THE COUNTY OF SANTA CLARA

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

DATE: May 24, 2012

TIME: 10:00 a.m.

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

REPORTED BY: LISA R. KEELING
Certified Shorthand Reporter
License No. 10518
APPEARANCES

Planning Commission:
Scott Lefaver, Chair
John Vidovich, Vice Chair
Mary Ann Ruiz
Dennis Chiu
Theresa Couture
Jack Bohan

County Counsel:
Nash Gonzalez
Nancy Clark
Elizabeth Pianca

Planning Department:
Rob Eastwood
Marina Rush
Gary Rudholm
May 24, 2012

Santa Clara Planning Commission Hearing
San Jose, California

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

This is the County of Santa Clara Planning Commission and
Board of Zoning Adjustments Special Agenda for May 24th,
2012.

Planning Commissioners answering roll call,
please.

Commissioner Bohan?

JACK BOHAN: Here.

GARY RUDHOLM: Commissioner Chiu?

DENNIS CHIU: Here.

GARY RUDHOLM: Commissioner Couture?

THERESA COUTURE: Here.

GARY RUDHOLM: Chairperson Lefaver?

SCOTT LEFAVER: Here.

GARY RUDHOLM: Commissioner Ruiz? Absent.

Commissioner Schmidt?

KATHRYN SCHMIDT: Here.

GARY RUDHOLM: Vice Chair Commissioner Vidovich?

JOHN VIDOVICH: Present.

GARY RUDHOLM: The first item on the agenda this
morning is public comment. This portion of the meeting is
reserved for persons desiring to address the Commission on any matter not on today's agenda.

Speaker's are limited to one minute. The law does not permit Commission action or extended discussion of any item not on the agenda except under special circumstances.

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

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

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

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

CATHY HELGERSON: Okay. First of all --

SCOTT LEFAVER: Hi. Oh, could you --

THE WITNESS: My name is Cathy Helgerson.

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

CATHY HELGERSON: Cathy Helgerson.

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

CATHY HELGERSON: One minute?

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

SCOTT LEFAVER: I didn't hear you.

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

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

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

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

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

CATHY HELGERSON: I already did.
SCOTT LEFAVER: I just want to make sure.

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

SCOTT LEFAVER: Okay. Thank.

GARY RUDHOLM: And we've got it recorded.

SCOTT LEFAVER: Very good.

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

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

And I'd like to ask for your direction on the amount of time we would allot to individual and group speakers as part of the public hearing. We have different time frames typically for individuals and for groups.
Would you like to allot three minutes for individual speakers?

SCOTT LEFAVER: Yes, that's fine.

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

SCOTT LEFAVER: That's fine.

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

Item number three is file 2250-13-66-10P. This is a public hearing to consider the Environmental Impact Report under State Clearing House number 2010042063 and Reclamation Plan Amendment project file 2250-13-66-10P10EIR(M1), to amend the 1985 Reclamation Plan for Permanente Quarry.

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

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

SCOTT LEFAVER: Okay. Thank you, Mr. Rudholm. I want to, by the way, thank everyone for coming today to -- at this public hearing about the Reclamation Plan
Amendment and Environmental Impact Report for the Lehigh Cement Company Permanente Quarry.

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

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

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

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

We're going to go until noon today, approximately, and then we're going to take a 30-minute
break for lunch and then come back and we will go to approximately 3 o'clock this afternoon.

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

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

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

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

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

Next slide, please. Okay. The hearing objectives here again is the Reclamation Plan Amendment, and whether or not this is in compliance with SMARA, the
Surface Mining and Reclamation Act. We're also going to go through the EIR to determine whether or not it is in compliance with CEQA, the California Environmental Quality Act. Did it adequately disclose significant impacts and identify mitigation? Also, all significant impacts mitigated or unable to be mitigated. Again, this provides for a full disclosure of the document.

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

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

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

In other words, this refers to as the closure plan or an exit strategy for leaving a site in a useable
state, whether that state is a different land use. It
could be agricultural, could be open space, could be
residential. Again, the Reclamation Plan provides for
that useable use.

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

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

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

And so what you see here on the screen are
photographs of what is referred to as the new Almaden Mine
in Santa Clara County, also referred to as the Quick
Silver Mine. When we take a look at what these mines
represent, basically, it's a legacy that we today are left with having to clean these sites up. This is an old mercury mine that, again, is problematic for the County and for the residents of California.

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

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

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

Okay. So with that let's go ahead and move on to the next -- next slide. So, again, what is reclamation? Well, reclamation means a combined process of land treatment pursuant to Public Resources Code 2733 which again deals with minimizing water degradation, air
pollution, damage to an aquatic or wildlife habitat, 
flooding, erosion or other adverse effects from surface 
mining operations, and it also indicates or states that 
mine lands are reclaimed to a usable condition which is 
readily adaptable for alternative land use and creates no 
danger to the public health and safety.

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

And with that could we go to the next slide.

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

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

Okay. It also deals with the revegetation of the 
site, and in many cases we're looking for end uses for 
wildlife habitats. Is the appropriate vegetation 
suitable? And again, we'll also deal with drainage and 
stream protection, and again, there are several components
of SMARA that refer to various laws. And again, we need
to look at the end use, drainage stream protection as an
example.

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

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

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

ROB EASTWOOD: Thanks, Nash.

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

Jim Baker, the County geologist is in attendance.

Pete Hudson, who works for ESA, our consultant on the project, who has much knowledge of geology and the selenium issue is here in attendance, as is Marina Rush to my right, who is the project planner for the project.

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

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

To walk through the Reclamation Plan Amendment, this is an abbreviation of last week where all planning commissioners had a much more elaborate presentation of the Reclamation Plan. The Reclamation Plan before the Planning Commission is intended to reclaim all mining disturbances on site. So it does address two violations issued by the County for mining that was conducted outside
of the existing Reclamation Plan, which dates from 1985. This will bring the mine into compliance with SMARA and address those violations.

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

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

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

So all of that overburden will be placed back into the pit to backfill, create geologic slope stability
and reclaim the quarry pit.

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

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

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

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

So the task before the Commission is to look at
this document which is an informational document. It doesn't have teeth in terms of policies. It's intended just to disclose to the Commission in reclaiming the site what are the environmental impacts from reclaiming the site? Did it comply with CEQA and did it meet that intent? Does the EIR adequately identify those significant impacts? Does it adequately identify feasible mitigations if there are significant impacts, and does it adequately identify any alternatives that could reduce significant impacts?

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

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

The third one during reclamation the EIR discloses that there will be interim selenium impacts.
Long-term following reclamation, the conclusion is water quality impacts and selenium will be less than significant, but during reclamation activities, there is no feasible mitigation measures identified.

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

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

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

The first question I think came from Commissioner Bohan. It was the question on selenium concentrations in Permanente Creek. We disclosed last week that as Permanente Creek goes through the site, there is spikes in selenium concentrations from water testing in the creek.
So near the West Material Storage Areas it's at about seven. The Regional Board standard for selenium concentrations is five, just for reference. So as it goes through the quarry cite, Permanente Creek ranges from seven up to 62 and then down to 24 and 9.9. So that's sort of as it goes downstream adjacent to the quarry site.

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

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

Another question had come up on what are the human health effects of excessive selenium? Now, the previous Regional Board standard that was disclosed of five micrograms per liter was for fish and wildlife, which has a much lower tolerance for exposure to selenium.
The EPA has set a standard, which is higher, for selenium for drinking water standard, and that's 50 micrograms per liter. That backwards U is a microgram.

Some of the information we found through studies, there's not a lot out there, but that's available on studies that were done we've summarized on the screen.

This is from a study done in Italy on exposure of humans to excessive selenium, and the takeaway here is that if a person was to consume over 300 micrograms of selenium per day, which is a very high concentration, over a consistent period, there could be toxic effects.

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

So again, that's a very high concentration.

That's a chronic consistent consumption of selenium at very high levels of over 300 micrograms per day.

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

For reference sake, the factor of safety is a conservative calculation of how stable slopes would be
following reclamation or any activity that's proposed, what is the stability?

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

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

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

For history sake, the easement -- the scenic easement was dedicated to the County from the quarry operator in 1972. The intent was to maintain the ridge line that's out there above the main pit. In two
instances in 1987 and 2001, there were landslides that lowered that ridge line down. Starting in 2002, the County did conduct a series of studies and also the mine operator submitted independent geologic studies. There were reports actually to the Board of Supervisors that was concerned about the status on a quarterly basis for a number of years.

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

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

And also the work to restore that ridge line over a long interim period would likely have a greater impact than what's there today. So to put fill up there and do remediation would have a much larger visual impact.
The Reclamation Plan does propose some remediation of the ridge line, not a restoration of the original height. It lays back some of the unstable landslides that are up there. By doing that, it actually creates greater stability. So today the estimate is that the factor of safety today for that landslide is less than one, which is unstable.

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

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

A quick zooming in of sort of what is proposed. The predevelopment topography back before the quarry pit was -- started work is on the top there. The existing condition is the dashed line, which shows where it is today, some of the benches and the landslide and the total of the slide. The proposed regrading is showed on there,
grade under a slope above elevation. And then finally the buttress you can see is the solid line, which is on the right. There's a buttressing of -- below that ridge line.

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

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

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

So today, this Reclamation Plan does abate that
violation, which has been ongoing, and that's the intent
to abate the violations that's going on.

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

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

This proposed Reclamation Plan with the backfill, with the covering of limestone, will reduce under these estimates under the EIR and the Rec plan water quality. Our selenium concentrations and runoff from the site from today which is about 80 micrograms per liter down below five micrograms per liter. So that's a long post reclamation.
The EIR did disclose of course, as I mentioned earlier, during reclamation there are -- there could be some exacerbations. So before it reaches that final end stage just by moving material, moving overburden with limestone, there could be some potential for spikes or increased runoff just during that activity.

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

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

The determination in the EIR and by County staff is that due to these uncertainties that all the studies have not been completed. There's additional need to look at how much that cost actually is, how would the water actually be balanced on site, how could a treatment plant be engineered, but today there's just not enough known to require this as a feasible mitigation measure.
So to answer the speaker's question how much is too much, that will be a determination that's made in the future. A requirement under the mitigation measure and the condition is that studies to determine how much it cost, what is needed to balance or manage water on the site, engineer site, will be done over the next two years, and that will be coming back to the Planning Commission in a feasible hearing. At that time, based on all those factors, is a determination of feasibility which will include costs.

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

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

The requirement is for five years that water must meet water quality standards before the mine is deemed reclaimed, and that's the surety.
A broader question that came up last week -- or was touched on briefly but want to bring back to the Commission is the scope of the Reclamation Plan, what's before the Planning Commission, and is there the potential to modify the Rec Plan? So if there's components the Planning Commission wanted to modify, change, how and under what parameters could that happen?

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

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

Another option or method of looking at a change would be through the alternatives in the EIR. So the EIR did disclose as a Rec Plan will have significant impacts. What alternatives are there that will reduce those impacts? Another method of looking at an alternative to
what's on the table would have to be identifying a new alternative that wasn't identified. So just to reiterate, if there is a different alternative, a different method, something considered by a Planning Commission, it would have to meet these standards under CEQA. It would have to be feasible. It would have to meet SMARA requirements and the objectives of the project and it would have to reduce those significant impacts, which we talked about earlier. Some other key issues just to circle back to the Commission. We talked about ground water last week. Just to reemphasize that this quarry is in a bedrock aquifer. It's in a bedrock bowl. There is very low permeability as opposed to on the Santa Clara County floor wherein there are soils that have clay or clay or sands are low. Up in this bedrock there's very low permeability and water permeating into the soil. With respect to wells and recharge and the potential for surface water or water to effect those wells, the recharge zone for the Santa Clara Valley alluvium aquifer where water enters in and recharges that larger aquifer is over two miles from the site. Closest ground water wells are over five -- four miles away from the site, and that's to the east. In looking at data, again, as we mentioned
earlier, selenium is an existing condition on the site.

So there has been concentrations in Permanente Creek for many, many years since quarrying began. One indication if there was an issue with ground water would be if selenium shows up in those ground water wells as that's an existing condition.

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

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

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

And so again, there's no evidence that today there is an impact on those ground water wells, but just
also keep in mind that in all projections both ground
water and surface water following reclamation will be
reduced down below water quality levels or the accepted
regional board levels.

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

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

Some of those are elaborated in your resolution
and there's additional information that has been submitted
from the applicant is that those overriding considerations
include the protection of the public health, safety and
welfare through reclaiming the site, providing an adequate
financial assurance.
Again, today we do not have that, but this will provide an adequate financial assurance to reclaim the site to continue local supplies and construction materials, retain economic fiscal benefits to the County and preserve local jobs.

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

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

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

The mitigation monitor reporting program that ensures all mitigation measures are followed through it with and that statement of overriding considerations. There is some supplemental correspondence that has been
received, I'm noting continues to be received and passed out by Michelle. And to note that, also.

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

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

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

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

Just to reiterate the order. You do have to take
an action on CEQA first. Again, you can't approve the Rec Plan until the EIR is certified.

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

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

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

(Short break taken.)

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

So Commissioner Chiu?

DENNIS CHIU: Thank you, Mr. Chair. In the supplemental packet it was attachment for correspondence
by Libby Lucas, May 18, 2012. She writes that under and adjacent to Lehigh Quarry's northern operations is a mile of unconfined zone where underflow will feed directly into the Santa Clara aquifer just downhill.

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

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

But for general purposes they are very much in different contexts and separated, and the permeability or the inter flow between ground water between those two areas is much, much reduced. Now, on the valley floor where it's the alluvium where the ground water -- ground water -- supply wells are located -- ground water is sort
of in a big sponge. It's confined, of course, by bedrock
that surround it and under it.

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

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

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

PETE HUDSON: Yeah, I'll add a couple things.

I'm Pete Hudson with ESA. The water contained within the
quarry pit, it is bedrock, and there was mottling done
based on subsurface information to determine what the
seepage rates out of that pit would be, and they're very,
very low. .4. I'm not going to quote numbers right now
off the bat, but it's -- I think it's .4 feet per year.

They're very slow, and water seeping -- if there would be water seeping out of that pit, it would -- like Rob said, it would be going through fractures and preferential pathway. It's a very slow moving system in a bedrock aquifer.

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

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

The data shows that the influence from the recharge from Permanente Creek into that recharge area has not contributed to high selenium. That will -- that contribution, if there is any contribution of selenium
into that recharge area, will be quite reduced once the --

with the project.

The last thing to consider is the project

proposes to fill the -- to fill the pit. And once that

pit is full and the ground water in that pit, it's not

going to be exposed to the environment. It's not going to

oxidize. It's going to be in a reducing environment. Not

only will just the fact of burying -- putting that -- the

material into the pit and that -- having that ground water

in there, it's also -- the project proposes to place

organic material, which would further reduce the oxygen.

So once that water is in that pit, it's not going

to be generating any selenium. It's not going to be

oxidizing. And when it starts to flow out -- it has been

equilibrating within the pit for years, 14 years, and the

water quality will be, according to mottling and the

analysis, it's going to be very close to what is actually

there now.

DENNIS CHIU: So to make sure that I got

everything correct from all of the technical and your

expertise that you just displayed, because it would take a

lot of travel that -- from water coming from the sky, rain

coming from the sky to percolate through the various soils

to get to the various levels, even though it is correct

there's a mile of unconfined -- unconfined zone where
underflow may feed in the Santa Clara aquifer, by the time it travels all that distance, it would have changed and lessened and become in some degree not a danger to public health as selenium?

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

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

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

PETE HUDSON: Yes.

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

PETE HUDSON: You're welcome.

SCOTT LEFAVER: Commission Ruiz, you had a question?

MARY ANN RUIZ: Thank you, Chair. I'd like to
disclose that I had a very brief conversation with a representative from Lehigh who called to offer to ask -- to answer questions I had raised at last week's workshop, and that was the extent of our discussion.

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

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

CEQA is a bit different but really related in this instance. CEQA is intended to disclose by reclaiming the site itself does it have significant impacts to go out
and restore the site just by that action, not the mining, the action of restoring the site. Will you have significant impacts?

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

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

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

And the EIR is disclosing during that even though
it's moving towards an end state where things will get
better, you cannot rule out the possibility that just
because you're disturbing material addition -- you know,
there could be additional runoff in selenium
concentrations.

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

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

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

So, you know, absolutely the Planning Commission
could consider that in their -- in their final
determination, but because it's -- because of the end
state of reclamation does meet all those standards is what
staff is recommending that it meets the SMARA
requirements.

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

ROB EASTWOOD: Yes.

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

Okay.

ROB EASTWOOD: Yeah, it is. We can find the
exact condition, if you'd like. It requires a -- there's
a two-step process. There's a series of best management
practices that is required. The quarry operator has to
put those in effect within 30 days of Reclamation Plan
approval. There is a requirement of monitoring, actually,
and County inspector's out there at the beginning of the
rainy season and monthly throughout the rainy season.
There's testing throughout the 20 years of reclamation,
and again, you know, the bigger condition is we have --
County staff can't determine today that a selenium
treatment plan is feasible. There's enough known as a
requirement to require selenium treatment. There is a
requirement that those studies continue over the next two
years and then two years come back to the commission based
on the knowns, can you manage the water on site, what is
the actual cost.

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

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

SCOTT LEFAVER: Commissioner Vidovich, please.

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

One -- I'm making these statements in case they
need correction. One, is there is a threat by the State
Mining Board to take jurisdiction away from the County if we do not timely approve it. In my opinion that is a reason to get going because I think it's better to have local control than have the State board do it.

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

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

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

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

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

And by the way, it's a huge project. The staff
has worked really, really hard on this, and I think
they've done a super job under the circumstances, this
rush. But the conditions of approval aren't really -- I
don't think they're that easy for us to look at, and if we
could go through them and identify when they refer to an
exhibit where we can find that exhibit so that we can see
what we're approving.

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

SCOTT LEFAVER: Thank you. Commissioner Bohan?

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

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

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

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

JACK BOHAN: All right. Thank you.

GARY RUDHOLM: Mr. Chair, Commissioner Vidovich
made some statements, and he said that he made them to
give staff an opportunity to respond and possibly correct.

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

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

So we are not under threat by the State Mining
and Geology Board to have our authority removed. There is
the potential by the State Office of Mining Reclamation,
which is a separate entity. It's a division of the State
Department of Conservation. They have the authority to
remove any mine from what's known as commonly the AB3098
list, which is a list of quarries that may sell material
to public agencies, state and local agencies, but right
now they have not taken an action to remove Permanente
JOHN VIDOVICH: I'm glad you clarified that because both of those threats have come to me as pressure to move this along. So if those threats aren't there, then I think maybe we have more time.

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

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

SCOTT LEFAVER: Commission Chiu?

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

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

ROB EASTWOOD: Just a quick suggestion. You might -- I know representatives from Lehigh are here
today, and there is -- as Gary mentioned, was initial action by OMR on the 3098 list. If you wish, you could follow up directly with Lehigh on the status of that. So that's -- they'd be the most knowledgeable about the status of OMR and the 3098 list and what's going on.

SCOTT LEFAVER: Thank you.

JOHN VIDOVICH: Mr. Chair?

SCOTT LEFAVER: Yes.

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

SCOTT LEFAVER: They're on next.

Commissioner Couture?

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

SCOTT LEFAVER: Thank you.

Commissioner Vidovich, I think, made a very good point, and that is that with the conditions of approval and the number of technical studies tied to those conditions of approval, that we should be forwarded the opportunity to go through those conditions, understand why they are conditions of approval and then have the
information there that backs up those conditions of approval or at least the ability to ask the question, well, where does this come from?

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

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

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

Commissioner -- everybody okay with that?

(Consent by nodding.)

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

GARY RUDHOLM: Okay. Mr. Chair, I have some

speaker cards from the applicant, and they have an order

they would like to make a presentation.

SCOTT LEFAVER: Good.

GARY RUDHOLM: The first speaker will be Mr. Kari

Saragusa followed by Marvin Howell.

SCOTT LEFAVER: Okay. Thank you.

KARI SARAGUSA: Thanks, Gary.

Mr. Chairman and the Commissioners, thank you for

the consideration you're giving us today. My name is Kari

Saragusa. I'm the president of Lehigh Southwest Cement

Company, and we are -- along with myself, Marvin Howell

will be speaking after me as well as Mark Harrison.

We're part of the HeidelbergCement Group, which

you heard, I think, during our introduction. That really

shouldn't mean a lot to you, 'cause what we are is we're a

local cement manufacturer. We're as a quarry to mine the

limestone to make that cement. We've been here since

1939. We're made up of about 150 employees along with a

few others like myself that support that quarry.

We make cement. That cement probably was used to

make the concrete that the homes that you all live in. If

you live in the Bay Area, you probably are sitting on a

foundation made with our cement. We think we provide a
very valuable product, sometimes misunderstood because the
public doesn't usually buy cement, they usually turn that
over to a contractor. But we think we're a valuable
product, and we want to be here for as long as we can to
provide that valuable product.

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

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

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

And I also -- my second point is, I want to thank
the County planning staff, because this has truly been a partnership. I began working with Jody Hall Lesser and Liz Ann Reynolds a couple years ago.

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

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

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

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

SCOTT LEFAVER: Thank you. And thank you for your kind words to the staff. I know they've worked very
MARVIN HOWELL: Good morning. My name is Marvin Howell. I work for Lehigh Hanson's West Region. I appreciate the opportunity to speak with you about this Rec Plan that's before you today.

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

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

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

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

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

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

Our revegetation plan uses some very cutting edge technologies. Just to point out a couple of them, we use
solar radiation studies to determine the best place to
plant trees and shrubs. And in fact, I think this is the
first time that's been done in a California Reclamation
Plan.

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

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

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

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

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

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

So Lehigh brought legal action against the State and resolved that legal action with an understanding that
as long as the County and as long as Lehigh was proceeding at a pace with approving the appropriate Rec Plan amendment, there would be no negative action taken against the company.

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

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

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

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

SCOTT LEFAVER: Any questions of counsel?

JOHN VIDOVICH: I have a question.

SCOTT LEFAVER: Commissioner Vidovich.

JOHN VIDOVICH: I don't know. Am I the only one
that can't hear very well? It just sounds like the -- can you hear okay? Very faint? Yeah.

MARK HARRISON: Is the microphone not working?

SCOTT LEFAVER: No. Just you have to get closer.

Thank you.

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

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

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

SCOTT LEFAVER: Commissioner Vidovich?

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

MARK HARRISON: Well, you didn't hear that from
me. I just tried to tell you what the schedule that we're on, but obviously the time that this Commission needs is your decision.

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

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

JOHN VIDOVICH: Fair enough.

SCOTT LEFAVER: Okay. Thank you.

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

I just wanted -- I think it's important for you to know that Lehigh does dispute those notices and has disputed those notices of violation but decided long ago that rather than fight about them, they wanted to put their energies in producing a modern and up-to-date and thorough Reclamation Plan.
So I just need to make my chalk mark on the record for that if I could.

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

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

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

But the act of moving overburden to these Material storage area is mining, it is not reclamation,
and all of the mining activities on this site are vested
and do not require a discretionary permit from the County.

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

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

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

The last point of clarification I'd like to raise
has to do with the Regional Board's letter. The Regional
Board wrote a lengthy letter in response to the EIR, and I
wanted to take just a moment to summarize the main points
it made and to respond to some of those points.
I will say that I think staff in the final EIR did an excellent and very thorough job responding to the Regional Board's letter going so far as to hire a national expert on certain issues to make sure that the investigation was done properly.

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

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

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

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

Probably the thrust of the Regional Board's letter was that more information had to be gathered
before this Commission could act on the Reclamation Plan. And in that regard, we have to recognize the distinction between the Regional Board's jurisdiction and their permitting activities and what's required and necessary in order to pass a Rec Plan.

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

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

And lastly, the Regional Board raised a question about the feasibility of selenium treatment, and I think this is where Staff's work actually showed really the best. So when that question is raised, Staff went out and hired, I guess, the national expert from Florida on this issue and had a thorough analysis done, the conclusion of which is at this point it's not feasible to put in such a
plant, but the Staff didn't stop there and put forward a schedule which requires Lehigh to do further pilot studies and testing and so forth to continue to pursue that issue in the future.

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

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

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

SCOTT LEFAVER: Okay.

MARK HARRISON: In short order what it is --

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

MARK HARRISON: Yeah. The summary --

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

MARK HARRISON: Okay. The summary is, is that these set of conditions contain numerous deadlines and requirements and reports and layers of reports for different types of monitoring and mitigation, and some of
those actions that the company has to take is going to
depend on the involvement and the input from other
governmental agencies. And we just thought it would be
appropriate to give the planning manager some authority to
make adjustments in those small interim timelines because
bringing back a request to change a deadline from 60 days
to 90 days or 90 days to 120 days every time that might
come up over the next 20 years to the Planning Commission
we thought was not workable.

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

SCOTT LEFAVER: Commissioner Schmidt.

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

SCOTT LEFAVER: Suggesting, yeah.

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

KATHRYN SCHMIDT: Thank you.

SCOTT LEFAVER: Thank you.
MARK HARRISON: Thank you very much.

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

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

SCOTT LEFAVER: Okay, please.

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

SCOTT LEFAVER: Very good. Hi. Welcome.

LIBBY LUCAS: Hi, I'm Libby Lucas, Los Altos. I guess my main concern is the representation of the impacts that might happen to the drinking water aquifer, and I think that there are three types of water runoff. One is the underground that comes through the lower underground confined zone and then there is what comes along Permanente Creek and then there is just overland flow that goes into this unconfined zone that is right directly below the platt. And that's the area that I feel is susceptible to whatever is happening upstream. And I would like to -- I mean, that's just a mile and it's an unconfined zone and that goes directly into
all different levels of the Santa Clara aquifer. And I probably should have delivered some water resource mapping of this, and I will try to get it to Staff just as background material this next week, but I think that to be safe, there really should be monitoring wells.

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

Another aspect that I think would give you a little bit of security would be to have a retention basin, and I think the water district may have asked for that for a flood control backup, because when you do get storms, they're very intense, and they come at very unusual times. Like in '98, I believe that storm that flooded San Francisquito Creek had a great downpour in this particular area 'cause I was going over 280 and it was a lake at that time, and it was just amazing that the Permanente Creek was able to absorb it. So there was no flooding in downtown Mountain View.

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

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

And I think between the monitoring wells and this retention basin with a, I say, 250 foot terracing of vegetation, it would give you some protection. And then the last thing would be to have a monitoring of your red-legged frog because they are an indicator species that would show problems before the human problem would arise. Thank you.

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

ROB EASTWOOD: On the site there is not. Yeah, there is the drinking wells that were tested I believe
will probably be continue to be tested, the ground water
wells and the aquifer, but specifically in a buffer zone
separate from that on this site, there is not.

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

ROB EASTWOOD: No.

SCOTT LEFAVER: No. Okay. All right.

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

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

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

LIBBY LUCAS: Yeah, I've been harassing the Water
District for 25 years. Anymore than that? No, my
background was advisory on the Santa Clara County Trails.
And once we got spread out all over the County learning
how the trails and the streams interacted, we sort of got
hooked on that subject and I've just been monitoring it.
And then I've been with the Native Plan Society
recently, and I was with the resource Conservation
district for four years, oh, some ten years ago. So it's
been a long-term exposure, but I think that this area is
just simply fascinating. I think you -- the Santa Clara
County has one of the most amazing geological formations, and you want to treat it properly.

DENNIS CHIU: Thank you.

SCOTT LEFAVER: Thank you. Next speaker, please.

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

SCOTT LEFAVER: Okay. Very good.

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

SCOTT LEFAVER: Miss Ballard, hi.

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

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

As Commissioner Vidovich said, and I will be brief since you do have a number of speakers, there's probably little debate that we support -- I'm sorry, is
that better? There's probably little debate that we all understand the importance of cement to our valley's economy, and we want to make sure that we're creating an environment here where Lehigh can continue to operate.

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

SCOTT LEFAVER: Thank you.

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

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

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

SCOTT LEFAVER: Okay. Please.

Hi. Welcome.

KAREN DEL COMPARE: Hi. Thank you. My name's Karen Del Compare. I just wanted to clarify a few things. The FACE, financial assurance cost estimate, is one of the statement of overriding considerations as this plan is necessary to pass to get a new FACE established, and I just wanted to clarify that annually there are inspections
of the mine, and based on those inspections and other factors, they recalculate the FACE annually at least. So you do not need to approve this plan to have an adequate financial assurances.

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

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

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

And in essence, it allows the mining to continue particularly in the main pit where they are below the water level, and that's where a lot of the selenium pollution is occurring because they're below the water
level, and particularly in the rainy season they're pumping huge amounts of selenium tainted water directly into Permanente Creek or through a pond that also gets discharged into Permanente Creek.

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

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

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

KAREN DEL COMPARE: Okay.

SCOTT LEFAVER: Thank you.

KAREN DEL COMPARE: Okay. That's pretty much it.

Thank you so much.

SCOTT LEFAVER: Okay. Thank you. Well, a question that you brought up on the financial, if I can ask Staff. She asked -- she's questioning it seemed like
the financial adequacy and making sure that that is being
met changes every year based upon certain factors. Maybe
you can address that.

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

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

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

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

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

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

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

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

There's two things that are in play here. One, is a financial assurance that is posted by the mine operator. That is supposed to be posted and made payable to the County or lead agency as well as the State Department of Conservation, and that's there in case the
lead agency needs to step in and complete the reclamation of this site.

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

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

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

JOHN VIDOVICH: The question was -- I hear the answer is that the State doesn't count the land. That's the answer, but the question isn't what we need to satisfy the State. The question is to protect the County. Do we have -- and it's a legal question. Do we have recourse to the land? Is that an obligation that runs with that land reclamation, and if the obligation runs with the land, you know, how far does it go out?
In other words, you have a Reclamation Plan. It's a legal obligation. Does it -- just like you have when you get a permit. That permit may run with the land. Does that reclamation obligation run with the land, and do we have then access to the land if for some reason the financial assurances weren't -- weren't adequate?

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

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

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

JOHN VIDOVICH: I'm talking what kind of a lien do we have on the land if there is inadequate financial assurance? Does the lien go -- and it's a legal question, I think. Does the lien go -- how far does that lien go? Does it go outside of the --
ELIZABETH PIANCA: No.


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

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

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

Any other questions of staff on this particular item?

Commissioner Schmidt.

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

NASH GONZALEZ: I can answer that if I can through the Chair. It is very similar to a construction
bond in that they work with an insurance company that is licensed to do work in the state of California. Part of our annual review is to make sure that that insurance company is solvent and licensed to practice in the state, along with the financial assurance cost estimates.

And so, you know, the fee that the operator pays, that's between the operator and the insurance company. But yes. And then if for whatever reason they step away from their obligations, the bond itself names the County and the State of California as beneficiaries should they walk away, so that we would be able to work with the bonding company to take the cash and make sure that the reclamation is completed.

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

JOHN VIDOVICH: Can I ask one question quick?

SCOTT LEFAVER: Yeah.

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

NASH GONZALEZ: It's currently 47 million dollars.

GARY RUDHOLM: That's correct. That is posted now.
JOHN VIDOVICH: That's what's posted now?

GARY RUDHOLM: Yes, it is.

JOHN VIDOVICH: I thought that's what we get when we approve it?

NASH GONZALEZ: No.

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

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

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

(Lunch break taken.)

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

GARY RUDHOLM: Commissioner Bohan?

JACK BOHAN: Here.

GARY RUDHOLM: Commissioner Chiu?

DENNIS CHIU: Here.

GARY RUDHOLM: Commissioner Couture?

THERESA COUTURE: Here.

GARY RUDHOLM: Chairperson Lefaver?

SCOTT LEFAVER: Here.

GARY RUDHOLM: Commissioner Ruiz?

MARY ANN RUIZ: Here.

GARY RUDHOLM: Commissioner Schmidt?

KATHRYN SCHMIDT: Here.

GARY RUDHOLM: Commissioner Vidovich?

JOHN VIDOVICH: Here.

GARY RUDHOLM: All commissioners are present,

Mr. Chair.

SCOTT LEFAVER: Thank you, Mr. Secretary.

So this is the continuation of our public hearing

on the Lehigh Permanente Quarry, the Reclamation Plan

Amendment and Environmental Impact Report.

And who is our next speaker?

GARY RUDHOLM: Okay. I was approached by a

couple of individuals, and I moved their names up because

ey also have time constraints.
Our first speaker is Paula Wallis, and she will be followed by Pat Sausedo.

SCOTT LEFAVER: Thank you. Hi.

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

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

Mr. Saragosa said that the document was an 1800-page commitment to reclaiming this land, but I would suggest that the 1985 Reclamation Plan was also a voluminous document that was also a commitment that sadly was broken.
So I think we need to be very careful about
giving them more assurances without really investigating
this document. I was at the 20 -- February 2011 SMGB
board meeting which the OMR gave a PowerPoint presentation
on Lehigh's status, and at the end it talked about its
noncompliance with AB3098 and the fact that it could be
taken off that list. And I do believe their attorneys
were in the room, so they were given fair warning.

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

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

Thank you very much.

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

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

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

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

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

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

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

SCOTT LEFAVER: Yes.

ROB EASTWOOD: So the question is compliance with water quality standards. SMARA does require compliance with water quality standards. The conclusion of the EIR and all documents is that the reclamation of the site will reduce selenium concentrations and comply with water quality standards. It is a fact that the EIR discloses that between now and then it cannot rule out there could be some concentrations running off site. So the Planning
Commission has to consider that. We've identified no feasible means to address that, no alternatives, no other ways to reclaim the site. I mean, basically there's nothing identified out there that would avoid that situation.

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

SCOTT LEFAVER: Okay. Thank you.

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

SCOTT LEFAVER: Thank you. Welcome.

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

We do believe upon review that it meets the requirements of CEQA. It recognizes any potential environmental impacts, has commented on public comments and made responses, has made feasible -- noted feasible
mitigation measures identified to reduce significant impacts, and we believe under the auspices of CEQA, the EIR before you is complete and should be adopted.

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

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

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

SCOTT LEFAVER: Thank you. Any questions of -- none. Thank you.
GARY RUDHOLM: Next speaker is Cathy Helgerson, and she will be followed by Jane Alvarado.

SCOTT LEFAVER: Hi.

CATHY HELGERSON: Hi.

SCOTT LEFAVER: Welcome again.

CATHY HELGERSON: Three minutes. Okay. Good.

What I'd like to bring up is that, first of all, there was a super fund site preliminary assessment done, and your paperwork stated that there wasn't, and there was. I'm in appeal, and I'm also going to Lisa Jackson's office so that's what I'm doing now.

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

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

The Mid Peninsula District has mentioned how terrible it is. They're a preserve. And what they're
going through, they've submitted letters. They've been complaining for probably ten years trying to do something about this, and no one does anything. There's no enforcement. So the citizens have to count on Santa Clara County in doing their job and helping us to be safe and healthy and to promote a life here in the valley.

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

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

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

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

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

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

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

SCOTT LEFAVER: Miss Alvarado.

JANE ALVARADO: Commissioners, I'm speaking as an
employee. I am a 30-year employee of Lehigh. I think
Lehigh is a good company and the right company to be
running the cement plant at this time. I believe they
will make every effort to continue to be a good member of
the community.
Lehigh cares about its employees from 2008 until the present in spite of a devastating economy that severely impacted cement sales. Not one single employee has been laid off. We have had production cuts, inventory cuts, but no job cuts, and we still have medical and dental benefits.

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

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

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

Thank you for your attention.

SCOTT LEFAVER: Thank you. Any questions? None.

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

SCOTT LEFAVER: Okay. Hi.

HEATHER ZAGAR: Good afternoon.

SCOTT LEFAVER: Welcome.

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

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

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

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

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

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

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

SCOTT LEFAVER: Thank you. Mr. Brand

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

First of all, Lehigh got up here and talked about the benefit of their cement to the valley, to Santa Clara. I think the number they used was 30-million-dollar benefit to the valley. And although, you know, that cement technically is not part of this Reclamation Plan I hear repeated over and over, but in that same vain, I have a report here. It's a citizen's report on the cement plant and its damage to the community in terms of health costs, and this is based on the Air District's own data, and I'll leave a copy of that with you.
And it says that the cement plant effects caused 60 million dollars of healthcare costs based on air district data. This is to all of Silicon Valley. And I think that's important to not only the cumulative effects, but also to keep in mind when you're thinking about the benefits of cement, which we don't dispute.

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

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

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

The County's response to our questions about this to the draft EIR are not adequate. Given the existing
selenium problem, it is largely due to the depth of the
pit which was -- which has intercepted the natural water
flow. The question of how much impact will occur from
digging even deeper deserves to be answered.

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

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

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

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

I'm sorry. Bear with me for a minute. I'm
Public Meeting / Planning Commission Meeting

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

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

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

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

   This is one more example of County negligence and
the reluctance to enforce SMARA since no notice of violation has yet been issued.

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

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

And a little bit about enforcement. We asked questions again to the draft EIR addressing enforcement and asking how their record of enforcement would affect what we might reasonably expect on enforcement in the future on the new Reclamation Plan Amendment, and the County failed to address this comment completely. They claim that public — and this is a quote, public and private parties are entitled to a presumption that they
will comply with the applicable requirements.

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

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

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

And it was kind of shocking to us because at the time we thought it was like, well, Your Honor, I'm only -- I'm robbing less banks per week, you know. It -- they have to meet the law, not just be better at it. But they took them off of their suspension or probation period for the OMR taking over. But since then all these other violations that we talked about have occurred.
That entire EMSA mountain was built, and they've been pumping water out of that quarry, and that was all after that time. So I think their record is -- on enforcement needs to be addressed in the EIR seriously because it really has a lot to do with -- I'm sorry.

SCOTT LEFAVER: Your time's up.

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

SCOTT LEFAVER: I think you summarized.

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

SCOTT LEFAVER: Thank you. Any questions?

Commissioner Chiu has a question for you.

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

Under Public Researches Code Section 21081(B), we have to weigh the unmitigated impacts like the selenium
and other things -- and the visual impacts and other things against whether there is an overriding economic, social or other benefit, in other words, overriding considerations for these unmitigated impacts.

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

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

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

So it's a little disingenuous for them to now say
that this is a local product and we're all depending on it and we can't do anything that would threaten to make them less profitable basically.

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

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

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

So we're asking them to clean up their act and mostly obey the law because I think that it's been really in your face to us. We were complaining about that EMSA
and their not complying with it loudly, and they continue
to build it to the point where they finished it.

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

DENNIS CHIU: Thank you.

SCOTT LEFAVER: Thank you.

TIM BRAND: Okay. Thank you very much.

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

JASON FLANDERS: Good afternoon, Commissioners.

SCOTT LEFAVER: Hi. Welcome.

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

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

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

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

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

We've heard there's even dispute, ongoing  

dispute, about the project boundary about what the  

conditions of approval should be, and we need more time to  

consider those. And most importantly, we're very  

called concerned with the comments submitted by the Regional  

Water Board.  

While you heard counsel for Lehigh say that Water  

Board approval will happen, you know, after the project is  

approved, not during the CEQA process, it's still very  

germande to the CEQA analysis to consider whether or not  

the facility will be able to perform all the mitigation  

measures to meet water quality standards that -- and  

whether they have accurately characterized all of the  

impact.  

I mean, those are questions that have to be  

answered during the CEQA process. And the Water Board's  

pointed out a number of instances where there's been  

inadequate information, inadequate analysis, potentially  

problematic monitoring methodologies, potentially  

insufficient BMPs for erosion and sediment control.  

Excuse me.  

And while Staff took, you know, great labors to  

respond to all of those comments, we really need a full  

opportunity to have a round of public review and comment
on those points. And I think you need that opportunity, too, before weighing the actual environmental impacts of the project.

SCOTT LEFAVER: Thank you.

JASON FLANDERS: Thank you.

SCOTT LEFAVER: Any questions? Thank you.

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

MARC McNEIL: Good day, Commissioners.

SCOTT LEFAVER: Welcome.

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

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

The approval of this Reclamation Plan will afford us the opportunity to continue to provide our quality cement products to the community around us for new projects, such as the 49er stadium that's to go up, the
new Apple's campus only while disturbing less than
20 percent of the owned property there.

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

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

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

SCOTT LEFAVER: Thank you.

MARC McNEIL: You're welcome.

SCOTT LEFAVER: Any questions? Thank you very
much.

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

BUD OLIVE: Hi. My name is Bud Olive.

SCOTT LEFAVER: Hi.

BUD OLIVE: We have lived in Los Altos for
45 years, and we live near Foothill Expressway and 280
north of the quarry. But we all live in Silicon Valley, the technology center of the world. And I think we live in a very beautiful area, and I hate to see it being marginalized or destroyed by the quarry.

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

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

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

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

SCOTT LEFAVER: Ms. Fry. Hi.

RHODA FRY: Officials from Cupertino, Los Altos, Los Altos Hills have serious reservations about this
project, and so do I. The OMR requires the cement -- that the cement plant must be part of the RPA, and it is not.

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

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

The 2002 emergency repairs never occurred on the landslide. Landslides onto our parkland and elsewhere occurred due to slope stability problems in violation of
SMARA. The slopes should have withstood the rain.

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

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

The company claims that limestone from this quarry is vital to the Bay Area economy. It has declared that -- it has also declared that the cement plant will continue to operate when the local limestone is exhausted. This is from a letter from Mark Harrison which you have in your hands. They can't have it both ways. In fact, for eight years the plant has relied on imported limestone to supplement the local substandard limestone. Since the tragic labor-related killings last year, the aggregate plant has closed, and the company has relied on more high-grade imported limestone from Canada, which is
lower in toxic substances such as mercury by an order of magnitude and sulfur. So perhaps we should Sunset the quarry now.

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

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

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

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

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

SCOTT LEFAVER: Okay.

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

SCOTT LEFAVER: Okay. Thank you. Dyan? And then after you we're going to take a break. Thank you. Hi.
DYAN WHITE: Hi, there. I'm Dyan White. I'm the executive officer at the California Regional Water Control Board of the San Francisco Bay region. Our name has been bantered around quite a bit, so I felt it would be appropriate for us to come up and answer any questions and say a few words before you.

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

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

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

So our efforts in the last two years have been
working with Lehigh and our staff to essentially figure out how to fully regulate this type of facility and bring them into water -- in compliance with water quality laws. And that's, in fact, what we are doing.

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

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

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

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

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

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

But there's also another piece of this, and that's that Permanente Creek is listed as impaired by selenium. And that requires us under federal law to develop what's called a total maximum daily load, and we're just starting that process. We're going to -- we're
getting additional information, but it's not just concentration.

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

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

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

Commissioner Chiu.

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

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

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

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

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

DENNIS CHIU: And just so I'm clear, the bottom line is that it didn't sound like you were against approval of the Reclamation Plan in that it seemed, and correct me if I'm wrong, that you were interested in making sure that the conditions of approval had enough flexibility to so that a future monitoring and abatement or, you know -- or some actions can be taken to lessen the impact of selenium in -- and other chemicals in the water supply; is that correct?
DYAN WHITE: Well, I'd say that I'm not authorized and in a position to say whether you should or should not move forward with approval of the Reclamation Plan. I really feel that's in your purview and within your scope and not within mine, but what I guess I'm pointing to is the need to have flexibility in what you do such that your actions down the road are sufficient that they could be modified based on any findings that we have based on the needs for water quality and water quality protection.

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

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

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

DENNIS CHIU: Thank you.
SCOTT LEFAVER: Commissioner Vidovich was -- go ahead.

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

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

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

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

And so those are functioning as aquatic ecosystems right now, so I'm not sure if you're talking about eliminating those or just treatment technologies further upstream in terms of detention, which typically would drop out the particulate phases, that type of a
practice, those sediment detention basins, but I'm not --
I don't myself have a clear understanding of the
conceptual model as it would relate to the dissolved
versus the particulate fractions. Am I answering your
question or --

JOHN VIDOVICH: So you're giving information.

There's two types of selenium that concern you. One is
the particulate --

DYAN WHITE: Yes.

JOHN VIDOVICH: -- the other is dissolve.

DYAN WHITE: Right.

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

DYAN WHITE: Right.

JOHN VIDOVICH: And the water that comes out will
have only have dissolved selenium.

DYAN WHITE: Right.

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

When you have a quarry, because they intercept
the aquifers and they have to pump the pit out, they're
suddenly creating all-year flows which are not natural.

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

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

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

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

DYAN WHITE: Okay. Thank you.

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

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

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

JULIE MACEDO: No. Hi. I'm Julie Macedo. I
represent the Water Board. No, the studies right now the
Water Board was able to find and cite in our February 21st comment letter dealt with mines up in Canada. So we are aware that it's a developing technology, but it's being used to remove selenium from water.

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

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

KATHRYN SCHMIDT: Okay. Thank you.

JULIE MACEDO: You're welcome.

SCOTT LEFAVER: Commissioner Couture?

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

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

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

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

(Short break taken.)

SCOTT LEFAVER: Commissioner Ruiz?

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

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

All right. Could we please have our next speaker?

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

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

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

MANUEL RODRIGUEZ: Okay. Thank you.

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

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

GARY RUDHOLM: Kevin McClelland --

SCOTT LEFAVER: Kevin, are you here?

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

SCOTT LEFAVER: Okay. Are you here?

GARY RUDHOLM: I can reserve that name to the end in case he comes back.
SCOTT LEFAVER: Okay. Well, let's go on to the next one, please.

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

SCOTT LEFAVER: Mr. Chang?

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

SCOTT LEFAVER: Hello.

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

My concern is with this report from the staff is SMARA specifically require that any Reclamation Plan approval has to subject to meet the Federal Clean Water Act. And what I heard today is really nervous because you make me concerned that the County can override the State law, the State law can override the federal law. That doesn't -- doesn't make sense to me.
Okay. So I want you to look into that because SMARA clearly specify that any approval of Reclamation Plan has to meet the Federal Clean Water Act.

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

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

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

Okay. So take your time, do a good job because all the residents in Silicon Valley is relying on you.
This is not only the 151 employee. You're talking about 1.2 million employees in the Silicon Valley. I don't want we wake up one day and we lose all this high tech innovative people to other people, other country and then we wake up one day and then there's no job, it's gone, we lost the competitive edge, and then we lost. Then we have nothing. We don't need the cement. Thank you.

SCOTT LEFAVER: Thank you very much, Mr. Chang.

Any questions? Okay.

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

SCOTT LEFAVER: That's my heart beating, right?

Am I normal?

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

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

SCOTT LEFAVER: Welcome, Ms. McCarthy. Hi.

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

May 7th, 1974 is the date I started my excellent
adventure at Kaiser Cement. 38 years ago I got my first hard hat and steel-toed boots and joined the Cement Lime and Gypsum Union. I told my husband I would just work ten years, but with the death of two husbands in my past, this company has been a wonderful support system for me. I have been a part of the changing face of the facility throughout the modernization of the plant in 1982. I have been a part of the working family that we have here. We work holidays and weekends when everybody else is at home to provide cement to build this valley. Think about all the places you visit, work and travel that have been built with my cement.

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

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

SCOTT LEFAVER: Thank you. Any questions? Thank you.
GARY RUDHOLM: Next speaker is David Peavey who will be followed by Ricardo Del Valle.

DAVID PEAVEY: Good afternoon.

SCOTT LEFAVER: Good afternoon.

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

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

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

This is a positive attribute for employees of
Lehigh as well as the surrounding community around the plant. Thank you.

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

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

SCOTT LEFAVER: Welcome. Hi.

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

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

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

Number two, we have to be an environmental family. That's not on option. That's something that since day one. I've been working there for six years, and
they've always said that. And sometimes it's difficult, but we do it. Sometimes if we're producing cement, something happens, it's not the best for the environment, you know, we shut down immediately. That's a lot of work for me. That's a lot of work for my team, but we do it. We do it gladly. That's what we have to do.

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

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

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

KEVIN McCLELLAND: Hi. Good afternoon. My name is Kevin McClelland, and I'm here on behalf of the Cupertino Chamber of Commerce. We are urge you to approve the Reclamation Plan Amendment for Lehigh Cement Permanente Quarry. The Chamber believes that the Reclamation Plan is another part of their commitment to do the right thing for our community, and I just want to say that as I've listened to a lot of the detractors, the people that oppose just about everything that has to do
with Lehigh, it's my belief that any decision you make short of closing down the plant is not going to be respected by these people.

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

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

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

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

BILL ALMON: Thank you.

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

BILL ALMON: I'm glad it was informative.
SCOTT LEFAVER: Thank you.

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

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

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

Their first letter, September 22nd, '06, said
that the cement plant was part of the reclamation plan. And you all have a copy of that letter in your handouts. I think it's Appendix D.

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

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

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

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

And they further testified that all of the area,
all the parcels of land up in that area have been disturbed by mining and hence had to be vested. So the supervisors agreed and voted for vesting.

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

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

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

GARY RUDHOLM: No, you're still good.

BILL ALMON: Oh -- and it regulates that, the dust from the trucks, et cetera. However, the County also regulates certain items in the cement plant, such as lime slurry, leaks, et cetera. So you have a joint effort by all the regulatory authorities. There is that -- not that much distance between the cement plant and the quarry. The trucks are thrown out on the basis that it's a cement plant. Been thrown out. We don't have to count the trucks because we're not going to count the cement plant. Their pollution is equal to what's put out by the kiln and the cement plant is equal to what the trucks -- the
greenhouse gases from the trucks are overwhelming. They will overwhelm this County in trying to establish new programs and will probably lead -- if you want the trucks, you're going to have to reduce the commuting.

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

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

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

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

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

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

Next speaker?

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

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

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

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

SCOTT LEFAVER: Okay. Thank you.

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

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

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

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

I think at the very least there should be some kind of concession from Lehigh and that the concession and
compliance therewith is considered in the Amended
Reclamation Plan and any kind of final EIR that comes out
before anything is approved. It just seems fair. Thank
you.

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

JOSH BENNET: Thank you.

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

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

SCOTT LEFAVER: Hi. Welcome. It is afternoon.

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

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

I'm proud to say that including aunts, uncles,
cousins and brothers, we've amassed more than 180 years of
service, and since day one there's always been a member of
my family employed at the plant. I've worked more than
half my life in the quarry and have been directly involved
in various reclamation projects, including surveying, grating, sloping, annual revegetation and hydroseeding and stock piling thousands of yards of top soil used to return the property to its natural environment.

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

Thank you.

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

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

SCOTT LEFAVER: Hi. Welcome.

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

I had the opportunity to review the Reclamation Plan, and I'm very impressed with the work our employees
as well as our consultants have done in preparing this
Reclamation Plan application. I would also like to
commend the planning department for their hard work on the
project before you.

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

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

SCOTT LEFAVER: Thank you. Any questions? No.

Thank you very much.

ALEX CONIADS: Thank you.

GARY RUDHOLM: Next speaker is Alan Sabawi.

SCOTT LEFAVER: Mr. Sabawi, welcome.

ALAN SABAWI: My name is Alan Sabawi. I'm the
production and quality control manager at the Lehigh
Permanent facility. I have been working at this facility
for eight years. I've been in the cement industry for
13 years. Prior to that I worked for the Water Board down
in Southern California while earning my degree in chemical engineering.

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

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

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

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

The Bay Area is very proud of its technical -- or technology sector, and I think one day when all is sorted
out, they'll be just as proud of their industrial sector as well. Thank you for your time.

SCOTT LEFAVER: Good. Thank you. Any questions?

Thank you.

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

SCOTT LEFAVER: Mr. Sinks.

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

SCOTT LEFAVER: Welcome.

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

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

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

Now, Lehigh has fought at every turn with the best attorneys available. Mr. Harrison is very skilled and, in fact, Lehigh's president was up on Capitol Hill in September arguing against the modest measures that would control air pollution, really the first significant
monitoring since the Clean Air Act was signed by President Nixon in 1970.

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

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

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

And if that's a big capital cost, we've seen no evidence that that amount of money is not feasible for a company that operates decade after decade apparently at a
substantial profit. I asked this body last Friday and I ask again, what's the ruler for deciding how much money is too much? Can the applicant or the County tell us how much cement prices would increase if selenium mitigation was done by active treatment rather than waiting the 20 plus years to see how much of the stuff seeps out of the ground, at which point, you know, what are you really going to do at that point?

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

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

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

Last Friday Rob spoke of notices of violations, including the one in 2008 that the use of EMSA as waste storage was not legal at that time. How have we gotten to accept this pile of rubble as a permanent feature? Why not fill in the pit with this waste? Stop it growing now.
Put it -- put the waste in the west, away from residents where they won't have the dust and noise impacts and make that EMSA pile the first to go back into the pit when extraction is done. Thank you very much.

SCOTT LEFAVER: Thank you. Any questions?

JOHN VIDOVICH: I have some questions.

SCOTT LEFAVER: Commissioner Vidovich has some questions.

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

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

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

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

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

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

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

JOHN VIDOVICH: You know, I don't mean to go on,
but if the pile -- if the pile bothers the local
residents, at least I think we should consider it differently than if the pile is a benefit, because that's what's we've been told is a benefit.

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

ROD SINKS: Yes.

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

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

JOHN VIDOVICH: Pardon me?

ROD SINKS: I assume you may have it verbatim.

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

ROD SINKS: All right.

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

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

SCOTT LEFAVER: We got a question from Commissioner Bohan.

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

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

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

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

JACK BOHAN: Page 12, paragraph I.

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

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

ROB EASTWOOD: That's correct.

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

GARY RUDHOLM: Mr. Chair, I believe I may be able
to answer that question. I don't believe they're stock
piling in the southwest corner of the pit just yet. I
think they anticipate doing that in July of this year or
sometime during the summer of this year.

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

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

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

JACK BOHAN: And would that be a problem?

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

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

JACK BOHAN: All right.

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

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

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

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

JACK BOHAN: And the eastern will come up later?

ROB EASTWOOD: The eastern is proposed to stay where it is and, as the speaker indicated, it would be
capped with at least a foot of soil and vegetation on top.

JACK BOHAN: But that will require a future Reclamation Plan, right?

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

JACK BOHAN: Part of this one?

ROB EASTWOOD: Yes.

ROD SINKS: It is. I just argue that -- my belief is that residents want that pile gone. They want it to stop growing as soon as possible, and then they want the pile gone as part of reclamation.

SCOTT LEFAVER: Okay. Commissioner Vidovich, please.

JOHN VIDOVICH: The issue -- Jack, the issue I have is, is we're hearing that that's a benefit to the community. I mean if it is, it is, but then I haven't heard that. I've heard all the testimony from people saying they don't want it there. That doesn't mean we're going to move it, but at least make the decision based on, you know, what the facts are. I think that at least what I'm hearing, it's a negative.

JACK BOHAN: My recollection was that the western portion, they can't quite bring it back to its natural contours, and people don't like that. And now we got one where it's too high, and they want it brought back to a
lower contour.

JOHN VIDOVICH: The hole has plenty of room.

JACK BOHAN: Yeah.

JOHN VIDOVICH: So it's not -- you know, they export a lot. There's plenty of room in the hole. I don't know what the cost of moving it back there is, but I don't see the reason to leave it there is if that it's benefitting anybody. I don't see that as the reason.

If there's a cost reason to leave it there, then they should argue that reason. I think they're arguing that it's a benefit, and I haven't heard -- I haven't heard any evidence, and the evidence you're presenting is it's not a benefit to leave it there.

ROD SINKS: I think if you did a wide survey, you would find people want the pile gone in the western end of Cupertino. That's all I know.

JOHN VIDOVICH: And they are the neighbors, the direct neighbors. They do get the dust. There is a hell of a lot of dust at night. Most of that operation is at night. It produces a lot of dust, and some of that stuff it is unavoidable. A lot of it is unavoidable, but they are living with it, and I think there should be some consideration for the people that have to look at it.

SCOTT LEFAVER: Okay. Any other questions?

Thank you.
ROD SINKS: Thank you, Mr. Chair, and thank all for your public service on these tough issues.

SCOTT LEFAVER: Well, we have a question. I knew if I hesitated long enough, there would be another question.

MARY ANN RUIZ: I do appreciate what you said today because, like John, this is the first I've heard that the east pile needed to be lowered. In everything I've read, I didn't get that the citizens didn't want it lowered. I thought they just want it, you know, to look back like a hill again.

ROD SINKS: Well, in my view it's not going to look like a hill again. It doesn't look like a hill now. I urge you to get a picture up. Maybe the staff can do it while I'm talking here -- urge you to take a look at the West Material Storage Area as an example of how land is reclaimed at this project. That's -- that's basically the issue that we have. Thank you so much.

SCOTT LEFAVER: Thank you.

GARY RUDHOLM: Mr. Chair, we did receive one more speaker card. Next speaker is Peg Champion.

SCOTT LEFAVER: Hello. Hi.

PEG CHAMPION: Thank you so much for letting me speak.

SCOTT LEFAVER: Sure.
PEG CHAMPION: I ran right down here from work, and this is as soon as I could get here.

SCOTT LEFAVER: Well, we're glad you're here.

PEG CHAMPION: Appreciate it. Thank you, everyone. My name is Peg Champion. I promise to be very brief. I appreciate you allowing me to speak here today on such an important issue to the health of our community. I'm a resident of Los Altos. I don't want work for Lehigh. I'm not a scientist. I'm not an engineer. I'm just a citizen. I'm a citizen who's requesting that the Planning Commission fulfill their mission to protect Santa Clara County, their residents, our natural resources and our -- the health of the public. I ask the Commission to consider the trucks, the cement plant and the quarry as one entity for the purposes of the EIR.

Finally, clean air and our precious water resources must not be sacrificed for the benefit of a single industrial entity. Thank you.

SCOTT LEFAVER: Thank you. Questions? Questions? There have been a number of certainly questions raised and so forth. I had some questions of the applicant if they could possibly respond to some of these things particularly dealing with the -- with the -- yeah, the piling up of waste and so forth on the east versus the west and what all that could mean or would mean
and give us a sense of what's -- what's your opinion of that.

MARK HARRISON: Sure. Mr. Chairman, I'm Mark Harrison. Again, I'm here with Marvin Howell. There was a number of comments about the East Material Storage Areas that I think we need to clarify.

First, the placement of that material there is mining activity that's included within the vested right that this Board's determined to exist. So the placement there is something that we're entitled to do. We're going to continue to do, and it is close to being finished.

I think the fundamental concern that we heard is the quality of the reclamation, and I think that is a very fair question. And for that and the particulars of that, I'd like to pass it to Marvin Howell.

MARVIN HOWELL: Thank you, Mark. I wish I had exhibits with me today so that I could show you not only our projected views of that hillside once it's -- we finish reconstructing it. But we also have photos, and unfortunately you're not going to be able to see that very well. But we also have photos of another hillside that was revegetated in the same area.

That backfill was actually first placed there going back to the 1940s, and the reason Henry Kaiser decided to place that material there is because he wanted
to provide the benefit of obscuring the views into the pit itself from the people that lived in the valley floor.

And that's exactly what it did. The reason that you can't see into the mining pit today is because that hillock was placed there starting in sometime in the 1940s. It was revegetated in the late 1970s, and today if you can blow that photo up, you wouldn't be able to pick it out from the surrounding naturally vegetated hillsides. We had a very hard time trying to locate it as we were preparing our presentation to take out to the community. And, in fact, I had to have the engineers locate it.

We're very confident about our ability to do even a better job with the MSA, and I say that because if you go out to the hillock that was revegetated starting in the late 1970s, you'll see that it's primarily vegetated with native species. It was planted entirely with nonnative species when it was first planted. And what happened over time is native species have kind of taken it over.

In our case, we're going to be using the solar radiation study that I spoke about earlier. We're going to be using not only native species, but we're actually hand collecting the seed spore, as I explained. So we're revegetating that hillock with the specific plants that have evolved over time to thrive in that specific environment.
So today you can go out there, and I challenge you to pick out the hill that Henry Kaiser built out of the same material and reclaimed. And so I'm very confident that our -- in our ability to reclaim it. And you know, I -- you know, I can tell you that we've taken this presentation out to numerous homeowners association and groups of people who live in that area, and I think they're very excited about the prospect of seeing us complete this portion of the project.

And the reason for that is from the valley, from the people that live on that side, right now they can look in, they can see the large dome, the conveyors.

When the EMSA is completed, they'll be looking at a revegetated hillside instead of at the industrial still operation.

SCOTT LEFAVER: Okay. Questions?

JACK BOHAN: Now, how much longer will you be using the eastern area for overburden?

MARVIN HOWELL: I don't work in operations, but my understanding is that they're preparing the pit, the main quarry to start accepting fill in June or July. The -- currently we're somewhat limited as to how much more fill we can place in the East Material Storage Area. So right now completion of that area is really pending approval of this Rec Plan.
So as soon as the Rec Plan is approved, we'll finish up filling in that area. That will happen very quickly over the next year to two years. Revegetation doesn't wait until -- until fill is completed. It's been designed to be filled, and finished fill and fine grading and the cap that was described, top soil, if you will, placed over the top of it.

That's being done in three phases so that as one phase is completed, we'll move to an alternate phase. We'll finish revegetation of the completed phase and then move again. So as soon as the fill is completed in one of the three phases, it will be revegetated.

JACK BOHAN: All right. So in July you'll stop bringing material into the eastern area and start moving it into the southwestern?

MARVIN HOWELL: We'll start moving into the main quarry pit this year, sometime June or July of this year. They'll still be some material to go into the east material storage area, but that is not far from being completed. As I say, I would say two years maximum.

JACK BOHAN: Okay.

SCOTT LEFAVER: Question Commissioner Vidovich, please.

JOHN VIDOVICH: What -- what specific groups of have supported this blockage? You say have you have home
owner groups that support it. Which groups?

MARVIN HOWELL: Primarily people that live out in that area directly out to the east so --

JOHN VIDOVICH: Because it seems like all those people are against it. It seems like it.


SCOTT LEFAVER: Okay. Excuse me. You're out of order. Thank you.

JOHN VIDOVICH: So what groups? You say The Forum?

MARVIN HOWELL: Yes.

JOHN VIDOVICH: Which other groups?

MARVIN HOWELL: DeAnza Oaks.

JOHN VIDOVICH: Okay. Any others?

MARVIN HOWELL: Stonebridge?

JOHN VIDOVICH: Stonebridge?

MARVIN HOWELL: Yes. And we've also presented it to the Lehigh Permanente Community Council, which has members from those groups and others. They've also expressed an interest in seeing it completed. And if -- you know, I mean, if you were looking at a picture of it, from the east of the property prior to any fill being placed there versus what it will look like as a revegetated hill -- like I think if you lived there, you'd want to see it done, too.
SCOTT LEFAVER: Have we gotten any comments from any of the homeowners associations in this area?

ROB EASTWOOD: I believe not. All the comments we have, you either have on the draft EIR or supplemental correspondence. I don't recall seeing any homeowners association specifically.

SCOTT LEFAVER: Okay. Thank you.

MARVIN HOWELL: Thank you.

SCOTT LEFAVER: Any other questions from the Commissioners for right now?

I have a couple questions, if you don't mind. Again, the issue game up -- has come up about including the cement plant as part of the environmental impact report and so forth. Can you please -- and we've been urged to include it as part of our scope.

Can you please go over that one more time -- one more time, please.

ROB EASTWOOD: Sure. The issue, as mentioned by speakers, and in previous staff presentation was asked and addressed both by County and Office of Mining Reclamation Circuit 2006, 2007. So the most pertinent -- and it is attachment to your staff -- to the staff report is a letter from the Office of Mining Reclamation who based on a variety of factors determines and sent a letter to the Director of the Department of Planning Development in 2007.
opining that based on numerous factors, that the cement plant was an independent operation, is separate from surface mining activities on the site, and thus, is not subject to reclamation in this Reclamation Plan.

SCOTT LEFAVER: Which is different than the 2006 letter that was quoted?

ROB EASTWOOD: As the speaker indicated, there was an earlier correspondence from OMR. Of course the later correspondence coming from the same agency superceded that earlier correspondence.

SCOTT LEFAVER: Okay. Thank you.

The other -- the other issue was trucks, and that, again, is --

ROB EASTWOOD: Trucks -- again, the focus of the Reclamation Plan is reclamation. It's not trucks to purchase lime -- to purchase cement that goes offsite. That's associated with the cement plant. It's not to -- or associated with another activity.

The trucks associated with reclamation to reclaim this site were evaluated. And Notably, as we talked about last week, there is a requirement to import a certain amount of organic material, and that was a key focus in looking at how much organic material had to come into the site and the trucks associated with it.

So all -- all truck operations are foreseeable.
1 Truck traffic associated with rec reclaiming the site have
2 been evaluated in the EIR.
3
4 SCOTT LEFAVER: Okay. Thank you. One of the
5 issues that Mr. Sink brought up was that -- and he
6 included it in the requested condition, was that if other
7 agencies had other requirements that they would be
8 included.
9
10 What I got particularly from the Water Quality
11 Control Board was that they're their own independent
12 agency in that whatever requirements they would come up
13 with would be those requirements. Is that your -- is that
14 what you --
15
16 ROB EASTWOOD: That is correct. And their
17 purview, oversight and regulatory oversight, again, as
18 stated by the Regional Board representative, is much
19 broader than what's before -- our focus here is
20 reclamation, but reclamation does have a SMARA standard
21 for water quality. The Regional Board's oversight is much
22 broader. It's the operations of the site. It's the
23 cement plant, the mining operations. It's the whole
24 thing. They focus on water quality.
25
26 With respect to the condition and the request by
27 the representative from the Regional Board to be flexible,
28 we did have previous conversations with the Regional Board
29 on that concept. That's from staff's perspective more
than acceptable as they continue to characterize the site and get new information.

If based on that information there's information that prescribes a certain treatment approach or method, and if it needs to change the Reclamation Plan, that's more than fine.

Many conditions in -- the conditions of approval defer to the authority of the Regional Board with respect to water quality and any sort of treatment approach, mitigation that might come out of that strategy.

SCOTT LEFAVER: Okay. The difference between -- I think I may have asked this question before, but it seems to be coming up, and that is the difference between substantial compliance on the one hand and specific compliance on the other.

So maybe you can go over that compliance with CEQA on the one hand and substantial compliance with SMARA on the other.

ROB EASTWOOD: Okay. We'll read right from the statute.

SCOTT LEFAVER: I'm sure you will.

ROB EASTWOOD: Elizabeth, do you want to find the SMARA section perhaps?

Well, I'll start on the EIR and CEQA, and Elizabeth will finish with SMARA. The requirements -- the
first task before the Planning Commission is to certify the EIR. So did the EIR as an informational document comply with the California Environmental Quality Act? Did it do a good faith effort and adequately disclose the significant impacts in this case associating with reclaiming this site?

And so the determination to be made by this Board is does it comply, not a substantial -- but does it comply the California Environmental Quality Act. So that's with respect to CEQA.

LIZ PIANCA: And with respect to SMARA, the standard is that the Reclamation Plan substantially meet the standards that are set forth in SMARA.


DENNIS CHIU: This is a question for County Counsel. A lot of the testimony that we've heard today focused on the unmitigated impacts. Can County Counsel just give us a brief overview of how the EIR can be certified with a statement of -- a statement of overriding considerations and whether or not that's a requirement of the Commission to decide?

LIZ PIANCA: So as has been discussed previously, there are impacts that are identified in the EIR which are considered significant and unavoidable impacts, and there
are no feasible mitigation measures or project alternatives that will reduce those impacts to a less than significant level; nevertheless, CEQA recognizes that an EIR may be certified despite the existence of impacts that are significant and unavoidable.

And part of that process is a finding that the Planning Commission will make determining based on the evidence and the record and the statement of overriding considerations that the overall benefits of the project outweigh those impacts that are of -- environmental impacts that are identified in the EIR.

DENNIS CHIU: So that just so it's clear, everybody can be right here where there are significant, unavoidable impacts into the water and scenic views and other parts of the -- but this Commission can still in order to approve the final EIR needs to consider whether or not their overriding considerations is the general benefit of the project that outweighs the unavoidable, unmitigated impacts; is that correct?

LIZ PIANCA: For the Commission to certify the EIR, one of the findings that needs to be made is a finding -- a statement of overriding considerations which determine -- make a determination that the overall benefits of the project outweigh those impacts that have been identified as significant and unavoidable.
DENNIS CHIU: So if the Planning Commission does not find sufficient overriding considerations, it cannot certify the EIR because they are -- there are unavoidable unmitigated, significant impacts?

ROB EASTWOOD: Just a quick disclosure. The EIR certification would happen ahead of time. Did it comply with CEQA? To move forward with the project, you have to make these findings. Even though the project might have significant, unavoidable impacts, the benefits of the project outweigh that. So those are two distinct actions.

As an informational document, you would certify the EIR first, then those findings -- there's a bridge to approving the project.

DENNIS CHIU: Okay. That's how that works.

Okay. So --

SCOTT LEFAVER: We have to remember that the EIR is an informational document, not a decision making document.

DENNIS CHIU: All right. So the -- anyone in the audience that testified today or last Thursday or any of the other sessions that indicated there's definitely these environmental impacts, can be correct, and the Planning Commission can certify the EIR with those -- with that understanding.

Then it falls -- the decision making process
falls to step two, which is to approve the project where
we would have to find that despite the unavoidable,
unmitigated, significant impacts, that the project has
overriding considerations that make it worthy. That's
correct? Is that correct?

LIZ PIANCA: The EIR will be certified. There
will be a number of findings that the Planning Commission
moves toward certification of the EIR. Among those
findings is a statement of overriding consideration. The
next step in the process is to look at the actual project
approval. Before you can get to the step of project
approval, you must certify the EIR.

DENNIS CHIU: Okay. I think that was a yes to
my --

SCOTT LEFAVER: Yeah. So we got all the
information. We say yes, we have the information. We
certify we have the information. Then we go on to the
approval or otherwise of the Reclamation Plan and then
that's the decision point.

DENNIS CHIU: Thank you. So as part of the
question that we're trying to deal with is, do we have
enough information in the EIR in which to certify the EIR?

SCOTT LEFAVER: I would say yes.

ROB EASTWOOD: Well, I mean, that's the first
question before you. Does the EIR as an informational
document adequately disclose all those significant impacts and adequately disclose all the feasible mitigation measures? Is it an informational document that complies with CEQA?

DENNIS CHIU: Thank you.

SCOTT LEFAVER: And sometimes it makes very clear there are no mitigations.

Okay. Any -- any other questions of staff?

Any -- Commissioner Vidovich.

JOHN VIDOVICH: I assume now -- between now and the next hearing that we'll have a copy of the proposed conditions of approval --

SCOTT LEFAVER: I will guarantee it.

JOHN VIDOVICH: Yeah. I'm going slow, not just for the reporter, but for my brain.

SCOTT LEFAVER: Okay.

JOHN VIDOVICH: A copy of the conditions of approval, a copy of any suggested changes particularly from some of the speakers here, if we could have that.

There are references in the conditions of approval such as the references -- Santa Clara Valley District report January 16th, 1985, a copy of those attached, so we could see them. That's a referenced condition.

I assume we all have the 3C sheets that we're
approving, that's the drawings that we're approving, and
the 4L sheets that we're approving?

There's reference to the mitigations in here that
they are part of the conditions, the mitigations, and if
there's an easy way those can be outlined for us dumb
commissioners -- you guys are more familiar with it, so we
can just make sure we know what we're voting on. That's
what I'm hoping to get. It makes it easier for me.

SCOTT LEFAVER: Sure. Good. Good points.

Commissioner Couture?

TERESA COUTURE: Do you think we can get all that
by Monday?

SCOTT LEFAVER: That's a lot of work, so I'm
not -- I'm sure they'll get it to us as quickly as they
can.

JOHN VIDOVICH: Well, and if we can't, why
couldn't we just delay a little bit? What's the time that
we have to jam it so much? And I think the public feels
that, too.

SCOTT LEFAVER: Well, let's see what we get.

We're going to have -- we do have a scheduled meeting a
week from today, and we can certainly take up, if not all
the issues, some of the issues at that time.

DENNIS CHIU: I just wanted to -- through the
chair, I just wanted to add to Commissioner Vidovich's
request that it doesn't seem like Lehigh's proposed
changes, the conditions of approval, are that significant,
but I assume that the staff will either agree or disagree
and provide comments to the conditions of approval?

ROB EASTWOOD: Sure. Just to add from staff,
most of this information you have today, I think it's
repackaging and a consolidation. The conditions you have,
the suggested changes, have come in today. References of
reports we can get together. The C and L sheets, I'm
looking to Gary. I'm assuming those are part of the Rec
Plan? We did distribute to all the commissioners sheets
out of the Rec Plan. Are there subsequent sheets?

GARY RUDHOLM: Actually, I think those may be
references made under the '85 Reclamation Plan. I don't
remember those being a reference made in the conditions
that are proposed for the current Reclamation Plan. I
provided that information that was requested of me.

I was asked for the current conditions, so I
forwarded those, and I think you may be remembering those
references. 'Cause we don't have the sheets identified as
L, as in landscape, or C, as in civil engineering.

JOHN VIDOVICH: So the only thing is you're
asking us to approve something based on those sheets. And
I'm not just saying it for me, too. I mean, the public
has a right to -- there's a lot of people that are
engineers or detailed -- they have a right to see these conditions of approvals and give us constructive comments, too.

GARY RUDHOLM: Right. And we have the proposed conditions posted as well as the full Reclamation Plan, including all the drawings and all the illustrations.

SCOTT LEFAVER: Okay. Good.

JOHN VIDOVICH: I'm -- we're not going to get those sheets then, the C ones and the Ls referenced in here 'cause they don't exist anymore?

SCOTT LEFAVER: Well, we need the sheets. We will get the sheets.

JOHN VIDOVICH: Well --

SCOTT LEFAVER: No, no, no, no. You don't -- we will get the sheets. If we have to approve it, we'll get them. Okay.

GARY RUDHOLM: I'll make sure everybody has them, Mr. Chair.

SCOTT LEFAVER: Thank you

DENNIS CHIU: I just wanted to add -- excuse me, through the Chair, I apologize -- my comments to Commissioner Vidovich's, that if we don't get the information and the staff needs a little bit more time, our next meeting is just the first week of -- the first Thursday of June, so I'd be willing to push it to the --
SCOTT LEFAVER: We will take as much time as we need.

DENNIS CHIU: Thank you.

SCOTT LEFAVER: Any other questions?

Commissioner Bohan?

JACK BOHAN: You know, one point of clarification I need from the staff. Again, looking at page 12 of the staff report, and it's paragraph J, closure of surface openings. It says in here, "In addition all drill holes, water wells and monitoring wells must be abandoned, sealed and reclaimed. The exploration area reclamation includes backfilling the drill holes and revegetation."

The previous sentence says these holes will be sealed. This one says these drilled will be backfilled. If we're drilling at all into an area which is this hard panel we're talking about that makes a bowl, that you want to avoid hydraulic connection between that -- that aquifer and the aquifers in the valley.

And so maybe I want to understand if the backfilling of the drilling holes really should be sealed?

GARY RUDHOLM: Mr. Chair, I can respond to that.

So there were some drilling for exploratory purposes done not to find water. So those would be, I think, backfilled and then reclaimed. I think a well that was dug for water would have to be sealed appropriately.
depending on the Water District requirements or the health requirements, but we understand the distinction, and that's how it would progress.

JACK BOHAN: All right.

SCOTT LEFAVER: Okay. Well, it's almost 3 o'clock. What I'd like to do with the -- with the concurrence of the Commission is to continue this public hearing until a date certain, and that is Friday -- next Thursday --

NASH GONZALEZ: Next Thursday, May 30th -- May 31st.

SCOTT LEFAVER: It's May 31st at 5:30 p.m.

JOHN VIDOVICH: And I would suggest, I may be the minority, that we kick it over another week just -- unless there's something jamming us on that agenda. Is that why you want to have it -- it just seems like too short of a time.

SCOTT LEFAVER: I think that we can start discussing a number of these issues next Thursday, and if we need to go to our regular meeting, we can completely devote that particular meeting to this item. And we'll just -- anything -- any other items at that meeting can be -- I don't think there are any major items coming up, so we can just continue to talk and to discuss and to better understand.
So I will continue the public hearing to May 30th at 5:30. Thank you.

ROB EASTWOOD: May 31st.

GARY RUDHOLM: Mr. Chair --

SCOTT LEFAVER: May 31st. Sorry.

ROB EASTWOOD: Thank you.

GARY RUDHOLM: Okay. Thank you for that.

(The hearing concluded at 2:58.)
I, LISA R. KEELING, a Certified Shorthand Reporter in and for the State of California, hereby certify that the foregoing is a full, true and correct transcript of the proceedings had at the taking of said hearing, reported to the best of my ability and transcribed under my direction.

Date ______________, 2012

LISA KEELING, CSR NO. 10518