I mean, map has a north, so everything
12 north of the quarry to their property line.

13 Do you want me to --

14 CHAIR PERSON LeFAVER: Yes, please.

15 COMMISSIONER VIDOVIK -- draw it.

16 COMMISSIONER COUTURE: (Indicating.)

17 CHAIR PERSON LeFAVER: Just great.

18 COMMISSIONER VIDOVIK: North would be --

19 COMMISSIONER BOHAN: It's the westerly
20 portion of the northerly.

21 COMMISSIONER VIDOVIK: Why don't we draw
22 with a pen. Can I borrow your pen.

23 CHAIR PERSON LeFAVER: Sure.

24 COMMISSIONER VIDOVIK: (Marking.)

25 CHAIR PERSON LeFAVER: Are there any

1 questions? Commissioner Bohan.

2 COMMISSIONER BOHAN: I have a question of
3 staff. With this modification, what affect is this
4 going to have?

5 CHAIR PERSON LeFAVER: Yes, there you go.

6 MR. KORB: I can start, or if you want --

7 MR. GONZALEZ: And if I may through the
8 Chair, I just wanted to go ahead and point out that
9 the area in light blue above the dark blue, yellow,
10 brown, green is a buffer area that's beyond what's
11 already described here to provide for that
12 safeguard. Now, with that, I'm going to ask Rob to
13 fill in the blanks.

14 MR. EASTWOOD: Well, it's my
15 understanding -- and I'll let County Counsel jump
16 in, is the rec plan proposal before you is to
17 encompass all mining areas, and the concern
18 expressed by Commissioner Vidovich is that it would
19 expand beyond those disturbed areas.

20 The Reclamation Plan has been proposed by
21 the mine operator, so it's their proposal. What's
22 before us, the motion is to change that plan.

23 My understanding is that you would have to
24 direct the mine operator who has proposed this plan
25 to change that plan.

1 What's before the Planning Commission is
2 to determine, does the reclamation plan before you
3 substantially comply, or does it substantially meet
4 the SMARA findings. If it does, you're required to
5 approve the plan.

6 COMMISSIONER VIDOVICH: But we are not
7 changing -- I don't mean the argument, we're not
8 changing the plan. The plan, meaning what their
9 activity is. We're changing the area that we say is
10 subject to reclamation jurisdiction. And if that
11 area slides and somebody's hiking there and they
12 fall in a hole, you have the ability to have
13 jurisdiction over it.

14 And you included a buffer area, so why not
15 make it bigger. That's all.

16 MR. EASTWOOD: Again, not staff's
17 reclamation plan. The mine operator proposed the
18 plan. A change to the boundary will be a change of
19 the Reclamation Plan.

20 CHAIR PERSON LeFAVER: Commissioner Chiu.

21 COMMISSIONER CHIU: I guess we're still
22 clarifying the motion, so should I hold comments
23 until there's a second, or are we still clarifying
24 the motion?

25 CHAIR PERSON LeFAVER: Go ahead.

1 There was a second. Was there a second?

2 There was a second, yes.

3 COMMISSIONER COUTURE: (Nodding head up
4 and down.)

5 COMMISSIONER CHIU: I just asked -- go
6 ahead.

7 MR. RUDHOLM: Mr. Chair, in my notes I
8 have only that a motion was made by Commissioner
9 Vidovich. I have not heard a second.

10 CHAIR PERSON LeFAVER: It was seconded by
11 Commissioner Couture.

12 MR. RUDHOLM: Thank you. I stand
13 corrected.

14 COMMISSIONER CHIU: I previously asked
15 County Counsel, and is it still your opinion, is it
16 still County Counsel's opinion that moving the
17 boundary north would possibly require a new EIR or a
18 supplement to the EIR will would be required to be
19 recirculated?

20 MR. KORB: Yes.

21 COMMISSIONER CHIU: For myself, this is a
22 very complicated process that's fraught with
23 potential lawsuits and causes of action. And I
24 would not, it would not be my preference to open up
25 an area which -- where the EIR could be challenged

1 at this time. So even though I appreciate
2 Commissioner Vidovich's comments, and I do care that
3 hikers might slip off the edge or fall into a hole,
4 I just wouldn't be -- I just can't see myself having
5 the EIR, seeing a legal challenge to the EIR based
6 on changing boundaries at this point. Thank you.

7 CHAIR PERSON LeFAVER: Thank you.

8 Any other comments? No other comments?

9 Commissioner Bohan.

10 COMMISSIONER BOHAN: Yes, I do have some
11 difficulty with the idea of modifying this at this
12 time, particularly with regard to the area that
13 we're dealing with. I just think that we are
14 creating a situation where it could be challenged,
15 and that I don't think I fully understand all the
16 dynamics you're talking about here in connection
17 with possible cave-ins and so forth.

18 My feeling is that what we have before us
19 already has built into it sufficient safeguards to
20 accommodate that should those events come up, so I
21 would not support the motion.

22 COMMISSIONER VIDOVICH: Let's just call
23 for the question and get it over with.

24 CHAIR PERSON LeFAVER: Any other comments?

25 I call for the vote. All those in favor

1 say "aye."

2 COMMISSIONER VIDOVIK: Aye.

3 COMMISSIONER COUTURE: Aye.

4 CHAIR PERSON LeFAVER: All those opposed.

5 Please raise your hands, or say "nay."

6 Abstentions.

7 COMMISSIONER RUIZ: I'm sorry. I voted in
8 support of the motion.

9 CHAIR PERSON LeFAVER: Okay. Thank you.
10 It's a four to three vote.

11 MR. RUDHOLM: Mr. Chair, I've got those in
12 favor were Vidovich, Ruiz and Couture. Those
13 against included LeFaver, Chiu, Schmidt, Bohan.

14 CHAIR PERSON LeFAVER: That's correct.

15 MR. RUDHOLM: And no abstentions and no
16 absences, so the motion failed.

17 CHAIR PERSON LeFAVER: Okay. Motion
18 fails.

19 COMMISSIONER VIDOVIK: Can I make the one
20 on the cement plant now, get it over with.

21 CHAIR PERSON LeFAVER: Help yourself.
22 Please do.

23 COMMISSIONER VIDOVIK: Okay. I would
24 make a motion to include the cement plant with its
25 ultimate use as a cement plant to bring it into

1 reclamation jurisdiction. That would be my motion.

2 CHAIR PERSON LeFAVER: To include the
3 cement plant as part of the reclamation?

4 COMMISSIONER VIDOVIK: Yes.

5 CHAIR PERSON LeFAVER: Is there a second?

6 COMMISSIONER COUTURE: I second it.

7 CHAIR PERSON LeFAVER: Moved and seconded.

8 Any discussion?

9 All those in favor say "aye."

10 COMMISSIONER VIDOVIK: Aye.

11 COMMISSIONER COUTURE: Aye.

12 COMMISSIONER RUIZ: (Hand raised.)

13 CHAIR PERSON LeFAVER: All those opposed?

14 COMMISSIONER CHIU: No.

15 COMMISSIONERS SCHMIDT, BOHAN, LeFAVER:

16 (Hand raised.)

17 MR. RUDHOLM: Mr. Chair, I have the vote
18 as those in favor were Vidovich, Couture and Ruiz,
19 and the four remaining commissioners all opposed to
20 the motion. It fails.

21 CHAIR PERSON LeFAVER: Very good. Thank
22 you.

23 Commissioner Couture.

24 COMMISSIONER COUTURE: I have a question
25 for staff and/or County Counsel, if I may.

1 What if you go back and look at the ERI
2 [sic] and decide that actually the north slope would
3 actually be included because it's possible that, I'm
4 not sure it was ever distinctly checked for every
5 single foot and yard, what if it actually already is
6 included? Because I don't know. I mean, I don't
7 have any map that I don't think showed me exactly
8 where all that is.

9 MR. EASTWOOD: If I understand correctly,
10 through the Chair', is the question, do we
11 understand today how much disturbance has occurred?
12 Is that the question?

13 CHAIR PERSON LeFAVER: No. I think the
14 question is how is the north, how much of the north
15 may or my not be included because the boundary, the
16 specific boundaries of what's in the reclamation
17 plan versus what is not seems to be hazy. Is
18 that --

19 COMMISSIONER COUTURE: Yes.

20 MR. KORB: So why don't you go ahead and
21 read the answer to that.

22 MS. PIANCO: All right. I'll just refer
23 of the graphic that's behind the Commission on your
24 behalf.

25 The area that's identified in yellow is

1 the quarry pit, the top of the slope.

2 Everything in blue is the buffer area
3 that's on the back side of the pit. So if you had
4 toured the quarry, you know that the top of the
5 quarry pit itself is the peak at that point. So all
6 that area in blue is on the back side of the hill,
7 which is a buffer. In case anything does slop off,
8 it would be required to be reclaimed.

9 COMMISSIONER COUTURE: So just to clarify,
10 so in actuality, the slide and the north slope is
11 already part of the EIR. So Commissioner Vidovich
12 and I were not trying to change the EIR at all. We
13 were just trying to make sure the public knew that
14 we were concerned about the big slides that have
15 happened over there, and we want to make sure
16 they're reclaimed.

17 MS. PIANCA: Yes. Those slides are part
18 of the proposed plan and included within the area.

19 CHAIR PERSON LeFAVER: Okay. Thank you.
20 All right.

21 So now that we've gotten --

22 Commissioner Vidovich, yes.

23 COMMISSIONER VIDOVICH: Are you ready for
24 another motion. I get rid of mine, then you guys
25 can do yours. Are you ready?

1 CHAIR PERSON LeFAVER: I wasn't going to
2 do a motion.

3 COMMISSIONER VIDOVIICH: But, I mean, we
4 can go to the recess.

5 CHAIR PERSON LeFAVER: Oh, I was going, it
6 is now 9:00 o'clock. Would you like to continue for
7 30 more minutes, or do you want to --

8 COMMISSIONER VIDOVIICH: Continue.

9 CHAIR PERSON LeFAVER: So 30 more minutes.
10 Are you okay?

11 THE REPORTER: I'm fine. Thank you.

12 CHAIR PERSON LeFAVER: Thank you.

13 Let's start going through the Conditions
14 of Approval then, and the first 14 which are page 1,
15 2 and 3, are what they call the general
16 requirements. So let's start going through those
17 first 14 and talk about those.

18 The, one of the items that was brought
19 before us, that was brought before us, was a request
20 by Lehigh on some of these, on some of these
21 conditions, and we should probably talk about that,
22 as well.

23 A question, Commissioner Schmidt?

24 COMMISSIONER SCHMIDT: I'll just say, on
25 the first condition of approval, Lehigh has

1 suggested amending it to allow the planning manager
2 to authorize changes to Conditions of Approval, and
3 I would not recommend adding that to the condition
4 myself. I would want to keep the condition as is.

5 Does staff have a comment about their
6 recommendation.

7 MR. GONZALEZ: If I can, through the
8 Chair, I would support that staff does not want to
9 be put in the position of having to make those
10 determinations, but would feel more comfortable with
11 bringing those changes back to the Planning
12 Commission.

13 COMMISSIONER SCHMIDT: Thank you.

14 COMMISSIONER CHIU: As, just to make sure
15 that I'm looking at the same document everyone else
16 is working off of, we were handed today Conditions
17 of Approval that have blue lined versions. Is that
18 what we're working off of, or is it the one that we
19 were presented in the supplemental packet?

20 CHAIR PERSON LeFAVER: The supplemental
21 packet has, let's work off that one because it has
22 the staff recommendations --

23 COMMISSIONER CHIU: I see. Okay.

24 CHAIR PERSON LeFAVER: -- in blue,
25 responding to what has been suggested. And then

1 Attachment A goes through each of them. And then
2 Attachment B are the 1 through, I don't know what
3 it's up to now, it used to be 89.

4 COMMISSIONER COUTURE: It's still 89.

5 CHAIR PERSON LeFAVER: Okay. It's still
6 89. 89.

7 COMMISSIONER CHIU: Thank you.

8 CHAIR PERSON LeFAVER: So is there anyone
9 on the proposed project description that's been
10 suggested by Lehigh that they include that, is there
11 any thought on that? Any support or otherwise.

12 Yes, Commissioner Schmidt.

13 COMMISSIONER SCHMIDT: That's the one I
14 just said I don't support Lehigh's.

15 CHAIR PERSON LeFAVER: Does anybody want
16 to bring up anything on that. Commissioner --

17 COMMISSIONER VIDOVICH: I don't see that
18 has, it looks like their intent is they want to give
19 some flex -- I think it's already there. It seems
20 like they're scared of a technical deadline or
21 something that there's no flexibility. And I don't
22 know if it needs to be written that way, but it says
23 "necessary adjustments," "deadlines," things like
24 that. I don't think they're asking -- maybe the way
25 it's written it's not so good.

1 CHAIR PERSON LeFAVER: Is there any
2 support on this?

3 Seeing none, we'll go forward.

4 COMMISSIONER VIDOVICH: Can we talk about
5 the east material yard, because that's not part of
6 the conditions. It's part of the description. I
7 mean these were things that were discussed.

8 CHAIR PERSON LeFAVER: Sure. Under
9 "Description." Go ahead.

10 COMMISSIONER VIDOVICH: Okay. I would
11 like to make a motion, and we can discuss it after I
12 make the motion, that the east material stockpile
13 shall be substantially placed back into the north
14 quarry prior to placing any material from the west
15 side storage site in there, and that it be reclaimed
16 so that at surface, instead of being 870 -- 800
17 elevation, which makes it a little less imposing.
18 That's a motion for discussion.

19 CHAIR PERSON LeFAVER: Is there a second?

20 COMMISSIONER COUTURE: I'll second it.

21 CHAIR PERSON LeFAVER: So did you
22 understand the motion, Mr. Secretary?

23 MR. RUDHOLM: Mr. Chair, I don't think I
24 heard correctly. The elevation level that would be
25 the limit for the height of the modified reclaimed

1 EMSA area, I think you said something to the 840
2 feet elevation level. I'm not sure if that's the
3 correct figure.

4 COMMISSIONER VIDOVICH: 800, versus --
5 where it's 870, it would be 800.

6 And I made the motion that way just so we
7 could talk about it. What it is a, it's taking the
8 grade to its maximum two to one, and it's big, and
9 it's imposing, and we do have hole that needs to be
10 filled that's unstable. And as one of the citizens
11 here pointed out, that the more you put back -- you
12 took it out of the hole, you put it back. That is a
13 thousand foot deep hole that has some -- that has
14 instability. And everybody seems to be objecting to
15 that east materials yard.

16 So if we can moderate it, and I think 800
17 is a compromise. And that's what everybody
18 complained about, Jack. That's what everybody
19 complained about.

20 CHAIR PERSON LeFAVER: Do you understand
21 the motion, then?

22 MR. RUDHOLM: Yes, Mr. Chair, I understand
23 the motion.

24 CHAIR PERSON LeFAVER: There's been a
25 motion and a second. Commissioner Bohan.

1 COMMISSIONER BOHAN: Yeah. I have a
2 question of staff. I heard a number here of
3 \$47 million for this Reclamation Plan. If we have
4 to move the east pile back into the pit, what's it
5 going to cost then?

6 MR. EASTWOOD: Staff doesn't have an
7 answer to that question. But I will just make sure
8 the Planning Commission is aware that this, this
9 alternative does not have full CEQA clearance. If
10 this was a request to have the reclamation plan
11 modified in this way, it would require a
12 recirculation of the EIR.

13 COMMISSIONER VIDOVICH: You know, that
14 sounds like whenever we want to make a change they
15 don't like, they throw CEQA at us. CEQA analyzed
16 this, supposed to analyze all the alternatives. It
17 is a controversy, that pile is a controversy, and
18 making it a little bit smaller I don't think is
19 outside of our CEQA analysis.

20 I think you're wrong, respectfully. I'll
21 think about it more when I drink some wine tonight,
22 but I think you're wrong. And the reason we're
23 doing this is to protect the neighborhood. It is
24 overly steep and it's too big.

25 And what we said is to go to 800 instead

1 of 870, so we're not talking about taking the whole
2 hill down, just not adding as much to it. The
3 neighbors want it to down to, back to 500.

4 COMMISSIONER BOHAN: Another question of
5 staff.

6 How many cubic yards do you think there
7 are in the east area?

8 MR. RUDHOLM: Mr. Chair, can I --

9 CHAIR PERSON LeFAVER: Go ahead. Sorry.

10 MR. RUDHOLM: I want to make sure I'm
11 clear on what the question is from the commissioner.

12 Is the question how much is there now?

13 COMMISSIONER BOHAN: In the eastern --

14 MR. RUDHOLM: In the EMSA.

15 COMMISSIONER BOHAN: -- storage area, yes.

16 MR. RUDHOLM: My recollection is it was
17 almost 5 million tons of material. I don't know how
18 that translates into cubic yards. I'm sorry.

19 COMMISSIONER COUTURE: Mr. Chair, can I
20 ask a question.

21 So, Gary, how much would it be for between
22 the 870 down to the 800? Do you have a kind of a
23 guess?

24 MR. RUDHOLM: Mr. Chair, I'm sorry I don't
25 have a response to that. I would have to turn to an

1 engineer to calculate it.

2 CHAIR PERSON LeFAVER: Commissioner Bohan,
3 did you have a question?

4 COMMISSIONER BOHAN: Yeah. We're still
5 trying to get some idea. It sounds like it's, what,
6 approximately 5 million tons, did you say?

7 MR. RUDHOLM: I think it was more like 51
8 million tons.

9 COMMISSIONER BOHAN: 51. Okay.

10 COMMISSIONER VIDOVIICH: I have the plan,
11 Jack, I have the plan here if you want to look at
12 it. We're not talking about taking it all down.
13 We're talking about going from 870 to 800. That's
14 not --

15 MR. RUDHOLM: Mr. Chair, if it's
16 important, you may want to recess for a few minutes
17 and give staff an opportunity to check the documents
18 that we have, see if we can get you clearer numbers.

19 CHAIR PERSON LeFAVER: Well, it is ten
20 after 9:00 right now. Do you want to set this aside
21 and take it up next time so we can have additional
22 information?

23 COMMISSIONER BOHAN: I'd certainly think
24 we need to get some idea of what we're imposing on
25 the Applicant here.

1 CHAIR PERSON LeFAVER: Okay. Go ahead.

2 COMMISSIONER CHIU: I agree with

3 Commissioner Bohan. I'm just not prepared at this
4 time to guess the displacement and its affect on the
5 Applicant and its environmental affect at this time.

6 It's not that I'm not convincible, It's
7 just that I just can't guess. I can't vote on these
8 guesses.

9 CHAIR PERSON LeFAVER: Would you be
10 willing to postpone your --

11 COMMISSIONER VIDOVICH: (Nodding head up
12 and down.)

13 CHAIR PERSON LeFAVER: So let's withdraw
14 this and postpone it until next time. Okay.

15 Can we continue on to general
16 requirements.

17 COMMISSIONER COUTURE: Mr. Chair, I have a
18 question on number 9.

19 CHAIR PERSON LeFAVER: Sure.

20 COMMISSIONER COUTURE: If at any time the
21 director of planning and development determines that
22 the quarry's not in compliance with the RPA,
23 mitigation monitoring and reporting program, or any
24 other condition of approval, and as such is in
25 violation of the RPA, the director may take any and

1 all action necessary, blah, blah, blah.

2 Do we have those actions defined somewhere
3 that I've missed? Because, the reason I ask is
4 because of the mining violations that have happened,
5 it seems like, to the best of my knowledge,
6 sometimes there's no consequences for the
7 violations, and I want to make sure there are
8 consequences here.

9 CHAIR PERSON LeFAVER: So what -- County
10 Counsel.

11 MS. PIANCO: I can respond to that
12 question.

13 The reference here is to any enforcement
14 to ensure compliance with applicable laws and
15 regulations. And we're looking at two bodies of
16 laws and regulations. One is the County's ordinance
17 code, and enforcement authority that the County has
18 to ensure the compliance through various methods
19 outlined in our ordinance code.

20 The other is an administrative process
21 that is set forth in the SMARA regulations.

22 And so by the reference to the language,
23 applicable laws and regulations, it takes into
24 account both those bodies, the County's ordinance
25 code, as well as the SMARA regulations.

1 CHAIR PERSON LeFAVER: Does that answer
2 your question? Okay.

3 Any other questions on 1 through 14 on
4 page 1, 2 and 3?

5 COMMISSIONER VIDOVICH: 1 to 14. Where's
6 the time limit?

7 CHAIR PERSON LeFAVER: Oh, yes. Hi,
8 Commissioner Schmidt. Sorry. I was looking at
9 these pages.

10 COMMISSIONER SCHMIDT: I have a couple of
11 small questions.

12 The Condition of Approval 8A says that an
13 annual report shall be presented to the Planning
14 Commission at a public meeting each year, and I
15 thought that when that was mentioned before that
16 staff said that we didn't get an annual report, but
17 we could request it. Is that -- am I
18 misunderstanding something?

19 MR. EASTWOOD: There will be an annual
20 report, yeah. An annual report will be delivered to
21 the Planning Commission.

22 COMMISSIONER SCHMIDT: Okay.

23 And another question on 2A11 where it
24 requires training annually. I was wondering if
25 staff thought that semi-annual training, if, since

1 there are lots of different requirements, lots of
2 different monitoring and so on that are being
3 included in this plan, do you think it would be
4 necessary to have more frequent training, or do you
5 think annual is sufficient?

6 MR. EASTWOOD: If I can answer that
7 through the Chair.

8 Staff believes that annual training would
9 be sufficient because, again, it would be to allow
10 for the training of the Lehigh staff to understand
11 fully what conditions are there, and it would be
12 their responsibility to make sure that that happens
13 and then to report out to staff, and then staff
14 would be reporting that out to the Planning
15 Commission.

16 COMMISSIONER SCHMIDT: I understand that,
17 that it's training for the people who are
18 implementing some of these things. And just from my
19 experience with construction activities, lots of
20 different people come on at different times and, you
21 know, new people need to understand what is
22 required. So I was just asking that question if you
23 thought more training, or twice a year training
24 would be better.

25 MR. GONZALEZ: Again, staff feels that

1 annually is sufficient, but again, it is the
2 Planning Commission's call if they want to do it
3 semi-annually.

4 COMMISSIONER SCHMIDT: Thank you.

5 CHAIR PERSON LeFAVER: Commissioner Chiu.

6 COMMISSIONER CHIU: Thank you, Mr. Chair.

7 I just wanted to make sure that if you
8 look at the Conditions of Approval, Exhibit 1 that
9 was passed out today to us with blue lined sheets,
10 that condition 8D was added which states, the County
11 shall include information provided by the Regional
12 Water Quality Control Board related to the water
13 board's determination regarding the mine operator's
14 compliance with water quality standards, including
15 waste load allocation and other permitting
16 requirements, and the effectiveness of best
17 management practice, BMPs, on the site, and that I
18 would wholeheartedly support the addition of 8D to
19 the general requirements.

20 COMMISSIONER RUIZ: Do we need a motion
21 for that?

22 CHAIR PERSON LeFAVER: Not yet, but when
23 we get there, let's include that.

24 COMMISSIONER COUTURE: Couldn't we at the
25 end just include all of them, or will we have to go

1 through and name every single one?

2 CHAIR PERSON LeFAVER: We will have to
3 name them by procedure. However, what we can do to
4 make this bite size is, as we will vote on 1 through
5 14, and then go on to the next ones and so forth.

6 Are there any other items you wish to
7 bring up on 1 through 14?

8 COMMISSIONER VIDOVIK: I have another
9 one.

10 CHAIR PERSON LeFAVER: Mr. Vidovich,
11 Commissioner Vidovich, please.

12 COMMISSIONER VIDOVIK: Mine are all at
13 the beginning, anyway.

14 The plan says it's a 20-year plan. It's a
15 pretty involved plan, complex. I would say -- and
16 if it's changed, it has to come back anyway. I
17 would say let's make it for 30 years, and I would
18 ask that biannually what they produce is a
19 estimated, a topo plan, a grading plan that
20 estimates the grades if the mining stopped, and that
21 they also produce, one, a new topo plan of where it
22 will be in two years. And that way the community
23 can visualize -- I mean, and there's two things of
24 this thing. There's the birds, and all the little
25 mitigations, but there's also a land. And a land

1 form, you know, is what you're -- you have so much
2 dirt and you're going to put so much in there and
3 you're going to end up with a land form. And that
4 topo really -- and it's too bad they didn't make a
5 model, I think it would demonstrate a lot of this
6 better, but that topo is what's going to be there,
7 and I don't think it's a lot of trouble for them to
8 make that every two years and produce it.

9 And also by producing where they'll be in
10 two years at present mining, in case we have runaway
11 mining, you'll know by getting that topo every two
12 years.

13 So that's a motion. 30 years, and a topo
14 every two years of where it's at, and where it's
15 going to be two years from there.

16 COMMISSIONER BOHAN: Is there a specific
17 paragraph you're modifying here? Is it paragraph 5?

18 COMMISSIONER VIDOVICH: Well, the 30
19 years -- the 20 years is in the project description,
20 so that's modified to 30.

21 And then there is a paragraph here where
22 they talk about --

23 CHAIR PERSON LeFAVER: Page 5 -- number 5,
24 has the date.

25 COMMISSIONER VIDOVICH: Well, 5 has a date

1 also, and so does project description. And then
2 there's another paragraph where we talk about
3 providing 11, the reports. I don't know if it's 11,
4 one of these with a report --

5 COMMISSIONER COUTURE: 8.

6 COMMISSIONER VIDOVIK: And I just think
7 the neighbors might want a report of what the topo's
8 going to look like if they stop. Because under
9 reclamation plan, there's no -- it doesn't tell you
10 when to stop. And if they go -- if they dig too
11 deep, that topo will tell you they're going too dep.

12 CHAIR PERSON LeFAVER: Commissioner
13 Vidovich, would you perhaps divide your motion into
14 two parts. Let's start with the 30 years.

15 COMMISSIONER VIDOVIK: Okay. 30 years is
16 the first motion.

17 CHAIR PERSON LeFAVER: Okay. 30 years
18 versus 20 years. There's a motion.

19 COMMISSIONER BOHAN: And this is in
20 paragraph 1, project description, you take out "20"
21 and put in "30." Is that it?

22 COMMISSIONER VIDOVIK: And item 5, too.

23 COMMISSIONER RUIZ: You'd have to change
24 the date on item 5.

25 COMMISSIONER BOHAN: And change 5 to 40,

1 too.

2 COMMISSIONER VIDOVICH: Yes.

3 COMMISSIONER BOHAN: Right.

4 COMMISSIONER COUTURE: I second that
5 motion.

6 COMMISSIONER RUIZ: So for discussion, the
7 plan we've seen is implementation in three phases.
8 So if you're proposing to extend the time to 30
9 years, are you then extending -- are you suggesting
10 another phase, a fourth phase?

11 COMMISSIONER VIDOVICH: I don't think you
12 can predict how fast they're going to extract
13 minerals. The plan has a timeline. If they extract
14 it out in three years, then it's done in three
15 years. I think it's based -- I mean, if I'm not
16 mistaken, it's based on their extraction rates.

17 And a reclamation plan is always, as the
18 guy testified, is subject to change. So why not
19 make it longer in case they slow down. I don't
20 think it changes reclamation really.

21 CHAIR PERSON LeFAVER: Commissioner
22 Schmidt.

23 COMMISSIONER SCHMIDT: But that would give
24 them longer time to reclaim. I would think, if
25 anything, we would want it faster, and so I wouldn't

1 personally want to extend what's already
2 recommended. And I would think that might also
3 cause some issues with the sort of overall plan as
4 it's been reviewed.

5 CHAIR PERSON LeFAVER: Commissioner Ruiz.

6 COMMISSIONER RUIZ: I didn't know it was
7 still on. Sorry.

8 CHAIR PERSON LeFAVER: Commissioner Bohan.

9 COMMISSIONER BOHAN: Yeah. Maybe staff
10 can help me here. I'd really like to find out what
11 the applicant thinks of having that extra ten years.
12 Is that a problem or a benefit? And Maybe staff
13 would have some idea of that.

14 MR. GONZALEZ: If I could answer that
15 through the Chair.

16 Again, the Environmental Impact Report
17 evaluated a 20-year plan, not a 30-year plan. So,
18 again, as previously stated, we're looking at the
19 CEQA document that basically addressed that time
20 period, and so as the Commission has pointed out,
21 you're stretching this out over a longer period of
22 time, which the EIR did not cover.

23 MR. RUDHOLM: Mr. Chair, if I can add, I
24 think in putting together the plan, the mine
25 operator made some assumptions about their rate of

1 extraction, their ability to process material and
2 sell it. And this was their best guess at putting
3 that date together because one is required under
4 SMARA.

5 I'd also like to point out that changing
6 the timeframe could affect the phasing because
7 there's timelines along in there. So that's another
8 modification of the reclamation plan, because the
9 plan includes the narrative as well as the drawings
10 that are posted on the wall.

11 CHAIR PERSON LeFAVER: Commissioner Chiu.

12 COMMISSIONER CHIU: I just need to say
13 that I'm losing the ability to concentrate. I did
14 not have dinner and when we previously discussed the
15 timeframe, I didn't think we would be being this
16 long. But, I just wanted to acknowledge that.

17 But I understand that Commissioner
18 Vidovich has spent a lot of time in preparing these
19 requested modifications. I have a question for
20 Commissioner Vidovich:

21 Is there a legal opinion from the attorney
22 that has a different opinion that I should be
23 considering? Do you have a legal opinion from an
24 attorney that I should be also considering?

25 COMMISSIONER VIDOVICH: You're an

1 attorney.

2 COMMISSIONER CHIU: I am an attorney.

3 COMMISSIONER VIDOVIK: And I don't think
4 that the 30-year is a big deal. I mean, why don't
5 we pass on it. I just thought it put this to bed a
6 little longer. I actually thought it gave us more
7 flexibility and gave the applicant more flexibility.
8 Because as you mine, you're going to reclaim it.

9 And the reclamation plan doesn't force
10 them really to reclaim if they're not mining. And
11 the way they're talking, they're doing some rapid
12 mining, it will be reclaimed right away the way I'm
13 hearing. So think we could skip it if the Chair
14 lets us pull it out.

15 CHAIR PERSON LeFAVER: Would you like to
16 withdraw your motion?

17 COMMISSIONER VIDOVIK: If the second
18 holder withdraws, I'll withdraw.

19 COMMISSIONER COUTURE: I'll withdraw.

20 CHAIR PERSON LeFAVER: The motion is
21 withdrawn.

22 COMMISSIONER CHIU: Thank you.

23 COMMISSIONER VIDOVIK: How about
24 providing the topos, do you want me to put that as a
25 motion?

1 CHAIR PERSON LeFAVER: This will be the
2 last item -- well, second to the last item.

3 Commissioner.

4 COMMISSIONER COUTURE: I think it would
5 help the public a lot. I think the public feels
6 very disappointed about many things, and I think it
7 would be a sign of good faith to show the public
8 what we are doing with the reclamation plan. You
9 know, they can hike up there, et cetera, but a lot
10 of the older people can't hike up there, and a topo
11 map would show them, that, oh, my gosh, you know, 20
12 feet or 30 feet has been reclaimed, three acres has
13 been reclaimed. It would help.

14 CHAIR PERSON LeFAVER: I have a question
15 of staff, if you don't mind.

16 Ken, what do you think will be included in
17 your annual reports? And that's sort of the first
18 question. But more specifically, can a topo map
19 that shows the progress that has been made be
20 included in that annual report?

21 MR. EASTWOOD: It can.

22 I'll start, Nash.

23 MR. GONZALEZ: Okay.

24 MR. EASTWOOD: There's many things.

25 There's a nine conditions of approval, so there'll

1 be many things included in the annual report.

2 I would like to call the Planning
3 Commission's attention to condition number 24, which
4 already does require, as part of the annual report,
5 the operator submits a surveyed coordinate list file
6 using GPS. Basically it requires an aerial be
7 submitted showing where all mining disturbance has
8 occurred over the last 24 months, and where planned
9 mining disturbance is to occur over the next 24
10 months. So there is a requirement that on an annual
11 basis, an aerial will be submitted that shows, you
12 know, what has happened during the last two years,
13 and what is planned to happen in order to assure
14 that reclamation is proceeding along with the
15 schedule that's proposed.

16 MR. GONZALEZ: And, if I can add to that
17 through the Chair, as Rob pointed out, it does
18 require an aerial, and all you'd basically be adding
19 if you wanted to put in the requirement for a topo
20 is an aerial with topographic lines placed on it on
21 that condition, so you'd basically be adding a
22 couple words to condition number 23 that would
23 achieve what Commissioner Vidovich is requesting.

24 COMMISSIONER VIDOVIK: That's fine.

25 CHAIR PERSON LeFAVER: Is there any

1 objections to that? Do we need to have a vote? Do
2 you want a vote?

3 COMMISSIONER RUIZ: Yes.

4 CHAIR PERSON LeFAVER: So if we can have a
5 motion.

6 COMMISSIONER VIDOVICH: Modify condition
7 23 which is well written to include a projected
8 topographical drawing, engineered drawing of where
9 it will be in two years, and where it is now, so
10 that the public can see what the land form's going
11 to be.

12 CHAIR PERSON LeFAVER: Is there a second
13 to that motion?

14 COMMISSIONER RUIZ: I'll second that.

15 CHAIR PERSON LeFAVER: Mr. Secretary, do
16 you have the motion?

17 MR. RUDHOLM: Yes, sir.

18 CHAIR PERSON LeFAVER: Moved and seconded
19 that condition number 23 include a topographic map
20 as stated. All those in favor say "aye."

21 COMMISSION MEMBERS: (In unison) Aye.

22 CHAIR PERSON LeFAVER: Opposed?

23 (No response.)

24 CHAIR PERSON LeFAVER: Unanimous. Thank
25 you.

1 Are there any other items on 1 through 14?

2 Can I have a motion to accept items 1
3 through 14.

4 COMMISSIONER RUIZ: I have question for --
5 and I apologize. I don't know if -- I think I have
6 a different version than everyone else, because my
7 number 14 is about financial assurances, and I don't
8 know if that's everyone else's. 14 --

9 COMMISSIONER CHIU: Commissioner Ruiz, I
10 recognize the copy you're using.

11 COMMISSIONER VIDOVICH: (Indicating).

12 COMMISSIONER CHIU: You're using the one,
13 I think, that Lehigh's attorney has provided us,
14 because it's got Microsoft Word changes on the side.

15 COMMISSIONER VIDOVICH: This is the one
16 they provided.

17 COMMISSIONER RUIZ: Thanks.

18 It was the same number 14.

19 So my question for financial assurance is
20 related to the water treatment that we talked about
21 earlier. It's not clear to me, is that a part of
22 this condition? I didn't see that in there.

23 MR. GONZALEZ: If I may through the Chair,
24 this is an overall global condition, so that as
25 stated earlier, if water treatment is deemed to be

1 the appropriate measure and then it's to be added in
2 there, then the financial assurance cost estimate
3 would have to account for that.

4 COMMISSIONER RUIZ: And how are the
5 compliance for water quality a part of this
6 financial assurance?

7 MR. GONZALEZ: So what would occur would
8 be, there would be a monitoring of two years to
9 determine whether the BMPs work. If at that point
10 it's determined that selenium treatment, or any
11 other type of water treatment facility needs to be
12 installed, then the financial assurance would have
13 to be recalculated to include the addition of a
14 treatment plant, as well as the reclamation or the
15 removal of the treatment plant.

16 So through the ongoing monitoring, and
17 each year as the face or the financial assurance
18 cost estimate is adjusted, that would be the
19 mechanism for insuring that that mechanism, or that
20 the estimate takes that into account.

21 Because again, it was stated earlier. We
22 don't know if that's really where we're going; but,
23 if so, then condition 14 should be satisfactory to
24 include those.

25 COMMISSIONER RUIZ: Given the late hour,

1 can I make a suggestion that we come back to this
2 condition after we've had a chance to discuss,
3 because it sounds like we're going to be discussing
4 that condition later. If we can come back to this.

5 COMMISSIONER COUTURE: The 1 through 13?

6 COMMISSIONER RUIZ: Yes.

7 CHAIR PERSON LeFAVER: Can we have a
8 motion 1 through 13 to accept?

9 COMMISSIONER COUTURE: I'll move that we
10 accept conditions 1 through 13 on the reclamation
11 plan amendment.

12 CHAIR PERSON LeFAVER: Can I have a
13 second.

14 MS. CLARK: Excuse me. Just for
15 clarification purposes, does your motion include
16 Commissioner Chiu's suggestion that the new
17 paragraph 8D be included?

18 COMMISSIONER RUIZ: Yes.

19 MS. CLARK: Okay. Good.

20 CHAIR PERSON LeFAVER: Absolutely, 8D.

21 COMMISSIONER VIDOVICH: What's 8D?

22 COMMISSIONER BOHAN: It's a table change.

23 CHAIR PERSON LeFAVER: Accept 1 through
24 13, the maker of the motion, did you get a second?

25 MR. RUDHOLM: I did not hear a second,

1 Mr. Chair.

2 COMMISSIONER CHIU: Second.

3 CHAIR PERSON LeFAVER: Second,
4 Commissioner Chiu.

5 All those in favor please say "aye."

6 COMMISSION MEMBERS: (In unison) Aye.

7 CHAIR PERSON LeFAVER: Unanimous vote.

8 All right. Well, it is 9:33. Not too
9 bad. I'm going to continue the public hearing --

10 MR. RUDHOLM: We have closed the public
11 hearing, Mr. Chair.

12 CHAIR PERSON LeFAVER: I'm sorry.
13 Continue the meeting.

14 MR. RUDHOLM: I'd like to request some
15 guidance from counsel. Is the action they would
16 take at this point a recess until they reconvene at
17 a date to be determined?

18 MR. KORB: They can make a motion to
19 recess, but they can only recess the meeting for up
20 to five days before they'll have to renote it. So
21 I think the next date that was planned is more than
22 five days from today, or is it less?

23 MR. EASTWOOD: The discussed date was one
24 week from today.

25 MR. KORB: Seven days. So you can just

1 continue the meeting, and you will have probably
2 just post a new agenda for it.

3 MR. RUDHOLM: But it would be a
4 continuation of the meeting.

5 MR. KORB: Correct.

6 CHAIR PERSON LeFAVER: Do we need a motion
7 on that?

8 MR. KORB: I recommend one.

9 CHAIR PERSON LeFAVER: Could we have a
10 motion to continue this meeting until a week from
11 today, which is Thursday, June the 7th, as I recall,
12 is it the 7th.

13 COMMISSIONER SCHMIDT: So moved.

14 COMMISSIONER CHIU: Just a clarification.
15 Does that include reopening the public hearing or
16 just continuing the meeting?

17 CHAIR PERSON LeFAVER: No, continuing the
18 meeting.

19 COMMISSIONER CHIU: Thank you.

20 CHAIR PERSON LeFAVER: Was there a second?
21 Did I hear Commissioner Chiu second?

22 COMMISSIONER CHIU: Second.

23 CHAIR PERSON LeFAVER: Moved and seconded
24 that we continue this hearing until Thursday,
25 June 7th.

1 COMMISSIONER VIDOVIICH: Gotta have a time.

2 We need a time.

3 MR. KORB: And, also, just for
4 clarification, as I understand, and correct me if
5 I'm wrong, the motion would be to continue this item
6 to the date specified and whatever time is going to
7 be specified for a decision, not for public hearing.

8 COMMISSIONER VIDOVIICH: Intent to make a
9 decision.

10 CHAIR PERSON LeFAVER: And what time were
11 we --

12 SPEAKER: It's 10:00.

13 MR. EASTWOOD: It's the will of the
14 Commission. You had discussed 10:00, though.

15 CHAIR PERSON LeFAVER: Okay. 10:00
16 o'clock. 10:00 o'clock.

17 COMMISSIONER CHIU: Accept the
18 clarification, the second.

19 CHAIR PERSON LeFAVER: So we have a date
20 which is June the 7th, we have a day of the week,
21 which is Thursday, and we have time at 10:00 o'clock
22 in the morning.

23 MR. RUDHOLM: Mr. Chair, I apologize for
24 being maybe too precise, but I did not hear the
25 maker of the motion say "10:00 a.m."

1 CHAIR PERSON LeFAVER: Did the maker of
2 the motion and say "10:00 a.m."?

3 COMMISSIONER SCHMIDT: I will add 10:00
4 a.m. to the motion.

5 MR. RUDHOLM: And that's been concurred to
6 by the maker of the second.

7 COMMISSIONER CHIU: Concurred.

8 MR. RUDHOLM: So you have the motion on
9 the floor.

10 CHAIR PERSON LeFAVER: Thank you,
11 Mr. Secretary.

12 All those in favor.

13 COMMISSION MEMBERS: (In unison) Aye.

14 CHAIR PERSON LeFAVER: Opposed?

15 (No response.)

16 CHAIR PERSON LeFAVER: Unanimous. Thank
17 you. Thank you all. Thank you all.

18 COMMISSIONER CHIU: I just wanted to add
19 my thanks to staff. And I don't know how many of
20 you had dinner or not had dinner, and to the
21 applicant and to the members of the audience that
22 stuck it out.

23 (Time noted: 9:36 p.m.)

24 --o0o--

25

R E P O R T E R ' S C E R T I F I C A T E

I, PATRICIA GOULET, a Certified Shorthand Reporter in and for the State of California, hereby certify that the foregoing item discussed by the Santa Clara County Planning Commission meeting was by me duly reported by me in machine shorthand, and it is a complete transcript of the proceedings had at the taking of said Santa Clara County Planning Commission meeting, reported to the best of my ability and transcribed under my direction.

I further certify that I am not of counsel or attorney for either/or any of the parties to the said Santa Clara County Planning Commission meeting, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

Date: July 11, 2012

PATRICIA GOULET,
CSR Number 8315