



# STATE MINING AND GEOLOGY BOARD

## MINING ORDINANCE GUIDANCE DOCUMENT

For use by City and County “Lead Agencies”

(Adopted May 9, 1996; Amended January 14, 1999, June 11, 2015, September 21, 2023, and December 19, 2024)

Pursuant to the Surface Mining and Reclamation Act of 1975, (SMARA), Public Resources Code (PRC) Division 2, Chapter 9, Sections 2710 et seq., every City and County lead agency (lead agency) is required to adopt mining ordinances in accordance with state policy. Mining ordinances must establish procedures for the review and approval of reclamation plans and financial assurances and the issuance of permits to conduct surface mining operations. However, any lead agency without a surface mining operation in its jurisdiction may defer adopting and implementing mining ordinances until a permit application for mining within the jurisdiction is filed. Local mining ordinances must be periodically reviewed and revised as necessary to ensure that they continue to be in accordance with SMARA and its implementing regulations found at California Code of Regulations, title 14, Division 2, Chapter 8, Subchapter 1, beginning at Section 3500.

A SMARA lead agency is defined as the entity “which has the principal responsibility for approving a reclamation plan” pursuant to PRC Section 2728. Lead agencies have the “primary responsibility for enforcing” SMARA, as well as the annual reporting requirements under PRC Section 2207.

The State Mining and Geology Board (Board) previously published suggested model ordinance language to assist lead agencies as they prepare their mining ordinances. This *Mining Ordinance Guidance Document* (guidance document) was developed by the Board with the cooperation of the Department of Conservation's Division of Mine Reclamation (Division). This guidance document includes both recommended guidance and model language that local agencies can utilize in developing their own mining ordinances. While this guidance document contains elements SMARA requires to be included in mining ordinances, as well as some additional elements common to ordinances in use statewide, it should be appropriately modified to reflect local conditions, practices, and procedures. Local procedures for a lead agency's implementation of SMARA must include and meet SMARA's requirements but may also include additional provisions. Beyond what SMARA and its implementing regulations require, the use of this document is not required, and any suggested additional language or format is not mandated by law.

Mining ordinances establish procedures for the review and approval of reclamation plans, financial assurances, and the issuance of permits to conduct surface mining

operations. SMARA requires at least one public hearing for the approval of a permit and reclamation plan. The mining ordinances should also include aspects addressing inspections, enforcement, and record keeping. The Board certifies mining ordinances as being in accordance with state policy if they adequately meet SMARA requirements.

This guidance document includes draft ordinance text relating to the various elements of SMARA. It is assumed that lead agencies have existing ordinances that account for land use planning and zoning, and procedures that must be followed when approvals for various permits or entitlements are sought. Where the draft ordinance text in this document addresses procedures for the approvals of permits, reclamation plans and their amendments, or financial assurances, lead agencies should consider integrating the approval of these requirements into their existing ordinances, as appropriate.

Certified mining ordinances are important for several reasons. Well-crafted mining ordinances provide a foundation for an effective local SMARA program by integrating the basic elements of SMARA into an existing local government's ordinances. This provides a measure of transparency to the public so that they may participate in the regulatory efforts of their local government and a measure of regulatory certainty and clarity to operators. It also ensures that local governments retain control over the conduct of surface mining and reclamation of mined lands within their jurisdiction.

Lead agencies should review the most current version of SMARA and its implementing regulations when developing their mining ordinances. Because mining ordinances must be in accordance with SMARA, it may be advantageous for mining ordinances to incorporate by reference certain elements of SMARA as opposed to attempting to summarize SMARA's requirements.

Mineral Resource Management Policies (MRMPs) are required under SMARA as provided in subdivision (a) of PRC Section 2762. A lead agency must submit proposed mineral resource management policies to the Board for review and comment prior to adoption. MRMPs are incorporated into the general plan of local governments and are intended to recognize mineral information classified by the State Geologist and designated by the Board. MRMPs assist the local agency's management of land use that affects access to mineral lands of statewide and regional significance and emphasizes the conservation of minerals. PRC section 2762 and 14 CCR Sections 3675 and 3676 should be referred to for information that is required to be included in MRMPs.

## **DRAFT ORDINANCE CONSIDERATIONS AND REVIEW PROCESS**

When developing or updating mining ordinances, lead agency staff should consider the following concepts: **Content**, **Clarity**, and **Conflict**. Draft ordinances submitted to the Board are reviewed by the Executive Officer, Board staff, and legal counsel. The Board may also seek additional review and comment from the Division and the California Geologic Survey.

**Content:** The mining ordinances are reviewed to determine if aspects of SMARA that are required to be addressed are contained within the mining ordinance.

**Clarity:** The contents of the mining ordinances are reviewed to determine if they are clearly stated, or might be construed in more than one way, which might lead to later confusion.

**Conflict:** The contents are reviewed to determine that they are internally consistent and not in conflict with statute.

The Board will review and certify mining ordinances in accordance with PRC Sections 2774.3 and 2774.5 and associated State Regulations 14 CCR Section 4000.

## **FORMAT OF THE GUIDANCE DOCUMENT**

The guidance document is divided into twenty-two sections.

Italicized text is narrative discussion for consideration by lead agencies when developing or updating its mining ordinances.

Boxed text is suggested, model language for lead agency consideration when drafting mining ordinances.

Square bracketed text provides additional considerations for lead agencies when drafting their mining ordinances; or requires the lead agency to identify the appropriate entity within the local government structure within suggested ordinance language.

## **REFERENCE TO SMARA STATUTES**

[Public Resource Code, Division 2., Chapter 9. Surface Mining and Reclamation Act of 1975](#)

[https://leginfo.legislature.ca.gov/faces/codes\\_displayexpandedbranch.xhtml?tocCode=PRC&division=2.&title=&part=&chapter=9.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=PRC&division=2.&title=&part=&chapter=9.&article=)

## **REFERENCE TO SMARA REGULATIONS**

[California Code of Regulations, Title 14. Natural Resources, Division 2. Department of Conservation, Chapter 8 Mining and Geology, Subchapter 1. State Mining and Geology Board](#)

[https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I5DC20AD05B4D11EC976B000D3A7C4BC3&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I5DC20AD05B4D11EC976B000D3A7C4BC3&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))

# **Surface Mining and Reclamation Ordinance**

## **Sections:**

- 1.0 Purpose and Intent**
- 2.0 Incorporation by Reference**
- 3.0 Definitions**
- 4.0 Exempt Activities**
- 5.0 Process for Approval of Surface Mining Permits**
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- 10.0 Annual Financial Assurance Cost Estimate Submissions and Approvals**
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- 18.0 Lead Agency Annual Inspection Fees**
- 19.0 Renewable Energy**
- 20.0 Severability**
- 21.0 Effective Date**
- 22.0 Certification and Recertification of Mining Ordinances**

## 1.0 Purpose and Intent

*If a lead agency wants to include a “purpose/intent” section in their mining ordinance, the language below is offered as a guide.*

The purpose and intent of this [Section/Ordinance] is to ensure [City’s/County’s] compliance with California's Surface Mining and Reclamation Act of 1975 (Public Resources Code (PRC) Section 2710 et seq.), “SMARA”, and PRC Section 2207 (relating to annual reporting requirements), and the State Mining and Geology Board’s regulations, (California Code of Regulations (CCR), Title 14, Division 2, Chapter 8, Subchapter 1, Section 3500 et seq.), “State Regulations”.

The [City/County] recognizes the Legislature’s findings and intent in adopting SMARA and incorporates by reference PRC Sections 2711 through 2713, to include SMARA intent detailed below:

- (a) The extraction of minerals is essential for continued economic well-being of the state and reclamation is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety.
- (b) To permit the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.
- (c) That mining occurs in diverse areas and reclamation operations and the specifications may vary.
- (d) Local mining resources help maintain a strong economy and are necessary to build the states infrastructure and are vital to reducing transportation emissions.
- (e) The state is needed to provide local lead agencies information to identify and protect mineral resources with general plans.
- (f) Mineral resources are vital, finite, and important natural resource and the responsible protection and development of these resources is vital to a sustainable California.

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) The adverse environmental effects associated with surface mining are prevented or minimized and that mined lands are reclaimed to a usable condition 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.

## **2.0 Incorporation by Reference**

*Future amendments and/or additions to SMARA, and its associated regulations, should be expected. Anticipating that inevitability, SMARA requires mining ordinances to “be periodically reviewed by the lead agency and revised, as necessary, to ensure that the mining ordinances continue to be in accordance with state policy”, PRC Section 2774(a). It is not possible to predetermine when a lead agency must revise their mining ordinance based on the nature and scope of future amendments to SMARA or its associated State Regulations. To reduce potential conflicts, it is recommended that lead agencies consider adopting language indicating SMARA controls over any conflicting or ambiguous terms. However, incorporation of SMARA’s provisions does not relieve lead agencies from their obligation to periodically review and revise their mining ordinances when state policy is amended, nor does it guarantee conformance when state policy is amended. Local lead agencies also have the discretion to adopt requirements that are more stringent than state policy (See PRC section 2774.3). Therefore, the draft mining ordinance text below is offered as a guide.*

The provisions of SMARA, PRC Section 2207, and associated State Regulations are made a part of this [Section/Ordinance] by reference with the same force and effect as if those provisions were specifically and fully set out forth herein. To the extent the provisions within this [Section/Ordinance] are inconsistent with state policy, the state provisions apply, except where this [Section/Ordinance] impose requirements more stringent than state policy, then this [Section/Ordinance] shall prevail.

## **3.0 Definitions**

*It is recommended that lead agencies incorporate SMARA’s definitions as opposed to repeating them verbatim within their mining ordinances. Lead agencies should also consider adding definitions when necessary to address unique local conditions that are not addressed specifically within SMARA or associated State Regulations. Any additional definitions must not conflict with SMARA or associated State Regulations. The draft mining ordinance text below is offered as a guide.*

- (a) The definitions set forth in PRC Sections 2726 through 2736, 2004 through 2008, and 14 CCR Sections 3501, 3675, 3695, 3802, are made a part of this [Section/Ordinance] by reference.
- (b) In addition, the following definitions apply: [Set out any additional definitions not expressly defined in SMARA.]

#### **4.0 Exempt Activities**

*It is recommended that lead agencies incorporate SMARA's exemptions as opposed to repeating them verbatim within the mining ordinance. The draft mining ordinance text below is offered as a guide.*

- (a) Except as provided in PRC Section 2714 and 14 CCR 3505(a), no person shall conduct surface mining operations unless a permit, reclamation plan, and financial assurances for reclamation have first been approved by the [City/County]. The provisions of this [Section/Ordinance] shall apply to all lands within the [City/County], both public and private.
- (b) The exemptions set forth in PRC Section 2714 and 14 CCR 3505(a), are made a part of this [Section/Ordinance] by reference with the same force and effect as if the exemptions therein were specifically and fully set out herein.
- (c) Although a mining operation may be exempt from SMARA under PRC Section 2714 and 14 CCR 3505(a), other state laws, such as the California Environmental Quality Act, and other local regulations may apply.

#### **5.0 Process for Approval of Surface Mining Permits**

*SMARA provides that surface mining operations shall not be conducted "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," PRC Section 2770(a).*

*SMARA requires at least one public hearing for the approval of a mining permit, pursuant to PRC section 2774(a). Prior to or at the time of approval, the lead agency must also comply with the California Environmental Quality Act (CEQA). Lead agencies often combine the approval of a mining permit and applicable CEQA documents with the approval of a reclamation plan and/or related approvals.*

*Lead agencies should draft their mining ordinances to reflect their own policies, requirements, and standards. Elements of a mining permit that are strictly of local concern should be included within the approval of mining permits. These local concerns may include hours of operations, appearance, dust control measures, lighting, screening or fencing, noise, blasting, truck debris controls, truck operations including truck limits, haul routes, and impact fees, etc. The language below is offered as a guide.*

- (a) Applications for a permit, or the renewal or amendment of a permit, to conduct surface mining operations shall be made on forms provided by the [City/County]. The application shall be filed in accordance with this [Section/Ordinance] and the procedures established by the [City/County]. As many copies of the application as may be required shall be submitted to the [City/County]. Applications shall include all required environmental review forms and information prescribed by the planning director. Applications shall include [additional requirements].
- (b) Whenever mining operations are proposed in the 100-year flood plain of any stream, as shown in Zone A of the Flood Insurance Rate Maps issued by the Federal Emergency Management Agency, and within one mile, upstream or downstream, of any state highway bridge, [name of appropriate department] shall also notify the State Department of Transportation that the application has been received pursuant to PRC Section 2770.5, as amended. No permit shall be issued or renewed until the Department of Transportation has submitted its comments or until 45 days from the date the application for the permit was submitted, whichever occurs first.
- (c) Whenever surface mining operations are proposed within the boundaries of the San Gabriel Basin Water Quality Authority that may penetrate the groundwater, and whenever proposed reclamation activities may impact groundwater quality, the [City/County] shall notify and provide copies of the subject application to the appropriate California Regional Water Quality Control Board, and any watermaster for the groundwater recharge basin pursuant to PRC Section 2770.6. Each agency shall have 60 days to review and comment or until 60 days from the date of application, whichever occurs first.
- (d) Within 30 days of the approval of a permit or the renewal or amendment of a permit for surface mining operations as complete, the lead agency shall provide a copy to the Division pursuant to PRC Section 2774.2.5.

## 6.0 Vested Rights

*SMARA requires that surface mining operations shall not be conducted “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,” PRC Section 2770(a). SMARA also provides that “No person who obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit to mine, so long as the vested right continues and as long as no substantial changes have been made in the operation except in accordance with SMARA, associated regulations, and this Chapter,” PRC Section 2776(a).*

*As articulated by the Court of Appeals for the Third Appellate District of California, “if an entity claims a vested right pursuant to SMARA to conduct a surface mining operation that is subject to the diminishing asset doctrine, that claim must be determined in a public adjudicatory hearing that meets procedural due process requirements of reasonable notice and an opportunity to be heard.” (Calvert v. County of Yuba (2006) 145 Cal. App. 4th 613, 617; [51 Cal. Rptr. 3d 797, 800].) Lead agencies should consider incorporating public hearing procedures regarding the nature and scope of any claimed vested right into their mining ordinances that would satisfy the requirements of SMARA as well as the requirements set forth in the Calvert v. County of Yuba case. The language below is offered as a guide.*

- (a) No person who obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit to mine, so long as the vested right continues and as long as no substantial changes have been made in the operation except in accordance with SMARA, associated regulations, and this [City/County]. The provisions describing vested rights, as set forth in PRC Section 2776 and 14 CCR Section 3505(b), are made a part of this [City/County] by reference. Persons conducting mining operations pursuant to vested rights, shall obtain [City/County] approval of a reclamation plan pursuant to [Section/Ordinance], and be subject to all other requirements of SMARA and this [Section/Ordinance] and other applicable state and local laws.
- (b) The determination of the nature and scope of a vested right to conduct mining operations shall be conducted in accordance with the procedures described in [City/County, Section/Ordinance]. [Describe any additional requirements determined appropriate by the lead agency here.]

## 7.0 Designation of SMARA Lead Agency

*Under certain conditions, whenever a proposed or existing mining operation is within two or more local jurisdictions, identification of a lead agency is required under SMARA, PRC Section 2771. The Board recommends that where a local government receives a permit*

*application for a mining operation that will implicate more than one local government jurisdiction, the affected local governments should review the nature and scope of the proposed mining operation to best determine which local government should become the designated lead agency for SMARA's administration. Affected local governments should consider their respective capabilities for SMARA's administration and which local government has principal permit responsibility when determining which local government will serve as the lead agency for administering SMARA. If the local jurisdictions are not able to resolve which entity shall serve as the lead agency they may submit the matter to the Board for resolution pursuant to PRC Section 2771. The language below is offered as a guide.*

Applications to conduct surface mining operations that potentially meet the requirements of PRC section 2771 shall include sufficient geographic information necessary for the [City/County] to consider if one or more local governments have jurisdiction over the proposed operation under SMARA. Upon determining that a proposed surface mining operation will require the identification of a single lead agency to administer SMARA pursuant to PRC section 2771, the [City/County] will advise the operator and any affected local government of its initial determination. If the affected local governments or affected operator do not agree as to which public agency shall act as the SMARA lead agency for the proposed surface mining operation, the question may be submitted to the Board for a determination pursuant to PRC Section 2771.

## **8.0 Process for Approval of Reclamation Plan and Reclamation Plan Amendments**

*SMARA anticipates the approval of the initial reclamation plan, subsequent amendments, and associated financial assurances. SMARA also anticipates annual inspections and the submittal of annual financial assurance cost estimates to the lead agency within 30 days of the inspections. See PRC Section 2773.4(d)(1)(A). SMARA requires at least one public hearing associated with the approval of a permit and a reclamation plan. The approval of reclamation plans requires compliance with CEQA and any amendments to reclamation plans may require additional consideration under CEQA.*

*Given these identified complexities, model language offered within this guidance document is limited in scope and is only offered as a guide. It includes statutory references when mining operations are conducted in certain geographic areas or when conducted by lead agencies themselves, such as lead agency borrow pits under PRC Section 2770.1. The language below is offered as a guide.*

- (a) Applications for a reclamation plan or reclamation plan amendment for surface mining operations must be submitted to [City/County] according to procedures determined by [City/County] as outlined in this [Section/Ordinance]. The reclamation plan or plan amendment application shall include, at a minimum, each of the elements required by SMARA and associated State Regulations.
- (b) As many copies of a reclamation plan or plan amendment application as may be required shall be submitted. All supporting documentation for the reclamation plan or plan amendment shall be submitted to the [City/County] at one time. All maps, surveys, designs, and reports shall be prepared by qualified and/or licensed professionals as required by state law.
- (c) Reclamation plan or plan amendment applications shall include all required environmental review forms and information prescribed by the [City/County].
- (d) [The lead agency should add any processes describing document reviews and resubmissions by the applicant, including any applicable timelines.]
- (e) Within [X] days of the determination that an application for a reclamation plan or plan amendment is complete and in compliance with each of the elements required by SMARA pursuant to Sections [2715.5 Cache Creek jurisdiction] 2770.1, 2770.5, [2770.6 San Gabriel Basin jurisdiction, see (d) above], 2772, 2772.5, and 2773 and 14 CCR Sections 3502 and 3503, the proposed reclamation plan or plan amendment will be submitted to the Division for review and comment following the procedures set forth in PRC Section 2772.1, which are Incorporated herein as if set forth in full. A reclamation plan or plan amendment will not be approved unless the procedures of PRC Section 2772.1 are followed.
- (f) The proposed reclamation plan or plan amendment is subject to review pursuant to CEQA and the [City's/County's] environmental review guidelines.
- (g) Upon completion of the process and notice procedures required by PRC Section 2772.1, [City/County] staff will prepare a report with recommendations for consideration by the [City/County] of the reclamation plan or plan amendment for the proposed or existing surface mine pursuant to [appropriate referenced ordinance code], of this [Section/Ordinance] at a public hearing before the [City/County].
- (h) In addition to any findings required by the [City's/County's] mining ordinance, the following findings shall be required:
  - 1) That the reclamation plan or plan amendment complies with SMARA, and any other applicable provisions.

- 2) That the reclamation plan or plan amendment complies with applicable requirements of 14 CCR Sections 3500 through 3505, and Sections 3700-3713 and any other applicable provisions.
- 3) That the reclamation plan or plan amendment and potential use of reclaimed land pursuant to the plan are consistent with this mining ordinance and the [City/County's] General Plan and any applicable resource plan or element.
- 4) That the reclamation plan or plan amendment has been reviewed pursuant to CEQA and the [City/County's] environmental review guidelines, and significant adverse impacts from the surface mining operations are mitigated to less than significant or the findings for overriding consideration are established and made.
- 5) That the reclamation plan or plan amendment will restore the mined lands to a usable condition which is readily adaptable for alternative land uses consistent with the General Plan and applicable resource plan.
- 6) That a written response to the Division has been prepared, describing the disposition of the Division's comments consistent with PRC section 2772.1(b)(5)(A). Where the [City/County's] position is at variance with the recommendations and objections raised by the Division the response shall address, in detail, why specific comments and suggestions were not accepted. To the extent there is a conflict between the comments of a trustee agency or a responsible agency that are based on that agency's statutory or regulatory authority and the comments of other commenting agencies that are received by the lead agency pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)) regarding a reclamation plan or plan amendments, the lead agency shall consider only the comments of the trustee agency or responsible agency.

*[Add any other findings deemed necessary by the lead agency]*

Within 30 days following the approval of the reclamation plan or plan amendment, the [City/County] shall provide the Division with notice of the approval. No later than 60 days after the approval of the reclamation plan or plan amendment, the [City/County] shall provide to the Division an official copy of the approved reclamation plan or plan amendment pursuant to PRC Section 2772.1(b)(7)(B).

## **9.0 Process for Approval of Initial Financial Assurance Cost Estimate or a Financial Assurance Cost Estimate Following Approval of an Amended Reclamation Plan**

*Following the approval of the reclamation plan or plan amendment, the initial financial assurance cost estimate or adjustments to a financial assurance cost estimate based on an amended reclamation plan are approved pursuant to SMARA under PRC Section 2773.4(a)(1) through (c)(6)(B). That process differs from the procedures for the approval of an annual financial assurance cost estimate, which are governed by SMARA under PRC Section 2773.4(d)(1)(A) through (d)(6). Lead agencies must become familiar with*

*both processes when developing their mining ordinance. While both contain some similarities, the two processes have different timelines surrounding the processing and approval of the financial assurance cost estimate. Approval of an initial financial assurance cost estimate, or one in support of an amendment to a reclamation plan can only be done following approval of the initial reclamation plan or plan amendment since SMARA provides a serial process for the approvals of these entitlements. The operator must obtain approved financial assurances prior to conducting surface mining activities. The language below is offered as a guide.*

- (a) The operator shall submit the initial financial assurance cost estimate to the [City/County] on the form prescribed under 14 CCR Section 3805.1 ("FACE-1" form (dated 6/18)) following the approval of a reclamation plan for a new mining operation, or approval of an amendment to the reclamation plan for an existing mining operation.
- (b) The amount of the financial assurance shall be calculated consistent with PRC section 2773.1, 14 CCR section 3804, and the Board's Financial Assurance Guidelines. Financial assurance cost estimates should be prepared by the operator or appropriately qualified persons consistent with the State licensing and professional practice requirements. As many copies of the financial assurance cost estimate as may be required by the [City/County] shall be submitted.

[The lead agency should add any additional requirements and processes unique to the local jurisdiction, describing document reviews, submissions by the applicant, costs or fees, including any applicable timelines, etc.]

- (c) Within [X] days of the determination by the [City/County] that the initial financial assurance cost estimate is adequate, complete, and consistent with PRC Section 2773.1, associated State Regulations (commencing with 14 CCR section 3800), and the Board's Financial Assurance Guidelines, the [City/County] shall submit the financial assurance cost estimate to the Division for review and comment and follow the procedures in PRC Section 2773.4(a) through (c).
- (d) Within 30 days following the approval of the financial assurance cost estimate for a newly approved reclamation plan or plan amendment, the operator shall provide a financial assurance mechanism(s) to the [City/County] and the Division for review pursuant PRC Section 2773.4(e).
- (e) The review and approval of financial assurances pursuant to this [Section/Ordinance] shall not be considered a project for the purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

## 10.0 Annual Financial Assurance Cost Estimate Submissions and Approvals

*In 2016, the procedures for submitting and approving annual adjustments to the initial financial assurance cost estimate as required by SMARA was amended under AB 1142, resulting in the process described under subdivisions (d)(1)(A) through (d)(6) of PRC Section 2773.4. Those subdivisions describe the review and approval of an annual financial assurance cost estimate following the operator's submission of a financial assurance cost estimate within 30 days of the annual inspection required by subdivision (d)(1)(A) of PRC Section 2773.4.*

*The number of mines located in the jurisdiction of the lead agency should be considered when scheduling mine inspections since inspections trigger the operator's obligation to submit an annual financial assurance cost estimate and the lead agencies obligation to review, process, and approve annual financial assurance cost estimates on a timely basis. The language below is offered as a guide.*

- (a) The operator shall submit an annual financial assurance cost estimate to the [City/County] on the form prescribed under 14 CCR Section 3805.1 ("FACE-1" (dated 6/18)) within 30 days of the annual inspection of their operation conducted under subdivision (b) of PRC Section 2774.
- (b) The amount of the financial assurance shall be calculated consistent with PRC section 2773.1, 14 CCR section 3804, and the Board's Financial Assurance Guidelines. Financial assurance cost estimates should be prepared by the operator or appropriately qualified persons consistent with State licensing and professional practice requirements.

*[The lead agency should add any additional requirements and processes unique to the local jurisdiction, describing document reviews, and resubmissions by the applicant, costs, or fees, including any applicable timelines, etc.]*

- (c) Within 60 days of receiving an operator's annual financial assurance cost estimate the [City/County] shall follow the requirements and procedures of subdivision (d) of PRC Section 2773.4.
- (d) Within 30 days following the approval of the annual financial assurance cost estimate, the operator shall provide a financial assurance mechanism(s) to the [relevant department] and the Division for review pursuant to subdivisions (e)(1) through (e)(2)(B) of PRC Section 2773.4.
- (e) The review and approval of financial assurances pursuant to this [Section/Ordinance] shall not be considered a project for the purposes of the

California Environmental Quality Act (Division 13 (commencing with Section 21000)).

## **11.0 Financial Assurance Mechanism Submission and Review Process**

*Financial assurances are defined under PRC Section 2736 as “a current approved financial assurance cost estimate and a financial assurance mechanism that is at least equal to the current approved financial assurance cost estimate.” Providing an appropriate financial assurance mechanism following the approval of the initial financial assurance cost estimate, one based on an amendment to the approved reclamation plan, or the approval of an annual financial assurance cost estimate is required to meet the definition of a financial assurance under PRC Section 2736. Financial assurance mechanisms are described under 14 CCR, beginning at Section 3800 through 3803.3.*

*“Financial Assurance Mechanisms” means “an instrument, fund or other form of Financial Assurance as provided in Section 2773.1 of the PRC” and 14 CCR Section 3800. The available types of financial assurance mechanisms (FAM) are listed in 14 CCR Section 3803. Governmental and private mine operators may use surety bonds, irrevocable letters of credit and trust funds (normally CD accounts) while government mine operators also have access to pledges of revenue and budget set asides, 14 CCR Section 3803(a) and (b). Mining operations conducted by a federal agency have an additional FAM option known as an “Acceptance of Liability,” under 14 CCR Section 3806.3.*

*The Board’s regulations prescribe the text for surety bonds, irrevocable letters of credit and CD accounts, 14 CCR Sections 3803.1, 3803.2, and 3803.3. Pursuant to PRC section 2773.4(e)(2), SMARA directs both lead agencies and the Division to “review the financial assurance mechanism to determine if the type of mechanism, including the release instructions,” meet the requirements of SMARA. Lead agency mining ordinances should include procedures for coordinating the review of FAMs with the Division as both the lead agency and the Division. The language below is offered as a guide.*

- (a) The [City/County] requires financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operation’s approved reclamation plan. Financial assurances are defined under PRC Section 2736 as a current approved financial assurance cost estimate and a financial assurance mechanism that is at least equal to the current approved financial assurance cost estimate.
- (b) Each financial assurance mechanism shall be made payable to the [City/County] and the Department of Conservation consistent with PRC Section 2773.1(a)(5).

- (c) (1) Within 30 days of the [City's/County's] approval of a financial assurance cost estimate, the operator shall provide the [City/County] and the Division a compliant financial assurance mechanism(s) that is/are at least equal to the approved financial assurance cost estimate.
- (2) Within 15 days of receiving a financial assurance mechanism pursuant to PRC Section 2773.4(e)(1), or PRC Section 2773.1 and the transfer of an operation, the [City/County] and the Division shall review the financial assurance mechanism(s) to determine if the type of mechanism, including the release instructions, meets the requirements of this [Section/Ordinance], PRC Section 2773.1, State Regulations, and the Board's Financial Assurance Guidelines.
- (d) Financial assurance mechanisms determined to be noncompliant by the [City/County] with this [Section/Ordinance] shall be returned to the operator with instructions on how to correct the type or release instructions of the financial assurance mechanism(s). The [City/County] shall notify the Division in cases where the financial assurance mechanism is determined to be noncompliant.
- (e) Approved financial assurance mechanism(s) should be submitted to the Division consistent with PRC Section 2774.2.5(a)(4).

## **12.0 Statement of Responsibility and Recordation of Reclamation Plan**

*Reclamation plans are required to include a statement by the operator that they accept "responsibility for reclaiming the mined lands in accordance with the reclamation plan," PRC Section 2772(c)(10). The statement is commonly referred to as a "Statement of Responsibility" (SOR). Where mining operators change during the life of the mine, the new operator is required to "sign a new statement of reclamation responsibility in accordance with paragraph (10) of subdivision (c) of Section 2772," within "15 days of the sale or transfer," PRC Section 2773.1(c). Lead agencies are best positioned to know when mine operators change. The following text is provided as a guide only.*

Reclamation plans shall include a statement, signed by the operator, accepting responsibility for reclaiming the mined lands in accordance with the approved reclamation plan, as required under PRC Section 2772(c)(10). The statement shall be kept by the [City/County] in the mining operation's permanent record. Within 15 days of the sale or transfer of the mining operation, the new operator shall submit a signed statement of responsibility to the [name of appropriate department] for placement in the permanent record. The [City/County] shall also forward a copy of the signed Statement of Responsibility to the Division.

*Upon “approval of a reclamation plan or an amendment to a reclamation plan,” lead agencies are required to record with the County Recorder’s Office, a notice to indicate that a particular parcel or parcels are “subject to a reclamation plan” that was approved by the lead agency, PRC Section 2772.7. The recorded notice is required to include “the name of the owner of record of the mine operation.” The following text is provided as a guide only.*

(a) Upon approval of a reclamation plan or an amendment to a reclamation plan, the [City/County] shall record a “Notice of Reclamation Plan Approval” with the county recorder. The [City/County] shall also forward a copy of the recorded “Notice of Reclamation Plan Approval” to the Division.

(b) The “Notice of Reclamation Plan Approval” shall read:

“Mining operations conducted on the hereinafter described real property are subject to a reclamation plan approved by the [City/County], a copy of which is on file with the [City/County].”

In addition, the notice shall include the name of the owner of record of the mine operation, [the owner of the fee title], the [City/County], and the acknowledged signature of the [City/County] representative.

### **13.0 Interim Management Plans**

*Within 90 days of when a mining operation becomes “idle,” as defined in PRC Section 2727.1, mine operators are required to submit for approval, an interim management plan or “IMP.” Unless the IMP is pending approval or on appeal before the lead agency’s governing body, “a surface mining operation that remains idle for over one year after becoming idle, as defined in Section 2727.1, without obtaining approval of an interim management plan shall be considered abandoned and the operator shall commence and complete reclamation in accordance with the approved reclamation plan,” PRC Section 2770(h)(6). If the operator fails to submit an IMP as required by SMARA, the lead agency should consider conducting a hearing to determine the financial capability of the operator consistent with PRC section 2773.1(b)(1).*

*IMPs are considered an amendment to an existing approved reclamation plan with their own unique approval process. IMP submission, review, and approval procedures are contained within PRC Sections 2770(h)(1) through 2770(h)(6). IMPs shall only provide for necessary measures the operator will implement during its idle status to maintain the site in compliance with the ordinance, including, but not limited to, all permit conditions. The following language is offered as a guide.*

- (a) In accordance with PRC Section 2770(h)(1), within 90 days of a surface mining operation becoming idle, as defined in PRC Section 2727.1, the operator shall submit to the [City/County] for review and approval, an interim management plan. The interim management plan shall only include those measures the operator intends to implement during the operation's idle status, which are necessary to maintain the site in compliance with the provisions of SMARA and this mining ordinance, including all permit conditions. [and add any other conditions or requirements by the lead agency. If the lead agency develops a form or requires a fee to use for interim management plans, refer to the use here.]
- (b) The [City/County] will review and approve interim management plans consistent with PRC Sections 2770(h). The review and approval of an interim management plan shall not be considered a project for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000)) pursuant to PRC Section 2770(h)(1).

#### **14.0 New Mining Operation Report and Annual Reporting Requirements**

*SMARA requires the establishment of a fee schedule and reporting requirements pursuant to PRC 2207. Fee schedules and associated fee reporting forms are provided for under associated regulations 14 CCR Sections 3695 through 3699. The reporting forms associated with the fee schedule includes the Initial Report (OMR-3), the Annual Report Form (MMRC-2), the Multi-Site Report (MRRC-4M) and the Low Gross Exemption Form (MRRC-4L). Lead agencies have the primary responsibility to ensure that mine operators file the appropriate forms and pay applicable fees. Lead agencies may also require the submission of additional forms, and the lead agency should consider including those reporting forms and any associated fees in this Section. The language below is offered as a guide.*

Mine operators shall submit reports and pay associated fees to the Division as required under PRC Section 2207 and associated regulations found in Sections 3695 through 3699, as amended. Copies of *the Initial Report (OMR-3), the Annual Report Form (MRRC-2), the Multi-Site Report (MRRC-4M) and the Low Gross Exemption Form (MRRC-4L)* shall be submitted to the [City/County] at the time of submission to the Division.

Applicable reports and fees, with their due dates include:

- (a) An initial report (New Mining Operation Report Form OMR-3) and filing fee established under 14 CCR Sections 3697 and 3698 for newly permitted

surface mining operations. This form and fees shall be submitted within 30 days of permit approval.

- (b) Annual reports (Annual Report Form MMRC-2) and associated fees based on commodity type and the amount of produced minerals under 14 CCR Section 3698 are due on or before July 1<sup>st</sup> for the prior reporting year.

Additional reports and fees include:

- (a) Annual report (Annual Report Form MMRC-2) with an associated fee for a newly permitted mining operation which has not yet begun operations and has not disturbed the land under 14 CCR Section 3698. The annual report and associated fee are due on or before July 1<sup>st</sup> for the prior reporting year.
- (b) Multi-site reports (Multi-Site Report MRRC-4M) and an associated fee established under 14 CCR Section 3698. The multi-site report and associated fee are due on or before July 1<sup>st</sup> for the prior reporting year.
- (c) Low gross exemption report (Low Gross Exemption Form MRRC-4L) and an associated fee established under 14 CCR Section 3699. The low gross exemption report and associated fee are due on or before July 1<sup>st</sup> for the prior reporting year.
- (d) [Include any other forms or fees established by the lead agency]

## 15.0 **Inspections**

*A lead agency is required to conduct an inspection of every surface mining operation subject to SMARA within its jurisdiction in intervals of no more than 12 months, PRC Section 2774(b)(1). Conditions observed during the annual inspection of a surface mining operation and documented in the surface mining inspection report by the inspector are critical when assessing ongoing compliance with SMARA. Lead agencies may also conduct inspections in addition to the annual inspection, such as to follow up on complaints or to document ongoing compliance issues, PRC Section 2774.1(a)(1). The lead agency's determination of compliance with SMARA includes, but is not limited to, assessing the surface mining operation's physical conditions and general conformance to the approved reclamation plan and administrative compliance with SMARA. In order to determine a surface mining operation's compliance with SMARA and the approved reclamation plan, a lead agency may require evaluation by a qualified person, consistent with the Business and Professions Code. The language below is offered as a guide.*

Surface mining operations shall be inspected in intervals of no more than 12 months pursuant to PRC Section 2774, 14 CCR Section 3504.5, and [appropriate referenced ordinance code].

The [City/County] shall schedule the inspection considering the requested date(s) noted in the operation's annual report (MRRC-2), or if no date is requested or the operation cannot be inspected on the requested date, with a minimum of five days' written notice to the operator.

- (a) Inspections shall be conducted using the Surface Mining Inspection Report Form MRRC-1 (2019), in conjunction with the Guidance Document for Surface Mine Inspectors as provided in 14 CCR Section 3504.6.
- (b) Inspections shall be performed by persons meeting the qualifications provided for in subdivision (b) of PRC Section 2774 and 14CCR Section 3504.5 and shall not have a conflict of interest as described in those provisions notwithstanding any other provision of law.
- (c) The [City/County] shall provide the Division with a copy of the completed MRRC-1 (2019) form within 90 days of conducting the inspection along with a copy of the Notice of Completion of Inspection, as provided for in subdivision (b)(1) of PRC Section 2774, using form NOCI-1 (2019).
- (d) The operator of the surface mining operation is responsible for the reasonable costs of the inspection which shall be paid within [X] number of days of the date of the notice of the cost invoice.
- (e) Borrow pit surface mining operations that are owned or operated by [City/County] and are idle pursuant to PRC Section 2727 may be inspected once every two years as provided for in PRC Section 2770.1.

## **16.0 Enforcement, Compliance, and Penalties**

*Lead agencies have "primary responsibility" for enforcing SMARA and the annual reporting provisions of PRC Section 2207, PRC Section 2774.1(g)(1). SMARA also provides that it is not a limitation on a lead agency's general "police powers," including the power to "declare, prohibit, and abate nuisances," or to "regulate the use of buildings, structures, and land as between industry, business, residences, open space (including agriculture, recreation, the enjoyment of scenic beauty, and the use of natural resources), and other purposes," or the option to "adopt policies, standards, or regulations imposing additional requirements on any person if the requirements do not prevent the person from complying with the provisions of this [Section/Ordinance]," PRC Section 2715.*

*SMARA provides that enforcement actions may be initiated as a result of an inspection, annual or otherwise, or, because an operator fails to comply with basic administrative requirements, PRC Sections 2774.1 and 2207. Lead agencies should consider the use*

*and inclusion of all available enforcement options as allowed under SMARA and federal, state, and local laws when drafting a mining ordinance. The language below is offered as a guide.*

- (a) If the [City/County], based upon an annual inspection or otherwise confirmed by an inspection of a mining operation, determines that the mining operation is not in compliance with SMARA, including the requirements of an approved reclamation plan, required permit conditions, or [appropriate referenced ordinance code], the [City/County] shall initiate enforcement actions as set forth in PRC Sections 2774.1 through 2774.2 and the [City/County] ordinance provisions of in [appropriate referenced ordinance code.]
- (b) In addition to the remedies provided for in SMARA, the [City/County], may also consider additional enforcement remedies, including measures to prohibit and abate nuisances and encroachment of mining activities onto adjoining lands under provisions of state law and local ordinances, including [appropriate referenced ordinance code.]
- (c) The [appropriate local department] shall provide notice to federal, state, and local agencies which have approved permits or other conditions upon a mining operation subject to an enforcement action. The failure of the [City/County] to provide the notice described herein is not a condition of enforcement.
- (d) Where the [City/County], has initiated an enforcement action that includes the assessment of administrative penalties under the provisions of SMARA and this ordinance, the [appropriate local department] shall follow the procedures set forth in subdivision (c) of PRC Sections 2774.1, 2774.2, and 2207, and the [City/County] ordinance provisions of [appropriate referenced ordinance code.]
- (e) The [City/County] may consider any other applicable provision of law which provides for the assessment of penalties or fines when initiating an enforcement action described herein as well as those provisions of the [appropriate referenced ordinance code] for revocation and/or abandonment of a permit which are not preempted by SMARA.

## **17.0 Appeals**

*Lead agencies should have existing appeals processes within their local ordinances concerning the manner in which an appeal may be pursued by a person dissatisfied regarding a decision of the local approval body. Lead agencies may want to consider incorporating those existing processes where amenable for use in the context of SMARA's administration. Whether the lead agency is a city or a county may also*

*determine how a lead agency structures its appeals processes. After an aggrieved party exhausts appeal remedies within the lead agency, they may then appeal the matter to the Board pursuant to SMARA. The language below is offered as a guide.*

Any person dissatisfied with the decision of the [City/County] on a permit to conduct surface mining operations, a reclamation plan, a reclamation plan amendment, an interim management plan, a financial assurance cost estimate, or enforcement actions pursuant to SMARA and this [Section/Ordinance] may, within [X] calendar days after the decision is published under [appropriate referenced ordinance code] file an appeal to the [appeals body]. The appeal shall be heard by the [identify first level authority] within [X] days after the filing of the appeal.

[The lead agency should note any requirements necessary for the first appeals-body to accept the appeal. This includes the use of required forms, any supporting documents, the payment of filing fees, and stating the basis for the appeal. The lead agency should note the actions that will be taken by the first appeals-body upon acceptance of the appeal, such as noting the time and place for the hearing and how public notice of the hearing will be accomplished. The lead agency should consider any appropriate evidentiary standards. The lead agency should also consider providing an appeal to the next higher hearing authority, depending on the structure of the lead agency, noting any requirements for that next-level appeal.]

## **18.0 Lead Agency Annual Inspection Fees**

*SMARA provides the authority for lead agencies to “impose a fee upon each mining operation to cover the reasonable costs incurred in “implementing” SMARA, and the reporting requirements of PRC Section 2207. SMARA also provides that operators are “solely responsible for the reasonable cost” of the inspection required under PRC Section 2774(b). Lead agencies should consider the manner in which these fees are established and the way in which operators are notified of these fees.*

The [City/County] may establish administrative fees, which may be amended, as determined necessary to cover the reasonable costs incurred in implementing SMARA, this mining ordinance, and the associated regulations, including the processing of permit applications, reclamation plans and plan amendments, annual reports, inspections, monitoring, enforcement, and compliance. Fees shall be due and paid by the operator, as determined by the [City/County]. Failure to pay any administrative fee or the assessed costs of an inspection under this Section may result in [list options, such as the rejection of application, etc.]

## 19.0 Renewable Energy

*Proposed renewable energy generation facilities located within a surface mining operation's approved reclamation plan may be considered an interim use under defined circumstances. Proposed renewable energy generation facilities meeting the requirements of PRC Section 2777.5 will not require a reclamation plan amendment so long as specific criteria are met.*

*SMARA requires that lead agencies provide certain information related to the permitting of a renewable energy generation facility on disturbed mined lands to the Division prior to approving an operating permit for the facility under subdivision (b)(1) of PRC Section 2777.3. The submission allows the Division to comment on whether the renewable energy generation facility meets the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a), pursuant to PRC Section 2777.3. The following language serves as a guide only.*

In addition to other reclamation plan requirements of this chapter and regulations adopted by the board pursuant to this chapter, a lead agency may not approve a reclamation plan for a surface mining operation for gold, silver, copper, or other metallic minerals or financial assurances for the operation, if the operation is located on, or within one mile of, any Native American sacred site and is located in an area of special concern, unless both of the following criteria are met:

- (a) The reclamation plan requires that all excavations be backfilled and graded to do both of the following:
  - (1) Achieve the approximate original contours of the mined lands prior to mining.
  - (2) Grade all mined materials that are in excess of the materials that can be placed back into excavated areas, including, but not limited to, all overburden, spoil piles, and heap leach piles, over the project site to achieve the approximate original contours of the mined lands prior to mining.
- (b) The financial assurance cost estimates are sufficient in amount to provide for the backfilling and grading required by paragraph (1).
- (c) Copies of all approved permits and associated documents shall be submitted to the [City/County] and the Division as an addendum to the approved reclamation plan no less than 30 days prior to the commencement of land improvements associated with the renewable energy generation facility.

## **20.0 Severability**

If any Section, subsection, sentence, clause or phrase of this mining ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of this mining ordinance.

## **21.0 Effective Date**

This mining ordinance shall take effect 30 days following its adoption.

## **22.0 Certification and Recertification of Mining Ordinances**

*When contemplating future amendments to the certified mining ordinance, the lead agency may not adopt the changes without review by the Board. This will ensure successive changes to the mining ordinance preserve consistency with SMARA. Any proposed changes to the existing mining ordinance should be highlighted and provided to the Board with timely notice.*

- (a) Upon adoption of a new mining ordinance, or amendment of an existing mining ordinance, the [City/County], within 30 days of such action, shall provide written notice of the complete text of the resulting mining ordinance to the Board, to enable the Board to review the ordinance in accordance with PRC Sections 2774.3, 2774.5(a) and 2774.5(b).

