

California Department of Conservation
Division of Mine Reclamation

Lead Agency Review and Assistance (LARA) Program

Final Report

Prepared for:

City of Banning

(lead agency under the
Surface Mining and Reclamation Act of 1975)

November 2020



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LIST OF ABBREVIATIONS AND ACRONYMS USED IN THIS REPORT

Acronym	Term	Description
AB	Assembly Bill	Proposed law, introduced by a Member of the Assembly of the California Legislature during a session for consideration by the Legislature, and identified numerically in order of presentation
AR	Annual Report	Document from a surface mine operator to the Division of Mine Reclamation noting mining activity for the previous calendar year; due on July 1 of each year with the required fee
CCR	California Code of Regulations	Regulations adopted, amended, or repealed by state agencies pursuant to the Administrative Procedure Act
CEQA	California Environmental Quality Act	California statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible
City	City of Banning	SMARA lead agency for this Lead Agency Review and Assistance Program review
CUP	Conditional Use Permit	Development permit issued by the lead agency to mine operators
DMR	Division of Mine Reclamation	Division within the California Department of Conservation established in 2017 under Senate Bill 209 (Pavley)
DOC	California Department of Conservation	A State of California department comprised of five divisions: Land Resources Protection, Mine Reclamation, California Geological Survey, California Geologic Energy Management Division, and State Mining and Geology Board
FACE	Financial Assurance Cost Estimate	Estimate of the financial cost to reclaim a surface mining operation pursuant to the requirements of the mine's approved reclamation plan
FAM	Financial Assurance Mechanism	Financial instrument established by the mine operator that is subject to forfeiture under certain conditions
IN	Inspection Notice	See NOCI
IR	Inspection Report	Regulatory form MRRC-1 to be used by the lead agency to document site inspections as required by PRC Section 2774(b)
LARA	Lead Agency Review and Assistance	Program designed as both a review of each lead agency's SMARA program and an extension of the Division of Mine Reclamation's education and outreach efforts
MOU	Memorandum of Understanding	An executed agreement that in this case is between the City of Banning and the Operator

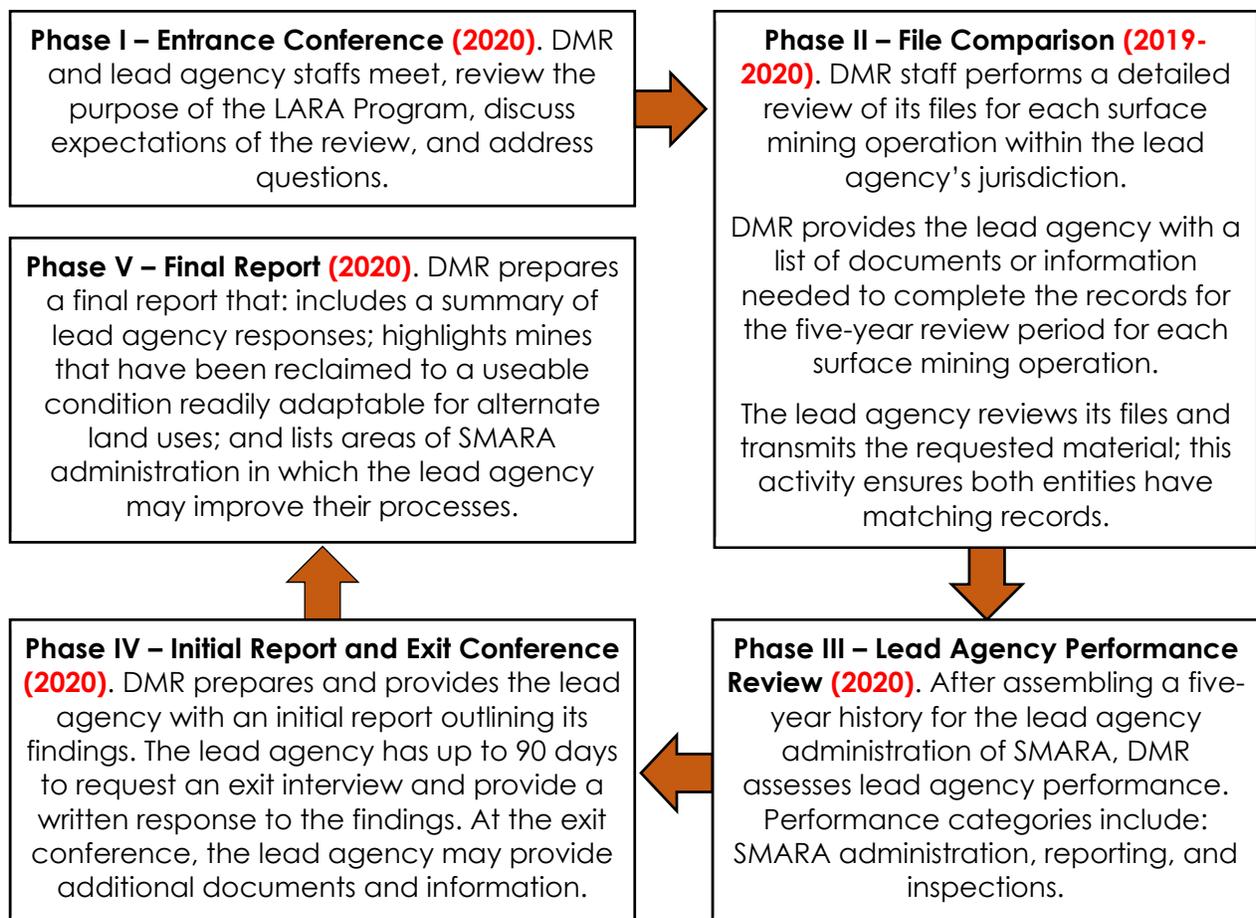
Acronym	Term	Description
NOCI	Notice of Completion of Inspection	Notice that accompanies the annual inspection report submitted by a lead agency to the Division of Mine Reclamation that includes prescribed information as required under PRC Section 2774(b)
NOV	Notice of Violation	Notice issued to a mine operator identifying site specific or administrative violations of state law
OMR	Office of Mine Reclamation	Former name of the Division of Mine Reclamation (prior to 2017)
PRC	Public Resources Code	Those provisions of current statutory laws relating to the conservation, utilization, and supervision of natural resources, including mines and mining, oil and gas, and forestry
RP	Reclamation Plan	Plan describing how mined lands will be conducted to minimize adverse environmental effects, mined lands will be reclaimed to a usable condition that is readily adaptable for alternate land uses, and residual hazards to public health or safety will be eliminated
SB	Senate Bill	Proposed law, introduced by a Member of the Senate of the California Legislature during a session for consideration by the Legislature, and identified numerically in order of presentation
SMARA	Surface Mining and Reclamation Act of 1975	Statute enacted in 1975 and effective in 1976 that governs surface mine operations in California; it is codified in PRC Sections 2710 through 2796.5
SMGB	State Mining and Geology Board	Regulatory, policy, and hearing body that represents the State's interests in geology, geologic, and seismologic hazards, conservation of mineral resources, and reclamation of mining lands
SOA	Statement of Adequacy	Statement by the lead agency that it finds the Financial Assurance Cost Estimate (FACE) adequate to fund complete reclamation according to the approved reclamation plan; the lead agency submits the SOA when the FACE is sent to the Division of Mine Reclamation for review and comment

EXECUTIVE SUMMARY

This Final Report provides recommendations from the Department of Conservation's Division of Mine Reclamation (DMR), pursuant to DMR's Lead Agency Review and Assistance (LARA) Program, to City of Banning (City), as lead agency under the Surface Mining and Reclamation Act of 1975 (SMARA; Public Resources Code [PRC] Section 2710 et seq.). The goal of the LARA Program is to ensure effective local administration of SMARA through vetted reclamation plans, comprehensive annual mine inspections, and rigorously reviewed cost estimates, in addition to uniform application of mining laws and regulations throughout California.

This Final Report reviews the City's administration of the core requirements of SMARA during the five years from 2014 through 2018 (hereafter referred to as the review period) for the one (1) existing surface mine within the City's jurisdiction. This review period includes two years after the substantial changes to SMARA took effect in 2017 (see Attachment D). Figure ES-1 identifies the steps in the LARA Program review process, which are described in detail in the body of the Final Report.

Figure ES-1. LARA Program Review Process Flowchart with Phase Completion Date



Based on its LARA Program review, DMR staff presents the following recommendations to the City. (For details, see Section III of this Final Report.)

A. Reclamation Plans and Reclamation Plan Amendments, Permits, and Compliance Actions

- 1. Recommendation #1a.** PRC Section 2770 requires that "a person shall not conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by the lead agency for the operation...." Title 14, California Code of Regulations, (Division 2, Chapter 8, Subchapter 2; hereafter abbreviated as 14 CCR) Section 3502(e) states, "[A]n amended reclamation plan shall be filed if the lead agency determines, after an inspection, that the surface mining operation can no longer be reclaimed in accordance with the approved reclamation plan." 14 CCR Section 3502(g) states, "[S]hould an expansion of an operation into an area not covered by an approved reclamation plan be determined by the lead agency to be a substantial deviation, an amended reclamation plan shall be prepared that ensures adequate reclamation for the surface mining operation. The amended reclamation plan shall incorporate current reclamation standards for the entire area governed by the plan that is impacted by the deviation."

The current operation mined 17 acres outside the boundaries of the approved RPs and was out of compliance with SMARA for several years, including the years of the LARA Program review as the outstanding compliance issues were not corrected. On September 22, 2020, the City Council approved a new RP that, among other things, incorporated the mined land outside the current surface mining operation's boundaries.

Recommendation #1b. The City must establish and maintain in-house measures and procedures to ensure organized record-keeping and monitoring of surface mining reclamation under its jurisdiction. SMARA states, "[T]he lead agency shall forward a copy of each permit and approved reclamation plan and financial assurance instrument to the director of the Department of Conservation" (14 CCR Section 3504). Additional documents that must be submitted to DMR include:

- Approved RPs or plan amendments within 60 days of their approval
- Interim Management Plans at the time of approval
- Financial Assurance Cost Estimates (FACEs) within 30 days of their approval
- Financial Assurance Mechanisms (FAMs) at the time of approval
- Notices of Violation at the time of issuance
- Stipulated Orders to Comply at the time of issuance
- Orders imposing an administrative penalty at the time of issuance
- Notices of completion of inspection (NOCI) including the completed inspection form at the time of issuance
- Permits at the time of approval

Additional documents that should be submitted to DMR include:

- Administrative decision at the time of issuance following an appeal of an Order to Comply
- Notices to an operator of a violation or failure to comply with an Order to Comply or Stipulated Order to Comply
- Vested rights determinations

2. Recommendation #2. Implementation of annual inspections as required by SMARA provide a vehicle for assessing compliance and for initiating appropriate responses to non-compliance (e.g., RP amendment or enforcement action). The City needs to continue to cause annual inspections to occur (PRC Section 2774(b)(1)) and provide DMR with notice of violations (PRC Section 2774.1(a)(1)). The City must take proactive steps when deficiencies occur at the mine site to avoid non-compliance with SMARA.

B. Financial Assurances

- 3. Recommendation #3.** Operator submittal and lead agency approval of FACEs must comply with PRC Sections 2773.1 and 2773.4. Specific to the City and focused on post-2017 SMARA requirements:
- a. The City shall ensure that the surface mining operator submits a FACE annually for review, either:
 - o within 30 days of an annual inspection being conducted pursuant to Section 2774, an operator shall provide an annual FACE to the lead agency for review (PRC Section 2773.4(d)(1)(A))
 - o within 30 days of the applicable inspection date (i.e., a date requested by the operator pursuant to PRC Section 2207 or a date set by the lead agency pursuant to Section 2774(c)) should the lead agency fail to cause the inspection of the surface mining operation (PRC Section 2773.4 (d)(1)(B))
 - b. For FACE submittals to DMR and per PRC Section 2773.4(a)(2), the City's process must include a statement that the financial assurance cost estimate is "adequate, complete, and consistent with Section 2773.1, Article 11 (commencing with Section 3800) of Subchapter 1 of Chapter 8 of Division 2 of 14 CCR and the State Mining and Geology Board guidelines adopted pursuant to PRC Section 2773.1.
 - c. Following approval, the City must provide copy of the approved FACE to DMR.
- 4. Recommendation #4.** The City must ensure that each surface mining operation has an adequate financial assurance mechanism to cover reclamation (PRC Sections 2736, 2770, and 2773.1).

C. Annual Inspections, Inspection Reports, and Inspection Notices

- 5. Recommendation #5.** The City must continue compliance with SMARA as it relates to annual inspections of the surface mining operation (PRC Section 2774(b)(1)); specifically, the City must:
- a. Cause surface mining operations to be inspected in intervals of no more than 12 months
 - b. Provide a notice of completion of inspection to the supervisor [of DMR] within 90 days of conducting the inspection
 - c. Ensure that the notice contains a statement regarding the surface mining operation's compliance with SMARA and a copy of the completed inspection form
 - d. Specify, as applicable, all the following:
 - (A) Aspects of the surface mining operation, if any, that were found to be inconsistent with this chapter but were corrected before the submission of the inspection form to the supervisor
 - (B) Aspects of the surface mining operation, if any, that were found to be inconsistent with this chapter but were not corrected before the submission of the inspection form to the supervisor
 - (C) A statement describing the lead agency's intended response to any aspects of the surface mining operation found to be inconsistent with this chapter but were not corrected before the submission of the inspection form to the supervisor
 - (D) A statement as to whether the surface mining operation is out of compliance with an order to comply or stipulated order to comply issued by the lead agency
- 6. Recommendation #6.** The City must transmit the inspection notices (INs)/NOICs within statutory requirements (within 30 days prior to 2017; within 90 days after 2017) as outlined in SMARA (PRC Section 2774(b)(1)).

D. General Findings and Recommendations

- 7. Recommendation #7.** Per statute (PRC Section 2774(a)), the City must update its existing surface mining ordinance and submit the updated ordinance to the State Mining and Geology Board for certification to comply with SMARA. This would ensure that the ordinance is consistent with the recent changes to the SMARA statutes (see Attachment D).

I. INTRODUCTION

A. Purpose and Scope

The Department of Conservation's Division of Mine Reclamation (DMR) presents this Final Report on the City of Banning (City) as part of DMR's Lead Agency Review and Assistance (LARA) Program. This Final Report provides the results of a review of the City's administration of the core requirements of the Surface Mining and Reclamation Act of 1975 (SMARA; Public Resources Code [PRC] Section 2710 et seq.).¹ The review:

- Is based on the records of one existing (and not yet reclaimed) surface mining operations within its jurisdiction (see Table 1 and Figure 1)
- Covers the period from 2014 through 2018 (hereafter the review period)

Table 1. Banning Surface Mines for the LARA Program Review

Mine ID #	Mine Name	Commodity	Area Excavated
33-0012	Banning Quarry	Sand & Gravel	81 acres ^{1,2}

Notes:

¹ Approximate value (rounded to whole acres) averaged over 5-year review period (2014-2018) from data presented in the operator's annual reports

² Does not include the 17 acres of mined land outside approved RP boundaries over the LARA Program review period

During the review period, which included substantial changes to SMARA that took effect in 2017 (see Attachment D), SMARA lead agencies core requirements included:

- Review and approval of reclamation plans (RPs), RP amendments, and interim management plans
- Issuance of permits or other mining authorizations
- Review and approval of financial assurances
- Enforcement of mine operator's annual reporting requirements
- Conducting and completion of annual inspection requirements for all mining operations within the lead agency's jurisdiction

¹ This report does not include a review of the City's mining ordinance or its administration of the California Environmental Quality Act (CEQA).

Figure 1. Existing Surface Mines in Lead Agency's Jurisdiction during Review Period (2014-2018) *



*See mine identification legend in Table 1.

B. Regulation of Surface Mines in California

1. Overview

SMARA recognizes both the need for mined materials and the need to manage surface mining operations as reflected in the Legislature's statement of intent described under PRC Section 2712, which states:

It is the intent of the Legislature to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that:

- a) Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses.*
- 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.*
- c) Residual hazards to the public health and safety are eliminated.*

2. Lead Agency's Role

Lead agencies have the primary responsibility for the administration and enforcement of SMARA. Lead agency responsibilities include:

- Establishing mineral resource management policies and mining ordinances to be incorporated in their general plan
- Issuing a mining permit or other authorization to mine, including determining the nature and scope of vested mining rights where appropriate
- Reviewing and approving RPs and financial assurances that meet minimum SMARA requirements
- Conducting inspections of surface mines in their jurisdiction to ensure compliance with SMARA
- Taking appropriate actions to ensure compliance under SMARA including the enforcement of reporting requirements under PRC Section 2207
- Submitting information to DMR pursuant to SMARA requirements
- Seizing financial assurances and completing reclamation after determining an operator's financial incapacity or abandonment of the operation

Surface Mining Operation Permits

California is unique among states in that the permitting of surface mines occurs through local governments acting as the lead agency. PRC Section 2774 requires that every lead agency shall adopt ordinances in accordance with state policy that establish procedures for the issuance of a permit to conduct surface mining operations. PRC Section 2732.5 defines a permit as any authorization from, or approval by, a lead

agency, the absence of which would preclude surface mining operations. Surface mining operations means all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining or minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. The lead agency issues permits for surface mining operations.

Vested Right to Mine

At the heart of SMARA is the requirement that every surface mining operation has a permit (or vested right to mine), a reclamation plan, and financial assurances to implement the planned reclamation (PRC Section 2770(a)). For operators of surface mines in California with a vested right to mine, SMARA states:

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] as long as the vested right continues and as long as no substantial changes are made in the operation except in accordance with [SMARA]. A person shall be deemed to have vested rights 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... (PRC Section 2776(a)).

A person with an existing surface mining operation who has vested rights pursuant to Section 2776 and who does not have an approved reclamation plan shall submit a reclamation plan to the lead agency not later than March 31, 1988. If a reclamation plan application is not on file by March 31, 1988, the continuation of the surface mining operation is prohibited until a reclamation plan is submitted to the lead agency... (PRC Section 2770(b)).

As shown in Table 3, the Banning Quarry surface mine operation has an area of the operation with a vested right to mine, which allows that area of the mine to operate as provided below:

- The issuance of a mining permit or the recognition of a vested mining right lies with the local land-use decision making authority (the City).
- A determination of a vested right removes the requirement for a use permit and evaluation under CEQA for existing operations.
- A reclamation plan, annual inspections, and financial assurances are required for all operations conducted after January 1, 1976, vested or not. The reclamation plan shall apply to operations conducted after January 1, 1976.
- In some circumstances, an expansion of the mining operation requires a permit and a CEQA review for the area outside of the existing vested right.

Reclamation Plan (RP)

RPs and RP amendments that meet minimum SMARA requirements provide a foundation for the lead agency's regulation of ongoing mining operations. Lead agencies are required to:

- Review, analyze, and certify RPs as complete and in compliance with SMARA
- Submit RPs and RP amendments to DMR for review prior to approval
- Respond to any DMR comments
- Provide a 30-day notice of the approval hearing
- Provide a final response to DMR comments after the approval
- File the approval of the RP with the County Recorder

Financial Assurance

RPs also provide a basis for the calculation of the Financial Assurance Cost Estimate (FACE). Any adjustments to the cost estimate for reclamation must be reflected in the Financial Assurance Mechanism (FAM) for the surface mining operation. The FAM must always remain at least equal to the annually approved FACE. The lead agency must:

- Review on an annual basis the FACE, based on the RP and site conditions to ensure that it is adequate to complete reclamation to reduce potential liability to local or state government
- Adjust the FACE if necessary, to reflect, among other things, the expansion or a decrease in mining disturbances
- Submit to DMR a determination that the FACE submitted for comment is adequate, complete, and consistent with PRC Section 2773.1, Title 14 California Code of Regulations (14 CCR) Section 3800, and the State Mining and Geology Board (SMGB) Financial Assurance Guidelines
- Respond to any comments from DMR
- Approve the FACE following receipt of DMR input as adequate to complete reclamation between each inspection (see below) and FACE review/approval cycle

The requirements for responding to DMR comments, notices of public hearings, and final responses to comments are generally the same as for RPs, described above, except there is no requirement to file the approved FACE with the County Recorder. The requirements of the FACE review process are found in PRC Section 2773.4.

Annual Inspection, Inspection Notice, and Notice of Completion of Inspection

Annual inspections help to ensure SMARA compliance and that specific deviations from the approved RP are identified and handled timely and appropriately. Lead agencies must:

- Conduct annual inspections to ensure compliance with SMARA and the mining operation's RP

- Document mine conditions in Inspection Reports (IR) and Inspection Notices (IN; now referred to as a Notice of Completion of Inspection or “NOCI” under PRC Section 2774(b)(1))
- Submit both the IR and the IN/NOCI to DMR

3. Surface Mine Operator’s Role

Under SMARA, surface mine operators must:

- Prepare RPs and RP amendments, including interim management plans, that meet minimum SMARA requirements
- Maintain their surface mining operation in compliance with SMARA, the approved RP, permit conditions related to reclamation condition, conditions of approval, and minimal acceptable practices for reclamation pursuant to 14 CCR Section 3503
- Comply with annual reporting and reporting fee provisions pursuant to PRC Section 2207. This includes the submission of an Annual Report (AR) to DMR noting specific operational aspects for the previous calendar year with the report due on July 1 of each year along with the required fee
- Prepare and submit to the lead agency, annually, a FACE that meets minimum SMARA requirements pursuant to PRC Section 2773.1
- Maintain a FAM in an amount equal to or greater than the approved FACE

4. Division of Mine Reclamation’s Role

DMR was created to provide backstop to enforcement, provide oversight of operators, and assist and provide document review for local governments that administer SMARA within their respective jurisdictions. The primary focus of DMR is on existing surface mining operations and the return of those mined lands to a usable and safe condition. Among other responsibilities, DMR reviews and comments on proposed RPs, RP amendments, and FACEs received from the lead agency after the lead agency certifies these documents are complete and compliant with SMARA. DMR also processes mining operators’ ARs and fees as required in PRC Section 2207. If necessary, DMR initiates compliance actions that encourage SMARA compliance. Legacy abandoned mines (prior to 1976) are addressed through DMR’s Abandoned Mine Lands Unit.

C. Lead Agency Review and Assistance Program

1. Background

The LARA Program was developed following extensive input from lead agencies and other stakeholders. In December 2015 and January 2016, DMR held stakeholder workshops in four cities—Redding, San Luis Obispo, Santa Ana, and Sacramento—that provided an overview of the proposed LARA Program. Comments received during the workshops influenced final development of the LARA Program and the LARA Guidelines

<https://www.conservation.ca.gov/dmr/SMARA%20Mines/Documents/LARA%20Guidelines-%20ADA%20Compliant.pdf>).

2. Program Goal

The goal of the LARA Program is to assist local agencies in effective administration of SMARA through vetted reclamation plans, comprehensive annual mine inspections, and rigorously reviewed cost estimates in addition to uniform application of mining laws and regulations throughout California.

3. Legislative Amendments Since 2016

Recent amendments to SMARA are reflected in LARA Program implementation where applicable (see Attachment D for summary of these changes). The LARA Program review period for this Report covers the City of Banning's administration of SMARA between 2014 and 2018; therefore, any statutory amendments that occurred in 2016, went into effect in 2017, and do not apply to review years 2014 through 2016.

D. City of Banning

1. General Plan and Surface Mining Ordinance

General Plan

The City of Banning's General Plan is intended to fulfill State requirements for comprehensive, long-term planning for the physical development of the City. The City's General Plan (posted at <http://banning.ca.us/468/General-Plan-Amendments>) contains information that pertains to SMARA implementation (and hence the LARA Program review). This material occurs in multiple locations including the Energy and Mineral Resources Element and the Goals, Policies, and Programs sections. These sections of the General Plan present a general discussion of the mineral resources located within the City and lists the goals, policies, and programs that apply.

Surface Mining Ordinance

The City of Banning's Surface Mining and Reclamation Ordinance constitutes the comprehensive mining regulations in relation to SMARA. On November 10, 1999, the State Mining and Geology Board (SMGB) certified the City of Banning's mining ordinance under Resolution number 99-15, Ordinance number 1237. The City of Banning's ordinance is posted at <https://www.conservation.ca.gov/smgb/reports/Documents/Ordinances-City/Banning.pdf>.

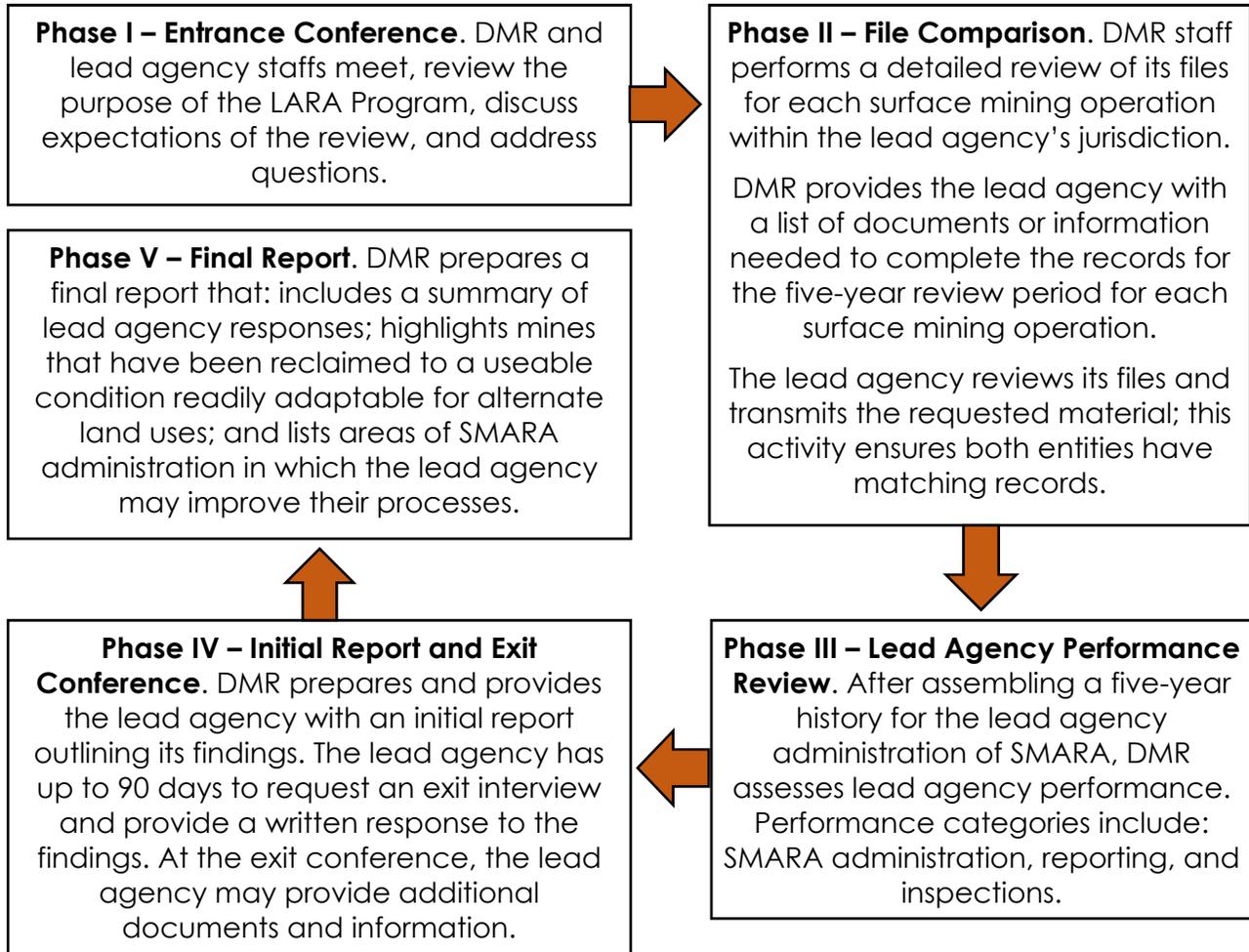
2. Surface Mining Administrative Review Procedures

The City of Banning has not developed any additional written documentation of its administrative review procedures for SMARA. Additional written administrative procedures are not required.

II. LEAD AGENCY REVIEW AND ASSISTANCE PROGRAM REVIEW ACTIVITIES

The LARA Program review process consists of the five phases identified in Figure 2.

Figure 2. LARA Program Review Process Flowchart



A. Phase I: Entrance Conference

On April 13, 2020, DMR and City staffs held an introductory meeting (Entrance Conference). The purpose of the meeting was to introduce staffs of the City and DMR, provide an overview of the LARA Program, discuss the LARA Program review and mutual expectations, and answer any questions. During the meeting, City staff were informed that a list of missing documents based on DMR files, would be transmitted shortly after the meeting. Meeting participants were:

City of Banning

- Adam Rush, Community Development Director
- Sandra Calderon, Development Project Coordinator
- Sonia Pierce, Senior Planner
- Serita Young, Legal Counsel

Division of Mine Reclamation

- Carol Atkins, Manager, Environmental Services Unit
- Carina Grove, Environmental Scientist
- Cy Oggins, Manager, Reclamation and Remediation Unit
- April Balestreri, Manager, Reporting Unit
- Ian Stevenson, Manager, Engineering and Geology Unit
- David Rader, Geologist
- Lolita Urrutia, Analyst
- Amy Gomes, Environmental Scientist

Current DMR and City contacts for the LARA Program review are listed in Attachment F.

B. Phase II: File Comparison

The DMR staff inventoried the contents of its mine files for the one existing surface mining operation subject to SMARA within the City's jurisdiction and within the review period (Table 1 and Figure 1 above identify the existing surface mining operation in the City). To ensure that both the City's and DMR's files contained the same operative documents as well as routine and non-routine submittals for this surface mining operation: (1) on April 15, 2020, DMR staff requested any documents missing from DMR's files the City; and (2) on May 19, 2020, City staff provided a partial response.

Examples of non-routine submittals and supporting documents include:

- Current approved RP (as amended, if applicable)
- Current approved Conditional Use Permit (CUP) and Conditions of Approval
- Comment letters from DMR regarding a RP or RP amendment
- Documents certifying RPs and RP amendments as complete and ready for review
- Response letters from the City (if DMR commented on a document)
- City hearing notices
- Final responses to comments (if DMR commented on a document)
- Any documents related to compliance actions during the review period

Examples of annual routine submittals include:

- Operator's AR and fee payment
- FACE with the associated Statement of Adequacy (SOA) and responses to any DMR comment letters
- FAM
- IR with the associated IN or NOCI

C. Phase III: Performance Review

1. Reclamation Plans and Amendments, Permits, and Compliance Actions

SMARA Section 2770 requires that a person shall not conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by the lead agency for the operation (unless excepted under SMARA). Table 2 details the permits and reclamation plans for the surface mining operation within the jurisdiction of this lead agency. Attachment A provides a detailed chronology for the LARA Program review period for this mine's SMARA-related activities.

Table 2. Surface Mining Operation Permits and Reclamation Plans

Mine ID # / Name	Initial Mining Activity	Current Permit	Permit Expires	Current RP	RP Expires
33-0012 / Banning Quarry	1925	1965, CUP; UUP 1994-01	None	RP for 1965 CUP; RP for UUP 1994-01	None ¹

Abbreviations: CUP = Conditional Use Permit; RP = Reclamation Plan; UUP = Unclassified Use Permit

Note:

¹ A new, single RP was prepared by the operator to consolidate the existing two RPs, incorporate mined lands outside current RP, and expand the operation 23 acres to the south of current mine operations; The new RP was sent to DMR for review and comment in 2017, and was approved by City Council on September 22, 2020.

During the LARA review period, the surface mining operation had two RPs – one for the 1965 CUP and one for the Unclassified Use Permit (UUP) 1994-01. 14 CCR Section 3502(d) states that “each surface mining operation...shall have no more than one approved reclamation plan applicable to that operation...” unless it meets one of two exceptions. While the Banning Quarry appears to have met the exemption under 14 CCR Section 3502(i)(2), the expansion of the surface mining operation beyond the boundaries of the existing permits and RPs raises the question of whether that expansion constituted a substantial deviation from the approved plan when and where the encroachment occurred. This report does not intend to answer that question now. However, if the City had made that determination at the time, the City could have required the operator to prepare and submit for approval, a single RP encompassing all mined lands pursuant to 14 CCR Section 3502(g).

The 2013 Surface Mining Inspection Report, prepared by Aragon Geotechnical, Inc., indicates that the lead agency was engaged prior to 2013 in negotiations with the mine operator regarding encroachments and discussing a single, site-wide RP. Progress on the preparation of a new, single RP and the supporting CEQA document was suspended in 2015, but it was reinitiated following the execution of a Memorandum of Understanding (MOU) on September 19, 2016, between the City of Banning and the mine operator. The MOU included agreements that:

- Supported development of a new, single RP for the existing quarry operations, as well as the mined lands outside the boundaries of the current RPs. The new, single RP also would include actions to address the over-steepened slopes.
- Re-started work on the CEQA document for the proposed project (including the single reclamation plan for the quarry as well as other entitlements provided by the MOU).

On September 11, 2017, the lead agency submitted to DMR a RP amendment prepared by the operator that consolidated the two existing RPs into a single document; made the new, single RP consistent with SMARA requirements and current standards; incorporated mined lands outside the current surface mining operation's boundaries; and expanded the operation to the south (Table 3). On September 22, 2020, the City Council approved RP Amendment 17-9504 and CUP 16-8007. The City Council's recent approval of the RP occurred after the 5-year period (2014-2018) covered by this LARA Program review.

Table 3. Reclamation Plan-Related Activities

Mine ID # / Name	LA sent RP to DMR	DMR commented on completeness within 30 days	LA transmitted missing material	DMR reviewed & commented on complete RP within 30 days	LA notified DMR of public hearing	LA approved/ recorded with County Clerk
33-0012 / Banning Quarry	9/11/2017	9/25/2017	11/17/2017	12/7/2017	NS ^{1,2}	NS

Abbreviations: DMR = Division of Mine Reclamation; LA = Lead Agency; NS = Not Submitted during LARA review period; RP = Reclamation Plan

Notes:

¹ Public hearing did not occur during the LARA review period; .

² The City of Banning's City Council approved RP Amendment 17-9504 on September 22, 2020.

2. Financial Assurances

Financial assurances under SMARA consist of the initial and annual FACE and FAM. Operators must submit their annual FACE no later than 30 days after the annual inspection (PRC Section 2773.4(d)(1)(a)). SMARA requires the lead agency to submit the FACE to DMR for review and comment together with a SOA. The FAM is required to be equal to or greater than the FACE. Prior to the 2016 changes to SMARA (effective January 1, 2017), lead agencies were required to: (1) respond if the DMR commented on a given FACE; (2) submit a notice of hearing on the FACE; and (3) provide a final response regarding approval of the FACE. Beginning in 2017, DMR under appropriate circumstances may appeal a lead agency's approval of a FACE to the SMGB.

Table 4 presents and compares FACE and FAM values for the City's active surface mining operation during the review period (2014-2018); a note of "inadequate" is shown if the FACE exceeded the FAM. Table 5a provides a summary of the annual documents required by SMARA that were within DMR files or were provided by the lead agency.

Table 4. Financial Assurances (2014-2018)

Mine ID #	Name	FACE Document Date ¹	FACE Amount ¹	FAM Document Date	FAM Amount	FAM/FACE Relationship
33-0012	Banning Quarry	5/4/2014	\$472,819.00	2014	\$520,000.00 ^{2,3}	+
		-	-	2015	\$520,000.00 ³	NC ⁵
		1/1/2016	\$652,695.00	2016	\$652,695.00 ⁴	+
		1/1/2017	\$627,068.00	2017	\$652,695.00 ³	+
		10/1/2018	\$670,565.00	2018	\$652,695.00 ³	inadequate

Abbreviations: + = FAM and FACE are at least equal; FACE = Financial Assurance Cost Estimate; FAM = Financial Assurance Mechanism; NC = Not Calculated

Notes:

- ¹ The FACE values presented are from FACE documents that the City submitted during the annual review process. A cell with a dash in it (i.e., "-") indicates that a FACE was not received that year.
- ² This FAM value was provided by the City during the LARA Program review document exchange phase.
- ³ This FAM is a security bond. Any change to the FACE would result in either an increase or decrease rider. In 2015, no FACE was submitted.
- ⁴ Increased rider received.
- ⁵ NC indicates that information was not submitted, so a relationship could not be calculated.

Table 5a. Lead Agency Document Submittal Performance Summary (2014-2018)

Mine ID # / Name	FACE	SOA	FACE Approval	FAMs Received ^{1,2}
33-0012 / Banning Quarry	4/5	4/5	0/5	2/2
Summary: # of Records Submitted	4/5	4/5	0/5	2/2
Summary: % Submitted	80%	80%	0%	100%

Abbreviations: FACE = Financial Assurance Cost Estimate; FAM = Financial Assurance Mechanism; SOA = FACE Statement of Adequacy;

Notes:

- ¹ The FAM values came from FAM documents that the City provided during (1) the annual review process and (2) the LARA Program review document exchange phase.
- ² In 2017, PRC Section 2773.4 changed the responsibility for submitting the FAM from the lead agency to the operator, and therefore, the two FAMs submitted in 2014 and 2016 are included in this review.

Table 5b. Lead Agency Document Submittal Performance Summary (2014-2018)

Mine ID # / Name	IR (annual)	IN/NOCI	Recorded Violations	Enforcement Actions
33-0012 / Banning Quarry	5/5	5/5	2014: 5 2015: 5 2016: 5 2017: 5 2018: 5	0 ¹
Summary: # of Records Submitted	5/5	5/5		
Summary: % Submitted	100%	100%		

Abbreviations: IN = Inspection Notice; IR = Inspection Report; NOCI = Notice of Completion of Inspection

Note:

¹ The City took no new SMARA enforcement actions during the LARA Program review period; annually, the IR recorded five violations. These five violations consisted of four associated with mining boundaries – (1) mining outside of RP boundaries; (2) mining lands not zoned for mineral extraction; (3) mining into property not owned by operator; and (4) mining beyond setback limits – and the fifth violation was for over-steepened slopes. The 2016 MOU between the City and the operator included actions to remedy these violations through a new, single RP for the existing quarry, as well as the mined lands outside the boundaries and expansion of the quarry southward. The City approved the new RP amendment on September 22, 2020, outside of the review period.

3. Annual Inspection, Inspection Report (IR), Inspection Notice (IN or NOCI)

The City is required to inspect mines annually (PRC Section 2774(b)). Typically, the City inspects the mine in its jurisdiction during December of each year. Tables 5a and 5b above contain a Performance Summary for the one mine within the City's jurisdiction; Table 5b is focused on IRs, IN or NOCI, and recorded violations. The City conducted all five annual inspections (100%) during the review period. All IRs were transmitted to DMR with the respective INs (2014-2016) or NOCIs (2017 and 2018). The five IRs document the same five violations throughout the LARA review period; the violations began prior to the LARA review period and, to date, have not been corrected.

4. Annual Report (AR)²

Pursuant to PRC Section 2207, surface mine operators are required to submit ARs and pay a reporting fee to DMR. Mine operators also are required to send a copy of their AR to the lead agency. Annual reports include information about the mine's reporting status (active, idle, under reclamation or reclaimed), disturbed and reclaimed acreage amounts, and production during the previous year. The operator submitted 100 percent of their ARs during the review period and fees were paid.

² An AR is submitted by the mining operator, not the lead agency, and is, therefore, not directly covered in the LARA Program review. Information on ARs is presented here as it is part of SMARA implementation.

D. Phase IV: Initial Report

The Initial Report was transmitted to the City for review on August 4, 2020. The City provided comments to DMR to consider in preparation of the Final Report (see Attachment E).

E. Phase V: Final Report

The Final Report was completed in November 2020 and was transmitted to the lead agency. Its availability was posted on the Department of Conservation website.

1. Summary of Lead Agency Responses to the Initial Report

The City submitted written comments regarding corrections to text in the Initial Report, updated DMR on the current status of the new, single Reclamation Plan, and provided statements regarding continual compliance with SMARA and continual transmittal of documents to DMR in the future. Comments from the City staff and DMR staff responses to those comments are found in Attachment E.

2. Reclamation During Review Period

During the review period, the surface mining operation was not reclaimed to a useable condition readily adaptable for alternate land uses pursuant to CCR Section 3805.5.

3. Review of the Lead Agency's SMARA Administration

Section III presents the DMR staff's findings and recommendations to the lead agency.

III. FINDINGS AND RECOMMENDATIONS TO LEAD AGENCY

Presented below are DMR staff's findings and recommendations to the lead agency following staff's review of the City's administration of the core requirements of SMARA during the LARA Program review period (2014-2018).

A. Reclamation Plans and Amendments, Permits, and Compliance Actions

1. **Finding #1.** A portion of the surface mining operation within the City's jurisdiction has a vested right to mine and a portion is under permit. Both areas are covered by separate RPs. Additionally, excavation has occurred outside of the surface mining operation boundaries on 17 acres of adjacent land. A proposed amended RP was submitted to DMR during the review period. The City approved RP Amendment 17-9504 on September 22, 2020. The City Council's recent approval of the Plan occurred after the 5-year period (2014-2018) covered by this Lead Agency Review and Assistance (LARA) Program review.

Additionally, the City was not able to provide a copy of the 1965 approved permit or the approved February 1996 RP, upon request, during the LARA Program review.

Recommendation #1a. PRC Section 2770 requires that "a person shall not conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by the lead agency for the operation...." 14 CCR Section 3502(e) states, "an amended reclamation plan shall be filed if the lead agency determines, after an inspection, that the surface mining operation can no longer be reclaimed in accordance with the approved reclamation plan." 14 CCR Section 3502(g) states, "Should an expansion of an operation into an area not covered by an approved reclamation plan be determined by the lead agency to be a substantial deviation, an amended reclamation plan shall be prepared that ensures adequate reclamation for the surface mining operation. The amended reclamation plan shall incorporate current reclamation standards for the entire area governed by the plan that is impacted by the deviation."

The current operation mined 17 acres outside the boundaries of the approved RPs and was out of compliance with SMARA for several years, including the years of the LARA Program review as the outstanding compliance issues were not corrected. On September 22, 2020, the City Council approved a new RP that, among other things, incorporated the mined land outside the current surface mining operation's boundaries.

Recommendation #1b. The City must establish and maintain in-house measures and procedures to ensure organized record-keeping and monitoring of surface mining reclamation under its jurisdiction. SMARA states, "[T]he lead agency shall forward a copy of each permit and approved reclamation plan and financial assurance instrument to the director of the Department of Conservation" (14 CCR Section 3504). Additional documents that must be submitted to DMR include:

- Approved RPs or plan amendments within 60 days of their approval

- Interim Management Plans at the time of approval
- FACEs within 30 days of their approval
- FAMs at the time of approval
- Notices of Violation at the time of issuance
- Stipulated Orders to Comply at the time of issuance
- Orders imposing an administrative penalty at the time of issuance
- Notices of completion of inspection including the completed inspection form at the time of issuance
- Permits at the time of approval

Additional documents that should be submitted to DMR include:

- Administrative decision at the time of issuance following an appeal of an Order to Comply
 - Notices to an operator of a violation or failure to comply with an Order to Comply or Stipulated Order to Comply
 - Vested rights determinations
2. **Finding #2.** The City submitted 5 out of 5 IRs over the review period and transmitted the IRs with either the IN or NOCI (see Table 5). While violations were noted in the IRs, there is no record of the lead agency having issued a notice of violation in DMR files. However, the City and the operator entered into an MOU to settle ongoing litigation and established a mutual agreement that provides the two existing RPs for the surface mining operation be combined into one single plan; that the RP include all mining expansion areas (including that mined land outside current RP boundaries); and that the new, single RP complies with SMARA and other applicable reclamation laws and standards. A single RP that encompasses all of the mined lands will provide for better inspections and ensure a more adequate FACE.

Recommendation #2. Implementation of annual inspections as required by SMARA provide a vehicle for assessing compliance and for initiating appropriate responses to non-compliance (e.g., RP amendment or enforcement action). The City needs to continue to cause annual inspections to occur (PRC Section 2774(b)(1)) and provide DMR with notice of violations (PRC Section 2774.1(a)(1)). The City must take proactive steps when deficiencies occur at the mine site to avoid non-compliance with SMARA.

B. Processing of Financial Assurances

3. **Finding #3.** Lead agencies shall require financial assurance of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operation's approved RP (PCR Section 2773.1(a)). As shown in Table 5a, the City's review and submittal process for annual FACEs to DMR along with appropriate statement of adequacy was not in complete compliance with SMARA in that:

- During the review period (2014-2018), the City submitted 4 out of 5 FACE documents for an overall 80 percent submittal rate. Each of the four FACES were transmitted with the required statement of adequacy.
- During the review period (2014-2018), the City failed to notify the supervisor [of DMR] of approval of any of the submitted FACE documents.
- Based on documents provided, the City did not follow the time requirements established within SMARA. FACE submittal should follow annual inspection and should occur within the time period per PRC Section 2773.4(d). See Attachment B for more detail.
- It is unclear if an interim FACE had been submitted to cover reclamation costs for the 17-acres that were mined outside the boundaries of the approved reclamation plans.

Recommendation #3. Operator submittal and lead agency approval of FACES must comply with PRC Sections 2773.1 and 2773.4. Specific to the City and focused on post-2017 SMARA requirements:

- a. The City shall ensure that the surface mining operator submits a FACE annually for review, either:
 - within 30 days of an annual inspection being conducted pursuant to Section 2774, an operator shall provide an annual FACE to the lead agency for review (PRC Section 2773.4(d)(1)(A))
 - within 30 days of the applicable inspection date (i.e., a date requested by the operator pursuant to PRC Section 2207 or a date set by the lead agency pursuant to Section 2774(c)) should the lead agency fail to cause the inspection of the surface mining operation (PRC Section 2773.4(d)(1)(B))
 - b. For FACE submittals to DMR and per PRC Section 2773.4(a)(2), the City's process must include a statement that the FACE is "adequate, complete, and consistent with Section 2773.1, Article 11 (commencing with Section 3800) of Subchapter 1 of Chapter 8 of Division 2 of 14 CCR) and the SMGB Guidelines adopted pursuant to PRC Section 2773.1."
 - c. Following approval, the City must provide copies of the FACE to DMR.
4. **Finding #4.** During the review period, the City did not ensure that the operator maintain adequate FAMs for the surface mining operation. Two FAMs were transmitted that adjusted the submitted FACE to be equal to or less than the FAM. However, in 2018 the FAM was not adjusted to be greater than the submitted FACE.

Recommendation #4. The City must ensure that each surface mining operation has an adequate financial assurance mechanism to cover reclamation (PRC Sections 2736, 2770, and 2773.1).

C. Annual Inspections, Inspection Reports, and Inspection Notices

5. **Finding #5.** The City conducted 100 percent of the annual inspections as determined by submittal of the IRs (see Table 5b).

Recommendation #5. The City must continue compliance with SMARA as it relates to annual inspections of the surface mining operation (PRC Section 2774(b)(1)); specifically, the City must:

- a. Cause surface mining operations to be inspected in intervals of no more than 12 months
 - b. Provide a notice of completion of inspection to the supervisor [of DMR] within 90 days of conducting the inspection
 - c. Ensure that the notice contains a statement regarding the surface mining operation's compliance with SMARA and a copy of the completed inspection form
 - d. Specify, as applicable, all the following:
 - (A) Aspects of the surface mining operation, if any, that were found to be inconsistent with this chapter but were corrected before the submission of the inspection form to the supervisor
 - (B) Aspects of the surface mining operation, if any, that were found to be inconsistent with this chapter but were not corrected before the submission of the inspection form to the supervisor
 - (C) A statement describing the lead agency's intended response to any aspects of the surface mining operation found to be inconsistent with this chapter but were not corrected before the submission of the inspection form to the supervisor
 - (D) A statement as to whether the surface mining operation is out of compliance with an order to comply or stipulated order to comply issued by the lead agency
6. **Finding #6.** All INs/NOCLs (or transmittal letters that contained the information required on INs/NOCLs) for the LARA Program review period were discovered during the file review (100 percent; see Table 5b). However, the INs/NOCLs were not transmitted in compliance with SMARA timelines.

Recommendation #6. The City must transmit the INs/NOCLs within statutory requirements (within 30 days prior to 2017; within 90 days after 2017) as outlined in SMARA (PRC Section 2774(b)(1)).

D. General Findings and Recommendations

7. **Finding #7.** The City has a mining ordinance certified by the SMGB per PRC Section 2774.5; it was last certified by the SMGB on November 10, 1999.

Recommendation #7. Per statute (PRC Section 2774(a)), the City must update its existing surface mining ordinance and submit the updated ordinance to the SMGB for certification to comply with SMARA. This would ensure that the ordinance is consistent with the recent changes to the SMARA statutes (see Attachment D).

IV. RESOURCES USED IN REPORT PREPARATION

A. City of Banning

1. The City of Banning, General Plan: (available at <http://banning.ca.us/468/General-Plan-Amendments>)
2. City of Banning, Ordinance No. 1237, an ordinance amending Chapter 22B of the Banning Ordinance Code adopting updates to the City's Surface Mining and Reclamation Ordinance (available at <https://www.conservation.ca.gov/smgb/reports/Documents/Ordinances-City/Banning.pdf>)

B. State of California

(See Attachment C)

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ATTACHMENT A

SMARA-Related Chronologies for Each Mine for the LARA Review Period

A — BANNING QUARRY (33-0012) MINE CHRONOLOGY

Abbreviations used in Attachment A:

CUP = Conditional Use Permit

DMR = Division of Mine Reclamation

FACE = Financial Assurance Cost Estimate

FAM = Financial Assurance Mechanism

IN = Inspection Notice

IR = Inspection Report

LARA = Lead Agency Review and Assistance

NOCI = Notice of Completion of Inspection

RP = Reclamation Plan

RPA = Reclamation Plan Amendment

SOA = FACE Statement of Adequacy

UUP = Unclassified Use Permit

A - BANNING QUARRY (33-0012) MINE CHRONOLOGY

DATE	Administrative Activity	RP/RPA	Permit CUP	FACE	FAM	IR	IN or NOCI	Enforcement
Background Administrative Approvals								
1925	Mining began on a portion of parcels that are now Banning Mineral Production (in-stream mining and streambed mining)							
10/6/1965	Conditional Use Permit approved (1965 CUP); no expiration		X					
1975	All properties described in 1965 CUP classified as vested mine property		vested					
Current Permit Status/RP Status								
10/6/1965	Conditional Use Permit approved (1965 CUP); no expiration		X					
6/29/1990	Approved RP for vested areas of surface mining operation; Termination-2010	X						
2/1/1996	Unclassified Use Permit (UUP) 1994-01 approved for 57 acres not covered by 1965 CUP		X					
2/1996	RP for properties covered by UUP 1994-01 approved	X						
LARA Review Period (2014-2018)								
10/30/2013	FACE document prepared; total estimated cost of reclamation was calculated to be \$472,819.00; DMR received on 2/27/2014			X				
2/27/2014	DMR received FACE and 2013 IR from Lead Agency			X				
4/11/2014	DMR transmitted comments to Lead Agency on the FACE document received on 2/27/2014			X				
5/2/2014	Revised FACE document prepared in response to (and to address) DMR comments; total estimated cost of reclamation was calculated to be \$472,819.00; DMR received on 6/6/2014			X				
5/8/2014	FAM amount of \$520,000.00 posted; bond is to remain continuous until cancelled; DMR received via email during the LARA Program review document exchange phase on 5/14/2020				X			

A - BANNING QUARRY (33-0012) MINE CHRONOLOGY

DATE	Administrative Activity	RP/RPA	Permit CUP	FACE	FAM	IR	IN or NOCI	Enforcement
6/4/2014	City transmitted revised FACE per DMR's 4/11/2014 comment letter; transmittal letter included Statement of Adequacy (SOA); DMR received on 6/6/2014			X				
12/8/2014	Lead Agency conducted inspection; current violations are same issues identified in 2012, with some additions: mining beyond RP limits, mining in lands not zoned for mineral extraction, mining into property not owned by operator, mining beyond designated setback limits, small releases of contaminants (Boneyard); IR signed 12/29/2014; DMR received on 1/9/2015					X		
12/29/2014	IN transmitted IR for 12/8/2014 inspection; DMR received on 1/9/2015						X	
12/8/2015	Lead Agency conducted inspection; no new violations; current violations are same issues identified in 2012-2014; 1 violation corrected: 2014 boneyard release violation cleaned-up by operator; IR signed 1/10/2016; DMR received on 1/25/2016					X		
1/1/2016	FACE document prepared; Total estimated cost of reclamation was calculated to be \$652,695.00; DMR received on 4/25/2016			X				
1/22/2016	IN prepared to transmit IR for 12/8/2015 inspection; DMR received on 1/25/2016						X	
4/15/2016	Addendum to 2015 FACE transmitted along with SOA; DMR received on 4/25/2016			X				
6/7/2016	FAM amount of \$652,695.00 posted; DMR received on 10/13/2017				X			
9/19/2016	MOU executed between the City of Banning and the Operator							X
12/12/2016	Lead Agency conducted inspection; current violations are same issues identified in 2012-2015; IR signed 12/29/2016; DMR received on 1/17/2017					X		
1/1/2017	FACE document prepared; total estimated cost of reclamation was calculated to be \$627,068.00; DMR received on 3/29/2017			X				

A - BANNING QUARRY (33-0012) MINE CHRONOLOGY

DATE	Administrative Activity	RP/RPA	Permit CUP	FACE	FAM	IR	IN or NOCI	Enforcement
1/10/2017	NOCI transmitted IR for 12/12/2016 inspection to DMR						X	
3/29/2017	SOA transmitted with 1/1/2017 FACE to DMR; DMR received on 3/29/2017			X				
5/5/2017	DMR transmitted comments to Lead Agency regarding the FACE document received on 3/29/2017			X				
9/11/2017	DMR received RP from Lead Agency	X						
9/25/2017	DMR transmitted Notice of Incomplete Submission to Lead Agency regarding the RP submittal DMR received on 9/11/2017	X						
11/17/2017	Lead Agency responded to DMR notice of incomplete submission with submittal of complete RP	X						
11/29/2017	DMR staff conducted a reconnaissance visit to observe site conditions	X						
12/7/2017	DMR transmitted comments to Lead Agency regarding the RP submittal	X						
12/20/2017	Lead Agency conducted inspection; no new violations; current violations are same issues identified in 2012-2016; IR signed 12/29/2017; DMR received on 4/9/2018					X		
3/20/2018	NOCI prepared to transmit IR for 12/20/2017 inspection to DMR; DMR received on 4/9/2018						X	
10/1/2018	FACE document prepared; total estimated cost of reclamation was calculated to be \$670,565.00; DMR received on 10/11/2018			X				
10/11/2018	SOA and 10/1/2018 FACE transmitted to DMR; DMR received on 10/11/2018			X				
12/19/2018	Lead Agency conducted inspection; no new violations; current violations are same issues identified in 2012-2016; IR signed 1/8/2019; DMR received on 6/7/2019					X		
5/31/2019	NOCI transmitted IR for 12/19/2018 inspection to DMR; DMR received on 6/7/2019						X	

ATTACHMENT B

SMARA-Related IR and FACE Statutory Timelines for Each Mine

B1 — BANNING QUARRY (33-0012) INSPECTION REPORT STATUTORY TIMELINES

B2 — BANNING QUARRY (33-0012) FINANCIAL ASSURANCE COST ESTIMATE
STATUTORY TIMELINES

Abbreviations used in Attachment B:

DMR – Division of Mine Reclamation

FACE – Financial Assurance Cost Estimate

FAM = Financial Assurance Mechanism

IR = Inspection Report

LA = Lead Agency

NOCI = Notice of Complete Inspection

NOPH = Notice of Public Hearing

NA = Not Applicable

NR = No Record

RTC = Response to Comments

X = In Accordance with SMARA

B1 – BANNING QUARRY (33-0012) INSPECTION REPORT STATUTORY TIMELINES

Activity	Applicable Time Period / Requirements	2014	2015	2016	2017	2018
Inspection Conducted	Annually	12/8/14	12/8/15	12/12/16	12/20/17	12/19/18
Inspection Conducted	By qualified individual	X	X	X	X	X
Inspection Conducted	On appropriate form	X	X	X	X	X
Inspection form	Form signed	12/29/14	1/10/16	12/29/16	12/29/17	1/8/19
Inspection Notice transmitted Inspection Report to DMR	30 days prior to 2017 OR 90 days after 2017	1/9/15	1/25/16	X ¹	4/9/18	6/7/19
Inspection Notice	Contains appropriate statements	X	X	X	X	X

Abbreviations: DMR = Department of Mine Reclamation

Notes:

X = Inspection was completed.

X¹ = Inspection was completed, but no record of when DMR received the document.

**B2 – BANNING QUARRY (33-0012) FINANCIAL ASSURANCE COST ESTIMATE STATUTORY
TIMELINES
PRC Section 2773.4(d)**

Activity	Applicable Time Period / Requirements	2014	2015	2016	2017	2018
Submit FACE to LA	Within 30 days of annual IR	2/27/14	NR	4/25/16	3/29/17	10/11/18
LA determined adequate	Within 90 days of annual inspection	6/4/14	NR	4/15/16	3/29/17	10/11/18
DMR comment	If incomplete, within 15 days of receipt	NA	NA	NA	NA	NA
DMR comment	If complete, within 45 days of receipt	4/11/14	NR	NR	5/5/17	NR
LA Response to Comments	Within 30 days of receipt	5/2/14	NA	NA	NR	NA
DMR received NOPH	30 days prior to approval	NR	NR	NR	NR	NR
DMR received appropriate FAM	30 days after approved FACE	NR	NR	10/13/17	NR	NR ¹

Abbreviations: DMR = Department of Mine Reclamation; FACE = Financial Assurance Cost Estimate; FAM = Financial Assurance Mechanism; IR = Inspection Report; LA = Lead Agency; NA = Not applicable; NOPH = Notice of Public Hearing; NR = No Record

Notes:

¹ Indicates that the responsibility for submitting the FAM shifted to the operator

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ATTACHMENT C

Resources Available to Lead Agencies (as of November 2020)

LEAD AGENCY REVIEW AND ASSISTANCE (LARA) PROGRAM WEB FILES

- California Department of Conservation Division of Mine Reclamation webpage:
<https://www.conservation.ca.gov/dmr>
- Information on the LARA Program, including final LARA reports:
<https://www.conservation.ca.gov/dmr/SMARA%20Mines/Pages/LeadAgencyReview.aspx>
- Access to the LARA Program Review Process Guidelines:
<https://www.conservation.ca.gov/dmr/SMARA%20Mines/Documents/LARA%20Guidelines-%20ADA%20Compliant.pdf>
- California Department of Conservation State Mining and Geology Board Financial Assurances guidelines:
<http://www.conservation.ca.gov/smgb/Guidelines/Pages/Appendices.aspx>

Resources Available to Lead Agencies (continued)

SURFACE MINING AND RECLAMATION ACT OF 1975 (SMARA)

Statute

- California Public Resources Code and California Code of Regulations for SMARA: <https://www.conservation.ca.gov/index/Documents/DMR-SR-1%20Web%20Copy.pdf>

Rulemaking Updates

- To be alerted to proposed regulatory changes to SMARA, sign up through the Department's website at: <https://www.conservation.ca.gov/smgb/Pages/Rulemaking/Overview.aspx>

SMARA Inspection Workshops

- The Division's SMARA Inspector Training Workshops and the Inspection Guidance Document, as required under PRC Section 2774(e): <https://www.conservation.ca.gov/dmr>

Division Points of Contact

- The Division has staff available to assist lead agencies in the Reporting Unit, Engineering Geology Unit, and Environmental Services Unit. An organization chart can be found on the DMR website at: <https://www.conservation.ca.gov/dmr>

Reclamation Plan Review and Approval

- Additional resources can be found on the Division's website, including:
 - Checklist of Reclamation Plan Requirements
The checklist is organized by topic (i.e., geologic requirements, revegetation requirements, etc.)
 - New online Annual Reporting System (including online Annual Report fee payment)
 - Annual Report form and instructions
 - Financial Assurance forms and instructions (FACE and FAMs)
 - Inspection Form and Notice of Completion of Inspection form

ATTACHMENT D

Lead Agency Review and Assistance (LARA) Program Changes in Legislation since 2016 (as of November 2020)

Senate Bill No. 854, Summary: *Published on June 27, 2018.*

- Establishes electric submittal of official copies of mining operational documents including reclamation plans, reclamation plan amendments, interim management plans, finance assurance documents, notices of violation, orders to comply, stipulated orders, orders imposing an administrative penalty, notices of completion of inspection, permits, vested rights determination and instructs DMR to post these documents on their website.

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB854

Senate Bill No. 809, Summary: *Published on October 5, 2017.*

- Transfers various duties assigned to the Director of Conservation to the Supervisor of Mine Reclamation, as specified, and transfers various duties assigned to the Department of Conservation to the Division of Mine Reclamation (DMR), as specified.
- Requires an operator to provide the lead agency and Mine Supervisor an updated Financial Assurance Mechanism (FAM) on approved forms, which includes updated requirements, and within 30 days of the lead agency Financial Assurance Cost Estimate (FACE) approval.
- Requires the lead agency and the Supervisor of DMR to notify the operator within 15 days of receipt of the FAM does not meet requirements.

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB809

Senate Bill No. 209, Summary: *Published on April 18, 2016.*

- Establishes the DMR within the Department of Conservation under the direction of the Supervisor of Mine Reclamation.
- Raises the amount of the annual reporting fee to \$10,000 per mining operation and raises the maximum amount of the total revenue generated from the reporting fee to \$8,000,000.
- Provides for an operator (after the State Mining and Geology Board (SMGB) has adopted specified regulation) to include a corporate financial test in a FAM.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB209

Assembly Bill No. 1142, Summary: *Published on April 18, 2016.*

- Requires reclamation plans filed by an operator of a mining operation with a lead agency include specified reclamation maps; requires a lead agency when submitting a proposed reclamation plan to DMR to incorporate specified items

of information and documents in the submitted reclamation plan within certain timeframes; requires certain actions be taken by DMR upon receiving a proposed reclamation plan.

- Requires operator to replace an approved financial assurance only if the FACE identifies a need to increase the amount of the financial assurance; requires a lead agency to submit the FACE for a surface mining operation to DMR for review as specified and requires DMR to take certain actions upon receiving a FACE.
- Requires a lead agency or the SMGB to conduct a specified public hearing if the lead agency has evidence that an operator maybe financially incapable of performing reclamation in accordance with its approved reclamation plan or that the operator has abandoned a surface mining operation without completing reclamation and to take appropriate actions to forfeit the operator's financial assurances.
- Authorizes a lead agency employee conducting mine inspections to have met specified criteria, including having completed mine inspection workshop (by January 1, 2020).
- Imposes new requirements on the lead agency related to the timing of mine inspections.
- Authorizes DMR to establish a training program for lead agency employees who inspect surface mining operations no later than December 31, 2017.
- Lays out process for enforcement actions.

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB1142

ATTACHMENT E

City of Banning Staff Comments on Initial Report and Division of Mine Reclamation Staff Responses

E1 — City of Banning Staff Comments on Initial Report

E2 — Division of Mine Reclamation Staff Responses to City of Banning Staff Letter

ATTACHMENT E1

City of Banning Staff Comments on Initial Report



City of Banning Community Development Department

November 3, 2020

Ms. Carol E. Atkins
Department of Conservation
Division of Mine Reclamation
801 K Street, MS 09-06
Sacramento, CA. 95814

SUBJECT: Final Comments on the Lead Agency Review and Assistance (LARA) Program – Initial Report

Dear Ms. Atkins;

The City of Banning appreciates the opportunity to review the LARA – Initial Report and provide comments. After review, staff has the following minor comments on the LARA – Initial Report.

- Page 8 – Correct the spelling of Sonia by replacing the “j” with an “i”. | 1
- Page 8 -Correct the spelling of Legal Counsel by replacing the “ci” with “se”
- Recommendations:
- #1a. The mine’s plans that were recently approved by the City Council on September 22, 2020. | 2
- #1b. The City will review plans to revise record keeping procedures and approved plans and permits shall be forwarded to the (DMR) within 60 days of their approval.
- #2. The City will continue the annual inspections.
- #3. The City will continue forward the FACE documents along with the annual inspections.
- #4. The City will continue to collect and review the FACE documents with the annual inspections. | 3
- #5. The City will continue to comply with SMARA as it relates to annual inspections.
- #6. The City will transmit the inspection notices.
- #7. The City will explore the timetable to update its existing surface mining ordinance.

If you have any questions, please contact me at spierce@banning.gov or (951) 922-3152.

Sincerely,
Sonia Pierce

Sonia Pierce
Community Development Department

99 E. Ramsey Street • P.O. Box 998 • Banning, CA 92220-0998 • (951) 922-3100

ATTACHMENT E2

Division of Mine Reclamation Staff Responses to the City of Banning Staff Letter

(Numbers correspond to the lined text in the City of Banning's letter.)

- 1. The City identified two corrections to text that should be made on page 8 of the Report.**

These edits have been made to the Final Report.

- 2. The City noted that the City Council recently approved a new Reclamation Plan for the Banning Quarry on September 22, 2020.**

Thank you for providing an update on the status of the Reclamation Plan. The City Council's recent approval of the Reclamation Plan occurred after the 5-year period (2014-2018) covered by this Lead Agency Review and Assistance (LARA) Program review; however, the LARA Program Review has noted the progress the City has made on this item. The Final Report was revised to include this information where appropriate.

- 3. The City noted that they will continue collecting, reviewing, and transmitting annual inspections and FACE documents, comply with SMARA, and explore a timetable to update the existing surface mining ordinance.**

DMR staff looks forward to continuing the review of these documents.

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ATTACHMENT F

Lead Agency Review and Assistance (LARA) Program Contacts (as of November 2020)

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