

1 COUNTY OF SANTA CLARA
2 PLANNING COMMISSION AND BOARD OF ZONING ADJUSTMENTS
3
4 PERMANENTE QUARRY RECLAMATION
PLAN AMENDMENT
5
6 FILE NO. 2250-13-66-10P(M1)-10EIR
7 _____/

8
9
10 PLANNING COMMISSION MEETING
11 TRANSCRIPTION OF VIDEO RECORDING

12 DATE: June 7, 2012
13

14 TIME: 10:00 A.M.
15

16 LOCATION: County Government Center
17 Isaac Newton Senter Auditorium
First Floor
18 70 West Hedding Street
San Jose, California 95110
19

20 TRANSCRIBED BY: Dana Parrott Harris
21 Certified Shorthand Reporter
License Number C-5700
22
23
24
25

1 A P P E A R A N C E S

2 Commissioners:

3 Jack Bohan

Dennis Chiu

4 Theresa Couture

Scott Lefaver (Chairperson)

5 Mary Ann Ruiz

Kathy Schmidt

6 John Vidovich (Vice Chairperson)

7

8 Staff:

9 Nash Gonzalez, Director, Department of Planning and
Development

10

Gary Rudholm, Commission Secretary

11

Michele Napier, Recording Secretary

12

Rob Eastwood, Principal Planner

13

Marina Rush, Planner III

14

Orry Korb, Assistant County Counsel

15

Elizabeth Pianca, Deputy County Counsel

16

Nancy Clark, Deputy County Counsel

17

18

19

20

21

22

23

24

25

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

2

3 SECRETARY RUDHOLM: Okay. This is the call to
4 order.

5 This is the County of Santa Clara planning
6 commission and board of zoning adjustment agenda for
7 Thursday, June 7th, 2012.

8 All commissioners answering roll call, please.

9 Commissioner Bohan?

10 COMMISSIONER BOHAN: Here.

11 SECRETARY RUDHOLM: Commissioner Chiu?

12 COMMISSIONER CHIU: Here.

13 SECRETARY RUDHOLM: Commissioner Couture?

14 COMMISSIONER COUTURE: Here.

15 SECRETARY RUDHOLM: Chairperson Lefaver?

16 CHAIRPERSON LEFAVER: Here.

17 SECRETARY RUDHOLM: Commissioner Ruiz?

18 Absent.

19 Commissioner Schmidt?

20 COMMISSIONER SCHMIDT: Here.

21 SECRETARY RUDHOLM: Commissioner Vidovich?

22 VICE CHAIRPERSON VIDOVICH: I'm here.

23 SECRETARY RUDHOLM: Item number 2 on the agenda
24 is public comment period. This portion of the meeting
25 is reserved for persons desiring to address the

1 commission on any matter not -- that is not on today's
2 agenda. Speakers are limited to one minute.

3 The law does not permit commission action or
4 extended discussion of any item not on the agenda,
5 except under special circumstances.

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

9 And Mr. Chair, I do have two request-to-speak
10 cards.

11 UNIDENTIFIED FEMALE SPEAKER: Um, excuse me.

12 Somebody told me that we weren't having this,
13 and I didn't fill one of these out. Now you're telling
14 us that we have it, I'll fill out a card.

15 SECRETARY RUDHOLM: Okay. Mr. Chair, as I
16 mentioned, this is the public comment period that's
17 listed on the agenda for speakers to speak on something
18 that is not on --

19 UNIDENTIFIED FEMALE SPEAKER:
20 (Unintelligible).

21 SECRETARY RUDHOLM: -- today's agenda.

22 UNIDENTIFIED FEMALE SPEAKER: Not.

23 SECRETARY RUDHOLM: And I do have two requests
24 to speak.

25 CHAIRPERSON LEFAVER: Okay. Please.

1 SECRETARY RUDHOLM: First individual is Rhoda
2 Fry (phonetic).

3 And we have a hand-held microphone at the
4 podium you'll need to switch on.

5 And Rhoda would be followed by Bud Oliver.

6 CHAIRPERSON LEFAVER: Okay.

7 SECRETARY RUDHOLM: And you have one minute.

8 MS. FRY: Hi, I'm Rho --

9 CHAIRPERSON LEFAVER: Miss --

10 MS. FRY: What?

11 CHAIRPERSON LEFAVER: I was going to say,
12 welcome, Miss Fry (phonetic).

13 MS. FRY: I'm trying to get my one minute in
14 here.

15 CHAIRPERSON LEFAVER: There you go.

16 MS. FRY: Thank you.

17 And two months ago, I went to a planning -- a
18 OMR workshop --

19 UNIDENTIFIED FEMALE SPEAKER: (Unintelligible).

20 MS. FRY: -- workshop.

21 I went to an OMR workshop with the planning
22 commission several months ago, and so I had an
23 opportunity to talk with the OMR guy. And I showed them
24 the annual report produced by the county, the SMAR
25 report on Lehigh, and I said, "This doesn't quite look

1 right to me."

2 And he said, "No," you know, "they actually
3 technically would be out of compliance."

4 And one glaring thing was the biannual report
5 from Lehigh was not in -- was not there.

6 And so I would ask the county -- and this
7 doesn't just have to do with Lehigh but all -- all the
8 guys that you regulate, is that, you know, we have
9 rules. Let's keep them in compliance.

10 And we know that Lehigh's been egregious across
11 the board. Right now they've got over a
12 half-a-million-dollar fines from the Mining Safety and
13 Health Administration. This is for their own
14 employees. It's really sad.

15 So let's keep them safe. Let's keep our air
16 safe, our land safe, and all that stuff, and our water
17 safe.

18 And please, you know --

19 SECRETARY RUDHOLM: Time is expired.

20 MS. FRY: -- when it comes -- even for their
21 land-use stuff, I want to see that biannual report.
22 I've been asking for it for months.

23 SECRETARY RUDHOLM: Thank you.

24 MS. FRY: So thank you.

25 Do your job.

1 SECRETARY RUDHOLM: Next speaker is Bud Oliver
2 (phonetic). And he would be followed by --

3 CHAIRPERSON LEFAVER: Thank you.

4 SECRETARY RUDHOLM: -- Kathy Helgersen
5 (phonetic).

6 MR. OLIVER: (Unintelligible).

7 SECRETARY RUDHOLM: Okay. You have nothing to
8 speak that's not on the agenda?

9 MR. OLIVER: (Unintelligible).

10 SECRETARY RUDHOLM: Oh, okay. Thank you.
11 Next person who wishes to speak is Kathy
12 Helgersen (phonetic).

13 MS. HELGERSON: Hello.

14 I understand that the cement plant is not on as
15 part of it, so I can speak.

16 They have been taking dust from the cement
17 plant, the (unintelligible) houses and (unintelligible)
18 found this out yesterday or -- in their report, and
19 putting it in the east materials storage area.

20 And also they've drudged the -- the ponds.
21 There's 22 ponds. And that material is also going into
22 the east materials storage area.

23 This needs to end, and this needs to stop.

24 As far as I'm concerned, they are polluting the
25 reclamation area, and this affects the EIR and the

1 reclamation itself.

2 So I'd like something done about that. If you
3 could look at that.

4 I've handed in a -- a report that you guys
5 should be reading. It talks about what the EPA has
6 found out. And you also have the EPA's report, from
7 what I understand.

8 Thank you.

9 CHAIRPERSON LEFAVER: Thank you.

10 SECRETARY RUDHOLM: Is there anyone left in the
11 agenda, excuse me, the audience, who wish to say
12 something to the commission, that's not on today's
13 agenda?

14 Mr. Chair, I'll move on to item number 3.

15 Item number 3 is county file number
16 2250-13-66-10P.

17 This is a continued meeting from May 31st,
18 2012, item number 3 on that agenda, to consider a
19 decision regarding the reclamation plan amendment to
20 amend the 1985 reclamation plan for the Permanente
21 Quarry.

22 Permanente Quarry is a limestone and aggregate
23 mining operation. The reclamation plan amendment
24 proposes to reclaim all mining disturbances on the
25 property. No new quarry pit is proposed.

1 Mr. Chair, last week we had exhibits posted,
2 but in this room, unfortunately, we were unable to post
3 any of the maps that we had up last time. The -- these
4 wooden walls are well varnished, and the -- the tape
5 literally wouldn't stick. But we do have copies of the
6 plans, bound copies of the engineered plans, the same
7 ones that were posted last week, available in two
8 places, one to my left, and on a table to my right, if
9 the commissioners want to look at the exhibits during
10 the deliberations today.

11 We passed out in your supplemental packet a
12 memorandum from me, it's dated June 6th, which provides
13 a recap of what took place in the prior three meetings.
14 And if you don't mind, Mr. Chair, I'll just give a quick
15 summary of that memo.

16 The -- Santa Clara County published a final EIR
17 on the project on May 11th, 2012. And in May, there
18 were three meetings by the planning commission to
19 discuss received comment and ask questions about the
20 project.

21 On May 18th, 2012, the commission held a
22 workshop where county staff discussed the FEIR and
23 answered technical questions from the commission on the
24 FEIR.

25 On May 24th, the planning commission held a

1 public hearing, during which time the planning office
2 presented a staff report summarizing the project
3 proposal and the EIR.

4 The commission received public testimony at
5 that time, which included a presentation by the mine
6 operator, comments from staff of the Regional Water
7 Quality Control Board, San Francisco Bay Region, and
8 from members of the public.

9 That hearing was continued to Thursday, May
10 31st. During that meeting, the commission received
11 additional testimony. The commission then closed the
12 public hearing on the -- on the matter before them.

13 In addition, on May 31st, the commission made,
14 on motion from Commissioner Vidovich and seconded by
15 Commissioner Bohan, made the required findings under the
16 California Environmental Quality Act, including adoption
17 of a statement of overriding considerations, and also
18 certified the environmental impact report.

19 During that same meeting, on motion by
20 Commissioner Vidovich, seconded by Commissioner Ruiz,
21 the commission modified condition number 23 in the
22 conditions of approval, to add additional information be
23 required every two years by the mine operator when they
24 provide a -- a map that shows existing conditions, the
25 amount of reclamation that had taken place in the prior

1 two years, and also requires that topographic data be
2 provided showing what the topography would look like two
3 years from the date of that submittal.

4 Would like to note that we also need to make a
5 typographical correction to the words in there.

6 The condition used the word "biannual," and
7 when I checked the dictionary, "biannual" means twice
8 per year, and the intent was for every two years, so we
9 would replace the word with "biennial," spelled B-I, E
10 as in Edward, N-N-I-A-L. And apologize for not catching
11 that before we cite it in our staff report.

12 Also on that same day, on a motion by
13 Commissioner Couture and seconded by Commissioner Chiu,
14 the commission added paragraph D to condition number 8
15 of the conditions of approval, which included some text
16 recommended by the Regional Water Quality Control Board,
17 and the commission also approved conditions 1 through
18 13.

19 Afterwards, the commission, on a motion by
20 Commissioner Schmidt, seconded by Commissioner Chiu,
21 continued the meeting to today, commencing at 10:00 A.M.

22 So the meeting is being continued on the
23 deliberations to consider a decision on the project.

24 And we have on the screen a list of the
25 remaining items or action items to be taken by the

1 commission on this matter.

2 And with that, Mr. Chair, I'll return the floor
3 to you.

4 CHAIRPERSON LEFAVER: Thank you, Mr. Secretary.

5 So we are now reviewing the conditions of
6 approval for the reclamation plan, and we are now on
7 condition of approval 14.

8 Are there -- and we'll start with comments and
9 any -- any items that you would like to bring up, and --

10 SECRETARY RUDHOLM: Mr. Chair?

11 CHAIRPERSON LEFAVER: Yes?

12 SECRETARY RUDHOLM: I beg your pardon.

13 One last piece of housekeeping.

14 I wanted to point out that we did receive some
15 additional correspondence, and we have produced copies
16 of those, and they've been distributed in your
17 supplemental packets, including a memo from Kathy
18 Helgersen that's addressed June 7th, which is in
19 addition to correspondence she had provided earlier this
20 week. Again, both are in your supplemental packets and
21 have been made part of the record.

22 We also did receive some pages from an
23 individual. We only have one copy, so while the
24 deliberations take place, we will make additional copies
25 and distribute those too.

1 CHAIRPERSON LEFAVER: Okay. Very good.

2 Anything else?

3 SECRETARY RUDHOLM: That's everything. Thank
4 you.

5 CHAIRPERSON LEFAVER: All right. Thank you.

6 So we were -- we're going to be talking about
7 continuing on the conditions of approval, and we are on
8 item number 14.

9 Any -- any discussion on 14?

10 Comm --

11 VICE CHAIRPERSON VIDOVICH: I -- I just have a
12 point of order.

13 I think, when we left the last meeting, the
14 staff was going to study the west material pile and
15 provide us new information, and that's why we deferred
16 making a decision on the size of the west material pile.

17 Isn't that your recollection?

18 CHAIRPERSON LEFAVER: Yeah.

19 UNIDENTIFIED FEMALE SPEAKER: East.

20 CHAIRPERSON LEFAVER: Yes, they are, and we'll
21 get to that.

22 VICE CHAIRPERSON VIDOVICH: Okay. So that's
23 later?

24 CHAIRPERSON LEFAVER: Yes.

25 VICE CHAIRPERSON VIDOVICH: All right.

1 CHAIRPERSON LEFAVER: All right. Thank you.

2 So any questions?

3 Commissioner Ruiz.

4 COMMISSIONER RUIZ: Yes.

5 CHAIRPERSON LEFAVER: Item 14.

6 COMMISSIONER RUIZ: At the previous meeting, in
7 the discussion of financial assurance, I -- what I
8 thought we agreed is to come back to that sort of
9 towards the end, after we've had the opportunity to go
10 through all the conditions.

11 CHAIRPERSON LEFAVER: On -- on 14?

12 COMMISSIONER RUIZ: On 14, yes, on -- to
13 discuss the final assurance later.

14 CHAIRPERSON LEFAVER: Okay. Would you like to
15 do that?

16 COMMISSIONER RUIZ: That would be great. Thank
17 you.

18 CHAIRPERSON LEFAVER: Okay.

19 Any objections?

20 Okay. We'll come back to 14.

21 In -- which leads us to number 15, as a
22 condition of approval.

23 Any -- any questions on 15?

24 Commissioner Schmidt.

25 COMMISSIONER SCHMIDT: My question is, it says

1 if requested by the county, copies of all violations or
2 abatement notices, et cetera, should be, you know,
3 provided to the planning manager.

4 Do we -- would we normally get -- wouldn't we
5 want to know what violations and abatement notices are?
6 Wouldn't we want to automatically get them? Or is that
7 not something --

8 DIRECTOR GONZALEZ: If I may -- if I may,
9 through the Chair.

10 Oftentimes what happens is you have other
11 agencies that would issue violation notices or letters
12 without necessarily copying the department. This is
13 just a condition to ensure that all correspondence
14 related to any matters associated with this project
15 would be sent to the department.

16 And again --

17 DEPUTY COUNTY COUNSEL PIANCA: If requested.

18 DIRECTOR GONZALEZ: If requested.

19 And if -- if a -- if a -- if a piece of
20 correspondence is received by even the applicant, the
21 applicant would be forwarding that to the department,
22 again if requested.

23 So basically what this condition does, it is --
24 it's going to ensure that we're staying in the loop on
25 everything, even if action is being taken by other

1 agencies.

2 COMMISSIONER SCHMIDT: And -- and I'm just
3 confused by the part that says if re -- "if requested."
4 Because I would think, wouldn't you want to
5 automatically get it? And it says -- to me, if it says
6 "if requested," it sounds like the planning manager has
7 to request it.

8 DIRECTOR GONZALEZ: If I may, there might be
9 some correspondence that may not be applicable --

10 VICE CHAIRPERSON VIDOVICH: (Unintelligible).

11 DIRECTOR GONZALEZ: -- may be nonviolation
12 issues. Again, we're only interested in those that
13 are -- that are pertinent issues.

14 COMMISSIONER SCHMIDT: Okay. Anyway, I just
15 want to make sure that we are noticed or the planning
16 manager is noticed on violations and important things.
17 So I don't know if we would need any clarifying language
18 there or not, but I just want to indeed make sure that
19 we are well aware of any bad things that are going on.

20 COMMISSIONER RUIZ: Commissioner Schmidt, are
21 you suggesting to remove that language that said "if
22 requested by the county"?

23 COMMISSIONER SCHMIDT: That would be a
24 possibility. I -- I think we might want to modify this,
25 because it's been indicated that we don't want to get

1 absolutely everything, but we want the important
2 things. So maybe we should just say that -- eliminate
3 the "if requested by the county."

4 COMMISSIONER RUIZ: I agree with you.

5 COMMISSIONER SCHMIDT: Okay.

6 COMMISSIONER RUIZ: And if that's your motion,
7 I'll second it.

8 COMMISSIONER SCHMIDT: Okay. It is my motion.

9 COMMISSIONER RUIZ: I'll second that.

10 CHAIRPERSON LEFAVER: Okay. Why don't -- why
11 don't you restate the motion then, please.

12 COMMISSIONER SCHMIDT: I -- I would move to
13 change condition of approval of number 15 to delete the
14 "if requested by the county" and -- so it would just say
15 copies of all violations or abatement notices, et
16 cetera, would be provided to the planning manager.

17 CHAIRPERSON LEFAVER: Okay. And moved by you,
18 seconded by Commissioner Ruiz, that remove the "if
19 requested by county," and just start "Copies of all."
20 Question.

21 COMMISSIONER COUTURE: So -- so I think it
22 actually should be two different sentences.

23 We would like to have copies of all the
24 violations and abatement notices, new sentence, "if
25 requested by the county," request for reports or

1 information related to this RPA and its authorized uses,
2 blah, blah, blah.

3 CHAIRPERSON LEFAVER: Commissioner Schmidt? Do
4 you think it says what you want right now?

5 COMMISSIONER SCHMIDT: I think I would just
6 leave it as is, where -- I leave my original motion.

7 CHAIRPERSON LEFAVER: Original motion, okay.
8 She -- she'd like to -- just her original
9 motion. She thinks it's --

10 UNIDENTIFIED MALE SPEAKER: (Unintelligible).

11 VICE CHAIRPERSON VIDOVICH: You can't
12 without -- you can't without the second holder removing
13 her second.

14 CHAIRPERSON LEFAVER: Well, no, she wants her
15 original motion.

16 VICE CHAIRPERSON VIDOVICH: Oh, she wants it.
17 Okay.

18 CHAIRPERSON LEFAVER: Yeah.

19 VICE CHAIRPERSON VIDOVICH: I thought she said
20 she was erasing it.

21 CHAIRPERSON LEFAVER: No.

22 Okay. Any -- any other comments, please?

23 COMMISSIONER CHIU: Just a question for staff.
24 Is that okay with staff?

25 DIRECTOR GONZALEZ: Yes. That would be fine.

1 CHAIRPERSON LEFAVER: Thank you.

2 Okay. We have a motion and a second on number
3 15, striking the first phrase, "if requested by the
4 county," and starting with "Copies of all violations."

5 All those in favor say "aye."

6 COMMISSIONER BOHAN: Aye.

7 COMMISSIONER CHIU: Aye.

8 COMMISSIONER COUTURE: Aye.

9 CHAIRPERSON LEFAVER: (Raises hand.)

10 COMMISSIONER RUIZ: Aye.

11 COMMISSIONER SCHMIDT: Aye.

12 VICE CHAIRPERSON VIDOVICH: Aye.

13 CHAIRPERSON LEFAVER: Opposed?

14 A hundred -- a hundred percent agreement.

15 COMMISSIONER RUIZ: Chair? Chair Lefaver?

16 CHAIRPERSON LEFAVER: Yes.

17 COMMISSIONER RUIZ: I have -- I have a question
18 regarding the Regional Water Quality Control Board's
19 input on number 15.

20 CHAIRPERSON LEFAVER: Uh-huh?

21 COMMISSIONER RUIZ: They had requested --
22 they -- they submitted a paragraph, and I see that staff
23 has agreed to the first sentence, however is not in
24 agreement with including their second sentence as part
25 of number 15, so I'd just like to understand from staff

1 why this should not be included as part of number 15.

2 CHAIRPERSON LEFAVER: Staff?

3 PRINCIPAL PLANNER EASTWOOD: Okay. To respond
4 to the question, the request from the regional board on
5 number 15, in staff's opinion was merely restating facts
6 that were known or -- or statements of fact. It did not
7 really add to the conditions. So it was for -- for
8 those reasons would be sort of redundant of existing
9 conditions, and for those reasons were not included in
10 the staff recommended conditions.

11 COMMISSIONER RUIZ: Would, then -- would, then,
12 it be okay with -- if it were a part of it, since it
13 doesn't sound like there's a harm to include that as
14 part of the condition? Would there be any downside to
15 including that language?

16 CHAIRPERSON LEFAVER: Go ahead.

17 DEPUTY COUNTY COUNSEL PIANCA: If I may,
18 through the Chair.

19 The intent of the conditions of approval is
20 essentially to provide parameters for how the project
21 should operate. And so to include a condition of
22 approval that is a restatement of fact is -- is not
23 necessary and could lead to confusion as well, in terms
24 of interpretation and application of those conditions of
25 approval to the project.

1 COMMISSIONER RUIZ: Would staff have any
2 suggestion on any language that would cover this area,
3 or can you maybe point out where this is covered in the
4 current conditions, then?

5 PRINCIPAL PLANNER EASTWOOD: Well, as -- as
6 counsel said, it -- it merely states what existing is
7 required by law. So that the requested changes from the
8 regional board states that nothing in the conditions has
9 any limiting effect on the jurisdiction of the regional
10 board or the California Air Resources Board, and that's
11 merely a statement of fact.

12 Probably, from staff's perspective, the -- you
13 know, if -- if required by the commission, that could be
14 added. I don't think there's anything that would --
15 that would present a problem.

16 The second sentence states, "Discharges --
17 discharges of selenium are not currently covered under
18 the mine operator's sand and gravel permit."

19 And I think from staff's perspective, while
20 that -- that is a statement of fact today, these are
21 conditions that go with the rec plan for 20 years, and
22 that could change; and -- and because of that, and again
23 because these conditions are for reclamation and not for
24 the regional board's permit, they're just not pertinent
25 to these conditions.

1 CHAIRPERSON LEFAVER: Okay? Okay.

2 So with that, we'll -- we'll move on to any
3 questions on 16 or 17 or 18. Severability and duty to
4 defend.

5 Seeing none -- oh.

6 COMMISSIONER RUIZ: Chair --

7 CHAIRPERSON LEFAVER: Commissioner Ruiz.

8 COMMISSIONER RUIZ: So I -- again, I'm looking
9 at the suggestion from the Regional Water Quality
10 Control Board related to number 17.

11 CHAIRPERSON LEFAVER: I don't see any from 17.

12 I --

13 COMMISSIONER RUIZ: I --

14 CHAIRPERSON LEFAVER: On severability.

15 VICE CHAIRPERSON VIDOVICH: (Unintelligible).

16 COMMISSIONER RUIZ: (Unintelligible).

17 Sorry.

18 It's on the tab of -- containing the input from
19 the Regional Water Quality Control Board, page number
20 4. It says number 17. However, it appears to be more
21 closely related to financial assurance, so I'm not --
22 maybe staff can help clarify that.

23 PRINCIPAL PLANNER EASTWOOD: Sure.

24 So -- and just a point of clarification, the --
25 the -- out of your binder, you have a -- a couple

1 attachments. What we're going through is the A. And A
2 has staff recommended changes. And the tabs on the
3 right is -- is highlighting requests from other
4 agencies.

5 And then you can go to other attachments. B
6 has a summary of all those requests and staff analysis.

7 So it just helps for clarification, going back
8 and forth.

9 The request from the regional board was their
10 number 17, and it requested an annual review of the
11 financial assurance; and it -- it -- you know, it seemed
12 to tie that to a request and review by the regional
13 board.

14 Staff took this request and modified it to
15 incorporate as 8-D, and this is an action you took last
16 week, information from the regional board which seemed
17 to say -- the seem -- some of the intent of this seemed
18 to be the regional board would provide intent into -- or
19 provide input into monitoring the rec plan and any
20 information they have regarding the rec plan.

21 Staff took that general intent and incorporated
22 it into 8-D on a annual basis, if the regional board
23 submits information that would affect the rec plan, that
24 would be considered as part of the annual report.

25 So in that sense, that -- that was staff's

1 intent to -- to -- to get to sort of the -- I -- I
2 believe the broader intent of the regional board's
3 comment in this case.

4 CHAIRPERSON LEFAVER: So you did incorporate
5 the -- the -- the idea of -- of -- of their request in
6 another condition?

7 PRINCIPAL PLANNER EASTWOOD: That is correct,
8 and that -- and last week you took an action to
9 incorporate that in. It was 8-D of the --

10 CHAIRPERSON LEFAVER: 8 -- 8-D --

11 PRINCIPAL PLANNER EASTWOOD: -- conditions.

12 CHAIRPERSON LEFAVER: -- right?

13 PRINCIPAL PLANNER EASTWOOD: Yes.

14 CHAIRPERSON LEFAVER: Yeah. Okay.

15 Commissioner Ruiz?

16 Okay.

17 COMMISSIONER RUIZ: (Unintelligible).

18 Apologize.

19 I think part of their suggestion is related to
20 financial assurance, so maybe we'll come back to that
21 when we look at the condition on financial assurance.

22 Thank you.

23 CHAIRPERSON LEFAVER: Okay. So if there are no
24 other questions on severability and the duty to defend
25 and indemnify, can I have a motion to accept those?

1 VICE CHAIRPERSON VIDOVIK: Can we go all the
2 way to 21?

3 CHAIRPERSON LEFAVER: 21. Excuse me. Yes.

4 VICE CHAIRPERSON VIDOVIK: We're going to 21?

5 CHAIRPERSON LEFAVER: Yes.

6 VICE CHAIRPERSON VIDOVIK: Then I'll make that
7 motion.

8 CHAIRPERSON LEFAVER: Moved.

9 Is there a second?

10 COMMISSIONER CHIU: Second.

11 Oops, sorry.

12 CHAIRPERSON LEFAVER: Second by Commissioner
13 Schmidt.

14 VICE CHAIRPERSON VIDOVIK: Discussion.

15 CHAIRPERSON LEFAVER: Any discussion?

16 VICE CHAIRPERSON VIDOVIK: I don't have
17 (unintelligible).

18 CHAIRPERSON LEFAVER: Keep me on track.

19 VICE CHAIRPERSON VIDOVIK: I want to make sure
20 she's okay.

21 CHAIRPERSON LEFAVER: No discussion?

22 All those in favor of 16 through 21, say
23 "aye."

24 COMMISSIONER BOHAN: Aye.

25 COMMISSIONER CHIU: Aye.

1 COMMISSIONER COUTURE: Aye.

2 CHAIRPERSON LEFAVER: Aye.

3 COMMISSIONER RUIZ: Aye.

4 COMMISSIONER SCHMIDT: Aye.

5 VICE CHAIRPERSON VIDOVICH: Aye.

6 CHAIRPERSON LEFAVER: Opposed?

7 Unanimous.

8 Okay. Let's go to reclamation requirements,

9 starting with 22 and 23 on page 5.

10 Any questions?

11 VICE CHAIRPERSON VIDOVICH: I have a comment.

12 CHAIRPERSON LEFAVER: Comment?

13 VICE CHAIRPERSON VIDOVICH: In my notes, I have
14 here that if we get any plans, I'd like to have them
15 20 -- excuse me, one inch, 200 scale as a minimum scale,
16 I mean, instead of one to a thousand or one-to-500. It
17 just -- that's the minimum readable side {sic} I think
18 you could get.

19 It doesn't specify that. But I think one of
20 the big problems everyone's had in this project is
21 getting little, tiny maps.

22 CHAIRPERSON LEFAVER: Yeah. I don't -- I don't
23 think you want to put that as part of a condition,
24 though, do you?

25 VICE CHAIRPERSON VIDOVICH: Well, they're

1 asking for drawings, and what do you -- what's the staff
2 think about having minimum 200 -- one-to-200? It just
3 is readable by the public.

4 CHAIRPERSON LEFAVER: Staff?

5 SECRETARY RUDHOLM: Mr. Chair, could you
6 clarify. Are we talking about condition 22 or 23?

7 VICE CHAIRPERSON VIDOVICH: I'm talking about
8 there's a whole -- there -- through the Chair.

9 There's a whole series of conditions that
10 require them to provide us data periodically. And what
11 we've seen a lot of times is everything's reduced to a
12 point where you -- you can't read it. That was the
13 biggest problem I had with analyzing the project.

14 You know, I'm not the Chair. I'm not the
15 Chair.

16 I'm finished.

17 CHAIRPERSON LEFAVER: Yeah. I -- I think, even
18 though I understand that one-to-200 scale is very
19 readable, it -- it may be very cumbersome as far as the
20 number of -- of plats that we would get at one --
21 one-to-200.

22 I think there could be a better scale than
23 that; we -- and we can still get the information that we
24 need.

25 Staff, could you suggest something?

1 Mr. Director.

2 DIRECTOR GONZALEZ: If I can -- if I can,
3 through the Chair.

4 I think this is one of those types of
5 conditions that's best dealt with between the county and
6 the applicant, to -- based on industry practices.

7 So I would recommend leaving the condition as
8 is.

9 Again, we have the discretion to accept or to
10 reject the -- the drawings when they're submitted.

11 And again, if we find that there is a problem
12 in the quality or the materials that we're receiving,
13 this is one of those items that we would report out to
14 the planning commission.

15 CHAIRPERSON LEFAVER: And also, if we're not
16 satisfied with the information that we get, we can ask
17 for other information --

18 DIRECTOR GONZALEZ: Yes.

19 CHAIRPERSON LEFAVER: -- better scale, et
20 cetera?

21 DIRECTOR GONZALEZ: Yes. That's correct.

22 CHAIRPERSON LEFAVER: Does that satisfy?
23 Satisfactory?

24 VICE CHAIRPERSON VIDOVICH: Well, I know you
25 have another commissioner that wants to comment.

1 I did get one-to-200 scale drawings. Actually,
2 one to -- one inch to a hundred. They were readable.
3 It just took me a long time to get it in the process,
4 and I think you asked many times. And it was readable.
5 That's when I could start seeing how the storage yard
6 was and everything.

7 So I know the public is interested in this
8 project. They're highly interested in it. And I just
9 want to make sure that if -- if drawings are available,
10 that they get it at at least that scale. That's all.
11 That's my intent.

12 And I think you have another commissioner that
13 wants to comment.

14 CHAIRPERSON LEFAVER: Go ahead.

15 COMMISSIONER COUTURE: Scott, if it -- if it's
16 okay, I -- I have a -- notes in my -- I don't think it
17 was last time but I think it was the before, that the
18 staff actually asked the applicant and the applicant
19 said that they -- they could provide topos to that. I
20 may be mistaken, but that's what I have in my notes.

21 CHAIRPERSON LEFAVER: And -- and they did.
22 Yeah. They did.

23 COMMISSIONER COUTURE: So may -- possibly we
24 could have the -- the -- the applicant would provide it
25 to staff. So it wouldn't be staff's time.

1 CHAIRPERSON LEFAVER: Right.

2 But I think what the director of planning is
3 indicating is that it should be left to their
4 professional discretion as to the scale that it should
5 come in. And then if we want a greater scale or the
6 scale is not to our liking, we can ask for additional
7 maps at that time. It may be that what they are given
8 is a scale that would be fine for the information that
9 is given, instead of specifying it has to be one to
10 one -- one-to-200. We could -- it could be one-to-500
11 and -- and be just as good, and -- and -- and convey the
12 information for everyone to -- to see.

13 COMMISSIONER COUTURE: I guess we'll find out,
14 won't we?

15 CHAIRPERSON LEFAVER: I'm sure we will.

16 VICE CHAIRPERSON VIDOVICH: You know, I do have
17 a kind of -- if I can talk more, I do have a comment.

18 You have people that live next door there that
19 are affected by the quarry; and somehow, and I -- I -- I
20 know the county is doing the best they can, but somehow
21 the drawing set are always produced, it's so big, the
22 drawings that are produced are unreadable. They are
23 unreadable.

24 And my -- my whole thing is, as we -- as we
25 move neighbor to neighbor, that the neighbors get

1 drawings that are readable.

2 Yeah, we can leave it to the staff's
3 discretion, but maybe we can say that, you know, if --
4 if they're public documents, the public has a right to a
5 document that's scale that's reasonably readable. I
6 don't know. Because it didn't seem that we were getting
7 them readable. It didn't -- it didn't seem that system
8 was working.

9 CHAIRPERSON LEFAVER: Mr. Director.

10 DIRECTOR GONZALEZ: Mr. Chair, if I can, for
11 clarification, one of the main reasons why you -- the
12 commission should not specify a scale but leave it to
13 the professional judgment is that if you ask for a scale
14 drawing, and we'll say at one-to-200, and if that is not
15 readable, then what you've done is you've already locked
16 the commission in to that scale or the department to
17 that scale.

18 So I think what we want to do is have some
19 latitude so that if it's unreadable, then we can come
20 back and say, based on the fact that these drawings are
21 inadequate, we would like them drawn at -- redrawn at a
22 different scale, for acceptance.

23 But my concern is that if you lock yourself in
24 to a particular scale, then we're mincing words and --
25 and I'd hate to see the county be put in a position

1 where they can't ask for something that's a little bit
2 better.

3 PRINCIPAL PLANNER EASTWOOD: So just -- you --
4 you could add, if you like, I'll just suggest, you know,
5 you could add a sentence, and this is a suggestion, "If
6 requested by the planning manager or the commission,
7 additional plans may be required at a scale that's
8 readable," up to whatever you specify, one -- so it
9 gives you the latitude later on.

10 So if that's -- it's -- if that's a way forward
11 to -- to acknowledge that a -- a -- a greater scale may
12 needed, that's a language you could add to that -- to
13 that condition.

14 VICE CHAIRPERSON VIDOVICH: Can I talk?

15 The -- I'm on the commission. I had trouble
16 getting a readable scale. And I know it's a huge
17 project and -- and -- and I don't think all the
18 opposition is reason -- reasonable; but I do think that,
19 you know, government has its own bureaucracy, and the --
20 the scale I was saying was minimum of one-to-200 minimum
21 is what I was saying. And I -- I don't think that's --
22 this one's a minimum of one to a hundred, the plans that
23 I have.

24 I mean, I just would like to see the public
25 have readable drawings, if -- this thing's going to go

1 on for 20 years.

2 So I don't know. I mean, I -- I don't know. A
3 minimum scale of that, if -- if that's reasonable.

4 CHAIRPERSON LEFAVER: Yeah, I -- I think what
5 the director is indicating is that let -- let the staff
6 do the professional, and with the caveat at what you
7 indicated, that it should be readable and -- and should
8 be accessible, and -- and we'll go from there. And I
9 think you've made your point. Okay?

10 VICE CHAIRPERSON VIDOVICH: I'm only one
11 person, so that's -- that's fine. I know I made a point
12 to this meeting. I just look at future meetings.

13 CHAIRPERSON LEFAVER: Okay. So -- so staff,
14 please make a note that we would like the maps to be
15 readable at a scale that can be understandable, and that
16 if requested by commissioners or -- or the public, that
17 you're able to get those scales to them.

18 Is that --

19 COMMISSIONER CHIU: Through the -- through the
20 Chair.

21 Commissioner Vidovich, were you more concerned
22 about also the time it took for you to get those scale
23 drawings?

24 VICE CHAIRPERSON VIDOVICH: My concern is
25 the -- the public is looking at this. They're a direct

1 neighbor. And if -- you know, I'm a commissioner. They
2 have to give it to me. But it did take me a long time.
3 I think it is burdensome sometime to have a large scale
4 drawing, because it's more paper; but on the flip side,
5 I mean, they're manufacturing mountains over there, and
6 I think that people are going to be right next door,
7 that they -- they might want to read what's -- what --

8 COMMISSIONER CHIU: Well --

9 VICE CHAIRPERSON VIDOVICH: -- what they're
10 given.

11 So that -- that's my comment, and I don't think
12 the system worked before.

13 COMMISSIONER CHIU: Mr. Chair, perhaps you
14 could also make a note to staff that it has to be made
15 in a timely fashion, produced in a timely fashion.

16 CHAIRPERSON LEFAVER: Very good.

17 In -- and in a timely fashion.

18 COMMISSIONER CHIU: Thank you.

19 PRINCIPAL PLANNER EASTWOOD: Just a note --

20 CHAIRPERSON LEFAVER: Thank you.

21 PRINCIPAL PLANNER EASTWOOD: Just a note to the
22 planning commission.

23 Last week, it's not included in these, but you
24 did modify condition 23 to require the submittals of --
25 of topographic data, so that's not in the conditions,

1 but that -- that will be added and was --

2 CHAIRPERSON LEFAVER: And it was in your memo.

3 PRINCIPAL PLANNER EASTWOOD: Yes. Yes.

4 CHAIRPERSON LEFAVER: Okay.

5 PRINCIPAL PLANNER EASTWOOD: Okay.

6 CHAIRPERSON LEFAVER: Okay. All right.

7 We did pass, by the way, number 23 already. So
8 we'll go on.

9 Any questions on 22? Can I just go --
10 Commissioner Schmidt.

11 COMMISSIONER SCHMIDT: I have a small question
12 on 22.

13 Basically it states that the various material
14 storage areas should be -- the perimeter should be
15 demarcated within 60 days after approval of the
16 reclamation program. And then it -- in the last
17 sentence, it says, "The demarcation should be used --
18 should be orange construction fencing or other brightly
19 colored material."

20 And I'm just wondering, is the -- putting
21 orange fencing out there making it look even worse?
22 Would it be better to use, you know, green fencing or
23 brown fencing or something like that? Or is that just
24 necessary for safety or --

25 DIRECTOR GONZALEZ: If I may, through the

1 Chair.

2 Orange fencing is primarily a -- an industry
3 standard that's used out there, in the construction
4 trades, that is easily identifiable; and as some of the
5 commissioners attended a field trip out to the site,
6 you've seen the large pieces of equipment that are used
7 on site, and so what you want is some sort of material
8 that's very visible to the people that are out there
9 doing field inspection work as well as those people that
10 are driving the heavy machinery, so that they're not
11 driving over or -- or impacting those areas that they
12 shouldn't be moving into.

13 So again, the orange is just a -- is a -- a
14 standard that's been used. I'm not sure if there's even
15 a -- a -- a lime green or something that could be used.
16 But generally it's the orange that's -- that's widely
17 used, so that's why it was suggested as such.

18 CHAIRPERSON LEFAVER: So it's a safety issue?

19 DIRECTOR GONZALEZ: Yes.

20 COMMISSIONER SCHMIDT: Okay. Thank -- thank
21 you.

22 CHAIRPERSON LEFAVER: Can we have a motion on
23 22?

24 COMMISSIONER CHIU: Mr. Chair, I'm sorry. I
25 have a procedural question at --

1 CHAIRPERSON LEFAVER: Yes.

2 COMMISSIONER CHIU: -- at this time.

3 I'd like to ask county counsel, in our
4 supplemental packet, we received -- and in today, we
5 were handed a correspondence; and I'm wondering, because
6 we closed the public hearing last meeting, whether it's
7 appropriate for me to read the correspondence that's --
8 was provided following our -- our -- our last meeting.

9 ASSISTANT COUNTY COUNSEL KORB: Well,
10 obviously, as you know, all this material was submitted
11 quite late in the process, and there was plenty of
12 opportunity to submit it at an earlier time.

13 However, it would most likely end up being
14 placed in the administrative record if this matter was
15 ever appealed. And you're not at this point required to
16 review it, because you don't have the time, given the
17 fact that it was submitted late; but if the board wants
18 to take a little time to allow everybody to at least
19 peruse the material, see what's there, you could do
20 that. That's your choice.

21 COMMISSIONER CHIU: Okay, so --

22 ASSISTANT COUNTY COUNSEL KORB: You're not
23 required to review it at this point.

24 COMMISSIONER CHIU: But the closing of the
25 public testimony did not close correspondence?

1 ASSISTANT COUNTY COUNSEL KORB: We -- we have
2 not prohibit -- obviously, we have received this
3 correspondence, so we have not prohibited correspondents
4 from continuing to submit material. And as I said, it
5 will end up in the record if anybody challenges the
6 county's decision; but at this point in time, given the
7 time available, you don't have to review it, but if you
8 want to take a few minutes to do so, you can.

9 COMMISSIONER CHIU: Thank you. I am reviewing
10 them, then. Thank you.

11 CHAIRPERSON LEFAVER: And -- and now if there
12 are no objections from my fellow planning commissioners,
13 we'll -- we will include this as part of the
14 administrative record.

15 Okay. Good. Thank you.

16 So can I have a motion on 22?

17 VICE CHAIRPERSON VIDOVICH: Can we go all the
18 way to 27?

19 CHAIRPERSON LEFAVER: If you would like, sure.

20 VICE CHAIRPERSON VIDOVICH: I'll move we go
21 all -- through all the conditions up to 27.

22 Sorry.

23 I move we approve the conditions up to 27,
24 adding the intent is to provide readable documents to
25 the public, if the public requests, in -- in readable

1 scale, if that's --

2 CHAIRPERSON LEFAVER: Okay.

3 VICE CHAIRPERSON VIDOVIK: -- okay with
4 everybody.

5 CHAIRPERSON LEFAVER: Do I have a second?

6 COMMISSIONER COUTURE: I'll second.

7 CHAIRPERSON LEFAVER: Moved and seconded.

8 COMMISSIONER CHIU: Can I make a -- can I ask a
9 question to the motion maker?

10 CHAIRPERSON LEFAVER: Please.

11 COMMISSIONER CHIU: In 23, there's the word
12 "biannually." Is that modified to "biennial" --

13 CHAIRPERSON LEFAVER: Yes.

14 COMMISSIONER CHIU: -- "biennially"?

15 VICE CHAIRPERSON VIDOVIK: Yes.

16 CHAIRPERSON LEFAVER: Yeah. There was -- it
17 was just a clerical error.

18 COMMISSIONER CHIU: Thank you.

19 CHAIRPERSON LEFAVER: Okay. Thank you.

20 All those in favor of 22 through 27, please say
21 "aye."

22 COMMISSIONER BOHAN: Aye.

23 COMMISSIONER CHIU: Aye.

24 COMMISSIONER COUTURE: Aye.

25 CHAIRPERSON LEFAVER: Aye.

1 COMMISSIONER RUIZ: Aye.

2 COMMISSIONER SCHMIDT: Aye.

3 VICE CHAIRPERSON VIDOVICH: Aye.

4 CHAIRPERSON LEFAVER: Opposed?

5 That's unanimous, Mr. Secretary.

6 All right. Let us go from 28 through 37.

7 Questions?

8 Mr. Vidovich?

9 VICE CHAIRPERSON VIDOVICH: Is this -- okay. I
10 have one.

11 Item 30 says the planning manager shall have
12 administrative review to do minor revisions, which I
13 think is good. However, I would like those revisions to
14 go to the planning commission and be subject to the
15 planning commissions of some sort, some kind of review.

16 And I -- I think it's a matter of -- okay.
17 That's my suggestion. At least a report to the
18 commission --

19 CHAIRPERSON LEFAVER: Well, why don't we get --

20 VICE CHAIRPERSON VIDOVICH: -- at the next
21 meeting.

22 CHAIRPERSON LEFAVER: Do -- do you have an
23 annual report that comes to us, Mr. -- Mr. Director?

24 DIRECTOR GONZALEZ: Yes. There is a -- a
25 status report that is provided to the planning

1 commission. I think that if the planning commission
2 wanted to tweak that condition, you could just basically
3 add "and a -- an annual status report shall be provided
4 to the planning commission, which summarizes any changes
5 or modification that have been made by the planning
6 manager."

7 VICE CHAIRPERSON VIDOVIK: Well --

8 CHAIRPERSON LEFAVER: Is that --

9 VICE CHAIRPERSON VIDOVIK: -- my -- my
10 suggestion is, if you make a change, that it come to us
11 at the next meeting, just as a report. Because the
12 changes may not happen yearly; they -- they happen at a
13 certain time. Just so -- does that seem like it's
14 burdensome?

15 DIRECTOR GONZALEZ: And that would be fine. It
16 would just be a status report.

17 CHAIRPERSON LEFAVER: So a status report on any
18 revisions?

19 VICE CHAIRPERSON VIDOVIK: Any minor things --

20 CHAIRPERSON LEFAVER: Any --

21 VICE CHAIRPERSON VIDOVIK: -- they make, they
22 just give us a -- a status report that -- at the next
23 hearing.

24 I see everybody nodding their heads, so --

25 CHAIRPERSON LEFAVER: Okay. Okay.

1 So item number 30, I -- a motion by
2 Commissioner Vidovich to include a sentence that a
3 status report of -- of any minor revisions be given to
4 the planning commission after those revisions.

5 VICE CHAIRPERSON VIDOVIK: (Unintelligible).

6 CHAIRPERSON LEFAVER: At the next --

7 VICE CHAIRPERSON VIDOVIK: At the next meeting
8 after --

9 CHAIRPERSON LEFAVER: At the next meeting.

10 Is a second?

11 COMMISSIONER COUTURE: I'll second it.

12 CHAIRPERSON LEFAVER: Moved and seconded to
13 request that a status report of any minor revisions be
14 given to the planning commissions after the revisions
15 are approved by the planning manager.

16 All those in favor, say "aye."

17 COMMISSIONER RUIZ: Quick question, for
18 clarification.

19 Just checking with staff, is -- "at the next
20 meeting," is that -- is that appropriate for you?
21 Because I know sometimes it could be -- it could happen
22 and then the next meeting is a week later, so --

23 DIRECTOR GONZALEZ: Right.

24 We -- we could go ahead -- through the Chair.

25 We could go ahead and put that "at the next

1 available meeting."

2 CHAIRPERSON LEFAVER: The next --

3 COMMISSIONER RUIZ: Okay.

4 CHAIRPERSON LEFAVER: -- available meeting?

5 COMMISSIONER RUIZ: Okay. Thank you.

6 CHAIRPERSON LEFAVER: Is that all right? Okay.

7 COMMISSIONER RUIZ: Is the maker of the motion
8 okay with that?

9 VICE CHAIRPERSON VIDOVIK: Yes.

10 CHAIRPERSON LEFAVER: Okay.

11 COMMISSIONER COUTURE: Yes.

12 CHAIRPERSON LEFAVER: Okay. So we have a -- an
13 amendment to 30 for the status report coming to the
14 planning commission at the next available meeting.

15 All those in favor, say "aye."

16 COMMISSIONER BOHAN: Aye.

17 COMMISSIONER CHIU: Aye.

18 COMMISSIONER COUTURE: Aye.

19 CHAIRPERSON LEFAVER: Aye.

20 COMMISSIONER RUIZ: Aye.

21 COMMISSIONER SCHMIDT: Aye.

22 VICE CHAIRPERSON VIDOVIK: Aye.

23 CHAIRPERSON LEFAVER: Okay. Opposed?

24 Unanimous.

25 Thank you.

1 Any other questions on any of the other items?

2 Commissioner Schmidt?

3 COMMISSIONER SCHMIDT: Question on item 32.

4 It talks about overburden, being compacted,
5 tested, and documented to demonstrate it will support
6 postmining uses.

7 A lot of times, compaction requirements are
8 stated more specifically, like pounds per square foot or
9 whatever, for soil compaction.

10 Is -- is that appropriate here, to add
11 something more definitive rather than just postmining
12 uses?

13 DIRECTOR GONZALEZ: Again, if I can answer that
14 through the Chair.

15 I think if you're dealing with construction
16 projects that are under a building permit, then you
17 would have specific standards under the building code.
18 But here, under mining, basically what you're looking at
19 is it -- it's -- as we mentioned before, it -- you
20 really have to look at the end use as to what those
21 standards are going to be. And I think just leaving it
22 the way it is gives us enough latitude to look at that.

23 But again, if we were looking at an end use of
24 residential or commercial or agricultural or open space,
25 then I think the standards would be increasing and you'd

1 have to have more specific compaction standards as you
2 get into residential uses. So again, we felt that this
3 would be appropriate.

4 COMMISSIONER SCHMIDT: Okay. So if -- if the
5 uses vary, then you would apply different -- you might
6 apply different standards?

7 DIRECTOR GONZALEZ: (Unintelligible).

8 COMMISSIONER SCHMIDT: Okay. Thank you.

9 CHAIRPERSON LEFAVER: Okay. Any other question
10 or --

11 Commissioner Chiu.

12 COMMISSIONER CHIU: Thank you, Mr. Chair.

13 I was wondering if the last sentence of 32,
14 "Documentation shall be submitted to the planning
15 manager" was a little vague as to time, and what
16 documentation was to be submitted to the planning staff.

17 CHAIRPERSON LEFAVER: So Mr. Director --

18 VICE CHAIRPERSON VIDOVICH: (Unintelligible).

19 CHAIRPERSON LEFAVER: -- it deals with time
20 and --

21 COMMISSIONER CHIU: What documentation.

22 CHAIRPERSON LEFAVER: -- and -- and type. On
23 32.

24 COMMISSIONER CHIU: The -- the last sentence of
25 32, documentation.

1 DIRECTOR GONZALEZ: The way the condition is
2 readed, if I can, through the Chair, says,
3 "Documentation shall be submitted to the planning
4 manager."

5 And I think the way it's written is it's a
6 catch-all. It means all documentation as it relates to
7 compaction or any changes.

8 We certainly could modify that -- that language
9 to say that "any and all changes or placement of
10 material shall be documented and said shall be provided
11 to the planning manager."

12 COMMISSIONER CHIU: Within so many -- so many
13 days or a month or --

14 DIRECTOR GONZALEZ: We could. We could say
15 within 30 days.

16 COMMISSIONER CHIU: That sounds -- does that
17 sound reasonable to staff, to -- to the director?

18 DIRECTOR GONZALEZ: I would say 30 days is very
19 reasonable.

20 COMMISSIONER CHIU: I would -- if anyone has
21 any comments --

22 CHAIRPERSON LEFAVER: Okay.

23 COMMISSIONER CHIU: -- I would propose that
24 amendment.

25 VICE CHAIRPERSON VIDOVICH: Can I make a

1 comment? I don't mean to speak.

2 I am familiar with -- with materials and
3 stacking materials. The material that they have there
4 is basically used all over the county for base
5 material. It has the ability to compact. It's almost
6 self-compacting. It has the ability to stand very
7 steep. And there's an angle of repose that's allowed
8 for so much distance, and then they -- they have to go
9 horizontally; they bench. That doesn't mean that's
10 aesthetically pleasing. But engineering-wise, it is
11 very, very stable.

12 They are going -- I -- I'm certain they'll have
13 soils engineers there that will give recommendations,
14 and the documentation they'll probably give them is --
15 is a soils engineer will give them something saying they
16 did it appropriately.

17 I -- I -- I just -- I'm just kind of telling
18 you, just from my --

19 COMMISSIONER CHIU: Uh-huh.

20 VICE CHAIRPERSON VIDOVICH: -- experience that
21 that material is very -- it'll stack up very steep, too
22 steep aesthetically, but it'll stack up very steep very
23 easily, and it is practically self-compacting.

24 COMMISSIONER CHIU: So with Commissioner
25 Vidovich's point, I guess I'm wondering why the

1 documentation shall be -- documentation shall be
2 provided to the planning manager if -- I mean, if -- if
3 we are going to -- to have documentation, we might as
4 well say all documentation, and it'd be -- it'd be
5 supplied to the -- to the planning manager within a
6 reasonable --

7 VICE CHAIRPERSON VIDOVIK: That's -- I mean,
8 that's fine. I just -- I just want to give -- you may
9 not be that familiar. I just want to give --

10 COMMISSIONER CHIU: Thank you.

11 VICE CHAIRPERSON VIDOVIK: -- little
12 background. I -- that stuff stacks very steeply. Not
13 necessarily aesthetically pleasing; but
14 engineering-wise, it -- I don't think that's an issue.

15 COMMISSIONER CHIU: Does anyone --

16 CHAIRPERSON LEFAVER: What would you like to
17 do, Commissioner Chiu?

18 COMMISSIONER CHIU: I'd like to move that at
19 least the last sentence be clarified, that all
20 documentation regarding the compacting, testing, and
21 documentation of the overburden shall be submitted to
22 the planning manager within 30 days, as the proposed --
23 as recommend -- as suggested based on my question to the
24 planning director.

25 CHAIRPERSON LEFAVER: So within 30 days?

1 COMMISSIONER CHIU: Yeah.

2 CHAIRPERSON LEFAVER: Is that --

3 PRINCIPAL PLANNER EASTWOOD: I'd say within 30
4 days of completion of the --

5 CHAIRPERSON LEFAVER: Okay.

6 PRINCIPAL PLANNER EASTWOOD: -- documentation,
7 it shall be submitted --

8 CHAIRPERSON LEFAVER: Completion --

9 PRINCIPAL PLANNER EASTWOOD: -- to the planning
10 manager.

11 CHAIRPERSON LEFAVER: -- of the documentation.

12 COMMISSIONER CHIU: Yes. Thank you. That
13 would be my motion --

14 CHAIRPERSON LEFAVER: Okay. Is there --

15 COMMISSIONER CHIU: -- in addition to
16 Mr. Eastwood's --

17 CHAIRPERSON LEFAVER: Is there a second?

18 COMMISSIONER RUIZ: I'll second it.

19 CHAIRPERSON LEFAVER: Moved and seconded that
20 item number 32 be changed with -- within 30 days of
21 completion.

22 VICE CHAIRPERSON VIDOVICH: Can -- can I move
23 1 -- conditions 1 to 39? Because I have a -- I want to
24 talk about 40. Can we just do 1 to 39?

25 CHAIRPERSON LEFAVER: Okay, well, let's do 32,

1 and then we'll do --

2 VICE CHAIRPERSON VIDOVICH: Oh, okay.

3 CHAIRPERSON LEFAVER: -- the rest of them.

4 All those in favor of item 32 as amended say

5 "aye."

6 COMMISSIONER BOHAN: Aye.

7 COMMISSIONER CHIU: Aye.

8 COMMISSIONER COUTURE: Aye.

9 CHAIRPERSON LEFAVER: Aye.

10 COMMISSIONER RUIZ: Aye.

11 COMMISSIONER SCHMIDT: Aye.

12 VICE CHAIRPERSON VIDOVICH: Aye.

13 CHAIRPERSON LEFAVER: Opposed?

14 Unanimous.

15 Thank you.

16 So now we'll go through, what did we say, 28

17 through 39?

18 VICE CHAIRPERSON VIDOVICH: I'll move 28 to 39.

19 CHAIRPERSON LEFAVER: Is there a second?

20 COMMISSIONER COUTURE: I second it.

21 CHAIRPERSON LEFAVER: Moved and seconded to

22 accept conditions 28 through 39 on page 6 and 7, with 32

23 amended.

24 All those in favor say "aye."

25 COMMISSIONER RUIZ: I -- I have a question for

1 staff --

2 CHAIRPERSON LEFAVER: Commissioner Ruiz.

3 COMMISSIONER RUIZ: -- regarding the limestone
4 removal.

5 So within this condition, the limestone will be
6 removed, it looks like, by the end of this year. So
7 what if, in the future, in 10 years or whatever time
8 frame, there are other limestone identified. Would that
9 also cover the intent of removing all future limestone?

10 PRINCIPAL PLANNER EASTWOOD: So you're
11 correct. The intent of this condition is to remove all
12 limestone boulders that have come down into the
13 Permanente Creek area this year, prior to the rainy
14 season.

15 If the commission likes -- I think generally,
16 the intent always, in the EIR and the rec plan, is to
17 remove those boulders. If you'd like to add specificity
18 that future identified boulders shall be removed also,
19 you could add that also.

20 COMMISSIONER RUIZ: I'd like to -- I think that
21 would help make it more clear. So I'd like to make that
22 motion to include language that any limestone identified
23 in the future would be removed.

24 CHAIRPERSON LEFAVER: In -- in which -- in
25 which condition is that, Commissioner Ruiz?

1 COMMISSIONER RUIZ: Well, that's -- looks like
2 it's in 38 and 39.

3 CHAIRPERSON LEFAVER: Both 38 and 39? Okay.
4 38 and 39 be modified to include that any limestone
5 boulders --

6 PRINCIPAL PLANNER EASTWOOD: Right. And I
7 think it's -- I think it's just 39.

8 CHAIRPERSON LEFAVER: Just 39?

9 PRINCIPAL PLANNER EASTWOOD: Yeah.

10 CHAIRPERSON LEFAVER: Okay. Because it does
11 say "limestone boulder removal" on 39.

12 VICE CHAIRPERSON VIDOVICH: It says on 38 too.

13 CHAIRPERSON LEFAVER: Oh, does it --

14 COMMISSIONER RUIZ: Yeah.

15 CHAIRPERSON LEFAVER: -- say that?

16 COMMISSIONER RUIZ: Both 38 and 39 --

17 CHAIRPERSON LEFAVER: Okay.

18 COMMISSIONER RUIZ: -- describe that there
19 removals. However, if it's just part of 39, I'm -- I'm
20 fine with that as well.

21 CHAIRPERSON LEFAVER: Okay. So that all -- all
22 limestone boulders be removed.

23 PRINCIPAL PLANNER EASTWOOD: Okay.

24 VICE CHAIRPERSON VIDOVICH: That's fine with
25 me.

1 CHAIRPERSON LEFAVER: Any -- any -- okay.

2 Can -- can I have a motion, a second on that?

3 SECRETARY RUDHOLM: Mr. Chair, we have a motion
4 on the floor.

5 CHAIRPERSON LEFAVER: I'm sorry.

6 SECRETARY RUDHOLM: And my question back to you
7 is, has the modification requested by Commissioner Ruiz
8 been accepted both by the maker of the motion and the
9 maker of the second?

10 CHAIRPERSON LEFAVER: Is that acceptable to the
11 maker of the motion?

12 VICE CHAIRPERSON VIDOVICH: Yes.

13 CHAIRPERSON LEFAVER: And the second?

14 COMMISSIONER COUTURE: Yes.

15 CHAIRPERSON LEFAVER: Okay, so --

16 SECRETARY RUDHOLM: Thank you.

17 CHAIRPERSON LEFAVER: So there was an
18 amendment. We'll -- we'll just do 39 right now, to
19 include all boulders, limestone boulders.

20 All those in favor say "aye."

21 COMMISSIONER BOHAN: Aye.

22 COMMISSIONER CHIU: Aye.

23 COMMISSIONER COUTURE: Aye.

24 CHAIRPERSON LEFAVER: Aye.

25 COMMISSIONER RUIZ: Aye.

1 COMMISSIONER SCHMIDT: Aye.

2 VICE CHAIRPERSON VIDOVIK: Aye.

3 CHAIRPERSON LEFAVER: Okay. Now we'll accept
4 the motion item 28 through 39.

5 All those in favor, say "aye."

6 COMMISSIONER BOHAN: Aye.

7 COMMISSIONER CHIU: Aye.

8 COMMISSIONER COUTURE: Aye.

9 CHAIRPERSON LEFAVER: Aye.

10 COMMISSIONER RUIZ: Aye.

11 COMMISSIONER SCHMIDT: Aye.

12 VICE CHAIRPERSON VIDOVIK: Aye.

13 CHAIRPERSON LEFAVER: Unanimous.

14 Thank you.

15 All right. So we -- shall we look at items 40
16 through 44? Or 45.

17 VICE CHAIRPERSON VIDOVIK: Chair?

18 CHAIRPERSON LEFAVER: 40 through 45.

19 VICE CHAIRPERSON VIDOVIK: 40 is -- you know,
20 I provided a handout. Staff has it. I think everybody
21 has it here.

22 And what I have asked, and I don't know if
23 Lehigh wants to accept it, because there may be an issue
24 whether it's -- it's -- has nexus to the reclamation
25 plan, but what I've asked them to provide us is an

1 engineering study looking at a bypass from Stevens Creek
2 Dam to the area of the cement plant, with a -- a
3 moderate tunnel, at different flows, in case, in the
4 future, that area is needed to protect for flooding,
5 flooding which has already occurred, and flooding which
6 they contribute to, and they are -- they've had to
7 put -- change their plan to put a basin there anyway,
8 because they didn't have the basin. There's a part
9 being dug out to handle flooding.

10 And this is just an engineering study. It's
11 not going to be that expensive, I don't think. It's a
12 specific study. It's not something real nebulous.

13 I don't know if they want to volunteer for it,
14 or has information, or how it might be handled. Maybe
15 you want to handle it after this. But, I mean, now's
16 the appropriate time for me to bring it up.

17 CHAIRPERSON LEFAVER: Okay. Yes, I -- I --
18 thank you, Commissioner Vidovich.

19 I think that we can -- it would be more
20 appropriate to handle this after we go through the
21 reclamation plan, and -- and discuss that specific item
22 and the possibility of Stevens Creek watershed and --
23 and flooding, and get a -- get a motion on that at that
24 time.

25 VICE CHAIRPERSON VIDOVICH: Are you guys

1 (unintelligible)?

2 COMMISSIONER RUIZ: So you're -- you're
3 suggesting that we cover this later, is that -- discuss
4 this later, is that what --

5 CHAIRPERSON LEFAVER: Yes. In a separate
6 motion, afterwards.

7 VICE CHAIRPERSON VIDOVICH: But I think you're
8 talking about doing it after we approve the reclamation
9 plan.

10 CHAIRPERSON LEFAVER: That's correct.

11 VICE CHAIRPERSON VIDOVICH: So we have no
12 authority then. We're just talking --

13 CHAIRPERSON LEFAVER: We --

14 VICE CHAIRPERSON VIDOVICH: -- to them then --

15 CHAIRPERSON LEFAVER: Well --

16 VICE CHAIRPERSON VIDOVICH: -- right?

17 CHAIRPERSON LEFAVER: -- we have -- we always
18 have authority, Commissioner Vidovich.

19 VICE CHAIRPERSON VIDOVICH: Okay. I -- I just
20 want to make it clear for everybody we'd be postponing
21 it till after we approve the reclamation plan.

22 CHAIRPERSON LEFAVER: Okay. Thank you.

23 All right. Any questions on 40 through 45?

24 Can I have a motion, please.

25 COMMISSIONER SCHMIDT: You're asking about 40

1 through --

2 CHAIRPERSON LEFAVER: 45.

3 COMMISSIONER SCHMIDT: Yeah. I -- I have a
4 question on 45.

5 CHAIRPERSON LEFAVER: Sure.

6 COMMISSIONER SCHMIDT: And I think John had
7 brought this up too, and maybe we've already discussed
8 this and I missed it.

9 But it doesn't seem like that relates to --
10 like 45 relates to in lieu of condition 42, 43?

11 VICE CHAIRPERSON VIDOVICH: Oh, yeah. It's --
12 it's -- 45's miswritten, I think.

13 COMMISSIONER SCHMIDT: Okay. This one is about
14 the caretaker's residence and --

15 PRINCIPAL PLANNER EASTWOOD: So -- yes.
16 Good -- good catch.

17 In renumbering, we can change that to be -- the
18 correct would be 43 and 44 instead of 42 and 43 --

19 CHAIRPERSON LEFAVER: 44?

20 VICE CHAIRPERSON VIDOVICH: Can -- can --

21 PRINCIPAL PLANNER EASTWOOD: -- is the correct
22 reference in terms of the -- the conditions.

23 VICE CHAIRPERSON VIDOVICH: Can we just leave
24 it out so it can be explained? Because I think we --
25 it's simple. It's about a caretaker's residence, but it

1 just doesn't make -- the English doesn't make sense to
2 me.

3 CHAIRPERSON LEFAVER: On 45?

4 VICE CHAIRPERSON VIDOVIK: Yeah.

5 CHAIRPERSON LEFAVER: So what -- what would you
6 suggest? I'm sorry.

7 VICE CHAIRPERSON VIDOVIK: I just want it
8 explained to me. I'd just leave it out so we could have
9 it explained and do it next motion.

10 CHAIRPERSON LEFAVER: Oh, I see. Okay.

11 UNIDENTIFIED FEMALE SPEAKER: 41 through 44.

12 CHAIRPERSON LEFAVER: It's -- why don't we just
13 explain it, and we'll get it over with.

14 VICE CHAIRPERSON VIDOVIK: Okay.

15 CHAIRPERSON LEFAVER: So on 45, why don't
16 you --

17 PRINCIPAL PLANNER EASTWOOD: Sure.

18 CHAIRPERSON LEFAVER: -- explain it.

19 PRINCIPAL PLANNER EASTWOOD: So the intent of
20 this, the -- and just to remind the planning commission,
21 from condition 42 on, these are actually all of the
22 mitigation measures from the EIR.

23 So each and every mitigation measure in the EIR
24 has become a condition of approval, and these are all
25 conditions.

1 The EIR identified that in construction in the
2 EMSA area, that there could be potential health hazard
3 impacts to an adjacent caretaker's cottage. There's a
4 house that's pretty close to the -- the quarry area.

5 And so the -- the immediate mitigation was to
6 do what's required under 43 and 44, to reduce emissions
7 that would affect someone living in that house.

8 The other option would just be to prevent
9 someone living there.

10 So 45 provide -- provides the opposite. If the
11 quarry operator was able to coordinate a deed
12 restriction that prevented someone from living in that
13 area during construction of the EMSA, that that would
14 prevent that impact also.

15 So it again just provides either/or as an
16 option to address that significant impact.

17 CHAIRPERSON LEFAVER: Does that explain? Is
18 everyone okay? Okay.

19 COMMISSIONER CHIU: Could -- could you repeat
20 the -- the motion that's -- that's pending? Or are we
21 trying to approve 42 through --

22 CHAIRPERSON LEFAVER: Yeah. 40 through 45.

23 COMMISSIONER CHIU: So --

24 CHAIRPERSON LEFAVER: And -- and the correction
25 is in lieu of condition 43 and 44. And -- and -- and

1 condition number 45.

2 COMMISSIONER CHIU: I have a -- could I go back
3 to item -- condition number 40?

4 CHAIRPERSON LEFAVER: Yes.

5 COMMISSIONER CHIU: In the last sentence, it
6 says, "The mine operator shall obtain all necessary
7 permits and approvals from the Regional Water Quality
8 Control Board, Department of Fish and Game, and U.S.
9 Army Corps of Engineers to implement the work."

10 I -- I would suggest that it be re -- reworded
11 to say the -- the mine -- excuse me. "The mine operator
12 shall obtain all necessary permits and approvals from
13 local, state, and federal authorities, including,
14 without limitation, the Regional Water Quality Control
15 Board, Department of Fish and Game, and U.S. Army Corps
16 of Engineers to implement the work."

17 CHAIRPERSON LEFAVER: Staff?

18 PRINCIPAL PLANNER EASTWOOD: Well, I -- you --
19 you could add that. I'd say "applicable," at least, to
20 make sure. The -- I mean, what --

21 COMMISSIONER CHIU: Okay.

22 PRINCIPAL PLANNER EASTWOOD: What's been listed
23 here is what's known the permits that are needed. There
24 could be others. We don't know. But at least, at
25 minimum, if that's added, I'd suggest putting the word

1 in, "applicable."

2 COMMISSIONER CHIU: Thank you.

3 CHAIRPERSON LEFAVER: Okay.

4 COMMISSIONER CHIU: So -- and that's just in --
5 in case, you know, departments of the federal government
6 change; they get reorganized and -- and things like
7 that. So just for the future, so this thing -- so
8 this -- these conditions of approval can go on for a
9 very long time, that's why I'm making it more general,
10 from all applicable local, state, and federal
11 authorities, including, without limitation, the Regional
12 Water Quality Control Board, et cetera.

13 It's a -- it's a legalistic thing. It's a --
14 it's a lawyer thing.

15 CHAIRPERSON LEFAVER: Okay.

16 COMMISSIONER CHIU: I'd like to make that
17 motion, or include that into the -- into the motion.

18 CHAIRPERSON LEFAVER: So would you like to make
19 a motion to that point?

20 COMMISSIONER CHIU: We have a -- already a
21 motion on the table.

22 CHAIRPERSON LEFAVER: Right. But there can be
23 an amendment to that motion.

24 COMMISSIONER CHIU: Okay. I'd like to amend
25 the motion to include that additional language.

1 CHAIRPERSON LEFAVER: Okay. Is there a second?

2 COMMISSIONER COUTURE: I'll second the
3 amendment.

4 CHAIRPERSON LEFAVER: Okay. It's been moved
5 and seconded to change item 40 to include applicable
6 local, state, and regional and federal agencies. Did I
7 cover them all?

8 All those in favor say "aye."

9 COMMISSIONER BOHAN: Aye.

10 COMMISSIONER CHIU: Aye.

11 COMMISSIONER COUTURE: Aye.

12 CHAIRPERSON LEFAVER: Aye.

13 COMMISSIONER RUIZ: Aye.

14 COMMISSIONER SCHMIDT: Aye.

15 VICE CHAIRPERSON VIDOVICH: Aye.

16 CHAIRPERSON LEFAVER: Opposed?

17 Unanimous.

18 Now we have a motion on 40 through 45 to
19 accept.

20 All those in favor, say "aye."

21 COMMISSIONER RUIZ: Chair --

22 Chair (unintelligible) I have a -- I have -- excuse --

23 Chair Lefaver?

24 CHAIRPERSON LEFAVER: Yes.

25 COMMISSIONER RUIZ: I -- I apologize.

1 I have a question on number 45. It's --

2 CHAIRPERSON LEFAVER: Oh, 45? Sure.

3 COMMISSIONER RUIZ: Yeah. And if -- if staff
4 can -- can explain, I know -- I know you did, and I -- I
5 just want to make sure I'm reading what -- what -- what
6 I'm understanding from staff. Thank you.

7 PRINCIPAL PLANNER EASTWOOD: One more time?

8 COMMISSIONER RUIZ: Yes. Thank you.

9 PRINCIPAL PLANNER EASTWOOD: So there is a
10 caretaker's residence at the address listed here, 2961
11 Stevens Creek Boulevard. It's very close to the EMSA.
12 And so in the EIR, it identified that construction
13 activity for the EMSA could result in impacts to that
14 residence, people living there. Most notably health
15 hazard risks from diesel particulate matter or
16 construction.

17 The mitigation measure in the EIR was to reduce
18 emissions and -- and do measures as listed under
19 conditions 43 and 44, so that was the requirement.

20 The alternative requirement is to prevent
21 someone from living there, and thus someone would not be
22 exposed to those health hazard risks. So 45 allows
23 that, if the operator's able to ensure a deed
24 restriction, no one is living at that residence, the
25 impact would go away.

1 COMMISSIONER RUIZ: Thank you.

2 CHAIRPERSON LEFAVER: Thank you.

3 Yes.

4 COMMISSIONER COUTURE: So I have another
5 question on that.

6 So if there is nobody living in the caretaker's
7 residence, then they don't have to follow 43 and 44?

8 PRINCIPAL PLANNER EASTWOOD: That is correct.

9 COMMISSIONER COUTURE: I'm not sure I think
10 that's right. I -- I -- I like the idea of using newer
11 model engines and using retrofit emission control
12 devices, because the air's going to go -- that bad air's
13 going to go other places other than just a caretaker's
14 lounge. Lodge.

15 CHAIRPERSON LEFAVER: Staff?

16 COMMISSIONER RUIZ: I agree.

17 COMMISSIONER COUTURE: Is that what you were
18 trying to --

19 COMMISSIONER RUIZ: Yes.

20 COMMISSIONER COUTURE: Yeah. So we -- we --
21 we're not sure we want to get rid of 43 and 44 if they
22 just say nobody lives in the --

23 PRINCIPAL PLANNER EASTWOOD: Well --

24 COMMISSIONER COUTURE: -- residence.

25 PRINCIPAL PLANNER EASTWOOD: -- there -- there

1 would have to be a nexus. I mean, again, the --
2 there -- under the EIR, if there's an impact, you have
3 to mitigate it, and -- and that -- and that was the
4 issue, is -- is that that equipment would affect that
5 receptor. In order to prevent that impact, you have to
6 retrofit the engines.

7 So to -- to require it regardless of someone
8 living there, the question would be what's -- you know,
9 what's the impetus or the nexus.

10 Now keep in mind that the California Air
11 Resources Board does require continually that all
12 equipment, and there's phasing, be upgraded over time.
13 So if that helps, just -- just to know that per state
14 air quality standards, there are mandates to update
15 equipment. That happens regardless.

16 COMMISSIONER RUIZ: So it sounds like this
17 would already be covered, so there's -- it sounds like
18 it would be okay to include the language as well and not
19 have it be dependent if there's someone living there or
20 not.

21 PRINCIPAL PLANNER EASTWOOD: Well, again, I --
22 I just don't think the county has the authority to
23 require them to retrofit engines, unless there's an
24 impact. So a specific that that -- that's the issue.

25 CHAIRPERSON LEFAVER: Okay. So -- so if I can

1 put it -- frame it here in a little bit, one of the --
2 the reason one of the mitigation measure is there, is
3 because if there's a -- a person living there, they want
4 to minimize the -- the noise and -- and possible
5 pollution from -- from equipment that's being used next
6 to the caretaker. But if there's no one there, that
7 level of -- of impact is not there. And therefore they
8 really don't need this.

9 Now having said that, staff is indicating that
10 there are increasing -- increasingly stringent standards
11 coming down all the time on equipment and -- and so
12 forth, and these -- those will be implemented anyway,
13 because that's what they're there for.

14 Okay?

15 COMMISSIONER RUIZ: When I -- when I look at
16 this section, I think the -- what I'm reading is that
17 the intent is to reduce the air -- excuse me, reduce
18 possible air emissions and health hazards risk. And so
19 I would support leaving this here, regardless if
20 someone's residing there or not, because I think that
21 that meets the improvement of air quality and reducing
22 health hazards risk.

23 COMMISSIONER COUTURE: So if I under -- sorry,
24 Mr. Chair.

25 So if I understand it, you would rather not

1 have "in lieu" in number 45, because you want to make
2 sure 43 and 44 stay.

3 COMMISSIONER RUIZ: That's correct.

4 COMMISSIONER COUTURE: Thank you.

5 CHAIRPERSON LEFAVER: Okay. We do have a --
6 we -- we -- we have a motion. You can amend the motion
7 if you wish.

8 And Commissioner Ruiz, did you want to amend
9 the motion?

10 COMMISSIONER RUIZ: Yes, I'd like to amend the
11 motion to include -- to -- I guess it would be removing
12 "in lieu of" condition numbers and to include that
13 language.

14 CHAIRPERSON LEFAVER: So remove condition
15 number 45, just the first part?

16 COMMISSIONER RUIZ: Yes.

17 CHAIRPERSON LEFAVER: So the first part --
18 specify the first part you want to remove, please.

19 COMMISSIONER RUIZ: Yes, so the sentence would
20 start with "The mine operator."

21 VICE CHAIRPERSON VIDOVICH: Can I --

22 CHAIRPERSON LEFAVER: Okay.

23 UNIDENTIFIED FEMALE SPEAKER: Yes.

24 CHAIRPERSON LEFAVER: So after the comma.

25 Okay.

1 VICE CHAIRPERSON VIDOVIK: Can I --

2 CHAIRPERSON LEFAVER: First phrase.

3 Yes.

4 VICE CHAIRPERSON VIDOVIK: Can I comment on
5 that?

6 CHAIRPERSON LEFAVER: Well, we have a motion.
7 Is that a motion?

8 COMMISSIONER RUIZ: Yes.

9 CHAIRPERSON LEFAVER: Amendment to the motion.
10 Do I have a second?

11 COMMISSIONER COUTURE: I second.

12 CHAIRPERSON LEFAVER: So we have an amendment
13 to the motion, and a first and -- and a second.

14 SECRETARY RUDHOLM: Mr. Chair --

15 CHAIRPERSON LEFAVER: Mr. Secretary.

16 SECRETARY RUDHOLM: Could you also identify the
17 maker of the original motion that we're looking to
18 amend?

19 CHAIRPERSON LEFAVER: Yes. The -- the
20 original -- the maker of the original motion was
21 Commissioner Chiu, as I recall.

22 COMMISSIONER CHIU: From -- for this section?

23 CHAIRPERSON LEFAVER: Yes.

24 SECRETARY RUDHOLM: My notes show I had a
25 motion to amend condition 40, which was made by

1 Commissioner Chiu and seconded by Couture. Ahead of
2 that, I wanted verification that my notes are correct
3 that regarding conditions 40 through 45, Commissioner
4 Vidovich, seconded by Couture, moved approval.

5 CHAIRPERSON LEFAVER: Oh, okay. I'm sorry.
6 There was -- there was -- so now we have -- now we have
7 a -- an amendment.

8 SECRETARY RUDHOLM: Correct. So the request by
9 Ruiz would be directed to Commissioner Vidovich and
10 Couture to modify their motion approving conditions 40
11 through 45, to include a modification to the text
12 contained within condition 45.

13 CHAIRPERSON LEFAVER: Commissioner Vidovich?

14 VICE CHAIRPERSON VIDOVICH: I -- you know what,
15 I have two commissioners I have great respect for, but
16 this -- there is very complicated, the diesel emissions;
17 and, you know, we have to deal with it on our farm, and
18 you have to buy tier 1, and then you have to go to tier
19 4.

20 I would like to applicant to have -- I mean, to
21 be fair, have them speak on this, because I -- we may
22 not understand the impact of the condition from a
23 technical standpoint. And I -- I just think it's fair.

24 There are other things here that I think are --
25 affect --

1 CHAIRPERSON LEFAVER: Okay.

2 VICE CHAIRPERSON VIDOVICH: -- the public more,
3 and -- and if they're complying with the current
4 environmental regulations, which are getting pretty
5 strict, we may be, you know, imposing something odd
6 here.

7 I just -- is that -- if that's allowed by the
8 Chair.

9 CHAIRPERSON LEFAVER: Right.

10 Now we can have an amendment, and so we don't
11 have to have the -- we don't have to have the maker of
12 the initial motion approve it. We can have an amend --
13 so this is an amendment that's being proposed by
14 Commissioner Ruiz and seconded by Commissioner Couture.
15 It's an amendment. So we can vote on it.

16 SECRETARY RUDHOLM: Vote on the proposed
17 amendment?

18 CHAIRPERSON LEFAVER: Amendment, yes.

19 COMMISSIONER CHIU: I'd add a --

20 CHAIRPERSON LEFAVER: Okay. So --

21 COMMISSIONER RUIZ: I -- I have a comment.

22 So if I -- in reading the language, says
23 options for reducing emissions may include but are not
24 limited to. So there is flexibility in the language.

25 VICE CHAIRPERSON VIDOVICH: I'm just saying

1 it's fair to let them speak on it if it's -- if it
2 involves all their diesel engines that they're using. I
3 just think it's fair to let them speak on it. That's
4 all.

5 COMMISSIONER CHIU: I had a question for
6 staff --

7 CHAIRPERSON LEFAVER: Yes. Commissioner --

8 COMMISSIONER CHIU: -- through the Chair.

9 CHAIRPERSON LEFAVER: -- Chiu.

10 COMMISSIONER CHIU: There was some mention by
11 Mr. -- by the planning staff, Mr. Eastwood, that
12 indicated that 43 and 44 required a legal nexus to the
13 EIR.

14 If we eliminate the first sentence as in -- as
15 is -- as is requested in the motion before us, do we
16 have a legal nexus?

17 PRINCIPAL PLANNER EASTWOOD: Well, staff's
18 opinion, there -- there is none. If the commission
19 wants to acquire -- if the commission wants to require
20 43 and 44 above and beyond the EIR, that's the will of
21 the commission. From staff's perspective, the nexus to
22 the -- the impact is not there if you make that change.
23 But if -- outside of the EIR, if you're making that
24 change, that's -- that's the will of the commission.
25 Staff is just advising that it's outside of the EIR and

1 the mitigation measure.

2 CHAIRPERSON LEFAVER: So -- okay.

3 So what they're saying is this was put in here
4 based upon the nexus of environmental impact with a
5 person living in the caretaker's.

6 COMMISSIONER CHIU: Right.

7 CHAIRPERSON LEFAVER: If there's no person
8 living there, they don't need it.

9 COMMISSIONER CHIU: Right.

10 I'm asking, can we have something in the
11 conditions of approval, even though it says
12 environmental conditions EIR mitigation -- mitigation
13 measures, that does not have a -- a nexus to the -- to
14 the EIR? And that might be a legal question.

15 ASSISTANT COUNTY COUNSEL KORB: Well,
16 generally, you don't want to require a condition on --
17 that doesn't have a nexus to the impacts of the
18 project.

19 Whether -- I mean, the EIR is a document that's
20 used to determine what the environmental impacts will
21 be. And so that -- that's the -- the origin of this
22 condition.

23 But in any case, you don't want to impose
24 conditions that actually could potentially take
25 something away from the applicant that don't have some

1 connection to the project, to the impacts of the
2 project. And I -- what I'm hearing from staff is that
3 the only impact identified with regard to this condition
4 is the environmental impact identified in the EIR
5 regarding dust and noise and other things --

6 VICE CHAIRPERSON VIDOVICH: Oh.

7 ASSISTANT COUNTY COUNSEL KORB: -- generated
8 from the heavy equipment; and if the -- if heavy
9 equipment is, you know, mod -- modified, upgraded in a
10 certain manner, then that condition's not required.
11 That -- that's what I'm understanding.

12 So -- so I -- I -- I see them as alternative
13 conditions, but directly related to the impact of the
14 EIR, if that impact is mitigated one way or another,
15 then I don't see a reason to require both conditions,
16 and I think you would be taking something away without
17 having a reason to do so.

18 CHAIRPERSON LEFAVER: Okay.

19 You understand?

20 COMMISSIONER CHIU: I do.

21 CHAIRPERSON LEFAVER: Okay. Thank you.

22 Shall we have a --

23 VICE CHAIRPERSON VIDOVICH: Can I -- can I ask
24 a clarification?

25 CHAIRPERSON LEFAVER: Yes.

1 VICE CHAIRPERSON VIDOVIK: The motion is
2 that -- just to be clear --

3 CHAIRPERSON LEFAVER: Yes.

4 VICE CHAIRPERSON VIDOVIK: And -- and I --
5 this thing about corralling us in, saying we can't
6 modify from the staff's conditions I think is going too
7 far, okay. That's too far. I think we can do it.
8 However, I think we have to be reasonable, just be
9 reasonable.

10 Tier -- this condition requires them to use all
11 tier 4 engine standards. I think. And from my
12 knowledge, that is -- that is really going far out
13 there. And one of the reasons that tier 4 -- they're
14 taking time is those engines aren't even available,
15 probably, for big equipment. And so, you know, you may
16 be making a condition that just goes too far.

17 And I just -- if they were able to speak on it,
18 I think it -- it would help.

19 I'm for mitigating dust and all that, but I
20 think it just may go too far. I really do.

21 If he wants to let them speak. I don't -- for
22 some reason --

23 CHAIRPERSON LEFAVER: Let's --

24 VICE CHAIRPERSON VIDOVIK: -- he doesn't want
25 to.

1 CHAIRPERSON LEFAVER: Well, why don't -- why
2 don't -- why don't we go through the -- we have a -- we
3 have a motion.

4 COMMISSIONER RUIZ: I'll -- just to address the
5 comment, what I'm reading here is flexibility in the
6 language, which the sentence starts, "Options for
7 reducing -- reducing emissions may include but are not
8 limited to using newer model engines," and the example
9 given is a tier 4. It's not saying "shall use a tier 4
10 engine." I'm reading it as encouraging best management
11 practices and with the goal to reduce emissions and to
12 reduce any health hazards risk.

13 CHAIRPERSON LEFAVER: Okay. So we have a -- a
14 motion and a second to -- on -- on item number 45, to
15 remove the first paragraph, excuse me, first phrase, and
16 start the sentence with "The mine operator may submit,"
17 and go from there.

18 Any other comments?

19 All those in favor of the amendment, please say
20 "aye."

21 COMMISSIONER BOHAN: Aye.

22 COMMISSIONER COUTURE: Aye.

23 COMMISSIONER RUIZ: Aye.

24 VICE CHAIRPERSON VIDOVICH: Aye.

25 You wouldn't let them speak. Aye.

1 CHAIRPERSON LEFAVER: I see. It's my fault.

2 All those opposed? All those opposed?

3 COMMISSIONER CHIU: I'll abstain because I'm
4 not sure about the legal nexus issue, that it's
5 required, but I do support more the environmental issues
6 involved. It's just that I'm concerned about the legal
7 nexus.

8 CHAIRPERSON LEFAVER: Okay. And I'm also
9 concerned with the -- the nexus issues, and I'll vote
10 no.

11 COMMISSIONER SCHMIDT: And I'm also -- I'm
12 concerned about (unintelligible).

13 CHAIRPERSON LEFAVER: So Commissioner Bohan,
14 where -- where were -- where were you on this?

15 COMMISSIONER BOHAN: Yes.

16 CHAIRPERSON LEFAVER: Yes?

17 COMMISSIONER BOHAN: Yes.

18 CHAIRPERSON LEFAVER: So we have four yes, two
19 no, and one abstain. So motion passes.

20 All right. So we -- now we have a motion on 40
21 through 45.

22 VICE CHAIRPERSON VIDOVICH: Can I ask a
23 procedural question?

24 CHAIRPERSON LEFAVER: Yes.

25 VICE CHAIRPERSON VIDOVICH: Sorry if it's out

1 of order.

2 Why wouldn't you let them speak to the -- why
3 wouldn't you let the mine operator speak about it if it
4 could impact them, and give us information? I'm just
5 curious. I'm just -- I don't mean to put you on the
6 spot, but --

7 CHAIRPERSON LEFAVER: Thank -- thank you --

8 VICE CHAIRPERSON VIDOVIK: Yeah.

9 CHAIRPERSON LEFAVER: -- Commissioner Vidovich.

10 VICE CHAIRPERSON VIDOVIK: Which I am.

11 CHAIRPERSON LEFAVER: We were talking about a
12 nexus issue here, and -- and it was very clear as to
13 what the issue was. Whether or not forty -- 45 would be
14 implemented. And I thought it was very clear. So ...

15 So we have 40 through 45. There's a motion.

16 All -- all those in favor of the motion please
17 say "aye."

18 COMMISSIONER BOHAN: Aye.

19 COMMISSIONER CHIU: Aye.

20 COMMISSIONER COUTURE: Aye.

21 CHAIRPERSON LEFAVER: Aye.

22 COMMISSIONER RUIZ: Aye.

23 COMMISSIONER SCHMIDT: Aye.

24 VICE CHAIRPERSON VIDOVIK: Aye.

25 CHAIRPERSON LEFAVER: Opposed?

1 Unanimous.

2 SECRETARY RUDHOLM: Mr. Chair, now that there's
3 a break, I wanted to check in with you on housekeeping.

4 The time is now 11:35. What time did you want
5 to take a lunch break? We're having --

6 CHAIRPERSON LEFAVER: At --

7 SECRETARY RUDHOLM: -- food brought in.

8 CHAIRPERSON LEFAVER: At noon.

9 SECRETARY RUDHOLM: Okay. Thank you.

10 CHAIRPERSON LEFAVER: Mm-hmm.

11 All right. So forty -- 46 --

12 VICE CHAIRPERSON VIDOVICH: Can we just --

13 CHAIRPERSON LEFAVER: -- through --

14 VICE CHAIRPERSON VIDOVICH: Can we do the rest,
15 all of them? I think I'd make a motion to do them all,
16 the balance of them. They're all out of the EIR.

17 They're all mitigation measures. They're not -- they
18 don't preclude us from making any other motions. We do
19 still have the east material yard, but I just make a
20 motion to finish the rest of them in one swoop.

21 CHAIRPERSON LEFAVER: Any comments from fellow
22 commissioners?

23 Commissioner Schmidt.

24 COMMISSIONER SCHMIDT: Let's see.

25 John, you're suggesting finishing all the rest

1 of the conditions of approval?

2 CHAIRPERSON LEFAVER: Yeah, any -- yes. Any --

3 COMMISSIONER SCHMIDT: Okay.

4 CHAIRPERSON LEFAVER: -- comments in --

5 COMMISSIONER SCHMIDT: I -- I do -- I do have
6 some comments.

7 CHAIRPERSON LEFAVER: Please.

8 COMMISSIONER SCHMIDT: In number 47, it says
9 implements mitigation measure 4.2 point -- or dash 2(a).

10 I was never able to find the, like, 4.2 section
11 in anything. I'm not sure if I just missed it somewhere
12 or not.

13 CHAIRPERSON LEFAVER: Clarify 47, please.

14 PRINCIPAL PLANNER EASTWOOD: We're -- we're
15 finding the mitigation. It's -- it is a mitigation
16 measure from the EIR. But if -- for nomenclature, we
17 can -- we can find that for you.

18 COMMISSIONER SCHMIDT: Okay. And then I had
19 another question on mitigation measure 58.

20 I was wondering if a word was missing here. It
21 says, "Wetland mitigation plan." It says, "If filling
22 of jurisdictional waters or wetlands is not feasible."
23 I was wondering if -- if that should be, "If avoiding
24 filling of jurisdictional waters or wetlands is not
25 feasible, then the following measure should be

1 implemented."

2 VICE CHAIRPERSON VIDOVIK: I'll make that as
3 part of my motion if you want, Kathy.

4 PRINCIPAL PLANNER EASTWOOD: From staff, that
5 clarification's fine.

6 COMMISSIONER SCHMIDT: Pardon?

7 PRINCIPAL PLANNER EASTWOOD: As a -- I think it
8 clarifies. That's -- that's -- that's fine. No --
9 that --

10 COMMISSIONER SCHMIDT: Okay.

11 PRINCIPAL PLANNER EASTWOOD: Yeah.

12 VICE CHAIRPERSON VIDOVIK: Kathy, would you
13 accept my making a motion on the conditions with those
14 clarifications?

15 CHAIRPERSON LEFAVER: Okay, we haven't had a
16 motion yet, but --

17 VICE CHAIRPERSON VIDOVIK: Oh. I --

18 CHAIRPERSON LEFAVER: -- we'll get there.

19 VICE CHAIRPERSON VIDOVIK: I'm trying to make
20 it.

21 CHAIRPERSON LEFAVER: All right. There may be
22 some questions here.

23 Go ahead.

24 SECRETARY RUDHOLM: Mr. Chair, I did hear the
25 commissioner say he made a motion to approve the balance

1 of the conditions 46 through 89.

2 VICE CHAIRPERSON VIDOVIK: Yes.

3 CHAIRPERSON LEFAVER: Yeah.

4 SECRETARY RUDHOLM: But I have not heard a
5 second.

6 CHAIRPERSON LEFAVER: We didn't get a second.
7 We -- I had comments first. So ...

8 Why don't we get a -- a second on that motion,
9 and we can get more comments in.

10 COMMISSIONER COUTURE: I'll second it.

11 CHAIRPERSON LEFAVER: Thank you.

12 So clarification on 58.

13 Any -- anyone -- any -- I'm sorry. Any --

14 VICE CHAIRPERSON VIDOVIK: Understanding
15 this -- this still -- we still have the east material
16 yard's --

17 CHAIRPERSON LEFAVER: Yes, we do.

18 VICE CHAIRPERSON VIDOVIK: -- okay,
19 outstanding.

20 CHAIRPERSON LEFAVER: All right.

21 VICE CHAIRPERSON VIDOVIK: I don't want the
22 public to disappear either.

23 CHAIRPERSON LEFAVER: Right.

24 Any -- any other comments, Commissioner
25 Schmidt?

1 COMMISSIONER SCHMIDT: I have -- I have no
2 other comments. And I guess these things will just be
3 clarified.

4 CHAIRPERSON LEFAVER: Okay. Thank you.

5 Are there any other comments on any of the
6 other ...

7 Take your time.

8 VICE CHAIRPERSON VIDOVICH: It's pretty cut and
9 dried. Call for a question? Possible?

10 CHAIRPERSON LEFAVER: Well, they're --
11 they're --

12 VICE CHAIRPERSON VIDOVICH: No?

13 CHAIRPERSON LEFAVER: We're -- we're -- we're
14 looking.

15 COMMISSIONER SCHMIDT: Mr. Chair, I just want
16 to say, would part of John's recommendation be to accept
17 all of the staff recommendations as noted herewith?

18 VICE CHAIRPERSON VIDOVICH: (Nods head up and
19 down.)

20 UNIDENTIFIED MALE SPEAKER: Absolutely.

21 COMMISSIONER SCHMIDT: Okay. Thank you.

22 CHAIRPERSON LEFAVER: Are we ready to vote?
23 Everybody ready?

24 COMMISSIONER CHIU: Thank you, Mr. Chair.

25 COMMISSIONER RUIZ: I think --

1 CHAIRPERSON LEFAVER: Commissioner --

2 COMMISSIONER RUIZ: -- Dennis had a -- did you
3 have something?

4 COMMISSIONER CHIU: Oh, no. I was just saying
5 that I had a -- to -- we have had so many different
6 sets, I had to look over my notes from one set to the
7 other set, just to make sure, but I'm -- I'm fine right
8 now. Thanks.

9 CHAIRPERSON LEFAVER: Okay. Thank you.

10 Commissioner Ruiz?

11 COMMISSIONER RUIZ: I had a question on
12 condition number 58, on the wet -- so how far up did we
13 go? Did you say through fifty --

14 VICE CHAIRPERSON VIDOVICH: All the way to 89.
15 All the way to 89.

16 COMMISSIONER RUIZ: Oh. Okay.

17 So I had a question on condition number 58.
18 Number 2.

19 I -- excuse me. (a)4.2.

20 An 80 percent overall revegetation planting
21 success for all mitigation areas over a 10-year period.

22 So I was thinking through when we receive
23 annual reports, and if, for example, at year eight
24 they're still at 60 percent, is -- I'm -- I'm wondering
25 if we should break this down to a -- a more manageable

1 chunk so that when a planning commissioner -- planning
2 commission in the future is reviewing this, they can see
3 if they're on track, besides the 10-year period. Aside
4 from waiting until the 10-year is complete.

5 So it's -- it's a question.

6 PRINCIPAL PLANNER EASTWOOD: So I guess,
7 clarification, was there a request to change the
8 percentage success rate, or --

9 COMMISSIONER RUIZ: Well, it's -- I think the
10 overall 80 percent over a 10-year period is -- it sounds
11 okay.

12 My question is, is when that's being monitored
13 on an annual basis, is there a way to -- maybe it's --
14 the expectation is at a five-year period or every two
15 years it -- it's -- it's on track, so that we're not
16 waiting until year nine and then determining that
17 they're not going to meet the 80 percent.

18 PRINCIPAL PLANNER EASTWOOD: That -- that's
19 absolutely right. It's -- it's monitored on a annual
20 basis.

21 COMMISSIONER RUIZ: Right.

22 PRINCIPAL PLANNER EASTWOOD: The -- it's -- it
23 merely puts out a -- a 10-year objective or standard to
24 get to 80 percent, but it's known that they can't get to
25 that on the first-year period.

1 So these are general parameters. When -- when
2 the project gets to that point, they have to develop a
3 specific plan and a monitoring plan that will flesh out
4 in much more detail on a year-by-year basis what -- what
5 is the status, what is the percentage of revegetation,
6 and that can be reported out to the planning
7 commission.

8 The 80 percent is just at the very end of that,
9 to meet that standard.

10 COMMISSIONER RUIZ: Okay. I think that --

11 CHAIRPERSON LEFAVER: Okay. Any --

12 PRINCIPAL PLANNER EASTWOOD: Just a --

13 CHAIRPERSON LEFAVER: -- other questions on any
14 of the other --

15 PRINCIPAL PLANNER EASTWOOD: Just a follow-up
16 to Commissioner Schmidt. She did catch an error. Noted
17 that condition number seventy -- I'm sorry, 47
18 referenced mitigation measure 4.4.2(a).

19 So staff has actually found that that
20 mitigation measure does not exist. That condition
21 actually implements what was in the reclamation plan
22 itself.

23 So we will delete just that reference to the
24 "implements mitigation measure."

25 CHAIRPERSON LEFAVER: Okay. Any -- any other

1 comments? Questions?

2 Shall we call for the question?

3 Seeing no objections, we have a -- a motion and
4 a second to accept the conditions from 46 through 89,
5 with the clarification on number 58.

6 COMMISSIONER RUIZ: Can I make a suggestion
7 that we cover through 73 and -- and take the hydrology
8 and water quality separate. Would the maker of the
9 motion accept that?

10 VICE CHAIRPERSON VIDOVIK: Can you -- can you
11 just take those out and do the rest of them? Which ones
12 do you want to take out?

13 COMMISSIONER RUIZ: The hydrology and water
14 quality.

15 VICE CHAIRPERSON VIDOVIK: Which -- which
16 condition numbers?

17 UNIDENTIFIED FEMALE SPEAKER: (Unintelligible).

18 COMMISSIONER RUIZ: Well, then actually that
19 would include 82, the selenium treatment facility.

20 VICE CHAIRPERSON VIDOVIK: Can you -- do you
21 want to say which condition numbers?

22 COMMISSIONER RUIZ: From 74 on.

23 VICE CHAIRPERSON VIDOVIK: 74 on?

24 COMMISSIONER RUIZ: Yeah.

25 VICE CHAIRPERSON VIDOVIK: Sure.

1 COMMISSIONER RUIZ: So I'm suggesting to
2 approve through 73.

3 VICE CHAIRPERSON VIDOVICH: What about 83 on?

4 CHAIRPERSON LEFAVER: So what -- what -- what
5 would you like, Commissioner Ruiz? What are you
6 suggesting?

7 COMMISSIONER RUIZ: What I'm suggesting is that
8 we approve through 73, and I'm -- yeah, I'm trying --
9 and then Commissioner Vidovich proposed -- I -- I'm
10 looking for -- what were you --

11 VICE CHAIRPERSON VIDOVICH: (Unintelligible)
12 just -- just asked.

13 CHAIRPERSON LEFAVER: So Commissioner Vidovich
14 was suggesting that we -- we had a motion and a second
15 to go from 46 to 89. And it was seconded. And we had
16 discussion.

17 VICE CHAIRPERSON VIDOVICH: Well, I'm willing
18 to take out -- I'm willing to go up to 74, to change my
19 motion to go up to 74, if that's what you would like.
20 Okay. If that's in order and the second holder --

21 COMMISSIONER COUTURE: I'm -- I'm -- I'm
22 willing to change my second to 74.

23 CHAIRPERSON LEFAVER: Okay. So why don't we
24 have an amendment.

25 Commissioner Ruiz, would you like to amend the

1 motion to approve through -- from 45 to 73?

2 COMMISSIONER RUIZ: I -- I'm fine through 74,
3 if --

4 CHAIRPERSON LEFAVER: Through 74, okay.

5 COMMISSIONER RUIZ: -- the maker of the
6 motion -- yeah.

7 CHAIRPERSON LEFAVER: Through 74.

8 Is there a second to that amendment?

9 COMMISSIONER COUTURE: I second that amendment.

10 CHAIRPERSON LEFAVER: Okay. Moved and seconded
11 that we approve from 46 through 74.

12 All those in favor say "aye."

13 COMMISSIONER BOHAN: Aye.

14 COMMISSIONER CHIU: Aye.

15 COMMISSIONER COUTURE: Aye.

16 CHAIRPERSON LEFAVER: Aye.

17 COMMISSIONER RUIZ: Aye.

18 COMMISSIONER SCHMIDT: Aye.

19 VICE CHAIRPERSON VIDOVICH: Aye.

20 CHAIRPERSON LEFAVER: Unanimous.

21 We -- we still have a motion on the floor, but
22 we can now have discussion.

23 Commissioner Ruiz. You want discussion on some
24 of the --

25 COMMISSIONER RUIZ: I'm sorry, did you say

1 there was a motion on the floor?

2 CHAIRPERSON LEFAVER: Yes. There's still a
3 motion.

4 VICE CHAIRPERSON VIDOVIK: I don't get it. I
5 think you lost some of us.

6 CHAIRPERSON LEFAVER: That's all right. I'm --
7 I'm -- I'm here.

8 So go ahead.

9 COMMISSIONER CHIU: (Unintelligible) motion?

10 VICE CHAIRPERSON VIDOVIK: The motion is to
11 approve 1 to 73. That was approved; right?

12 CHAIRPERSON LEFAVER: Right. That's the --
13 that is amendment to the motion.

14 VICE CHAIRPERSON VIDOVIK: And that amendment
15 was approved.

16 CHAIRPERSON LEFAVER: Approved, right. We
17 still have a motion on the floor to approve the rest of
18 them, but we can have discussion on that, the remainder,
19 so we're open to discussion. So we're good.

20 Go ahead.

21 So 75 through 89 are still outstanding.

22 VICE CHAIRPERSON VIDOVIK: 74; right?

23 CHAIRPERSON LEFAVER: 74? 74 through 89 are
24 still outstanding.

25 SECRETARY RUDHOLM: Mr. Chair, I believe the

1 conditions 46 through 74, inclusive, have been
2 approved --

3 CHAIRPERSON LEFAVER: Yes.

4 SECRETARY RUDHOLM: -- as amended per the
5 discussion.

6 CHAIRPERSON LEFAVER: Yes.

7 SECRETARY RUDHOLM: But that was a amendment
8 accepted by the maker of the original motion and
9 accepted by the maker of the second of that motion. And
10 the vote was seven to nothing to approve conditions 46
11 through 74 as clarified.

12 But I -- my notes show no other motion having
13 been made by any commissioners or seconded by any
14 commissioners.

15 I know Commissioner Ruiz indicated she had some
16 questions, and I believe it came in the form of a
17 request to modify the original motion.

18 So I -- my notes don't show any additional
19 motions on the floor at this time.

20 CHAIRPERSON LEFAVER: We have a main motion.

21 VICE CHAIRPERSON VIDOVICH: I --

22 SECRETARY RUDHOLM: Okay. And the main motion
23 was to --

24 VICE CHAIRPERSON VIDOVICH: Amended.

25 SECRETARY RUDHOLM: -- approve 46 through --

1 VICE CHAIRPERSON VIDOVIK: Through 89.

2 SECRETARY RUDHOLM: -- 89.

3 CHAIRPERSON LEFAVER: Yes.

4 So now -- now we're looking at 74 through 89.

5 So let's talk about 74 through 89. Okay?

6 SECRETARY RUDHOLM: Yes.

7 CHAIRPERSON LEFAVER: Okay. Good. I'm so
8 happy.

9 SECRETARY RUDHOLM: Okay. So what's being
10 discussed, then, is a motion by Commissioner Vidovich,
11 seconded by Couture, regarding conditions 75 through 89.

12 CHAIRPERSON LEFAVER: That's correct.

13 VICE CHAIRPERSON VIDOVIK: We can talk about
14 74.

15 So what -- what -- do you want to just kind of
16 maybe say your feelings on these things, and we could
17 figure out a motion to fit it?

18 COMMISSIONER RUIZ: This is regarding condition
19 number 81.

20 VICE CHAIRPERSON VIDOVIK: 81?

21 COMMISSIONER RUIZ: And monitoring of the BMP
22 effect -- effectiveness. For numb -- for B.

23 It states that if test results for two
24 consecutive years show selenium levels are higher than
25 base levels, then the county shall schedule public

1 hearing before the planning commission.

2 I -- I would like to request that that hearing
3 occur earlier or sooner than two years. I think if
4 there are continuous -- continuously high selenium
5 levels, that the planning commission want -- would want
6 to be informed sooner than that.

7 So I would suggest, if test results for six
8 months show selenium levels are higher than base levels,
9 then the county shall schedule public hearing.

10 VICE CHAIRPERSON VIDOVIK: Is that a motion?

11 COMMISSIONER RUIZ: That's a motion.

12 VICE CHAIRPERSON VIDOVIK: I'll second it.

13 CHAIRPERSON LEFAVER: Moved and seconded that
14 we have, if selenium levels are higher over a six-month
15 period, that we -- that -- that the planning commission
16 be informed.

17 Staff, any comments on that?

18 PRINCIPAL PLANNER EASTWOOD: Sure.

19 From -- from staff's perspective, a -- a
20 six-month period we believe would be too short. Due to
21 many variations with respect to weather, with respect to
22 application of BMPs, it -- it -- staff just believes
23 that might be premature.

24 A lot of consideration was put into what
25 duration, and it is a very good question, but from

1 staff's perspective, due to fluctuations, again in
2 weather, or if -- or to test if BMPs are working, the
3 intent was, if a few tests are over, that the applicant
4 enhance the BMPs to -- to reduce those, that a wider
5 window was necessary, to really ensure -- to really flag
6 at which point there really is a water quality issue.

7 And so in staff's opinion, two years was the
8 recommended benchmark.

9 CHAIRPERSON LEFAVER: Okay. Comments?

10 COMMISSIONER RUIZ: Don't you think we could at
11 least do one year? I mean, the -- the creek's been
12 having problems for a long time.

13 PRINCIPAL PLANNER EASTWOOD: It -- it's the
14 will of the commission, what you want to require.

15 It's -- from staff's perspective, in
16 consultation with our consultants, we believe two years
17 was more appropriate. But if the planning commission
18 wants to recommend something else, that's the will of
19 the commission.

20 CHAIRPERSON LEFAVER: Yeah. I -- I agree that
21 one year is -- is certainly a -- a more appropriate
22 time -- time frame. I -- I really do think that six
23 months is much -- much too short, for -- for -- for all
24 the circumstances, including weather and so forth.

25 VICE CHAIRPERSON VIDOVICH: Yeah, can I --

1 I'll -- all right. I'll give a comment.

2 I think six months is very short. However,
3 I -- and I'm not speaking for somebody more intelligent
4 than me, but I think what -- this only applies to the
5 east materials storage area. They could impound the
6 water, if they had to, impound it. That is -- I think
7 she just wants to see focus on it. I think it's a big
8 concern for her, and she just wants to see focus on it.

9 So I -- I don't think it matters either way.

10 If -- we're going to have -- then we'll have a hearing
11 right away, and we'll -- we'll get a report on it.

12 CHAIRPERSON LEFAVER: Right. Exactly.

13 VICE CHAIRPERSON VIDOVICH: So I don't think it
14 hurts us. We'll just get a report what they're doing,
15 more quickly.

16 COMMISSIONER CHIU: Through --

17 CHAIRPERSON LEFAVER: Commissioner Chiu.

18 COMMISSIONER CHIU: Through the Chair.

19 I'm also thinking that six months might be
20 dicey unless you specify a rainy season, et cetera, or
21 other sorts of things, because of the seasonal changes.
22 I would support a year, if -- if the motion maker
23 would -- would like to amend.

24 COMMISSIONER RUIZ: I -- I think that that
25 could be determined at the time -- at that time frame.

1 It could be the weather, and it could be the planning
2 commission decides not to schedule at that time. It
3 could be excesses. It could be change in operations.

4 There are so many unknowns with selenium that
5 we've read in the EIR, that we've seen by the
6 information, I think that we should be precautionary and
7 we could decide the appropriate action.

8 COMMISSIONER CHIU: In six months?

9 COMMISSIONER RUIZ: Yes.

10 VICE CHAIRPERSON VIDOVICH: And -- and
11 remember, this is not just selenium on the project.
12 This is just the east --

13 COMMISSIONER CHIU: East --

14 VICE CHAIRPERSON VIDOVICH: -- material storage
15 area yard, which is where everybody -- it's where the
16 community has a lot of focus on that. And I even think
17 you're going to bring the east material storage yard
18 back to us that way. So the -- and -- and it's just a
19 report. It's just focus.

20 COMMISSIONER RUIZ: Yeah. We could have
21 language in here that says that "could be decided to
22 schedule" or something like that, but I think the
23 planning commission should be informed.

24 And it's a good clarification. I think if --
25 if there's excess of selenium levels on a continuous

1 basis, not just in this area, that the planning
2 commission should be informed and to determine if there
3 should be a -- a -- a public hearing.

4 VICE CHAIRPERSON VIDOVIK: But there is. No,
5 there -- there's no -- there is. It's just the east
6 material is the only thing they can control. There --
7 it -- it -- they violate it all anyway. But the east
8 material, you can maybe have some control over.

9 CHAIRPERSON LEFAVER: So you -- Commissioner
10 Ruiz, you still feel the six months?

11 COMMISSIONER RUIZ: That's the -- that -- I
12 think that that's -- yes.

13 CHAIRPERSON LEFAVER: Okay. So we -- we -- we
14 have a motion and a second to modify the report, instead
15 of two years, six -- every six months.

16 SECRETARY RUDHOLM: Mr. Chair, could I ask the
17 maker of the motion to restate the condition number that
18 this modification is being proposed to. My notes show
19 con -- she identified condition 81.

20 CHAIRPERSON LEFAVER: 81(b) is --

21 SECRETARY RUDHOLM: 81(b), which does not
22 identify the EMSA, which is what Commissioner Vidovich
23 was discussing.

24 VICE CHAIRPERSON VIDOVIK: I thought she said
25 80(b).

1 CHAIRPERSON LEFAVER: No.

2 VICE CHAIRPERSON VIDOVIK: I'm sorry.

3 CHAIRPERSON LEFAVER: 81(b).

4 VICE CHAIRPERSON VIDOVIK: I thought she said
5 80(b).

6 CHAIRPERSON LEFAVER: No. 81(b).

7 VICE CHAIRPERSON VIDOVIK: Well, 81(b) is
8 completely different.

9 CHAIRPERSON LEFAVER: Yes.

10 COMMISSIONER RUIZ: So if we were to have both
11 80(b), this would apply to both 80(b) and 81(b)?

12 VICE CHAIRPERSON VIDOVIK: Did you say 80(b)
13 or did you say 81? I thought you said 80.

14 COMMISSIONER RUIZ: No. I'm -- I'm asking
15 about 80(b) and 81(b).

16 CHAIRPERSON LEFAVER: Would -- would it -- if
17 we modify 81(b), would it also apply to 80(b), is what
18 Commissioner Ruiz is -- is asking.

19 PRINCIPAL PLANNER EASTWOOD: I -- staff could
20 comment on 81.

21 So -- so no, 81 has to do with the main pit.
22 And today, the -- the operator dewateres that pit on a
23 annual basis, so there's a continuous flow.

24 The difference with -- with 80, which is EMSA,
25 is that storm water only happens seasonally, when it

1 rains. So -- so keep in mind, a request for six months,
2 you only -- you only have rain during a part of the
3 year, so that -- that might -- might be more of an issue
4 in -- sort of in trying to encapsulate, even if there is
5 a test or storm water running off, going to that short
6 duration.

7 CHAIRPERSON LEFAVER: Okay. Any -- any -- any
8 questions?

9 Okay. Let -- let's -- so the -- the request is
10 to modify 81(b) and -- to six months.

11 ASSISTANT COUNTY COUNSEL KORB: Mr. Chairman?
12 If -- if I could --

13 CHAIRPERSON LEFAVER: Go ahead.

14 ASSISTANT COUNTY COUNSEL KORB: Just --

15 CHAIRPERSON LEFAVER: Yes.

16 ASSISTANT COUNTY COUNSEL KORB: Just because of
17 something said in the discussion, I just want to clarify
18 that in 81, condition 81, it talks about a process. And
19 when selenium levels, over a period of time, whatever
20 the period of time ultimately may be determined by the
21 commission, are determined to exceed acceptable levels,
22 then a public hearing is to be held by the planning
23 commission, at which time the planning commission will
24 be asked to make an official determination about whether
25 there are excessive levels of selenium. It's not just a

1 report. It is in fact a -- a full public hearing on the
2 question.

3 And if the -- the -- the commission makes a
4 determination that there are excessive levels of
5 selenium over what period of time, then the operator has
6 an obligation to install water treatment, which is of
7 course a -- you know, a significant issue as well.

8 So I'm just pointing out that it's not just a
9 report. It's something -- it's a far more significant
10 process. And in that process, you do, I think, want to
11 ensure that you have sufficient data to -- to make that
12 determination.

13 COMMISSIONER RUIZ: Can I --

14 CHAIRPERSON LEFAVER: Commissioner Ruiz.

15 COMMISSIONER RUIZ: Yeah. Well, if I can ask
16 my planning commissioners, if we were to amend this so
17 that at six months there would be a report to the
18 planning commission and then schedule a hearing at --
19 after one year.

20 Is that acceptable to -- was it Terry who
21 hadn't -- seconded the motion?

22 COMMISSIONER COUTURE: I -- I'm just not sure
23 that six months will give them -- I -- I don't -- I
24 mean, I'm a total proponent of no extra selenium. I'm
25 just not sure six months is enough time. That's my only

1 concern.

2 CHAIRPERSON LEFAVER: Commissioner Schmidt?

3 COMMISSIONER SCHMIDT: And I would say the same

4 thing, that I am very concerned about selenium, but six

5 months I don't think is an adequate time period.

6 There's just too much process involved. I don't even

7 know how quickly analysis can be done to really

8 determine what's there. You don't just go out and

9 stick, you know, a stick in the water and say, well,

10 this is an elevated level of selenium. So I'm in favor

11 a year rather than six months.

12 COMMISSIONER RUIZ: So are you -- I'm -- I'm

13 willing to change it to a year.

14 So my question is, is after six months or eight

15 months, a report to the planning commission to inform

16 that there is a potential for this situation, and that

17 we will be working with the quarry to -- on this issue,

18 to keep the planning commission informed.

19 Are you open to that?

20 CHAIRPERSON LEFAVER: I think --

21 COMMISSIONER COUTURE: So --

22 CHAIRPERSON LEFAVER: -- a yearly report is

23 good.

24 COMMISSIONER COUTURE: So if you look at 81(a),

25 we are going to get up to -- we're going to get monthly

1 water sampling testings done, so I think we'll know if
2 there's a problem pretty quickly.

3 COMMISSIONER RUIZ: So my question to staff is,
4 for 81(a), is the planning commission informed of the
5 monthly water sampling and testing results?

6 PRINCIPAL PLANNER EASTWOOD: Well, a different
7 condition requires an annual report. So -- so --

8 COMMISSIONER RUIZ: Right.

9 PRINCIPAL PLANNER EASTWOOD: -- regardless of
10 this, you would get in your annual report whatever --
11 all of the -- the compliance that's happening at the
12 quarry, including a summary of all water quality data
13 that comes along.

14 COMMISSIONER RUIZ: So it would only be at an
15 annual basis the planning commission would be informed
16 if there had been a year of higher selenium levels, is
17 what I'm hearing.

18 CHAIRPERSON LEFAVER: That would be in the
19 report.

20 PRINCIPAL PLANNER EASTWOOD: Yes. Your annual
21 report would include a summary of -- of all that -- of
22 water quality testing, yes.

23 COMMISSIONER COUTURE: Mr. Chair?

24 CHAIRPERSON LEFAVER: Yes.

25 COMMISSIONER COUTURE: Possibly the maker of

1 the motion --

2 CHAIRPERSON LEFAVER: There we go.

3 COMMISSIONER COUTURE: -- would like to
4 actually add something to 81 so that we could get
5 something in six months, to see what it is.

6 COMMISSIONER RUIZ: I think that's a -- a good
7 suggestion.

8 VICE CHAIRPERSON VIDOVICH: Would you -- would
9 you accept a suggestion from me?

10 COMMISSIONER RUIZ: Sure.

11 VICE CHAIRPERSON VIDOVICH: You would? Okay.

12 The east material storage area, that's what I
13 thought you were focusing on, that is a very contained
14 area. We could put that one year, and we could leave 81
15 alone.

16 You're going to get a -- you'll -- this data is
17 available anyway. It only rains once a year. But there
18 is -- there is groundwater that seeps in there that they
19 -- they pump out monthly.

20 I guess you could do 81 one year also, since
21 they are pumping out groundwater on a monthly basis out
22 of -- out of there. You could just change it to one
23 year.

24 I think the conditions are very well written,
25 and -- and just change it to two -- if you want to go

1 instead of two years, just do one year.

2 COMMISSIONER RUIZ: So you're suggesting that
3 for 80(b) and 81(b), the test results for one year?

4 VICE CHAIRPERSON VIDOVIK: Yes.

5 COMMISSIONER RUIZ: Okay. I'm fine with that
6 amendment.

7 CHAIRPERSON LEFAVER: Okay. Well, why don't --
8 why don't we -- why don't you withdraw your -- why don't
9 you withdraw your amendment, if you don't mind.

10 COMMISSIONER RUIZ: Sure.

11 CHAIRPERSON LEFAVER: Okay.

12 SECRETARY RUDHOLM: And then (unintelligible).

13 CHAIRPERSON LEFAVER: And then the second
14 withdraw.

15 Second's withdrawn.

16 COMMISSIONER COUTURE: Yes.

17 CHAIRPERSON LEFAVER: Thank you.

18 So now let's -- let's have a -- a new motion
19 amendment.

20 COMMISSIONER RUIZ: So the motion is to amend
21 condition 80(b) and 81(b) so that test results for one
22 year, if they show higher selenium levels, would be
23 scheduled planning commission hearing.

24 And addition -- and in addition, the planning
25 commission would be informed of the results of water

1 sampling and testing results every six months.

2 CHAIRPERSON LEFAVER: Every year. Every year.

3 VICE CHAIRPERSON VIDOVICH: Every year.

4 COMMISSIONER RUIZ: I -- did I have the -- I
5 think we were going for six months.

6 CHAIRPERSON LEFAVER: No. We were going for a
7 year.

8 COMMISSIONER RUIZ: Well, I'll put the motion
9 out for six months, and if -- we'll see how that goes.

10 CHAIRPERSON LEFAVER: Okay.

11 VICE CHAIRPERSON VIDOVICH: I'll second it. I
12 prefer a year, but I -- I will second it.

13 CHAIRPERSON LEFAVER: Okay. So -- in 80(b),
14 it'll be test results for two -- instead of two
15 consecutive years it'll be one -- one consecutive year;
16 and in 81(b), if the -- we will get a report every six
17 months; and if the test results for one year show, is
18 that -- is that what you're saying?

19 COMMISSIONER RUIZ: Well, for clarification,
20 80(b) and eighty -- 80(b) and 81(b), you would just
21 simply change from two to one. And what I'm reading in
22 these conditions is that they are conducting monthly
23 water sampling tests anyway, so what I'm proposing in my
24 motion is that the planning commission would be informed
25 of the results, because they're doing these testing

1 anyway. It could be a memo from staff to the planning
2 commission that says the results of the past six months
3 have shown stable levels, decreased levels of selenium,
4 and whatever the -- the results have -- for the previous
5 six months have been. Because this water sampling is --
6 is occurring on a monthly basis anyway.

7 VICE CHAIRPERSON VIDOVIK: Right.

8 COMMISSIONER RUIZ: And in that status report,
9 staff can also indicate this level is in excess or is
10 decreased due to weather fluctuations, mining operation
11 changes, whatever explanation they understand at the
12 time.

13 Again, what I'm going back to is, because in
14 the EIR, there are so many unknowns with selenium and
15 the long-term impacts, that I think that closer
16 monitoring of the planning commission would just be
17 beneficial; and then that way it's transparent to the
18 community and the neighbors as well, of the status and
19 how staff and the quarry are working together on this
20 issue.

21 VICE CHAIRPERSON VIDOVIK: And as the second
22 maker, I think I'm reading it, it's a simple change,
23 it's one year, and you get a report every six months.
24 It's simple. It's not that burdensome, I don't think,
25 either.

1 Call --

2 CHAIRPERSON LEFAVER: Staff?

3 VICE CHAIRPERSON VIDOVICH: -- the question?

4 CHAIRPERSON LEFAVER: Hold on.

5 Staff?

6 PRINCIPAL PLANNER EASTWOOD: It's up to the
7 commission. So if you -- if you'd like a report every
8 six months, that can happen. Just know, with the EMSA,
9 as Commissioner Vidovich noted, that that's only during
10 the rainy season you actually have flows, so for that
11 area you might not have a report, but that's --

12 VICE CHAIRPERSON VIDOVICH: (Unintelligible).

13 PRINCIPAL PLANNER EASTWOOD: -- that can be
14 summarized. That's fine.

15 CHAIRPERSON LEFAVER: Okay. We have a -- a
16 motion and a second.

17 Mr. Secretary, you have it?

18 SECRETARY RUDHOLM: We have it, and this is a
19 modification to the broader motion regarding conditions
20 75 through 89. And what's being voted on now is changes
21 that would affect conditions 80(b) and 81(b).

22 CHAIRPERSON LEFAVER: Okay. Any further
23 discussion?

24 COMMISSIONER CHIU: I would just --

25 CHAIRPERSON LEFAVER: Commissioner Chiu?

1 COMMISSIONER CHIU: Through the Chair. Thank
2 you.

3 I'll just -- I -- I'm going to support the
4 motion, but I'm not sure the amount of useful data we'll
5 get in six months, considering that it might not rain,
6 or -- so -- but in an effort to keep the community
7 informed, as Commissioner Ruiz said, and as just a
8 policy considering, I'll -- I'll be supporting the
9 motion.

10 COMMISSIONER RUIZ: Thank you, Commissioner
11 Chiu.

12 And that is part of the intent of the motion,
13 is we've had significant concerns from the neighbors as
14 well as from organization.

15 And -- and I think this will actually be
16 beneficial to the quarry, where they can show their
17 transparency and their efforts, and it will be a good
18 communication on how the levels fluctuate depending on
19 so many factors.

20 So that's in part -- that's -- that's the
21 intent as part of this, is the communication and the
22 building of relationships, hopefully. But in any case,
23 to be transparent to the community.

24 CHAIRPERSON LEFAVER: Thank you.

25 Okay. We have a motion and a second.

1 All those in favor say "aye."

2 COMMISSIONER BOHAN: Aye.

3 COMMISSIONER CHIU: Aye.

4 COMMISSIONER COUTURE: Aye.

5 CHAIRPERSON LEFAVER: Aye.

6 COMMISSIONER RUIZ: Aye.

7 COMMISSIONER SCHMIDT: Aye.

8 VICE CHAIRPERSON VIDOVICH: Aye.

9 CHAIRPERSON LEFAVER: Opposed?

10 Unanimous.

11 ASSISTANT COUNTY COUNSEL KORB: Mr. Chair, I
12 just want to correct the record, now that you've taken
13 action on that item.

14 I said previously that -- that if the
15 commission, after a public hearing, makes a
16 determination that -- that selenium levels from the
17 reclamation activities exceed acceptable levels, then
18 you go to a process regarding a treatment facility,
19 water treatment facility.

20 Actually, what they -- the commission then does
21 is it actually has to make a determination about the
22 feasibility of -- of water treatment, which will be a --

23 VICE CHAIRPERSON VIDOVICH: We know that.

24 ASSISTANT COUNTY COUNSEL KORB: -- complex
25 process --

1 VICE CHAIRPERSON VIDOVIK: Yeah.

2 ASSISTANT COUNTY COUNSEL KORB: -- in itself.

3 So --

4 CHAIRPERSON LEFAVER: Okay.

5 ASSISTANT COUNTY COUNSEL KORB: Just wanted to
6 make sure that was clear on the record.

7 CHAIRPERSON LEFAVER: Thank you.

8 So now we have a main motion to accept the
9 remaining through 89 of the conditions of approval for
10 the reclamation plan.

11 VICE CHAIRPERSON VIDOVIK: Which excludes the
12 east materials storage area.

13 CHAIRPERSON LEFAVER: Yeah. Which we're going
14 to talk about.

15 VICE CHAIRPERSON VIDOVIK: Okay. After lunch;
16 right?

17 CHAIRPERSON LEFAVER: After lunch.

18 VICE CHAIRPERSON VIDOVIK: Okay.

19 COMMISSIONER RUIZ: Taking a break for lunch?

20 CHAIRPERSON LEFAVER: I -- I'm sorry?

21 COMMISSIONER SCHMIDT: (Unintelligible).

22 VICE CHAIRPERSON VIDOVIK: Yeah.

23 CHAIRPERSON LEFAVER: Yes.

24 VICE CHAIRPERSON VIDOVIK: The grading of it.

25 Remember the grading? Forgot.

1 COMMISSIONER RUIZ: I -- I had a question about
2 the monitoring wells.

3 UNIDENTIFIED FEMALE SPEAKER: I got to pee so
4 bad.

5 CHAIRPERSON LEFAVER: Yes.

6 UNIDENTIFIED FEMALE SPEAKER: Can we take a
7 break?

8 CHAIRPERSON LEFAVER: No, let -- let's get --
9 let's get through this.

10 COMMISSIONER RUIZ: Can -- I'm not sure which
11 condition monitoring wells is under.

12 COMMISSIONER COUTURE: 76.

13 COMMISSIONER RUIZ: 76? Thank you.

14 CHAIRPERSON LEFAVER: Want to pull it out?

15 COMMISSIONER RUIZ: Mm-hmm.

16 CHAIRPERSON LEFAVER: Pull it out after lunch?

17 PRINCIPAL PLANNER EASTWOOD: Just staff
18 clarification.

19 The condition 76 is surface watering.

20 Currently in the conditions of approval there
21 is no requirement for groundwater monitoring.

22 Staff has included in attachment B some
23 language that the planning commission can consider if
24 they'd like to require a groundwater well. And staff's
25 not recommending this. The EIR concluded that there

1 would be no impact to groundwater.

2 But in response to concerns, requests from the
3 Santa Clara Valley Water District and public comment in
4 past hearings, staff did prepare some language for
5 consideration by the planning commission. That's in
6 your subsection B. It's under groundwater. And there's
7 a section -- it's language highlighted in blue.

8 COMMISSIONER RUIZ: Can we come back to this
9 topic after lunch, then?

10 VICE CHAIRPERSON VIDOVIK: Please.

11 CHAIRPERSON LEFAVER: Sure. Yes.

12 VICE CHAIRPERSON VIDOVIK: So then we have a
13 motion on the floor to approve everything else --

14 CHAIRPERSON LEFAVER: Yes.

15 VICE CHAIRPERSON VIDOVIK: -- but pull that
16 groundwater monitoring well conditions --

17 CHAIRPERSON LEFAVER: Yes.

18 VICE CHAIRPERSON VIDOVIK: -- related to it
19 out?

20 CHAIRPERSON LEFAVER: We can add that.

21 VICE CHAIRPERSON VIDOVIK: Okay. And is
22 there -- and was a second? I got to go to the bathroom,
23 so --

24 COMMISSIONER CHIU: I'll second --

25 VICE CHAIRPERSON VIDOVIK: --

1 (unintelligible).

2 COMMISSIONER CHIU: To add the groundwater
3 monitoring, I will second that.

4 CHAIRPERSON LEFAVER: Okay. So the motion is
5 to accept the conditions of approval, and it's noted
6 that we'll be talking about the groundwater monitoring,
7 which -- which is not in the conditions as yet, and also
8 the east storage materials area.

9 All those in favor please say "aye."

10 COMMISSIONER BOHAN: Aye.

11 COMMISSIONER CHIU: Aye.

12 COMMISSIONER COUTURE: Aye.

13 CHAIRPERSON LEFAVER: Aye.

14 COMMISSIONER RUIZ: Aye.

15 COMMISSIONER SCHMIDT: Aye.

16 VICE CHAIRPERSON VIDOVICH: Aye.

17 CHAIRPERSON LEFAVER: Opposed?

18 Unanimous.

19 So now let's take a lunch break. And we will
20 be back at 15 after 1:00.

21 VICE CHAIRPERSON VIDOVICH: Just for the
22 public, there's two issues left. Do you want to make
23 sure they understand it?

24 CHAIRPERSON LEFAVER: So there are two issues
25 left that we'll be talking about on the conditions of

1 approval, and that is the east storage materials area as
2 well as groundwater monitoring --

3 UNIDENTIFIED FEMALE SPEAKER: Right.

4 CHAIRPERSON LEFAVER: And we -- and we'll also
5 be talking about the financial.

6 Thank you.

7 (The lunch recess was taken.)

8 CHAIRPERSON LEFAVER: Mr. Secretary, Planning
9 Secretary, can you please call the roll, please.

10 UNIDENTIFIED FEMALE SPEAKER: Hello.

11 SECRETARY RUDHOLM: Mr. Chair, then the
12 commission is reconvening at the hour 1:18 P.M.

13 Commissioners answering to roll call.

14 Commissioner Bohan?

15 COMMISSIONER BOHAN: Here.

16 SECRETARY RUDHOLM: Commissioner Chiu?

17 COMMISSIONER CHIU: Here.

18 SECRETARY RUDHOLM: Commissioner Couture?

19 COMMISSIONER COUTURE: Here.

20 SECRETARY RUDHOLM: Chairperson Lefaver?

21 CHAIRPERSON LEFAVER: Here.

22 SECRETARY RUDHOLM: Commissioner Ruiz?

23 COMMISSIONER RUIZ: Here.

24 SECRETARY RUDHOLM: Commissioner Schmidt?

25 COMMISSIONER SCHMIDT: Here.

1 SECRETARY RUDHOLM: And Commissioner Vidovich?

2 VICE CHAIRPERSON VIDOVIK: Here.

3 SECRETARY RUDHOLM: All commissioners are
4 present, Mr. Chair, and I'll return the floor to you.

5 CHAIRPERSON LEFAVER: Thank you.

6 The next item that we're going to discuss is
7 groundwater monitoring. And if you look on -- in your
8 section tabbed B, page 8, the staff has put together a
9 possible condition for the reclamation plan and the
10 groundwater monitoring.

11 Are there any comments and questions on the
12 groundwatering?

13 Commissioner Schmidt.

14 COMMISSIONER SCHMIDT: I just wanted to say
15 that I -- I think it's a good idea to add this condition
16 of approval. There's been a lot of -- of concern about
17 groundwater, and so I think it is very useful to add
18 this and monitor during the process.

19 CHAIRPERSON LEFAVER: Good. Thank you.

20 Other commissioners?

21 Commissioner Couture?

22 COMMISSIONER COUTURE: I -- I don't know if
23 there should be some qualifications about what
24 "adequate" is. I -- is there something in the --
25 somewhere that defines "adequate"? Is it standard of

1 care? Is it -- what is it? I don't -- I don't know
2 what the determination of "adequate" is.

3 CHAIRPERSON LEFAVER: Staff?

4 COMMISSIONER COUTURE: Says "adequate" --

5 PRINCIPAL PLANNER EASTWOOD: Right.

6 COMMISSIONER COUTURE: -- "data."

7 PRINCIPAL PLANNER EASTWOOD: (Unintelligible).

8 COMMISSIONER COUTURE: Like is it parts per
9 million? Is it --

10 PRINCIPAL PLANNER EASTWOOD: Right.

11 Just reading the sentence.

12 So the -- it -- the sentence reads, "The
13 monitoring well shall be located and constructed to
14 provide adequate data to support the evaluation of
15 potential groundwater quality impacts."

16 So the reading would be that it -- it provides
17 sufficient, adequate, clear data to show if there's --
18 if the groundwater impact and the -- the issue of
19 selenium is occurring. If -- if you'd like to add
20 language to illustrate that more, that's possible. I
21 think --

22 COMMISSIONER COUTURE: Well, like chemical
23 composition, or what -- what would you call it?

24 CHAIRPERSON LEFAVER: Is there a standard
25 for -- for measuring quality of water?

1 PRINCIPAL PLANNER EASTWOOD: There is. It's --
2 it's usually parts per billion or micrograms per liter.
3 So you could clarify and say, parens, you know,
4 "Meeting -- showing consistency with water quality
5 standards," to make sure that that's -- that's the
6 intent.

7 CHAIRPERSON LEFAVER: Con -- consistency with
8 water quality standards. Does that sound --

9 COMMISSIONER COUTURE: Yes.

10 CHAIRPERSON LEFAVER: You like that? Okay.
11 Good.

12 COMMISSIONER RUIZ: Chair Lefaver?

13 CHAIRPERSON LEFAVER: Yes, please.

14 COMMISSIONER RUIZ: This is related to
15 Commissioner Couture's suggestion.

16 In reading this proposed language, I think we
17 should also add a -- a sentence that the -- there would
18 be a groundwater management plan, and that part of that
19 plan would be determining standards as well as location
20 of the groundwater monitoring wells, and that the
21 groundwater management plan would be approved by staff
22 as well as the planning commission.

23 So I think right now what we need is for
24 probably the -- the quarry's consultant to go back and
25 determine the number of wells and the locations, and

1 that information would be brought back later and
2 approved by the planning commission.

3 CHAIRPERSON LEFAVER: Staff?

4 PRINCIPAL PLANNER EASTWOOD: What -- staff
5 would agree that additional information on just where
6 the well is going and how that happens could -- could
7 use some additional illustration.

8 So the requirement that a -- I -- from staff's
9 position, I'd call it a groundwater monitoring plan of
10 how -- of where the wells will be installed, will they
11 meet the requirements to -- to monitor, be submitted for
12 review and approval.

13 The question is by who. Staff would recommend
14 at -- at minimum County of Santa Clara and staff.
15 It's -- it's your will if you want in some way the
16 planning commission to be involved in that.

17 COMMISSIONER RUIZ: I would -- yes, that would
18 be part of the recommendation, that it would come to the
19 planning commission for approval.

20 COMMISSIONER COUTURE: And just to further on
21 that, it -- it -- it's so that the public can see it.
22 Because if it comes to us, then the public will get to
23 see it. And we just want to make sure that we're doing
24 the best we can to protect our water.

25 COMMISSIONER RUIZ: Yes. Exactly.

1 CHAIRPERSON LEFAVER: Okay. So I've got three
2 items on -- on page 8, with the condition. Number one,
3 that it would be con -- the groundwater monitoring plan
4 and report would be consistent with water quality
5 standards, and that the report would come to the
6 planning commission on a yearly basis.

7 Any other comments?

8 COMMISSIONER RUIZ: Well, Chair, did you -- was
9 that also including my suggestion -- our suggestion
10 on -- that the plan would be brought to the planning
11 commission for approval --

12 CHAIRPERSON LEFAVER: Oh, oh.

13 COMMISSIONER RUIZ: -- and --

14 CHAIRPERSON LEFAVER: For approval. Sorry.

15 COMMISSIONER RUIZ: -- and -- and the location
16 of the wells, as well as the standards, and -- I think
17 that was about it.

18 CHAIRPERSON LEFAVER: And -- and that -- okay.
19 Thank you.

20 And that the groundwater monitoring plan be
21 presented to the planning commission, which includes the
22 location of the wells, the standards, and it will be
23 approved by the planning commission.

24 COMMISSIONER RUIZ: Yes. In a public session.

25 CHAIRPERSON LEFAVER: In a public hearing.

1 COMMISSIONER RUIZ: A public hearing.

2 VICE CHAIRPERSON VIDOVICH: Just --

3 CHAIRPERSON LEFAVER: Commissioner Vidovich.

4 VICE CHAIRPERSON VIDOVICH: Can I make a
5 suggestion to the commissioner on my right. The --
6 the --

7 CHAIRPERSON LEFAVER: Ruiz.

8 COMMISSIONER RUIZ: Ruiz.

9 VICE CHAIRPERSON VIDOVICH: Commissioner Ruiz.
10 Smarter than me and better looking than me. Both.

11 What about -- it's a technical plan. What
12 about that, you know, that they come up with a plan and
13 that we review it? Do you really want to -- I mean, we
14 review it. They'll explain it to us what they come up
15 with, and we review it. Does that sound better than we
16 approve it, that -- that it comes to us and we just
17 review it? The staff, the staff in conjunction with the
18 water district, figures out where the right wells go and
19 that we just review it? Does that sound more
20 efficient? Or do you care?

21 COMMISSIONER RUIZ: I saw this condition as
22 part of the -- this conditions of approval, so then
23 therefore, I was assuming our role would be to approve
24 this as part of the conditions of approval, but I'm open
25 if -- if there's a different interpretation.

1 VICE CHAIRPERSON VIDOVIK: Well, how does the
2 staff feel? Wouldn't it -- would it be more efficient
3 if we just reviewed it for compliance, that -- that it
4 complies with our -- the intent, instead of us approving
5 it? We're slowing it down if we approve it, maybe.

6 DIRECTOR GONZALEZ: If I may, through the
7 Chair.

8 A review would be sufficient.

9 VICE CHAIRPERSON VIDOVIK: It's up to her.

10 DIRECTOR GONZALEZ: And again, this -- this
11 would work as part of the status reports back to the
12 planning commission.

13 COMMISSIONER RUIZ: So what -- what I was
14 looking for, I think what we -- what we were talking
15 about earlier is that we're in agreement that there
16 should be groundwater monitoring. We'd like to see the
17 plan. And we understand that it takes, you know,
18 there's additional information that needs to be
19 obtained, such as location and standards and so forth,
20 and that that would -- that -- so that's separate from
21 the report. So that would be -- come back -- the plan
22 would come back to us. And then subsequently, the
23 monitoring would be part of the annual report.

24 So I -- I -- I see that as part of our
25 approval, of conditions of approval, so it would seem

1 appropriate that our role would be to approve it.

2 Is that -- and I'm -- I'm seeing the Chair nod.

3 CHAIRPERSON LEFAVER: Before -- before I answer
4 that question, Commissioner Chiu had a question. Then
5 I'll --

6 COMMISSIONER CHIU: Oh, not for -- not for
7 Commissioner Ruiz, but for staff.

8 CHAIRPERSON LEFAVER: Go ahead.

9 COMMISSIONER CHIU: Oh.

10 I note here at the beginning of page 8 that it
11 says the EIR states that there is no potential for a
12 groundwater impacts resulting from the implementation of
13 the RPA.

14 Even though that the -- that the EIR found
15 no -- can the commission, based on the totality of the
16 evidence presented to us, indicate there is at least
17 a -- a -- some kind of potential where there's a legal
18 nexus into requiring the groundwater inclusion into
19 the -- groundwater mitigation measures included into the
20 conditions of approval?

21 PRINCIPAL PLANNER EASTWOOD: I think county
22 counsel is probably best suited to respond to that.

23 DEPUTY COUNTY COUNSEL PIANCA: The EIR did
24 conclude that groundwater monitoring was not necessary
25 because there was no significant impact related to

1 groundwater that was identified.

2 And similar to the other conditions that you
3 have reviewed earlier today, there should be a
4 reasonable relationship between the impact that's
5 identified and the proposed mitigation measure.

6 This is a little bit of a different situation
7 because this particular condition of approval is not an
8 identified mitigation measure in the EIR. Nevertheless,
9 you have to look at whether or not the imposition of the
10 development of a groundwater monitoring plan, as well as
11 installation of the groundwater monitoring wells goes
12 above and beyond what is the scope of the project and
13 the scope of the conditions of approval.

14 COMMISSIONER CHIU: But my question was, if
15 the -- can the planning commission find, based on
16 totality of the evidence presented, including testimony
17 from the Santa Clara Valley Water District, that there
18 is a relationship and -- between the -- there's at least
19 a potential effect on groundwater, even though the --
20 though the EIR did not, and -- and implement the --
21 safely and legally implement the -- the groundwater
22 language that we're talking about?

23 DEPUTY COUNTY COUNSEL PIANCA: That is at the
24 will of the planning commission, to make those findings.

25 COMMISSIONER CHIU: Thank you.

1 CHAIRPERSON LEFAVER: Okay. Going back to
2 Commissioner -- I'm sorry. Going back to Commissioner
3 Ruiz.

4 I -- I would suggest that the groundwater
5 monitoring plan, which includes the location of the --
6 the -- the wells and the standards, come back to the
7 planning commission for approval. And that then we --
8 we will get a yearly update on those -- on the
9 monitoring as it comes about.

10 Is that -- is that what you were thinking?

11 COMMISSIONER RUIZ: Yes. That's great.

12 CHAIRPERSON LEFAVER: Okay. Any other thoughts
13 on this item?

14 COMMISSIONER CHIU: I just want to say for the
15 record that -- that I do believe that based on the
16 testimony, that -- and documents that was presented to
17 the planning commission, that there -- that isn't -- the
18 EIR's conclusion that there's no impact on groundwater
19 is not as conclusive as I would like, and there's still
20 at least a small possibility that it might affect the
21 groundwater. That's -- and that's the rationale that I
22 would vote for the -- for the groundwater language
23 that --

24 CHAIRPERSON LEFAVER: Okay.

25 COMMISSIONER CHIU: -- that's being proposed.

1 CHAIRPERSON LEFAVER: Thank you. Good.

2 Can I -- oh.

3 COMMISSIONER COUTURE: I just want to concur --

4 CHAIRPERSON LEFAVER: Oh.

5 COMMISSIONER COUTURE: -- with that.

6 CHAIRPERSON LEFAVER: Okay. And Commissioner
7 Bohan. I'm sorry.

8 COMMISSIONER BOHAN: Yeah. I have a question.

9 That is that it states here that the -- the
10 mine operator will conduct groundwater monitoring
11 downstream of the quarry. So all of these wells would
12 be off the quarry property.

13 CHAIRPERSON LEFAVER: Yes.

14 COMMISSIONER BOHAN: And obviously they have to
15 have permission to do this at various sites, probably
16 publicly owned sites, and they'd be able to get that
17 permission.

18 CHAIRPERSON LEFAVER: Yes. They will need --
19 need to get that permission.

20 VICE CHAIRPERSON VIDOVICH: I think the law --

21 COMMISSIONER BOHAN: Yeah.

22 VICE CHAIRPERSON VIDOVICH: -- through the
23 Chair.

24 I mean, I'm -- I think the law allows you to --
25 they've gone on my property all the time. They allow

1 you to do this --

2 COMMISSIONER BOHAN: Yeah.

3 VICE CHAIRPERSON VIDOVICH: -- without
4 permission.

5 COMMISSIONER BOHAN: Yeah.

6 And I guess the second question I have is that
7 the thing you worry about when you do these monitoring
8 wells is that you might start interconnecting the
9 aquifers that you don't want to have interconnected,
10 just by putting a well in. And of course I think that's
11 probably pretty well controlled, isn't -- in the process
12 that's creating it?

13 PRINCIPAL PLANNER EASTWOOD: Yeah, my
14 understanding, I mean, that would be part of the initial
15 plan, is how it's installed, how deep it goes, to ensure
16 that -- that that would not take place.

17 COMMISSIONER BOHAN: Right.

18 CHAIRPERSON LEFAVER: County counsel?

19 DEPUTY COUNTY COUNSEL PIANCA: Yes. May I
20 respond to Commissioner Bohan's question.

21 There is in this condition a requirement that
22 the mine operator obtain a well construction permit from
23 the Santa Clara Valley Water District. And there is a
24 separate permitting authority through the Santa Clara
25 Valley Water District that the mine operator would need

1 to comply with prior to installing the wells.

2 COMMISSIONER BOHAN: And in that process,
3 they'd make sure that the wells are properly
4 constructed.

5 DEPUTY COUNTY COUNSEL PIANCA: That is my
6 understanding --

7 COMMISSIONER BOHAN: Yeah.

8 DEPUTY COUNTY COUNSEL PIANCA: -- yes.

9 COMMISSIONER BOHAN: Okay.

10 CHAIRPERSON LEFAVER: Okay. Can -- can we have
11 a -- a motion?

12 Commissioner Ruiz?

13 COMMISSIONER RUIZ: I think John was going
14 to -- you want to do the motion?

15 VICE CHAIRPERSON VIDOVICH: You want me to do
16 the motion?

17 The motion is to approve the balance of the
18 conditions with the modifications as suggested by
19 Commissioner Ruiz. Still leaving outstanding the east
20 materials storage yard.

21 CHAIRPERSON LEFAVER: Okay, we -- we did --
22 we -- we did go ahead and -- and -- so this would be a
23 specific condition --

24 VICE CHAIRPERSON VIDOVICH: Correct.

25 CHAIRPERSON LEFAVER: -- dealing with

1 groundwater. And so the groundwater on page 8 is as the
2 staff indicated, with -- with the -- with the language
3 that the groundwater monitoring plan, with location and
4 standards be put together and brought back to the
5 planning commission for approval, and that the -- there
6 will be a consistency with water quality standards
7 mentioned within the plan, and that there will be a
8 report to the planning commission on a yearly basis,
9 based upon the information from the groundwater
10 monitoring plan.

11 VICE CHAIRPERSON VIDOVICH: And thank you for
12 clarify my motion.

13 CHAIRPERSON LEFAVER: No. Oh. I thought you
14 said that.

15 VICE CHAIRPERSON VIDOVICH: Yes.

16 CHAIRPERSON LEFAVER: Was there a second?

17 COMMISSIONER RUIZ: I second that.

18 CHAIRPERSON LEFAVER: Okay.

19 Mr. Secretary, did you -- did you get all that?

20 SECRETARY RUDHOLM: Yes, Mr. Chair, we've got
21 it.

22 CHAIRPERSON LEFAVER: Okay. Mr. Director?

23 DIRECTOR GONZALEZ: Mr. Chair, just for the
24 record, I'd like to note that this condition that you're
25 acting on would be condition number 90.

1 CHAIRPERSON LEFAVER: 90. Thank you.

2 COMMISSIONER RUIZ: Commissioner Couture.

3 CHAIRPERSON LEFAVER: Yes. Couture.

4 COMMISSIONER COUTURE: And our -- we're going
5 to talk about the east materials storage area and also
6 the financial.

7 CHAIRPERSON LEFAVER: Yeah. We're -- we're
8 getting there.

9 COMMISSIONER COUTURE: Okay. But you just said
10 east materials, so I'm just making sure you're talking
11 about the financial too.

12 CHAIRPERSON LEFAVER: Correct. Yeah.
13 Okay. We have a motion on the floor.
14 All those in favor say "aye."

15 COMMISSIONER BOHAN: Aye.

16 COMMISSIONER CHIU: Aye.

17 COMMISSIONER COUTURE: Aye.

18 CHAIRPERSON LEFAVER: Aye.

19 COMMISSIONER RUIZ: Aye.

20 COMMISSIONER SCHMIDT: Aye.

21 VICE CHAIRPERSON VIDOVICH: Aye.

22 CHAIRPERSON LEFAVER: Opposed?

23 It's unanimous.

24 Thank you.

25 That's groundwater.

1 The next item that we were going to bring up,
2 Mr. Secretary, is the east management storage area.

3 SECRETARY RUDHOLM: Referred to as the east
4 materials storage area.

5 CHAIRPERSON LEFAVER: Materials storage area.

6 COMMISSIONER RUIZ: I -- I have a procedural
7 question, Chair.

8 CHAIRPERSON LEFAVER: Yes.

9 COMMISSIONER RUIZ: I know at the start of the
10 meeting we had -- we opened -- we had a -- a time for
11 public comment. Now that we're in the afternoon
12 session, do you think it'd appropriate to have another
13 time for public comment, maybe, for people who have
14 joined us that were not here this morning?

15 CHAIRPERSON LEFAVER: County counsel?

16 I don't -- I don't think so, but let -- let me
17 ask county counsel.

18 DEPUTY COUNTY COUNSEL CLARK: You're under
19 no -- no obligation to open it up for public comment at
20 this point in time. You had the opportunity at the
21 beginning of the meeting. And (unintelligible) lunch
22 break, so there's no obligation to do so.

23 CHAIRPERSON LEFAVER: Okay.

24 VICE CHAIRPERSON VIDOVICH: Can -- can I ask a
25 question through the Chair on this?

1 Are you referring to general public comment, or
2 are you saying that allow -- are you suggesting that we
3 let the public comment regarding the east materials
4 storage yard because we have new information that -- I
5 mean, that was told -- the public was told that we
6 were -- they were going to get new information on it.
7 Because I -- because I want the public to be able to
8 comment on the east materials storage yard.

9 COMMISSIONER RUIZ: Yes, my question was
10 that if we were going to open it up for public comment
11 to comment on whatever items that they would like,
12 including east materials, if -- if that's the comment
13 or --

14 VICE CHAIRPERSON VIDOVICH: Yeah, I just
15 think --

16 COMMISSIONER RUIZ: Yes.

17 VICE CHAIRPERSON VIDOVICH: -- we should limit
18 it not to everything --

19 COMMISSIONER RUIZ: Okay.

20 VICE CHAIRPERSON VIDOVICH: -- because -- well,
21 because you're going to get a lot of the things we
22 already covered. Unless you want to -- unless you want
23 to open it up, which I don't have a problem with that
24 either. But I do think the east materials storage yard,
25 we promised the public there'd be new information, so I

1 think they should be able to comment on it.

2 CHAIRPERSON LEFAVER: County counsel. We -- we
3 haven't gotten there yet, but the question's being
4 asked.

5 DEPUTY COUNTY COUNSEL CLARK: There was no
6 notice of a public hearing of any type. So all you
7 have -- all you're noticed for is a public meeting.

8 So to the extent you are going to be inviting
9 the public to comment on new information, I don't
10 believe it's been public -- been properly noticed.

11 Nevertheless, if -- it -- it -- it's at your
12 discretion. If you wish to open it up to -- to allow
13 for comments of a specific nature, that is within your
14 prerogative.

15 CHAIRPERSON LEFAVER: Okay. So when we get
16 there, we'll figure that one out.

17 VICE CHAIRPERSON VIDOVICH: Thank you,
18 counsel.

19 CHAIRPERSON LEFAVER: So now we are going to
20 talk about the east material storage area.

21 And as I recall from our last discussion, you
22 -- Commissioner Vidovich, you asked whether or not that
23 area could be lowered to about -- about 70 feet, to
24 the -- what, the 8 -- 820 level.

25 And perhaps you can --

1 VICE CHAIRPERSON VIDOVICH: I -- I can review
2 what happened.

3 At the meeting, we -- I received these topos,
4 100 scale, and I can see the east materials storage
5 yard. It's got a creek on the bottom. Permanente Creek
6 flows through. And so it can't match that grade there.
7 It has to have a valley. And it's heaped up at a
8 two-to-one grade, with benches, because two to one is
9 the maximum they can go. The material's very stable,
10 but it's two to one, and then it has benches.

11 And it extends out like a hotdog, right out
12 into -- it protrudes out into an area that is very, very
13 visible by the neighbors. And there's been a lot of
14 public comment about the aesthetics of that.

15 So I was trying to suggest a compromise about
16 lowering it, and I -- I gave a number that was a
17 compromise, my meant not a lot of movement of material.

18 As I learned since then, that material will --
19 probably won't be moved by truck; it'll probably be
20 moved by a conveyor.

21 And I think it's an issue that the public wants
22 to comment on; that staff said that they -- that we --
23 they wanted to have time to analyze lowering it, and
24 they were going to give us some new information
25 regarding lowering it.

1 And I think the applicant knows this is coming,
2 because I've talked to him, and -- and he says he'd like
3 to speak on it, and I know people in the public are
4 expecting to speak on it.

5 So I -- I think that's -- that's my
6 understanding of the situation with the east materials
7 storage yard.

8 CHAIRPERSON LEFAVER: Okay. Staff, you -- you
9 did -- there was, requested by Commissioner Bohan, to
10 look at the amount of material and, number one, how much
11 that would be, and number 2, where would it go.

12 And so --

13 PRINCIPAL PLANNER EASTWOOD: Okay. So staff
14 did get some information. We had -- we had requested
15 this of the applicant. And again would suggest if --
16 staff doesn't have all the information, that if you have
17 questions for the applicant, you could also do that
18 also.

19 But to report back, as stated in the EIR, the
20 total cubic yardage of overburden planned for the east
21 materials storage area is 4.8 million cubic yards.

22 Today in the east materials storage area,
23 there's already been placed some overburden, and that's
24 approximately one million cubic yards. So that's what's
25 there today.

1 Additionally, under this rec plan, would be
2 placed up to the difference, which is 3.8 million cubic
3 yards.

4 The information we don't have, which we
5 requested of the applicant, is what would happen, as
6 suggested by Commissioner Vidovich, if a portion of that
7 overburden was not placed in the east materials storage
8 area.

9 If I understand correctly, Commissioner
10 Vidovich is looking at an alternative where it would be
11 lowered, where there's less overburden; the height is
12 lower. And by doing so, the over -- overburden would
13 not go there; it would go somewhere else.

14 We requested the applicant, Lehigh, to respond
15 to that.

16 They've reported that in order to lower the
17 EMSA down to 800 feet as the maximum height, the net
18 difference would be one million cubic yardage of
19 overburden.

20 So instead of that overburden going to the east
21 material -- east materials storage area, it would have
22 to go somewhere else.

23 So that -- that's the factual response to the
24 question of what -- what is the ramification of lowering
25 the height of that overburden storage area.

1 Now with respect to what that does, as staff
2 reported last time, unfortunately the window of -- of
3 environmental coverage for what's before you is narrow.
4 The -- the EIR did only evaluate what is proposed under
5 the reclamation plan. It didn't provide a full CEQA
6 clearance of alternatives or other things contemplated.

7 One thing to keep in mind with the commission
8 is, as opposed to a use permit, where someone's
9 proposing a use and perhaps the commission could modify
10 hours or reduce things, with this -- with the plan
11 before you, it's a reclamation plan to -- to reclaim the
12 quarry. And the -- what's at discussion is the amount
13 of overburden and where it's placed.

14 So just by requiring that the height of the
15 EMSA be lowered doesn't make that overburden go away.
16 It has to go somewhere else.

17 So as proposed, in order for the mine operator
18 to continue mining, they need to take that overburden
19 out of the pit and place it somewhere.

20 The first question would be, if it's not placed
21 in the east materials storage area, where would it go.
22 There is no analysis of where it was. Or is the
23 proposal to put it in the east materials storage area
24 and then remove it and place it back into the main pit?

25 Now the EIR did not contemplate or evaluate

1 that at a -- just sort of the -- to get a sense of what
2 that means, a one million cubic yards would be a large
3 number of trucks.

4 The mine operator is proposing to use a
5 conveyor for the west materials storage area, and that's
6 on the other side of the quarry; but they have not
7 proposed, as they didn't contemplate any means of
8 transporting material from the east materials storage
9 area back into the mine pit.

10 So again, we don't know, and there wasn't an
11 analysis of how many trucks that is. Is there
12 additional air quality emissions? How would it be
13 placed into the pit? Is there a geotech analysis of how
14 it would be placed? How does that interface with the
15 100-year flood detention basin that's proposed for the
16 main pit?

17 So these are just all unknowns on -- on -- you
18 know, that overburden has to go somewhere. Where would
19 it go? What does it look like? And what are
20 potentially the environmental impacts of doing that?

21 And so again, to disclose, that has not been
22 evaluated in the EIR.

23 CHAIRPERSON LEFAVER: Okay. Any comments
24 from -- from commissioners?

25 Commissioner Bohan.

1 COMMISSIONER BOHAN: Would -- would it be
2 possible to get rid of all the material within the
3 confines of the site, or would some of it have to be
4 hauled off if you lowered it?

5 PRINCIPAL PLANNER EASTWOOD: Well, I don't -- I
6 mean, I guess one question is, what -- is there -- is
7 there a market? Or where would it go? I mean, this
8 is -- it's overburden. I don't believe there is a
9 market for it; otherwise, probably, the mine operator
10 would sell it.

11 At one point, we -- you know, the EIR and staff
12 preliminary looked at is there an alternative where all
13 of the overburden is just moved off of site. But based
14 on everything we know, there just is not a feasible
15 place to accept it. Where would it actually go? Who
16 would accept it?

17 And again, there is apparently no market for
18 overburden. So that just did -- did not look at -- does
19 not look like a feasible alternative, to haul it off
20 site to somewhere else.

21 COMMISSIONER BOHAN: All right.

22 VICE CHAIRPERSON VIDOVICH: Mr. Chair, and
23 Jack.

24 The reclamation plan only covers the final
25 form. They can still store it in the east side, whether

1 the neighbors like it or not. But it came out of the
2 large pit. And the large pit is in need of as much
3 shoring material as possible. So they do have a place
4 to put it.

5 The pit they're mining right now it came out
6 of, it can go back in there. In fact, I think somebody
7 from the public commented that, on that.

8 And there is -- before we make a decision, I
9 think there are -- there is people from the public that
10 have things to say about it; but it can go back in the
11 pit, either with a truck or with a -- a conveyor.

12 CHAIRPERSON LEFAVER: Okay. I think that since
13 we did -- county counsel, since we did talk about this
14 last time during the public hearing, and we also
15 indicated that we would be talking about it again at
16 this meeting, I feel it's -- it's -- it would be fine to
17 ask for comments from those that are here specifically
18 on this item, to talk about it.

19 So I'm -- I'll -- I'm going to allow that to
20 happen. I think it would be to the benefit of -- of all
21 of us.

22 DEPUTY COUNTY COUNSEL CLARK: Yes, for the
23 purpose of obtaining further information --

24 CHAIRPERSON LEFAVER: Yes.

25 DEPUTY COUNTY COUNSEL CLARK: -- on this issue,

1 and then not opening the public hearing?

2 CHAIRPERSON LEFAVER: No.

3 DEPUTY COUNTY COUNSEL CLARK: Good. That's --
4 that's the clarification.

5 CHAIRPERSON LEFAVER: Yes. It's to obtain
6 information.

7 So are there people within the audience that
8 have specific information, not opinions, information,
9 and clarifications, on this particular proposal?

10 All right. Come on up and -- and state your
11 name and also write out a -- they should write out their
12 name and everything so we'll get it, please.

13 UNIDENTIFIED FEMALE SPEAKER:
14 (Unintelligible).

15 VICE CHAIRPERSON VIDOVICH: Yeah.

16 CHAIRPERSON LEFAVER: Yeah. And just two
17 minutes, please.

18 VICE CHAIRPERSON VIDOVICH: Mr. -- Mr. Chair,
19 is it --

20 CHAIRPERSON LEFAVER: Yes.

21 VICE CHAIRPERSON VIDOVICH: Is it possible to
22 have Lehigh speak first, so at least --

23 CHAIRPERSON LEFAVER: Well, they're --
24 they're --

25 VICE CHAIRPERSON VIDOVICH: -- the -- the

1 public has that information before --

2 CHAIRPERSON LEFAVER: Lehigh --

3 VICE CHAIRPERSON VIDOVICH: -- they speak?

4 CHAIRPERSON LEFAVER: -- would you like --

5 thank you.

6 Would you like to talk first, or --

7 VICE CHAIRPERSON VIDOVICH: They could talk

8 second-last, also.

9 UNIDENTIFIED FEMALE SPEAKER:

10 (Unintelligible).

11 CHAIRPERSON LEFAVER: Would -- what would you

12 like? Would you like to respond now or later?

13 UNIDENTIFIED FEMALE SPEAKER: Want last.

14 UNIDENTIFIED MALE SPEAKER: Later.

15 CHAIRPERSON LEFAVER: Later, okay.

16 VICE CHAIRPERSON VIDOVICH: Well, if they -- if

17 they --

18 CHAIRPERSON LEFAVER: They -- they've said

19 later --

20 VICE CHAIRPERSON VIDOVICH: I know.

21 CHAIRPERSON LEFAVER: -- Commissioner.

22 VICE CHAIRPERSON VIDOVICH: But if they have

23 information, it's not fair that they don't share it with

24 the public. That's --

25 CHAIRPERSON LEFAVER: They are going to share

1 it.

2 VICE CHAIRPERSON VIDOVIK: Okay.

3 UNIDENTIFIED MALE SPEAKER: That's bullshit.

4 SECRETARY RUDHOLM: Mr. Chair --

5 CHAIRPERSON LEFAVER: Yes?

6 SECRETARY RUDHOLM: -- did you want us to
7 collect the speaker cards in advance or have people fill
8 them out after they've spoken?

9 CHAIRPERSON LEFAVER: Yeah, if you can do it in
10 advance so we'll have you, but -- please.

11 But let's get the first -- first person up
12 here, anyway, so they can comment.

13 So this is very specific, please.

14 UNIDENTIFIED FEMALE SPEAKER: Chair, just one
15 question is whether or --

16 CHAIRPERSON LEFAVER: Yeah.

17 UNIDENTIFIED FEMALE SPEAKER: -- not there's
18 going to be a limitation on the amount of time.

19 CHAIRPERSON LEFAVER: Yeah. Two -- two
20 minutes.

21 SECRETARY RUDHOLM: (Unintelligible) go now.

22 CHAIRPERSON LEFAVER: Thank you.

23 SECRETARY RUDHOLM: The timer?

24 CHAIRPERSON LEFAVER: Go -- go ahead, please.

25 Do -- are you going -- are you going to be my

1 first speaker?

2 UNIDENTIFIED MALE SPEAKER: (Unintelligible).

3 CHAIRPERSON LEFAVER: We have to get you a mic.

4 John -- John, let me run the meeting.

5 VICE CHAIRPERSON VIDOVICH: Okay. All right.

6 CHAIRPERSON LEFAVER: All right.

7 MR. SINKS: Thank you very much. Rod Sinks

8 here once again on behalf --

9 CHAIRPERSON LEFAVER: Hi, Mr. Sinks. Hi.

10 MR. SINKS: -- on behalf of myself. I'm a city
11 councilor in Cupertino, but I'm not representing the
12 city, rather my -- myself.

13 Mr. Vidovich was kind enough to take copies of
14 this picture for you all. I hope you all have this.
15 This is a picture of the west materials storage area.

16 Now this is the picture I couldn't display when
17 I was here last time; we had -- we had technical
18 difficulties, and I guess this time this is the best I
19 can do.

20 CHAIRPERSON LEFAVER: Yeah. And we have them
21 up here, so --

22 MR. SINKS: You do?

23 CHAIRPERSON LEFAVER: Yes. Thank you.

24 SECRETARY RUDHOLM: We have them.

25 MR. SINKS: So as you know, I endeavored to

1 frankly get some public opinion to counter the
2 impression that was --

3 VICE CHAIRPERSON VIDOVICH: I have
4 (unintelligible).

5 MR. SINKS: -- left that residents want this
6 pile. And in fact they don't. By a 90 to 10 -- 90
7 percent to 10 percent vote, residents do not want this
8 pile.

9 You know, it is rather astounding to learn,
10 after hearing the claim that residents want this, to now
11 hear -- to tell you that that's simply not the case.

12 It's astounding to hear the assertion that the
13 pile's almost up to where it's going to be, and now
14 learn that we've only -- that's only the first million,
15 and we have 3.8 million cubic yards of material to go.

16 And what is this material? Clay. It's going
17 to compact. Great. That's not going to be the
18 problem. The real question is, will it vegetate in any
19 reasonable way?

20 Let me read you, again, what Le -- Hanson's
21 vice president said in 2004, in a report to concerned
22 community members: "About 80 percent" -- these are
23 Hanson's words -- "About 80 percent of the exposed five
24 acres now has been planted in that wooded vegetation.
25 We will increase density of the woody vegetation, our

1 supplying water, and taking other steps to accelerate
2 growth, in order to diminish the visual distinction from
3 the surrounding hillside. Results of that effort should
4 be visible in three to five years."

5 Now, ladies and gentlemen, I ask you to look at
6 this picture, which is what many people see, from
7 Los Altos, Los Altos Hills, and places north in Mountain
8 View, and tell me if this looks like it's been
9 revegetated to you.

10 And with regard to removing this material, I --
11 I really see no reasonable argument whereby -- whereby
12 residents' wishes in this accord should not be honored.

13 Please stop the pile from growing. Put it
14 someplace within Lehigh's area, but not right next to
15 residents, in the face of those residents.

16 SECRETARY RUDHOLM: Two minutes have expired,
17 Mr. Chair.

18 MR. SINKS: Thank you very much.

19 CHAIRPERSON LEFAVER: Thank you, Mr. Sink.

20 SECRETARY RUDHOLM: Next speaker will be
21 Mr. Bill Almon, followed by Matt Baldzikowski.

22 MR. ALMON: Hi, I'm Bill Almon, representing
23 Quarry No.

24 I appreciate the opportunity, again, to talk to
25 the commission.

1 (Unintelligible).

2 SECRETARY RUDHOLM: I beg your pardon. I'm
3 very sorry, Bill. Please talk directly into the
4 microphone. These are not that sensitive. We're having
5 difficulty hearing you up here.

6 MR. ALMON: The storage areas have all been
7 problems. We've all seen already the demise of the
8 easement on the west materials storage area.

9 We believe that there's new information on the
10 toxicity of the east materials storage area.

11 I'm now reading from a 1911 -- or pardon me,
12 from 2011, EPA document that says that kiln dust
13 generated was also sent to the EMSA. They were told
14 that on a visit to the quarry.

15 We have a lot of haste here and urgency to get
16 this done, but I would please ask you to make sure that
17 we understand what's in the EMSA, and use some wisdom in
18 limiting the size of the EMSA.

19 As was stated earlier, it -- the boundary of it
20 is Permanente Creek. We're very concerned over the
21 selenium in the creek.

22 The last point I would add is I've been on the
23 phone with General Electric the last two days. General
24 Electric Corporation has an operating selenium treatment
25 plant (unintelligible).

1 CHAIRPERSON LEFAVER: Okay. We're not talking
2 about the selenium. Please.

3 MR. ALMON: Thank you.

4 CHAIRPERSON LEFAVER: Thank -- thank you.

5 SECRETARY RUDHOLM: Next speaker is Matt
6 Baldzikowski. Followed by Kathy Helgersen (phonetic).

7 MR. BALDZIKOWSKI: Think that's on.

8 CHAIRPERSON LEFAVER: You're -- you're --
9 you're on.

10 MR. BALDZIKOWSKI: All right.

11 Matt Baldzikowski, Midpeninsula Regional Open
12 Space District. I do appreciate you reopening --

13 CHAIRPERSON LEFAVER: So you're going to have
14 to slow down and talk in.

15 MR. BALDZIKOWSKI: All right. I appreciate
16 your reopening --

17 CHAIRPERSON LEFAVER: Thank you.

18 MR. BALDZIKOWSKI: -- this for some comments.

19 This is a significant issue to the district.
20 We've submitted numerous comments on the east materials
21 storage area, starting with not believing it should be
22 there in the first place.

23 The -- we support its removal.

24 The -- it's a source of the significant impacts
25 identified in the EIR. The alternatives that are less

1 superior that were -- or -- it was noted as a less
2 superior to the preferred alternative, but the
3 differences are not significant impacts, like they are
4 with having it there, in terms of visual quality, and
5 the -- the water quality difference would be a temporary
6 versus a permanent water quality issue.

7 So I would disagree with the finding of the EIR
8 that it is less superior in that regard as well.

9 It is very disturbing to hear that there's only
10 been a million cubic yards placed there, and there's 3.8
11 million to go. This is a figure, and it's something
12 we've been asking for for years, to try to get a handle
13 on, so you all have the appropriate information, as
14 do -- does the public, to make a -- a informed, proper
15 decision on this.

16 The quarry operator also said at the last
17 hearing that they have been getting the pit ready to
18 receive material. That means they've been digging it
19 out as fast as they can. And there -- they said that
20 that would be available in July. So I would suggest
21 beginning the refilling of the pit with the east
22 materials storage area material.

23 Thank you.

24 CHAIRPERSON LEFAVER: Thank you.

25 VICE CHAIRPERSON VIDOVICH: (Unintelligible).

1 SECRETARY RUDHOLM: Next speaker is Kathy
2 Helgersen (phonetic) followed by Rhoda Fry (phonetic).

3 MS. HELGERSON: It is known that the EPA has
4 now found out that Lehigh has been dumping waste
5 material, and I suspect in the west materials storage
6 area as well as the east materials storage area. We
7 need to find out what's going on.

8 They also have the dredged ponds that
9 they're -- they're dumping the pollution in there.

10 This is the quarry. It's huge. There's plenty
11 of room to (unintelligible) the EMSA back there. And
12 then one minute there was a mining, and mining is going
13 on there.

14 We have to make sure there's at least four foot
15 of topsoil and that it's cleaned up. And also,
16 underneath the east materials storage area, we need to
17 find out what's under there, because whatever it was, it
18 wasn't lined at one time, and it's the -- it has to be
19 cleaned up.

20 So what I'm proposing here is that we move it,
21 the east materials storage area, into the pit and
22 flatten it out.

23 And then also I'm concerned about the
24 watering. How is this going to be watered? We've had
25 trouble with the wet -- west materials storage area and

1 watering and what was planted there. It has to be low
2 enough so that it can be flat enough for things to grow
3 there.

4 And also the runoff. We have to be careful
5 about the runoff, because it's going into the creek. So
6 there should be no pollution there.

7 Lehigh should not be allowed to dump any more
8 waste material from the cement plant into any one of the
9 locations on the site. It should be carried off -- off
10 the site. They've been dumping on here, and nobody's
11 done anything about it. The EPA just caught this, and I
12 want the commission to be aware of this. This has to be
13 some kind of a clean-up on your part.

14 And then we're for the reclamation, as long as
15 there's -- it's -- it's clean. We have to make sure
16 that the public is protected against this pollution
17 that's blowing up in the air.

18 And if you look here at all the pictures I gave
19 you, you can see this gray dust is covering everything.
20 They're not cleaning up the whole property, with this
21 dust. This dust is blowing all over the valley. We're
22 being contaminated by this, and it has to stop.

23 So if you'll start by moving the east materials
24 storage area, which I think this is a good proposal.
25 There's plenty of room here.

1 I'd like to find out exactly where the

2 (unintelligible) --

3 SECRETARY RUDHOLM: Two minutes have expired,
4 Mr. Chair.

5 MS. HELGERSON: -- where the mining is, so we
6 can work around it.

7 CHAIRPERSON LEFAVER: Okay. Thank you.

8 MS. HELGERSON: Thank you.

9 SECRETARY RUDHOLM: Next speaker is Rhoda Fry
10 (phonetic), followed by Karen Del Campari (phonetic).

11 MS. FRY: Wow, it's one million now, and it's
12 going to be close to five million? We were told the
13 reason why they weren't going to -- that the
14 (unintelligible) become a permanent feature. Is it too
15 disruptive to move it (unintelligible) off?

16 UNIDENTIFIED FEMALE SPEAKER:
17 (Unintelligible).

18 MS. FRY: It -- we were told that it was going
19 to be too disruptive to move the material that's in the
20 east materials storage area off, and that's why it was
21 going to become a permanent feature. But now there's
22 3.8 million cubic yards, or whatever they are, that
23 haven't even gotten there yet? That -- that doesn't
24 make sense to me.

25 Seems to me that we should -- it seems to me

1 that this extra stuff they're talking about moving is an
2 expansion, and maybe it shouldn't be moved there in the
3 first place.

4 Again, as Mr. Almon mentioned, they found
5 cement plant waste in the -- in these piles before
6 they're moved. We need to figure out what's in there.

7 Your conditions that you're putting in today
8 say we shouldn't put stuff, you know, stuff that doesn't
9 have to do with overburden, in that pile. Please start
10 doing that now and enforcing it.

11 And finally, on a procedural note, I hope that
12 you can address the CCRs 3706 and 3710 that are yet to
13 (unintelligible) and if you could explain the procedure
14 on that, I'd appreciate it.

15 Thank you.

16 CHAIRPERSON LEFAVER: Thank you.

17 SECRETARY RUDHOLM: Next speaker is Karen Del
18 Campari (phonetic), followed by Catherine Diltz
19 (phonetic).

20 MS. DEL CAMPARI: Yes. Thank you for letting
21 us speak again.

22 I just want to reiterate that the EPA recently
23 conducted a review of the Lehigh facility and --

24 CHAIRPERSON LEFAVER: Okay, again, I -- I want
25 you to focus, please, on -- on -- on this.

1 MS. DEL CAMPARI: I am.

2 CHAIRPERSON LEFAVER: On -- okay. Thank you.

3 MS. DEL CAMPARI: Yeah. And in that review
4 that just recently became available, they said that the
5 cement kiln dust was deposited in the EMSA.

6 Cement kiln dust is really nasty stuff. It's
7 not something you want, you know, contract --
8 contaminating the groundwater or Permanente Creek.

9 And I think that, at a minimum, that you should
10 review the EPA study and -- and possibly con -- do your
11 own study on this issue before deciding whether you're
12 going to build up the EMSA any further or whether that
13 area needs to be, you know, cleaned out or possibly
14 subjected to further environmental review, instead of
15 just creating a huge mountain on top of something we
16 don't know what exactly is in there.

17 And it -- just in terms of the base levels of
18 pollution, I think they should always be protective of
19 the creek, at a minimum, and not based on just recently
20 polluted levels, if there's no baseline level from
21 2006. And that relates to 81(b), where they say the
22 base levels are the average of two years immediately
23 prior to start of phase two.

24 If the levels are -- are high, those base
25 levels, are we really going to allow for the death of

1 Permanente Creek because the base levels are high prior
2 to the start of phase two? So that also I would --
3 would ask you to address.

4 Thank you.

5 CHAIRPERSON LEFAVER: Thank you.

6 SECRETARY RUDHOLM: Next speaker is Catherine
7 Diltz (phonetic), followed by Denise East.

8 CHAIRPERSON LEFAVER: Miss Hill (phonetic), hi.

9 MS. DILTZ: Hi. Good afternoon.

10 As a homeowner in the area, I am very concerned
11 about Lehigh and about EMSA.

12 In 2008, Lehigh was issued a notice of
13 violation for accumulating material and EMSA, and for
14 four years nothing has been done. And the pile has been
15 growing.

16 If you approve the EMSA, this would be the
17 first legislative body to legitimize it, and this will
18 be a very significant move. You will be allowing the
19 addition of 3.8 million cubic miles more of this
20 material.

21 Please just say no to EMSA. It should be
22 completely removed. It's -- you're -- if you approve
23 it, it will be five times what it is today. I don't
24 want it there at all.

25 Thank you.

1 CHAIRPERSON LEFAVER: Thank you very much.

2 Thank you for being succinct too.

3 SECRETARY RUDHOLM: Next speaker is Denise East
4 of the Sierra Club. She will be followed by Marvin
5 Howell.

6 Two minutes. And please hold the microphone
7 very close to your mouth for it to pick you up.

8 MS. EAST: I'm going to start
9 (unintelligible) --

10 CHAIRPERSON LEFAVER: Hi.

11 MS. EAST: -- start.

12 Can you hear me now?

13 CHAIRPERSON LEFAVER: You're good.

14 MS. EAST: I started out with a degree in
15 natural resources soils science and now have 34 years'
16 experience as a construction inspector. I have seen
17 many large earth-moving projects, vast quantities of
18 rebar, concrete, and have recently been certified as a
19 QSP, qualified storm water provision prevention plan
20 practitioner.

21 And per the Federal Clean Water Act of 1972,
22 the state now requires both a qualified SWPPP designer
23 and practitioner for all projects having disturbances
24 over one acre, as of last September of 2011.

25 The report does not have -- the report, the

1 reclamation report, it does not have (unintelligible)
2 that addresses the EMSA, and that does not have a
3 qualified SWPPP designer.

4 Chapter 7, (unintelligible) environmental
5 impact says that the reclamation project has the
6 potential of delivering selenium to Permanente Creek.

7 The authors did not understand that they
8 need -- they need to have a state-mandated QSD to design
9 a plan to prevent such storm water runoff and non storm
10 water runoff by a QSP and monitored by a QS -- that --
11 I'm sorry, designed by a QSD and monitored by a QSP.

12 And we're having this construction, and there's
13 no approved SWPPP plan, and that is a violation of the
14 Clean Water Act at this point.

15 The permit that they are working under is a --
16 is a -- let's see -- is a state industrial general
17 permit CAS 5001, and the storm water runoff from that
18 and the non storm water runoff under that permit has to
19 be without hazardous materials in reportable quantities.

20 So CWA section 303(d) lists Permanente Creek as
21 an impaired water body to its -- due to its high
22 selenium state levels.

23 I don't see how you can separate selenium
24 levels from the SWPPP plan. You have to have a SWPPP
25 plan. And it's not just (unintelligible). It has to be

1 in place and permitted.

2 SECRETARY RUDHOLM: Two minutes have expired,
3 Mr. Chair.

4 CHAIRPERSON LEFAVER: Thank -- thank you.

5 SECRETARY RUDHOLM: Next --

6 CHAIRPERSON LEFAVER: Staff, do you -- do you
7 want to comment? There -- there was question about
8 qualified designer and having the proper permits and so
9 forth. Did you want to comment on that at this point?

10 PRINCIPAL PLANNER EASTWOOD: Are you -- are you
11 asking staff?

12 CHAIRPERSON LEFAVER: Yes, staff.

13 PRINCIPAL PLANNER EASTWOOD: Just as a general
14 comment, the -- the conditions and the requirements, we
15 believe we meet water quality standards. They were
16 removed by the Regional Water Quality Control Board.
17 They did submit some comments, but they made no
18 recommendations to the effect that was indicated --

19 CHAIRPERSON LEFAVER: And --

20 PRINCIPAL PLANNER EASTWOOD: -- by the speaker.

21 CHAIRPERSON LEFAVER: And also, the -- I think
22 the qualified designer, that -- that was dealing with
23 the actual stacking up of the materials and so forth, as
24 I understand.

25 DIRECTOR GONZALEZ: I believe so.

1 And then as -- as far as getting back to the --
2 the requirements for water quality, again, these are
3 items that would be dealt with during the obtaining of
4 the permits through the Regional Water Quality Control
5 Board.

6 CHAIRPERSON LEFAVER: Okay.

7 DIRECTOR GONZALEZ: So again, those would be
8 adequately addressed through the --

9 CHAIRPERSON LEFAVER: And --

10 DIRECTOR GONZALEZ: -- (unintelligible).

11 CHAIRPERSON LEFAVER: And you're the ones that
12 address that issue?

13 DIRECTOR GONZALEZ: Correct.

14 CHAIRPERSON LEFAVER: Okay. Thank you.

15 Next speaker, please.

16 SECRETARY RUDHOLM: Next speaker is Marvin
17 Howell, followed by Mark Harrison.

18 CHAIRPERSON LEFAVER: Very good.

19 Mr. Howell, thank you.

20 MR. HOWELL: Good afternoon, commissioners.

21 I would just like to focus my comments to
22 clarification of some of the information that's been
23 shared, to make sure that you've got the correct
24 information for your deliberations.

25 So first of all, the amount of material that's

1 been stored in the east materials storage area to date
2 is approximately 4.3 million cubic yards. The one
3 million cubic yards that has been placed there, referred
4 to earlier, has been placed since the submittal of the
5 reclamation plan amendment before you today.

6 The EMSA is, as you heard, designed to contain
7 at its build-out, from the date of the submittal of the
8 reclamation plan amendment, 4.8 million. And so
9 therefore there's 3.8 million cubic yards of fill still
10 to be placed there.

11 We did take also a look at lowering the height
12 from approximately 910 to 800, as suggested by
13 Commissioner Vidovich.

14 And keep in mind that the east materials
15 storage area is at its maximum height now, as verified
16 by County of Santa Clara surveys, in fact I believe
17 they've done two such surveys, the most recent one
18 confirming that we've -- we've about reached the height
19 limitation.

20 To -- to pull that height down, we would lose
21 approximately 980,000 cubic yards of storage of
22 material. And while the pit has been opened up to start
23 accepting material, it would -- it would create problems
24 to move more than the amount of material that -- that --
25 that that storage area can take, because at some point,

1 when we start putting too much material in the pit,
2 before it's ready to accept it, we're going to start
3 burying reserves, and of course that would be a primary
4 concern to us.

5 I also wanted to point out there was a -- a
6 comment made that we could convey it, and I just wanted
7 to explain that moving material from the west
8 material -- materials storage area benefits from the
9 fact that it's at a higher elevation than where the --
10 where the pit is, where the material would be taken
11 to --

12 SECRETARY RUDHOLM: Two minutes --

13 MR. HOWELL: -- so that --

14 SECRETARY RUDHOLM: -- have expired, Mr. Chair.

15 CHAIRPERSON LEFAVER: Just go ahead and end
16 up. Go ahead.

17 MR. HOWELL: Okay. So it can -- it actually
18 generates its own energy, because it's downhill. So
19 while it -- it would take some electricity to start the
20 conveying system, with the weight on the belt, once the
21 conveyors start, it actually generates more electricity
22 than it uses, and that electricity can be used elsewhere
23 in the plant.

24 The EMSA is at a lower elevation than the rim
25 of the pit, so conveying it would actually use a

1 considerable amount of energy, and that's why there
2 would be additional impacts related to removing that
3 4.3 million cubic yards to the pit.

4 CHAIRPERSON LEFAVER: Great.

5 Questions?

6 Yes. Go ahead.

7 VICE CHAIRPERSON VIDOVICH: Can I ask --

8 CHAIRPERSON LEFAVER: Commissioner Vidovich --

9 VICE CHAIRPERSON VIDOVICH: -- a question?

10 CHAIRPERSON LEFAVER: -- has a question.

11 UNIDENTIFIED MALE SPEAKER: (Unintelligible).

12 VICE CHAIRPERSON VIDOVICH: Can you --

13 MR. HOWELL: Sure.

14 VICE CHAIRPERSON VIDOVICH: Can you comment on
15 the kiln dust? Seems to me if it's -- well, can you
16 comment on the kiln dust?

17 MR. HOWELL: You know, I -- I haven't heard
18 that before the public testimony today. I certainly
19 have no knowledge of its happening. I've -- I've been
20 there since 2004, and we don't have at this kiln
21 disposal of kiln dust. It's -- it's something that goes
22 right back into the -- in -- into the process.

23 I can't speak to what would have happened back
24 in the past. The site's been operating since 1939. But
25 I'm not aware of any -- any kiln dust being stored in

1 the EMSA. Certainly not -- certainly -- I certainly
2 don't believe it's happened during the time I've been
3 associated with it.

4 CHAIRPERSON LEFAVER: Okay. Questions? Other
5 questions?

6 Yes. Commissioner Bohan.

7 COMMISSIONER BOHAN: Yeah.

8 Can you repeat what you said about how much
9 more is going to go into the eastern pit or eastern
10 storage.

11 MR. HOWELL: Our calculation shows 3.8
12 million --

13 COMMISSIONER BOHAN: Additional?

14 MR. HOWELL: -- cubic yards.

15 Yeah.

16 COMMISSIONER BOHAN: Okay. And there's no
17 chance that that could be stored in the western area?

18 MR. HOWELL: No. The west materials storage
19 area has maxed out its height already.

20 COMMISSIONER BOHAN: Okay. All right.

21 VICE CHAIRPERSON VIDOVICH: Can I ask a
22 question?

23 CHAIRPERSON LEFAVER: Yeah. Go ahead.

24 VICE CHAIRPERSON VIDOVICH: The west materials
25 maxed it out, but in about six months you're going to be

1 taking it out of the west and putting it in the pit;

2 right?

3 MR. HOWELL: At the -- at the end of phase one,
4 which would be longer than six months. I think -- ten
5 years?

6 UNIDENTIFIED FEMALE SPEAKER: Probably.

7 MR. HOWELL: Ten years.

8 VICE CHAIRPERSON VIDOVICH: So it'd be ten
9 years before -- your testimony is it'd be ten years
10 before you put anything back into the pit?

11 MR. HOWELL: Coming out of the west materials
12 storage area, yes.

13 VICE CHAIRPERSON VIDOVICH: What would you put
14 in the west material yard before that? What would you
15 put in the pit before that?

16 MR. HOWELL: Material -- waste material that
17 we're generating as we go. We've got generally a waste
18 factor that I think runs at about 40 percent.

19 UNIDENTIFIED FEMALE SPEAKER:
20 (Unintelligible).

21 MR. HOWELL: So -- so for every ton we are
22 able -- every ton we mine, 60 percent of that ton is
23 processed to make cement. 40 percent of it is a -- is a
24 waste material.

25 VICE CHAIRPERSON VIDOVICH: It -- it -- can I

1 ask another question?

2 Is it possible for you to store the material to
3 whatever is necessary? I realize 3.8 is -- is the max,
4 and then take that material and put it in the main pit
5 later, chuck it in?

6 MR. HOWELL: Well, I -- I -- I think I'll allow
7 our counsel to answer that question, but I -- I think
8 staff has already made it clear that that -- that hasn't
9 been analyzed in this EIR, the -- the impacts from the
10 (unintelligible).

11 CHAIRPERSON LEFAVER: If you don't mind, I have
12 a -- a question.

13 You -- you made a statement, what -- so you use
14 60 percent. So you mine a hundred percent --

15 MR. HOWELL: Yes.

16 CHAIRPERSON LEFAVER: -- and then 60 percent is
17 usable material.

18 MR. HOWELL: Right. Now that -- that -- that's
19 an average. So understand that --

20 CHAIRPERSON LEFAVER: Oh, that's -- that's
21 fine. Yeah. Okay.

22 MR. HOWELL: -- that we'll go through, and
23 those of you who have visited the quarry will see that
24 there's a seam of high-grade limestone, medium-grade
25 limestone. So, you know, when we're actually mining out

1 that bucket of limestone, we've got limestone.

2 CHAIRPERSON LEFAVER: Okay.

3 MR. HOWELL: But we move an enormous amount of
4 overburden to get to it.

5 So for instance, right -- right now, we are
6 relocating the crusher so that we can access limestone
7 reserves in the -- in the -- in the pit.

8 And in order to do that, we've got to -- we've
9 got to move a -- a huge amount of over -- overburden
10 material.

11 In fact, we've got to move about 15 million
12 cubic yards within the next two and a half years to be
13 able to access the reserves in that portion of the pit.

14 CHAIRPERSON LEFAVER: So I'm just going to use
15 the 40 percent. Seems easier.

16 So -- but I -- I think you said that of that 40
17 percent, a certain amount does go back into the pit.
18 Did -- did you not say that?

19 MR. HOWELL: Right -- that -- right now it is,
20 because that's -- that's why we opened up the -- the --
21 the pit, so that it could start accommodating some of
22 the -- some of the waste material.

23 CHAIRPERSON LEFAVER: So -- so you are putting
24 it -- some of it back into the pit now?

25 MR. HOWELL: Yes.

1 CHAIRPERSON LEFAVER: And then what -- what you
2 can't put in the pit goes up to the east -- is that --

3 MR. HOWELL: That's correct.

4 CHAIRPERSON LEFAVER: Okay. I just -- I
5 just -- just wanted to make that clear.

6 Good.

7 Other questions of Mr. Howell?

8 Thank you.

9 SECRETARY RUDHOLM: Next speaker is Mark
10 Harrison.

11 MR. HARRISON: Thank you, Chairman, members of
12 the commission.

13 I just wanted to clarify a -- a few legal
14 points that were made by the counsel to the commission
15 at the last hearing.

16 In this case, the idea of moving the material
17 from the east materials storage area into the pit was
18 analyzed as part of the EIR as alternative 1, I think as
19 mention by Mr. Eastwood and the counsel at the last
20 hearing.

21 That alternative in the EIR was deemed to be
22 the least preferable from the standpoint of mitigating,
23 particularly before impacts had been deemed significant
24 and unavoidable to this project.

25 And there's various sites in the EIR where --

1 where that decision is found.

2 And the project was found to be environmentally
3 superior to that alternative in all key respects.

4 And I think it's important to note, picking out
5 one issue, whereas some members of the public
6 complaining about a visual issue, that's one piece of a
7 very large puzzle that the engineers, the staff, and the
8 scores of professionals who worked on this project had
9 to balance coming up with the best environmentally --
10 the best environmental project they could.

11 So that's one thing to keep in mind, and that
12 is the conclusion of staff's EIR that this board
13 certified at the last hearing.

14 The other thing I want to point out is,
15 although the alternative 1 was identified as a
16 potentially feasible alternative, and I think
17 appropriately so, there are questions of equal
18 feasibility if -- if it were thought that you could
19 force a miner with vested rights to mine in a certain
20 way.

21 You certainly can require them to impose
22 certain reclamation treatments. But asking them to move
23 millions of cubic of yards of material, which is their
24 mining operation, is something that doesn't follow
25 within the purview necessarily for the reclamation plan.

1 And I think it's important for this commission

2 (unintelligible).

3 CHAIRPERSON LEFAVER: Okay. Questions of
4 counsel?

5 No questions?

6 Thank you.

7 So that -- that will conclude the specific
8 commentary from -- from -- from everyone at this time.

9 Okay. So Mr. Vidovich, do you have some
10 thoughts?

11 VICE CHAIRPERSON VIDOVIK: Thank you.

12 CHAIRPERSON LEFAVER: I know you have some
13 thoughts.

14 VICE CHAIRPERSON VIDOVIK: Well, thank you,
15 Mr. Chair.

16 And, you know, I apologize for being -- I don't
17 know if the word is "pushy," on this item, but I -- I'm
18 just -- I'm -- you know, in looking at the project
19 physically, and even the testimony of the amount of
20 material that they're moving, it does not seem to me
21 that the magnitude of the material in the west material
22 yard, of -- of taking some of that material and putting
23 it back in the pit, as part of the -- not as part of
24 mining but as part of the eventual reclamation, is
25 unreasonable.

1 You know, they just test -- test -- testified
2 that, you know, they're, you know, 10 -- they're going
3 to do what, 10 million yards in a -- a very short period
4 of time.

5 This pit -- this pile is going to hold
6 9.1 million yards. I don't see why we couldn't have a
7 better reclamation plan by reducing the size of this
8 pile, because of where it's located.

9 And, you know, everybody comes up here and says
10 something different. But physically, looking at it, it
11 is an imposing new mountain that is at a two-to-one
12 slope, which is fairly severe.

13 And I think they -- if you relax the amount of
14 material they're allowed to put there, you can better
15 sculpture a -- a mountain there that -- that looks a
16 little bit better.

17 I think it's strictly -- what I'm hearing the
18 testimony, it's cost item. It's just cost. And is it
19 fair to burden them with that cost. That's what I'm
20 hearing.

21 And I -- I -- I'd like to hear from everybody
22 else.

23 CHAIRPERSON LEFAVER: Okay. Commissioner
24 Chiu.

25 COMMISSIONER CHIU: With all due respect to

1 Commissioner Vidovich and to the speakers, that in many
2 ways I agree that the aesthetic principles involved with
3 the lowering of the east materials storage area is an
4 issue. But foremost in my mind is also the amount of
5 selenium that's released into the environment.

6 And considering, as was just pointed out by the
7 last speaker, that the EIR analyzed this as -- as an
8 option, an alternative, and that it was the least
9 environmentally approval -- least environmentally
10 sensitive option for -- to protect the environment,
11 considering that when selenium is exposed to the air,
12 that it becomes dangerous at that point, when it's --
13 when it becomes oxidized. And leaving it covered and
14 covered and more covered and dumped on top of would be
15 environmentally safer.

16 Although I have a lot of sympathy for the
17 community having to -- to look at this potentially
18 barren and -- and ugly hill, I can't avoid that the --
19 the way to -- to -- to decrease that visual impact
20 would -- to -- to release more toxins into the
21 environment.

22 Balancing those two, I'm going to have to say
23 that, it's not a great option, but I'd have to leave --
24 I would vote to leave the east materials storage area as
25 is -- as is stated in the reclamation plan.

1 CHAIRPERSON LEFAVER: Thank you.

2 Other comments?

3 Commissioner Schmidt?

4 COMMISSIONER SCHMIDT: Yeah, I agree with a lot
5 of what Commissioner Chiu has, and -- and I also am --
6 am concerned that I -- I think we've been told by staff
7 that -- that -- and -- and the mining company, that what
8 has been analyzed and what is proposed in the EIR and in
9 the reclamation plan, you know, addresses the quarry and
10 the west materials storage area, and the east materials
11 storage area was analyzed much less. And if we were to
12 just go ahead and say that yes, let's cut it down, that
13 we would possibly be negating what we've already
14 approved in the EIR, and what we -- we've just approved
15 a lot of conditions.

16 And I'm wondering if we can -- you know, I -- I
17 emotionally support what -- what Commissioner Vidovich
18 is saying, but I don't -- I'm not going to vote for
19 that, because I think we need to be able to get
20 something in place, something that -- that, you know,
21 brings some standards to -- new standards to what the
22 mine is doing.

23 And can we ask, as -- as a condition or as a
24 condition to do more analysis of the east materials
25 storage area in, you know, in the future, or, you know,

1 in -- in the near future, and not exactly another
2 reclamation plan, but give us some more information.

3 And if there's some -- something we can do
4 later, let's do that, but if we can get a plan in place
5 and get standards going now, I would be for that.

6 CHAIRPERSON LEFAVER: Okay.

7 VICE CHAIRPERSON VIDOVICH: Okay. Can I ask a
8 clarification on that?

9 CHAIRPERSON LEFAVER: Go ahead.

10 VICE CHAIRPERSON VIDOVICH: So you would be in
11 support of a motion to approve the reclamation plan as
12 is, but with the condition to bring it back for restudy
13 of the east material yard because it wasn't -- you don't
14 think it was studied properly?

15 COMMISSIONER SCHMIDT: I would ask staff to
16 comment on what we -- what would be something that we
17 could ask for more study. I don't know -- I -- I don't
18 think we'd be saying bring that -- back the reclamation
19 plan, but can we ask for more study of that area, more
20 analysis?

21 CHAIRPERSON LEFAVER: Staff?

22 PRINCIPAL PLANNER EASTWOOD: Well, what's
23 before you today is adoption of the reclamation plan, so
24 it is a -- a -- a slight dichotomy to want to study
25 something more but adopt it ahead of time. I mean, you

1 could adopt the reclamation plan.

2 Now keep in mind, on an annual basis, you will
3 be seeing this. Every year, on an annual basis, you
4 will have a report, what's the status of the
5 reclamation.

6 I mean, through that iterative process over the
7 next 20 years, if it's discovered that the reclamation
8 plan isn't fulfilling its needs or if -- if perhaps
9 circumstances change over the next 20 years, I mean,
10 you -- you could just insert general language to say
11 that -- that through that process, if additional -- if
12 the -- if the monitoring discloses that the EMSA is --
13 is not being vegetated, if it's not working, to -- to
14 eventually hit visual benchmarks or whatever it is,
15 that -- that through that process, the commission has
16 the right to, you know, potentially evaluate the
17 reclamation plan, in a -- in a general sense.

18 I'm not sure if county counsel wants to add
19 any -- anything in addition to that.

20 CHAIRPERSON LEFAVER: Okay. Thank you.

21 Any other comments?

22 COMMISSIONER COUTURE: I just have a comment,
23 because, you know, we added things about monitoring the
24 wells. We added things about monitoring the selenium.
25 Why couldn't we add something about monitoring the

1 EMSA? It seems reasonable to me.

2 CHAIRPERSON LEFAVER: Okay. Are we -- are we
3 going to be monitoring the EMSA? Do we have annual
4 reports?

5 PRINCIPAL PLANNER EASTWOOD: Well, again, on an
6 annual report, basically what's before you, I mean,
7 generally, you know, everything that's in the conditions
8 could come before you. You know, how is reclamation
9 pursuing? Is it meeting all of the requirements as
10 outlined in the reclamation plan? Is it meeting the
11 mitigation measures in the EIR?

12 So -- so if it's disclosed at any time, you
13 know, none of those benchmarks are being met, that that
14 would be the -- the bridge to a discussion on what --
15 what to do then.

16 COMMISSIONER COUTURE: Are you saying I could
17 add a little bit of something on somewhere like we did
18 with the water well monitoring?

19 CHAIRPERSON LEFAVER: So --

20 PRINCIPAL PLANNER EASTWOOD: I mean, you -- you
21 could be more specific if you want specific things at
22 this point to come out in that annual report. If you
23 want to focus in on the status of the EMSA or vegetation
24 explicitly at this point, to make sure that's not
25 dropped at all in the process and that that -- that's

1 reported out, you could --

2 VICE CHAIRPERSON VIDOVIK: It's really the
3 size.

4 PRINCIPAL PLANNER EASTWOOD: -- you could put
5 that in at this point.

6 VICE CHAIRPERSON VIDOVIK: It's the whole
7 scope and size of it. (Unintelligible) anyway.

8 CHAIRPERSON LEFAVER: I say we -- oh, go
9 ahead. No, I -- I'm done.

10 UNIDENTIFIED FEMALE SPEAKER: John, speak.

11 VICE CHAIRPERSON VIDOVIK: Well, the whole
12 thing is -- is -- is they say it wasn't analyzed. It
13 was an alternative that wasn't analyzed.

14 The whole idea, is the size and shape of this
15 giant mountain that you're creating appropriate?

16 And the testimony we get from the staff and --
17 and, you know, Lehigh, they don't even answer, could we
18 do it something else, they said, "Hey, you have to go
19 along with what the EIR analyzed."

20 The neighbors are saying it's too big and too
21 abrupt. It's right against the two creeks there. It's
22 two-to-one slope. It's at maximum -- this is the
23 maximum amount of dirt you can fit in this hole. It's
24 not designed aesthetically. It's designed to fit the
25 maximum amount.

1 So if you -- you could approve the plan, I
2 would say, where you came back with a right to redesign
3 the -- the vol -- the eventually volume and shape of the
4 EMSA.

5 If -- if it needed further environmental
6 analysis, could you do that. But to come back and just
7 monitor it, you've already approved the size. It's the
8 size that I think impacts the project.

9 COMMISSIONER COUTURE: Can you say that one
10 more time.

11 VICE CHAIRPERSON VIDOVICH: I don't know if
12 there's support for this, but I think you could approve
13 the reclamation plan with a condition that EMSA -- you
14 reserve the right to analyze, do more environmental
15 analysis on EMSA, to lower EMSA to be -- to have less
16 volume, as -- as a finished product. They still can
17 stack it there in the meantime, but you could lower it
18 from 9.1 million yards to have the -- the ability to
19 lower it to a different shape, down to say 7.1 or
20 some -- some number like that.

21 Otherwise, once you approve the shape, you've
22 approved the -- you've approved the size of that
23 mountain. You can't go back.

24 CHAIRPERSON LEFAVER: Commissioner Chiu?

25 COMMISSIONER CHIU: I just have a question for

1 Commissioner Vidovich.

2 You know what my issue is, that if we -- I
3 agree that aesthetically it's unpleasing and that it
4 would be some kind of confirmation of -- if its size
5 right now.

6 But how do we avoid what the environ -- the EIR
7 says would be the -- the -- the greater environmental
8 impacts? I mean, we've really seen selenium and -- and
9 more selenium and things. And I -- and I don't like the
10 selenium that we're releasing as it is.

11 VICE CHAIRPERSON VIDOVIK: I -- I think the
12 testimony was, Commissioner Chiu, that it really wasn't
13 analyzed to make it smaller. That's what I heard from
14 the staff. That's what I heard from the attorney. That
15 it wasn't analyzed to make it smaller.

16 So if you analyze it and the environmental
17 report says keep it the same size, you haven't changed
18 anything. You're not committed to making it smaller,
19 but you're committed to have the opportunity. Otherwise
20 you approve it this shape and you're stuck with it.

21 COMMISSIONER CHIU: Thank you for that
22 clarification.

23 I'd like to ask staff at this time, did the EIR
24 study reducing it?

25 PRINCIPAL PLANNER EASTWOOD: So the EIR, as

1 mentioned earlier, had three alternatives.

2 This specific proposal was not evaluated.

3 There was a complete backfill proposal of
4 taking all of the overburden and putting it back into
5 the pit.

6 Now when -- in CEQA, when there's an
7 alternative evaluation in CEQA, it's mostly for
8 comparison purposes. It doesn't provide a full, 100
9 percent comprehensive evaluation of an alternative.

10 It's basically to disclose, is there another alternative
11 out there that could, through a -- say a peripheral bore
12 or a, you know, sort of a first look, be environmentally
13 superior?

14 So the EIR did evaluate to completely backfill
15 the pit. You know, it does that generally through all
16 of these categories. And the known significant
17 impacts. Does that reduce those significant impacts.

18 The disclosure was, for selenium it would not.
19 And the reason being, the significant, unavoidable
20 impact is this interim period, until it's reclaimed and
21 backfill of the pit and the capping of the EMSA happens,
22 there is an interim selenium impact with this
23 significant, unavoidable.

24 By extending the period in which there --
25 that -- that interim period happens, if you put the

1 overburden into EMSA, then take it and put it back into
2 the pit, that elongates that construction schedule. And
3 so the duration at which there could be more selenium
4 going into the creek, as opposed to being capped at a
5 earlier -- and interred at a earlier state, is longer.

6 So comparatively, the backfill alternative or
7 any -- let's say generally any -- any iteration of that,
8 where you're not capping it in place but then taking it
9 back into the pit, elongates that schedule and elongates
10 the period in which there is additional selenium going
11 into Permanente Creek.

12 COMMISSIONER CHIU: So as I understand, the
13 issue right now is whether or not we can draw from the
14 EIR an answer to the question, if we reduce the pit by
15 approximately 4.3 million cubic yards, excuse me, not
16 the pit, reduce the east materials storage area by
17 approximately 4.3 million cubic yards, would that be --
18 can -- can we extrapolates from what was studied in the
19 EI -- EIR as having a -- a further significant,
20 unmitigated impact on -- on -- on the environment, like
21 putting more selenium into the creek?

22 So I -- that's the -- that's the way I
23 understand the question, the issue.

24 Thank you.

25 CHAIRPERSON LEFAVER: Any other comments?

1 I -- I'd like to make a comment, and that is,
2 you know, the staff has -- has gone through and done
3 a -- a environmental impact report and looked at these
4 alternatives. They've gone through extensive reviews.
5 Got extensive information. Looked at a number of
6 alternatives, one of which is the one that we're
7 discussing right now.

8 They came up and made a conclusion, and so did
9 we as a commission, that the least environmentally
10 disruptive of all the alternatives is the one that is
11 before us now. The one that is indicated now. That is
12 the least environmentally disruptive.

13 And that's what we should do. Because it is
14 the least environmentally disruptive.

15 Those are my comments.

16 So shall we move on?

17 We don't need a -- a -- a motion or anything.
18 Unless you want to change.

19 VICE CHAIRPERSON VIDOVIK: I'll make a motion
20 if you like.

21 CHAIRPERSON LEFAVER: Go ahead.

22 UNIDENTIFIED FEMALE SPEAKER: I'm not.

23 VICE CHAIRPERSON VIDOVIK: I make a motion
24 that we modify the conditions, that we reserve or we
25 have the ability to reshape the EMSA, where it would

1 have less volume, through a study of the environmental
2 impacts. And I know we studied the impact of selenium,
3 but you've got to weigh that study with the land
4 formation that you're -- you're -- you're putting
5 there.

6 And, you know, my motion would be to be very
7 general, that we approve the plan with the EMSA, but
8 we -- we reserve the right to make it smaller in the
9 final reclamation, based on further environmental review
10 that comes back to the planning commission. So this
11 one -- the EMSA would come back to us as far as size
12 that it ends up.

13 And that would be a motion. It's a general
14 motion. I don't (unintelligible) --

15 CHAIRPERSON LEFAVER: Okay.

16 VICE CHAIRPERSON VIDOVICH: Anybody want to
17 second it?

18 CHAIRPERSON LEFAVER: Is there a second?

19 Go ahead.

20 COMMISSIONER BOHAN: A question in connection
21 with that motion.

22 You mentioned the volume. I -- I understood
23 earlier it was the height of the system that was the
24 problem.

25 If the height could stay the same but the

1 volume increase, would that be a problem?

2 VICE CHAIRPERSON VIDOVICH: It -- it's a
3 combination of the slopes and the height, the whole
4 shape. So I -- if we study it and it looks
5 aesthetically pleasing higher, that's fine, if that's
6 what our study turns out.

7 COMMISSIONER BOHAN: But it's -- I'm -- I'm
8 just trying to get clarification whether you're
9 concerned more about height or volume.

10 VICE CHAIRPERSON VIDOVICH: I -- I just like to
11 reserve the right to look at reshaping it, because I
12 think that's what people are complaining about --

13 COMMISSIONER BOHAN: Okay.

14 VICE CHAIRPERSON VIDOVICH: -- is how it
15 imposes on them.

16 CHAIRPERSON LEFAVER: So -- so you're not
17 looking -- he's not talking about volume; he's talking
18 about height.

19 COMMISSIONER BOHAN: Yeah.

20 CHAIRPERSON LEFAVER: Okay.

21 VICE CHAIRPERSON VIDOVICH: Well, I'm talking
22 about everything. I mean, you reshape it, you're going
23 to change the volume.

24 CHAIRPERSON LEFAVER: Okay. Is there a second?

25 COMMISSIONER COUTURE: I'll second it.

1 CHAIRPERSON LEFAVER: Okay.

2 COMMISSIONER RUIZ: So I have --

3 CHAIRPERSON LEFAVER: (Unintelligible).

4 COMMISSIONER RUIZ: I have a question about --

5 so I -- I feel like I -- I don't have enough

6 information, because we haven't really, as far as I

7 know, discussed this alternative when we were going

8 through the conditions and so forth.

9 So I -- I do -- I am supportive of sort of

10 additional information or a study. So would that be, as

11 part of the next annual report, we would look at if

12 there's any additional information? Is that --

13 UNIDENTIFIED MALE SPEAKER: That's fine.

14 UNIDENTIFIED FEMALE SPEAKER: Okay.

15 VICE CHAIRPERSON VIDOVICH: I think we could

16 put a time limit on it. We could put a -- whatever time

17 limit you think is appropriate.

18 It's not impacting how much they could put

19 there now. It only impacts how it's shaped in its

20 final, reclaimed form.

21 COMMISSIONER RUIZ: Well, would you be willing

22 to be more open to that, which is based on information

23 of that alternative, then we could discuss --

24 VICE CHAIRPERSON VIDOVICH: Yes.

25 COMMISSIONER RUIZ: -- those type of features?

1 VICE CHAIRPERSON VIDOVICH: Yes.

2 CHAIRPERSON LEFAVER: Commissioner Schmidt.

3 COMMISSIONER SCHMIDT: Wanting to know how
4 staff views that. We -- we're -- we're sort of
5 continuing to ask the same question about getting some
6 more information.

7 Is there an appropriate way to get some more
8 information and still move forward?

9 PRINCIPAL PLANNER EASTWOOD: You can adopt the
10 rec plan and ask for a subsequent study. I mean, I
11 guess the question is, what is the implications of
12 that? If the implication is that you'll change the rec
13 plan in the future, then that's -- that's a separate
14 thing, as -- as again, you -- you know, as -- by
15 adopting the rec plan, the mine operator's saying they
16 will reclaim the site in good faith with the rec plan.
17 If the idea is then to come back and do something
18 different later on, that's a different issue all
19 together. So they'd have to -- you'd have to change the
20 rec plan. I'm not sure what the bridge is. And there'd
21 have to be environmental review of what that future
22 change is.

23 So, I mean, you could request a study, but
24 again, the question is, what are the implications of
25 what comes out of that study, and then what happens

1 after that.

2 UNIDENTIFIED MALE SPEAKER: Questions.

3 CHAIRPERSON LEFAVER: Question?

4 COMMISSIONER SCHMIDT: Another question, but
5 a -- a lot of the actual reclamation doesn't start for a
6 number of years; is that correct?

7 PRINCIPAL PLANNER EASTWOOD: Well, they -- yes,
8 as reported earlier, they've -- they have already put
9 one million cubic yards into the east materials storage
10 area, and they would continue to place material in that
11 east materials storage area. That -- that is the first
12 phase.

13 They're -- under the plan, within nine to ten
14 years, reclamation and creation of that east materials
15 storage area would be complete.

16 SECRETARY RUDHOLM: So Mr. Chair, among the
17 pieces of information that was shared, they do expect to
18 finish bringing the material to the EMSA by about 2015,
19 and then the revegetation would commence.

20 CHAIRPERSON LEFAVER: Okay. So this is an
21 ongoing -- ongoing process and continuing.

22 And we're -- we are -- in our conditions of
23 approval, we have the ability to review this right now;
24 do we not? That is, it will come back and we will look
25 at it?

1 PRINCIPAL PLANNER EASTWOOD: Well, again, on an
2 annual basis you get a status report.

3 The -- the obligation of the mine operator is
4 continue reclamation in good faith with the reclamation
5 plan. If they are not, then that's, you know, it
6 does -- as a requirement's made to change the
7 reclamation plan or some other action to ensure that
8 they fulfill the rec plan.

9 But again, that -- not to confuse the
10 commission, that's to review, are they complying with
11 the rec plan, reclamation plan that is approved.

12 CHAIRPERSON LEFAVER: Mm-hmm. Okay.

13 VICE CHAIRPERSON VIDOVIK: Mr. Chair, just to
14 make sure of my motion, my motion is not to give them
15 final approval on this size of this reclaimed pile. My
16 motion, however you want to craft it, is to leave that
17 as an item that is to be -- the final size and shape of
18 it is to be determined at a later date by the
19 commission.

20 So they have a approved reclamation plan,
21 except they don't have this -- they -- they don't have
22 the size of this EMSA approved. Whether it passes or
23 not, I just want to make sure the motion is -- is
24 understood.

25 And I've heard testimony. There's -- there's

1 a -- you know, everybody wants to push this -- this pile
2 size the way it is. I've heard this testimony that it
3 hasn't really been looked at that much, and -- you know,
4 the selenium part of it has, but the shape and size I
5 don't think has.

6 COMMISSIONER RUIZ: Commissioner Vidovich, I
7 think that -- my understanding is that that would be
8 part of our annual review, is that we could come to
9 that -- the shape and size; is that my understanding?

10 VICE CHAIRPERSON VIDOVIK: When -- when you
11 review a plan, you can't change it unless you made that
12 the condition up front. You can't give them a plan to
13 make the -- what the staff's saying is they have a --
14 once you approve the plan with this shape, they have the
15 vested right to reclaim it to that shape. You can
16 review only that they're doing it.

17 But if you make it a condition that you haven't
18 determined the volume and shape, then I think you have
19 reserved that piece of the reclamation plan to come
20 to -- for final approval. It's your -- you know, you --
21 you're -- you've got a -- I don't know if it's
22 considered a fully approved reclamation plan or not.

23 CHAIRPERSON LEFAVER: Well, you -- look. You
24 wouldn't have a reclamation plan.

25 VICE CHAIRPERSON VIDOVIK: That's --

1 CHAIRPERSON LEFAVER: I mean, that's -- that's
2 what you're suggesting --

3 VICE CHAIRPERSON VIDOVICH: It's a legal
4 opinion.

5 CHAIRPERSON LEFAVER: -- Commissioner.

6 No. You -- that's what you -- you're saying
7 it's open-ended.

8 "Oh, I'm sorry, yes, we have a -- we have a --
9 we have a reclamation plan, except for, by the way, the
10 east materials storage area, and that's open-ended, and
11 we don't -- we don't know what's going to happen there.
12 Gee, whiz, it may change next year. It may change in
13 six months. May change in three years."

14 They don't have a reclamation plan. And that's
15 what you're suggesting.

16 It's too open-ended. You don't have one. We
17 can't approve one.

18 DIRECTOR GONZALEZ: Staff would go ahead and
19 concur with the Chair.

20 You can't just half approve a reclamation plan.

21 What -- I think what we have to get past is
22 we're not dealing with a use permit that we can bring
23 back and open up every time.

24 What we have is a reclamation plan that will
25 ensure the closure of this site, that will ensure the

1 revegetation of this site. And so you can't leave it
2 open-ended.

3 If you had a use permit, then you could do
4 that. Then you could bring it back, open it up.

5 In this case, the -- the reclamation plan is to
6 close out the site.

7 On an annual basis, the planning commission
8 will be reported -- will be provided with status reports
9 on the compliance.

10 If there's a compliance issue, then the
11 planning commission can deliberate on bringing it back
12 for compliance issues and enforcement and direct staff
13 to do so.

14 The reclamation plan here before you is to
15 ensure that the site will be closed out as being
16 proposed.

17 And staff would concur with the Chair.

18 VICE CHAIRPERSON VIDOVICH: And I have no
19 problem with voting on it. I'm just -- I do not believe
20 that this size and shape is appropriate. And I -- let's
21 vote on it and get it over with.

22 I mean, I -- I'm not going to change my mind on
23 that. So let's -- let's vote on it and get it over
24 with.

25 COMMISSIONER COUTURE: Mr. Chair, can I have a

1 -- can I have a question?

2 CHAIRPERSON LEFAVER: Yes.

3 COMMISSIONER COUTURE: So I'm -- I'm really
4 confused, because earlier, in past meetings, we were
5 allowed to add well inspection mitigation; we were
6 allowed to add that if there was too much selenium, then
7 we were going to have a selenium treatment plan figured
8 out.

9 So why can't we also have something that helps
10 us understand, you know, maybe there's another EIR that
11 can be done to -- for just this EMSA height and depth
12 and breadth and all that.

13 I don't know how much that costs or anything,
14 but it seems like we could approve the plan, but with
15 the conditions, again, of something to help with the --
16 the EMSA size.

17 And I think Dennis can speak better for me.

18 COMMISSIONER CHIU: I don't know if --

19 COMMISSIONER COUTURE: (Unintelligible).

20 COMMISSIONER CHIU: -- if, on your point.

21 Through the Chair --

22 CHAIRPERSON LEFAVER: Go ahead.

23 COMMISSIONER CHIU: My point would be that I'm
24 not sure that we would be in compliance with SMAR-A if
25 we didn't approve a -- a reclamation plan.

1 And I do see a -- a difference, where, if we
2 don't approve the reclaiming and revegetation of the
3 east materials storage area, that would be a direct
4 impact on whether or not the site is reclaimed or not
5 under SMAR-A.

6 And -- but whether or not there's a water
7 treatment plant or whether we can treat the selenium is
8 a byproduct from the actual revegetation, repop -- re --
9 regrowth of the -- of the east materials storage plant.

10 So I do see a -- a real legal and practical
11 problem by not approving the reclamation plan for the
12 east materials storage area.

13 Even though the -- it does seem a little
14 incongruous, and I understand where Commissioner Couture
15 is coming from.

16 One deals with a byproducts from revegetating
17 and -- and reclaiming the site. And the other one is --
18 is directly rel -- the -- and -- and what we're -- what
19 Commissioner Vidovich is talking about is, is not
20 approving a reclamation of a major problem caused by the
21 mining of a -- not approving the revegetation and
22 reclamation of -- of the east materials storage area.

23 That's what I understand is the -- is the
24 issue.

25 VICE CHAIRPERSON VIDOVICH: I'm willing to

1 change my motion if the Chair would let me and the
2 second holder would let me.

3 CHAIRPERSON LEFAVER: Go ahead.

4 VICE CHAIRPERSON VIDOVICH: And I would change
5 it instead.

6 I mean, you guys led me into this thing of --
7 of coming -- bringing it back to restudying because you
8 said it hasn't been studied. I changed the motion to
9 make it more simple, is they've testified it's -- this
10 shape will take 9.1 million yards.

11 I -- I would approve the east materials storage
12 yard, at its completion, of only holding 6.1 million
13 yards. And if they have the environmental information
14 and they want to come back at 9.1, they could come back
15 at 9.1. But we limit it to -- my motion would be, if
16 the second holder goes along with it, would be
17 6.1 million yards. Then it's a definitive size. And
18 then you don't have any of those issues.

19 CHAIRPERSON LEFAVER: Okay. So procedurally,
20 the maker of the motion -- can I -- can I go there?

21 The maker of the motion would like to have a
22 specific amount, volume amount, which is 6.1 million
23 yards, for the east material storage yard.

24 Who was the second? Were you -- were you
25 second?

1 COMMISSIONER COUTURE: I'm okay with that.

2 CHAIRPERSON LEFAVER: Okay. So we're
3 withdrawing the first motion and -- and specifying that
4 the -- the maximum amount of storage in the east storage
5 area, materials area, is 6.1 million cubic yards.

6 PRINCIPAL PLANNER EASTWOOD: Just a small point
7 of clarification.

8 6.1 would be greater.

9 The approved -- what's proposed under
10 reclamation plan is 4.8 million.

11 VICE CHAIRPERSON VIDOVICH: That's not what
12 they testified.

13 CHAIRPERSON LEFAVER: Well -- no, they --

14 PRINCIPAL PLANNER EASTWOOD: So -- okay.

15 So to clarify, as -- as disclosed in the EIR
16 and evaluated, the total cubic yardage in the
17 reclamation plan is 4.8 million.

18 Since submittal of the reclamation plan
19 amendment, there has been one million cubic yards placed
20 there. 3.8 cubic yards -- million cubic yards
21 additional.

22 What Mr. Howell from Lehigh referred to, I
23 believe, was past overburden or materials that had been
24 placed in in past -- in history prior to this. He had
25 referred to a different number.

1 But to be clear, under the EIR and the
2 reclamation plan, the total cubic yardage to be put in
3 is 4.8 million cubic yards.

4 VICE CHAIRPERSON VIDOVIK: In addition to 4.3
5 that was -- that's already there. That's already been
6 imported -- well, that's what they testified to. I
7 mean, I just --

8 COMMISSIONER SCHMIDT: They just testified that
9 there's 5.3, because they've added one million since the
10 4.3, so --

11 VICE CHAIRPERSON VIDOVIK: Right.

12 COMMISSIONER SCHMIDT: -- there's a figure --

13 VICE CHAIRPERSON VIDOVIK: But this 4.8 is
14 from the base of 4.3.

15 COMMISSIONER SCHMIDT: That -- that's correct.
16 But they've already added one million, from what I
17 believe was just said, so they're at 5.3, so you're
18 limiting them to .8 more.

19 VICE CHAIRPERSON VIDOVIK: Correct.

20 COMMISSIONER COUTURE: Correct.

21 CHAIRPERSON LEFAVER: .8.

22 COMMISSIONER SCHMIDT: .8.

23 VICE CHAIRPERSON VIDOVIK: Correct.

24 COMMISSIONER SCHMIDT: Correct.

25 CHAIRPERSON LEFAVER: Okay. So --

1 VICE CHAIRPERSON VIDOVIK: .8 million.

2 CHAIRPERSON LEFAVER: Okay. So to clarify the
3 motion, Commissioner Vidovich is indicating that they
4 would limit it -- the east storage materials area to .8
5 million cubic yards more.

6 COMMISSIONER SCHMIDT: More. Correct.

7 CHAIRPERSON LEFAVER: .8.

8 VICE CHAIRPERSON VIDOVIK: From today.

9 CHAIRPERSON LEFAVER: Right. From today.

10 VICE CHAIRPERSON VIDOVIK: Which is 1.8 from
11 the -- when they --

12 CHAIRPERSON LEFAVER: Okay.

13 VICE CHAIRPERSON VIDOVIK: -- submitted it.

14 CHAIRPERSON LEFAVER: All right. So everybody
15 clear on the motion? Everybody clear?

16 VICE CHAIRPERSON VIDOVIK: And they can come
17 back for more if they want to.

18 CHAIRPERSON LEFAVER: Okay. All of those in
19 favor of the motion say "aye."

20 VICE CHAIRPERSON VIDOVIK: Aye.

21 COMMISSIONER COUTURE: Aye.

22 CHAIRPERSON LEFAVER: Opposed?

23 UNIDENTIFIED FEMALE SPEAKER: No.

24 CHAIRPERSON LEFAVER: No.

25 COMMISSIONER CHIU: (Raises hand.)

1 COMMISSIONER BOHAN: (Raises hand.)

2 CHAIRPERSON LEFAVER: Motion fails.

3 All right.

4 COMMISSIONER RUIZ: Can I ask a question?

5 CHAIRPERSON LEFAVER: Let -- can we continue
6 on, please?

7 Go ahead, Commissioner Ruiz.

8 COMMISSIONER RUIZ: To Commissioner Vidovich,
9 is your -- it sounds like your concern is the -- the
10 final -- is it the final contour of the site?

11 VICE CHAIRPERSON VIDOVICH: Magnitude, size,
12 and shape of this -- the hill in that spot.

13 COMMISSIONER RUIZ: So I -- I don't recall that
14 that has been a part of our conditions so far, as sort
15 of the final contour. It's -- we've talked about the
16 volume, but not, you know, the final contour.

17 So could that be a part of the conditions
18 that -- that would be -- we would be given information
19 on sort of the final contour, and that would be of an
20 annual report? I mean, I don't -- I don't know if we
21 would have that flexibility.

22 CHAIRPERSON LEFAVER: I -- yeah, I -- actually
23 we do, and it's part of number 23, as I recall, and that
24 was part of the annual report, and we're going to get a
25 topo map and --

1 COMMISSIONER RUIZ: Oh, the topography?

2 CHAIRPERSON LEFAVER: -- and all the --

3 COMMISSIONER RUIZ: Okay.

4 CHAIRPERSON LEFAVER: Yes.

5 So we are going to be looking at it.

6 Continuously. More closer -- very closely, as a matter
7 of fact.

8 Okay. The next -- next item, Mr. Secretary, is
9 the financial --

10 COMMISSIONER RUIZ: Chair?

11 CHAIRPERSON LEFAVER: -- which I think is back
12 to 14.

13 COMMISSIONER RUIZ: Chair Lefaver?

14 CHAIRPERSON LEFAVER: I'm sorry?

15 COMMISSIONER RUIZ: I have a question.

16 CHAIRPERSON LEFAVER: Sure.

17 COMMISSIONER RUIZ: I'd like to ask your
18 kindness to make a request to -- in terms of condition
19 number 81. I apologize. I meant to include in the
20 recommendation that the standard we should use are the
21 water quality standards, when we have the test results.

22 UNIDENTIFIED FEMALE SPEAKER: It's there.

23 UNIDENTIFIED FEMALE SPEAKER: It's eighty --

24 COMMISSIONER COUTURE: I -- I have -- I have
25 written down that we had -- we -- we --

1 COMMISSIONER RUIZ: Water quality?

2 CHAIRPERSON LEFAVER: Yeah. We included that.

3 COMMISSIONER RUIZ: Oh, okay. So -- just so
4 I'm clear. And I -- and I apologize.

5 CHAIRPERSON LEFAVER: Sure.

6 COMMISSIONER RUIZ: 81(b), the test results for
7 the selenium levels would be higher than the water
8 quality standards. Is that what we had approved?

9 Okay. Thank you.

10 CHAIRPERSON LEFAVER: No.

11 PRINCIPAL PLANNER EASTWOOD: Staff does not
12 have those notes down --

13 CHAIRPERSON LEFAVER: No.

14 PRINCIPAL PLANNER EASTWOOD: -- as approval.
15 The -- the -- the language we have is the --
16 the term is "base levels."

17 CHAIRPERSON LEFAVER: That's --

18 PRINCIPAL PLANNER EASTWOOD: That's by the
19 condition.

20 CHAIRPERSON LEFAVER: Yeah. That -- that's
21 what we voted on.

22 COMMISSIONER RUIZ: So I would like -- and I
23 apologize, because I meant to include that in my
24 recommendation, that we look at the test results that
25 show selenium levels are higher than water quality

1 levels, because what's current language is at the base
2 levels would be the current high levels of discharge,
3 and so we should go back to the water quality standards
4 when we have that information.

5 CHAIRPERSON LEFAVER: You want a comparison?

6 COMMISSIONER RUIZ: Yes.

7 CHAIRPERSON LEFAVER: You understand?

8 So it -- so --

9 PRINCIPAL PLANNER EASTWOOD: (Unintelligible).

10 CHAIRPERSON LEFAVER: -- Commissioner Ruiz
11 would like a -- make sure we get a comparison.

12 In other words, what are -- what are the
13 standards --

14 COMMISSIONER RUIZ: Correct.

15 CHAIRPERSON LEFAVER: -- and then what are they
16 today.

17 COMMISSIONER RUIZ: Correct.

18 PRINCIPAL PLANNER EASTWOOD: So it's -- just to
19 disclose, to make sure it's clear, so the --

20 CHAIRPERSON LEFAVER: Yes.

21 PRINCIPAL PLANNER EASTWOOD: -- the requirement
22 is -- and the reason for this is, today the water
23 that's -- all testing has shown all the water that comes
24 out of the main pit exceeds those levels.

25 CHAIRPERSON LEFAVER: Sure.

1 PRINCIPAL PLANNER EASTWOOD: And that's a
2 result of the mining operations.

3 COMMISSIONER RUIZ: Right.

4 PRINCIPAL PLANNER EASTWOOD: It's a --

5 CHAIRPERSON LEFAVER: Right.

6 PRINCIPAL PLANNER EASTWOOD: -- vested mine.
7 The reclamation plan isn't going to go into that.

8 The -- the reason why it says comparison with
9 base levels is to disclose, does reclamation then cause
10 those base levels, which are higher than the standards,
11 to get worse.

12 COMMISSIONER RUIZ: Okay.

13 PRINCIPAL PLANNER EASTWOOD: And that's the
14 nexus of requiring whatever it is, treatment.

15 CHAIRPERSON LEFAVER: All right.

16 PRINCIPAL PLANNER EASTWOOD: Are you asking
17 just as a pure disclosure issue, not a requirement for
18 selenium treatment --

19 COMMISSIONER RUIZ: As part of --

20 PRINCIPAL PLANNER EASTWOOD: -- or something?

21 COMMISSIONER RUIZ: What I would like to -- is
22 that we would have test results that show the levels
23 that are higher than the water standard -- water quality
24 standard levels.

25 I mean, we -- we can have the base levels as

1 additional information, but what I'm looking for is that
2 when we have the test results --

3 PRINCIPAL PLANNER EASTWOOD: Okay.

4 COMMISSIONER RUIZ: -- we're looking at the
5 water quality.

6 PRINCIPAL PLANNER EASTWOOD: So we -- we
7 could -- in the -- when the results come out, it'll have
8 the results. We could more than include what the base
9 level was, more than include what the water quality
10 standard is.

11 But I guess the key is the policy issue, the
12 determination of when you have to evaluate treatment, is
13 if --

14 CHAIRPERSON LEFAVER: That's a separate issue.

15 PRINCIPAL PLANNER EASTWOOD: -- it's going over
16 base levels.

17 CHAIRPERSON LEFAVER: So that --

18 PRINCIPAL PLANNER EASTWOOD: But as a
19 disclosure to include the water quality standard --

20 CHAIRPERSON LEFAVER: Yeah. All we want is
21 information.

22 PRINCIPAL PLANNER EASTWOOD: That's -- that's
23 more helpful.

24 CHAIRPERSON LEFAVER: Okay.

25 COMMISSIONER RUIZ: Okay. I'd like to make

1 that motion, to include water quality standard levels.

2 CHAIRPERSON LEFAVER: Okay. I -- I can just --

3 I can just -- it's done.

4 COMMISSIONER RUIZ: It's done.

5 CHAIRPERSON LEFAVER: Yeah.

6 COMMISSIONER RUIZ: Okay. So that's part of
7 the conditions.

8 I just want to be clear that that's not just
9 a -- that's sort of part of the annual report.

10 CHAIRPERSON LEFAVER: Right.

11 COMMISSIONER RUIZ: Thank you very much.

12 CHAIRPERSON LEFAVER: You're right.

13 COMMISSIONER RUIZ: Thank you.

14 CHAIRPERSON LEFAVER: Okay. Thank you.

15 All right. Now we go back to 14, which is
16 financial. And we want to take that as a separate item.

17 What -- what are the questions on 14, and
18 the -- perhaps staff can go over, what -- what are the
19 financial obligations and requirements of -- of the
20 reclamation plan and what they have -- what they need?

21 Commissioner -- Director?

22 I'm going to make you a commissioner here
23 pretty soon. You and I are going to switch.

24 DIRECTOR GONZALEZ: If I can, through the
25 Chair.

1 I'll give you a brief overview of financial
2 assurances and financial assurance cost estimates, as to
3 how they work with regards to reclamation.

4 The mine operator has proposed a reclamation
5 plan. And in order to ensure that the reclamation is
6 completed, a financial assurance cost estimate is
7 required of the mine operator on an annual basis, to
8 show what areas they have disturbed, what areas they
9 will be disturbing.

10 Those cost estimates have to include today's
11 industry standards. They have to include cost estimates
12 for equipment usage, for labor, for any aspects that go
13 into the reclamation of that site or the clean-up of
14 that site.

15 Staff will go ahead and review that
16 information, along with the State of California.

17 A determination is then made, after submitting
18 this information to the state, as to whether or not
19 those cost estimates are adequate or not.

20 A -- if the cost estimates have been deemed
21 adequate, both the county and the state are in
22 concurrence, and again, those cost estimates account for
23 those areas that are to be disturbed in the coming year
24 as well as those areas that have been disturbed.

25 Okay. Once those cost estimates have been

1 approved, then the operator is to post a financial
2 assurance mechanism, which could be a bond or it could
3 be other form of surety with the county, and it would
4 name the county and the state as beneficiaries should
5 the mine operator walk away from their obligations.

6 That cost estimate and that financial assurance
7 is in effect for -- for the entire year.

8 The -- as we move into the next year, the
9 operator would then have to come back to us and provide
10 us yet another cost estimate for those areas that they
11 plan on disturbing, as well as those areas that they've
12 disturbed, and it's an ongoing cycle throughout the
13 entire reclamation process.

14 Once we get to the end and they have reclaimed
15 the site, we still don't release the financial
16 assurance. They still have to do monitoring, and
17 typically that's for five years after the reclamation
18 has been done, but that's only to ensure that we hold
19 onto the financial assuery until the state has
20 concurred that the site has been completely reclaimed.

21 And I'll ask Mr. Rudholm to fill any blanks in
22 that I might have missed.

23 SECRETARY RUDHOLM: No, Mr. Chair, I think
24 that's a good summary of the mandate under SMAR-A and
25 the guidelines that have been adopted by the state

1 mining and geology board.

2 Just want to reiterate, the purpose of the
3 financial assurance is that there's funds in place that
4 the lead agency, or instead of a lead agency, if
5 necessary, the state can step in and reclaim the site if
6 the mine operator should leave the site and not do the
7 reclamation or is no longer financially capable of doing
8 the reclamation themselves.

9 In other words, the mine operator stops mining
10 and they're not doing the reclamation, the state -- the
11 state or the lead agency, rather, could step in and do
12 the reclamation themselves.

13 So we want to make sure there's enough money do
14 that, reclaim the site, if there's no mining and no mine
15 operator doing the reclamation.

16 CHAIRPERSON LEFAVER: Okay. Any questions?
17 Commissioner Ruiz.

18 COMMISSIONER RUIZ: So I was looking at the
19 proposal from the Regional Water Quality Control Board,
20 and I know staff has --

21 CHAIRPERSON LEFAVER: And -- let me see.

22 COMMISSIONER RUIZ: So --

23 CHAIRPERSON LEFAVER: The -- is -- what page is
24 that on? I'm --

25 COMMISSIONER RUIZ: I was looking at tab B,

1 page --

2 UNIDENTIFIED FEMALE SPEAKER: Page 5.

3 COMMISSIONER RUIZ: Page 5.

4 SECRETARY RUDHOLM: Is that D as in David,
5 Commissioner?

6 CHAIRPERSON LEFAVER: Page 5?

7 UNIDENTIFIED FEMALE SPEAKER: B.

8 UNIDENTIFIED MALE SPEAKER: D as in David.

9 VICE CHAIRPERSON VIDOVICH: B as in boy.

10 CHAIRPERSON LEFAVER: Oh, Lehigh.

11 COMMISSIONER RUIZ: So what the regional board
12 is asking is that in this annual review, the county will
13 consider information provided by the regional board
14 related to their determination with water quality --
15 excuse me, water quality standards.

16 So I think that that would make sense.

17 But staff is not in agreement.

18 Can you provide additional information on -- on
19 why?

20 DIRECTOR GONZALEZ: If I may, through the
21 Chair.

22 CHAIRPERSON LEFAVER: Please.

23 DIRECTOR GONZALEZ: The prob -- problem with
24 adding more and more agencies to the financial assurance
25 process is that what it does is it convolutes it, and in

1 essence it becomes very difficult to try to have
2 financial assurances calculated and released so that the
3 county can actually do its job.

4 If you have multiple agencies involved, it
5 could sometimes take months, if not years, before you
6 can get a resolution to funding to be released or
7 reclamation to take place.

8 Obviously the regional water board has their
9 own independent permit authority and they can require
10 whatever is necessary of the -- of their permitting
11 process. They can submit documentation to us, which
12 we -- we could consider when we do our inspections and
13 when we do our reviews.

14 The regional water board, along with any other
15 responsible agency, is welcome to accompany the county
16 on it's annual inspections and provide any feedback.

17 But again, why we did not support that is that
18 when you have too many agencies involved, then it
19 becomes difficult to try to -- to manage financial
20 assurance instrument.

21 COMMISSIONER RUIZ: Can I make a suggestion,
22 because what I'm hearing, your main concern is related
23 to the second sentence, which states, "Any reevaluation
24 would trigger an opportunity for agencies to comment."
25 I think that's your -- you main concern I'm hearing.

1 So the first sentence states that the county
2 would consider information. So it doesn't mean that you
3 send it to them. It -- it -- it puts the responsibility
4 on the board to provide information to the county, and
5 that you consider it as part of your evaluation.

6 So would that make sense, to just include the
7 first sentence and not the second? Without placing that
8 additional work on the county?

9 DIRECTOR GONZALEZ: I think if I can, through
10 the Chair.

11 I think condition 8-D, modified condition 8 has
12 already addressed that --

13 COMMISSIONER RUIZ: 8.

14 DIRECTOR GONZALEZ: -- to include the concern
15 to the regional board.

16 SECRETARY RUDHOLM: Mr. Chair, I'd like to add
17 some additional comments and point out that we've
18 received comments from the regional board and they've
19 been incorporated in some of the conditions.

20 The basis that we do the analysis for the
21 financial assurance is the reclamation plan, so in
22 effect the regional board has participated, and I think
23 that's the more appropriate means by which we would
24 receive comments.

25 Additional comments could come from them

1 through a permit process if a permit is required to be
2 pulled as part of the reclamation activities. Because
3 again, the financial assurance relates to work necessary
4 to reclaim the site.

5 COMMISSIONER RUIZ: Okay. Thank you.

6 That covers it. Thank you.

7 CHAIRPERSON LEFAVER: Other questions on
8 financial?

9 Can -- can I have a motion to accept that --
10 that condition as stated?

11 VICE CHAIRPERSON VIDOVIK: How about --

12 CHAIRPERSON LEFAVER: Commissioner.

13 VICE CHAIRPERSON VIDOVIK: How about a motion
14 to accept the whole -- aren't we done now with the whole
15 reclamation plan, including that condition?

16 CHAIRPERSON LEFAVER: You can, sure.

17 VICE CHAIRPERSON VIDOVIK: Well, sounds like
18 we're done.

19 I make motion to accept that condition and
20 approve the reclamation plan.

21 CHAIRPERSON LEFAVER: Move to accept
22 condition -- last condition, 15, and --

23 COMMISSIONER CHIU: 14.

24 COMMISSIONER RUIZ: 14.

25 COMMISSIONER CHIU: 14

1 CHAIRPERSON LEFAVER: 14. Thank you.

2 And approve the -- the reclamation plan.

3 Am I --

4 PRINCIPAL PLANNER EASTWOOD: You also, as shown
5 on the board, there's also the mitigation monitoring
6 approval program.

7 CHAIRPERSON LEFAVER: We'll get there.

8 VICE CHAIRPERSON VIDOVIK: (Unintelligible) do
9 the second (unintelligible).

10 CHAIRPERSON LEFAVER: Okay.

11 VICE CHAIRPERSON VIDOVIK: Second.

12 CHAIRPERSON LEFAVER: Okay. We'll -- we'll get
13 (unintelligible) in a separate motion.

14 Okay. So the motion right now is to approve
15 the reclamation plan and conditions of approval.

16 ASSISTANT COUNTY COUNSEL KORB: The conditions
17 of approval as amended by --

18 CHAIRPERSON LEFAVER: As amended by our -- our
19 commissioners.

20 ASSISTANT COUNTY COUNSEL KORB: Right. For the
21 prior determination.

22 CHAIRPERSON LEFAVER: Yes. Thank you.

23 COMMISSIONER COUTURE: I second the motion.

24 CHAIRPERSON LEFAVER: Moved -- moved and
25 seconded to approve the recommend -- the reclamation

1 plan and conditions of approval.

2 All those in favor, say "aye."

3 COMMISSIONER BOHAN: Aye.

4 COMMISSIONER CHIU: Aye.

5 COMMISSIONER COUTURE: Aye.

6 CHAIRPERSON LEFAVER: Aye.

7 COMMISSIONER RUIZ: Aye.

8 COMMISSIONER SCHMIDT: Aye.

9 VICE CHAIRPERSON VIDOVICH: Aye.

10 CHAIRPERSON LEFAVER: Opposed?

11 It's unanimous.

12 VICE CHAIRPERSON VIDOVICH: I'll -- I'll move
13 the mitigations.

14 CHAIRPERSON LEFAVER: Adopt the mitigation
15 monitoring and reporting program.

16 Is there a motion? There's a motion.

17 Is there a second?

18 COMMISSIONER COUTURE: I second.

19 CHAIRPERSON LEFAVER: Moved and seconded to
20 adopt the mitigation monitoring and reporting program.

21 All those in favor, say "aye."

22 COMMISSIONER BOHAN: Aye.

23 COMMISSIONER CHIU: Aye.

24 COMMISSIONER COUTURE: Aye.

25 CHAIRPERSON LEFAVER: Aye.

1 COMMISSIONER RUIZ: Aye.

2 COMMISSIONER SCHMIDT: Aye.

3 VICE CHAIRPERSON VIDOVICH: Aye.

4 CHAIRPERSON LEFAVER: Unanimous.

5 And then we also have the final, which --
6 adoption of the resolution, which ties everything
7 together. And the resolution has been given to you.

8 Do we have a motion to -- to adopt the
9 resolution of the planning commission of the County of
10 Santa Clara, certifying the environmental impact report,
11 making related findings, adopting the mitigation
12 monitoring and reporting program and improving the
13 amendment to the 1985 reclamation plan for Lehigh
14 Southwest Cement Company Permanente Quarry?

15 VICE CHAIRPERSON VIDOVICH: I'll make that
16 motion.

17 CHAIRPERSON LEFAVER: Moved.

18 UNIDENTIFIED FEMALE SPEAKER: Second.

19 CHAIRPERSON LEFAVER: Second to adopt the
20 resolution.

21 All those in favor, say "aye."

22 COMMISSIONER BOHAN: Aye.

23 COMMISSIONER CHIU: Aye.

24 COMMISSIONER COUTURE: Aye.

25 CHAIRPERSON LEFAVER: Aye.

1 COMMISSIONER RUIZ: Aye.

2 COMMISSIONER SCHMIDT: Aye.

3 VICE CHAIRPERSON VIDOVICH: Aye.

4 CHAIRPERSON LEFAVER: Opposed?

5 Unanimous.

6 Thank you.

7 VICE CHAIRPERSON VIDOVICH: We're finished,
8 right?

9 CHAIRPERSON LEFAVER: I have one other -- one
10 other item I would like to bring up to the commission
11 that is related to this, if you -- if you would bear
12 with me.

13 I know that there's been a lot of
14 information --

15 PRINCIPAL PLANNER EASTWOOD: One second.

16 CHAIRPERSON LEFAVER: -- been given to us.

17 I'm sorry, what -- what -- county counsel?

18 No? Are we good?

19 UNIDENTIFIED FEMALE SPEAKER:

20 (Unintelligible).

21 CHAIRPERSON LEFAVER: Oh, yes. I'm sorry.

22 They have to make the appeal announcement.

23 County counsel.

24 DEPUTY COUNTY COUNSEL CLARK: Thank you.

25 Anyone dissatisfied with this decision of the

1 planning commission --

2 UNIDENTIFIED FEMALE SPEAKER: I can't hear you.

3 DEPUTY COUNTY COUNSEL CLARK: Anyone

4 dissatisfied with this decision of the planning

5 commission may file an appeal with the board of

6 supervisors. An appeal must be filed within 15 calendar

7 days after the date the commission made its decision, or

8 today's date. All appeals must be submitted to the

9 planning office, accompanied by a nonrefundable filing

10 fee.

11 CHAIRPERSON LEFAVER: Thank you, county

12 counsel.

13 I do have one other item that I'd like to bring

14 up at this time.

15 Because of the information that has been

16 brought forth before the commission, I know there have

17 been a lot of concerns.

18 One particular concern that I think we can

19 further certainly talk about and -- and monitor is the

20 information that's been given to the commission about

21 the past flooding and potential future flooding from the

22 Stevens Creek watershed area.

23 Given this information, I've concluded that

24 there may be alternative solutions to this flooding,

25 using such things as easements and other flood control

1 mechanisms that involve the Hanson Permanente land, as
2 well as cooperation between the County of Santa Clara
3 and the Valley Water District.

4 I therefore feel that the county staff should
5 discuss these possibilities with the Valley Water
6 District and with Hanson, to better define the potential
7 flooding issues and discuss if alternatives are
8 available to minimize potential flooding in that area.

9 These alternatives may include easements,
10 engineering studies, and other flood water conducting
11 mechanisms on or including the Hanson Permanente lands.

12 And if you don't mind, I would just like a -- a
13 motion from the commission indicating that they would
14 like the county staff to work with the Hanson Permanente
15 and the Valley Water District to look into these
16 potential flooding issues and -- and see what specific
17 items that could be brought back to us within the
18 next -- six months?

19 VICE CHAIRPERSON VIDOVIK: (Nods head up and
20 down.)

21 CHAIRPERSON LEFAVER: About looking at
22 alternative solutions.

23 COMMISSIONER CHIU: So moved.

24 COMMISSIONER COUTURE: I'll second it.

25 COMMISSIONER CHIU: So moved.

1 CHAIRPERSON LEFAVER: Okay. Moved and -- and
2 seconded.

3 All those in favor, say "aye."

4 COMMISSIONER BOHAN: Aye.

5 COMMISSIONER CHIU: Aye.

6 COMMISSIONER COUTURE: Aye.

7 CHAIRPERSON LEFAVER: Aye.

8 COMMISSIONER RUIZ: Aye.

9 COMMISSIONER SCHMIDT: Aye.

10 VICE CHAIRPERSON VIDOVICH: Aye.

11 CHAIRPERSON LEFAVER: Good. Thank you.

12 Is there any other business to come before the
13 commission?

14 Commissioner Schmidt.

15 COMMISSIONER SCHMIDT: I just wanted to comment
16 and thank staff very much for the incredible amount of
17 hard work they've put into this and getting us
18 information and getting it out promptly and just getting
19 this huge project through, and also thank the public for
20 all of your comments.

21 And we -- I hope that the monitoring and
22 continuing observation of this work as it goes through
23 will reveal that things are going well. And if they're
24 not going well, we will hopefully be able to take care
25 of them.

1 So again, thank you, everybody.

2 CHAIRPERSON LEFAVER: I -- I certainly -- thank
3 you, Commissioner Schmidt. You have said it well.

4 VICE CHAIRPERSON VIDOVIK: I thank the Chair
5 and the staff for putting up with me, so that's --
6 that's something.

7 COMMISSIONER CHIU: I'd also add my -- my
8 second to the sentiments from Commissioner Schmidt and
9 the Chair and Commissioner Vidovich also.

10 CHAIRPERSON LEFAVER: If -- if there's no other
11 business to come before the commission, this hearing is
12 now closed.

13 SECRETARY RUDHOLM: So, Mr. Chair, we are now
14 adjourned at the hour of 3:10 p.m.

15 (End.)

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

1

2

3 STATE OF CALIFORNIA)
) ss.
4 COUNTY OF SAN MATEO)

5

6 I, Dana Parrott Harris, do hereby certify
7 that the foregoing proceedings were transcribed into
8 typewriting from a DVD to the best of my ability, by
9 myself, a Certified Shorthand Reporter and a
10 disinterested person in said cause; that I was not
11 present to clarify certain words, and some
12 unintelligible or inaudible phrases may appear in the
13 transcript.

14 I do further certify that I am not of counsel
15 for any of the parties to said proceedings, nor in any
16 way interested in the before-mentioned cause named in
17 the said caption.

8 IN WITNESS WHEREOF, I have hereunto set my
9 hand.

20

21

22 _____
Dana Parrott Harris, CSR #C-5700

23

24

25 Date: _____, 20____.