THE COUNTY OF SANTA CLARA

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In re:

LEHIGH PERMANENTE QUARRY

RECLAMATION PLAN AMENDMENT

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

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SANTA CLARA COUNTY PLANNING COMMISSION HEARING

DATE: May 31, 2012

TIME: 5:30 p.m.

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

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

PLANNING COMMISSION:

Scott LeFaver, Chair
John Vidovich, Vice Chair
Mary Ann Ruiz
Dennis Chiu
Theresa Couture
Jack Bohan

County Counsel:

Orry R. Korb, Assistant County Counsel
Elizabeth Pianca, Assistant County Counsel
Nancy J. Clark, Assistant County Counsel

Planning Department:

Nash Gonzalez, Planning Director
Gary Rudholm
Rob Eastwood
May 31, 2012                    San José, California

PROCEDINGS

CHAIR PERSON LeFAVER:  Good evening.

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

MR. RUDHOLM:  Commissioner Bohan.

COMMISSIONER BOHAN:  Here.

MR. RUDHOLM:  Commissioner Chiu.

COMMISSIONER CHIU:  Here.

MR. RUDHOLM:  Commissioner Couture.

COMMISSIONER COUTURE:  Here.

MR. RUDHOLM:  Chair Person LeFaver.

CHAIRMAN LeFAVER:  Here.

MR. RUDHOLM:  Commissioner Ruiz.

COMMISSIONER RUIZ:  Here.

MR. RUDHOLM:  Commissioner Schmidt.

COMMISSIONER SCHMIDT:  Here.

MR. RUDHOLM:  And Commissioner Vidovich.

COMMISSIONER VIDOVICH:  Here.

MR. RUDHOLM:  Mr. Chair, I'd like to note

that we have a court reporter here again, and so we
should periodically take about a five-minute break
to give that individual an opportunity to rest their
wrists.

CHAIR PERSON LeFAVER: Thank you.

MR. RUDHOLM: We are also recording the
audio and the video, as well, for archival purposes.
I just want to make everybody aware of that, too.
And if you don't mind, I'll go ahead and
read the items from the agenda as we go through the
agenda.

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

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

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

The Permanente quarry is a limestone and
aggregate mining operation, and the Reclamation Plan
amendment proposes to reclaim all mining
disturbances on the property. No new quarry pit is
proposed.

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

CHAIR PERSON LeFAVER: Very good. Thank
you.

Mr. Planning Director.

MR. EASTWOOD: Nash will go ahead and
start.

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

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

As the Planning Commission will recall,
there was a workshop on May 18th that provided an
opportunity for the Planning Commission and members
of the public to put forth questions, and it also
served as an opportunity for staff to answer
questions related to the Reclamation Plan and what
is a Reclamation Plan, and what the purpose of this process is, including the Environmental Impact Report.

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

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

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

Next slide, please.

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

And then after that, and after deliberating, the Planning Commission is to make a
determination of whether or not the Reclamation Plan is in substantial compliance with SMARA.

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

Next slide, please.

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

Next slide, please.

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

And with that, I'm going to go ahead and turn it over to Mr. Eastwood.
MR. EASTWOOD: Sure. Thanks, Nash.

Our presentation tonight is pretty brief.

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

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

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

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

This is going back to some slides we had last week. Just a quick recap of the scope of the reclamation plan that's before the Planning Commission covers all mining disturbances that are
on the Lehigh Quarry. It does address at least two violations that have been issued by the County for mining outside the existing 1985 Reclamation Plan boundaries, and this reclamation plan will allow to go into place a new financial assurance which covers all of mining disturbances and reclamation of the site as proposed in the plan.

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

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

   Last week there was some substantial discussion on an alternative approach to reclamation of the site that would entail removal of the EMSA. So one integral part of this reclamation plan is proposal to create a permanent overburden storage
pile on the east side of the property. East material storage area is the name, EMSA is the acronym.

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

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

And then finally, per CEQA we are required to evaluate a no-project alternative. In this case
there is not an option of not having a reclamation plan, so the EIR evaluated if there was a delay in approving a reclamation plan if for some reason this reclamation plan was denied, what would be a foreseeable scenario of what could happen at the site.

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

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

The conclusion in the EIR was that this alternative actually would not decrease environmental impacts on several counts. Because of the level of work that was required not only placing the overburden in this area, but going back in, reexcavating that material, taking it back into the
main pit would entail a much prolonged construction schedule, and much more construction activity.

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

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

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

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

The EIR did conclude that the project is
environmentally superior to this alternative, and so
the conclusion was that this alternative was not
preferable to what's proposed under this reclamation
plan.

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

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

So two of those significant impacts were
interim impacts. On both counts for visual and
selenium, the EIR conclusions was following reclamation, the impacts would be less than significant.

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

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

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

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

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

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

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

And the last point I wanted to make is that the impacts disclosed are unavoidable. So one question would be: Is there any means out there to avoid this impact? Is there another means to reclaiming the site? Is there another mitigation measure? Is there anything that can be done to address these unavoidable impacts for interim water quality and visual impacts? And the conclusion was
that there was none. So that's an important thing
to consider.

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

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

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

The second general area is SMARA
requirements in general. So per the State Code
requiring that the reclamation plan meet those
requirements, which includes revegetation and the
maintenance of drainage basins.

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

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

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

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

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

So what staff has handed out is a packet that includes those separate requested changes from those bodies. Staff has reviewed those changes, and in many areas we've agreed with some of the changes,
and in some areas we have not. And what we can do when it's at the right time is walk a bit through some of those changes, and where staff is suggesting to the Commission those changes be appropriate, and be a change in the Conditions of Approval, and areas where staff does disagree, and believes that those changes should not be made Conditions of Approval. But those are before you. That was handed out in the supplemental packet.

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

The conclusion of the EIR and all the technical studies that have been done by consultants to the County is that the reclamation of the site would not affect groundwater. However, for your consideration, staff has worked with the water district, and in response to a public comment last week to craft a condition for your consideration which would require the installation of a monitoring well.
So, again, the conclusion of our EIR is that there is not an impact to groundwater, but as an extra precautionary measure, if the Commission would like, there is a condition crafted for your consideration which would require the installation of a well between the quarry site and the Santa Clara Valley floor which would monitor groundwater to ensure that there is no contamination of groundwater.

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

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

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

Again, that's the staff presentation.

I'll hand it back to Nash, if he has anything to add.

MR. GONZALES: Thank you very much, Rob.

Basically the Planning Commission has received to date the Draft EIR, the Final EIR, the Reclamation Plan in its entirety. It has received public testimony from both the Applicant, the public in general, public agencies as Rob noted that, we had the Regional Water Quality Control Board here last week. We've had input from various other agencies on this project. And the Commission has also been given the opportunity to visit the site and physically conduct a site view. And again this evening you will consider additional public testimony.
And so the question really is, at this point is: Staff is asking, is there any additional information that the Planning Commission needs at this point in time to be able to move forward in conducting your deliberations on this Reclamation Plan at this point.

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

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

Any questions of staff at this time? Commissioner Vidovich.

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

I don't know how -- in this drawing it's got blue, yellow and green. The blue is the last phase. I don't know how much more material is
planned to go there in cubic yards from what's there now. I don't know if we could get that information.

MR. GONZALEZ: I can go ahead and respond. We don't have the cubic yards in front of me. We can research that get it back to you.

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

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

COMMISSIONER VIDOVICH: My assumption would be, you know, they're putting it here for convenience of mining economy. And my assumption,
and this is a question to make, so we can make a
good decision, isn't it -- couldn't they put that on
the east side or somewhere in a different location
where if they were going to put it back in the hole,
it would be easier, maybe it's a little more
expensive right now, couldn't it be put, say, in the
east storage area, which is already pretty big?

MR. GONZALEZ: Do you mean the west?

MR. RUDHOLM: It is proposed for the east.

COMMISSIONER VIDOVICH: When I said
"east," I meant "west." Sorry.

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

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

There is a little bit of room, but not a
lot more room. They're almost maxed out at the west material storage area.

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

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

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

COMMISSIONER VIDOVICH: I think part of the question is that not to not have the east material storage area and have it reclaimed, but maybe the magnitude of it is severe. It is two to one. It kind of comes out like a hot dog towards the neighbors there. And I'm listening to the neighbors.
If it was moderated a little bit, and if there is room, I don't know as they dig down to this declining hole if they're going to be able to start putting material in the hole itself as they mine, the tailings as they mine. I don't know. It's a question. Maybe they have the answer of it. If they could moderate it. And I've been listening to the public about, they seem to be more disturbed about this west hill that's being built.

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

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

COMMISSIONER VIDOVICH: I agree with you if the only place to put it is the east side storage area, but if there are alternative places that they
could put it, it might moderate the size of the hill. And I don't know, maybe the public's going to speak about it, but I'm just -- and it may be a question for the Applicant. I don't know if he wants to speak or not.

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

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

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

CHAIR PERSON LeFAVER: Thank you.

Any other questions of staff at this time?

(No response.)

CHAIR PERSON LeFAVER: No questions of
CHAIR PERSON LeFAVER: We'll open up the public hearing at this time. And, Mr. Rudholm, Mr. Secretary --

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

CHAIR PERSON LeFAVER: Hello.

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

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

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

I have a handout that I believe has been distributed to you, so it looks like this (indicating). It's got four photographs. And I'd like to kind of walk through those with you so that I can talk to you a bit about some reclamation work that's already been completed in the same general
area as the east material storage area. And I've also got a couple photographs of the proposed reclamation work on the EMSA. So do you have those.

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

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

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

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

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

Now, area C, you can see that they started placing overburden material in area C all the way back in the early 1940s. That's the same kind of, same exact material that was later placed in the
west material storage area, same material that we're
placing now in the east material storage area.

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

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

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

And what happened over time, because they
didn't irrigate it, the native species were able to
out compete with the nonnatives that were planted
there. So if you go out there today you'll see
primarily native species that have taken over. So
that really gives us considerable confidence with what our plan is for the east material storage area because we've seen it, we've seen nature do it before.

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

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

And if you turn to the final page, you'll
see a rendering of the reclaimed east material storage area. So you can see the benefit of its obstructing views into those industrial operations.

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

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

We estimate that we'll be ready to revegetate the top within six to eight months of approval of the Reclamation Plan, and I would guess that in total we would probably have the whole thing
revegetated within a couple years.

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

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

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

CHAIR PERSON LeFAVER: Commissioner Vidovich.

COMMISSIONER VIDOVICH: So you are starting to backfill the --

MR. HOWELL: Yeah.

COMMISSIONER VIDOVICH: -- the main hole.

MR. HOWELL: Yes. And Commissioner
Schmidt was out there today, so she was able to see the rock trucks taking material down and filling there.

CHAIR PERSON LeFAVER: Any other questions of the Applicant?

Commissioner Couture.

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

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

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

MR. HOWELL: No. That’s an alternative. We have determined that we can conduct operations over there through other mitigations that are available, and that suite of mitigations in that condition.

COMMISSIONER COUTURE: Thank you.
So I have another question. On the 42, it says, no light, no night lighting shall be allowed or permitted on the east facing slope of the EMSA, or any other location with the EMSA that would be visible from the public locations on the Santa Clara Valley floor.

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

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

CHAIR PERSON LeFAVER: Other questions of the Applicant?

(No response.)

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

MR. HOWELL: Thank you.

CHAIR PERSON LeFAVER: Thank you.
Next speaker.

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

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

MR. RUDHOLM: That's correct.

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

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

CHAIR PERSON LeFAVER: Thank you.

MR. POMPY: Good evening --

CHAIR PERSON LeFAVER: Welcome.

MR. POMPY: -- Mr. Chairman and members of the Planning Commission. My name is Jim Pompy. I'm the assistant director in charge of the Office of Mine Reclamation, and we're the State agency that administers SMARA. We have certain responsibilities, just as the county, Santa Clara County does have certain responsibilities as the lead agency under the Surface Mining and Reclamation Act, or as we call it, SMARA. And I've been doing, I've been working in the Office of Mine Reclamation for over 25 years.
I only recently became the assistant director in charge, but prior to that I was in charge of the reclamation unit, and that's the unit that all reclamation plans are required by SMARA to be sent to our office for a 30-day review, and the reclamation unit is the unit that reviews those from a technical perspective and to assure that they meet the minimum requirements or substantially conform with SMARA. So I've had a lot of experience in that capacity. We've reviewed hundreds of reclamation plans. Probably about a hundred of them go through our office a year. This is definitely one of the more comprehensive reclamation plans that we've seen at least this year.

As I said, SMARA requires three things prior to conducting surface mining operations. A permit to mine. In this case that's not required because Lehigh Quarry has a vested right to mine. That means they were a legal, nonconforming use prior to 1976 when SMARA became effective. But they still are required to have a reclamation plan to show how any areas that are disturbed by surface mining operations will be reclaimed in accordance with SMARA. And they have to have a financial assurance in place to assure that either the County,
the lead agency, or the Office of Mine Reclamation could conduct, fulfill the requirements of the reclamation plan should the operator not be in a position to do it.

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

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

And as I mentioned earlier, prior to approving it, that plan had to come to the Office of Mine Reclamation for a 30-day review. When it comes to our office, it's assigned to a team. On that team is a geologist, someone that's licensed to practice geology in the State of California, and a biologist with expertise not only in biology, but in revegetation of mine lands.
And so that team, we did get -- this plan was reviewed, reviewed by the Office of Mine Reclamation, by a team including a geologist and a revegetation specialist.

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

And prior to taking action on the reclamation plan, the lead agency has to respond to our comments. So the County did respond. We actually had comments in a letter on January 13th, and then we followed up with, we had a conference call with the operator, I believe, and the County. And we had some additional clarifying comments. But all of those comments that the lead agency is
required to respond, provide us with a draft response to those comments. And so that has also been done.

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

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

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

CHAIR PERSON LeFAVER: Thank you.

Any questions of the deputy director?

Commissioner Schmidt.

COMMISSIONER SCHMIDT: I'm just curious.
How often do mining organizations update their reclamation plans?

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

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

COMMISSIONER SCHMIDT: Thank you.

CHAIR PERSON LeFAVER: Other questions from staff?
Are you going to be around for a little bit, I hope.

MR. POMPY: I will, yes.

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

MR. POMPY: Thank you for letting me talk.

CHAIR PERSON LeFAVER: Thank you for coming.

We'll continue with the public hearing.

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

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

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

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

MR. RUDHOLM: So seven if they have not,
and five if they did?

CHAIR PERSON LeFAVER: Yes.

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

MR. RUDHOLM: I'll do my best.

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

CHAIR PERSON LeFAVER: Hello. Welcome.

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

One thing is they've always tried to be a good neighbor to the community. And they've done that by supporting charities, supporting town functions and group functions. So it's my sincerest belief that this reclamation plan that they're proposing will bring the site up to what it needs to
be, and I hope that you feel the same way.

Thank you.

CHAIR PERSON LeFAVER: Thank you.

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

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

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

CHAIR PERSON LeFAVER: Very good.

Mr. Grissom, welcome.

MR. GRISSOM: Thank you. Good evening.

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

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

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

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

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

Thank you very much.

CHAIR PERSON LeFAVER: Thank you.

Any questions?

(No response.)
CHAIR PERSON LeFAVER: Thank you.

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

CHAIR PERSON LeFAVER: Mr. Yew.

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

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

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

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

The other thing which we will reiterate, and perhaps Mr. Pompy could clarify this, is that we still feel that the cement plant ought to be
included as part of the project.

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

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

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

And also, we urge once again that the cement plant be modernized, reduce pollution. And
it should be, in order to reduce the negative
impacts of the cement plant, the County ought to
require that Lehigh submit to new source performance
standards.

Thank you very much.

CHAIR PERSON LeFAVER: Thank you.

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

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

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

MR. RUDHOLM: I beg your pardon.

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

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

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

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

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

I'm not sure that I have as much faith in
the management's commitment to the current
reclamation plan, any more so than I do what it is
that they should have been doing all along. So I'm
concerned that even interim selenium runoff doesn't
make life any healthier for any of us downstream, and down wind from what it is that we're living with.

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

So thank you.

CHAIR PERSON LeFAVER: Thank you.

Do you have a question?

COMMISSIONER VIDOVICH: I'm just curious where his address is. That's all.

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

COMMISSIONER VIDOVICH: No, he didn't say Hills.

THE WITNESS: No. Los Altos.

CHAIR PERSON LeFAVER: Los Altos. Sorry.

MR. WHITWORTH: Homestead, Foothill, 280.


CHAIR PERSON LeFAVER: Thank you.

MR. RUDHOLM: Next speaker, then, would be Alice Kaufman representing the Committee for Green
Foothills, and she'll be afforded seven minutes.

Ms. Kaufman would be followed by

Marylin McCarthy.

CHAIR PERSON LeFAVER: Ms. Kaufman. Hi.

Welcome.

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

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

This is particularly true of the input from government agencies such as the Regional Water Quality Control Board that have expertise in various issues relevant to quarry operations and jurisdiction over aspects of those operations. So I would urge you tonight to not rush to reach a
decision on this. It seems like there's a lot of complex issues that need to be resolved and that could potentially benefit from further analysis. So I would urge you not to rush to approve the RPA or certify the EIR until more analysis of the issues has been completed.

    Thank you.

CHAIR PERSON LeFAVER: Thank you.

Any questions?

Thank you.

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

COMMISSIONER CHIU: Not at all.

Thank you. Good evening.

The Committee for Green Foothills and the Planning Commission have worked years together, so I just wanted to ask you as a representative for the environmental community, having heard the testimony at the previous meeting from the State Water Control Board, that there currently is not the technology available to treat selenium in the water, and that there possibly are two plants in Canada which are attempting to do this or are in construction, how would you address the situation that the selenium in the water is unmitigated, unmitigatable impact? Do
you want us to use that -- would you suggest that we use that information to just deny the reclamation plan, or is there -- have you come across any information at all to treat the selenium? I just wanted to hear your thoughts about the unmitigatable impact.

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

I'll say that I have been, you know, very swayed by the opinions and the information provided by the Water Quality Control Board. I feel that they're an agency that is responsible for this, they're clearly going to be responsible for, you know, regulating these discharges in the future. And if they're expressing significant concerns with, you know, the potential, the potential lack of adequacy of the mitigations that have been proposed, I think that those should be given a great deal of weight because that's -- they're responsible for the water quality of the creek. And once this is done, it's done. Correct. I mean, it's -- we're looking for a permanent solution here, so that's why I think
that we shouldn't rush into it.

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

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

COMMISSIONER CHIU: Thank you.

MS. McCARTHY: Thanks.

CHAIR PERSON LeFAVER: Thank you.

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

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

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

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

CHAIR PERSON LeFAVER: Hi.

MS. McCARTHY: Good evening, everyone. I'm going to repeat a little bit what's said, but I think it's necessary to emphasize this point.
CHAIR PERSON LeFAVER: Bring the mike to you. There you go. Thank you.

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

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

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

Exhibit 5 also elaborates on the benefits of cement to the County, even though the County has stated repeatedly that the cement plant and its impacts are precluded from the impacts the public has been allowed to consider.
1 As stated in the Final EIR, page 3.1-18
2 section B, the cement plant is not a component of
3 the project.
4
5 After the May 24th meeting started, the
6 County released all the arguments for the benefit of
7 the cement plant on neglecting to offer any critical
8 arguments of their own or allow any from the public.
9
10 The public is entitled to participate in
11 the evaluation of the full economic impacts of the
12 cement operation including the substantial negative
13 affects on health and the environment. For example,
14 note that the health impact from SO2 alone is
15 $35 million. This is from the "Citizens' Report on
16 the Cement Plant Regulation" in the San Francisco
17 Bay Area by Gary Latshaw.
18
19 This cost is a small fraction of the
20 overall health impact from a vast array of other
21 pollutants from the kiln, and includes nothing from
22 the thousands of antiquated trucks servicing the
23 plant. The County must include all the impacts from
24 the cement plant and recirculate the EIR.
25
26 Don't rush into this. Take your time, and
27 allow the opportunity for the public to really
28 comment on the full scope of what goes up up there.
29
30 And on a lighter note, I'd like to also
comment that in the Conditions of Approval there is quite a bit of talk about avian species, bats, and other creatures that are disturbed. Their natural habitat is disturbed, but there is nothing that details what happens to these creatures if they're found wounded or injured. So I'd like to recommend that it be added that these creatures be humanely trapped, taken to the Wildlife Center of Silicon Valley on Penitencia Creek, and a generous donation be made by Lehigh to that organization to foster for their care and eventual re-release or rehabilitation if it's possible.

Thank you.

CHAIR PERSON LeFAVER: Thank you.

COMMISSIONER RUIZ: Chair --

CHAIR PERSON LeFAVER: Yes.

COMMISSIONER RUIZ: Excuse me, ma'am.

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

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

MS. McCARTHY: Well, they talk about that a biologist will go out and look at nesting sites,
that certain disturbances are only allowed from
month to month to allow for migration, nesting,
maturity of pups or whatever these little creatures
are called. But there's nothing that says what
happens if the work that's being done, or the
disturbance that's being done in these native
habitats injures or orphans young animals or birds
or bats, So I'd like some kind of mitigation put in
place that allows for humane rescue, maybe education
from the Wildlife Center of Silicon Valley. I'm
sure they'd be willing to come out and talk to
Lehigh. And I think Lehigh should make a generous
donation to this organization to -- for all the
things that are necessary to see that these native
species are taken care of to the point of being
rereleased, and if not rereleased, then support for
their care in a native museum or a training center,
teaching center. I just think that's only fair.

COMMISSIONER RUIZ: Thank you.

CHAIR PERSON LeFAVER: Thank you.

MR. RUDHOLM: Mr. Chair, the next speaker
provided some documents that I distributed earlier,
and she also provided a set of photographs, but we
have the one set that needs to be shared among all
the commissioners, and she's going to refer to those
photographs, I think, as part of her presentation. And the next speaker is Cathy Helgerson representing Citizens Against Pollution. But she spoke last week, so she'll be allowed five minutes.

MS. HELGERSON: Thank you.

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

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

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

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

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

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

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

I want to bring up Exhibit 47, which is
part of the packet. And it talks about what's
underneath the east material storage area. It's the
aluminum plant and the ammunitions plant. As you
can see, there's a picture there of when it first
started, one and two, how low everything was, and
now we're up to over 800 feet high.

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

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

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

MR. RUDHOLM: Mr. Chair --

CHAIR PERSON LeFAVER: Yes.

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

MS. HELGERSON: It's pretty big.

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

CHAIR PERSON LeFAVER: Sure.

MS. HELGERSON: Do you want this also. That's the area that talks about -- it's hard to see, but as you can see, there's room up in front. The trucks go up that little hill and they deposit,
I don't know how they got up there, believe me, it's just crazy, but they're spreading out, and they could go higher and they could spread out more. And that's what they're doing. And I don't know how long this is going to continue. Gary knows more about this because he goes out there with the surveyor all the time. I've been taking these pictures ongoingly. The ones you have are even more so.

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

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

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

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

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

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

You can see the pictures I've given you. You can't even see, from Stelling you can't even see the hill it's so polluted and so thick, so I don't understand why no one realizes how much pollution
there is. We have to look at this and clean this mess up.

I wanted to show you this one last thing --

CHAIR PERSON LeFAVER: Your time's up.

MS. McCARTHY -- but I can't do that.

Okay.

CHAIR PERSON LeFAVER: So thank you.

MR. RUDHOLM: Mr. Chair, the next speaker is Mr. Bill Almon representing Quarry No, and Mr. Almon will be followed by Barry Chang.

Mr. Almon spoke last week, so he will be afforded five minutes.

CHAIR PERSON LeFAVER: Thank you.

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

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

I look out on the west material storage area. I've looked out on it for over 15 years.

There is no reclamation there.

In the 2007, 2008, 2010 reclamation plans, there was reclamation to start. In the 1985 plan reclamation would start immediately. There is no reclamation started yet. Consequently, we look upon
all of this as somewhat questionable.

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

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

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

However, the new information, is I understand that, and possibly Jim can talk to it, that in other reclamation plans of other quarry cement plants have been included, so there is no OMR regulation that cement plants will not be included. It was thrown out here because of the representations made by Lehigh to the supervisors.
Trucks, just one mention of trucks.
You'll see it in tomorrow's paper. One of the cement trucks was involved in quite a significant accident this morning and shut down the intersection between 85 and 280 for approximately five hours. Morning commute.

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

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

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

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

Thank you.

CHAIR PERSON LeFAVER: Thank you.

Any questions?

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

MR. GONZALEZ: If I can, Mr. Chairman, Members of the Planning Commission: What happens with a financial assurance mechanism, and I went through this last week but I'll go ahead and summarize this, is every year, a mine operator is required to submit a financial assurance cost estimate to be reviewed by the Department of Planning and Development, the County. What is also
involved in that review is forwarding a copy of that
to the State Office of Mine Reclamation. This has
to be done on an annual basis.

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

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

So there is no provision in SMARA for
liening property. What we're doing is basically
calculating ahead of time for those areas that will
be disturbed, collecting a financial assurance up
front before those areas are disturbed. And then
next year as new areas are to be disturbed according
to the reclamation plan, then those figures will be
adjusted to account for those newly disturbed areas, and then the Applicant would have to go through the same process every year, and basically prove that they will have enough financial backing there to cover in case they walk away or they are unable to finish the reclamation so the County has that funding ahead of time.

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

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

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

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

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

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

CHAIR PERSON LeFAVER: Well, thank you.
MR. ALMON:  Thank you for the opportunity to speak.

CHAIR PERSON LeFAVER:  Okay.

Commissioner Vidovich wants to know where you live.

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

MR. RUDHOLM:  Mr. Chair --

CHAIR PERSON LeFAVER:  I'm sorry.

Commission Ruiz.

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

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

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

COMMISSIONER RUIZ:  And during the presentation, staff presented that there would continue to be the runoff of selenium. Does it cover those type of releases, as well as selenium in the water?
MR. GONZALEZ: Any areas of disturbance or any items that are listed in the Conditions of Approval that are part of the mitigations that are related to any disturbances or any issues out there, those would be covered.

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

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

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

COMMISSIONER RUIZ: Because during the presentation, we don't -- there was a discussion about the selenium impacts, that in some cases we don't know, so to cover those potential impacts is
what I would be looking for in the financial assurance.

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

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

CHAIR PERSON LeFAVER: Thank you.

Any other questions?

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

MR. EASTWOOD: That is correct.

COMMISSIONER COUTURE: Thank you.

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

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

COMMISSIONER COUTURE: I just wanted it for the record.

CHAIR PERSON LeFAVER: Thank you.

Commissioner Ruiz.

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

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

CHAIR PERSON LeFAVER: Thank you.

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

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

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

(Recess had.)

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

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

CHAIR PERSON LeFAVER: Very good. Thank you.

Mr. Chang, please.

MR. CHANG: Thank you, Chairman. Thank you commissioners. Thank you for having this opportunity. My name is Barry Chang. I'm a Cupertino City Council member, but I'm here for myself, not representing the entire council. Okay.
That's number one.

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

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

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

You can dim the light.

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

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

Look at now. Tell me this is reclamation.

Reclamation mean it's in the progress. Nothing has
been done for couple years.

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

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

So my request is we can put, ask them to put up a bond, $50 million bond for the selenium treatment. Number two, shorten time for two years. Instead of two years, you probably need review it every six months. Make sure there's a way -- my understanding, there's a way to treat selenium called reverse osmosis. So it's not total, it's just expensive. But there is a way to do it.
So please slow down. If you did not get a chance to see the plant, you should go look at that east material storage yourself. This is much worse now. No reclamation, and that alone west material storage is same. For 70 years, nothing.

Thank you.

CHAIR PERSON LeFAVER: All right. Thank you.

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

CHAIR PERSON LeFAVER: Thank you.

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

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

Of the 230 people surveyed, 90 percent want the pile on EMSA removed. Given its proximity to residents, it is no surprise that even more do
not want the pile to grow any further. They do not
want the so-called view shed that's been proposed.

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

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

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

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

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

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

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

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

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

So if you look at this close-up, you will see an artificially shaped barren pile of dirt. Is it really any surprise if you extract limestone,
sand and aggregate materials, they've largely been removed, you yield the soft material that can't be used to make cement or concrete products. Basically it's a lot of clay. So how many of you could imagine in your back yard growing anything like the mature trees and vegetation that you see in the surrounding hillsides with just a foot of dirt and no long-term irrigation.

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

Thank you very much.

CHAIR PERSON LeFAVER: Thank you.

Any questions of Mr. Sinks?

COMMISSIONER VIDOVICH: Rod --

MR. SINKS: Yes, sir.

COMMISSIONER VIDOVICH: One of the things I heard is, we're looking at this west material yard, and you're familiar with it obviously. Other than moving it all into the hole, is there a suggestion, a compromise suggestion for that area that would reduce the amount of trucking of the tailings into the hole, reduce that, that would
still work out? Could it be a hill there, but maybe not --

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

COMMISSIONER VIDOVICH: You're talking about the north, the main quarry that they're --

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

CHAIR PERSON LeFAVER: Thank you.

MR. SINKS: Thank you very much.

MR. RUDHOLM: The next speaker is Tim Brand, and he will be followed by Matt Baldzikowski. And Mr. Brand spoke last week,
so he will be afforded two minutes.

CHAIR PERSON LeFAVER: Thank you.

MR. BRAND: Good evening.

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

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

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

We've asked questions about the baseline for selenium which were never answered. How much
contamination is due to the depth of the mine, and
how does the discharge correlate to the pumping
activities? How much would be mitigated if they
don't continue extracting another 200 feet?

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

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

The next thing is about the cement plant.

And I'm sorry, but we've asked this specifically a
couple times, and Lehigh has used an exemption in
SMARA that says, operation of a plant site used for
mineral processing including associated on-site
structures, equipment, machines, et cetera, is
subject to all of the following conditions. To be
exempt, you have to meet all four of the following
conditions, and I'm just going to read one for
simplicity. This is Section 2714C, and number 3 is,
none of the materials being processed are being
extracted on-site. They certainly don't meet that condition. Mr. Pompy is here tonight. Maybe we can get an answer to this question tonight.

I appreciate the opportunity to speak again. Thank you.

CHAIR PERSON LeFAVER: Thank you.

Any questions of the speaker?

(No response.)

CHAIR PERSON LeFAVER: None. Thank you.

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

CHAIR PERSON LeFAVER: Hi. Welcome.

MR. BALDZIKOWSKI: Good evening. Thank you.

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

The issues that I raised regard the selenium treatment and the conclusion by the County that the quarry will meet water quality standards at the completion of reclamation. As the district in
the San Francisco Regional Water Control Board previously stated, this conclusion remains speculative, at best.

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

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

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

Regarding the Permanente re of scenic easement, planning staff stated that the analysis
was undertaken which concluded that restoration of
the existing impacts to the scenic easement was
determined to be infeasible. This analysis was not
presented in the EIR, so we can't offer an opinion
on that.

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

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

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

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

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

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

Similarly, Lehigh submitted to the Planning Commission that the quarry currently generates approximately two and a half million in
annual property taxes to the County, and
approximately 135 and a half in total sales
collection from the counties. These figures appear
to also blend the economic benefits of the quarry
with the cement plant, which as stated repeatedly in
the EIR, is not part of the Reclamation Plan.

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

Cost for scenic degradation to the region,
and the air and water pollution impacts to human and
wildlife should be analyzed, calculated and
presented in a thorough economic impact analysis to
balance the skewed analysis presented by Lehigh.

The economic return to the project brings
significant environmental impacts that have not been
economically analyzed or calculated.

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

In closing, the District believes that the
FEIR is deficient in many critical areas with both
SMARA and CEQA. Additionally, inappropriate, incorrect and misleading information continues to be interjected into the process. We respectfully request that the County Planning Commission deny the permit -- deny the Permanente Quarry Reclamation Plan and FEIR.

I've got a minute-20 still.

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

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

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

The Kaiser knoll was discussed.
Henry Kaiser understood the visual impacts associated with the quarry, and the scenic value that it has to the community. I hope everybody else still does.

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

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

Thank you very much.

CHAIR PERSON LeFAVER: Thank you.

Are there any other speakers.

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

CHAIR PERSON LeFAVER: Very good.
Are there any questions from the Commission to any of the -- to the Applicant or to the -- anybody here? Or I -- you're pointing and I'm --

COMMISSIONER CHIU: (Indicating.)

CHAIR PERSON LeFAVER: I do -- yes.

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

CHAIR PERSON LeFAVER: Go ahead.

MR. HARRISON: First, we've carefully followed this process, as you might expect, followed by the -- taken the process that this staff followed, and we do support staff recommendations largely. We wanted to clarify a couple things. As far as the EMSA and removing that material potentially and putting it in the main pit, that was analyzed in the EIR, and it was determined not to be environmentally superior.

More importantly, we think there's questions of feasibility with that associated with the company's vested rights to operate in that area. And that's an important point for us.
As far as the conditions are concerned, we support the conditions that are being recommended by staff in their supplemental submittals today, with the exception that we don't think the groundwater monitoring that's been suggested is warranted, simply because nothing in the EIR suggests that there's a potential impact in that area, and we don't think it's sufficiently flushed out to indicate what it would actually add to the process.

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

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

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

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

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

CHAIR PERSON LeFAVER: Any questions? Commissioner Vidovich.

COMMISSIONER VIDOVIĆ: What is the economic harm to Lehigh if the Reclamation Plan
encompasses non-quarried areas that are subject to land sliding because of the quarrying, or if they include the cement plant and the reclamation result is a cement plant, you don't have to have it open space, but the reclamation result is a cement plant, then it can be dealt with in an entirety. Just to include that in the reclamation boundary, what is the economic harm to Lehigh?

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

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

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

MR. HARRISON: Yeah. What I can say, as a
legal matter, I don't believe this body has the authority to put the cement plant in the reclamation plan.

CHAIR PERSON LeFAVER: Questions, other questions.

Commissioner Chiu.

COMMISSIONER CHIU: Good evening.

MR. HARRISON: Good evening.

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

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

MR. HARRISON: The primary reason that it's so is based on Constitutional law that flows
from the Federal and State constitutions, and has been discussed in numerous cases. But the leading case in California is a case called Hanson Brothers Enterprises. County Counsel is very familiar with it and analyzed it in detail as they've developed, I believe, their legal approach to this. And it's based on the fact that when one has an operation that's a legally vested right; and in this case, February of last year the Board of Supervisors determined that mining operations were legally vested and entitled to continue without a permit, then you can't require an additional permit to entitle them and so forth.

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

COMMISSIONER CHIU: Thank you.

CHAIR PERSON LeFAVER: Commission Bohan.

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

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

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

And what we think the most common thing would come up is, a lot of our activities will be subject to consultation or review by other agencies,
such as the Department of Fish and Game. And if they delay, and sometimes due to staffing reasons or others they do delay, we might have to miss a deadline and we have no recourse but to schedule a hearing before this body to make a change. So we think that's important.

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

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

COMMISSIONER BOHAN: Uh-huh.

CHAIR PERSON LeFAVER: Any other questions. Thank you.

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

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

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

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

CHAIR PERSON LeFAVER: Yes.

MR. POMPY: And I think what happened over time, this is, you know, somewhat of a unique situation. It's a very old quarry, opened a long time ago. And when it was originally came under SMARA in 1985 and the Rec Plan was approved, cement plant operations were not part of that reclamation plan. And then it came up again when this process started to get this reclamation plan going. And I think it was the quarry operator working with the County. The County, the quarry operator has maintained that that's a separately permitted, or
separate operation, separate from the quarrying
operation and the mining, and the County concurred
that the cement plant would not be part of the
reclamation plan.

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

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

MR. POMPY: Yes.

CHAIR PERSON LeFAVER: Thank you.

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

In the past, because there was lack of a
good reclamation plan, things like the east material
storage area happened. Now with this plan, those
kind of things cannot happen without coming back to
the County and asking for an amendment to that particular plan. So I think there's some bene- -- there's a lot of benefit to the community and to the County in getting this reclama- --and getting this, bringing this mine into compliance with SMARA.

CHAIR PERSON LeFAVER: Thank you.

 COMMISSIONER VIDOVICH: Thank you for coming, sir.

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

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

    But it seems to me that if you're going to
have a reclamation plan, you might want your
boundary to include areas that could be affected.
And the cement plant's right in the middle of
everything, but reclamation allows you to say, okay,
my reclamate reclaimed use is a cement plant there,
and we'll bring the material from outside.

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

    MR. POMPY: Well, again, this is a
decision of the lead agency, the County, and the
County has made a decision to not include the cement
plant in, as part of the reclamation plan. And our
office has made a determination that that's not
inconsistent with the Surface and Mining Reclamation
Act, the County's decision on -- in this particular
case.
COMMISSIONER VIDOVICH: But actually, we're the final decision makers, I think.

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

COMMISSIONER VIDOVICH: Four of us are.

AUDIENCE MEMBER: Do the right thing.

CHAIR PERSON LeFAVER: Any other questions.

Commissioner Ruiz.

COMMISSIONER RUIZ: I have a follow-up question.

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

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

And I think what happened in this particular case a few years back under a different
assistant director who was newly appointed, started down the path of saying that in OMR's opinion, that the cement plant should be part of the reclamation plan. And, again, based upon further information provided by the mine operator, our office, the Office of Mine Reclamation, reversed the decision on whether or not the cement plant should be, and concurred with the County determination that it doesn't have to be part of the Reclamation Plan.

MR. RUDHOLM: Mr. Chair --

CHAIR PERSON LeFAVER: Yes.

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

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

MR. POMPY: Yes, that's correct.

CHAIR PERSON LeFAVER: Okay. Thank you.

Other questions.

(No response.)

CHAIR PERSON LeFAVER: No other questions.

Thank you.

MR. POMPY: Thank you.

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

Do we have any other speakers?

Commissioner Ruiz.

COMMISSIONER RUIZ: One of the actions that we're asked to take is to make a finding of, a statement of overriding considerations, and one of those overriding considerations would be the economic benefit, and I'm understanding that the economic benefit includes the cement operations and -- or am I misunderstanding that? I think it's including and I think that's what I've heard. However, throughout this process we're asked to focus only on the reclamation plan limited to -- and to exclude the cement operations. So it's confusing
CHAIR PERSON LeFAVER: So why don't you, staff, explain.

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

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

Now, the mine operator has submitted independently from County Counsel and County staff their own statement of overriding considerations, and that's very common throughout California. And in the county in the past when the objective of CEQA is to reconcile what are the benefits of the project versus knowing there's significant impacts, it's
very traditional to ask the proponent, be it the applicant, the owner, the mine operator to submit their own statement of why they believe their project has its benefits.

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

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

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

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

But you're required under CEQA to make a the statement of overriding considerations for any impact, significant impact that cannot be mitigated as a consequence of your approval of the project if you're going to approve the project.
The contents of the statement are yours. You can use the contents that are suggested in the resolution by staff in whole or in part. You can add any additional factors that you believe based on your experience and the testimony and the other evidence that has been presented in this hearing, you may wish to add. That includes the information that is suggested by the quarry operator. But you're not required to add any of it, you're not required to use all of what has been recommended by staff. You can use any portion of it that you think is significant or sufficient to constitute a statement of the reasons why it is necessary in your opinion, if that is your opinion, to go forward and approve the project, notwithstanding the fact that the environmental process has identified environmental impacts that cannot be mitigated to a less than significant impact.

COMMISSIONER CHIU: Mr. Chair.

CHAIR PERSON LeFAVER: Go ahead.

COMMISSIONER CHIU: Since there are no more speaker cards, and I don't know if the -- my colleagues have any other questions of anyone in the audience, can we -- can I move to close the public hearing so we can begin discussion on the positions.
CHAIR PERSON LeFAVER: Well, I just want to make sure that if anybody has any questions, or need clarification while the public hearing is open, and the people out here, that we can do so. So if there are none, at this point, I'll close the public hearing.

Thank you.

The public hearing is now closed. We have discussion.

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

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

So let's start our discussion with the
Environmental Impact Report. And the reason I say that is because, number one, it's first on the agenda. And number two, it is an information document; that is, in the information that has been presented to us, it gives you information about the project as much as it can, and it is not a de-decision making document. That is, it is only an information document and includes items that would formally be adopted under the approval of the Reclamation Plan.

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

Go ahead, Commissioner Vidovich.

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

One of them, I made some, you know, discussion and argument about, and maybe we can take these one at a time and the Commission can talk about them, because it's a very, very important
project. It's a worthwhile endeavor, but it's also
smack in the middle of, you know, a very special
area.

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

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

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

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

CHAIR PERSON LeFAVER: Commissioner Chiu.

COMMISSIONER CHIU: Thank you, Mr. Chair. Commissioner Vidovich, I don't know if you know, and I would throw this out to staff as well, if we change the boundary areas, would the EIR still be sufficient, or would the new area need to be included which would require either a supplemental or an additional EIR, and whether or not that has to be recirculated?

COMMISSIONER VIDOVICH: My reason to change it is basically from the information the EIR gave me. The EIR gave me this information that we have instability at the north. The cement plant is there. There's been controversy whether it should be included or not. I don't see that you -- I see
the EIR as valid and it's doing its job. That's
what I see.

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

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

CHAIR PERSON LeFAVER: Staff?

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

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

If Lehigh, for example, were to expand or
want to expand its mining operations beyond the area
of its defined reclamation plan into other areas
that they own, and other areas where they may be
vested to operate, but, in fact, have not operated
yet, then Lehigh would be required to seek an amendment to their reclamation plan before they initiate mining operations.

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

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

COMMISSIONER VIDOVICH: So if you ask two lawyers you get two different opinions.
But if their mining has created instability, to me that's an impact. And so their mining has created instability that spreads to the area that they're not allowed to mine in, I would say you would want to include that area for jurisdictional purposes into the reclamation plan.

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

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

COMMISSIONER VIDOVICH: I disagree.

CHAIR PERSON LeFAVER: Okay. County Counsel indicated.

Go ahead.

COMMISSIONER CHIU: I wanted to -- well,
when the public hearing was closed, I want to ask County Counsel if they concurred with counsel for Lehigh in their response to my last question to the counsel for Lehigh, which was that as a matter of law, the reclamation plan is a separate project from the mining operations.

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

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

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

MR. KORB: That's correct.

COMMISSIONER CHIU: Thank you.

CHAIR PERSON LeFAVER: Commissioner Couture.

COMMISSIONER COUTURE: So going back to the EIR, and they said that there were -- the
findings were that there were -- to move the EMSA back into the quarry was not economically feasible. If it -- I'm trying to understand why that wouldn't be economically feasible from the standpoint of if it went out, it could go back in. It doesn't seem like it's that big of a deal. I don't -- and it seems like it's already been studied with the EIR so it could be done if we thought it should be done. Am I mistaken?

MR. EASTWOOD: I'll start.

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

COMMISSIONER COUTURE: Thank you.

CHAIR PERSON LeFAVER: Commissioner Chiu.

COMMISSIONER CHIU: Thank you.

One of the speakers, I believe it was either Council Member Chang or another speaker indicated that there's a possibility that reverse
osmosis may be a process that could be used in the
treatment of selenium. Does the staff have any
research on that, and was that included in the EIR?

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

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

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

COMMISSIONER CHIU: And the standard that
we have to use with evaluating whether or not there
are mitigation options for environmental impact is
its feasibility both financially and in
scientifically, or could -- if staff wants to just
clarify what the standard is.

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

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

CHAIR PERSON LeFAVER: And, Commissioner
Chiu, again I would read page 7 where the staff
summarized that very specifically, and they did look
into it quite heavily.

COMMISSIONER CHIU: Yes. Thank you.

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

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

And so although that -- I've heard over
and over and over again that you're extremely
concerned by the selenium in the water, and we are, that at this time the best we can do is to keep checking to see if it becomes feasible under the definition provided under the law, and to keep monitoring and checking. That seems like the best we can do. So that's the purp-, that was the purpose of my comment.

Thank you, Mr. Chair.

CHAIR PERSON LeFAVER: Thank you.

Other questions about the Environmental Impact Report.

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

Commissioner Vidovich.

COMMISSIONER VIDOVICH: Just as a matter of process, the conditions seem to be tied with the EIR. Can we go through motions on the conditions? Because some of us, you know, if we just have it
done then we could vote for the -- we gotta vote for
the EIR, but we want to know what we're voting for.
And I think the conditions, I don't want the
attorneys to say, well, you voted for the EIR, now
you can't change the conditions. I don't know what
he's going to say --

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

COMMISSIONER VIDOVICH: Pardon me?

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

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

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

Counsel.

MR. KORB: You can. What I would -- I
would strongly suggest first that you take action on
the EIR, which then makes it possible for you to
take whatever action you wish to take on the plan,
including the Conditions of Approval.
COMMISSIONER VIDOVICH: Including making it a bigger area if we wanted to, anything we want.

MR. KORB: Yes --

COMMISSIONER VIDOVICH: Okay. Thank you.

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

CHAIR PERSON LeFAVER: Commissioner Schmidt.

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

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

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

So parallel with that, again, if during
that annual monitoring it's discovered that the reclamation plan is not working, or it needs to be changed to be consistent with SMARA, there could be scheduled a compliance hearing, somewhat similar to what you have with reaffirmation modification hearings with use permits to evaluate if the reclamation plan needs to be changed.

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

CHAIR PERSON LeFAVER: Commissioner Vidovich.

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

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

COMMISSIONER VIDOVICH: The County created overriding consideration language.

CHAIR PERSON LeFAVER: Yes.

COMMISSIONER VIDOVICH: The Applicant, and they're worried about a legal challenge, they spent time and wrote their overriding consideration language.

CHAIR PERSON LeFAVER: Okay.

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

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

MR. KORB: Mr. Chair --

CHAIR PERSON LeFAVER: Go ahead, please.

MR. KORB: Through the maker of the motion, would you be adding to go that motion the adoption of the proposed mitigation monitoring and
reporting program which it comes under the environmental --

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

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

COMMISSIONER VIDOVICH: But we can add that in as part of the motion.

CHAIR PERSON LeFAVER: Is there a second?

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

COMMISSIONER VIDOVICH: We're going to do that -- we're going to discuss that as --

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

COMMISSIONER VIDOVICH: No this doesn't do any of that.

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

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

COMMISSIONER BOHAN: Yeah, second.

CHAIR PERSON LeFAVER: Okay. Sorry. He
looked like -- there's a motion and second to
certify the Final Environmental Impact Report, make
the required findings per the California Quality,
Environmental Quality Act, CEQA, and adopt a
Statement of Overriding Considerations for those
environmental impacts identified as significant and
unavoidable, and, three, adopt a proposed mitigation
monitoring and reporting program. There has been a
motion and a second.

Question?

Commissioner Schmidt.

COMMISSIONER SCHMIDT: We can ask
questions, I presume.

CHAIR PERSON LeFAVER: Yes.

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

MR. KORB: Well, I'm not going to speak
for the staff, but what I believe I heard was that
staff brought it forward, that they made -- pointed
out the fact that it is not unusual for the
proponent of a project that's subject to
environmental review to recommend their own. And as
far as I could tell, staff could take it or leave
it. If the Commission wishes to include it, I think staff is satisfied, but if they want to say something, they should.

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

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

COMMISSIONER CHIU: No, I have no question.

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

COMMISSIONER RUIZ: Yes.

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

CHAIR PERSON LeFAVER: Yes.

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

CHAIR PERSON LeFAVER: We will come back.

The next item that we'll talk about is the Conditions of Approval, which are set for the reclamation plan, which are more specific and
related to a lot of items that you're interested in.

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

CHAIR PERSON LeFAVER: Thank you, Commissioner Vidovich.

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

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

COMMISSIONER CHIU: Okay. So we're going to do this in two motions. The specific, this is the concept of the motion now, and then we'll adopt
the exact language of our findings and --

CHAIR PERSON LeFAVER: Under resolution.

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

COMMISSIONER CHIU: I understand. Thank you.

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

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

COMMISSIONER VIDOVICH: Correct.

CHAIR PERSON LeFAVER: That is correct.

COMMISSIONER RUIZ: So based on information we've heard today and that we plan to go over at a later date, I don't feel comfortable voting for it now. Not -- I do agree that the environmental impacts have been revealed as part of the EIR; however, that part of the mitigation monitoring and reporting program, I'm not
comfortable enough to vote for the full motion, so I won't be voting for it.

CHAIR PERSON LeFAVER: Thank you.

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

COMMISSIONER SCHMIDT: Aye.
COMMISSIONER VIDOVICH: Aye.
COMMISSIONER COUTURE: Aye.
COMMISSIONER BOHAN: (Hand raised.)

CHAIR PERSON LeFAVER: Those opposed.
COMMISSIONER RUIZ: (Hand raised.)
COMMISSIONER CHIU: (Hand raised.)

CHAIR PERSON LeFAVER: Okay. The motion passes.

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

I think the way to start this conversation is to start looking at the Conditions of Approval, and at that time, I'm sure we'll get to the point where it should or should not include various parts of the -- whether the area should be expanded or not.
So let's start on page 1 of the -- which is Exhibit 1, Conditions of Approval. Items 1 through 14 deal with the general requirements of the Conditions of Approval for the Reclamation Plan.

COMMISSIONER VIDOVICH: Do you want us to reverse that one? Do you want a reconsideration?

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

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

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

COMMISSIONER VIDOVICH: Would that make you feel more comfortable?

MR. KORB: That would be fine. You can do that. As long as you've taken your action on the EIR, you can deal with the mitigation monitoring program after you've dealt with the conditions.
COMMISSIONER VIDOVICH: I'll make a motion of reconsideration, to have a reconsideration on the mitigation monitoring.

COMMISSIONER CHIU: Second.

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

So we have a motion of reconsideration.

COMMISSIONER COUTURE: I'll second it.

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

COMMISSIONER VIDOVICH: No, no. It's a motion to reconsider that motion. You have to then consider it.

CHAIR PERSON LeFAVER: Bear with me.

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

COMMISSIONER VIDOVICH: It was only the mitigation monitoring.

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

COMMISSIONER VIDOVICH: The whole motion?
CHAIR PERSON LeFAVER: Yes. So it's a motion for reconsideration of that motion.

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

PLANNING COMMISSIONERS: (In unison) Aye.

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

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

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

COMMISSIONER BOHAN: (Hand raised.)

COMMISSIONER COUTURE: I second it.

CHAIR PERSON LeFAVER: Commissioner Bohan raised his hand quickly.

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

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

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


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

PLANNING COMMISSIONERS: (In unison) Aye.

COMMISSIONER RUIZ: I'm sorry.


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

CHAIR PERSON LeFAVER: That's correct. So what we will do is take up both the Conditions of Approval under Exhibit 1, as well as the mitigation measures and monitoring and reporting program at the same time. All right.

And under the Conditions of Approval there is a specific point within the Conditions of Approval where it adopts those mitigation and monitoring reporting programs. So as we go through
the Conditions of Approval, we can then talk about it. When we get to that point, we can talk about it.

Commissioner Bohan.

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

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

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

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

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

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

CHAIR PERSON LeFAVER: Go ahead.

COMMISSIONER VIDOVICH: Okay.

My motion is that any and all references to the size of the reclamation area being 1,238 acres shall be deleted, and the reclamation area
shall be increased to include the area considered the cement plant, and that the reclamation plan is that that shall be a cement plant.

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

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

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

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

COMMISSIONER VIDOVICH: It's similar to that, yeah.

CHAIR PERSON LeFAVER: Is there a second?

COMMISSIONER COUTURE: I second the motion.
CHAIR PERSON LeFAVER: Okay. Any discussion?

Commissioner Bohan.

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

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

And I think that's correct, because what we're dealing with here is where they dug a hole in the ground in order to get the minerals out that they need to make cement. And the part that actually processes that is on an area that really isn't being excavated or modified to the extent other than just to get the equipment in there and run it. And it could be that once they run out of materials there, they could be bringing in materials from another area and continue to process there. So I think it is a separate and distinct -- --
COMMISSIONER VIDOVICH: And that's your objection on the cement plant. But what about --

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

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

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

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

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

COMMISSIONER COUTURE: I withdraw.

COMMISSIONER VIDOVICH: I'll withdraw it.

CHAIR PERSON LeFAVER:

COMMISSIONER VIDOVICH: So do I have to repeat my motion again?

CHAIR PERSON LeFAVER: Yes, yes.

COMMISSIONER VIDOVICH: The motion is to include the north area, that is subject to the north
area because it's subject to instability because of overly steep mining. And in the environmental document, some of this is argument, but in the environmental document it says that it's sliding down, it's dangerous, it's sliding down, and so include that in the area which then the County will have jurisdiction over it.

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

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

Do you want me to --

CHAIR PERSON LeFAVER: Yes, please.

COMMISSIONER VIDOVICH -- draw it.

COMMISSIONER COUTURE: (Indicating.)

CHAIR PERSON LeFAVER: Just great.

COMMISSIONER VIDOVICH: North would be --

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

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

CHAIR PERSON LeFAVER: Sure.

COMMISSIONER VIDOVICH: (Marking.)

CHAIR PERSON LeFAVER: Are there any
COMMISSIONER BOHAN: I have a question of staff. With this modification, what affect is this going to have?

CHAIR PERSON LeFAVER: Yes, there you go.

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

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

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

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

My understanding is that you would have to direct the mine operator who has proposed this plan to change that plan.
What's before the Planning Commission is to determine, does the reclamation plan before you substantially comply, or does it substantially meet the SMARA findings. If it does, you're required to approve the plan.

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

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

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

CHAIR PERSON LeFAVER: Commissioner Chiu.

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

CHAIR PERSON LeFAVER: Go ahead.
There was a second. Was there a second?

There was a second, yes.

COMMISSIONER COUTURE: (Nodding head up and down.)

COMMISSIONER CHIU: I just asked -- go ahead.

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

CHAIR PERSON LeFAVER: It was seconded by Commissioner Couture.

MR. RUDHOLM: Thank you. I stand corrected.

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

MR. KORB: Yes.

COMMISSIONER CHIU: For myself, this is a very complicated process that's fraught with potential lawsuits and causes of action. And I would not, it would not be my preference to open up an area which -- where the EIR could be challenged
at this time. So even though I appreciate Commissioner Vidovich's comments, and I do care that hikers might slip off the edge or fall into a hole, I just wouldn't be -- I just can't see myself having the EIR, seeing a legal challenge to the EIR based on changing boundaries at this point. Thank you.

CHAIR PERSON LeFAVER: Thank you.

Any other comments? No other comments?

Commissioner Bohan.

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

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

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

CHAIR PERSON LeFAVER: Any other comments?

I call for the vote. All those in favor
say "aye."

COMMISSIONER VIDOVICH: Aye.

COMMISSIONER COUTURE: Aye.

CHAIR PERSON LeFAVER: All those opposed. Please raise your hands, or say "nay."

Abstentions.

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

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

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

CHAIR PERSON LeFAVER: That's correct. MR. RUDHOLM: And no abstentions and no absences, so the motion failed.

CHAIR PERSON LeFAVER: Okay. Motion fails.

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

CHAIR PERSON LeFAVER: Help yourself. Please do.

COMMISSIONER VIDOVICH: Okay. I would make a motion to include the cement plant with its ultimate use as a cement plant to bring it into
reclamation jurisdiction. That would be my motion.

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

COMMISSIONER VIDOVICH: Yes.

CHAIR PERSON LeFAVER: Is there a second?

COMMISSIONER COUTURE: I second it.

CHAIR PERSON LeFAVER: Moved and seconded.

Any discussion?

All those in favor say "aye."

COMMISSIONER VIDOVICH: Aye.

COMMISSIONER COUTURE: Aye.

COMMISSIONER RUIZ: (Hand raised.)

CHAIR PERSON LeFAVER: All those opposed?

COMMISSIONER CHIU: No.

COMMISSIONERS SCHMIDT, BOHAN, LeFAVER: (Hand raised.)

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

CHAIR PERSON LeFAVER: Very good. Thank you.

Commissioner Couture.

COMMISSIONER COUTURE: I have a question for staff and/or County Counsel, if I may.
What if you go back and look at the ERI [sic] and decide that actually the north slope would actually be included because it's possible that, I'm not sure it was ever distinctly checked for every single foot and yard, what if it actually already is included? Because I don't know. I mean, I don't have any map that I don't think showed me exactly where all that is.

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

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

COMMISSIONER COUTURE: Yes.

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

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

The area that's identified in yellow is
the quarry pit, the top of the slope.

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

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

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

   CHAIR PERSON LeFAVER: Okay. Thank you.

   All right.

   So now that we've gotten --

   Commissioner Vidovich, yes.

   COMMISSIONER VIDOVICH: Are you ready for
another motion. I get rid of mine, then you guys
can do yours. Are you ready?
CHAIR PERSON LeFAVER: I wasn't going to
do a motion.

COMMISSIONER VIDOVICH: But, I mean, we
can go to the recess.

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

COMMISSIONER VIDOVICH: Continue.

CHAIR PERSON LeFAVER: So 30 more minutes.

Are you okay?

THE REPORTER: I'm fine. Thank you.

CHAIR PERSON LeFAVER: Thank you.

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

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

A question, Commissioner Schmidt?

COMMISSIONER SCHMIDT: I'll just say, on
the first condition of approval, Lehigh has
suggested amending it to allow the planning manager
to authorize changes to Conditions of Approval, and
I would not recommend adding that to the condition
myself. I would want to keep the condition as is.

Does staff have a comment about their
recommendation.

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

COMMISSIONER SCHMIDT: Thank you.

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

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

COMMISSIONER CHIU: I see. Okay.

CHAIR PERSON LeFAVER: -- in blue,
responding to what has been suggested. And then
Attachment A goes through each of them. And then
Attachment B are the 1 through, I don't know what
it's up to now, it used to be 89.

COMMISSIONER COUTURE: It's still 89.

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

COMMISSIONER CHIU: Thank you.

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

Yes, Commissioner Schmidt.

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

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

COMMISSIONER VIDOVICH: I don't see that
has, it looks like their intent is they want to give
some flex -- I think it's already there. It seems
like they're scared of a technical deadline or
something that there's no flexibility. And I don't
know if it needs to be written that way, but it says
"necessary adjustments," "deadlines," things like
that. I don't think they're asking -- maybe the way
it's written it's not so good.
CHAIR PERSON LeFAVER: Is there any support on this?

Seeing none, we'll go forward.

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

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

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

That's a motion for discussion.

CHAIR PERSON LeFAVER: Is there a second?

COMMISSIONER COUTURE: I'll second it.

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

MR. RUDHOLM: Mr. Chair, I don't think I heard correctly. The elevation level that would be the limit for the height of the modified reclaimed
EMSA area, I think you said something to the 840 feet elevation level. I'm not sure if that's the correct figure.

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

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

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

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

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

CHAIR PERSON LeFAVER: There's been a motion and a second. Commissioner Bohan.
COMMISSIONER BOHAN: Yeah. I have a question of staff. I heard a number here of $47 million for this Reclamation Plan. If we have to move the east pile back into the pit, what's it going to cost then?

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

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

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

And what we said is to go to 800 instead
of 870, so we're not talking about taking the whole hill down, just not adding as much to it. The neighbors want it to down to, back to 500.

COMMISSIONER BOHAN: Another question of staff.

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

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

CHAIR PERSON LeFAVER: Go ahead. Sorry.

MR. RUDHOLM: I want to make sure I'm clear on what the question is from the commissioner. Is the question how much is there now?

COMMISSIONER BOHAN: In the eastern --

MR. RUDHOLM: In the EMSA.

COMMISSIONER BOHAN: -- storage area, yes.

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

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

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

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

CHAIR PERSON LeFAVER: Commissioner Bohan,

did you have a question?

COMMISSIONER BOHAN: Yeah. We're still

trying to get some idea. It sounds like it's, what,
approximately 5 million tons, did you say?

MR. RUDHOLM: I think it was more like 51

million tons.

COMMISSIONER BOHAN: 51. Okay.

COMMISSIONER VIDOVICH: I have the plan,

Jack, I have the plan here if you want to look at

it. We're not talking about taking it all down.

We're talking about going from 870 to 800. That's

not --

MR. RUDHOLM: Mr. Chair, if it's

important, you may want to recess for a few minutes

and give staff an opportunity to check the documents

that we have, see if we can get you clearer numbers.

CHAIR PERSON LeFAVER: Well, it is ten

after 9:00 right now. Do you want to set this aside

and take it up next time so we can have additional

information?

COMMISSIONER BOHAN: I'd certainly think

we need to get some idea of what we're imposing on

the Applicant here.
1 CHAIR PERSON LeFAVER: Okay. Go ahead.

2 COMMISSIONER CHIU: I agree with

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

4 It's not that I'm not convincible, It's
5 just that I just can't guess. I can't vote on these
guesses.

6 CHAIR PERSON LeFAVER: Would you be
7 willing to postpone your --

8 COMMISSIONER VIDOVICH: (Nodding head up
9 and down.)

10 CHAIR PERSON LeFAVER: So let's withdraw
11 this and postpone it until next time. Okay.
12
13 Can we continue on to general
14 requirements.

15 COMMISSIONER COUTURE: Mr. Chair, I have a
16 question on number 9.

17 CHAIR PERSON LeFAVER: Sure.

18 COMMISSIONER COUTURE: If at any time the
director of planning and development determines that
the quarry's not in compliance with the RPA,
mitigation monitoring and reporting program, or any
other condition of approval, and as such is in
violation of the RPA, the director may take any and
all action necessary, blah, blah, blah.

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

CHAIR PERSON LeFAVER: So what -- County Counsel.

MS. PIANCO: I can respond to that question.

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

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

And so by the reference to the language, applicable laws and regulations, it takes into account both those bodies, the County's ordinance code, as well as the SMARA regulations.
CHAIR PERSON LeFAVER: Does that answer your question? Okay.

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

COMMISSIONER VIDOVICE: 1 to 14. Where's the time limit?

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

COMMISSIONER SCHMIDT: I have a couple of small questions.

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

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

COMMISSIONER SCHMIDT: Okay.

And another question on 2A11 where it requires training annually. I was wondering if staff thought that semi-annual training, if, since
there are lots of different requirements, lots of different monitoring and so on that are being included in this plan, do you think it would be necessary to have more frequent training, or do you think annual is sufficient?

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

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

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

MR. GONZALEZ: Again, staff feels that
annually is sufficient, but again, it is the Planning Commission's call if they want to do it semi-annually.

COMMISSIONER SCHMIDT: Thank you.

CHAIR PERSON LeFAVER: Commissioner Chiu.

COMMISSIONER CHIU: Thank you, Mr. Chair.

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

COMMISSIONER RUIZ: Do we need a motion for that?

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

COMMISSIONER COUTURE: Couldn't we at the end just include all of them, or will we have to go
through and name every single one?

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

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

COMMISSIONER VIDOVICH: I have another one.

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

COMMISSIONER VIDOVICH: Mine are all at the beginning, anyway.

The plan says it's a 20-year plan. It's a pretty involved plan, complex. I would say -- and if it's changed, it has to come back anyway. I would say let's make it for 30 years, and I would ask that biannually what they produce is a estimated, a topo plan, a grading plan that estimates the grades if the mining stopped, and that they also produce, one, a new topo plan of where it will be in two years. And that way the community can visualize -- I mean, and there's two things of this thing. There's the birds, and all the little mitigations, but there's also a land. And a land
form, you know, is what you're -- you have so much
dirt and you're going to put so much in there and
you're going to end up with a land form. And that
topo really -- and it's too bad they didn't make a
model, I think it would demonstrate a lot of this
better, but that topo is what's going to be there,
and I don't think it's a lot of trouble for them to
make that every two years and produce it.

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

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

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

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

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

CHAIR PERSON LeFAVER: Page 5 -- number 5,
has the date.

COMMISSIONER VIDOVICH: Well, 5 has a date
also, and so does project description. And then
there's another paragraph where we talk about
providing 11, the reports. I don't know if it's 11,
one of these with a report --

COMMISSIONER COUTURE:  8.

COMMISSIONER VIDOVICH:  And I just think
the neighbors might want a report of what the topo's
going to look like if they stop. Because under
reclamation plan, there's no -- it doesn't tell you
when to stop. And if they go -- if they dig too
deep, that topo will tell you they're going too dep.

CHAIR PERSON LeFAVER:  Commissioner

Vidovich, would you perhaps divide your motion into
two parts. Let's start with the 30 years.

COMMISSIONER VIDOVICH:  Okay. 30 years is
the first motion.

CHAIR PERSON LeFAVER:  Okay. 30 years
versus 20 years. There's a motion.

COMMISSIONER BOHAN:  And this is in
paragraph 1, project description, you take out "20"
and put in "30."  Is that it?

COMMISSIONER VIDOVICH:  And item 5, too.

COMMISSIONER RUIZ:  You'd have to change
the date on item 5.

COMMISSIONER BOHAN:  And change 5 to 40,
COMMISSIONER VIDOVICH: Yes.

COMMISSIONER BOHAN: Right.

COMMISSIONER COUTURE: I second that motion.

COMMISSIONER RUIZ: So for discussion, the plan we've seen is implementation in three phases. So if you're proposing to extend the time to 30 years, are you then extending -- are you suggesting another phase, a fourth phase?

COMMISSIONER VIDOVICH: I don't think you can predict how fast they're going to extract minerals. The plan has a timeline. If they extract it out in three years, then it's done in three years. I think it's based -- I mean, if I'm not mistaken, it's based on their extraction rates. And a reclamation plan is always, as the guy testified, is subject to change. So why not make it longer in case they slow down. I don't think it changes reclamation really.

CHAIR PERSON LeFAVER: Commissioner Schmidt.

COMMISSIONER SCHMIDT: But that would give them longer time to reclaim. I would think, if anything, we would want it faster, and so I wouldn't
personally want to extend what's already recommended. And I would think that might also cause some issues with the sort of overall plan as it's been reviewed.

CHAIR PERSON LeFAVER: Commissioner Ruiz.

COMMISSIONER RUIZ: I didn't know it was still on. Sorry.

CHAIR PERSON LeFAVER: Commissioner Bohan.

COMMISSIONER BOHAN: Yeah. Maybe staff can help me here. I'd really like to find out what the applicant thinks of having that extra ten years. Is that a problem or a benefit? And Maybe staff would have some idea of that.

MR. GONZALEZ: If I could answer that through the Chair.

Again, the Environmental Impact Report evaluated a 20-year plan, not a 30-year plan. So, again, as previously stated, we're looking at the CEQA document that basically addressed that time period, and so as the Commission has pointed out, you're stretching this out over a longer period of time, which the EIR did not cover.

MR. RUDHOLM: Mr. Chair, if I can add, I think in putting together the plan, the mine operator made some assumptions about their rate of
extraction, their ability to process material and sell it. And this was their best guess at putting that date together because one is required under SMARA.

I'd also like to point out that changing the timeframe could affect the phasing because there's timelines along in there. So that's another modification of the reclamation plan, because the plan includes the narrative as well as the drawings that are posted on the wall.

CHAIR PERSON LeFAVER: Commissioner Chiu.

COMMISSIONER CHIU: I just need to say that I'm losing the ability to concentrate. I did not have dinner and when we previously discussed the timeframe, I didn't think we would be being this long. But, I just wanted to acknowledge that.

But I understand that Commissioner Vidovich has spent a lot of time in preparing these requested modifications. I have a question for Commissioner Vidovich:

Is there a legal opinion from the attorney that has a different opinion that I should be considering? Do you have a legal opinion from an attorney that I should be also considering?

COMMISSIONER VIDOVICH: You're an
attorney.

COMMISSIONER CHIU: I am an attorney.

COMMISSIONER VIDOVICH: And I don't think that the 30-year is a big deal. I mean, why don't we pass on it. I just thought it put this to bed a little longer. I actually thought it gave us more flexibility and gave the applicant more flexibility. Because as you mine, you're going to reclaim it. And the reclamation plan doesn't force them really to reclaim if they're not mining. And the way they're talking, they're doing some rapid mining, it will be reclaimed right away the way I'm hearing. So think we could skip it if the Chair lets us pull it out.

CHAIR PERSON LeFAVER: Would you like to withdraw your motion?

COMMISSIONER VIDOVICH: If the second holder withdraws, I'll withdraw.

COMMISSIONER COUTURE: I'll withdraw.

CHAIR PERSON LeFAVER: The motion is withdrawn.

COMMISSIONER CHIU: Thank you.

COMMISSIONER VIDOVICH: How about providing the topos, do you want me to put that as a motion?
CHAIR PERSON LeFAVER: This will be the last item -- well, second to the last item.

Commissioner.

COMMISSIONER COUTURE: I think it would help the public a lot. I think the public feels very disappointed about many things, and I think it would be a sign of good faith to show the public what we are doing with the reclamation plan. You know, they can hike up there, et cetera, but a lot of the older people can't hike up there, and a topo map would show them, that, oh, my gosh, you know, 20 feet or 30 feet has been reclaimed, three acres has been reclaimed. It would help.

CHAIR PERSON LeFAVER: I have a question of staff, if you don't mind.

Ken, what do you think will be included in your annual reports? And that's sort of the first question. But more specifically, can a topo map that shows the progress that has been made be included in that annual report?

MR. EASTWOOD: It can.

I'll start, Nash.

MR. GONZALEZ: Okay.

MR. EASTWOOD: There's many things.

There's a nine conditions of approval, so there'll
be many things included in the annual report.

I would like to call the Planning Commission's attention to condition number 24, which already does require, as part of the annual report, the operator submits a surveyed coordinate list file using GPS. Basically it requires an aerial be submitted showing where all mining disturbance has occurred over the last 24 months, and where planned mining disturbance is to occur over the next 24 months. So there is a requirement that on an annual basis, an aerial will be submitted that shows, you know, what has happened during the last two years, and what is planned to happen in order to assure that reclamation is proceeding along with the schedule that's proposed.

MR. GONZALEZ: And, if I can add to that through the Chair, as Rob pointed out, it does require an aerial, and all you'd basically be adding if you wanted to put in the requirement for a topo is an aerial with topographic lines placed on it on that condition, so you'd basically be adding a couple words to condition number 23 that would achieve what Commissioner Vidovich is requesting.

COMMISSIONER VIDOVICH: That's fine.

CHAIR PERSON LeFAVER: Is there any
objections to that? Do we need to have a vote? Do you want a vote?

COMMISSIONER RUIZ: Yes.

CHAIR PERSON LeFAVER: So if we can have a motion.

COMMISSIONER VIDOVICH: Modify condition 23 which is well written to include a projected topographical drawing, engineered drawing of where it will be in two years, and where it is now, so that the public can see what the land form's going to be.

CHAIR PERSON LeFAVER: Is there a second to that motion?

COMMISSIONER RUIZ: I'll second that.

CHAIR PERSON LeFAVER: Mr. Secretary, do you have the motion?

MR. RUDHOLM: Yes, sir.

CHAIR PERSON LeFAVER: Moved and seconded that condition number 23 include a topographic map as stated. All those in favor say "aye."

COMMISSION MEMBERS: (In unison) Aye.

CHAIR PERSON LeFAVER: Opposed?

(No response.)

CHAIR PERSON LeFAVER: Unanimous. Thank you.
Are there any other items on 1 through 14?

Can I have a motion to accept items 1 through 14.

COMMISSIONER RUIZ: I have question for -- and I apologize. I don't know if -- I think I have a different version than everyone else, because my number 14 is about financial assurances, and I don't know if that's everyone else's. 14 --

COMMISSIONER CHIU: Commissioner Ruiz, I recognize the copy you're using.

COMMISSIONER VIDOVICH: (Indicating).

COMMISSIONER CHIU: You're using the one, I think, that Lehigh's attorney has provided us, because it's got Microsoft Word changes on the side.

COMMISSIONER VIDOVICH: This is the one they provided.

COMMISSIONER RUIZ: Thanks.

It was the same number 14.

So my question for financial assurance is related to the water treatment that we talked about earlier. It's not clear to me, is that a part of this condition? I didn't see that in there.

MR. GONZALEZ: If I may through the Chair, this is an overall global condition, so that as stated earlier, if water treatment is deemed to be
the appropriate measure and then it's to be added in there, then the financial assurance cost estimate would have to account for that.

COMMISSIONER RUIZ: And how are the compliance for water quality a part of this financial assurance?

MR. GONZALEZ: So what would occur would be, there would be a monitoring of two years to determine whether the BMPs work. If at that point it's determined that selenium treatment, or any other type of water treatment facility needs to be installed, then the financial assurance would have to be recalculated to include the addition of a treatment plant, as well as the reclamation or the removal of the treatment plant.

So through the ongoing monitoring, and each year as the face or the financial assurance cost estimate is adjusted, that would be the mechanism for insuring that that mechanism, or that the estimate takes that into account.

Because again, it was stated earlier. We don't know if that's really where we're going; but, if so, then condition 14 should be satisfactory to include those.

COMMISSIONER RUIZ: Given the late hour,
can I make a suggestion that we come back to this condition after we've had a chance to discuss, because it sounds like we're going to be discussing that condition later. If we can come back to this.

COMMISSIONER COUTURE: The 1 through 13?

COMMISSIONER RUIZ: Yes.

CHAIR PERSON LeFAVER: Can we have a motion 1 through 13 to accept?

COMMISSIONER COUTURE: I'll move that we accept conditions 1 through 13 on the reclamation plan amendment.

CHAIR PERSON LeFAVER: Can I have a second.

MS. CLARK: Excuse me. Just for clarification purposes, does your motion include Commissioner Chiu's suggestion that the new paragraph 8D be included?

COMMISSIONER RUIZ: Yes.

MS. CLARK: Okay. Good.

CHAIR PERSON LeFAVER: Absolutely, 8D.

COMMISSIONER VIDOVICH: What's 8D?

COMMISSIONER BOHAN: It's a table change.

CHAIR PERSON LeFAVER: Accept 1 through 13, the maker of the motion, did you get a second?

MR. RUDHOLM: I did not hear a second,
Mr. Chair.

COMMISSIONER CHIU: Second.

CHAIR PERSON LeFAVER: Second,

Commissioner Chiu.

All those in favor please say "aye."

COMMISSION MEMBERS: (In unison) Aye.

CHAIR PERSON LeFAVER: Unanimous vote.

All right. Well, it is 9:33. Not too bad. I'm going to continue the public hearing --

MR. RUDHOLM: We have closed the public hearing, Mr. Chair.

CHAIR PERSON LeFAVER: I'm sorry.

Continue the meeting.

MR. RUDHOLM: I'd like to request some guidance from counsel. Is the action they would take at this point a recess until they reconvene at a date to be determined?

MR. KORB: They can make a motion to recess, but they can only recess the meeting for up to five days before they'll have to renotice it. So I think the next date that was planned is more than five days from today, or is it less?

MR. EASTWOOD: The discussed date was one week from today.

MR. KORB: Seven days. So you can just
continue the meeting, and you will have probably
just post a new agenda for it.

MR. RUDHOLM: But it would be a
continuation of the meeting.

MR. KORB: Correct.

CHAIR PERSON LeFAVER: Do we need a motion
on that?

MR. KORB: I recommend one.

CHAIR PERSON LeFAVER: Could we have a
motion to continue this meeting until a week from
today, which is Thursday, June the 7th, as I recall,
is it the 7th.

COMMISSIONER SCHMIDT: So moved.

COMMISSIONER CHIU: Just a clarification.

Does that include reopening the public hearing or
just continuing the meeting?

CHAIR PERSON LeFAVER: No, continuing the
meeting.

COMMISSIONER CHIU: Thank you.

CHAIR PERSON LeFAVER: Was there a second?

Did I hear Commissioner Chiu second?

COMMISSIONER CHIU: Second.

CHAIR PERSON LeFAVER: Moved and seconded
that we continue this hearing until Thursday,
June 7th.
COMMISSIONER VIDOVICH: Gotta have a time.

We need a time.

MR. KORB: And, also, just for clarification, as I understand, and correct me if I'm wrong, the motion would be to continue this item to the date specified and whatever time is going to be specified for a decision, not for public hearing.

COMMISSIONER VIDOVICH: Intent to make a decision.

CHAIR PERSON LeFAVER: And what time were we --

SPEAKER: It's 10:00.

MR. EASTWOOD: It's the will of the Commission. You had discussed 10:00, though.

CHAIR PERSON LeFAVER: Okay. 10:00 o'clock. 10:00 o'clock.

COMMISSIONER CHIU: Accept the clarification, the second.

CHAIR PERSON LeFAVER: So we have a date which is June the 7th, we have a day of the week, which is Thursday, and we have time at 10:00 o'clock in the morning.

MR. RUDHOLM: Mr. Chair, I apologize for being maybe too precise, but I did not hear the maker of the motion say "10:00 a.m."
CHAIR PERSON LeFAVER: Did the maker of the motion and say "10:00 a.m."?

COMMISSIONER SCHMIDT: I will add 10:00 a.m. to the motion.

MR. RUDHOLM: And that's been concurred to by the maker of the second.

COMMISSIONER CHIU: Concurred.

MR. RUDHOLM: So you have the motion on the floor.

CHAIR PERSON LeFAVER: Thank you, Mr. Secretary.

All those in favor.

COMMISSION MEMBERS: (In unison) Aye.

CHAIR PERSON LeFAVER: Opposed?

(No response.)

CHAIR PERSON LeFAVER: Unanimous. Thank you. Thank you all. Thank you all.

COMMISSIONER CHIU: I just wanted to add my thanks to staff. And I don't know how many of you had dinner or not had dinner, and to the applicant and to the members of the audience that stuck it out.

(Time noted: 9:36 p.m.)

--000--
REPORTER'S CERTIFICATE

I, PATRICIA GOULET, a Certified Shorthand Reporter in and for the State of California, hereby certify that the foregoing item discussed by the Santa Clara County Planning Commission meeting was by me duly reported by me in machine shorthand, and it is a complete transcript of the proceedings had at the taking of said Santa Clara County Planning Commission meeting, reported to the best of my ability and transcribed under my direction.

I further certify that I am not of counsel or attorney for either/or any of the parties to the said Santa Clara County Planning Commission meeting, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

Date: July 11, 2012

PATRICIA GOULET,
CSR Number 8315