



LAND USE SERVICES DEPARTMENT PLANNING COMMISSION STAFF REPORT

HEARING DATE: July 9, 2026

AGENDA ITEM # 3

Project Description

Applicant: San Bernardino County Land Use Services Department

Community: All unincorporated communities

Location: Countywide

Project No.: PMISC-2026-00029

Staff: Dan Walsh, Chief Engineering Geologist
Amy DeNinno, Contract Planner

Proposal: 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.

Newspaper Publication Date: June 29, 2026

Report Prepared By: Amy DeNinno, Contract Planner (Harris & Associates)

STAFF RECOMMENDATION:

That the Planning Commission **RECOMMEND**¹ that the Board of Supervisors take the following actions:

- 1) **FIND** that the proposed ordinance to repeal and reenact Chapter 88.03 of Division 8 of Title 8 of the San Bernardino County Code is exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations;
- 2) **ADOPT** the findings in support of the proposed ordinance;
- 3) **ADOPT** the proposed ordinance to repeal and reenact Chapter 88.03 of Division 8 of Title 8 of the San Bernardino County Code, relating to local surface mining and land reclamation regulations; and
- 4) **DIRECT** Land Use Services Department to file a Notice of Exemption in accordance with the California Environmental Quality Act and provide written notice and a copy of the ordinance to the State Mining and Geology Board in accordance with the Surface Mining and Reclamation Act.

¹ Pursuant to Subsection 86.12.040(b) of the Development Code, the Planning Commission shall either recommend to the Board of Supervisors that no amendment, a modified amendment, or the proposed amendment be made.

PROJECT DESCRIPTION

This item consists of an amendment to the San Bernardino County Development Code (Title 8 of the San Bernardino County Code), specifically Chapter 88.03 related to local surface mining and land reclamation regulations adopted in accordance with the requirements of the Surface Mining and Reclamation Act of 1975 (SMARA; Public Resources Code § 2710 *et al.*).

BACKGROUND:

SMARA requires any city or county with a surface mining operation within its jurisdiction to adopt a surface mining ordinance that is in compliance with SMARA. SMARA establishes procedures for the review and approval of reclamation plans, financial assurances, and for the issuance permits to conduct surface mining operations. The State Mining and Geology Board (SMGB) certifies local agency mining ordinances for conformance with SMARA before they become effective (Public Resources Code Section 2774.3).

The County’s local surface mining and land reclamation regulations (Chapter 88.03) were last substantively amended in 2007 and certified by the SMGB. Since that time SMARA has underwent legislative reform in various areas that include, but are not limited to, vested rights determinations, financial assurances, inspections, idle mines, and addressing violations. The proposed ordinance is intended to update and align Chapter 88.03 with the statutory updates to SMARA and provide clarification on County processes and enforcement as further explained below.

An initial stakeholder meeting occurred on November 13, 2023, where County staff provided a presentation informing stakeholders of proposed updates to Chapter 88.03. Stakeholders included local mining operators and the California Construction and Industrial Materials Association (CalCIMA). County staff received comments from the mining operators requesting that CalCIMA coordinate with the County throughout the process to ensure the updates are comprehensive and incorporate all applicable changes to SMARA. Stakeholders expressed support for the update during the stakeholder meeting. County staff then collaborated with CalCIMA to prepare an update to Chapter 88.03 and develop an initial draft of the ordinance. The initial draft of the proposed ordinance was then submitted to SMGB for comments during the board’s November 20, 2025, regular business meeting. Following discussion, the SMGB had no comments for the County’s consideration.

Currently, there are 85 surface mines in various stages of development and reclamation throughout the County’s SMARA jurisdiction. The County reviews and permits new mining operations, oversees the required annual inspections, and reviews financial assurance cost estimates and financial assurance mechanisms for each of the mines. Any new mine proposed in the unincorporated County are subject to the provisions of Chapter 88.03.

OVERVIEW:

Exhibit A of this Staff Report includes the proposed new ordinance recommended to the Board of Supervisors for final approval and Exhibit B of this Staff Report includes a side-by-side comparison of the proposed changes to Chapter 88.03 including which sections have been altered, deleted, or

added, as well as a summary of the substantive changes made in each section. All of the proposed changes are in accordance with SMARA and the County is not proposing any changes that are more stringent than SMARA.

ANALYSIS:

The proposed ordinance represents a comprehensive repeal and reenactment of Chapter 88.03 governing surface mining and land reclamation, with the primary purpose of modernizing the County's regulations and aligning them more closely with updates to SMARA, State regulations, and industry practices. While the overall structure and many foundational concepts of the existing ordinance are retained, the updated ordinance substantially expands, reorganizes, and clarifies the regulatory framework in accordance with SMARA. Key changes include the addition of a new definitions section to establish consistent terminology; expanded applicability provisions addressing federal lands and multi-agency jurisdiction; and significantly enhanced procedures governing vested rights determination, permits, reclamation plans, financial assurances, and enforcement actions. The process for determining vested rights has been greatly expanded to include detailed application requirements, evidentiary standards, and formal hearing procedures when applicable, providing clearer guidance for both applicants and decision-makers.

The ordinance also introduces new sections that were not previously addressed, including provisions for permit and reclamation plan amendments, renewable energy generation facilities on reclaimed mining lands, and certification of the ordinance by the SMGB. Existing sections related to application processing, mineral resource protection, and financial assurances have been substantially revised to incorporate more detailed requirements, formal coordination with the State Division of Mine Reclamation, and updated cost estimation and review procedures. In particular, the financial assurance provisions now include more rigorous standards for calculating, reviewing, and adjusting reclamation cost estimates, as well as new provisions addressing financial incapability, release, and forfeiture.

Enforcement provisions have been strengthened and expanded, replacing the prior, more limited violations section with a comprehensive framework that includes notices of violation, orders to comply, administrative penalties, appeal processes, and remedies for imminent threats to public health and safety consistent with SMARA. Similarly, inspection requirements have been updated to include more stringent qualifications for inspectors, standardized reporting procedures, and enhanced coordination with State agencies. Interim management plan requirements for idle mines have also been clarified and expanded, including more detailed timelines and conditions for renewal.

Overall, the proposed changes improve clarity, consistency, and enforceability of the County's mining regulations, while ensuring closer alignment with State law and policy on surface mining and reclamation. The ordinance introduces new policy areas—such as renewable energy reuse of mined lands and State certification requirements—while strengthening procedural rigor and oversight across all aspects of surface mining operations, from permitting and reclamation planning to enforcement and long-term site management.

ENVIRONMENTAL DETERMINATION:

This ordinance is exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations because the ordinance is limited to an administrative update of an existing surface mining and land reclamation ordinance and will not directly or indirectly authorize activity that may have a significant effect on the environment. Thus, no further environmental review is required.

FINDINGS:

The following findings and the evidence support the adoption of the proposed updates in accordance with Development Code Subsection 86.12.060(b)(1)-(3).

1) The proposed amendment is consistent with the General Plan and any applicable community plan or specific plan.

The adoption of the proposed ordinance is intended to bring County mining and reclamation regulations into conformance with legislative updates to SMARA. As provided in Section 88.03.010 of the proposed ordinance, the primary purpose of the County surface mining and land reclamation regulations are to ensure the continued availability of important mineral resources, while regulating surface mining operations as required by SMARA, Public Resources Code section 2207, et seq. related to annual reporting requirements, and SMGB regulations at California Code of Regulations, Title 14, section 3500, et seq.. The intent of the propose ordinance is to regulate surface mining operations to ensure that: (1) adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition that is readily adaptable for alternative land use; (2) the production and conservation of minerals are encouraged while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment; and (3) the elimination of residual hazards to the public health and safety that may arise from surface mining operations.

The proposed updates achieve the purpose and intent of the ordinance and is consistent with Policy Plan by prioritizing mineral resource areas, imposing proper land use regulations and monitoring of mineral operations and reclamation, and support business investment in mineral resources consistent with the following goals and policies:

Goal NR-6: Mineral resource zones that allow extraction industries to continue supporting the regional and national economy while minimizing negative impacts on the public and natural environment.

Policy NR-6.1: **Mineral resource areas.** We prioritize the conservation of land area with mineral resources by prohibiting or discouraging development of land that would substantially preclude the future development of mining facilities in areas classified as Mineral Resource Zone (MRZ) 2a, 2b, or 3a.

Policy NR-6.2: **Mineral operations and reclamation.** We require and monitor mineral extraction activities to ensure that the operation and reclamation of mined lands is consistent with the State Surface Mining and Reclamation Act of 1975 (SMARA).

Policy NR-6.3: **Conservation of construction aggregate.** We encourage the continued operation of existing mining facilities and streamline the permitting of new mining facilities (consistent with the Policy Plan and other local, state, and federal regulations) to establish aggregate resources that are sufficient to satisfy 50 years of county demand.

Goal ED-1: **Unincorporated land and facilities.** Increased business investment in land and facilities and job growth in key unincorporated areas.

Policy ED-1.5: **Mineral resources.** We support the extraction of mineral resources in unincorporated areas and the establishment and operation of supporting businesses throughout the county.

2) The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the County; and

As noted in Finding 1, the intent of the proposed ordinance is to regulate surface mining operations to ensure that: (1) adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition that is readily adaptable for alternative land use; (2) the production and conservation of minerals are encouraged while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment; and (3) the elimination of residual hazards to the public health and safety that may arise from surface mining operations. The proposed updates to Chapter 88.03 would impose proper oversight and regulations to reduce public health and safety impacts associated with surface mining and reclamation while supporting and recognizing the continued contribution to the economic well-being of the County and its residents that mineral extraction provides.

3) The proposed amendment is internally consistent with other applicable provisions of this Development Code.

The proposed amendment is internally consistent with all other applicable provisions of the Development Code. All applicable Sections, Subsections, and Tables of the Development Code were analyzed to ensure internal consistency.

RECOMMENDATION:

That the Planning Commission **RECOMMEND** the following actions to the Board of Supervisors:

1. **FIND** that the proposed ordinance to repeal and reenact Chapter 88.03 of Division 8 of Title 8 of the San Bernardino County Code is exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations;
2. **ADOPT** the findings in support of the proposed ordinance;
3. **ADOPT** the proposed ordinance to repeal and reenact Chapter 88.03 of Division 8 of Title 8 of the San Bernardino County Code relating to Surface Mining and Land Reclamation regulations; and
4. **DIRECT** the Land Use Services Department to file a Notice of Exemption in accordance with the California Environmental Quality Act and provide a written notice and a copy of the ordinance to the State Mining and Geology Board in accordance with the Surface Mining and Reclamation Act.

ATTACHMENTS:

Exhibit A: Proposed County Development Code Chapter 88.03 (Surface Mining and Reclamation)
Exhibit B: Summary of Proposed Changes

EXHIBIT A

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ORDINANCE NO.

An ordinance of San Bernardino County, State of California, to repeal and reenact Chapter 88.03 of Division 8 of Title 8 of the San Bernardino County Code, relating to Surface Mining and Land Reclamation.

The Board of Supervisors of the County of San Bernardino, State of California, ordains as follows:

SECTION 1. The Board of Supervisors of San Bernardino County finds that:

(a) This ordinance will repeal and reenact Chapter 88.03 of Division 8 of Title 8 of the San Bernardino County Code (Development Code) relating to surface mining and land reclamation. The County’s local surface mining and land reclamation ordinance was last updated in 2007. The revisions in this ordinance will update local permitting and enforcement procedures to align with the Surface Mining and Reclamation Act of 1975 (Public Resources Code §§ 2710 *et seq.*), State Mining and Geology Board regulations (Cal. Code Regs., tit. 14, §§ 3500 *et seq.*), interpretative case law, and industry trends applicable to the diverse geologic, topographic, climatic, biological, and social conditions of the unincorporated San Bernardino County.

(b) Properly noticed public hearings have been held before the Planning Commission and the Board of Supervisors pursuant to the Planning and Zoning Law of the State of California and the San Bernardino County Development Code.

(c) This ordinance is exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations because the ordinance is limited to an administrative update of an existing surface mining and land reclamation ordinance and will not directly or indirectly authorize activity that may have a significant effect on the environment.

SECTION 2. Chapter 88.03 of Division 8 of Title 8 of the San Bernardino County

1 Code is repealed.

2

3 SECTION 3. Chapter 88.03 is added to Division 8 of Title 8 of the San Bernardino
4 County Code, to read:

5 CHAPTER 88.03: SURFACE MINING AND LAND RECLAMATION

6 Section

7 88.03.010 Purpose.

8 88.03.020 Definitions.

9 88.03.030 Incorporation of SMARA and State Regulations.

10 88.03.040 Applicability.

11 88.03.050 Permit, Reclamation Plan and Financial Assurance Requirements.

12 88.03.060 Vested Rights Determination.

13 88.03.070 Permit and Reclamation Plan Application Filing, Processing, and
14 Review.

15 88.03.080 Permit and Reclamation Plan Amendments.

16 88.03.090 Mineral Resource Protection Policies.

17 88.03.100 Financial Assurances.

18 88.03.110 Reclamation Standards.

19 88.03.120 Interim Management Plans and Idle Mines.

20 88.03.130 Annual Report.

21 88.03.140 Inspections.

22 88.03.150 Enforcement.

23 88.03.160 Permit Revocation or Suspension.

24 88.03.170 Post-Approval Procedures.

25 88.03.180 Renewable Energy Generation Facilities.

26 88.03.190 Certification and Recertification of Mining Ordinances.

27 **Section 88.03.010 Purpose.**

28 (a) **Extraction of Minerals Essential to County Economic Well-Being.** The

1 County recognizes that the extraction of minerals is essential to the continued economic
2 well-being of the County and its residents and to societal needs and that the reclamation
3 of mined lands is necessary to prevent or minimize adverse effects on the environment
4 and to protect the public health and safety. The County further recognizes that the
5 production and development of local mineral resources are necessary to build the state's
6 infrastructure and are vital to reducing transportation emissions that result from the
7 distribution of hundreds of millions of tons of construction aggregates that are used
8 annually in building and maintaining the State.

9 (b) **Surface Mining in Diverse Areas.** The County also recognizes that
10 surface mining takes place in diverse areas where the geologic, topographic, climatic,
11 biological, and social conditions are significantly different and that reclamation operations
12 and their related specifications may vary accordingly.

13 (c) **Purpose and Intent.**

14 (1) The purpose of this Chapter is to ensure the continued availability of
15 important mineral resources, while regulating surface mining operations as required by:

16 (A) California's Surface Mining and Reclamation Act of 1975
17 (Public Resources Code section 2710, et seq.) ("SMARA");

18 (B) Public Resources Code section 2207, et seq. ("Annual
19 Reporting Requirements"); and

20 (C) State Mining and Geology Board regulations at California
21 Code of Regulations, Title 14, section 3500, et seq. ("State Regulations").

22 (2) The intent of this Chapter is to regulate surface mining operations to
23 ensure that:

24 (A) Adverse environmental effects are prevented or minimized
25 and that mined lands are reclaimed to a usable condition that is readily adaptable for
26 alternative land use;

27 (B) The production and conservation of minerals are encouraged,
28 while giving consideration to values relating to recreation, watershed, wildlife, range and

1 forage, and aesthetic enjoyment; and

2 (C) The elimination of residual hazards to the public health and
3 safety that may arise from surface mining operations.

4 **Section 88.03.020 Definitions**

5 (a) **Definitions.** In addition to the definitions for specific terms listed in SMARA
6 (section 2725 et seq.) and State Regulations (sections 3501, 3502, and 3701), as those
7 terms are defined in Subsection 88.03.010(c), and those abbreviated titles and definitions
8 listed in Divisions 1 and 10, the following definitions shall apply throughout this Chapter:

9 (1) "CEQA" means the California Environmental Quality Act (Public
10 Resources Code section 21000 et seq.) and its implementing regulations (Cal. Code
11 Regs, tit. 14, section 15000 et seq.).

12 (2) "Claimant" means the applicant for a vested rights determination
13 submitted pursuant to Section 88.03.060.

14 (3) "DOC" means the California Department of Conservation.

15 (4) "DMR" means the California Department of Conservation Division of
16 Mine Reclamation and includes the supervisor of Mine Reclamation.

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

21 (6) "SMGB" means the California State Mining and Geology Board.

22 (7) "Vested right" means the right to conduct a legal nonconforming use
23 of real property if that right existed lawfully before a zoning or other land use restriction
24 became effective and the use is not in conformity with that restriction when it continues
25 thereafter. A vested mining right, in the surface mining context, may include but shall not
26 be limited to: the area of mine operations, the depth of mine operations, the nature of
27 mining activity, the nature of material extracted, the quantity of material available for
28 extraction, and the nature and scope of ancillary processing activities.

1 **Section 88.03.030 Incorporation of SMARA and State Regulations.**

2 (a) **Incorporation of SMARA and State Regulations.** SMARA, the State
3 Regulations, and Annual Reporting Requirements are incorporated by reference into this
4 Chapter, as applicable, recognizing that not all provisions of SMARA, the State
5 Regulations, and Annual Reporting Requirements apply to the exercise of the County's
6 duties under this Chapter.

7 (b) **Conflict Between This Chapter and State Law.** To the extent that the
8 provisions of this Chapter are more stringent than corresponding State law provisions,
9 the provisions of this Chapter shall prevail, unless inconsistent with State law.

10 (c) **Amendments.** Applicable amendments to SMARA, the State Regulations,
11 and Annual Reporting Requirements shall be deemed automatically incorporated by
12 reference into this Chapter.

13 **Section 88.03.040 Applicability.**

14 (a) **Applicability.** The provisions of this Chapter shall apply to activities,
15 including surface mining operations and reclamation of mined lands, regulated under
16 SMARA, as may be applicable to public and private property in the unincorporated areas
17 of the County.

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

27 (c) **Jurisdiction.** Whenever a proposed or existing surface mining operation
28 is within the jurisdiction of the County and another public agency, is a permitted use within

1 the agencies, and is not separated by a natural or manmade barrier coinciding with the
2 boundary of the agencies, the evaluation of the proposed or existing operation shall be
3 made by the SMARA lead agency in accordance with SMARA section 2771.

4 **Section 88.03.050 Permit, Reclamation Plan and Financial Assurance**
5 **Requirements.**

6 (a) **Approval of Conditional Use Permit, Reclamation Plan, and Financial**
7 **Assurance Required.** Except as otherwise provided for in this Chapter, and consistent
8 with SMARA, a person shall not conduct surface mining operations unless:

- 9 (1) A Permit is obtained from the County;
- 10 (2) A reclamation plan has been submitted to and approved by the
11 County; and
- 12 (3) A financial assurance for reclamation has been approved by the
13 County.

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

16 (c) **Vested Rights.** Consistent with SMARA section 2776, a person who
17 conducts surface mining operations pursuant to vested rights, which have been
18 recognized by the County pursuant to this Chapter (as set forth in Section 88.03.060),
19 shall not be required to obtain a Permit. Such operations shall be required to comply with
20 the requirement to have an approved reclamation plan and financial assurance as
21 provided in this Chapter.

22 **Section 88.03.060 Vested Rights Determination.**

23 (a) **Purpose.** No person who has obtained a vested right to conduct surface
24 mining operations prior to January 1, 1976, shall be required to secure a Permit pursuant
25 to SMARA sections 2770 and 2776, as long as no substantial changes have been made
26 to the operation except in conformance with SMARA. Any person claiming a vested right
27 to conduct surface mining operations in unincorporated County may, to the extent
28 required by applicable law, establish such claim in a public proceeding as provided by

1 this Chapter. In such a proceeding the Claimant shall assume the burden of proof. The
2 County shall recognize prior administrative determinations or confirmations of vested
3 rights (including, but not limited to, those encompassed by a prior reclamation plan
4 approval) consistent with applicable law.

5 A person shall be deemed to have a vested right or rights to conduct surface
6 mining operations if, prior to January 1, 1976, the person has, in good faith and in reliance
7 upon a permit or other authorization, if the permit or other authorization was required,
8 diligently commenced surface mining operations, and incurred substantial liabilities for
9 work and materials necessary for the surface mining operations. Expenses incurred in
10 obtaining the enactment of an ordinance in relation to a particular operation or the
11 issuance of a permit shall not be deemed liabilities for work or materials. Surface mining
12 operations on or after January 1, 1976, including areas not previously mined or disturbed
13 prior to January 1, 1976, may be recognized as a vested nonconforming use under the
14 doctrine of diminishing assets.

15 **(b) Filing a Request for Determination.** An application for a determination of
16 vested rights shall be initiated by filing a request for determination with the Department,
17 to determine the establishment and/or scope of the vested right. At a minimum, the
18 request for determination shall include the following:

19 (1) An application made on forms provided by the Department and filed
20 in compliance with Chapter 85.03 (Application Procedures).

21 (2) An application shall require, at a minimum, each of the elements
22 required by SMARA (SMARA section 2776), State Regulations, and any other
23 requirements deemed necessary to facilitate an expeditious and fair evaluation of the
24 vested rights determination, to be established at the discretion of the Director in
25 consultation with County Counsel, consistent with SMARA (SMARA section 2776) and
26 applicable law.

27 (3) An application shall be accompanied by a declaration or affidavit
28 attesting to the true and accurate nature of the materials provided and shall include all

1 required information prescribed by the Director, including the following:

2 (A) Name, address, and telephone number (and name, address,
3 and telephone number of any agent for contact or service of notice, if different) of the
4 Claimant;

5 (B) Name, address, and telephone number of the property owner
6 if different than (A) above;

7 (C) Name, address, and telephone number of any lessee, lien
8 holder, or other potential claimant to the vested right asserted;

9 (D) A map indicating the exact location of the property upon which
10 the vested right is asserted;

11 (E) A legal description of such property including township and
12 range, metes and bounds, parcel numbers, or other descriptive methods to specifically
13 identify such property;

14 (F) Copies of all documents which Claimant asserts establish title
15 to such property;

16 (G) Written statements, with supporting documentation, indicating
17 the basis for the claim of a vested right to conduct surface mining operations upon such
18 property;

19 (H) Written statements, with supporting documentation,
20 identifying the scope or scale of the vested right claimed;

21 (I) Copies of, or statements specifically identifying, all local land
22 use or mining ordinances or regulations which either may presently, or have historically,
23 governed conduct of surface mining operations upon such property; and

24 (J) The names and mailing addresses of the owners of all
25 properties adjacent to the property upon which a vested right is being asserted.

26 (c) **Review and Determination Fees.** Fees for a determination of vested rights
27 shall be established and paid in accordance with Subsection 88.03.070(b).

28 (d) **Processing.**

1 (1) Within 60 business days of submittal of an application for vested
2 rights determination, the Department shall make a determination on whether the
3 application submittal contains the minimum information required pursuant to Subsection
4 88.03.060(b).

5 (2) If the Department determines that the request for vested rights
6 determination is not complete, it shall identify and request such information as necessary
7 for a complete application. A new 60-day period begins with each re-submission of an
8 application. Prior to the Department completing a staff report for the public hearing
9 required pursuant to Subsection 88.03.060(e), the Department shall notify the Claimant if
10 it determines that additional evidence may be required to support a recommendation that
11 a vested right exists on some or all of the parcel(s) subject to the vested rights
12 determination. In notifying the Claimant, the Department shall identify any additional
13 evidence requested, and provide a reasonable time, based upon the scope of additional
14 evidence requested, for the Claimant to provide such additional evidence.

15 (3) The Department shall issue a staff report with recommendations for
16 consideration by the Board and schedule a public hearing before the Board pursuant to
17 Subsection 88.03.060(e), to consider the application. Notice of the public hearing shall
18 comply with Section 86.07.020. The Department shall schedule the public hearing no
19 more than 180 business days after the Department concludes that the application is
20 complete, unless later date is mutually agreed to by the Department and the Claimant or
21 because the Department is required to notify the Claimant that additional evidence may
22 be required to support a vested right pursuant to Subsection 88.03.060(d)(2).

23 (4) A vested rights determination is not a “project” within the meaning of
24 CEQA and shall not be subject to environmental review under CEQA.

25 (e) **Public Hearing.** A public hearing before the Board, where required, shall
26 be held to consider the vested rights determination in compliance with SMARA (SMARA
27 section 2776) and this Chapter. The decision of the Board shall be final and subject to
28 judicial review in the Superior Court of California.

1 (f) **Evidence.** Relevant evidence in a proceeding for determination of a claim
2 of vested rights shall be written or oral evidentiary statements or material demonstrating
3 or delimiting the existence, nature, and scope of the claimed vested right. Such evidence
4 may include, but is not limited to, evidence of any Permit or authorization to conduct
5 mining operation on the property in question prior to January 1, 1976, mining activity
6 commenced or pursued pursuant to such Permit or authorization, and zoning or land use
7 restrictions applicable to the property in question prior to January 1, 1976. As to any land
8 for which Claimant asserts a vested right to use for surface mining operations, Claimant
9 shall produce evidence demonstrating that the Claimant intended to devote such areas
10 to surface mining operations. Such evidence shall be measured by objective
11 manifestations, and not subjective intent at the time of passage of the law, or laws
12 affecting Claimant's right to continue surface mining operations without a permit.

13 (g) **Determination.** Following the public hearing, the Board shall determine
14 whether the Claimant, by a preponderance of the evidence, has demonstrated a claim for
15 vested rights pursuant to this Chapter. The determination shall, by resolution, identify
16 upon what specific property the vested rights are established and the scope and nature
17 of surface mining operations included within the established vested right.

18 (h) **Effect of Vested Rights Determination.** A final determination by the Board
19 recognizing a claim of vested rights shall constitute acknowledgment that the specific
20 surface mining operations as identified upon the specific property, or properties does not
21 require a permit under SMARA (SMARA section 2770) provided that the vested right has
22 been maintained and no substantial change may be made in such mining operations. If
23 any vested rights identified pursuant to this Chapter are waived or abandoned, the surface
24 mining operations identified shall become subject to the Permit requirements of SMARA.

25 (i) **Other Requirements Applicable to Vested Mining Operations.** All other
26 requirements of SMARA and this Chapter shall apply to vested mining operations. Those
27 operations that are not eligible for a vested right shall be subject to both a reclamation
28

1 plan (SMARA subsection 2770(b)) and a Permit, as well as all applicable zoning
2 regulations.

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

9 **Section 88.03.070 Permit and Reclamation Plan Application Filing, Processing,**
10 **and Review.**

11 (a) **Application Filing.**

12 (1) Applications for a Permit and/or reclamation plan(s) shall be made
13 on forms provided by the Department and filed in compliance with SMARA, the State
14 Regulations, this Chapter, and Chapter 85.03 (Permit Application and Review
15 Procedures).

16 (2) The forms governing a Permit and/or reclamation plan application
17 shall require the submittal of information meeting the requirements of SMARA and State
18 Regulations as applicable, including but not limited to SMARA sections 2772-2773, and
19 other information deemed necessary at the Director's discretion to facilitate an
20 expeditious and fair evaluation of the application for a Permit and/or reclamation plan.

21 (3) As many copies of the application materials as may be required by
22 the Director shall be submitted to the Department. All application materials shall be
23 submitted to the County at one time.

24 (4) Applications shall be accompanied by the submittal of all required
25 environmental review forms required by the Department to comply with CEQA, and such
26 other information as may be deemed necessary and prescribed by the Director.

27 (b) **Fees.**

28 (1) **Establishment of Fees.** The County shall establish a schedule of

1 fees which the County deems necessary to cover the reasonable costs incurred in
2 implementing this Chapter (e.g., fees to process applications, annual reports, inspections,
3 monitoring, enforcement, compliance, etc.).

4 (2) **Payment of Fees.** Fees shall be paid by surface mining operators at
5 times determined by the County to be appropriate to ensure that reasonable costs of
6 implementing this Chapter are borne by the operators. The estimated fees relating to the
7 processing of applications shall be paid by the applicant at the time of filing of the
8 application and supplemented as necessary upon completion of processing and review.
9 Excess fees shall be returned to the applicant in accordance with the County Fee
10 Ordinance.

11 (c) **Processing.**

12 (1) Within 30 days of acceptance of an application for a Permit and/or
13 reclamation plan as complete, the Department shall notify the DMR of the filing of the
14 application(s), consistent with the requirements of SMARA subsection 2772.1(b)(7).

15 (2) Whenever surface mining operations are proposed in the 100-year
16 floodplain of any stream, as shown in Zone A of the Flood Insurance Rate Maps issued
17 by the Federal Emergency Management Agency, and within one mile, upstream or
18 downstream, of any State highway bridge, the Department shall also notify the California
19 Department of Transportation pursuant to SMARA section 2770.5 that the application has
20 been received. The County shall not issue or renew the permit until the California
21 Department of Transportation has submitted its comments or until 45 days from the date
22 the application for the permit was submitted to the California Department of
23 Transportation, whichever occurs first.

24 (3) The Department shall process the application through environmental
25 review in compliance with CEQA and the County's environmental review guidelines, as
26 applicable.

27 (4) Subsequent to any applicable review under CEQA and the County's
28 environmental review guidelines, the Department shall prepare a staff report with

1 recommendations for consideration by the Commission.

2 (5) Before final approval of an application for a reclamation plan, the
3 Director shall:

4 (A) Certify to the DMR that the reclamation plan complies with the
5 applicable requirements of SMARA; and

6 (B) Submit the reclamation plan to the DMR for review, consistent
7 with SMARA and Subsection 88.03.070(d).

8 (d) **Review by Division of Mine Reclamation.**

9 (1) Prior to approving a reclamation plan, the Department shall follow
10 the process set forth in SMARA section 2772.1 to submit the reclamation plan to the DMR
11 for review, evaluate any written comments received from the DMR within a reasonable
12 amount of time, and prepare a written response describing the disposition of any major
13 issues raised by the DMR, including:

14 (A) A description of how the Department proposes to adopt
15 DMR's comments to the reclamation plan or detailed description of the reasons why the
16 Department proposes not to adopt any comments made by the DMR.

17 (B) The Department shall submit its responses to DMR at least
18 30 days prior to the intended approval of the application for a reclamation plan.

19 (2) The Department's staff report to the Commission shall include the
20 Department's written response to the DMR.

21 (e) **Action by Commission.** The Commission shall hold a public hearing to
22 consider the proposed Permit and/or reclamation plan. The Commission shall take action
23 to approve, conditionally approve, or deny the Permit and/or reclamation plan consistent
24 with SMARA and this Chapter.

25 (f) **Conditional Approval.** If a Permit is being processed concurrently with a
26 reclamation plan, the Commission may conditionally approve the Permit with the condition
27 that the Department shall not issue the Permit until the financial assurance cost estimate
28 for the reclamation plan has been reviewed by the DMR and final action has been taken

1 to approve the financial assurance cost estimate.

2 (g) **Notice of Approved Reclamation Plan Provided to State.** Within 30 days
3 of approving a reclamation plan, the Department shall provide the DMR with notice of the
4 approval, consistent with SMARA section 2772.1.

5 (h) **Statement of Responsibility.** Before commencing surface mining
6 operations, the operator shall sign a statement of responsibility accepting responsibility
7 for reclaiming mined lands in compliance with the approved reclamation plan and in
8 accordance with SMARA subsection 2772(c)(10). The Department shall retain the
9 statement of responsibility in the surface mining operation's permanent record. Upon sale
10 or transfer of the operation, the new operator shall submit a new statement of
11 responsibility in compliance with SMARA subsection 2773.1(c)(i).

12 (i) **Transfer of Ownership.** Upon the sale or transfer of ownership of a surface
13 mining operation, and for the purpose of documenting the sale or transfer, a new operator
14 shall submit the following documents to the Department consistent with SMARA
15 subsection 2773.1(c):

16 (1) A Transfer of Ownership form, which shall be placed in the
17 Department's permanent record for the operation.

18 (2) A statement of responsibility form, which shall be placed in the
19 Department's permanent record for the operation.

20 (3) If a surface mining operation is sold or ownership is transferred to
21 another person, the existing financial assurance mechanism shall remain in force and
22 shall not be released by the Department until new financial assurance mechanisms are
23 secured from the new owner and have been approved by the Department in accordance
24 with SMARA sections 2770, 2773.1, and 2773.4.

25 (j) **Findings for Issuance of Permits and Approval of Reclamation Plans**

26 (1) **Permits.** Before granting or issuing a Permit for surface mining
27 operations, the review authority shall make all of the applicable findings required by
28 Chapter 85.06 (Conditional Use Permit/Minor Use Permit).

1 (2) **Reclamation Plans.** Before approving a reclamation plan, the
2 review authority shall make all of the following findings:

3 (A) The reclamation plan complies with the applicable
4 requirements of SMARA, including SMARA sections 2772-2773.

5 (B) The reclamation plan complies with the applicable
6 requirements of the State Regulations, including State Regulations sections 3500-3505
7 and 3700-3713.

8 (C) The reclamation plan will reclaim the mined lands to a usable
9 condition which is readily adaptable for alternative land uses consistent with the general
10 plan and with any applicable resource plan or element.

11 (D) The reclamation plan has been reviewed in compliance with
12 CEQA and the County's environmental review guidelines, as applicable, and all significant
13 adverse impacts from reclamation are mitigated below a level of significance or to the
14 extent feasible.

15 (E) The reclamation plan will reclaim the mined lands to a
16 condition that is compatible with the surrounding environment, topography and/or other
17 resources.

18 (k) **Notice of Reclamation Plan Approval.**

19 (1) Upon approval of a reclamation plan, the Department shall record a
20 "Notice of Reclamation Plan Approval" with the County Recorder. The notice shall include
21 a statement substantially similar to the following: "Mining operations conducted on the
22 hereinafter described real property are subject to a reclamation plan approved by San
23 Bernardino County, a copy of which is on file with the San Bernardino County Land Use
24 Services Department."

25 (2) In addition to the information required by subdivision (1), the notice
26 shall also include the name of the owner of record of the surface mining operation, the
27 name of the SMARA lead agency, and the acknowledgement signature of the County
28 representative.

1 (l) **Conditions of Approval.** Notwithstanding Section 85.03.090, the review
2 authority shall, when adopting conditions of approval as part of a Permit or reclamation
3 plan under this Chapter, specify whether the conditions of approval may be amended by
4 the Department or are required to be amended pursuant to Chapter 85.12 (Revisions to
5 An Approved Action).

6 **Section 88.03.080 Permit and Reclamation Plan Amendments.**

7 (a) **Amendments.** An application for approval of an amendment to a previously
8 approved Permit or reclamation plan shall be made in accordance with the provisions of
9 this section. Under no circumstances shall any deviation from the approved Permit or
10 reclamation plan be undertaken until the required amendment is approved by the
11 Department pursuant to all applicable requirements of this Chapter.

12 (b) **Permit Amendment.** Amendments to Permits shall be processed in
13 accordance with Chapter 85.12 (Revisions to An Approved Action).

14 (c) **Reclamation Plan Amendment.** Amendments to a reclamation plan shall
15 be processed in accordance with Chapter 85.12 (Revisions to An Approved Action) and
16 pursuant to subdivisions (d)-(f) below. In the event of any conflict between Chapter 85.12
17 (Revisions to An Approved Action) and this section, the provisions of this section shall
18 prevail.

19 (d) **Application Filing.** An amendment to a previously approved reclamation
20 plan shall be processed on forms provided by the Department and filed in compliance
21 with this section, as applicable. Applications for amendments shall be reviewed by the
22 Director to determine if the proposed modification constitutes a substantial or non-
23 substantial deviation from the approved reclamation plan.

24 (e) **Substantial Deviations.** Pursuant to SMARA section 2777, an operator
25 shall obtain approval of a reclamation plan amendment prior to commencing any activities
26 that constitute a "substantial deviation" from the approved reclamation plan. Deviations
27 from the approved reclamation plan that are determined by the Director to be substantial
28 shall be reviewed and approved by the review authority for the original reclamation plan,

1 through the same procedure used for the initial approval. Whether a deviation from an
2 approved reclamation plan is a “substantial deviation” or a “non-substantial deviation”
3 shall be governed by subdivision (f) below.

4 (f) **Non-Substantial Deviations.** A non-substantial deviation from an
5 approved reclamation plan shall mean any deviation from an approved reclamation plan
6 that is not substantial when considering the factors in State Regulations subsection
7 3502(d). An application for a non-substantial deviation shall be reviewed and approved
8 by the Director using the Staff Review without Notice procedures. Notwithstanding any
9 provision to the contrary, the Director shall be required to find that the application for non-
10 substantial deviation will not adversely affect the public health, safety or welfare and the
11 change does not constitute significant new information requiring recirculation under
12 CEQA. Examples of non-substantial deviations may include, but are not limited to, the
13 following:

- 14 (1) Minor changes to contours or final site topography;
- 15 (2) Minor changes to existing on-site roads and encroachments directly
16 from the surface mining operation to a public road;
- 17 (3) Minor changes to revegetation plans, including but not limited to
18 substitutions in the type and/or number of plant species, and/or changes in topsoil
19 treatments;
- 20 (4) Technological or administrative changes in methods used to achieve
21 reclamation;
- 22 (5) Measures which will ensure or maintain public safety (e.g., fences,
23 gates, signs, or hazard removal);
- 24 (6) Minor modifications to a previously approved phasing plan; and
- 25 (7) Modifications that allow compliance with requirements imposed by
26 other public agencies, provided the requirements are not inconsistent with the previously
27 approved Permit.

28 **Section 88.03.090 Mineral Resource Protection Policies.**

1 (a) **Protection of Mines from Incompatible Uses.** Mine development is
2 encouraged in compatible areas before encroachment of conflicting uses. Mineral
3 resource areas that have been classified by the State Geologist or designated by the
4 SMGB as Mineral Resource Zones (MRZ), as well as existing surface mining operations
5 that remain in compliance with the provisions of this Chapter, shall be protected from
6 intrusion by incompatible land uses that may impede or preclude mineral extraction or
7 processing, to the extent possible for consistency with the general plan. Before approving
8 a use that would be incompatible with mineral resource protection, conditions of approval
9 shall be applied to encroaching development projects to minimize potential conflicts.

10 (b) **Mapping of Identified Resource Areas.** As required by SMARA, the
11 general plan and resource maps shall be updated to reflect mineral information
12 (classification and/or designation reports) within 12 months of receipt from the SMGB of
13 the information. Land use decisions within the County shall be guided by information
14 provided on the location of identified mineral resources of regional significance.
15 Conservation and potential development of identified mineral resource areas shall be
16 considered and encouraged. Recordation on property titles of the presence of important
17 mineral resources within the identified mineral resource areas may be encouraged as a
18 condition of approval of any development project in the impacted area.

19 (c) **Mineral resources management policies.** Within 12 months of receiving
20 mineral information pursuant to SMARA section 2761, and also within 12 months of the
21 designation of an area of statewide or regional significance within its jurisdiction, the
22 County shall, in accordance with state policy, establish mineral resource management
23 within the general plan (and/or other community or specific plan, as appropriate) and
24 resource maps that protect such mineral resources pursuant to and consistent with
25 SMARA section 2762.

26 **Section 88.03.100 Financial Assurances.**

27 (a) **Financial Assurance Required as Condition of Approval.** Any person
28 who conducts or intends to conduct surface mining operations shall submit a financial

1 assurance cost estimate for review and approval by the Department pursuant to SMARA
2 section 2773.1. To ensure that reclamation will proceed in compliance with the approved
3 reclamation plan, the County shall require financial assurances of each surface mining
4 operation. Such financial assurances will be released upon satisfactory performance.

5 (1) **Acceptable Types of Financial Assurance.** The applicant may
6 post the financial assurance in the form of a surety bond executed by an admitted surety
7 insurer, as defined in subdivision (a) of Section 995.120 of the Code of Civil Procedure,
8 trust funds, irrevocable letters of credit from an accredited financial institution, or other
9 method acceptable to the Department and the SMGB as specified in State Regulations,
10 and that the Department reasonably determines are adequate to perform reclamation in
11 compliance with the surface mining operation's approved reclamation plan.

12 (2) **Required Payees.** The financial assurance shall be made payable
13 to the County and DOC pursuant to SMARA subsection 2773.1(a)(5). The financial
14 assurance may also, to the extent permitted by law, be made payable to any federal
15 agency (*e.g.*, Bureau of Land Management, U.S. Forest Service, or National Park
16 Service), where a surface mining operation is required to provide a federal agency a
17 financial assurance pursuant to a federal approval to conduct surface mining operations
18 on federally managed public land.

19 (b) **Purpose of Financial Assurance.** A financial assurance shall be required
20 to ensure reclamation is performed in accordance with the surface mining operator's
21 approved reclamation plan, including the following elements as applicable:

- 22 (1) Revegetation and landscaping requirements.
- 23 (2) Reclamation of aquatic or wildlife habitat.
- 24 (3) Reclamation of water bodies and water quality.
- 25 (4) Slope stability and erosion and drainage control.
- 26 (5) Disposal of hazardous materials.
- 27 (6) Removal of equipment and buildings that are not part of an approved
28 end use.

1 (7) Other measures, if necessary.

2 (c) **Financial Assurance Cost Estimate Review Process.**

3 (1) Cost estimates for the financial assurance shall be submitted to the
4 Department for review and approval.

5 (2) Prior to approving a financial assurance cost estimate, the
6 Department shall follow the process set forth in SMARA section 2773.4 to submit the
7 financial assurance cost estimate to the DMR, to evaluate and respond to written
8 comments received from the DMR, to engage in consultation with the DMR, if requested,
9 and to notify the DMR of the intent to approve the annual financial assurance cost
10 estimate. If the DMR does not provide any comments within the 45 day period set by
11 SMARA subsection 2773.4(C)(1), the Department may assume that the cost estimate is
12 adequate and shall notify the DMR of the intent to approve it in the time set by SMARA
13 subsection 2773.4(d)(5)(D).

14 (3) The Department shall approve a financial assurance cost estimate
15 meeting the requirements of this Chapter, SMARA, and State Regulations. The
16 Department shall certify that the financial assurance cost estimate complies with the
17 applicable requirements of SMARA.

18 (d) **Determination of Amount of Financial Assurance Cost Estimate.**

19 (1) A financial assurance cost estimate shall be prepared by the mine
20 operator, a licensed engineer, or other professional experienced in the reclamation of
21 mined lands. The financial assurance cost estimate shall be submitted to the County on
22 the financial assurance cost estimate (FACE-1) form approved by the SMGB.

23 (2) The financial assurance cost estimate shall be based on the
24 following, consistent with State Regulations section 3804:

25 (A) An analysis of physical activities and materials necessary to
26 implement the approved reclamation plan.

27 (B) The County's unit costs, or costs for third party contracting, for
28 each of the physical activities.

1 (C) The number of units of each of the physical activities.

2 (D) A contingency factor of up to ten (10) percent. The
3 contingency factor shall depend on the amount of the direct costs of reclamation and
4 other relevant factors, consistent with the following:

5	Total Direct Cost (\$):	Contingency (%):
6	0-\$500,000	10
7	\$500,000-\$5 million	7
8	\$5 million - \$50 million	4
9	Greater than \$50 million	2

10 (3) The financial assurance cost estimate shall not include the cost of
11 completing mining of the site.

12 (4) In preparing a financial assurance cost estimate, it shall be assumed
13 without prejudice or insinuation that the surface mining operation could be abandoned by
14 the operator and, consequently, the County or DOC may need to contract with a third-
15 party commercial company for reclamation in accordance with the reclamation plan of the
16 mined lands associated with the surface mining operation.

17 (e) **Time Period Financial Assurance Required to Remain in Effect.** The
18 financial assurance shall remain in effect for the duration of the surface mining operation
19 and any additional period specified in the reclamation plan for the purpose of monitoring
20 until reclamation is deemed completed (including any maintenance required).

21 (f) **Annual Adjustment in Amount of Financial Assurance.** The amount of
22 the financial assurance required of a surface mining operation for any one (1) year shall
23 be reviewed pursuant to SMARA subsection 2773.4(d) and, if necessary, adjusted
24 annually to account for new lands disturbed by surface mining operations, inflation, and
25 reclamation of lands accomplished in compliance with the approved reclamation plan.
26 The financial assurance shall include estimates to cover reclamation for existing
27 conditions and anticipated activities during the upcoming year, excepting that the
28 permittee may not claim credit for reclamation scheduled for completion during the

1 coming year. The annual SMARA inspection by the County shall, in most cases, be used
2 to validate the submitted estimate. If revisions to the financial assurance cost estimate
3 are not required, the operator shall explain, in writing, why revisions are not required.

4 (g) **Submittal of Revised Financial Assurance.** Revisions to a financial
5 assurance cost estimate shall be submitted to the Director within 30 days after the annual
6 inspection date for approval of the financial assurance cost estimate pursuant to SMARA
7 subsections 2773.4(d)(2) and 2773.4(e)(1).

8 (h) **Financial Incapability.** If evidence indicates that an operator is financially
9 incapable of completing reclamation in accordance with an approved reclamation plan or
10 may have abandoned the surface mining operation without completing reclamation, the
11 County shall conduct a public hearing before the Commission to determine whether the
12 operator is financially capable of completing reclamation in accordance with the approved
13 reclamation plan or has abandoned the surface mining operation. The hearing shall be
14 noticed to the operator and the DMR at least 30 days prior to the hearing. The hearing
15 shall be conducted in accordance with SMARA subsection 2773.1(b)(2).

16 (i) **Release of Financial Assurance.** A financial assurance shall no longer be
17 required of a surface mining operation, and shall be released, upon the written
18 concurrence of the Department and the DMR, which shall be forwarded to the operator
19 and the institutions providing or holding the financial assurance mechanism, that
20 reclamation has been completed in accordance with the approved reclamation plan.

21 (j) **Transfer of Financial Assurance.** The transfer of a financial assurance
22 upon the sale or change of ownership of a surface mining operation shall be completed
23 in accordance with SMARA subsection 2773.1(c).

24 (k) **Forfeiture.** A forfeiture of a financial assurance, to enable the County to
25 complete reclamation in accordance with an approved reclamation plan, shall occur
26 pursuant to SMARA subsection 2773.1(b)(2).

27 **Section 88.03.110 Reclamation Standards.**

28 (a) **Applicable State Law.**

1 (1) Reclamation plans shall comply with the provisions of SMARA and
2 the State Regulations, as applicable.

3 (2) Reclamation plans approved on or after January 15, 1993,
4 reclamation plans for proposed new mining operations, and any amendments to
5 previously approved reclamation plans that constitute a "substantial deviation," shall
6 comply with the reclamation standards established in sections 3700-3713 of the State
7 Regulations, including but not limited to, wildlife habitat, backfilling, revegetation,
8 drainage, agricultural land reclamation, equipment removal, stream protection, topsoil
9 salvage, and waste management.

10 (b) **Phasing of Reclamation.**

11 (1) Reclamation activities shall, when possible given the site conditions,
12 be initiated at the earliest possible time on those portions of the mined lands that will not
13 be subject to further disturbance. Interim reclamation may also be required for mined
14 lands that have been disturbed and that may be disturbed again by future surface mining
15 operations. Reclamation may be performed on an annual basis, in stages compatible with
16 continuing operations, or on completion of all excavation, removal, or fill, as approved by
17 the County.

18 (2) Each phase of reclamation shall be specifically described in the
19 reclamation plan and shall include all of the following information:

20 (A) The anticipated beginning and expected ending dates for
21 each phase, which shall be regarded as non-binding estimates.

22 (B) All reclamation activities planned.

23 (C) Criteria for measuring completion of specific reclamation
24 activities.

25 **Section 88.03.120 Interim Management Plans and Idle Mines.**

26 (a) **Deadline for Submittal of Interim Management Plan.** Within 90 days of a
27 surface mining operation becoming "idle," as defined by SMARA section 2727.1, the
28 operator shall submit to the Department an application for an Interim Management Plan

1 (“IMP”) in accordance with the provisions of this section, consistent with SMARA
2 subsection 2770(h)(1).

3 (b) **IMP Submittal Requirements.**

4 (1) The IMP shall fully comply with the requirements of SMARA and all
5 existing Permit conditions and shall provide measures the operator will implement to
6 maintain the site in a stable condition, taking into consideration public health and safety.

7 (2) The IMP shall be submitted on forms provided by the Department
8 and shall be processed as an amendment to the reclamation plan.

9 (3) An IMP shall not be subject to environmental review under CEQA,
10 consistent with SMARA subsection 2770(h)(1).

11 (c) **Continuation of Financial Assurance Required.** The operator shall
12 maintain a financial assurance at all times while the surface mining operation is idle, or
13 as otherwise required through the approved IMP and consistent with SMARA subsection
14 2770(h)(3).

15 (d) **Review by Department and Division of Mine Reclamation.** On receipt of
16 a complete IMP, the Department shall provide the IMP to the DMR for review, and the
17 Director shall review and approve the IMP, pursuant to SMARA subsection 2770(h)(4)-
18 (6). The determination of the Director to approve or deny the IMP shall not require a public
19 hearing. The operator may appeal a Director’s denial of an IMP in compliance with
20 Chapter 83.08 (Hillside Grading Standards).

21 (e) **Duration.** The IMP may remain in effect for a period not to exceed five
22 years, at which time the Director shall do one of the following:

23 (1) Renew approval of the IMP for an additional period not to exceed five
24 years, which may be renewed for one additional five-year period at the expiration for the
25 first five-year renewal period, if the Director finds that the operator has fully complied with
26 the provisions of the IMP. The determination by the Director to extend the term of the IMP
27 shall not require a public hearing.

28 (2) Require the operator to commence reclamation in accordance with

1 the approved reclamation plan; provided, however, that notwithstanding such a
2 requirement, the surface mining operation shall not be considered abandoned unless: (i)
3 clear and convincing evidence demonstrates that the operator has “abandoned” the
4 surface mining operation as that term is interpreted by applicable law, and (ii) the County
5 has, following a noticed public hearing before the Commission, determined that the
6 surface mining operation has been so abandoned.

7 (f) Unless review of an IMP is pending before the Director, or an appeal is
8 pending before the Commission or the Board, a surface mining operation which remains
9 idle for over one year after becoming idle without obtaining approval of an IMP shall be
10 considered in violation of this Chapter.

11 **Section 88.03.130 Annual Report.**

12 Surface mining operators shall forward an annual surface mining report to the DMR
13 and to the Department on a date established by the DMR, upon forms furnished by the
14 SMGB. New surface mining operations shall file an initial surface mining report and any
15 applicable filing fees with the DMR within 30 days of initial permit approval, or before
16 commencement of operations, whichever is sooner. Applicable fees, together with a copy
17 of the annual inspection report, shall be forwarded to the DMR at the time of filing the
18 annual surface mining report.

19 **Section 88.03.140 Inspections.**

20 (a) **Annual Inspection.** The Department shall conduct an annual inspection of
21 a surface mining operation in intervals of no more than 12 months to determine whether
22 the surface mining operation is in compliance with this Chapter. The Department shall
23 arrange for inspection of a surface mining operation within six months of receipt of the
24 annual report required in Section 88.03.130.

25 (b) **Eligible Inspectors.** Inspections may be made by a State-licensed
26 geologist, State-licensed civil engineer, State-licensed landscape architect, or State-
27 licensed forester, or a qualified Department employee, such as those certified in the DMR
28 training programs under SMARA subsection 2774(d)(3), who is experienced in land

1 reclamation and who has not been employed by the surface mining operation being
2 inspected in any capacity during the previous 12 months. All inspectors conducting annual
3 inspections shall have on file with the County and the DMR a current Certificate of
4 Completion of an inspection workshop, and any additional licensing and disciplinary
5 information of the inspector.

6 (c) **Inspection Forms.** The annual inspection(s) shall be conducted using a
7 form approved and provided by the SMGB.

8 (d) **Notification of Inspection to State.** The Department shall submit the
9 completed inspection form to the DMR within 90 days of completion of the inspection,
10 along with a notice of completion that includes a statement regarding the surface mining
11 operation's compliance with SMARA, and the information required by SMARA subsection
12 2774(b), including any supporting documentation that substantiates the County's findings,
13 and shall forward a copy of the inspection notice and any supporting documentation to
14 the operator. All inspections shall be conducted in accordance with State Regulations.

15 (e) **Payment for Inspection.** The operator shall be solely responsible for the
16 reasonable cost of the inspection pursuant to Subsection 88.03.070(b)(1).

17 **Section 88.03.150 Enforcement.**

18 (a) **Compliance Process.** The County has primary responsibility for enforcing
19 this Chapter. The County shall enforce this Chapter consistent with SMARA sections
20 2715, 2774.1 and 2774.2, and as provided for herein.

21 (b) **Notice of Violation.** If the Director determines, based upon an annual
22 inspection or otherwise confirmed by an inspection, that a surface mining operation is not
23 in compliance with this Chapter, the County shall send the operator a notice of violation
24 by personal service or certified mail. The notice of violation shall describe the violation
25 and specify the actions that the operator shall take to correct the violation.

26 (c) **Time for Correction.** If the time to correct the violation will exceed 30 days,
27 the operator and Director may, pursuant to SMARA subsection 2774.1(a)(2), enter into a
28 stipulated order to comply that specifies an agreed-upon time for correcting the

1 violation(s) specified in the notice of violation.

2 (d) **Order to Comply.**

3 (1) If the violation continues beyond 30 days after the service of a notice
4 of violation or the operator does not commit to enter into a stipulated order to comply
5 within 30 days of being served with the notice of violation, the Director may issue an order
6 to comply by personal service or certified mail requiring compliance with this Chapter,
7 and consistent with SMARA subsection 2774.1(a)(3)(A).

8 (2) An order to comply shall specify (i) those aspects of the surface
9 mining operation which are not in compliance with this Chapter, (ii) a time for compliance
10 that is reasonable taking into account the seriousness of the alleged violation and any
11 good faith efforts by the operator to comply with applicable requirements, and (iii) the
12 actions and legal processes required to correct the violation. If an operator does not have
13 an approved reclamation plan or financial assurance, an order to comply may direct that
14 all surface mining activities shall cease, consistent with SMARA subsection 2774.1(a).

15 (3) An order to comply shall take effect 30 days following the service of
16 the order unless within those 30 days the operator appeals the order to the Commission.
17 Such an appeal shall be noticed and heard at a public hearing within 45 days of the filing
18 of the appeal or a longer period as mutually agreed upon by the operator and the County.

19 (e) **Denial of Appeal.** An operator whose appeal pursuant to subdivision (d)(3)
20 has been denied shall not be removed from the list published by DMR pursuant to SMARA
21 subsection 2717(b) if, within 10 business days of the denial of the appeal, the operator
22 enters into a stipulated order to comply, which includes a stipulated schedule for
23 compliance, with the Director that is consistent with the order to comply upheld by the
24 Commission.

25 (f) **Administrative Penalty**

26 (1) An operator who violates or fails to comply with an order to comply
27 issued by the Director after the order's effective date, or who fails to submit a report or
28 pay annual fees to the County as required by SMARA section 2207, shall be subject to

1 an order by the Director imposing an administrative penalty of not more than five thousand
2 dollars (\$5,000) per day, assessed from the original date of non-compliance with this
3 Chapter and consistent with SMARA subsection 2774.1(f).

4 (A) In determining the amount of the administrative penalty, the
5 Director shall take into consideration the nature, circumstances, extent, and gravity of the
6 violation or violations, any prior history of violations, the degree of culpability, economic
7 savings, if any resulting from the violation, and any other matters justice may require.

8 (B) An order imposing an administrative penalty shall be effective
9 upon issuance of the assessment and payment shall be made to the County within 30
10 days, unless the operator files an appeal for review of the order pursuant to SMARA
11 section 2774.2. An order shall be served by personal service or by certified mail.

12 (C) Within 30 days of the issuance of an order setting
13 administrative penalties, the operator may petition the Board for review of the order. The
14 Board may affirm, modify, or set aside, in whole or in part, by its own order, the order of
15 the Director imposing administrative penalties. Any order of the Board shall be served by
16 certified mail upon the operator and shall become effective upon the issuance thereof
17 unless the operator petitions the superior court for review. Payment of an effective order
18 for administrative penalties shall be made to the County within 30 days of service of the
19 order or 30 days from resolution of the petition filed with superior court. All appeal
20 procedures shall be in accordance with SMARA section 2774.2.

21 (g) **Imminent and Substantial Endangerment.** If the County determines that
22 the surface mine is not in compliance with this Chapter, so that the surface mine presents
23 an imminent and substantial endangerment to the public health or the environment, the
24 County may seek an order from a court of competent jurisdiction enjoining that operation.

25 **Section 88.03.160 Permit Revocation or Suspension.**

26 (a) Any Permit granted under the provisions of this Chapter shall be subject to
27 revocation or suspension by the Commission, in accordance with the procedures set forth
28 in Section 86.09.170.

1 (b) A revocation or involuntary modification of a Permit is appealable in
2 compliance with Chapter 86.08 (Appeals). Where allowed by law, including SMARA, a
3 further appeal may be taken by the operator to the SMGB.

4 **Section 88.03.170 Post-Approval Procedures.**

5 Unless otherwise provided, the procedures and requirements in Division 6
6 (Development Code Administration) related to Permit implementation, time limits,
7 extensions, appeals, and revocations, shall apply following the decisions on Permits and
8 reclamation plans.

9 **Section 88.03.180 Renewable Energy Generation Facilities.**

10 (a) The construction and operation of a renewable energy generation facility on
11 disturbed mined lands, including all foundations and other installations, facilities,
12 buildings, accessory structures, and other improvements to the land that are related to
13 the generation of energy, shall be considered an interim use for the purposes of this
14 Section and shall not require an amendment to an approved reclamation plan if all of the
15 following are met:

16 (1) The renewable energy generation facility will not adversely affect the
17 completion of reclamation in accordance with the surface mining operation's approved
18 reclamation plan.

19 (2) The permit conditions of the renewable energy generation facility
20 address and eliminate any potentially adverse impacts on the surface mining operation.

21 (3) The operating permit for renewable energy generation facility
22 includes both of the following:

23 (A) An approved closure and decommissioning plan that will not
24 affect the manner in which reclamation will be achieved pursuant to this Chapter.

25 (B) A separate financial assurance mechanism that the County
26 determines to be sufficient to perform the removal of the renewable energy generation
27 facility.

28 (4) The closure and decommissioning of the renewable energy

1 generation facility will occur prior to the latter of the following:

2 (A) The expiration of the Permit for the surface mining operation.

3 (B) The completion of reclamation in accordance with the surface
4 mining operation's approved reclamation plan.

5 (5) All required permits for the construction and related land
6 improvements for the renewable energy generation facility have been approved by a
7 public agency in accordance with applicable provisions of state law and locally adopted
8 plans and ordinances, including, but not limited to, CEQA.

9 (b) Approvals and action on renewable energy generation facilities shall comply
10 with the following requirements:

11 (1) Prior to approving an operating permit for renewable energy
12 generation facility subject to this Section, the County shall submit the operating permit
13 application with all associated maps and plans to the DMR for review.

14 (2) The supervisor of the DMR shall have 30 days from receipt of the
15 application with associated documents to prepare written comments if the supervisor
16 chooses. The supervisor of the DMR may provide comments relating to whether the
17 renewable energy generation facility meets the criteria set forth in paragraph (1) to (4),
18 inclusive, of Subdivision (a).

19 (3) The Department shall prepare a written response to the supervisor's
20 comments and submit its response to the supervisor of the DMR at least 30 days prior to
21 approval of the operating permit for renewable energy generation facility.

22 (c) Copies of all approved permits and associated documents shall be
23 submitted to the Department and the supervisor of the DMR as an addendum to the
24 approved reclamation plan no less than 30 days prior to the commencement of land
25 improvements associated with the renewable energy generation facility.

26 (d) For purposes of this Section, "renewable energy generation facility" means
27 a solar photovoltaic, solar thermal under 50 megawatts, or wind energy generation facility.

28 **Section 88.03.190 Certification and Recertification of Mining Ordinances.**

1 (a) Upon adoption of a new mining ordinance, or amendment of an existing
2 mining ordinance, the County shall, within 30 days of such action, provide written notice
3 of the complete text of the resulting mining ordinance to the SMGB, to enable the SMGB
4 to review the ordinance in accordance with SMARA section 2774.3 and subsections
5 2774.5(a) and 2774.5(b).

6 (b) A new mining ordinance, or an amendment to an existing mining ordinance,
7 of the County shall not be considered to be in accordance with state policy until the mining
8 ordinance is certified by the SMGB. Until the County has a certified ordinance, no person
9 shall initiate a surface mining operation unless a reclamation plan has been approved by
10 SMGB or as amended by SMGB.

11
12 SECTION 4. The Board of Supervisors declares that it would have adopted this
13 ordinance and each section, sentence, clause, phrase, or portion of it irrespective of the
14 fact that any one or more sections, subsections, clauses, phrases or portions of it be
15 declared invalid or unconstitutional. If for any reason any portion of this ordinance is
16 declared invalid or unconstitutional, then all other provisions of it shall remain valid and
17 enforceable.

18
19 SECTION 5. This ordinance shall take effect 30 days from the date of adoption.
20
21

22
23 _____
DAWN ROWE, Chair
Board of Supervisors
24
25
26
27
28

1 SIGNED AND CERTIFIED THAT A COPY
2 OF THIS DOCUMENT HAS BEEN DELIVERED
3 TO THE CHAIR OF THE BOARD

4 LYNNA MONELL, Clerk of the
5 Board of Supervisors

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1 STATE OF CALIFORNIA)
2 SAN BERNARDINO COUNTY) ss.
3)

4 I, LYNNA MONELL, Clerk of the Board of Supervisors of San Bernardino County,
5 State of California, hereby certify that at a regular meeting of the Board of Supervisors of
6 said County and State, held on the _____ day of _____, 20__, at which meeting
7 were present Supervisors: _____

8 _____,
9 and the Clerk, the foregoing ordinance was passed and adopted by the following vote, to
10 wit:

11 AYES: SUPERVISORS:
12 NOES: SUPERVISORS:
13 ABSENT: SUPERVISORS:

14 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal
15 of the Board of Supervisors this ____ day of _____, 20__.

16 LYNNA MONELL, Clerk of the
17 Board of Supervisors of
18 San Bernardino County,
19 State of California

20 _____
21 Deputy

22 Approved as to Form:

23 LAURA FEINGOLD
24 County Counsel

25 By: _____
26 JOLENA E. GRIDER
27 Deputy County Counsel

28 Date: _____

EXHIBIT B

Chapter 88.03 Ordinance Comparison

This document summarizes the correspondence between the old and new ordinance sections and provides detailed summaries of substantive changes in the updated ordinance.

Topic	New Section	Old Section	Summary of Changes
Purpose	88.03.010	88.03.010	Expanded to include emphasis on statewide infrastructure needs and reduction of transportation-related emissions associated with aggregate hauling.
Definitions	88.03.020	—	New section establishing key terminology (CEQA, DOC, DMR, SMGB, Permit, Vested Rights) to improve clarity and consistency across the chapter.
SMARA Incorporation	88.03.030	88.03.020	Expanded to include automatic incorporation of future amendments to SMARA and clearer conflict-of-law provisions.
Applicability	88.03.040	88.03.030	Clarifies applicability to regulated activities and adds provisions addressing federal lands and multi-agency jurisdictional coordination.

Permit, Reclamation Plan, Financial Assurance Requirements	88.03.050	88.03.040	Clarifies requirement structure and aligns terminology with SMARA; simplifies exemptions and integrates vested rights references.
Vested Rights	88.03.060	88.03.050	Significantly expanded to include detailed procedures for vested rights determinations, including application requirements, evidentiary standards, hearings, and formal Board determinations.
Application Filing, Processing, and Review	88.03.070	88.03.060	Expanded to include detailed application content requirements, formal coordination with the Division of Mine Reclamation (DMR), timelines, required written responses to state comments, and recordation requirements.
Amendments	88.03.080	—	New section establishing procedures for amendments to permits and reclamation plans, including distinction between substantial and non-substantial deviations.
Mineral Resource Protection Policies	88.03.090	88.03.070	Expanded from prior 'Additional Conditions' section to include policies for protection of mineral resource zones, mapping updates, and integration into General Plan policy.

Financial Assurances	88.03.100	88.03.080	Expanded with detailed cost estimate procedures, DMR review requirements, contingency calculations, financial incapability provisions, release and forfeiture standards.
Reclamation Standards	88.03.110	88.03.090	Updated to align with current State regulations and clarify phasing and performance requirements.
Interim Management Plans	88.03.120	88.03.100	Expanded to clarify idle mine requirements, renewal timelines, and abandonment standards, consistent with SMARA.
Annual Report	88.03.130	88.03.110	Minor updates to reflect current State reporting processes and terminology.
Inspections	88.03.140	88.03.120	Expanded to include inspector qualification requirements, reporting timelines to DMR, and certification standards.
Enforcement	88.03.150	88.03.130	Major expansion creating a comprehensive enforcement framework including notices of violation, orders to comply, administrative penalties, appeals, and judicial remedies.
Permit Revocation or Suspension	88.03.160	—	New standalone section establishing clear authority and

			procedures for permit revocation or suspension.
Post-Approval Procedures	88.03.170	88.03.140	Updated to clarify applicability of Development Code administrative procedures following permit approval.
Renewable Energy Generation Facilities	88.03.180	—	New section allowing renewable energy facilities on mined lands with requirements for compatibility, decommissioning, and separate financial assurances.
Certification and Recertification	88.03.190	—	New section requiring submission of the ordinance to the State Mining and Geology Board (SMGB) for certification and ongoing compliance with SMARA.

Removed or Replaced Sections from Old Ordinance

- § 88.03.060 Application Filing, Processing, and Review: Reorganized into § 88.03.070 with expanded requirements.

- § 88.03.070 Additional Conditions of Approval: Replaced by § 88.03.090 Mineral Resource Protection Policies.

- § 88.03.130 Violations and Penalties: Replaced by comprehensive § 88.03.150 Enforcement section.