Via email BoardMeetingComments@cob.sbcounty.gov

August 6, 2026

San Bernardino County
Clerk of the Board of Supervisors,
385 N. Arrowhead Ave, 2nd Fl.,
San Bernardino, CA 92415

Re: August 18, 2026 Agenda : An ordinance to repeal and reenact Chapter 88.03 of the San Bernardino County Development Code related to local surface mining and land reclamation regulations.

Dear Supervisors,

This letter is submitted on behalf of the Center for Biological Diversity, Earthworks, Sierra Club, and National Parks Conservation Association regarding: "An ordinance to repeal and reenact Chapter 88.03 of the San Bernardino County Development Code related to local surface mining and land reclamation regulations" (the "proposed development code" or "Project"). The Planning Commission heard this item on July 9, 2026 and stated that was intended to be on the Board of Supervisors' Agenda for August 18, 2026. That Agenda has not yet been published for the public.

We respectfully urge the Board of Supervisors to **deny** adoption of the proposed repeal and reenactment of the Development Code unless or until changes have been made as recommended below.

Several provisions of the proposed development code are poorly drafted or rely on an outdated Memorandum of Understanding and should be revised. We also request that **the item be continued** to allow more time for public review and comment on the proposed development code changes.

Most of the proposed development code appears to be a straight-forward update of the County's ordinances implementing SMARA and state regulations to incorporate changes in the law since 2007. As it stands, the interplay between local, state, and federal permitting for surface mining projects in California is complicated to navigate. The County, state and federal agencies, and the

public will benefit from more clarity in how mining projects are permitted. We hope to work cooperatively with the County to recommend revisions to the code that will help clarify the process and ensure that mine permitting includes adequate safeguards to protect the County's resources, such as groundwater, air quality, public lands, and endangered species habitat.

However, the current draft of the updated code includes poorly drafted sections regarding the County's responsibility for SMARA permitting and CEQA review for projects on federal lands in the section entitled "applicability." **Proposed Section 88.03.040(b) should be removed or revised** as detailed below.

1. ***Proposed Section 88.03.040(b) is poorly drafted and relies on an outdated Memorandum of Understanding.***

Proposed Section 88.03.040(b) states the following regarding the "applicability" of the development code requirements on federal lands:

> (b) Federal Lands. Where surface mining operations occur, or are proposed, partially or entirely on federally managed public lands, the County may accept documents and environmental studies prepared by federal agencies as functionally equivalent to meet the County's requirements under this Chapter, consistent with the 1992 Memorandum of Understanding between the State of California and such federal agencies, and any subsequent amendments or successor agreements entered into by the parties. A Permit shall not be required for those portions of surface mining operations that require and obtain a federally approved plan of operation, or other federal authorization, to conduct surface mining operation.

(Emphases added.) This section is problematic for two reasons. The first sentence relies on a 1992 Memorandum of Understanding ("MOU") that misstates SMARA and is outdated regarding the current status of NEPA. The second sentence is poorly drafted and thus overly broad. The term "Permit" is broadly defined in the proposed code and SMARA. If, as Planning Department staff have stated, the intent was only to clarify that a County conditional use permit would not be required for projects on Federal Lands, then the section must be revised to state that limitation expressly.

a. *"Permit" is Broadly Defined and Its Use In Proposed Section 88.03.040(b) is unclear.*

In our comments to the Planning Commission we raised objections regarding the language **in the second sentence of Proposed Section 88.03.040(b**) which appears to exempt mining projects on Federal Lands from County oversight: "A Permit shall not be required for those portions of surface mining operations that require and obtain a federally approved plan of operation, or other federal authorization, to conduct surface mining operation."

In response, at the Planning Commission meeting on July 9, 2026, planning department staff stated that the term "Permit" as used in **Proposed Section 88.03.040(b**) regarding Federal Lands was intended only to mean that a County conditional use permit for surface mining operations

would not be required. Staff also stated that the **Proposed Section 88.03.040(c)** regarding Jurisdiction made it clear that the Federal Lands remained subject to the reclamation plan and financial assurances requirements. Unfortunately, it does not. Proposed Section 88.03.040(c) provides:

> (c) **Jurisdiction.** Whenever a proposed or existing surface mining operation is within the jurisdiction of the County and another public agency, is a permitted use within the agencies, and is not separated by a natural or manmade barrier coinciding with the boundary of the agencies, the evaluation of the proposed or existing operation shall be made by the SMARA lead agency in accordance with SMARA section 2771.

Proposed Section 88.03.040(c). This section appears to relate only to jurisdiction between state, county or local agencies that are responsible for implementing SMARA, not between the County and Federal agencies.

Because the proposed definition of "Permit" in the Development Code is quite broad and could include other authorizations including "reclamation plans" under SMARA, the use of the term "Permit" **in the second sentence of Proposed Section 88.03.040(b**) is problematic.

The definition of Permit from **Proposed Section 88.03.020(a)(5)** reads:

> "Permit" means a permit defined in SMARA section 2732.5 and <u>includes</u> the permit required by the land use zoning district for surface mining operations where allowed in compliance with Division 2 (Land Use Zoning Districts and Allowed Land Uses) of this Development Code.

(emphasis added).

California Public Resources Code section 2732.5 defines Permit broadly as follows:

> "Permit" means <u>any authorization from, or approval by</u>, a lead agency, the absence of which would preclude surface mining operations.

(emphasis added). Because a reclamation plan is required under SMARA for most surface mining operations, including operations on Federal Lands, the absence of a reclamation plan from the County precludes surface mining operations in most cases. Therefore, reclamation plans and other needed authorizations under SMARA are also "Permits" under definition in Public Resources Code section 2732.5.

Further, the term "reclamation plan" is used interchangeably with the term "permit" in at least one part of the proposed Development Code regarding mining where there are vested rights. Proposed **Section 88.03.050 Permit, Reclamation Plan and Financial Assurance Requirements** states:

> (j) **Additional Permits**. Should a vested right be recognized by the Board, the person shall obtain County approval of a reclamation plan covering the mined lands disturbed on or subsequent to January 1, 1976. In those cases where an overlap exists (in the horizontal and/or vertical sense) between pre-SMARA and post-SMARA mining, the reclamation plan shall require reclamation proportional to the disturbance caused by the mining as of January 1, 1976 (i.e., effective date of SMARA).

(Emphases added.)

Notably, "Reclamation Plan" is not defined in SMARA or in the County's proposed Development Code sections.

If the intent of the proposed Development Code's definition was to limit the use of the term "Permit" to conditional use permits under the county code, the proposed language does not do so. As a result, the language in the **second sentence of Proposed Section 88.03.040(b) regarding Federal Lands not requiring a permit** is ambiguous and unclear, and should be **removed or revised**.

If the intent of **second sentence of Proposed Section 88.03.040(b)** regarding Federal Lands was limited to stating that Conditional Use Permits are not required, the proposed language could be revised to clarify that and clearly state that other County approvals, including for reclamation plans and financial assurances, will still be required.

Recommendation 1a:

Delete the second sentence of Proposed Section 88.03.040(b):

> ~~**A Permit shall not be required for those portions of surface mining operations that require and obtain a federally approved plan of operation, or other federal authorization, to conduct surface mining operation.**~~

Recommendation 1b (alternate):

If the County wants to retain the **second sentence of Proposed Section 88.03.040(b), it should be revised as follows**:

> A **Conditional Use** Permit **pursuant to Chapter 85.06 of this Code** shall not be required for those portions of surface mining operations **on Federal lands** that require and obtain a federally approved plan of operation, or other federal authorization, to conduct surface mining operation. **All other applicable County and State permits are required including, but not limited to, an approved Reclamation Plan and financial assurances issued by the County, unless exempt under SMARA.**

Most commonly, unless subject to an exception from SMARA, surface mining projects on private lands within the County jurisdiction would require a County use permit, a County Reclamation Plan, and financial assurances, while mining projects on Federal Lands would require a County Reclamation Plan and financial assurances, along with other permits such as air and water permits where applicable.

To comply with SMARA, County permitting and review is essential to ensure that "adverse environmental effects are prevented or minimized," "that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses," and that "the production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment." (Cal. Pub. Res. Code § 2712 (a) & (b).)

b. The 1992 MOU is outdated and inaccurate.

The MOU assumed that NEPA and CEQA were "largely equivalent."

> WHEREAS, the statutory requirements of the National Environmental Protection Act. of 1969 (NEPA) for the Forest Service and BLM, and the California Environmental Quality Act (CEQA) for State and local agencies are largely equivalent.

MOU at 3; *see also* MOU at 4 (citing the now withdrawn CEQ regulations 40 CFR 1500-1508). Even if some equivalence in these environmental reviews had been true in 1992, it is not true today. NEPA, particularly under the new USDA and DOI regulations (*see* 91 Fed. Reg. 17062 (April 3, 2026); 91 Fed. Reg. 8738 (Feb. 24, 2026)) does not provide the same depth or breath of environmental review as CEQA. As just one example, CEQA requires public notice and an opportunity for participation whereas NEPA implementation no longer requires public notice or an opportunity to comment when the agency proposes to rely on a categorical exclusion or environmental assessment, and even for environmental impact statements (EIS), federal agencies may only be providing for public notice and comment at the scoping stage—not for the draft or final EIS.[1]

Even under the MOU's own terms, the County's reliance on it is problematic. Under the MOU's terms, the County should only rely on Federal documents and environmental studies that are determined to meet or exceed the requirements of SMARA and other applicable laws and regulations on a case-by-case basis – plans and authorizations "that meet SMARA requirements" or NEPA documents "that meet CEQA requirements."

The first sentence of the proposed Section 88.03.040(b) leaves out key terms of the 1992 MOU on which it relies. The MOU does not assume that federal documents and environmental studies

[1] Two recent examples of mining projects where BLM is not taking comments on the draft EIS are the South Railroad (Nevada) https://eplanning.blm.gov/Project-Home/?id=81dbebec-a7f2-f011-8407-001dd80db62a , and DeLamar Mine Project (Idaho) https://eplanning.blm.gov/Project-Home/?id=3D00EE85-E859-F111-BEC6-001DD804183B

are functionally equivalent to County's requirements or that such equivalence alone is sufficient. Rather, the MOU requires that, in order to be accepted by the lead agency, the Federal plans and studies must meet or exceed the state and local requirements and other applicable state and local laws and regulations.[2] The MOU provides:

> (2) Lead agencies may accept as functionally equivalent documents to meet their requirements under SMARA, operating plans, reclamation plans and environmental studies that meet the requirements of Forest service and BLM regulations [submitted pursuant to federal regulation provided such plans and studies meet or exceed lead agency requirements as included in the lead agency's State-certified surface mining and reclamation ordinance and any other applicable laws and regulations]; and alternatively, Forest Service and BLM may accept as functionally equivalent documents to meet their requirements, operating plans, reclamation plans and environmental studies [submitted to the lead agency when such plans and studies meet or exceed requirements set by the BLM] that meet SMARA requirements.
> (3) Lead agencies may accept as functionally equivalent, documents prepared under NEPA (40 CFR 1500-1508) that meet the requirements of CEQA.

MOU at 4 (emphases added). Notably, the MOU is outdated in several respects (as explained in more detail below).

The **first sentence of proposed Section 88.03.040(b)** fails to provide any process for the County to determine whether or not the federal documents are "functionally equivalent to the County's requirements," or "meet or exceed lead agency requirements as included in the lead Agency's State-certified surface mining and reclamation ordinance and any other applicable laws and regulations," and fails to provide any public notice and input or record keeping of that decision making.[3]

We recommend that the County delete **the first sentence of proposed Section 88.03.040(b)**. Alternatively, if the County retains **the first sentence of proposed Section 88.03.040(b)**, it should be revised to include: a requirement that the documents or environmental studies "meet or exceed lead agency requirements as included in the lead Agency's State-certified surface mining and reclamation ordinance and any other applicable laws and regulations"; a process for public notice when County determination is pending; the basis for any proposed determination that the federal plans and permits or environmental studies meet or exceed requirements for surface mining and reclamation under this ordinance and any other applicable laws and regulations; and record keeping requirements for all such determinations.

---

[2] These include CEQA as well as California Endangered Species Act, Western Joshua Tree Conservation Act, California Water Code, etc.

[3] We have been informed and believe that the County has informally relied on the MOU in the past to not require permits for some mining exploration projects, however, in response to a Public Records Act request from the Center for Biological Diversity, the County on March 31, 2026, in an email entitled "San Bernardino County public records request #26-8723" provided no records at all about such projects.

Recommendation 2a:

Delete the first sentence of proposed Section 88.03.040(b):

> ~~Where surface mining operations occur, or are proposed, partially or entirely on federally managed public lands, the County may accept documents and environmental studies prepared by federal agencies as functionally equivalent to meet the County's requirements under this Chapter, consistent with the 1992 Memorandum of Understanding between the State of California and such federal agencies, and any subsequent amendments or successor agreements entered into by the parties.~~

Recommendation 2b (alternate):

If the County retains the **first sentence of proposed Section 88.03.040(b)**, it should be revised as follows:

> Where surface mining operations occur, or are proposed, partially or entirely on federally managed public lands, the County may accept documents and environmental studies prepared by federal agencies **that meet or exceed lead agency requirements as included in the lead Agency's State-certified surface mining and reclamation ordinance and any other applicable laws and regulations including the California Environmental Quality Act** as functionally equivalent to meet the County's requirements under this Chapter, **only after public notice and comment regarding the County's intent to do so and a finding by the Board that the standard has been met.** ~~consistent with the 1992 Memorandum of Understanding between the State of California and such federal agencies, and any subsequent amendments or successor agreements entered into by the parties~~.

2. **Application of Exemptions Must Comply with SMARA , Cal. Pub. Res. Code § 2714(d). Reliance on the MOU or the Regulations Cannot Support an Exemption that Does Not Meet the SMARA standards.**

Regarding exemptions from SMARA, the **proposed Development Code Section 88.03.050 Permit, Reclamation Plan and Financial Assurance Requirements** states:

> (a) **Approval of Conditional Use Permit, Reclamation Plan, and Financial Assurance Required.** Except as otherwise provided for in this Chapter, and consistent with SMARA, a person shall not conduct surface mining operations unless:
>
> (1) A Permit is obtained from the County;
> (2) A reclamation plan has been submitted to and approved by the County; and

(3) A financial assurance for reclamation has been approved by the County.

(b) Exemptions. This Chapter shall not apply to activities that are exempt from SMARA pursuant to SMARA section 2714 and State Regulations subsection 3505(a).

Reliance on the MOU is also problematic because of the inaccurate statements regarding SMARA's applicability and exemptions.

SMARA states:

> This chapter does not apply to any of the following activities:
> . . .
> (d) Prospecting for or the extraction of minerals for commercial purposes where the removal of overburden or mineral product totals less than 1,000 cubic yards in any one location and the total surface area disturbed is less than one acre.

Cal. Pub. Res. Code § 2714(d). The State Regulations, 14 C.C.R. § 3505(a)(1), re-state this as:

> (a) Exemptions.
> (1) In addition to the provisions of Public Resources Code Section 2714(a), (c) and (d), any surface mining operation that does not involve either the removal of a total of more than 1000 cubic yards of minerals, ores, and overburden, or involve more than one acre in any one location, shall be exempt from the provisions of the Act.

Cal. Code Regs. tit. 14, § 3505. The regulation causes a material change in the meaning of this exemption by shifting the term "total" to modify the amount of cubic yards of material, shifting the term "in any one location" to modify the number of acres of disturbance, changing "less than" to "more than" and making the requirements disjunct by using "or" rather than both conditions being required with the use of "and". As a result, the regulation is not the same as the SMARA exemption.

The MOU also wrongly re-states the SMARA exemption as:

> Prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than 1,000 cubic yards in any one location of one acre or less;

MOU at 2. This implies that it is the size of the "location" of each disturbance that matters and completely leaves out the requirement that the <u>total</u> surface disturbance from the project at a whole is what must be considered. Our organizations are concerned that this inaccuracy in the MOU has already led to confusion about the applicability of

SMARA for projects that disturb more than one acre in total, but less than one acre at any one "location".[4]

As stated above, the SMARA exemption is only for projects "where the removal of overburden or mineral product totals less than 1,000 cubic yards in any one location **and** the **total** surface area disturbed is less than one acre." (Cal. Pub. Res. Code § 2714(d) (emphases added).) This could encompass several locations but in no case can be applied where the total surface disturbance from the project as a whole is one acre or more. The SMARA standard, found in Public Resources Code section 2714(d), is the standard that must be met for an exemption to be applied by the County.

Recommendation:

Revise proposed Development Code Section 88.03.050 Permit, Reclamation Plan and Financial Assurance Requirements to remove reference to the Regulatory re-statements for exemptions:

> (a) **Approval of Conditional Use Permit, Reclamation Plan, and Financial Assurance Required.** Except as otherwise provided for in this Chapter, and consistent with SMARA, a person shall not conduct surface mining operations unless:
>
> (1) A Permit is obtained from the County;
> (2) A reclamation plan has been submitted to and approved by the County; and
> (3) A financial assurance for reclamation has been approved by the County.
>
> (b) Exemptions. This Chapter shall not apply to activities that are exempt from SMARA pursuant to SMARA section 2714 ~~and State Regulations subsection 3505(a)~~.

3. *Conclusion*

Thank you for the opportunity to submit comments on the proposed changes to Chapter 88.03 of Division 8 of Title 8 of the San Bernardino County Code. As explained above, there are several

[4] We have raised concerns with this ambiguity in the MOU and reliance on this MOU with the SMGB in a proceeding where a mining applicant represented to the SMGB that San Bernardino County had previously informed them that the County would only look at each "location" or "claim" and therefore their project (in that case approximately 10 acres of surface disturbance in San Bernardino County and another 5 acres of surface disturbance in Kern County) did not need any SMARA review. *See, e.g.,* Gold Discovery Group presentation to SMGB dated June 20, 2024 at 7; Applicant's February 22, 2023 Application to the Board for Exemption regarding Kern County areas at 2 available at https://doc.app.box.com/s/afrsfrc20m8mp4y2bfp1dehxdjxp8az7

problems with the draft ordinance as written. We urge the Board of Supervisors to make the recommended changes to the draft provided in these comments.

Please ensure that the Center for Biological Diversity, Earthworks, Sierra Club, and National Parks Conservation Association are on the notice list for all future updates and notices associated with this Project and its environmental review, and include us as stakeholders in any meetings or processes regarding mining in the County. Please do not hesitate to contact us with any questions at the emails listed below.

Sincerely,

Lisa Belenky, Senior Counsel
Center for Biological Diversity
lbelenky@biologicaldiversity.org

Mary Ann Ruiz, Chair
San Gorgonio Conservation Chair
Sierra Club
ruizmaryann@gmail.com

Jared Naimark, Western Mining Senior Manager
Earthworks
jnaimark@earthworksaction.org

Chance Wilcox
California Desert Associate Director
National Parks Conservation Association
cwilcox@npca.org

cc:

Dan Walsh, Chief Engineering Geologist, San Bernardino County Land Use Services, Department, Dan.Walsh@lus.sbcounty.gov

Jeffrey Schmidt, Executive Officer, State Mining and Geology Board, Jeffrey.Schmidt@conservation.ca.gov

Heidi Calvert, Regional Manager, Region 6 CDFW, Heidi.Calvert@wildlife.ca.gov

Heather Brashear, Senior Environmental Scientist Supervisor, CDFW, heather.brashear@wildlife.ca.gov

Brandy Wood, Region 6, CDFW, Brandy.Wood@wildlife.ca.gov

Ben Letton, Executive Officer, Lahontan RWQCB, Ben.Letton@waterboards.ca.gov