

TOWN OF HERSEY, MAINE

COMMERCIAL/INDUSTRIAL MINING ORDINANCE

Adopted on October 6, 2022

PREAMBLE

The Town of Hersey currently does not have a Comprehensive Plan or town-wide zoning. As a result, all lawful uses of property are allowed in Town subject to the state-imposed mandatory Shoreland zoning regulations. Lawful uses include metallic mining activities.

The Town of Hersey is aware that potential metallic mineral deposits exist in and around the Pickett Mountain area, which is adjacent to the northwestern portion of Hersey. A reasonable prospect exists that a mining project may be pursued in the Pickett Mountain area, which could include portions of the project facilities being located in the Town of Hersey.

In the judgment of the Board of Selectmen, it is in the interests of the Town of Hersey to determine whether a mining project, or more specifically a portion of a mining project, would be acceptable in the Town of Hersey subject to State and Federal laws and regulations and local ordinance requirements set forth herein. Further, since mining projects have lengthy and costly resource assessment and application requirements (e.g., the mining rules administered by the Maine Department of Environmental Protection or MDEP), it is reasonable for potential mining project applicants to understand whether a project would be acceptable in the Town of Hersey subject to satisfying all regulatory requirements and standards.

In light of the above, in the summer of 2022 the Board of Selectmen conducted a public informational process on mining issues that resulted in the development of this Ordinance, including a public hearing held on September 22, 2022.

Fundamentally, the purpose of this Ordinance is to allow a mining project, or portion of a mining project, located in the Town of Hersey provided the project satisfies all regulatory requirements and standards. This includes Chapter 200 of the MDEP Rules, which were updated in 2017 to provide more comprehensive, stringent, and robust mining standards in the State of Maine, as well as this Ordinance.

Further, the purpose of this Ordinance is to have local processes and requirements specific to metallic mining activities that otherwise do not exist in the Town in order to help ensure the public health, welfare, and safety. This Ordinance, among other things, establishes a *maximum* setback distance for metallic mining activities from Route 11 thereby restricting such activities to that setback area, and a *minimum* setback distance for metallic mining activities from the property line of parcels including

residences to ensure such facilities are not in close proximity to homes. It also addresses other local considerations such as truck traffic.

Moreover, this Ordinance ensures the Town of Hersey realizes significant tangible benefits in the form of a community benefit agreement, which would not otherwise be a requirement absent this Ordinance.

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SECTION 1 – TITLE; EFFECTIVE DATE.

This ordinance shall be known and may be cited as *The Town of Hersey Commercial/Industrial Mining Ordinance*, hereinafter the “Ordinance”.

The effective date of this Ordinance shall be the date of its adoption, October 6, 2022.

SECTION 2 – PURPOSE; AUTHORITY.

The purpose of this Ordinance is to establish minimum local standards regarding certain mining activities in the Town of Hersey to protect the health, safety, and general welfare of the inhabitants of Hersey. It is adopted pursuant to the home rule authority of the Town of Hersey pursuant to the Maine Constitution and 30-A M.R.S. § 3001 et al.

This Ordinance shall be in addition, and not in lieu of or a substitute, to any other local, state, or federal requirements applicable to any mining activity governed by this Ordinance.

SECTION 3 – APPLICABILITY.

This Ordinance shall apply to any mining activity in the Town of Hersey that requires issuance of a permit by the Maine Department of Environmental Protection (“MDEP”) under its regulations promulgated under Chapter 200 “Metallic Mineral Exploration, Advanced Exploration and Mining”. Such activities are hereinafter referred to as “Regulated Mining Activities”.

Without limiting the generality of the foregoing, “Regulated Mining Activities” shall include all construction and operational activities of and concerning facilities or processes necessary for the preparation, processing, treatment, or otherwise arranging, handling, storing, or transporting metallic minerals and/or associated waste storage, stockpiling, or reclamation activities associated with a mining project regulated by Chapter 200 of the MDEP Rules. This includes without limitation the construction and operation of any facility designed to process mined material for the purpose of separating or purifying metallic minerals and associated waste rock (tailings) storage (e.g., dry stack tailings management).

SECTION 4 – ADMINISTRATION.

This Ordinance shall be administered by the Hersey Board of Selectmen, except as otherwise noted herein.

SECTION 5 – NOTICE OF BASELINE STUDIES/RESOURCE ASSESSMENT ACTIVITIES.

A person/entity pursuing a Regulated Mining Activity (an "Applicant") shall submit a written Notice of Baseline Studies/Resource Assessment to the Hersey Board of Selectmen within 30 days of submitting a baseline work plan (as required by Chapter 200 of the MDEP Rules) to the MDEP.

The Notice of Baseline Studies/Resource Assessment shall include and be subject to the following:

1. Name of Project Owner. The Applicant shall submit ownership information of the person(s) or entity(ies) that are the project owners of the proposed activity.
2. Project Participant Information, Organizational Chart. The Applicant shall submit information identifying project participants (e.g., landowners, technical consultants, etc.) that will be participating in the baseline studies/resource assessment activities. This may take the form of an organizational chart or equivalent document. The Applicant shall provide any material changes to the Hersey Board of Selectmen as part of the periodic updates with the Board.
3. Description/Scope of Baseline Studies/Resource Assessment Activities. The Applicant shall submit a detailed statement describing the scope and nature of the baseline studies/resource assessment activities, which shall include a map identifying the area of interest and other relevant attributes (e.g., surrounding environs). The Applicant shall provide any material changes to the area of interest and baseline studies/resource assessment activities to the Hersey Board of Selectmen as part of the periodic updates with the Board.
4. Semi-Annual Report (e.g., every 6 months). The Applicant/Permittee shall provide, at a minimum, semi-annual written reports to the Hersey Board of Selectmen describing the status of the baseline studies/resource assessment activities in the Town of Hersey and proposed project as a whole, as well as meet with the Board of Selectmen, if requested to do so, on a semi-annual basis. The Applicant and Board of Selectmen shall discuss and determine a mutually agreeable schedule.
5. Compliance with Laws/Regulations. The Applicant shall comply with all applicable local, state, and federal laws and regulations applicable to the baseline studies/resource assessment activities.

SECTION 6 – TOWN PARTICIPATION IN MDEP CHAPTER 200 APPLICATION PROCESS; ADDITIONAL LOCAL MEETINGS ON MDEP APPLICATION.

The MDEP Chapter 200 Rules include specific provisions regarding local participation by the Town including, for example, the ability of the Town to review and comment on the following:

1. Baseline Work Plan. An Applicant's proposed work plan to conduct baseline studies (the aforementioned "baseline work plan");
2. Draft Scoping Plan of Environmental Impact Statement. An Applicant's proposed draft scoping plan associated with an Environmental Impact Statement;
3. Mining Permit Application. An Applicant's application for a mining permit pursuant to Chapter 200 ("MDEP Mine Permit Application"), including participation in adjudicatory hearings and the ability to obtain assistance grants; and
4. Site Access. Access to the proposed project site for inspection and investigation.

In addition, and not as a duplication or as a substitute or in lieu of the above opportunities, an Applicant shall host and pay all costs associated with no fewer than two and, upon the request of the Board of Selectmen, up to four public meetings to discuss the MDEP Mine Permit Application and the potential impacts and benefits of the proposed project to the Town as more particularly described below (the "Supplemental Local Process"):

- The dates, location, and format for each of the meeting shall be agreed upon by the Board of Selectmen and the Applicant in advance of such meeting.
- The Applicant shall provide public notice of the meetings by (i) posting the details of the meeting in the Town office no less than seven days prior to the meeting, and (ii) mailing to all property owners in Hersey as determined from the most recent tax records if requested by the Board of Selectmen.
- Each meeting shall be dedicated to topic(s) identified in advance by the Board of Selectmen and must be identified in the public notice for the meeting.
- The Applicant must present information on the topic(s) identified by the Board of Selectmen for the meeting and identified in the public notice for the meeting and have subject matter experts present to answer questions on the topic(s) presented.
- The Board of Selectmen may take comment from the public.

The Board of Selectmen may opt to hold one or more public meetings required by this section jointly with municipal officials from adjacent municipalities that may have an interest in the MDEP Mine Permit Application.

If the Town wishes to retain outside experts to evaluate information presented in the MDEP Mine Permit Application or as part of the Applicant's presentations pursuant to this Section, then the Applicant shall reimburse the Town for the reasonable costs of retaining such experts in an aggregate amount not to exceed \$25,000, unless otherwise agreed upon in writing. The Town's use of outside experts pursuant to this section is in addition to but shall not be in duplication of the Town's use of outside experts and any Municipal Intervenor Grant provided to the Town in the MDEP Mine Permit Application process.

The Supplemental Local Process may include consideration of the submissions and standards for issuance of the construction/operations permit discussed below and must be completed prior to issuance of any construction/operations permit.

SECTION 7 – CONSTRUCTION/OPERATIONS PERMIT REQUIRED.

Prior to constructing and operating a Regulated Mining Activity, a construction/operations permit is required from the Hersey Board of Selectmen, including satisfaction of any pre-construction conditions.

SECTION 8 – SUBMISSION REQUIREMENTS AND PERMIT STANDARDS FOR REGULATED MINING ACTIVITIES.

A permit for a Regulated Mining Activity shall not be issued by the Hersey Board of Selectmen unless the following submissions and standards are met:

1. Name of Owner. The Applicant shall submit ownership information regarding (i) the property owner where the activity is proposed; and (ii) if different from the underlying property owner, the project owner.
2. Name of Operator; Organizational Chart. The Applicant shall submit operator information of the proposed activity. In addition, the Applicant shall submit an organizational chart or equivalent document identifying the project participants and describing their relationships.
3. MDEP Permits, Licenses, or Other Approvals. The Applicant must submit copies of all MDEP permits, licenses, or other MDEP approvals as evidence of satisfying all requirements and conditions of those laws and regulations (e.g., MDEP Chapter 200 Rules).

The Board may issue a construction/operations permit prior to submission of the MDEP permit if the construction/operations permit is specifically conditioned

upon submission of all approved MDEP permits, licenses, or other MDEP approvals.

4. Additional Submissions. The Applicant shall submit further information responsive to the Local Standards set forth below.
5. Local Standards.
 - a. *Maximum Distance from Route 11.* A Regulated Mining Activity (excluding utility lines and roads that may be associated with a Regulated Mining Activity) shall be located no further than 1.5 miles east and 1.5 miles west on either side of the portion of Route 11 wholly within the Town of Hersey.
 - b. *Minimum Setbacks from Residences.* A Regulated Mining Activity (excluding utility lines and roads that may be associated with a Regulated Mining Activity) shall be no closer than ¼ mile from the property boundary of a parcel containing an existing residence. For purposes of this provision, an existing residence is a building or structure maintained and used for year-round residential occupancy that includes permanent indoor sanitary facilities, and that is in existence and used as of the date that the Notice of Baseline Studies/Resource Assessment required in Section 5 above is filed with the Town. A residence does not include a seasonal camp.
 - c. *Truck Route Plan.* A preferred Truck Route Plan shall be submitted depicting truck routes. As a condition of approval, the final approved preferred Truck Route Plan shall be provided to all applicable contractors/operators (e.g., truckers), and must abide by any local or state road limitations (e.g., weight limits).
 - d. *Complaint Protocol.* The Applicant shall submit a Complaint Protocol for review that sets forth procedures and requirements to address complaints regarding the proposed Regulated Mining Activity.
 - e. *Tangible Benefits.* The Applicant shall submit a Tangible Benefit Plan, Statement, or Report demonstrating the Regulated Mining Activity will result in significant tangible benefits for the Town of Hersey. "Significant tangible benefits" include, without limitation, consideration of additional tax revenue, host community benefit agreements, employment opportunities, or other economic benefits realized or to be realized by the Town of Hersey.
 - f. *Sound/Noise.* A Regulated Mining Activity shall not cause excessive noise that could degrade the health and welfare of nearby neighbors and shall demonstrate compliance with the sound level limits contained in Section 10 of Chapter 375 of the MDEP Regulations (No Adverse Environmental

Effect Standards), which are hereby incorporated by reference and made standards of this Ordinance. A determination by the MDEP that these sound level limits are met shall constitute compliance with these sound/noise standards.

- g. *Dust; Fumes; Odors.* A Regulated Mining Activity shall not generate or otherwise cause unreasonable dust, fumes, or odor emissions beyond the property boundary where the Regulated Mining Activity is located.
- h. *Lighting.* A Regulated Mining Activity shall not cause excessive light pollution and shall utilize reasonable measures to avoid or minimize glare, light trespass, and "sky glow" to protect night sky and prevent any lighting nuisances on adjacent properties or public right-of-ways.

Lighting shall not produce strong, dazzling, flashing, or reflection of light beyond what is necessary for operations.

Unless necessary for safety or otherwise required by state or federal law, lighting shall be shielded and hooded and directed downward so as not to light up the night sky.

6. Additional Conditions of Approval

- a. Reporting. As a condition of approval, the Applicant/Permittee shall provide an annual report within 120 days of the end of the calendar year, regarding the Regulated Mining Activity for the prior year period. The annual report shall summarize the activities of the permittee and include, without limitation, a description of environmental management and compliance items with all applicable approvals. Such reporting requirements shall also apply to any post-operations phase of the mining project (i.e., post-closure). Post-operations reporting requirement shall be co-extensive in time with the MDEP Chapter 200 reporting requirements.
- b. Compliance with Laws/Regulations. As a condition of approval, the Applicant/Permittee shall comply with all local, state, and federal laws and regulations applicable to the Regulated Mining Activity.

SECTION 9 – AUTHORIZATION TO CONSTRUCT AND OPERATE REGULATED MINING ACTIVITIES.

Upon issuance of a Construction/Operations Permit to conduct Regulated Mining Activities, the permittee is authorized to construct and operate for as long as the Permittee obtains and maintains valid permits, licenses, and approvals under state and federal laws and regulations and complies with the provisions of this Ordinance.

SECTION 10 – ENFORCEMENT.

In the event that the Complaint Protocol does not result in resolution of alleged violations, the Town may (i) refer the matter to the MDEP and request that the MDEP take appropriate enforcement of alleged violations of Chapter 200, or (ii) commence formal local enforcement of alleged violations of Local Standards.

The Hersey Code Enforcement Officer shall have the authority to enforce the provisions of this Ordinance and, if necessary, refer any unresolved asserted violations to the Hersey Board of Selectmen for further action.

Upon issuance of any Notice of Violation (“NOV”), the Code Enforcement Officer and Permittee shall meet to discuss the alleged violations and potential resolution. If the violation has not been resolved, then the Code Enforcement Officer shall issue a “Final NOV”, which shall be a final decision appealable to the Hersey Board of Selectmen.

In addition, when the above actions do not result in the correction or abatement of a violation, the Board of Selectmen may institute any and all actions and proceedings appropriate or necessary to enforce the provisions of this Ordinance in the name of the Town of Hersey including without limitation the provisions of 30-A M.R.S. § 4452.

SECTION 11 – APPEALS.

Any final decision under this Ordinance concerning the issuance or non-issuance of a permit may be directly appealed to the Maine Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure. To remove any doubt, any decision regarding a permit must be marked “Final Decision” and include the date of issuance.

Any final decision by the Code Enforcement Officer under this Ordinance concerning an enforcement decision or order may be appealed to the Hersey Board of Selectmen within 30 days of the date the final decision is issued. To remove any doubt, any decision regarding enforcement must be marked “Final Decision” and include the date of issuance.

The Board of Selectmen shall conduct a *de novo* standard of review of such appeals. Any final decision of the Board of Selectmen concerning an enforcement matter may be appealed to the Maine Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

SECTION 12 – SEVERABILITY.

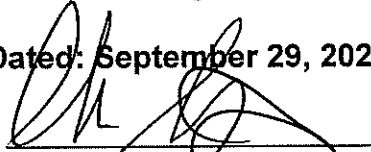
The invalidity of any section or provision of this Ordinance shall not be held to invalidate any other section or provision of this Ordinance.

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HERSEY BOARD OF SELECTMEN
ORDINANCE CERTIFICATION PURSUANT TO 30-A M.R.S. § 3002

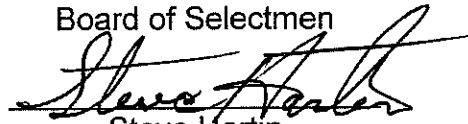
The undersigned Hersey Board of Selectmen hereby certify this "Town of Hersey, Maine Commercial/Industrial Mining Ordinance", a copy of which has been provided to the Hersey Town Clerk to be kept as a public record with copies made available for distribution to voters and at the Special Town Meeting on October 6, 2022 at 7:00 PM at the Patten Public Works Garage, Katahdin Street, Patten, Maine.

Dated: September 29, 2022.



Chris Streinz
Board of Selectmen

Ken Libby
Board of Selectmen



Steve Hartin
Board of Selectmen

