



FRIENDS OF MORONGO VALLEY
a California nonprofit public benefit corporation
www.friendsofmorongovalley.org
friendsofmorongovalley@gmail.com

August 17, 2026

San Bernardino County Board of Supervisors
385 North Arrowhead Avenue
San Bernardino, CA 92415

Re: August 18, 2026 Board Meeting, Agenda Item No. 76 — Proposed Repeal and Reenactment of Development Code Chapter 88.03, Surface Mining and Land Reclamation

Dear Chair Rowe and Members of the Board of Supervisors:

On behalf of Friends of Morongo Valley, we respectfully request that the Board **not adopt the proposed repeal and reenactment of Development Code Chapter 88.03 in its present form**, and instead **continue the item** to address concerns regarding proposed Section 88.03.040(b), particularly the elimination of the County land-use Permit for federally authorized mining operations.

Friends of Morongo Valley previously raised concerns before the Planning Commission regarding the potential loss of meaningful local oversight for mining operations on or spanning federal and private lands. After reviewing the proposed ordinance, the County's subsequent response to comments submitted by the Center for Biological Diversity, Earthworks, Sierra Club, and National Parks Conservation Association, and the 1992 Memorandum of Understanding cited by the ordinance, we believe those concerns remain unresolved and deserve further consideration by the Board.

The County's August 11 memorandum specifically responds to the August 6 comments submitted by those four conservation organizations. We have not found a County response in the Board materials specifically addressing the concerns Friends of Morongo Valley previously raised, nor does our prior comment appear among the public comments included in the August 18 Board materials. Given that County staff reported receiving substantial written public comment before the Planning Commission, we respectfully request that the Board ensure that the concerns raised during that process are fully considered before taking final action. Indeed, the County's own currently published guidance states that on federal lands the local SMARA lead agency is required to consider both a mining permit and a reclamation plan for a new surface mine and to review the whole of the activity pursuant to CEQA. We respectfully request an explanation of how eliminating the County Permit is consistent with that guidance and what substantive County authority, environmental review, and public participation may be lost as a result.

The existing Chapter 88.03 applies to public and private property in the unincorporated County and generally requires County approval of a land-use permit, reclamation plan, and financial

assurances before surface mining begins. The proposed ordinance, however, expressly provides that a County “Permit” will not be required for portions of mining operations that obtain a federally approved plan of operation or other federal authorization. The County has confirmed that the “Permit” currently required for surface mining is a Conditional Use Permit (CUP). The proposed ordinance would therefore remove an existing **discretionary** County land-use approval for federally authorized portions of mining operations.

We recognize that federal agencies exercise authority over activities on federally managed lands and that unnecessary duplication of environmental review should be avoided. We also recognize the County’s position that reclamation plans and financial assurances remain separate County responsibilities. Our concern is not with interagency coordination itself, but with eliminating an existing form of independent County land-use review without clearly establishing why that change is legally necessary, what protections will replace it, and what authority the County will retain over the operation of the mine itself.

The proposed ordinance relies expressly on the 1992 Memorandum of Understanding between California and federal land-management agencies as the framework for accepting federal documents as functionally equivalent to County requirements. However, the MOU contemplates **coordination rather than displacement of local participation**. Among other things, it provides for early local-agency participation and consultation, coordinated review and public hearings, and communication of locally adopted conditions that may differ from federal conditions. It also provides that federal operating plans, reclamation plans, and environmental studies may be accepted as functionally equivalent where they “**meet or exceed**” **the requirements of the lead agency’s certified ordinance and other applicable laws**.

This is especially important with respect to environmental review. The 1992 MOU was written at a time when it described NEPA and CEQA as “largely equivalent.” That statement was made more than three decades ago. Federal NEPA law, regulations, and agency implementation have changed substantially since 1992, including significant recent changes affecting the scope and procedures of federal environmental review and public participation. Whatever degree of equivalency may have existed in 1992 should not be presumed to exist in 2026, nor should a federal NEPA document be presumed to satisfy current CEQA requirements.

An Environmental Impact Statement is not automatically the equivalent of an Environmental Impact Report simply because both are detailed environmental documents. The MOU itself recognizes this distinction by contemplating acceptance of federal environmental documents only when applicable State requirements are satisfied. If the County intends to rely on federal environmental documents, it should be required to make an independent, project-specific determination that the particular federal document actually satisfies current CEQA requirements and all other applicable State and local standards.

The County’s August 11 memorandum states that the word “may” in Section 88.03.040(b) is permissive, that federal documentation would be evaluated on a case-by-case basis, and that the County would conduct its own analysis before determining whether federal documentation satisfies applicable State and local requirements. The memorandum further states that nothing in Section 88.03.040(b) eliminates otherwise applicable requirements of SMARA, CEQA, the Development Code, or other State or local law. We appreciate these clarifications. To provide certainty for applicants, the public, and future County decision-makers, we respectfully request

that these safeguards be stated expressly in the ordinance rather than left to administrative interpretation. Importantly, however, the discretion to accept adequate federal documentation and the elimination of the County Permit are two separate provisions. The County's explanation of why it may appropriately rely on federal documents, however, does not appear to address the separate question of why federal authorization should eliminate an otherwise applicable County land-use approval.

The elimination of the County CUP also raises significant questions regarding public participation and the scope of County decision-making. We understand that the proposed ordinance retains a Planning Commission public hearing for approval of a reclamation plan. However, a reclamation plan is not the same as a discretionary land-use entitlement for the mining operation itself. The proposed ordinance separately distinguishes the findings required for issuance of a Permit from those required for approval of a reclamation plan.

Without the CUP, it is unclear whether the remaining County hearing would allow meaningful consideration of operational impacts such as truck traffic, hours of operation, noise, dust, groundwater use, visual impacts, wildlife disturbance, setbacks, road safety, and compatibility with nearby communities, or whether County review would be substantially narrowed to reclamation and SMARA compliance.

This distinction is also important under CEQA. If the County eliminates its discretionary approval of the mining operation itself and retains approval of the reclamation plan, the Board should explain what County discretionary action will ensure CEQA review of the whole of the mining project, including extraction, processing, haul traffic and other operational effects, rather than limiting County review to impacts associated with reclamation. Eliminating an existing discretionary land-use approval should not inadvertently narrow the scope of environmental review or result in fragmented consideration of a single mining operation.

The same concern applies to conditions of approval. The proposed ordinance continues to authorize conditions associated with permits and reclamation plans. But if the County eliminates the CUP for federally authorized mining, it is unclear what authority remains to impose conditions addressing operation of the mine itself rather than reclamation. This is particularly important because the 1992 MOU expressly contemplates local conditions that may differ from federal conditions. The Board should understand exactly what condition-setting authority would remain before eliminating the existing County CUP requirement.

We are also concerned about how the County's early participation in federal review would be ensured in practice. The 1992 MOU contemplates early notice, consultation, information sharing, and recommendations by the local lead agency while federal environmental documents and reclamation plans are being developed. Yet proposed Section 88.03.040(b) does not expressly require that such participation actually occur before the County Permit exemption applies.

Under the existing framework, even if federal consultation with the County is incomplete, the operator must still proceed through an independent County land-use approval process. Under the proposed ordinance, once the federal agency issues the requisite authorization, that federal authorization becomes the basis for eliminating the CUP. If the federal agency fails to meaningfully involve the County early in its process, what mechanism will ensure that the

County can require additional analysis, mitigation, or operational changes before mining begins? Eliminating the County's independent land-use approval may remove an important mechanism for ensuring that local concerns are addressed before mining begins.

These concerns are particularly important in San Bernardino County, where federally managed lands surround many rural communities. **Residents of these communities deserve meaningful local representation when federal projects may directly affect the places where they live.** A project may be located entirely on federal land while its effects extend well beyond federal boundaries through traffic, dust, noise, groundwater impacts, scenic degradation, habitat disturbance, emergency-service demands, and impacts on neighboring private property and communities. Federal ownership of the project site does not make those impacts exclusively federal concerns. The County provides an important local voice in decisions affecting its residents, particularly in rural communities surrounded by federally managed lands. We therefore believe that any change that may reduce the County's existing role deserves careful consideration and a clear explanation of the legal or policy basis for that change.

We are also concerned by the characterization of the proposed ordinance as an administrative update for purposes of the County's proposed CEQA exemption. The ordinance does more than modernize terminology and administrative procedures: it expressly creates a new federal-land provision under which an existing discretionary County land-use Permit will no longer be required. Before determining that this change has no possibility of causing a significant environmental effect, the County should explain the practical consequences of removing that discretionary approval and whether doing so could affect the scope of future County environmental review, mitigation, conditions, or public participation.

Before adopting the ordinance, we respectfully request that the Board obtain clear answers to the following questions:

1. Is elimination of the existing County CUP for federally authorized mining required by State or federal law? If not, what legal or policy considerations support eliminating this existing discretionary County approval?
2. How is elimination of the County Permit consistent with the County's currently published guidance stating that the local SMARA lead agency considers both a mining permit and reclamation plan for a new surface mine on federal land and reviews the whole activity pursuant to CEQA?
3. For a mining operation located entirely on federal land, what County discretionary approvals, public hearings, appeal rights, and locally enforceable conditions will remain after the CUP is eliminated, and will the remaining reclamation-plan hearing allow the County to consider the operational impacts and compatibility of the mine itself?
4. If the County no longer issues the CUP for the mining operation itself, what County discretionary action will ensure CEQA review of the entire mining project, and what authority will remain to impose enforceable conditions addressing operational impacts?
5. How will the County ensure the early participation contemplated by the 1992 MOU if a federal agency does not meaningfully involve the County before issuing its authorization? Will the federal Permit exemption still apply if that coordination does not occur?

6. Why does Section 88.03.040(b) not expressly incorporate the safeguards the County says it intends to apply, including an independent determination that federal documents meet or exceed applicable State and local requirements and satisfy current CEQA requirements?
7. Why should a 2026 ordinance rely upon a 1992 MOU's characterization of NEPA and CEQA as "largely equivalent" without accounting for the substantial changes in federal NEPA law, regulations, implementation, and public-participation procedures during the intervening three decades?
8. Why is elimination of an existing discretionary County land-use approval appropriately characterized as merely an administrative update for purposes of the County's CEQA determination?

Friends of Morongo Valley appreciates the County's work to modernize its mining regulations and supports appropriate coordination among County, State, and federal agencies. Our comments are focused on ensuring that the proposed federal-land provisions preserve meaningful local participation and current State environmental protections while achieving those administrative efficiencies. We do not advocate unnecessary duplication of environmental documents. However, administrative efficiency should not come at the expense of meaningful local oversight, current CEQA compliance, enforceable local conditions, or public participation.

We therefore respectfully request that the Board continue this item rather than adopt the ordinance in its present form, and provide staff and County Counsel additional time to address these questions and consider appropriate revisions to Section 88.03.040(b). At minimum, the ordinance should expressly require that federal documents may be accepted as functionally equivalent only after the County independently determines that they **meet or exceed the requirements of the County's certified ordinance and other applicable State and local law, including current CEQA requirements**, and should clearly preserve the County's early participation, public review, appropriate condition-setting authority, and environmental review of the whole mining operation.

Given the significance of mining to both public lands and surrounding communities throughout San Bernardino County, we believe these issues warrant resolution in the ordinance itself rather than reliance on assurances contained only in a staff memorandum. More broadly, we urge the County to preserve rather than relinquish meaningful opportunities for local participation in decisions affecting federally managed lands and neighboring communities. Rural residents should not lose their local voice simply because the project affecting them happens to be located on federal land.

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Sara Fernandez", with a stylized flourish at the end.

Sara Fernandez
President, Friends of Morongo Valley