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**COUNTY OF MENDOCINO
BOARD OF SUPERVISORS**

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February 23, 2022

Sent Via Email to: DMR-Regulations@conservation.ca.gov
Also Sent Certified Mail

Department of Conservation
Atten: OLRA/DMR Lead Agency Regulations
715 P Street, MS 1907
Sacramento, CA 95814

**RE: Notice of Proposed Rulemaking Action
Lead Agency Electronic Document Submission Regulations**

To Whom It May Concern;

On January 24, 2022, the County of Mendocino received an email from the Division of Mine Reclamation (DMR) regarding the proposed Rulemaking Action that would amend the Surface Mining and Reclamation Act (SMARA) soliciting comments to the proposed changes. This change would place the requirement for all documents submitted to DMR from lead agencies to be converted to a format that is easily accessible by persons with disabilities, ADA compliant.

In the Department of Conservation's analysis, it is noted that the Division of Mine Reclamation will incur costs in providing staff to administer the regulations estimated at \$90,145.00 in the first year, and further noted that "State agencies that are also mine operators will also incur costs..." It has also been noted that the proposed Regulation does impose a state-mandated local program and that reimbursement is not required because lead agencies may recover the reasonable costs from mine operators under Subdivision (e) of Public Resources Code 2207. DMR's document, titled "Department of Conservation, Division of Mine Reclamation Lead Agency Electronic Document Submittal" (page 8 of 10) also acknowledges that small businesses will be affected by increased costs associated with the regulation.

It should also be pointed out that the Initial Statement of Reasons (ISOR) finds that many of the documents associated with mining operations can be low to impossible to convert based on the complexity of the documents, which can include text, table, graphics, scientific data, maps and technical reports. It is further noted that based on surveys conducted by DMR many lead agencies and mine operators do not have existing expertise in accessibility remediation. The ISOR also assumes that lead agencies and operators will use dedicated accessibility contractor services and further assures that any costs incurred by lead agencies will likely be passed onto the mine operators via administrative fees. DMR's ISOR concluded that the proposed

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regulations are likely to improve the economic health of the dedicated accessibility remediation contractor industry and under the fiscal impact discussion continues to allude that the fiscal impacts to lead agencies will likely be passed onto the mine operators, with the analysis mostly focusing on DMR's fiscal impacts with little to no detail on lead agency impacts.

The County of Mendocino respectfully disagrees with DMR's proposed rulemaking changes for the following reasons:

1. The cost to implement at the local lead agency level will be cost prohibitive, especially for small agencies without staffing and available financial resources, let alone qualified staff to implement the requirements. The state approach does not consider the fiscal impacts to local lead agencies and only analyzed its own fiscal impacts and assumes that costs can easily be passed onto operators when there is still an unknown to the full and true cost to the local agencies.
2. It should be noted that DMR has not considered the fact that most mine operators located in the rural counties, such as Mendocino County, are not by any means corporations with deep pockets to afford the costs and will likely result in many small businesses being forced out of business. By assuming that the costs to remediate documents will be passed down to small businesses/operators, this will result in a social injustice as this will no doubt lead to many small mine operators going out of business and resulting in unemployment of many of their staff.
3. Many operators, especially in rural counties lack the financial resources and expertise to provide lead agencies with necessary ADA compliant documents DMR points out in their analysis that the task or cost will be passed onto the operators, which further indicates that the state lacks an understanding of local issues and is completely out of touch with the local mining industry. The comments provided in the ISOR lead one to believe that the state is creating an environment favorable towards the dedicated accessibility contractor industry with a complete disregard for existing local businesses, which erodes the economic viability of many rural counties.
4. The same comment/issue is apparent in regards to small rural agencies who do not have either the necessary financial resources or expertise in house to accomplish the proposed mandate. This would result in new costs to agencies who must purchase expensive software, hire new staff and or hire dedicated accessibility consultants that could prove to be very expensive since there is a limited pool of consultants available, especially in this current labor shortage market being experienced in California.
5. It should be noted that Mendocino County has like many other counties, experienced devastating wildfires, including the loss of hundreds of residential units since 2017, 2018, 2020, and 2021, which has placed a huge financial burden on the County, including the loss of property tax revenue in recent years. The County has been focusing on recovery efforts and any additional fiscal impacts to the County will be unjust, especially if the County has to deal with another unfunded state mandate, which the state is unwilling to fund or address at the state level. With the state having a budget surplus in 2022, the Department of Conservation should request the necessary resources to fund this proposed regulation as opposed to passing the responsibility to the lead agencies.
6. For transparency purposes, DMR should hold a public hearing on this topic and fully publicize the hearing so that the matter may be fully heard and the public has the opportunity to fully be engaged in the public hearing process, also, it appears that most public agencies may not have been adequately

noticed as many lead agency contacts that the Division of Mine Reclamation have on file may have left employment in recent months and adequate notice of the proposed rulemaking may not have been provided, thus resulting in little to no notice to all public agencies that implement the Surface Mining and Reclamation Act (SMARA).

Thank you very much for the opportunity to comment on the proposed rulemaking, but we respectfully protest the proposed amendment to SMARA requiring the mandate for the County to be responsible for accessibility remediation of all documents as it will result in a financial burden to the County of Mendocino. We look forward to this matter quickly being resolved without any further burdens to the County and other lead agencies who implement SMARA.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Tw' with a large loop above the 'w'.

Ted Williams
Chair, Mendocino County
Board of Supervisors

cc: CSAC
Planning and Building Services