



Interoffice Memo

DATE: August 11, 2026

PHONE: 909-387-4739

FROM: LAND USE SERVICES DEPARTMENT

TO: BOARD OF SUPERVISORS

SUBJECT: CONSERVATION AGENCY COMMENTS - SUMMARY OF REQUESTED CHANGES AND DEPARTMENT RESPONSES

PURPOSE

This memorandum provides the Board of Supervisors ("Board") with a summary of comments received following the Planning Commission's July 9, 2026 public hearing regarding the proposed ordinance to repeal and reenact Chapter 88.03 of the San Bernardino County Development Code relating to local surface mining and land reclamation regulations, and the Land Use Services Department's ("Department") response to the requested revisions.

Following the Planning Commission hearing, the County received written comments dated August 6, 2026, submitted jointly on behalf of the Center for Biological Diversity, Earthworks, Sierra Club, and National Parks Conservation Association ("Commenters"). The Commenters requested that the Board not adopt the ordinance unless certain revisions are made and also requested additional time for public review.

After reviewing the comments, the Department does not recommend the requested substantive revisions to the ordinance for the reasons summarized below.

SUMMARY OF REQUESTED CHANGES AND DEPARTMENT RESPONSE

- 1) Definition and use of the term "Permit."** The Commenters request that the County either delete the provision in Section 88.03.040(b) stating that a "Permit" is not required for portions of mining operations conducted pursuant to federal authorization or replace "Permit" with "Conditional Use Permit." They contend that the proposed definition of "Permit," because it references SMARA section 2732.5, could be read broadly enough to include a reclamation plan and therefore create ambiguity regarding whether federally authorized mining remains subject to County reclamation requirements. As an alternative, the Commenters propose language expressly stating that reclamation plans and financial assurances remain required.

Department Response: The Department does not recommend this change. Section 88.03.020(a)(5) defines "Permit" by reference to SMARA and expressly provides that it "includes 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 the Development Code. The definition therefore directs the reader to the land use entitlement required by the applicable zoning district. At present, the applicable entitlement for surface mining operations is a Conditional Use Permit.

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Defining “Permit” by reference to the applicable land use zoning requirements, rather than permanently defining it as a “Conditional Use Permit,” is intentional. This approach provides flexibility should the Board subsequently amend the Development Code to authorize mining through a different entitlement or to establish different authorization requirements in different zoning districts. The ordinance therefore does not need to be amended each time the underlying land use entitlement applicable to mining is modified.

Further, the ordinance distinguishes a Permit from a reclamation plan rather than using the terms interchangeably. Section 88.03.050 separately requires that an operator (1) obtain a Permit, (2) submit and obtain County approval of a reclamation plan, and (3) obtain approval of financial assurance. The ordinance likewise separately establishes findings for issuance of a Permit and findings for approval of a reclamation plan. Thus, the structure of Chapter 88.03 distinguishes the land use entitlement from reclamation-plan approval.

SMARA independently requires approval of a reclamation plan where applicable, and the proposed ordinance repeatedly incorporates and implements that requirement. Restating the reclamation-plan requirement within the definition of “Permit” is therefore unnecessary and could instead obscure the ordinance's deliberate distinction between the land use entitlement and reclamation-plan approval.

- 2) **Federal agency documents and environmental studies.** The Commenters request deletion of the first sentence of Section 88.03.040(b), which provides that the County “may accept” federal agency documents and environmental studies as functionally equivalent to County requirements, consistent with the 1992 Memorandum of Understanding (“MOU”) between the State of California and federal agencies and subsequent amendments or successor agreements. Alternatively, they request language requiring that federal documents meet or exceed all applicable State and local requirements, together with public notice and comment and a Board finding before such documents may be accepted. Their proposed alternative language would expressly reference the California Environmental Quality Act (“CEQA”) and require public notice, comment, and a Board determination.

Department Response: The Department does not recommend the requested revision. Section 88.03.040(b) states that the County “may” accept federal documents and environmental studies as functionally equivalent. The use of “may” is permissive and non-directory; it does not require the County to accept federal documentation or establish that federal documentation automatically satisfies County requirements. Rather, the provision allows the County to avoid unnecessary duplication where federal documentation is sufficient while preserving the County’s authority and responsibility to independently determine whether the documentation satisfies applicable State and local requirements. The Department would evaluate the relevant federal documentation on a case-by-case basis and conduct its own analysis before determining whether it may appropriately be accepted to satisfy a County requirement. Nothing in Section 88.03.040(b) eliminates otherwise applicable requirements of SMARA, CEQA, the Development Code, or other State or local law.

The Department therefore does not recommend establishing an additional mandatory Board-level notice, hearing, and finding procedure within Section 88.03.040(b). Applicable procedural and environmental review requirements continue to govern the underlying County action, while the proposed language appropriately preserves administrative flexibility to recognize federal documentation when the County independently determines that it satisfies applicable requirements.

- 3) **SMARA exemptions and State regulations.** The Commenters request deletion of the reference to State Regulations subsection 3505(a) from Section 88.03.050(b). They contend that the wording of the State regulation differs materially from SMARA section 2714(d) concerning the exemption applicable to certain

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small-scale mineral extraction activities and argue that the County should rely solely on the statutory exemption. The Commenters therefore propose that the exemption provision reference SMARA section 2714 without also referencing State Regulations subsection 3505(a).

Department Response: The Department does not recommend this change. The proposed ordinance appropriately incorporates both SMARA and the implementing State regulations applicable to surface mining. Section 88.03.030 expressly incorporates SMARA, State Regulations, and annual reporting requirements by reference, while recognizing that individual provisions apply according to the County's duties under the Chapter. Section 88.03.050(b) correspondingly provides that Chapter 88.03 does not apply to activities exempt under SMARA section 2714 and State Regulations subsection 3505(a).

Incorporating the statutory and regulatory exemptions is appropriate because the County administers its local mining ordinance within the regulatory framework established by both SMARA and the State Mining and Geology Board's implementing regulations. The ordinance does not independently expand the scope of an exemption or authorize the County to disregard SMARA. Any exemption determination must be made based upon the applicable State law governing the particular activity. Accordingly, the Department does not recommend removing the reference to the State regulation.

Conclusion. The Department appreciates the comments received and has considered the requested revisions. The proposed ordinance appropriately distinguishes land use permitting from reclamation-plan approval, codifies the County's existing coordination of mining and reclamation approvals on federal lands, preserves the County's independent responsibility to determine compliance with applicable State and local requirements, and properly incorporates SMARA and its implementing regulations. Accordingly, the Department recommends that the Board adopt the proposed ordinance without the requested revisions.