From the South Western Oregon Mining Association

These are observations for the record upon the proposed ordinance 2011-003 “An Ordinance Implementing and Revising Rules and Regulations For Mining Josephine County Owned Lands and repealing Ordinance 88-3”. These observations are not exhaustive and would need to be revisted given any draft correction to bring it into compliance with law, reason, and justice. Line-throughs are corrections to the first impression response to the first draft of this observation amended correcting for the Second Draft corrections as proposed. The position of the Mining Association is the Ordinance is defective and unsatisfactory. We would urge the Board of Commissioners vote against its passage.

Observations Upon The Proposed Ordinance:

The County holds this property of whatever quality of title and possession in Trust for all people about the county.

~~Section 2.0 and 4.01 The county purports to have authority over real estate which it has not shown in the Draft that it owns where local government ownership is not presumed, the mineral estate or dominant estate. Without title this ordinance would be unlawful. If a split estate, any surface or servient estate rights would require a different approach to the permit regarding the servient estate owners expectations. In the absence of a conveyance of the mineral estate to the County, Patent or the National mining law will declare who has authority to oversee use of the particular mineral estate, the extent, the entry, and protection to the servient estate.~~

Section 3 Definitions:

(A) Josephine County Stream, seems to imply a blanket water right which may or may not exist, which might affect the propriety of the Board's ability to regulate Streams, Section 4.01

(B)Recreational Dredge Mining:

I) Putting any permit in the proper context of Day Use instead of what appears to be more of a lease together with a size restriction for mechanical processing would eliminate the need for a yardage restriction relating to a year. Again, the long term utility of the permit argues against it being a mere Day Use guidance implying a more commercial interest, being that the draft places so many restriction upon that particular Day Use that in reality no visitor will be able to just drop into a County property for the purpose of enjoying an in-water prospecting experience. The permit requires one to dedicate their life to fulfilling its terms instead of being regulated to a Day Use.

II) The term as used, even if accepting the improper use, "recreational mining" is also improper where it uses "dredge" together with a requirement to obtain a permit under the Clean Water Act. The section for dredging pertains to channel relocation for purposes of channel improvement and by the terms of the permit channel relocation is prohibited. Since a "Dredge" is used for the purpose of such channel relocation or changing the channel is prohibited, compliance with the CWA is not indicated, notwithstanding the *de minimus* or non-regulable nature of the 4 inch restriction for nozzle type.

(C) Permit for Recreational Dredge Mining is (a) a very problematic definition full of incongruities and lack of knowledge of the occasion of mining. For instance, the machines that concentrate heavy minerals do not "discharge" materials in the legal use of that term elsewhere and imposing such a

character on the practice is arbitrary and capricious. (b) Causing a Day Use servitude subject to other uses by a condition that "does not impede or interfere" prejudices the mining use. In other words, as stated, anyone wanting to use the same location subsequent to a prospector could impose a violation upon the prospector with ejectment out of that location without recourse and to the prejudice of someone having just as equal a right to enjoy County property as any other. But the "permit" wrongly requires the mineral exploring family or individual to be displaced merely upon someone asserting a subsequent use over the same place. Again, a Day Use guidance for mineral exploration together with existing laws enforcement would suffice, that, subject to first-come-first-served every one enjoys the property as they do now without prejudice to anyone or any philosophical proclivity or “sustainable” whim.

(D) “Operator”, notwithstanding its commercial origins, where a permit is required for every "person", does not embrace family outings where a lot of people in a family or get-together might be interested to partake on one machine. The term "operator" is inconsistent with a recreational or day use; As is using the term "operator" to imply a commercial value will be recovered through Day Use which is implied in the exorbitant fees demanded for a non-commercial purpose. While condemning commercial use the permit incorporates commercial terms. In doing so, it begins from an improper structure which carries through the ordinance offering an improper or wrong outcome. This improper structure discriminates against one certain Day Use which appears could be better served allowing protection other uses by existing laws, such as for litter, trespass, waste, etc.

(E) "Commercial mining" is an unnecessary use of words in creating a term for purposes of the ordinance. Mining in commercial. "recreation mining" is actually an impossible term. This highlights the failure of the continuing failure of an ordinance being a properly grounded or based in an understanding of the subject matter.

Section 4.01. Implies that in-water mineral exploration is not healthy or safe. It does so also contrary to state law. There is no evidence of either potential harm asserted. As such, invoking the municipal power as reason for the permit authority is a fraudulent representation. To purport these as supporting authority is fraud and admits the lack of need for a permit all together. There is no actual municipal concern for the particular Day Use.

Section 5.02 The County purports to be able to declare that a non-existent form of mining, "recreational dredging" is allowed in the Josephine County. The term “Dredging” brings it into conflict with S3.0 (C) where moving the natural course of the stream is prohibited being “dredging” is the method for natural channel augmentation. The County does not have authority to declare any type of mining lawful in the county, neither unlawful.

5.03, Authority to regulate "type of dredge". The Army Corps of Engineers may have a problem, and therefore the ordinance would come in conflict of federal law with that provision, if the Corps were ever to need to dredge a navigation channel on Josephine County property. Though this is unlikely is highlights the problem with using the terms improperly and applying them improperly as the ordinance proposal attempts.

Section 6 may be conditioned by the actual mineral, water, and access rights of the County. General reference to comply with all federal, state, and local laws is not sufficient notice and appears arbitrary and capricious.

~~6.05, should be able to be stricken. Relating to public lands it is not relevant to a county land ordinance. If the activity is on public land the county has no authority, federal law will be determinate.~~

Section 7 appears contradictory. The permit creates an "easement" the allowance of the taking of something of "profit" implied by the excessive money investment charged to obtain a permit, whether or not it is actually awarded. Therefore, despite the ordinance expression, the permit would create a profit a prendre which is limited by the further expressed condition, revocable at any time, with or without cause.

7.06, For the effort and investment, there is no objective protection for an “operator”. And wouldn't a reasonable “state” define and account for at least normal wear and tear. The term "natural state" and use under the permit is incompatible. The term "proper state" is vague, arbitrary and capricious. In light of the prevailing “sustainable” cult (ture) exhibited by some people of "authority", this ordinance becomes an open-ended club or license to beat people with, without remedy.

7.08. Use of the term "turbidity" is imprecise. This term is actually inapplicable.
And if it were applicable any scientifically measurable "turbidity", so-called, of 100 feet might in some instances may be impractical, notwithstanding the probability that most all Day Users do not possess such scientific equipment. Moreover, notwithstanding the improper utility of the terms "discharge" or "pollution" implied in the use of the term, a visible sediment plume has not been shown to be harmful, neither a threat to health or safety, to invoke municipal authority to require a permit. Such a restriction in light of 3 (C), interference, is a problem/violation waiting to find something to happen all liability of which will be upon the hapless mineral exploring Day User.

The math appears inconsistent with the purpose of 7.08. If there is no visible plume by 100 feet, why waste 100 feet before the next "operator" might enjoy the use?

7.09 is a repeat of 3.0. and problematic.

7.10 seems senseless in the respect that panning is sometimes done out of the concentrates of the day's run from a sluice box and hurts nothing.

7.11 "pollutant", if it can be used at all, ought to be placed in the Section 3 Definitions.
The term is also in conflict of State water law, imposing standards impossible to meet in the use; Partly because of the misuse of the terms under the definition of "Pollutant", such as "turbidity" and "discharge" and the prohibition of naturally occurring "silt". Adding the term "additions of" to the water designating something a pollutant might help to alleviate certain excursions from the proper application of law, notwithstanding the improper application of that Code upon a none-offensive Day Use. As it is defined, the very activity for which the permit purportedly covers, by the loose treatment of those terms, would be to violate the terms and purpose for which the permit ostensibly exists or in its enjoyment.

7.12 is redundant with respect to a corrected 7.11 or the impossible "natural state" standard.

7.14 looks like one strike and you are out. No check and balance or appeal. Together with being confronted with a zealous official loosely applying the rules could be a set-up to administratively coerce people off of county land for whatever the “law enforcement” official fabricates. This is a Code enforcement and revenue enhancement Official's Dream, a Day User's nightmare. The perceived

injustice on this point alone would argue against the ordinance, notwithstanding the opportunity for revenue enhancement through utility of the permit or process was not identified as a legitimate "Authority" under that section.

An 8 month permit term is inconsistent with the 25 cu yard per year restriction. 25 cu. yard per year restriction also appears arbitrary and capricious. State law allows 50 cubic yards to be taken away. This sort of activity unless one is extremely lucky takes nothing but pennyweight at a time. If the ordinance were confined to a Day Use guidance no one could reserve exclusive to themselves certain stretches of county water course at the prejudice of others and would eliminate the need for keeping track. This would also eliminate special treatment for preferred users which Code enforcement could cause to exist at its whim and caprice under the guise of code enforcement. This ordinance, as written, appears to promote or at least be susceptible to graft and preferential pay-offs.

7.15 is inconsistent with Sediment plume 100ft and separation 200ft. Also does not embrace family outings where a lot of people might be interested to partake on one machine where a permit is required for every "person". There is nothing about this permit the embraces any notion of a family outing for the purpose nor of spontaneous family outings or friendly "get-togethers".

"outside the area for which that person has a permit is a trespasser" unreasonably threatens people while the permit creates an administrative oversight headache not needed if the ordinance does away with the permit requirement and sets guidelines for how people would enjoy county property for recreational purposes while exploring for minerals with a hydro-vacuum cleaner without fear of reprisal and to promote enjoyment and respect for Day Use.

7.16 Is vague. What constitutes an applicable permit? Because the ordinance misinterprets the various terms and applicability of certain laws creates an open-ended liability to any one simply trying to avail themselves of the recreation this ordinance purports to allow, the section alone will make it impossible to make compliance. It creates a veritable catch-22. If we ignore for the moment that there is actually no permit required under the law for this Day Use and we apply what some ignorantly insist are applicable permits, those readily known will be impossible to obtain in anticipation of another permit requiring a location that hasn't yet been "awarded" by the county. And then the county process does not offer any guarantee, that even if someone took the time it takes to obtain every permit that could be found that might be applicable all that work will be for not if the county were to reject the application. Not many will go through this sort of abuse for a Day Use. This ridiculous imposition certainly eliminates all who would happen through the county that could enjoy a Day Use and contributing to the economy while visiting, Further, it is an insult to the people for the county to impose such oppressive requirements penalizing what state and federal law acknowledged is a public and beneficial use. This provision certainly does not foster and encourage tourism or use of county property. Further, it suggests by the need to obtain unknowable permits that something is unsafe and unhealthy about an activity the State of Oregon has deemed a beneficial and public use, safe and healthy or that the legislature has found for the Day Use intended will be well within any municipal concern otherwise.

8.01 appears unreasonable, excessive, exploitative, prejudicial and discriminatory being other "recreational" Day Use fees typically seem to be about 2 dollars for the parking of a conveyance or rig covering the same cubic foot of space allotted to the Day User mineral explorer.

8.02. is an outrageous and shameful demand to do something that every one else does for 2 bucks a day parking to enjoy their property held in trust by the County for their lawful use. There is nothing unlawful about mineral exploration requiring such a fear-based permit.

Notwithstanding the outrage, Where are these bonds gotten? Are they even obtainable for a non-commercial Day Use activity?

This part of the ordinance proposed is essentially a declaration for no mineral exploration on county land. If the county intended that mineral exploration not occur on property held in trust by the county for the people, instead of wasting time on these two drafts, it could have simply said that recreational mineral exploration is prohibited on County property. The outcome of this Ordinance will be to prohibit that particular Day Use. It is a Day Use the is intended despite the 8 month term because that provision is actually a lease of a certain part of county controlled land and prejudicial to every other user for the similar purpose.

8.03 is redundant, covered elsewhere.

Section 10.0 severability may not be valid if a central provision is invalidated the existence of which is required by other sections.

Summary Observation:

It has come to our attention that this ordinance will be shoved through because a lot of time has been spent on it. That is no excuse to push through such an ill-conceived piece of local legislation that appears to be created by people that do not have any comprehension on the subject matter, or as apt, appear hell-bent to deny access to a public and beneficial use under guise of the need of public protection.

After review of this draft ordinance and it's second attempt we must say, despite the effort expended, apparent wasted of time and energy to date as we see this ordinance offers, that it would be better to vote against this ordinance proposal, ringing of special interest, and instead allow existing law to guide the public in using the county property for Day Use until such time as better minds can provide laws which serve all of the people.

In other words, better than this problematic ordinance it would be better that the people access their county land without this special regulation while administrators take a watch to see whether or not the people might regulate themselves consistent with current laws already available to the county in administering its trust; In the event of any found conflict regulate for those particular conflicts.

Approved by the Membership in Assembly vote June 3, 2011.