



ORDINANCE NO. 98-13

AN ORDINANCE OF THE MONO COUNTY BOARD
OF SUPERVISORS ENACTING CHAPTER 7.10 OF
THE MONO COUNTY CODE PERTAINING TO
MINING OPERATIONS

THE BOARD OF SUPERVISORS OF THE COUNTY OF MONO ORDAINS as follows:

SECTION ONE: That Chapter 7.10 is hereby added to the Mono County Code and will read as follows:

"Chapter 7.10

MINING OPERATIONS

Sections:

7.10.010	Declarations and findings.
7.10.020	Definitions.
7.10.030	Permits required.
7.10.040	Processing with certain chemicals; rebuttable presumption.
7.10.050	Permit procedure.
7.10.060	Permit non-compliance; penalties; suspension or revocation.
7.10.070	Exemptions.

7.10.010 Declarations and findings.

The Board of Supervisors finds and declares as follows:

A. Mono County is endowed with a variety of valuable natural resources, including but not limited to pumice, gravel, gold, and clay, which have periodically been the subject of mining throughout Mono County's history.

B. Mono County is also endowed with a pristine and beautiful natural environment, whose many forests, lakes, streams, and mountains are home to diverse flora, fauna, and ecosystems, and the site of numerous recreational and scenic attractions.

C. Mono County is obligated and committed by its own General Plan, County Code, and state laws such as the California Environmental Quality Act (CEQA) to ensuring that the environment is adequately protected, to the extent the County possesses the legal authority to do so.

D. The County has land-use and zoning authority over private lands within the County and over certain lands owned by state and local government agencies and, with respect to such lands, only allows mining activities on land zoned "RE -- Resource Extraction" in accordance with a use permit issued in conformity with the County General Plan, County Code, and applicable state laws such as CEQA. The vast majority of real property in Mono County, however, is "public land" owned by the federal government and administered by federal agencies such as the U.S. Department of Agriculture, acting through the U.S. Forest Service, and the Secretary of the Interior, acting through the Bureau of Land Management.

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2 E. The Federal Mining Act of 1872 (30 U.S.C. §§ 21 et seq.) confers certain
3 rights to explore public lands for valuable mineral deposits and provides that the
4 "locators" of such deposits shall have the exclusive right to extract those
minerals if they comply with federal law and state and local laws that do not
conflict with federal law. (See 30 U.S.C. § 26.)

5 F. The United States Supreme Court and other courts have held, in cases
6 such as *California Coastal Commission v. Granite Rock Co.*, 480 U.S. 572 (1987), that
7 state and local laws that impose and require compliance with reasonable
8 regulatory requirements designed to protect the environment are not preempted
by the Mining Act as long as they do not act as a de facto ban on mining or
otherwise act as a "clear obstacle" to the accomplishment of the Congressional
purposes and objectives embodied in the Mining Act.

9 G. Accordingly, this ordinance is intended to establish, through a purely
10 environmental (non-land-use) permit process, legally permissible regulatory
11 requirements designed to protect the environment of Mono County, and not to
create a de facto ban on mining or create a "clear obstacle" to accomplishing the
objectives of the Mining Act.

12 H. The County is a lead agency for purposes of the Surface Mining and
13 Reclamation Act (Section 2710 et seq. of the California Public Resources Code)
and has previously adopted an ordinance implementing the Act (Ordinance No.
14 94-02), which was duly certified by the State Mining and Geology Board.
15 Mining operations on all land in the County, including public land, are already
subject to the County's certified reclamation ordinance. This Chapter does not
16 amend that certified ordinance, nor does it impose reclamation requirements. It
is intended solely as an exercise of the County's constitutional authority to make
and enforce within its limits all ordinances not in conflict with general laws.
(California Constitution, Article XI, Sec. 7.)

17 I. Methods of processing that use hazardous chemicals, such as mercury,
18 cyanide and cyanide compounds, breakdown products of cyanide, and sulfuric
acid, are of especially grave concern to the residents and the Board of
19 Supervisors of Mono County due to their potential to cause damage to the
environment, including but not limited to streams, lakes, groundwater, air, flora,
20 and fauna. Anecdotal and scientific evidence of such potential harm is detailed
in various sources, including but not limited to publications, staff reports, and
21 testimony that have been brought to the Board of Supervisors' attention.

22 J. The Board is unwilling to risk such damage to Mono County's
environment, and thus, by way of a rebuttable presumption established in this
23 ordinance, declines to allow certain known hazardous chemicals to be used in
connection with any processing activity in Mono County unless the use of the
24 chemical in a given project can be shown by the project proponent, by substantial
evidence, to have no significant adverse impact on the environment.

25 K. The enactment of this Chapter is exempt from the California
26 Environmental Quality Act (CEQA) as either a non-project or as a class 7 or class
27 8 categorical exemption.
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2 **7.10.020 Definitions.**

3 Terms used in this Chapter have the following meanings:

- 4 A. "Acid mine drainage" means the natural process through which sulfuric
5 acid is created by the exposure of iron sulfide minerals in mined metal
6 ores to oxygen in the air.
- 7 B. "Average case scenario" means typical project operations under average
8 conditions, with reasonably foreseeable environmental impacts.
- 9 C. "Artificial" means occurring as a result of human design or activity, as
10 opposed to natural activities and processes that occur regardless of any
11 human involvement.
- 12 D. "Beneficiation" means the process of liberating and concentrating a
13 mineral from ore.
- 14 E. "Best case scenario" means atypical project operations under better than
15 average conditions, causing the least possible environmental impact.
- 16 F. "Environmental contamination" means degradation of any aspect of the
17 natural environment in and around a proposed extraction project,
18 including but not limited to pollution of the air, soil, or surface or ground
19 water, and any associated harm caused to flora, fauna, or humans.
- 20 G. "Exploratory extraction" means extraction conducted for the purpose of
21 searching for or investigating a mineral deposit. It includes but is not
22 limited to geophysical, geochemical, or geological surveying and
23 sampling, drilling or rotary drilling of core and bore holes, and digging
24 pits, trenches, or cuts and other works for the purpose of extracting
25 samples prior to commencement of mine development or extraction
26 operations, and the building of roads, access ways, and other facilities
27 related to such work.
- 28 H. "Exposed" means uncovered through extraction and put in direct physical
contact with air, precipitation, and other atmospheric elements.
- I. "Extraction" means the artificial removal of solid (not liquid or gaseous),
non-living, and naturally-occurring substances from the surface or sub-
surface of the earth, including but not limited to rocks, sand, gravel,
pumice, clay, salt, gold, silver, diamonds, or other minerals or gems.
- J. "Feasible" means achievable based on known scientific or engineering
data and technology. Feasible does not mean the least expensive method
nor the method necessary for an extraction or processing project to yield a
profit in light of prevailing market prices for mined substances, except in
the event that all other things are equal with respect to protecting the
environment, in which case the most cost-effective means may be deemed
the most feasible.
- K. "Financial assurance" means, to the extent permitted by applicable state
and federal law, bonds, escrowed funds, letters of credit, insurance, or
other form of security provided to the County by a project proponent in

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an amount set by the Planning Commission (or Board of Supervisors in the event of an appeal) and in a form approved by the County Counsel that will ensure sufficient funding for the cleanup, restoration, or other remediation of any environmental damage caused by the project.

- L. "Groundwater" means all water beneath the surface of the earth within the zone at or below the water table in which the soil is completely saturated with water.
- M. "Hydrology" means the scientific study of the origin, distribution, and circulation of water through, among other things, precipitation, stream flow, infiltration, groundwater storage, and evaporation.
- N. "In-situ mining" means a method of processing in which chemical reagents are injected directly into the ground before extraction occurs.
- O. "Kinetic testing" refers to a method of testing in which a sample of mine waste is placed in a cylindrical chamber or other closed container and factors such as air, water, and bacteria are introduced into the chamber, allowing the impact of these factors on acid generation to be measured over time.
- P. "Mining" and "Mining operations" mean extraction or processing or both, and all activities integral to such extraction or processing occurring in the County, including but not limited to the movement, transportation, loading, unloading, and other activity of vehicles, offices, buildings, facilities, equipment, structures, mined substances, materials, or personnel associated with extraction or processing.
- Q. "Processing" means the artificial refinement, purification, beneficiation, adulteration, or other special treatment of rock ore and other extracted substances to separate valuable metals or other substances from non-valuable materials such as soils and other impurities, examples of which include but are not limited to washing, flotation, aeration, electrification, gravity concentration, solvent extraction/electrowinning (SX/EW), magnetic separation, crushing, heating, smelting, soaking, leaching, spraying, grinding, sorting, or sifting. For purposes of this Chapter, in-situ mining shall be considered a form of processing rather than extraction.
- R. "Project" means a proposal, embodied in a permit application, to engage in extraction, processing, or other mining operations, as well as any resulting extraction, processing, or other mining activity.
- S. "Project proponent" means a party submitting a permit application under this Chapter and assuming responsibility for that application, as well as that party's agents, representatives, successors, or assigns (if any).
- T. "Scientific" means performed by an individual with expertise in a particular field of human knowledge, using generally-accepted standards and methodologies for observing, identifying, objectifying, explaining, studying and describing phenomena in that field of knowledge.

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- U. "Significant adverse environmental impact" has the meaning attributed to that term under the California Environmental Quality Act (CEQA), as the same may be amended from time to time, and/or under any applicable CEQA guidelines, regulations, or case law.
- V. "Static testing" means the measuring of bulk amounts of acid-generating and acid-neutralizing material in samples of mined waste, expressed as numerical values, which are then compared to predict the likelihood that the waste will generate acid mine drainage.
- W. "Substantial evidence" has the meaning attributed to that term under the California Environmental Quality Act (CEQA), as the same may be amended from time to time, and/or under any applicable CEQA guidelines, regulations, or case law.
- X. "Surface waters" refers to rivers, streams, creeks, lakes, ponds, and other bodies of water existing on a constant or seasonal basis on the surface of the land.
- Y. "Immediate vicinity" means the geographic area surrounding a project site whose environment could foreseeably be impacted by a project.
- Z. "Worst case scenario" means atypical project operations under worse than average conditions, where virtually everything that conceivably could go wrong does go wrong, causing the most adverse environmental impacts possible.

7.10.030 Permits required.

It shall be unlawful for any person to engage in extraction, processing, or other mining operations within the territorial boundaries of Mono County without possessing at the time of such activity both of the following: (1) a reclamation plan (including financial assurance requirements) approved by the County in accordance with the Surface Mining and Reclamation Act (Section 2710 et seq. of the California Public Resources Code), the Mono County General Plan, and any applicable chapters of this Code, and (2) either a Mining Operations Permit issued in accordance with this Chapter in the case of mining operations on land over which the County lacks full land-use and zoning authority or a use permit issued in accordance with Chapter 19.59 of this Code (entitled "RE-Resource Extraction District") in the case of mining operations on land over which the County possesses full land-use and zoning authority. Violations of this section constitute a misdemeanor and a public nuisance which may, in addition to any other legal or equitable remedies available to the County, be prosecuted and/or enjoined.

7.10.040 Processing with certain chemicals; rebuttable presumption.
It shall be and is hereby rebuttably presumed that any proposed processing operation located above or adjacent to surface or ground waters, or which could potentially impact such waters regardless of their location, that would use one or more of the following chemicals as a processing agent poses an unreasonable risk of environmental harm due to the toxicity of such chemicals and their demonstrated potential to cause damage to the environment: mercury, cyanide or cyanide compounds, breakdown products of cyanide, or sulfuric acid. Use of such chemicals shall not be permitted as part of any processing operation unless

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2 the project applicant can demonstrate, by substantial evidence, based on reliable
3 scientific or engineering data, that the proposed use of such chemicals in a given
4 project will not, under any reasonably foreseeable scenario, cause significant
5 adverse environmental impacts. Scenarios considered shall include but not be
6 limited to "best case," "average case," and "worst case" scenarios, taking into
7 account any environmental contamination reasonably foreseeable over time from
8 both natural and artificial causes, including but not limited to spills, leaks, and
9 other releases or discharges resulting from potential design or construction flaws
10 or miscalculations (if any), foreseeable errors or negligence (if any) of processing
11 operators, as well as rainfall, snowfall, snow melt, floods, fires, earthquakes, and
12 other potential natural forces and events.

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14 **7.10.050 Mining Operations Permit procedure.**

15 A. The Mono County Planning Commission shall possess the authority to issue
16 Mining Operations Permits in accordance with the provisions of this Chapter
17 and to adopt such reasonable administrative regulations as it deems necessary
18 and proper to implement this chapter, including but not limited to regulations
19 establishing advisory committees to examine project applications and to provide
20 reports and recommendations to the Commission. Applications for Mining
21 Operations Permits shall be submitted to the Mono County Planning Department
22 on forms developed by that Department. Such application forms shall, at a
23 minimum, solicit detailed plans, specifications, studies, maps, and other
24 information from applicants addressing the following: (a) the nature, estimated
25 location, and physical and chemical characteristics of the substance(s) proposed
26 to be extracted, exposed, or processed; (b) the location, duration, manner, and
27 method of proposed extraction or processing activities; (c) the quantity of
28 substances proposed to be mined or processed; (d) the estimated facilities,
personnel, equipment, and vehicles that will be brought into or constructed
within the County to conduct or provide services related to the proposed
extraction or processing; (e) the days of the week and times of the day when the
proposed extraction or processing will foreseeably occur; (f) the manner or
method by which personnel, equipment, mined substances, or any materials
associated with the proposed extraction or processing will be moved,
transported, or otherwise conveyed to, from, at, or around the extraction or
processing site; (g) the quantity and source of any water proposed to be used in
conjunction with the proposed extraction or processing; (h) the nature and
source(s) of power, electrical or otherwise, that will be used at the site of the
proposed extraction or processing; (i) the quantity, nature, and proposed means
of disposing of any solid or liquid waste, including all mining waste, generated
by the project; (j) the type and nature of any chemical reagents that will be used
in processing and the manner and method by which such processing will be
conducted; and (k) a description of any foreseeable extensions, continuations, or
modifications of the proposed project. Submission of any of the foregoing
information to the County as part of an application for a reclamation plan or
amendment thereto with respect to a proposed extraction or processing project
may, with the prior approval of the Planning Director, be incorporated by
reference into an application for a mining operations permit under this Chapter
with respect to the same proposed project.

26 B. Upon receipt of a completed application, the County and its consultant(s)
27 shall analyze and assess, at the applicant's cost, the potential adverse
28 environmental impacts of the proposed extraction or processing operations in
accordance with the California Environmental Quality Act (CEQA) and this

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Chapter. Among other things, such analysis and assessment shall include, to the extent deemed relevant and appropriate by the Planning Director after performing an initial study under CEQA, in order to gather baseline data and to effectuate the intent of this Chapter or CEQA:

- hydrological studies of any surface waters on the project property or within the runoff or drainage path of the project
- biological studies regarding the nature and quantity of any species of fish, birds, reptiles, mammals, and other flora and fauna living in or dependent on such surface waters
- studies regarding the potential impacts of the project on any natural habitats or ecosystems in the County
- studies regarding the potential impacts of the project on human health in the County
- a hydrological determination of whether or not groundwater exists directly below or in the immediate vicinity of the site of the proposed extraction or processing
- to the extent groundwater is present, a detailed scientific analysis of the nature, quantity, locations, and properties of such water and a detailed analysis of soil, percolation, and drainage characteristics of the land on which the proposed extraction or processing will occur
- hydrological studies of the sources of water that will be used by the project itself and the impacts of the project on such sources and documentation of the use of such water by other parties, including analysis of the degree and duration of the project's anticipated impact on such other water users for the life of the project and until reclamation is completed.
- hydrological studies regarding any erosion and sedimentation impacts likely to be associated with or caused by the project
- a geological determination of whether or not any notable sources of actual or potential seismic or volcanic activity exist below or in the immediate vicinity of the site of the proposed extraction or processing
- to the extent any notable sources of actual or potential seismic or volcanic activity are present, a detailed scientific analysis of the nature and characteristics of such sources and their foreseeable relationship to and effects, if any, upon the proposed project, including but not limited to any groundwater used by or otherwise impacted by the project
- studies to determine the impacts of all project transport and vehicle movements on air quality, noise, road systems, and traffic

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- scientific studies regarding the potential for the project to cause or be subject to land subsidence and collapse, and the hydrological impacts of any such potential on the environment
- hydrological studies examining the flooding and drainage potential and characteristics of the proposed project and site of extraction or processing and the foreseeable environmental effects such flooding and drainage may have on the site and on adjacent properties.
- scientific studies regarding the nature, quantity, and characteristics of any dust, gas, or other airborne substances likely to be generated or dispersed by the proposed project
- studies regarding the nature, quantity, and characteristics of any nighttime lighting proposed to be used on the project
- scientific studies regarding the nature, decibel level, and other pertinent characteristics of any noise or sound likely to be generated by the proposed project
- scientific studies examining the probability, nature, and extent of environmental contamination, if any, that could foreseeably result from the project in "best case," "average case," and "worst case" scenarios, taking into account both natural and artificial causes of such contamination, including but not limited to spills, leaks, and other discharges resulting from design flaws, negligent design or construction, negligence of extraction or processing operators, as well as rainfall, snowfall, snow melt, floods, fires, earthquakes, and other potential natural forces and events
- scientific studies determining whether or not items of archeological or cultural significance are present at the site and, if so, the degree to which they would be disturbed or otherwise impacted by the proposed project
- scientific studies determining whether or not rare, threatened, or endangered species of plants or animals are present at the site and, if so, the degree to which they would be disturbed or otherwise impacted by the proposed project
- feasible project alternatives and mitigation measures, which may include components of any reclamation plan proposed or approved for the project

C. Mining Operations Permits shall be granted only after a duly noticed public hearing and only if the Planning Commission (or the Board of Supervisors in the event of an appeal) makes all of the following findings based on the evidence before it:

- The application and any documentation submitted with it for purposes of complying with or facilitating CEQA review are complete and adequate.

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- The proposed project is consistent and compliant with this Chapter, this Code, and any applicable environmental policies, regulations, or standards set forth in the Mono County General Plan, as the same may be amended from time to time, as well as any applicable state or federal laws, orders of state or federal agencies having jurisdiction, and applicable court orders, except to the extent that such consistency or compliance is impossible to achieve through any feasible modification or mitigation of the proposed project without violating or conflicting with the federal Mining Act of 1872 (30 U.S.C. §§ 21 et seq.), as the same may be amended from time to time, or with other applicable federal or state laws.
- The proposed project, as mitigated, will not cause any significant adverse environmental impacts, except to the extent that such impacts are impossible to avoid through any feasible mitigation measures without violating or conflicting with the federal Mining Act of 1872 (30 U.S.C. §§ 21 et seq.), as the same may be amended from time to time, or with other applicable federal or state laws, unless a statement of overriding considerations is made through the CEQA process.

D. Conditions of approval imposed on Mining Operations Permits by the Planning Commission shall, among other things, to the extent deemed relevant and appropriate by the Planning Commission or the Board of Supervisors in order to effectuate the intent of this Chapter or CEQA:

- Require that all mining operations, before and during mining, characterize the potential of their ore and waste rock to generate acid mine drainage. Operators may be required to use both static and kinetic testing to make this determination.
- Require pollution prevention and pollution containment techniques in all phases of mine operation
- Require mining operations to use the best available technology and practices in order to protect the environment, including but not limited to preventing or minimizing acid mine drainage
- Impose specific contamination standards for water, air, and other environmental components that the project may not exceed
- Require post-mining water quality monitoring to ensure that acid mine drainage does not develop (or worsen, to the extent it is present before the proposed mining or processing occurs) over time
- Require inspections of mining operations, especially water-related facilities, by County staff or consultants at frequent intervals
- Require adequate financial assurances in order to cover the estimated costs of cleaning up or otherwise remediating any reasonably foreseeable environmental contamination that could result from the project despite any imposed mitigation measures, including but not limited to natural and artificial causes of such

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2 potential contamination, including but not limited to spills, leaks,
3 and other releases or discharges resulting from negligent design or
4 construction, negligence of extraction or processing operators, as
5 well as rainfall, snowfall, snow melt, floods, fires, earthquakes, and
6 other potential natural forces and events.

- 7 • Require any other appropriate mitigation measures and associated
8 monitoring programs. Significant adverse environmental impacts
9 associated with mining operations shall be mitigated to a level of
10 non-significance to the extent feasible without violating or
11 conflicting with the federal Mining Act of 1872 (30 U.S.C. §§ 21 et
12 seq.), as the same may be amended from time to time, or with other
13 applicable federal or state laws, unless a statement of overriding
14 considerations is made through the CEQA process.

15 E. All permit applications shall be accompanied by a processing fee in an
16 amount set by resolution of the Board of Supervisors, not to exceed the County's
17 direct and indirect costs of administering this Chapter, including any funds
18 periodically required to be paid or placed on deposit with the County to fund its
19 associated costs of staff time and/or consultants necessary to implement and
20 comply with CEQA and this Chapter.

21 F. The decision of the Planning Commission is final unless timely appealed to
22 the Board of Supervisors in compliance with Chapter 19.42 of this Code.

23 7.10.060 Permit non-compliance; penalties; suspension or revocation.

24 Non-compliance with any term or condition of a Mining Operations Permit
25 issued under this Chapter, including but not limited to any mitigation measures,
26 monitoring requirements, or financial assurance requirements, shall constitute a
27 misdemeanor and a public nuisance, and shall be grounds for suspension or
28 revocation of the permit by the Planning Commission. Before the Commission
shall consider revocation or suspension of any permit, the Commission shall hold
a public hearing thereon after giving written notice thereof to the permittee at
least ten days in advance of such hearing. The decision of the Commission may
be appealed to the Board of Supervisors in accordance with Chapter 19.42 of this
Code.

7.10.070 Exemptions

This Chapter shall not apply to the following activities:

A. Mining that would be exempt from any reclamation requirements under the
Surface Mining and Reclamation Act (Section 2710 et seq. of the California Public
Resources Code), the Mono County General Plan, and any other Chapter of this
Code, as the same may be amended from time to time.

B. Any mining operations, other than exploratory extraction, that were actually
in existence and functioning as of the date this Chapter took effect and which
were otherwise compliant at that time with applicable laws, and also proposed
expansions of such mining operations with respect to which complete
applications for reclamation plans or amendments thereto had already been filed
with the County as of the date this Chapter took effect."

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SECTION TWO: If any provision(s) of this ordinance is ever determined by a court of competent jurisdiction to be unconstitutional or otherwise invalid as a matter of law, the Board of Supervisors does hereby express its intent and desire that such provision be severed from the remaining provisions of this ordinance and that the remainder be in full force and effect. The Board of Supervisors declares that it would have adopted that remainder even without the severed provision(s).

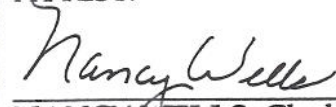
SECTION THREE: This ordinance shall become effective 30 days from the date of its adoption and final passage, which appears immediately below. The Clerk of the Board of Supervisors shall post this ordinance and also publish the ordinance or a summary thereof in the manner prescribed by Government Code section 25124 no later than 15 days after the date of this ordinance's adoption and final passage. If the Clerk fails to so publish this ordinance or a summary thereof within said 15 day-period, then the ordinance shall not take effect until 30 days after the date of publication.

PASSED, APPROVED and ADOPTED this 1st day of December, 1998, by the following vote, to wit:

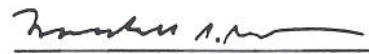
AYES: Supervisors Farnetti, Inwood, Lawrence, Ronci, Rowan.
NOES: None.
ABSENT: None.
ABSTAIN: None.



PAUL ROWAN, Chair
Mono County Board of Supervisors

ATTEST:


NANCY WELLS, Clerk of the Board

APPROVED AS TO FORM:


COUNTY COUNSEL