

California Department of Conservation
Division of Mine Reclamation

Lead Agency Review and Assistance (LARA) Program

Final Report

Prepared for:

City of Twentynine Palms

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

April 2020

Revised February 2021



Addendum

This document has been revised from its original format.

The link for the FTP site that was on pages 9 and B1 have been removed. An alternative link has been put in its place. Mine file documents can be requested from the Division of Mine Reclamation using this new link.

Page Intentionally Left Blank

TABLE OF CONTENTS

EXECUTIVE SUMMARY V

- A. Reclamation Plans and Amendments, Permits, and Compliance Actions..... vi
- B. Financial Assurances vi
- C. Annual Inspections, Inspection Reports, and Inspection Notices vi
- D. Annual Reports vii
- E. General Findings vii

I. INTRODUCTION 1

- A. Purpose and Scope 1
- B. Regulation of Surface Mines in California..... 3
 - 1. Overview 3
 - 2. Lead Agency's Role 3
 - 3. Surface Mine Operator's Role 4
 - 4. Division of Mine Reclamation's Role 5
- C. Lead Agency Review and Assistance Program 5
 - 1. Background 5
 - 2. Program Goal 5
 - 3. Legislative Amendments Since 2016 6
- D. City of Twentynine Palms 6
 - 1. General Plan and Surface Mining Ordinance 6
 - 2. Processing Procedures for RPs, RP Amendments and FACEs..... 7

II. LEAD AGENCY REVIEW AND ASSISTANCE PROGRAM REVIEW ACTIVITIES..... 8

- A. Phase I: Entrance Conference 8
- B. Phase II: File Comparison 9
- C. Phase III: Performance Review 10
 - 1. Reclamation Plans and Amendments, Permit, and Compliance Actions 10
 - 2. Financial Assurances 10
 - 3. Annual Inspection, Inspection Report, and Inspection Notice/Notice of Completion of Inspection..... 11
 - 4. Annual Report..... 11
- D. Phase IV: Initial Report 11
- E. Phase V: Final Report 12
 - 1. Summary of Lead Agency Responses to the Initial Report 12
 - 2. Reclamation During Review Period 12
 - 3. Review of Lead Agency's SMARA Administration 12

III. FINDINGS AND RECOMMENDATIONS TO LEAD AGENCY 13

- A. Reclamation Plans and Amendments, Permits, and Compliance Actions..... 13
- B. Financial Assurances 13
- C. Annual Inspections, Inspection Reports, and Inspection Notices 14
- D. Annual Reports 14
- E. General Findings 15

IV. RESOURCES USED IN REPORT PREPARATION 16

- A. Twentynine Palms 16
- B. State of California 16

ATTACHMENTS

- A. SMARA-Related Chronology for each Mine for the LARA Review Period
- B. Resources Available to Lead Agencies (as of April 2020)
- C. LARA Program Recent Changes in Legislation (as of July 2018)
- D. General Processing Procedures Used by the City of Twentynine Palms for Reclamation Plans, Reclamation Plan Amendments, and Financial Assurance Cost Estimates during the LARA Review Period
- E. City of Twentynine Palms Staff Comments on Initial Report and Division of Mine Reclamation Staff Responses
- F. Lead Agency Review and Assistance Program Contacts (as of April 2020)

LIST OF TABLES

Table 1. City of Twentynine Palms Surface Mines for LARA Program Review..... 1

Table 2. Financial Assurances (2014-2018)..... 10

Table 3. Lead Agency Document Submittal - Performance Summary for LARA Review 11

LIST OF FIGURES

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

Figure 1. Existing Surface Mine in City of Twentynine Palms Jurisdiction during the Review Period (2014-2018) 2

Figure 2. LARA Program Review Process Flowchart 8

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 mine operator to the Division of Mine Reclamation noting mining activity for the previous calendar year; due on July 1 of each year with required fee
CCR	California Code of Regulations	Regulations adopted, amended, or repealed by state agencies pursuant to the Administrative Procedures Act
City	City of Twentynine Palms	SMARA lead agency for this Lead Agency Review and Assistance Program review
CRB RWQCB	Colorado River Basin Regional Water Quality Control Board	One of nine Regional Water Quality Control Boards within California; together with the State Water Resources Control Board, they have regulatory responsibility for protecting the water quality of the State
CUP	Conditional Use Permit	Development permit issued by the lead agency to mine operators
DMR	Division of Mine Reclamation	Division within 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, Oil, Gas, and Geothermal Resources, 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 a 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 a 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
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)

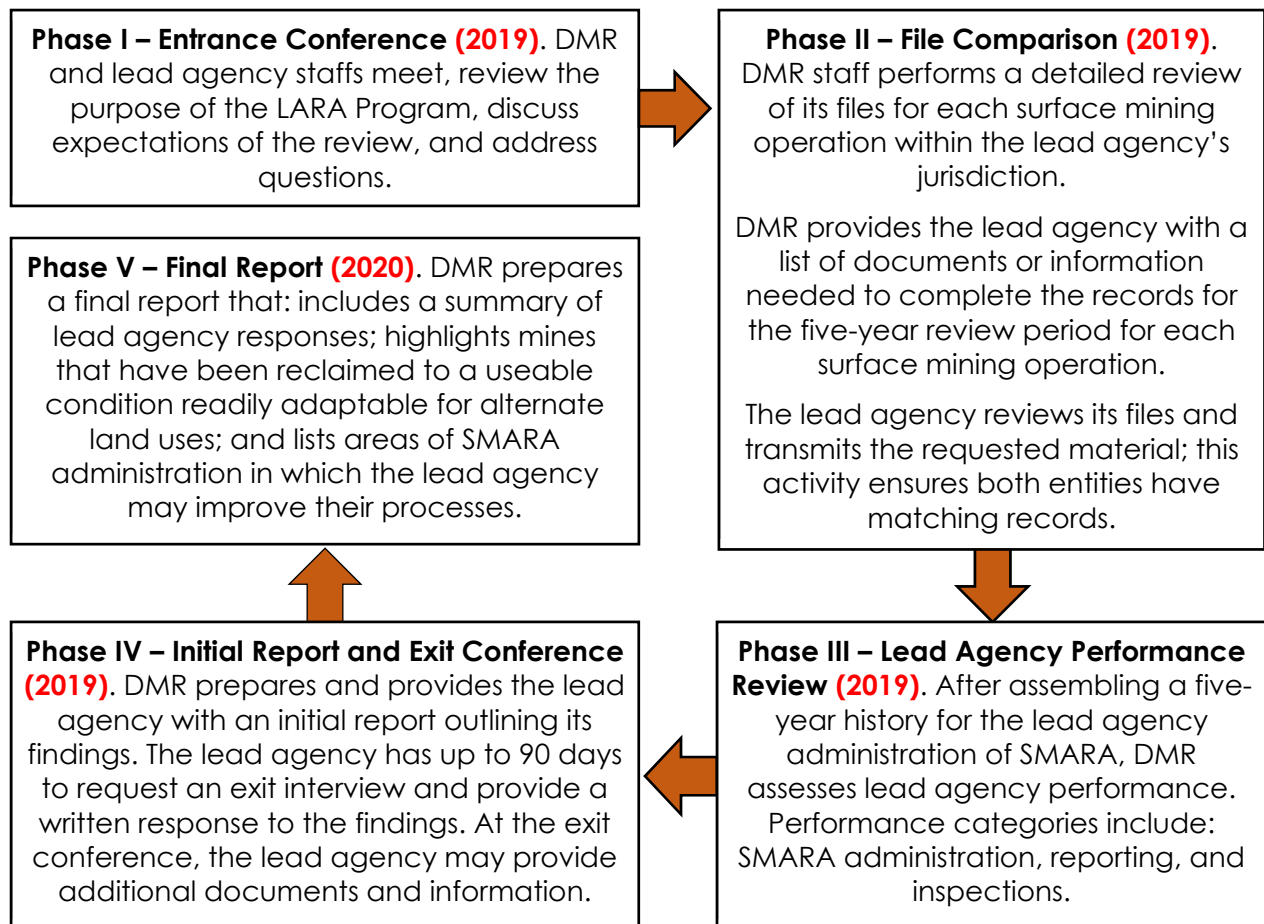
Acronym	Term	Description
NOV	Notice of Violation	Notice issued to a mine operator identifying site specific or administrative violations of state law
NS	Not Submitted	For this field, the information was not submitted
OMR	Office of Mine Reclamation	Former name of Division of Mine Reclamation (prior to 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 mining 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
SOR	Statement of Responsibility	Statement signed by the new operator within 15 days of the sale or transfer of a surface mining operation in accordance with paragraph (10) of subdivision (c) of Section 2772 of SMARA

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 the City of Twentynine Palms (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 existing surface mine within the City's jurisdiction. The first three years of the review period (i.e., 2014, 2015, and 2016) preceded the substantial changes to SMARA that took effect in 2017 (see Attachment C). 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 Amendments, Permits, and Compliance Actions

1. **Recommendation #1.** As a SMARA lead agency, the City must continue to ensure that every surface mining operation within its jurisdiction, which currently consists only of the Twentynine Palms Pit (Mine ID # 36-0055), complies with SMARA by having an approved permit, in addition to a reclamation plan and adequate financial assurance (PRC Section 2770).

B. Financial Assurances

2. **Recommendation #2.** The City must ensure that mine operations have an adequate financial assurance to reclaim surface mine operations.
3. **Recommendation #3.** Operator submittal and City approval of FACEs must comply with PRC Section 2773.1 and Section 2773.4. For example, post-2017 amendments to SMARA require:
 - a. The City shall ensure that the mining operator submits a FACE annually for review, either:
 - within 30 days of an annual inspection being conducted pursuant to PRC 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., on the date requested by the operator pursuant to PRC Section 2207 or on the date set by the lead agency pursuant to PRC 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, the City's process must include a statement of adequacy (SOA) based on its review and analysis of the operator's FACE so that a clear statement of adequacy of a proposed FACE is made and is transmitted to DMR.
 - c. Following approval, the City must provide a copy of the approved FACE to DMR.

C. Annual Inspections, Inspection Reports, and Inspection Notices

4. **Recommendation #4.** Implementation of a proactive and rigorous inspection program would enable the City to both identify and correct deficiencies before they become larger problems. (See the Post-LARA Review Period Activities in the Chronology Table A (Appendix A).) Additionally, timely enforcement of SMARA requirements (e.g., issuance of enforcement actions as necessary) would provide a means to protect the environment and health and safety of communities; the lead agency should proactively ensure that areas of concern

are remedied before they result in non-compliance with SMARA or other state and federal laws.

D. Annual Reports

5. **Recommendation #5.** DMR and City staff should consult if a review of an annual report shows that discrepancies may exist or if an annual report does not include all required information (e.g., a mine's reporting status, disturbed and reclaimed acreage amounts, and production during the previous year).

E. General Findings

6. **Recommendation #6.** The City must maintain a record of the appropriate operational and administrative documents, as well as provide the appropriate documents to DMR.
7. **Recommendation #7a.** In compliance with SMARA (PRC Section 2774(b)(1)), the City must:
 - cause surface mining operations to be inspected in intervals of no more than 12 months
 - provide a notice of completion of inspection to the supervisor (of Mine Reclamation within DMR) within 90 days of conducting the inspection
 - ensure that the notice of completion of inspection contains a statement regarding the surface mining operation's compliance with SMARA and a copy of the completed inspection form
 - 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

Recommendation #7b. The City's mining ordinance, which the State Mining and Geology Board (SMGB) certified pursuant to PRC Section 2774.5 on March 11, 1999, must be updated consistent with the recent amendments to SMARA. For example, the process for reviewing and approving FACEs has been expanded to

include DMR's authority to request a consultation meeting with lead agencies over pending FACEs, as well as DMR's authority to appeal a lead agency approved FACE to the SMGB.

I. INTRODUCTION

A. Purpose and Scope

The Department of Conservation's Division of Mine Reclamation (DMR) presents this Final Report on the City of Twentynine Palms (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 operation within its jurisdiction (see Table 1 and Figure 1)
- covers the period from 2014 through 2018 (hereafter the review period)

Table 1. City of Twentynine Palms Surface Mines for LARA Program Review

Mine ID #	Mine Name	Commodity	Area Excavated (acres) ¹
36-0055	Twentynine Palms Pit	Sand and Gravel	16

Notes:

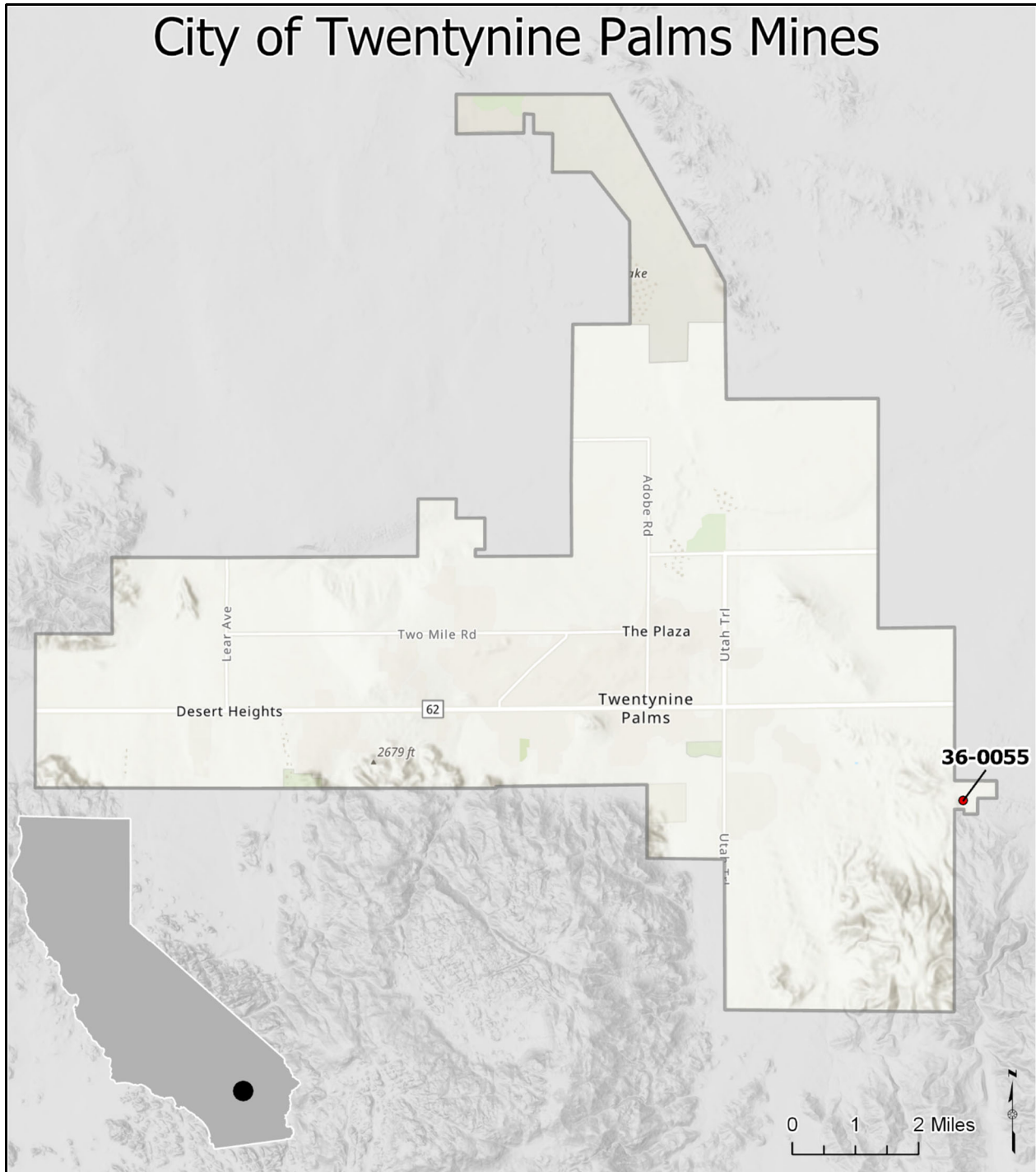
¹ Approximate value (rounded to whole acres) averaged over 5-year review period (2014-2018)

During the review period, review years 2014 to 2016 preceded the substantial changes to SMARA that took effect in 2017 (see Attachment C), SMARA lead agencies core requirements included:

- Review and approve 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
- Conduct and complete annual inspection requirements for all mining operations within the lead agency's jurisdiction

¹ This LARA Program review does not cover the lead agency's mining ordinance or its administration of the California Environmental Quality Act.

Figure 1. Existing Surface Mine in City of Twentynine Palms Jurisdiction during the 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

California is unique among states in that the permitting of surface mines occurs through local governments acting as the lead agency. 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

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

The 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; adjust the FAM to be at least equal to the FACE
- Submit to DMR a determination that the FACE submitted for comment is adequate, complete, and consistent with PRC Section 2773.1
- Respond to any comments from DMR
- Approve the FACE following receipt of public and 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.

Annual Inspection and Notice of Completion of Inspection (NOCI)

Annual inspections help to ensure SMARA compliance and 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 and Inspection Notices (now referred to as a Notice of Completion of Inspection or "NOCI" under PRC Section 2774(b)(1))
- Submit both the Inspection Report 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 and permit conditions, and minimal acceptable practices for reclamation pursuant to Title 14, California Code of Regulations (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

The DMR was created to assist and provide oversight for local governments that administer the 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. The 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 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.

3. Legislative Amendments Since 2016

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

D. City of Twentynine Palms

1. General Plan and Surface Mining Ordinance

General Plan

The General Plan is intended to fulfill State requirements for comprehensive, long-term planning for the physical development of the City. The City of Twentynine Palm's General Plan (available at <https://www.ci.twentynine-palms.ca.us/generalplan>) contains city-wide goals, policies, and programs. Most relevant to the LARA Program review and SMARA implementation is the General Plan Open Space and Conservation Element that lists the mining goals and policies shown below.

- Ensure that all mineral mining be undertaken in compliance with State and local laws and regulations (Mineral Resources Goal, CO-5)
- Review and monitor all mining operations to ensure compliance with SMARA (Implementation Policy, CO-5.1)
- Develop and adopt ordinances and regulations to ensure that all mining operations within the City preserve the City's aesthetic resources (Implementation Policy, CO-5.2)
- Require that all mining operations utilize rights-of-way with adequate road improvements and maintenance (Implementation Policy, CO-5.4)
- Require noise reduction measures, when a mining operation is adjacent to a residential or other noise-sensitive area (Implementation Policy, CO-5.3)

Surface Mining Ordinance

The City's Code of Ordinances, Chapter 19.58, Surface Mining and Land Reclamation Permit is the primary instrument for implementing the City's General Plan goals, objectives, and policies, pursuant to SMARA (see https://library.municode.com/ca/twentynine_palms/codes/code_of_ordinances). The Code of Ordinances constitutes the comprehensive regulations for the City and was adopted to:

- Implement the City's General Plan
- Promote the public health, safety and general welfare
- Provide the environmental, economic, and social advantage which result from an orderly, planned use of resources
- Establish the most beneficial and convenient relationships amongst land uses

On March 11, 1999, the State Mining and Geology Board (SMGB) certified the City's mining ordinance under Resolution number 99-08, Ordinance number 150.

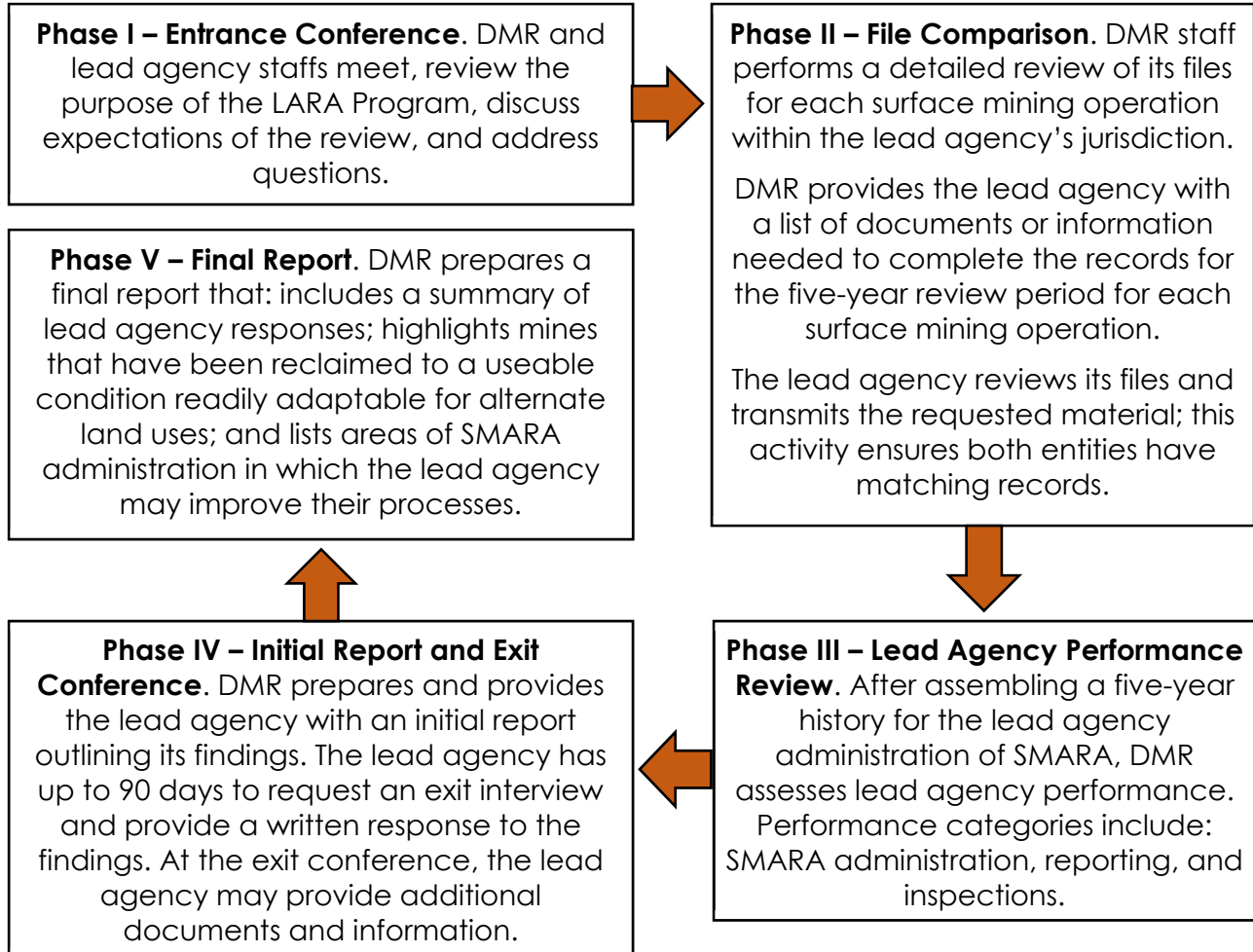
2. Processing Procedures for RPs, RP Amendments and FACEs

The City Planning Director identified procedures that the City uses to process RPs, RP amendments, and FACEs. They are presented in Attachment D.

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

The Entrance Conference was held by conference call on July 10, 2019. The purpose of the meeting was to introduce the City and DMR staffs, provide an overview of the LARA Program, discuss LARA Program review and mutual expectations, and answer any questions. Meeting participants were:

City of Twentynine Palms

- Travis Clark, Community Development Director
- Jon Braginton, Interim Planner

Division of Mine Reclamation

- Pat Perez, Supervisor of Mine Reclamation
- Carol E. Atkins, Manager, Environmental Services Unit
- Cy R. Oggins, Manager, Reclamation and Remediation Unit
- April Balestreri, Manager, Reporting Unit
- Paul Fry, Manager, Engineering and Geology Unit
- Hora Gezhegn, Senior Engineering Geologist/Civil Engineer
- Carina Grove, Environmental Scientist, Environmental Services Unit
- Kirsten Byrnes, Analyst, Reporting Unit

B. Phase II: File Comparison

The DMR staff inventoried the contents of its mine files for all existing surface mining operations subject to SMARA within the City's jurisdiction and within the review period (Table 1 and Figure 1 above identify the one existing surface mining operation in the City). To ensure that both the City and DMR files contained the same operative documents as well as routine and non-routine submittals for each mining operation, (1) DMR staff requested from the City any documents missing from DMR's files; and (2) City staff responded by providing many of the missing documents.

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
- Inspection Report (IR) with the associated Inspection Notice (IN or NOCI)

Documents for the mining operation within the City can be requested by emailing DMR-Submittals@conservation.ca.gov.

C. Phase III: Performance Review

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

SMARA 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 assurance for reclamation have been approved by the lead agency for operation. No RP amendments were processed during the review period. The operative document for the one mine is the 2010 RP amendment that added 365 acres to the surface mining operation. The operation term for the mine permit is until 2096. Attachment A provides a detailed chronology for the LARA review period for the single mine's SMARA-related activities.

2. Financial Assurances

Financial assurances under SMARA consist of the initial and annual FACE and FAM. Operators are required to submit their annual FACE no later than 30 days after the annual inspection (SMARA Section 2773.1(a)(3)). 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, 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. Beginning in 2017, DMR may comment on the adequacy of particular FACE under appropriate circumstances and can appeal a lead agency's approval of a FACE to the SMGB.

Table 2 presents and compares FACE and FAM values for the City's active mine operation for the review period (2014-2018); a note of "inadequate" is shown if the FACE exceeded the FAM. A summary of the annual documents required by SMARA that were within DMR files or were provided by the lead agency is provided in Table 3.

Table 2. Financial Assurances (2014-2018)

Mine ID #/ Name	FACES ¹		FAMs from AR ²		FAM/FACE Relationship
	Document Date/Amount	Document Date/Amount	Document Date/Amount	Document Date/Amount	
36-0055 / Twentynine Palms Pit	12/9/2014	\$168,556.64	2014	\$168,556.64	+
	2015	NS	2015	\$286,625.00	+
	5/6/2016	\$157,245.75	2016	\$286,625.00	+
	2017	NS	2017	\$217,171.00	+
	4/6/2018	\$217,171.51	2018	\$242,753.86	DMR comments ³

Abbreviations: AR = Annual Report; FACE = Financial Assurance Cost Estimate; FAM = Financial Assurance Mechanism; NS = Not Submitted

¹ The FACE values came from FACE documents that the City provided during (1) the annual review process or (2) the LARA Program document exchange phase.

² FAM amounts are based on the operator's annual reports, Form MRRC-2. The AR year used was for the calendar year corresponding with the FACE.

³ DMR reviewed the FACE and provided comments; discussions regarding submitted FACE adequacy are ongoing.

Table 3. Lead Agency Document Submittal - Performance Summary for LARA Review

Mine ID # / Name		IR ¹ (annual)	IN or NOCI	FACE	SOA	FACE Approval	Enforcement Actions
36-0055 / Twentynine Palms Pit		2/5	2/5	3/5	2/5	2/5	None
RECORDS SUMMARY	Submitted	2/5	2/5	3/5	2/5	2/5	
	% Submitted	40%	40%	60%	40%	40%	

Abbreviations: FACE = Financial Assurance Cost Estimate; IN = Inspection Notice; IR = Inspection Report; NOCI = Notice of Completion of Inspection; SOA = FACE Statement of Adequacy

Notes:

¹ To evaluate this field, DMR staff first looked for presence of a submitted IR; if that was not available, then DMR staff looked to the AR to determine if the IR was appended to this document.

3. Annual Inspection, Inspection Report, and Inspection Notice/Notice of Completion of Inspection

The City is required to inspect all mines annually (PRC Section 2774(b)). Table 3 above contains a Performance Summary for the one mine within this jurisdiction. The City conducted two out of an expected five annual inspections (40 percent). The two IRs were transmitted to DMR with the IN (2015) and NOCI (2018).

4. Annual Report²

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% of their ARs during the review period and fees were paid.

D. Phase IV: Initial Report

The Initial Report was transmitted to the City for review on November 27, 2019. The City provided] comments to DMR on February 24, 2020, to consider in preparation of the Final Report.

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

E. Phase V: Final Report

The Final Report was released and posted to the Department of Conservation website in April 2020.

1. Summary of Lead Agency Responses to the Initial Report

The City provided written comments on the Initial Report. Comments from the City and DMR staff response to those comments are found in Attachment E.

2. Reclamation During Review Period

During the review period, no surface mines were reclaimed to a useable condition readily adaptable for alternate land uses.

3. Review of 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 through 2018).

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

1. **Finding #1.** The City oversees implementation of SMARA for one surface mine operation for which a permit and reclamation plan have been approved.

Recommendation #1. As a SMARA lead agency, the City must continue to ensure that every surface mining operation within its jurisdiction, which currently consists only of the Twentynine Palms Pit (Mine ID # 36-0055), complies with SMARA by having an approved permit, in addition to a reclamation plan and adequate financial assurance (PRC Section 2770).

B. Financial Assurances

2. **Finding # 2.** DMR submitted comments regarding the adequacy of the 2018 FACE. The City and DMR currently are discussing the matter. Appendix A, Post-LARA Review Period Activities, contains an up-to-date chronology of correspondence on this matter.

Recommendation #2. The City must ensure that mine operations have an adequate financial assurance to reclaim surface mine operations.

3. **Finding #3.** The City's processing of FACE documents does not comply with SMARA. As shown in Table 3, the City submitted 3 of 5 (60 percent) required FACES during the review period; only 2 of the 5 (40 percent) FACES submitted had a SOA; and the Supervisor was not notified after FACES were approved.

Recommendation #3. Operator submittal and City approval of FACES must comply with PRC Section 2773.1 and 2773.4. For example, post-2017:

- a. The City shall ensure that the 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 financial assurance cost estimate to the lead agency for review (PRC Section 2773.4(d)(1)(A))
 - within 30 days of the applicable inspection date (i.e., on the date requested by the operator pursuant to PRC Section 2207 or on the 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, the City's process must include a SOA based on its review and analysis of the operator's FACE so that a clear statement of adequacy of a proposed FACE is made and is transmitted to DMR.
- c. Following approval, the City must provide copies of the FACE to DMR.

C. Annual Inspections, Inspection Reports, and Inspection Notices

4. **Finding # 4a.** The City conducted 2 out of 5 (40 percent) of the annual inspections as determined by submittal of the IRs (see Table 3).
5. **Finding # 4b.** Inspection reports, consultant reports, and field reconnaissance site visit notes prepared during the review period documented several concerns with erosion control, potential encroachments into setbacks and onto adjacent properties (e.g., placement of stockpiles within the 50-foot setback), impacts to adjacent federal land, and construction debris and concrete slurry placed onsite. These "areas of concern," which apparently persisted throughout the five-year LARA Program review period, raise questions of whether the operation was in compliance with the approved RP and/or if sufficient financial assurances existed for the site. However, the IRs do not identify these areas of concern as violations of SMARA, no compliance actions were recommended or taken, and the 2018 NOCI indicated that the surface mine operation was in compliance with SMARA.

Recommendation #4. Implementation of a proactive and rigorous inspection program would enable the City to both identify and correct deficiencies before they become larger problems. (See the Post-LARA Review Period Activities in the Chronology Table A (Appendix A).) Additionally, timely enforcement of SMARA requirements (e.g., issuance of enforcement actions as necessary) would provide a means to protect the environment and health and safety of communities, and the lead agency should proactively ensure that areas of concern are remedied before they result in non-compliance with SMARA or other state and federal laws.

D. Annual Reports

6. **Finding #5.** The mine operator submitted 100 percent of the annual reports to DMR during the review period.

Recommendation #5. DMR and City staff should consult if a review of an annual report shows that discrepancies may exist or if an annual report does not include all required information (e.g., a mine's reporting status, disturbed and reclaimed acreage amounts, and production during the previous year).

E. General Findings

7. **Finding #6.** The City provided between 40 to 60 percent of the requested administrative documents (see Table 3).

Recommendation #6. The City must maintain a record of the appropriate operational and administrative documents as well as provide the appropriate documents to DMR.

8. **Finding #7.** The City must ensure that its implementation of SMARA in the future is consistent with the recent amendments to SMARA (see Attachment C).

Recommendation #7a. In compliance with SMARA (PRC Section 2774(b)(1)), the City must:

- cause surface mining operations to be inspected in intervals of no more than 12 months
- provide a notice of completion of inspection to the supervisor [of Mine Reclamation within DMR] within 90 days of conducting the inspection
- ensure that the notice of completion of inspection contains a statement regarding the surface mining operation's compliance with SMARA and a copy of the completed inspection form
- 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

Recommendation #7b. The City's mining ordinance, which the SMGB certified pursuant to PRC Section 2774.5 on March 11, 1999, must be updated consistent with the recent amendments to SMARA. For example, the process for reviewing and approving FACEs has been expanded to include DMR's authority to request a consultation meeting with lead agencies over pending FACEs, as well as DMR's authority to appeal a lead agency approved FACE to the SMGB.

IV. RESOURCES USED IN REPORT PREPARATION

A. Twentynine Palms

1. The City of Twentynine Palms, General Plan (available at <https://www.ci.twentynine-palms.ca.us/generalplan>)
2. City of Twentynine Palms, Code of Ordinances, Surface Mining and Land Reclamation Permit (available at https://library.municode.com/ca/twentynine_palms/codes/code_of_ordinances)

B. State of California

(See Attachment B.)

ATTACHMENT A

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

A — TWENTYNINE PALMS PIT (36-0055) 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

NOCI = Notice of Completion of Inspection

NOV = Notice of Violation

RP = Reclamation Plan

RPA = Reclamation Plan Amendment

SOA = FACE Statement of Adequacy

SOR = Statement of Responsibility

A — TWENTYNINE PALMS PIT (36-0055) MINE CHRONOLOGY

DATE	ADMINISTRATIVE ACTIVITY	RP/RPA	Permit	FACE	FAM	IR	IN or NOCI	Enforcement
Background Administrative Approvals								
9/18/1989	Board of Supervisors approved Mining / Reclamation Plan (SAMR/87-0090/DS769-73 and RP 89M-03); mining approved for 25 years (until 12/31/2014)	X	X					
8/8/1995	Amendment approved to transfer the Mining/Reclamation Plan to new operator	X	X					
Current Permit Status/RP Status								
7/27/2010	CUP and RP amended; expanded operation by 356 acres; expiration date 6/9/2096	X	X					
12/24/2013	Current operator assumed legal and operational authority for the mine	SOR						
LARA Review Period (2014-2018)								
4/30/2014	Notification sent that FAM was secured for \$286,625.00				X			
7/24/2014	DMR staff performed site reconnaissance visit; noted erosion concerns and boundary encroachment into setbacks (e.g., from mining and potential erosion) with respect to requirements in approved RP							
12/9/2014	FACE document; total cost to reclaim estimated to be \$168,556.64			X				
12/23/2014	DMR approved release of FAM secured by previous owner				X			
6/8/2015	Inspection conducted by City's consultant; signed 12/17/2015; consultant's supplemental report (dated 10/2/2015) appended to the IR identified nine areas of concern; DMR received IR and consultant report on 12/21/2015					X		
5/6/2016	FACE document; total cost to reclaim estimated to be \$157,245.75			X				
3/23/2018	Inspection conducted by a new SMARA consultant for the City; "areas of concern noted" but not recorded as violations; IR signed on 5/18/2018					X		
4/6/2018	FACE document; DMR received 6/5/2018; total cost to reclaim estimated to be \$217,171.51			X				
5/18/2018	NOCI transmitted IR (3/23/2018) to DMR; NOCI indicates surface mine operation compliant with SMARA						X	

A — TWENTYNINE PALMS PIT (36-0055) MINE CHRONOLOGY

DATE	ADMINISTRATIVE ACTIVITY	RP/RPA	Permit	FACE	FAM	IR	IN or NOCI	Enforcement
6/4/2018	City submitted FACE and SOA to DMR for review and comment; DMR received on 6/5/2018			SOA				
7/17/2018	DMR provided comments to the City on the 6/4/2018 FACE; DMR comments identified concerns that the FACE was inadequate to perform reclamation in accordance with the approved RP			X				
8/16/2018	City adopted DMR's comments and directed Operator to revise the FACE to adequately address DMR's comments			X				
11/13/2018	DMR conducted field inspection with City Planning Director, City's consultant, operator, and Colorado River Basin Regional Water Quality Control Board (CRBRWQCB)							
Post-LARA Review Period Activities Carrying over from LARA Review Period								
1/10/2019	DMR transmitted 11/13/2018 field inspection report associated with FACE review to City			X				
3/22/2019	Operator prepared revised annual FACE			X				
6/13/2019	City provided DMR with a Notice of Intent to approve the revised annual FACE			X				
7/12/2019	DMR transmitted comments for the City to consider prior to approval of the revised annual FACE			X				
11/6/2019	CRBRWQCB transmitted NOV to operator for failure to comply with Waste Discharge Permit (Order No. R7-2017-0053) requirements and Stormwater Permit (Order No. 2014-0057-DWQ; CAS000001)							X

Page Intentionally Left Blank

ATTACHMENT B

Resources Available to Lead Agencies (as of April 2020)

LEAD AGENCY REVIEW AND ASSISTANCE (LARA) PROGRAM WEB FILES

- California Department of Conservation's Division of Mine Reclamation webpage:
<https://www.conservation.ca.gov/dmr>
- Information on the LARA Program, including LARA Program Final 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.pdf>
- California Department of Conservation State Mining and Geology Board Financial Assurances Appendices:
<http://www.conservation.ca.gov/smgb/Guidelines/Pages/Appendices.aspx>
- Documents for the mining operation within the City can be requested by emailing DMR-Submittals@conservation.ca.gov.

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/smgb/Regulations/Documents/DMR-SR-1-Jan-2019.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 C

Lead Agency Review and Assistance (LARA) Program Recent Changes in Legislation (as of July 2018)

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

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

Senate Bill No. 209, Summary: *Published 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 Financial Assurance Mechanism

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 financial assurance cost estimate (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 D

General Processing Procedures Used by the City of Twentynine Palms for Reclamation Plans, Reclamation Plan Amendments, and Financial Assurance Cost Estimates during the LARA Review Period

(Provided by Travis Clark, Community Development Director, through email correspondences during August 2019.)

Reclamation Plans (RPs) and RP Amendments:

1. The City receives and reviews a proposed RP or RP amendment.
2. The City's review staff are the Community Planning Director and Associate Planner.
3. If the application is not complete, the City requests revisions and/or additional documents from operator, and upon submittal may accept the application as complete within 60 days or notify the operator to provide needed information.
4. Once accepted, the City forwards the proposed document to DMR for review and comment.
5. DMR reviews and provides comments to the City.
6. The City responds to DMR comments by either incorporating the comments or providing DMR with the reasons they do not agree.
7. The City forwards comments to the operator with a request for revisions or further information.
8. Operator provides requested information or revisions and the City determines if the application is complete.

Items 9 – 11 are for major changes in surface mine operations or expansion from the original, approved Conditional Use Permit. For previously approved Reclamation Plans, the City does not hold a public hearing; rather, public hearings are held at the time the permit is issued and the original reclamation plan is approved.

9. The City provides notice to DMR 30 days prior the hearing.
10. The Planning Commission will either approve or deny RP or RP amendment.
11. If approved, the RP or RP amendment conditions are incorporated into the permit by reference. The City holds a public hearing for a RP amendment if it is a major change from the original RP and approved permit.

12. The City sends their final response and final document to DMR following RP or RP amendment approval per SMARA requirements.

Financial Assurance Cost Estimates (FACEs):

1. Annual inspections are conducted by the City's consulting engineer.
2. The City receives a FACE from the operator annually within 30 days of the inspection, unless new information is required thereby requiring additional work on preparation of the FACE
3. The Planning Director and the City's consulting engineer review the proposed FACE for accuracy and completeness based on the following:
 - requirements of SMARA
 - observations and findings from the City's recent inspection
 - information submitted in the most recent AR
4. The City works with the operator to develop a FACE that is adequate, complete, and consistent with Public Resources Code (PRC) Section 2773.1 prior to forwarding to DMR for review per PRC Section 2773.4
5. The City prepares a Statement of Adequacy (SOA) and forwards it along with the FACE to DMR.
6. DMR has 45 days upon receipt to prepare written comments regarding the proposed FACE.
7. If comments are received from DMR, then the comments are forwarded on to the operator with a request for revisions or additional information.
8. If the operator revises the FACE, and the City finds it acceptable, the revised FACE along with a new SOA is forwarded to DMR.
9. The City informs the operator when the FACE/revised FACE is acceptable.
10. The City notifies DMR that the FACE will be approved in 30 days.
11. If DMR does not comment within 30 days, the City approves the FACE.
12. The operator is required to adjust the FAM as needed to be at least equal to the approved FACE (or if a decrease is applicable).
13. The operator submits the FAM to the City and previously the City would forward to DMR. Recent changes to SMARA require that the operator submit the FAM to both the City and to DMR.

ATTACHMENT E

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

E1 — City of Twentynine Palms Staff Comments on Initial Report

E2 — Division of Mine Reclamation Staff Responses to City of Twentynine Palms
Staff Letter

ATTACHMENT E1

City of Twentynine Palms Staff Comments on Initial Report

CITY OFFICES:
 6136 ADOBE ROAD
 TWENTYNINE PALMS, CA 92277
 (760) 367-6799
 Fax (760)367-4890
 www.29palms.org



COUNCIL MEMBERS
 Joel A. Klink, Mayor
 Daniel L. Mintz Sr., Mayor Pro Tem
 Steven Bilderain
 Karmollette O'Gilvie
 McArthur Wright

CITY MANAGER
 Frank J. Luckino, MPA

February 24, 2020

Pat Perez, Supervisor
 Division of Mine Reclamation
 Department of Conservation
 801 K Street
 MS09-06
 Sacramento , CA 95814

RE: Lead Agency Review and Assistance (LARA) Program – Initial Report and Review

Dear Mr. Perez,

As Lead Agency, the City of Twentynine Palms has received and reviewed the Initial Report and Review for the LARA Program. Generally, the City agrees with the findings and recommendations. The City acknowledges the gaps in inspections and reporting. This was due to staff turnover within the Community Development Department over the last few years. The City has made efforts to resume a regular inspection and reporting cycle and has executed a multi-year contract with a consultant to assist in this goal. The City has also hired a new Assistant Planner to assist with record keeping.

1

The City does have concerns about the DMR's process outlined in the Initial Report and Review. The City makes a good faith effort to carefully consider comments from DMR (and all parties) about Annual Reports, Inspection Reports, and the FACE, and resolve any issues before the FACE is finalized and approved. DMR requires the Lead Agency to certify a FACE as complete. Yet, DMR does not provide its comments until after the Statement of Adequacy is issued. This process seems backwards. If all parties - the State, Lead Agency, and Mine Operator – are trying to reach agreement on the adequacy of a FACE to support future reclamation, shouldn't we be working together to resolve any issues before it becomes final?

2

The City tried, unsuccessfully, to have DMR review and comment on the FACE before going through the 30-day Notice of Intent to Adopt step. DMR would not entertain a review. That meant the City had to officially issue the Notice of Intent to Adopt upon the advice of its consultant, wait the 30 days, receive comments from DMR within the 30 days, attempt to address those comments with the mine operator which could take a significant amount of time depending on the comment,

3

only to start the process over again. This translates into delays in fulfilling the responsibility as the Lead Agency. If any issues are not resolved, they would only resurface in the next inspection cycle.

It would be helpful to define in the annual SMARA cycle when a FACE is considered "pending" or "proposed" by DMR. Below are the questions that the City has regarding when a FACE is pending, proposed, or complete:


1. Page viii, What is a "pending FACE" and what point in the review process does it occur? Is that a FACE of which a Notice of Intent to Approve or a Statement of Adequacy has been issued, but the 30 days has not elapsed?
2. Page 5, Item 4 states that "DMR reviews and comments on proposed...FACEs received...after the lead agency certifies these documents are complete and compliant with SMARA." What is a proposed FACE and what point in the review process does it occur? Is a certified and complete FACE after a Statement of Adequacy still in a "proposed" state at this point? How can a FACE be proposed and complete at the same time?

4

These questions get to the discussion above about incorporating comments from DMR early in the process so that a certified and complete FACE is truly complete and free of outstanding issues. As stated, it is the City's goal as Lead Agency, to have all parties in agreement on the results of the inspection and the adequacy of the FACE, and to get there in a timely manner with the least bureaucracy.

5

Travis Clark



Community Development Director
City of Twentynine Palms

ATTACHMENT E2

Division of Mine Reclamation Staff Responses to the City of Twentynine Palms Staff Letter

(Numbers correspond to the lined text in the City of Twentynine Palms letter.)

- 1. Generally, the City agrees with the findings and recommendations. The City acknowledges the gaps in inspections and reporting. This was due to staff turnover within the Community Development Department over the last few years. The City has made efforts to resume a regular inspection and reporting cycle and has executed a multi-year contract with a consultant to assist in this goal. The City has also hired a new Assistant Planner to assist with record keeping.**

As noted in the Initial Report, this Lead Agency Review and Assistance (LARA) Program review covers the five years from 2014 through 2018. Division of Mine Reclamation (DMR) staff recognizes the improvement in the City's implementation of the core requirements of the Surface Mining and Reclamation Act of 1975 (SMARA; Public Resources Code [PRC] Section 2710 et seq.) since the City hired additional staff and consultants to assist with surface mining activities. As stated in Recommendation # 7b, DMR staff recommends that the City also update its surface mining ordinance to be consistent with recent SMARA amendments; an up-to-date surface mining ordinance is key to effective local implementation of SMARA. DMR staff looks forward to reviewing the City's implementation of the recommendations identified in this Final Report during a future LARA Program review.

- 2. The City does have concerns about the DMR's process outlined in the Initial Report and Review. The City makes a good faith effort to carefully consider comments from DMR (and all parties) about Annual Reports, Inspection Reports, and the FACE and resolve any issues before the FACE is finalized and approved. DMR requires the lead agency to certify a FACE as complete. Yet DMR does not provide its comments until after the Statement of Adequacy is issued. This process seems backwards. If all parties – the State, Lead Agency, and Mine Operator – are trying to reach agreement on the adequacy of a FACE to support future reclamation, shouldn't we be working together to resolve any issues before it becomes final?**

DMR staff is unclear which process in the Initial Report the City is referring to, as the Report refers to processes and procedures required by SMARA and those performed as part of the LARA Program review. These processes are summarized below (see also response to Comment #3).

- SMARA. The requirements for and processes associated with annual reports, inspection reports, and financial assurance cost estimates (FACES), as well as reclamation plans and their amendments, are set forth in the SMARA statutes and regulations. For example, SMARA provides a detailed process for document reviews and approvals. With respect to FACES, PRC Section 2773.1 and Section 2773.4 set forth requirements for financial assurances.

- PRC Section 2773.4 requires that the lead agency submit the FACE to the supervisor (i.e., DMR) for review, and requires that the lead agency provide the supervisor with a determination that the FACE is adequate, complete, and consistent with Section 2773.1, as well as the State Mining and Geology Board's (SMGB) financial assurance guidelines.
- PRC Section 2773.4 also states that DMR may provide comments on the FACE "if the supervisor chooses."
- PRC Section 2773.4(c)(2) and (c)(3) indicates that FACEs for new operations or for amended reclamation plans, the lead agency shall evaluate the supervisor's comments within a "reasonable amount of time." For annual FACE approvals, PRC Section (d)(5)(B)(i) requires the lead agency to evaluate and respond to the supervisor's comments "Within 30 days from receiving the supervisor's written comments...." For all FACE approvals, lead agencies are required to provide a proposed response to the supervisor at least 30 days prior to approval of the FACE under PRC Sections 2773.4(c)(3) and 2773.4(d)(5)(B)(ii).
- The final opportunity for the supervisor to comment to the lead agency on the FACE is just prior to approval (e.g., at the scheduled hearing).
- LARA Program. The LARA Program review process resulted from several meetings with stakeholders and is presented in the 2016 LARA Guidelines document. The purpose of the LARA Program review is to evaluate how SMARA lead agencies are implementing SMARA requirements over a recent five-year period. The LARA Program review uses a five-phase process that includes an Entrance Conference, File Comparison, Lead Agency Performance Review, preparation of an Initial Report (circulated to the lead agency for review), and preparation of the Final Report (which includes responses to any comments received from the lead agency). These phases include working with the lead agency to ensure that DMR has the most complete administrative record possible for the five-year review period. LARA Program review is focused on agency administration and implementation of SMARA requirements and associated timelines, not with specific written comments on FACEs or other documents provided by DMR staff at the time the City staff prepared and submitted these documents.

3. The City tried, unsuccessfully, to have DMR review and comment on the FACE before going through the 30-day Notice of Intent to Adopt step. DMR would not entertain a review.

The chronology in Attachment A of this Final Report and summarized below identifies actions associated with the FACE for the Twentynine Palms Pit.

- 3/23/2018 – City conducted inspection of the operation (inspection conducted by a new SMARA consultant for the City)
- 4/6/2018 – Operator prepared annual FACE; total cost to reclaim estimated to be \$217,171.51

- 6/4/2018 – City determined FACE to be adequate and submitted the FACE and the Statement of Adequacy to DMR for review; DMR received 6/5/2018
- 7/17/2018 – DMR provided three comments to the City on the FACE; DMR comments identified concerns that the FACE was inadequate to perform reclamation in accordance with the approved RP
- 8/16/2018 – City adopted DMR's comments and directed Operator to revise the FACE to adequately address DMR's comments

Post-LARA Review Period Activities Carrying over from LARA Review Period

- 3/22/2019 – Operator prepared revised annual FACE following a November 2018 inspection of the surface mining operation by DMR, City, and Colorado River Basin Regional Water Quality Control Board staffs
- 6/13/2019 – City provided DMR a Notice of Intent to approve revised annual FACE
- 7/12/2019 – DMR transmitted comments for the City to consider prior to approval of the revised annual FACE

In accordance with SMARA requirements, DMR (i.e., supervisor) commented on the initial FACE submitted by the City per PRC Section 2773.4(d)(5)(A). The next step in the FACE review process is for the lead agency to review and respond to the supervisor's comments. PRC Sections 2773.4(d)(5)(B)(i) and (d)(5)(B)(ii) state:

(d)(5)(B)(i) Within 30 days from receiving the supervisor's written comments pursuant to this subdivision, the lead agency shall evaluate the written comments and provide the supervisor and the operator its proposed response to the supervisor

(d)(5)(B)(ii) The lead agency shall submit its proposed response to the supervisor at least 30 days prior to approving the annual financial assurance cost estimate. The lead agency's response shall include either of the following:

- A. A description of how the lead agency proposes to adopt the supervisor's comments to the annual financial assurance cost estimate.*
- B. A detailed description of the reasons why the lead agency proposes not to adopt the supervisor's comments.*

Additionally, PRC Section 2773.4(d)(5)(C)(i) states:

"If the lead agency, in its written response to the supervisor's comments, proposes to not adopt the supervisor's comments concerning the annual financial assurance cost estimate, the supervisor, within 15 days of receipt of the lead agency's written response, may request in writing a consultation with the lead agency to discuss the supervisor's comments and the lead agency's response. The request shall include an invitation to the operator to participate in the consultation. The consultation may be conducted in person, electronically, telephonically, or by any means convenient to the parties."

The next step is for the lead agency to “give the supervisor at least 30 days’ notice of the time, place and date of the hearing at which the annual financial assurance cost estimate is scheduled to be approved by the lead agency.” (PRC Section 2773.4(d)(5)(D)(ii)). The final step occurs when the lead agency approves the FACE.

Based on the chronology of events, DMR provided comments in accordance with SMARA’s requirements.

4. ***It would be helpful to define in the annual SMARA cycle when a FACE is considered “pending” or “proposed” by DMR.***
 1. ***Page viii, what is a “pending FACE” and what point in the review process does it occur? Is that a FACE of which a Notice of Intent to Approve or a Statement of Adequacy has been issued, but the 30-days has not elapsed?***
 2. ***Page 5, Item 4 states that “DMR reviews and comments on the proposed...FACEs received...after the lead agency certifies these documents are complete and compliant with SMARA.” What is a proposed FACE and what point in the review process does it occur? Is a certified and completed FACE after a Statement of Adequacy still a “proposed” state at this point? How can a FACE be proposed and complete at the same time?***

Under SMARA generally, a surface mining operator “proposes” a FACE when he or she submits the FACE to the lead agency. It then becomes a proposed FACE “pending” approval. The FACE is then pending until the lead agency approves it.

Pages vii-viii of the Initial Report state:

For example, the process for reviewing and approving FACEs has been expanded to include DMR’s authority to request a consultation meeting with lead agencies over pending FACEs, as well as DMR’s authority to appeal a lead agency approved FACE to the SMGB.

This statement identifies one of the changes to SMARA’s requirements since 1999, the year the City adopted its surface mining ordinance. In this sentence, the Initial Report uses the word “pending” to mean that the FACE certified by the lead agency as adequate, complete, and consistent with Section 2773.1, as well as the SMGB financial assurance guidelines, has yet to be approved by the lead agency. It is pending approval by the lead agency.

After the lead agency certifies the FACE as adequate, complete, and consistent with Section 2773.1, and submits the FACE and SMGB financial assurance guidelines per the requirements of Section 2773.4 to DMR, DMR provides a review of and written comments on the FACE. On page 5, the Initial Report states:

*Among other responsibilities, DMR reviews and comments on proposed RPs, RP amendments, and FACEs received from the lead agency **after** lead agency staff certifies these documents are complete and compliant with SMARA. (Emphasis added.)*

A document can be adequate, complete, and in compliance with SMARA and still be pending or proposed, as the lead agency approval is the key action that changes the status of the document.

- 5. As stated, it is the City's goal as Lead Agency, to have all parties in agreement on the results of the inspection and the adequacy of the FACE, and to get there in a timely manner with the least bureaucracy.**

DMR staff agrees with the City that this is a desirable goal.

ATTACHMENT F

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

DIVISION OF MINE RECLAMATION

Main Phone Number: (916) 323-9198

Carol E. Atkins
Supervisor, Environmental Services Unit
(916) 445-6175
Carol.Atkins@conservation.ca.gov

Cy R. Oggins
Manager, Remediation and Reclamation Unit
(916) 322-2229
Cy.Oggins@conservation.ca.gov

CITY OF TWENTYNINE PALMS

Main Phone Number (760) 830-6163

Travis Clark
Community Development Director
(760) 367-6799 extension 1008
tclark@29palms.org