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

Code is repealed.

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

CHAPTER 88.03: SURFACE MINING AND LAND RECLAMATION

Section

Section 88.03.010 Purpose.

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

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

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

(c) **Purpose and Intent.**

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

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

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

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

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

(A) 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;

(B) 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

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

Section 88.03.020 Definitions

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

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

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

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

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

(5) "Permit" means a permit defined in SMARA section 2732.5 and 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 this Development Code.

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

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

Section 88.03.030 Incorporation of SMARA and State Regulations.

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

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

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

Section 88.03.040 Applicability.

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

(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.

(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.

Section 88.03.050 Permit, Reclamation Plan and Financial Assurance Requirements.

(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).

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

Section 88.03.060 Vested Rights Determination.

(a) **Purpose.** No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a Permit pursuant to SMARA sections 2770 and 2776, as long as no substantial changes have been made to the operation except in conformance with SMARA. Any person claiming a vested right to conduct surface mining operations in unincorporated County may, to the extent required by applicable law, establish such claim in a public proceeding as provided by this Chapter. In such a proceeding the Claimant shall assume the burden of proof. The County shall recognize prior administrative determinations or confirmations of vested rights (including, but not limited to, those encompassed by a prior reclamation plan approval) consistent with applicable law.

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

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

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

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

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

required information prescribed by the Director, including the following:

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

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

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

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

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

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

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

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

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

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

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

(d) **Processing**.

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

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

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

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

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

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

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

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

(i) **Other Requirements Applicable to Vested Mining Operations.** All other requirements of SMARA and this Chapter shall apply to vested mining operations. Those operations that are not eligible for a vested right shall be subject to both a reclamation plan (SMARA subsection 2770(b)) and a Permit, as well as all applicable zoning regulations.

(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).

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

(a) **Application Filing.**

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

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

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

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

(b) **Fees.**

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

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

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

(c) **Processing.**

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

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

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

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

recommendations for consideration by the Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 88.03.080 Permit and Reclamation Plan Amendments.

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

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

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

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

(e) **Substantial Deviations.** Pursuant to SMARA section 2777, an operator shall obtain approval of a reclamation plan amendment prior to commencing any activities that constitute a "substantial deviation" from the approved reclamation plan. Deviations from the approved reclamation plan that are determined by the Director to be substantial shall be reviewed and approved by the review authority for the original reclamation plan, through the same procedure used for the initial approval. Whether a deviation from an approved reclamation plan is a “substantial deviation” or a “non-substantial deviation” shall be governed by subdivision (f) below.

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

(1) Minor changes to contours or final site topography;

(2) Minor changes to existing on-site roads and encroachments directly from the surface mining operation to a public road;

(3) Minor changes to revegetation plans, including but not limited to substitutions in the type and/or number of plant species, and/or changes in topsoil treatments;

(4) Technological or administrative changes in methods used to achieve reclamation;

(5) Measures which will ensure or maintain public safety (e.g., fences, gates, signs, or hazard removal);

(6) Minor modifications to a previously approved phasing plan; and

(7) Modifications that allow compliance with requirements imposed by other public agencies, provided the requirements are not inconsistent with the previously approved Permit.

Section 88.03.090 Mineral Resource Protection Policies.

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

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

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

Section 88.03.100 Financial Assurances.

(a) **Financial Assurance Required as Condition of Approval.** Any person who conducts or intends to conduct surface mining operations shall submit a financial assurance cost estimate for review and approval by the Department pursuant to SMARA section 2773.1. To ensure that reclamation will proceed in compliance with the approved reclamation plan, the County shall require financial assurances of each surface mining operation. Such financial assurances will be released upon satisfactory performance.

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

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

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

(1) Revegetation and landscaping requirements.

(2) Reclamation of aquatic or wildlife habitat.

(3) Reclamation of water bodies and water quality.

(4) Slope stability and erosion and drainage control.

(5) Disposal of hazardous materials.

(6) Removal of equipment and buildings that are not part of an approved end use.

(7) Other measures, if necessary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) **Annual Adjustment in Amount of Financial Assurance.** The amount of the financial assurance required of a surface mining operation for any one (1) year shall be reviewed pursuant to SMARA subsection 2773.4(d) and, if necessary, adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in compliance with the approved reclamation plan. The financial assurance shall include estimates to cover reclamation for existing conditions and anticipated activities during the upcoming year, excepting that the permittee may not claim credit for reclamation scheduled for completion during the coming year. The annual SMARA inspection by the County shall, in most cases, be used to validate the submitted estimate. If revisions to the financial assurance cost estimate are not required, the operator shall explain, in writing, why revisions are not required.

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

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

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

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

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

Section 88.03.110 Reclamation Standards.

(a) **Applicable State Law.**

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

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

(b) **Phasing of Reclamation.**

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

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

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

(B) All reclamation activities planned.

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

Section 88.03.120 Interim Management Plans and Idle Mines.

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

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

(b) **IMP Submittal Requirements.**

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

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

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

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

(d) **Review by Department and Division of Mine Reclamation**. On receipt of a complete IMP, the Department shall provide the IMP to the DMR for review, and the Director shall review and approve the IMP, pursuant to SMARA subsection 2770(h)(4)-(6). The determination of the Director to approve or deny the IMP shall not require a public hearing. The operator may appeal a Director's denial of an IMP in compliance with Chapter 86.08 (Appeals).

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

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

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

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

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

Section 88.03.130 Annual Report.

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

Section 88.03.140 Inspections.

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

(b) **Eligible Inspectors.** Inspections may be made by a State-licensed geologist, State-licensed civil engineer, State-licensed landscape architect, or State-licensed forester, or a qualified Department employee, such as those certified in the DMR training programs under SMARA subsection 2774(d)(3), who is experienced in land reclamation and who has not been employed by the surface mining operation being inspected in any capacity during the previous 12 months. All inspectors conducting annual inspections shall have on file with the County and the DMR a current Certificate of Completion of an inspection workshop, and any additional licensing and disciplinary information of the inspector.

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

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

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

Section 88.03.150 Enforcement.

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

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

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

(d) **Order to Comply.**

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

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

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

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

(f) **Administrative Penalty**

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

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

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

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

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

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

Section 88.03.160 Permit Revocation or Suspension.

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

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

Section 88.03.170 Post-Approval Procedures.

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

Section 88.03.180 Renewable Energy Generation Facilities.

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

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

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

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

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

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

(4) The closure and decommissioning of the renewable energy

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

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

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

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

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

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

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

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

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

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

Section 88.03.190 Certification and Recertification of Mining Ordinances.

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

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

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

SECTION 5. This ordinance shall take effect 30 days from the date of adoption.

____
DAWN ROWE, Chair
Board of Supervisors

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

LYNNA MONELL, Clerk of the Board of Supervisors

By:____________________________________

Deputy Clerk of the Board

STATE OF CALIFORNIA)
) ss.
SAN BERNARDINO COUNTY)

I, LYNNA MONELL, Clerk of the Board of Supervisors of San Bernardino County, State of California, hereby certify that at a regular meeting of the Board of Supervisors of said County and State, held on the ______ day of ____________, 20__, at which meeting were present Supervisors:____ ____ ____, and the Clerk, the foregoing ordinance was passed and adopted by the following vote, to wit:

AYES: SUPERVISORS:

NOES: SUPERVISORS:

ABSENT: SUPERVISORS:

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

LYNNA MONELL, Clerk of the
Board of Supervisors of
San Bernardino County,
State of California

____
Deputy

Approved as to Form:

LAURA FEINGOLD
County Counsel

By:____________________________
JOLENA E. GRIDER
Deputy County Counsel

Date: _____________________