

# FINAL DRAFT FOR JOCO MAC APPROVAL, JUNE 12, 2024

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**NOTE:** This Final Draft was prepared after the JoCo MAC meeting on May 15, contains all amendments made by the MAC at that meeting, and will be reviewed for Final MAC Approval at the next MAC meeting on June 12, 2024.

## BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY STATE OF OREGON

### ORDINANCE No. 2023-00X

**AN ORDINANCE AMENDING THE JOSEPHINE COUNTY CODE (ORDINANCE NO. 2018-004)  
BY AMENDING THE TEXT OF TITLE 5: BUSINESS LICENSES AND REGULATIONS, TO  
IMPLEMENT CHANGES RELATED TO MINING.**

**WHEREAS**, the Board of Commissioners held public readings of this ordinance on [DATE] and [DATE] approving this amendment;

**NOW THEREFORE**, The Board of County Commissioners of Josephine County ordains as follows:

#### **Section 1.00 TEXT AMENDMENT - TITLE 5 BUSINESS LICENSES AND REGULATIONS**

**Chapter 5.15, MINING**, of the Josephine County Code (JCC), is amended as follows.

#### **Chapter 5.15, MINING**

##### **5.15.010 Definitions.**

**“Based upon all relevant information”** means facts provided through public comments that would suggest either approval or denial. Supposition, beliefs, etc without corroborating facts would NOT be used to assist in the decision, ,

**“County”** means Josephine County, Oregon, through its Board of County Commissioners.

**“Exploration Permit”** means the document issued by County which enables permittee to conduct a planned mining exploration program on county owned lands in order to determine whether a valuable mineral deposit of commercial size underlies the area subject to the permit.

**“Good (or just) cause” (“good cause shown”, “upon a showing or good cause”)** means relevant additional information provided showing special circumstances justifying a unforeseen need or provision that a logical and reasonable explanation has been offered which an average person would accept.

**“Laboratory certified assay report” , “other analytical tests”**, means a test that meets the requirements identified in US Geological Survey Bulletin 1445 (1977), a “Manual on Fire Assaying and Determination of the Noble Metals in Geological Materials”

**“Little or no surface disturbance”** means total disturbance that requires no particular reclamation other than removing equipment, and no more than 200 square feet of surface disturbance (e.g. mineral soil exposure) per acre has occurred over the entire permit area

and any such surface disturbances must be a minimum of 208 feet apart (e.g. no more than 1 per acre).

**“Mechanized exploration or mining activity”** means any use of heavy earthmoving equipment such as bull-dozers, backhoes, and excavators, and does not include motorized vehicles such as pickups, cars, ATV’s, side by sides, chainsaws, picks and shovels.

**“Mineral”** means and shall include, without being limited to, coal, clay, stone, sand, gravel, metallic ore, and any other solid material or substance, excavated for commercial, industrial, or construction use from natural deposits situated within or upon the lands being explored or leased.

**“Mineral discovery”** means a showing of minerals as required under 5.15.030 (F).

**“Mineral production”** means the mining of the ore or mineral(s) and all further recovery work prior to sales of the ore or mineral(s). Work on infrastructure (such as buildings, road building, along with work such as sinking a shaft(s) and/or drifting necessary to expose the ore is not “production”.

**“Mining Administrator”** and/or **“Consultant”** means the person or firm designated by the Board of County Commissioners to administer, enforce, and otherwise monitor compliance with this mining chapter and any mining leases executed pursuant hereto. Such designee shall have knowledge of and/or experience in mining. Any such Administrator or Consultant should have some practical mining experience and mining related qualifications (education, training, etc.); and considering the control the Administrator and/or Consultant will have over the proposed mining any such designated person or firm should be agreed upon by both the County and the mining permittee.

**“Mining Advisory Committee”** means a committee established by the Board of County Commissioners to assist in the administration of this chapter and any permits or leases executed hereunder, including any authorized appeals. “...

**“Mining Lease”** means the completed lease of possessory rights to a portion of the mineral estate granted by County.

**“Mining Permit”** means the document issued by County to the holder of a valid mining lease on County land, which indicates that all necessary preliminary steps and permits have been satisfied and obtained, and the holder is authorized to commence mining operations.

**“Net Smelter Return (NSR)”** is the net revenue that the owner of a mining property receives from the sale of the mine's metal/non-metal products less transportation and refining costs. As a royalty it refers to the fraction of net smelter return that a mine operator is obligated to pay the owner of the royalty agreement. The royalty is paid in variable or fixed payments based on sales revenue received by a mining operator in return for mining output. It is contingent only on the sales price and quantity of product sold.

“**Permittee**” means any individual, corporation, association, partnership, or limited partnership that has an active exploration permit or mining permit from the County.

“**Person**” means any individual, corporation, association, partnership, or limited partnership that applies for an exploration permit, mining permit, or mining lease through the County.

“**Promptly**” means within thirty (30) days after notification by the County.

“**Revocation of an exploration permit or lease**” means that the permittee has not abided by the terms of the permit and their non-compliance has or is likely to result in significant environmental damage or current or future loss of revenue to the County (such as timber, etc.) or negligent loss of revenue for the County.

“**Royalty**” means a percent of the gross sales receipts of the product mined or extracted to be paid to the county.

“**Showing of good cause**” means that there is a showing that the permittee has not abided by the terms of the permit and their non-compliance has or is likely to result in significant environmental damage or current or future loss of revenue to the County (such as timber, etc.) or negligent loss of revenue for the County.

“**Surface Rights**” means all property rights and usage exclusive of the mineral estate or reserved mineral rights. Surface Rights does not mean full rights to the property itself.

#### **5.15.020 Permits Required.**

No person shall engage in any mechanized exploration or mining activity or dig, extract, mine drill, or otherwise remove any minerals from County-owned land unless such person has first received a mineral exploration permit and/or a mining permit issued and required by County pursuant to the provisions of this chapter. Non-mechanized prospecting involving little or no surface disturbance may be allowed without a permit subject to separate County regulation *as found in \_\_\_ ?? \_\_\_*.

#### **5.15.030 Mineral Exploration Permit.**

A. Prior to application for a mining permit and or the execution of a mining lease, a person may make application for an exploration permit on County land except as otherwise provided in subsection (F) of this section and JCC 5.15.040. The application shall be on a form provided by County. No person shall conduct mechanized mineral exploration activity on any County land without first obtaining an exploration permit as required herein unless such activity is otherwise authorized by subsection (G) of this section or JCC 5.15.040. Through Resolution or Order, the Board of County Commissioners has authority to suspend the acceptance of applications for periods of up to one year and periods of suspension may be renewed consecutively.

B. Applications for an exploration permit shall be accepted in the order received by the Josephine County Board of Commissioners or BCC staff and priority for permit issuance will be established accordingly. The County, after consultation with the applicant but in

## FINAL DRAFT FOR JOCO MAC APPROVAL, JUNE 12, 2024

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its sole discretion, may select and retain the services of a consulting firm(s) to review and/or administer the exploration permit.

A person that applies for or is granted the aforementioned permit shall be responsible for reimbursing the County for all consulting fees. A reimbursement agreement shall accompany the permit application and must include the name or names of the consulting firm(s), an estimate of the total costs involved to review the application, and a minimum pre-payment not less than the estimated amount to review the application. The reimbursement agreement shall also provide an estimate of the total costs to administer the permit over the course of the permit and specify the terms for payment over the course of administering the permit. Any failure by the permit applicant or permit holder to promptly reimburse County for County's incurred expenses may result in the immediate suspension or termination of the exploration permit.

### Suggested format.

Permit Review (no heavy equipment)=	<u>\$50.00</u>
Permit Review (heavy equipment)=	<u>\$500.00</u>
Permit Administration (no heavy equipment)=	
10 acres or less	<u>\$100.00</u>
11 to 120	<u>\$200.00</u>
121 acres+	<u>\$300.00</u>
Permit Administration (heavy equipment)=	
Up to 40 acres	<u>\$1,000.00</u>
41 to 240 acres	<u>\$2,000.00</u>
241 acres+	<u>\$3,000.00</u>

C. Upon receipt of an exploration permit application, County shall cause said application to be reviewed by the Mining Administrator and the Mining Advisory Committee, and any other persons or agencies deemed by County to have an interest in same. Said persons or agencies shall review the application and make a recommendation on same within 60 days from the filing date of the completed application. Any recommendation may include such conditions or restrictions deemed appropriate.

D. Upon receipt of a recommendation by the Mining Administrator and Mining Advisory Committee as provided herein, the County shall allow public input concerning the issuance of said exploration permit. County may grant or deny the application based upon all relevant information and just cause available at the time of its public decision on the matter.

E. An exploration permit approved by County shall be issued for a period not to exceed five years from the date of issuance, and may be revoked prior to expiration if permittee has not engaged in mineral exploration activity during any 12-month period with the exception of delays while diligently obtaining required permits from other government agencies or extenuating circumstances such as COVID, heavy snowfall in winter, lack of access such as road failure, extreme fire season, etc.. Permits may be renewed upon good cause shown. Except for good cause shown, permits shall be limited in size to an area of not more than 1,000 acres, and allow for the removal of not more than 100 yards

## FINAL DRAFT FOR JOCO MAC APPROVAL, JUNE 12, 2024

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(10 dump trucks) of minerals. No person shall possess more than two valid permits at a time without authorization from County. All exploration permits shall be personal to the applicant, and shall not be transferred or assigned without prior approval of County. All permits shall allow exclusive use of the mineral estate granted therein and for the purposes stated therein, for the term thereof, and may be revoked by County at any time prior to receipt of a mineral discovery notice and application for mining lease filed by the permittee on the subject land upon a showing of good cause for same made by County.

F. In order to make application for a mining lease under JCC 5.15.040 through 5.15.070, the permittee shall, prior to the expiration of the exploration permit, file a written notice of mineral discovery on a form provided by County. The written notice of mineral discovery shall include the following information:

- 1) a map showing the location of the mineral deposit or vein;
- 2) a copy of the corresponding exploration permit;
- 3) a geologic description of the ore body or in the case of a placer mineral, the mineral deposit;
- 4) evidence demonstrating the physical and natural occurrence of the mineral at the location identified; and
- 5) copies of laboratory-certified assay reports or other analytical tests that confirm the mineral occurrence.

Upon receipt of the notice of mineral discovery, the County shall refer said notice to the Mining Administrator and the Mining Advisory Committee for review. Within 60 days following receipt, the Mining Administrator and the Mining Advisory Committee shall determine if the person has demonstrated a valid mineral discovery. Upon determination of a valid mineral discovery, the Mining Administrator shall certify the notice of mineral discovery, at which time the permittee may apply for a mining lease pursuant to JCC 5.15.040 through 5.15.070.

G. Except as provided in subsection (G)(2) of this subsection, the fees to be charged for exploration permits shall be \$10.00 per acre per year.

Exceptions to this schedule may be made by the County Board of Commissioners in consideration of the following two factors as applied to a given situation:

1. Whether, and if so to what extent, the permittee (or prospective permittee), has conducted substantial exploratory efforts appropriate to the number of acres to which the permit applies and to the length of time (if any) the permittee (or prospective permittee) has been conducting the exploratory efforts, and whether, and if so to what extent, the permittee (or prospective permittee) has shown actual and satisfactory evidence thereof; and
2. Whether, and if so to what extent, there appears to be a significant

possibility of the County obtaining major royalty payments under a subsequent mining lease with the permittee (lessee) or prospective permittee (prospective lessee).

**5.15.040 Mining leases – Availability.**

For all lands considered available for a mining lease, the County retains sole discretion to issue said lease. All County-owned lands shall be considered available for issuance of mining leases if:

A. A certified mineral discovery has been made pursuant to JCC 5.15.030 (F); or

B. A nearby certified mineral discovery warrants consideration of a mining lease without the prior issuance of an exploration permit; or

C. The lands involved have been formally designated by the County as available for mining leases.

**5.15.050 Size of Leasable Tract.**

Minimum. The minimum shall be the size of the county owned tax lot.

**5.15.060 Mining lease .**

Any person may make application for a mining lease on County lands on forms provided by County. County forms shall include the information described in § 5.15.070 of this Code, along with a list of possible consulting firms and an estimate of consulting fees. County shall establish a filing fee which shall accompany said applications. All applications shall be fully completed by the actual applicant thereof unless a duly executed power of attorney is attached thereto. Any false, misleading or incomplete information on said application may be cause for rejection or revocation by County.

The County, after consultation with the applicant but upon its sole discretion, may select and retain the services of a consulting firm(s) to review and/or administer a mining lease. A person that applies for or is granted the aforementioned lease shall be notified by the County prior to the hiring of a consulting firm as to what firm is being hired and an estimate of the consulting fees, and shall have the right to cancel the application or lease. A person that applies for or is granted the aforementioned lease agreement shall be responsible for reimbursing the County for all consulting fees. A reimbursement agreement shall accompany any lease application and must include a minimum pre-payment not less than the estimated amount to review the application. The reimbursement agreement shall provide an estimate of the total costs to administer the permit and specify the terms for payment over the course of the lease agreement. Any failure by a leaseholder to promptly reimburse County for County's incurred expenses may result in the immediate suspension or termination of the mining lease after a hearing to determine the cause for the failure.



**5.15.070 Mining lease – Application.**

A. Upon receipt of the certified notice of mineral discovery, the application for a mining lease may be submitted to the County for consideration. A mining lease application shall include a Mining Plan containing all relevant and appropriate information that would permit a prudent person to justify the further expenditure of labor and means, with a reasonable prospect of success, in developing a valuable mine.

B. A Mining Plan shall include at least the following information:

1. A detailed plan as to the establishment of the mine, including maps and/or diagrams, a timeline of activities, identification of partners and subcontractors involved, and environmental protection measures to be used.
2. A detailed plan as to the operation of the mine, including maps and/or diagrams, expected activity, production value, and mineral removal, as well as environmental protection measures to be used.
3. A detailed plan regarding reclamation of the land following mining, including timeline and environmental protection measures to be used.
4. An explanation as to how the planned activities demonstrate:
  - a. A reasonable prospect of success in developing a valuable mine; and
  - b. That the issuance of a mining lease and mining permit would be in the best interests of the County.

C. The County shall immediately refer same to the Mining Administrator, the Mineral Advisory Committee and any other persons for their review and recommendations. Said review and recommendations shall be conducted and submitted to the Board of County Commissioners within 60 days from the date of filing. The pending application shall be given chronological priority over any other competing applications for the subject property as provided in JCC 5.15.080.

D. Upon receipt of any recommendation as provided herein, County shall consider the execution of a mining lease at a public hearing. County may accept or reject said lease or negotiate additional terms based upon any information presented, matters submitted by interested persons and agencies, and all other matters relating to the application, including public health, safety and welfare.

**5.15.0870 Priority – Exploration permittees.**

A holder of a valid exploration permit shall be granted a priority right to a mining lease on the subject property if a notice of mineral discovery is filed as provided in JCC 5.15.030 (F), and an application for a mining lease is submitted pursuant to JCC 5.15.070, and permittee otherwise complies with all other applicable requirements.

**5.15.0890 Priority – Date of filing.**

Those persons applying for a mining lease who do not possess a valid exploration

permit and who otherwise may qualify for a mining lease under JCC 5.15.040 shall be entitled to consideration based upon the order in which their applications are received by County providing the land in question is not involved with a current exploration permit or lease.

**5.15.100 Cancellation of mining lease.**

Upon revocation of a mining permit, County may cancel lessee's mining lease or suspend its mining operation until lessee reinstates its mining permit by satisfying the conditions of revocation.

**5.15.110 Mining lease forms – Terms.**

A. Upon approval of the application of a mining lease and mining permit, County shall enter into a mining lease with applicant according to the standard mining lease form adopted by County. Modifications or conditions may be included when deemed to be in the public interest or necessary in the particular circumstances.

B. Upon approval of the application of a mining lease and mining permit and before lessee commences any mining activity, if it is determined that other non-county permits or authorizations are required that may take months or years to obtain the lessee may opt to make a non-refundable payment of annual rent while diligently obtaining required permits for as long as it takes to obtain the required permits. During this period no mining may occur, and no royalty payments will be required.

C. Before lessee commences any mining activity, and during the continuation of any such activity, lessee shall at all times post a copy of the County mining permit in a conspicuous place on the mining site.

D. All mining leases shall have a definite term, which may be a minimum term of five years.

E. Rental Fees. The rental fees to be charged for mining leases shall be the same as the rental fees for an exploration permit found in **5.15.030(H)**. Such rental fees are non-refundable and payable in advance annually.

F. Royalties shall be charged and paid based on actual production. The amount of royalties shall be 5% of gross revenue. Total royalties must match or exceed the anticipated income realized to the County from timber harvest upon the area disturbed over the period of the lease.

G. Surface Management. In all leases where County has no interest in the surface estate, the lessee shall first obtain permission and authority from the surface owner to proceed with mining activity on said land. Proof of such authority shall be submitted to County prior to issuance of a mining lease by County. In lieu of the foregoing, lessee may post a security bond with County in an amount sufficient to protect the surface owner from any damage or loss which may be occasioned by lessee's mining activities.



**5.15.120 Mining Permit.**

County shall issue a mining permit to a valid mining lease holder, which specifies the terms and conditions upon which a person is authorized to conduct mining activities on County owned lands.

A. Upon issuance of a mining lease, and upon applicant's satisfaction of all other conditions and requirements of this chapter and other applicable law, County shall issue to applicant a mining permit which shall authorize the applicant to commence mining activities. No person shall conduct mechanized mining activity on any County land without first obtaining a mining lease and mining permit as required herein.

B. Once issued, a mining permit shall remain in full force during the entire term of the mining lease with County, unless County revokes said permit for cause. Cause for consideration of revocation shall be deemed to exist whenever lessee is in breach of any provisions of this code, of any material provision in the mining lease agreement or the mining plan, or violates or fails to comply with any applicable state or federal rules or regulations, or conducts mining activities in a way detrimental to the public interest. Failure to provide accurate royalty payments constitutes a breach of the agreement and may result in suspension or termination of the lease. County may order the suspension of all mining activity by lessee during the pendency of any proceeding to consider revocation of a mining permit when County deems same to be in the public interest . No mining permit may be revoked by County unless a public hearing is held and all relevant evidence is presented and considered and all interested persons are allowed to be heard.

**5.15.130 Land use permit.**

Prior to commencement of any mining activities, lessee shall obtain all necessary zoning and other land use permits relative to the mining site. Any decision by County to execute a mining lease with lessee shall be wholly independent from any such land use decision or any appeal thereof which may be heard by County.

**Section 2.00 CODIFICATION**

These amendments shall be codified in JCC Title 5.

**Section 3.00 AFFIRMATION**

Except as specifically amended by the provisions of this ordinance, the Josephine County Code, as previously adopted and amended, is hereby affirmed.

**Section 4.00 SEVERABILITY**

Should any section or provision of this ordinance be declared by a court or tribunal of competent jurisdiction to be invalid, that decision shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

**FINAL DRAFT FOR JOCO MAC APPROVAL, JUNE 12, 2024**

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**Section 5.00 EFFECTIVE DATE**

First reading by the Board of County Commissioners this [DATE]. Second reading and adoption by the Board of County Commissioners at least thirteen (13) days from the first reading, this [DATE]. This ordinance shall take effect ninety (90) days after its adoption by the Board of County Commissioners.

**JOSEPHINE COUNTY  
BOARD OF COMMISSIONERS**

\_\_\_\_\_  
, Chair

\_\_\_\_\_  
Jr, Vice-Chair

\_\_\_\_\_  
, Commissioner

**APPROVED AS TO FORM:**

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M. Wally Hicks, Legal Counsel

**JOSEPHINE COUNTY, OREGON**  
**MINING ADVISORY COMMITTEE**

June 12, 2024

Dear Josephine County BCC;

I, Andreas Blech, Chair of the Josephine County Mining Advisory Committee (MAC) do hereby submit a Draft of the MAC prepared and approved proposed Josephine County Mining Ordinance No. 2023-00X.

A Draft of the MAC Ordinance was review by the MAC at its May 15<sup>th</sup> meeting, amendments were proposed and approved, and this Final Draft was reviewed and approved by the MAC on June 12, 2024

Approved this day: June 12, 2024

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Andreas Blech  
Mining Advisory Committee,Chair