

STAFF REPORT

GENERAL INFORMATION:

REQUEST: ORDINANCE AMENDMENT / OA 22-01:
Pennington County. To add Section 321 – Hard Rock Mining to the Pennington County Zoning Ordinance.

REPORT BY: Cody Sack

GENERAL DESCRIPTION: To establish Hard Rock Mining requirements.

PROPOSED TEXT:

SECTION 321 – HARD ROCK MINING OPERATION

An operator shall obtain a Hard Rock Mining Permit from Pennington County to extract any substance with economic value, whether organic or inorganic, that can be extracted from the earth, *other than the following*: water, oil, gas, sand, gravel, or rock to be crushed and used in construction, pegmatite minerals, or limestone, sand, gypsum, shale, or iron ore used in the process of making cement. SDCL 45-6B-3(10).

A. *Applicability.*

Section 321 applies to the extraction of minerals in excess or equal to 100 cubic yards of material. Section 321 does not apply to the extraction of aggregate regulated under Section 320 or for subsurface Hard Rock Mining Operations. A Storm Water Permit may be required under Section 507 for hard rock mining operations. All hard rock mining operations must comply with all other applicable local, state, and federal law, rules or regulations. The Mining of minerals is allowed in any Zoning District provided that it is a Mining Claim. If the subject property does not have a Mining Claim; the mining of minerals is allowed **only** in the following Zoning Districts with an approved Pennington County Hard Rock Mining Permit:

3. Agriculture District (required minimum lot size of 10-acres).
4. Heavy Industrial District.
5. Forest Service Lands / Public Lands / Open Space (prior approval of mining activity from appropriate authority or agency required).

B. *Purpose.*

The purpose of Section 321 is to promote public health, safety, and general welfare; permit the development and utilization of resources in a manner compatible with neighboring land uses; prevent the degradation of existing private and public water supplies; and minimize potential adverse environmental effects through use of Best Management Practices, all consistent with the Comprehensive Plan.

- C. *Authority.* For the purpose of promoting health, safety, or the general welfare of the county, the Board may adopt a Zoning Ordinance to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of the yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, floodplain, or other purposes. SDCL 11-2-13.
- D. *Definitions.*
3. *ABANDONMENT.* An intentional and absolute relinquishment and cessation of a use for any period of time without intention to resume said use or the voluntary discontinuance of a use for a continuous period of one (1) year without reference to intent.
 4. *AIR BLAST.* A jet of air produced mechanically.
 5. *BERM.* An earthen mound designed to provide visual interest on a site, screen undesirable views, reduce noise, or fulfill other such purposes.
 6. *DELAY (blasting).* Interval of time between blasts or explosive charges.
 7. *HABITABLE.* Condition of premises that permits inhabitant to live free of serious defects to health and safety.
 8. *HABITABLE STRUCTURE.* Any building or structure used, or intended for use, on a day-to-day basis by people for residential purposes, or for purposes of conducting a commercial or industrial business, or for purposes of a similar nature.
 9. *HARD ROCK MINING OPERATION.* The development or extraction of a mineral from its natural occurrence on affected land. The term includes surface mining and surface operation, in situ mining, the reprocessing of tailings piles, the disposal of refuse from underground mining, and milling and processing located on the land described in the application for a mining permit. The term does not include extraction of sand, gravel, or rock to be crushed and used in construction, exploration activities, bulk sampling, the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipe, borrow excavation for embankments, or the extraction of geothermal resources.
 10. *JUNK MATERIAL.* Any scrap, waste, worn out, discarded material or debris collected or stored for destruction, disposal or some other use.
 11. *LARGE-SCALE OPERATION.* Operations that mine more than 10 acres disturbance and extract more than 25,000 tons annually and any operation that use cyanide or other chemical or biological leaching agents.
 12. *MINERAL.* A substance with economic value, whether organic or inorganic, that can be extracted from the earth, other than the following: water, oil, gas, sand, gravel, or rock to be crushed and used in construction, pegmatite minerals, or limestone, sand, gypsum, shale, or iron ore used in the process of making cement;
 13. *NEIGHBORHOOD.* A geographically localized community within a larger city, town, suburb or rural area.
 14. *OPERATOR.* Any person, firm, partnership, limited liability company, association, or corporation or any department, division, or agency of federal or state government or any political subdivision of the state.
 15. *OVERBURDEN.* Material, such as rock or soil that lies above an ore body. When

- mining is completed, it is either used to backfill the mined areas or hauled to an external dumping or storage site.
16. *PARCEL*. Any legally described piece of land designated by the owner or developer as land to be used or developed as a unit, or that has been developed as a unit.
 17. *PERMIT LIMIT*. The area of mining operation as legally described on the Pennington County hard rock mining application.
 18. *SMALL-SCALE OPERATION*. Any mining operation, other than an in situ mining operation or a mining operation that employs a cyanide leaching or other chemical or biological leaching process to extract minerals from ore, which affects less than ten acres, excluding access roads, and extracts less than twenty-five thousand tons of ore or overburden per calendar year.
 19. *START WORK ORDER*. An administrative order that allows a person to resume an activity that was the subject of a prior stop work order.
 20. *STOP WORK ORDER*. An administrative order that directs a person not to continue or not to allow the continuation of an activity that is in violation of Pennington County Ordinances.
 21. *SUBSTANTIAL STEP*. Completion of 30 percent of a permitted use measured as a percentage of estimated total area of disturbance.
 22. *TAILINGS*. The discharged valueless product of a beneficiation process.

E. *Hard Rock Mining Permit Process and Public Notice Requirements.*

3. *Application and Notice of Hearings.*

Upon submittal of a complete application and payment of application fee, the Planning Department shall provide the applicant a sign for the purpose of informing the public of the Hard Rock Mining Permit Application. The applicant shall place the sign on the property that is the subject of the Hard Rock Mining Permit Application and in a location with the greatest visibility to the public. The applicant shall post the sign on the property at least thirty (30) days prior to the public hearing on the application.

The applicant shall notify all property owners (including recorded Contract for Deed buyers) of land located within one-half (0.5) mile, inclusive of any right-of-way, of the outer boundaries of the subject property of the pending Hard Rock Mining Permit application. Based upon Department of Equalization records, the Planning Department will determine and provide a list of property owners within one-half (0.5) mile. Notice shall be by registered or certified mail at least 30 days prior to the public hearing on the application before the Planning Commission. The applicant shall use "Application and Notice of Hearing" letters provided by the Planning Department. The applicant shall also notify by registered or certified mail the Tribal Historical Preservation Officer (THPO) for each tribe listed on the Black Hills National Forest Tribal/THPO current mailing list.

4. *Public Hearing.*

The Planning Commission shall hold a public hearing on the application and the application must be complete prior to consideration. Notice of time and place of hearing shall be given at least 10 days in advance by publication in the legal newspapers of the County. The decision of the Planning Commission shall be a recommendation to the Board. The Planning Commission may recommend approval, approval with conditions or denial of the application.

After receiving the recommendation of the Planning Commission, the Board shall hold a public hearing on the application. Notice of time and place of hearing shall be given at least 10 days in advance by publication in the legal newspapers of the County. The Board may approve, approve with conditions or deny the application.

5. *Hard Rock Mining Permit Application Review.*

When reviewing a Hard Rock Mining Permit Application, all relevant information may be considered, including, but not limited to the following:

- a. The effect of the proposed operation upon existing neighboring land uses.
- b. The effect of the proposed operation upon private and public water quality and quantity.
- c. The effect of the proposed operation on public health, safety, and general welfare.
- d. The effect and location of the proposed operation in Special Flood Hazard Areas and/or drainage paths.
- e. Staff recommendations regarding permit conditions to mitigate potential negative impact of the proposed operation.

F. *Hard Rock Mining Permit Application.*

3. An incomplete application will result in denial of the Permit.
4. All applications for a proposed hard rock mining operation shall include the following information:
 - a. Signed Statement. A signed statement by the applicant or operator, if different from the applicant, acknowledging review of and compliance with the provisions in Section 321, including responsibility to pay required fees and penalties for any violation.
 - b. Mineral Rights Verification. The applicant must provide proof, in writing, that the owner of the mineral rights has given permission to enter and begin operations.
 - c. Map of Affected area: A site plan/map of affected area as required by SDCL 45-6B-10.
 - d. Operation Plan. An operation plan that includes information required by SDAR 74:29:02:04
 - e. Reclamation Plan. The reclamation plan shall contain the information as required by SDCL 45-6B-7.

5. *Drainage and Erosion Control Permits.*
 - a. All hard rock mining operations shall comply with the South Dakota Water Pollution Control Act and Administrative Rules of South Dakota (SDAR) Chapters 74:52:01 through 74:52:12 regulating erosion control measures, water drainage and discharge from the permit limit. Prior to the start of mining operations, the applicant must obtain and provide a copy of a Storm Water Permit issued by SD DANR.
 - b. The applicant must submit copies of all other required local, state and federal erosion control and runoff management permits.
 - c. All mining operations must meet the requirements set forth in Section 507 of this Zoning Ordinance, which may require a Pennington County Storm Water Permit and/or Grading Permit.
6. *Road and Traffic Impact Study.* Each large-scale application shall be accompanied by a Road and Traffic impact study which identifies the potential impact of the development on Pennington County Roads, and mitigation measures proposed to address those impacts. The Board of Commissioners may determine, based upon circumstances unique to the application, that additional areas will be addressed by the study. In such cases, the applicant will be informed at the earliest practical stage of the application process.
 - a. The following areas shall be addressed in the study for large-scale operations:
 - i. Average amount of traffic per day;
 - ii. Road design standards;
 - iii. Impact of additional mining traffic; and,
 - iv. Any improvements that need to be made.
 - v. Any additional information required by the Pennington County Highway Department
 - b. At a minimum, each small-scale application shall be accompanied by the following impact data:
 - i. Roads;
 - ii. Proposed reclamation plan; and,
 - iii. Adjacent land use.
 - iv. Any additional information required by the Pennington County Highway Department
 - c. By written request, the Planning Director may require submission of other information necessary to determine the nature of the proposed hard rock mining operation and reclamation and effect on the surrounding area. This information may include, but is not limited to: applicable access easements or agreements.

G. *General Requirements for Mining Operations.*

3. *Hours of Operation.* The hours of hard rock mining operation may be restricted to address special circumstances or demonstrated problems, and noticed in writing, prior to the effected change.
4. *Dust Control.* The operator shall comply with the provisions of SDCL 34A-1. The

operator shall use industry Best Management Practices in an effort to control and minimize fugitive dust, including one of the following: landscaped earthen berms, paved entrance roadways, standard methods of water spray, dust covers on transfer points, and sweeping, if needed.

5. *Noise Control.* The operator shall comply with all applicable noise regulations and industry recommendations, provided such recommendations are allowed by Mine Safety and Health Administration. The Planning Department will address noise complaints and mitigation under Pennington County Ordinance 106.
6. *Lighting.* All lights shall use hoods and lenses that cast light downward.
7. *Vibration and Blasting.* The hard rock mining operation and activities shall comply with all local, state, and federal law, rule or regulation pertaining to blasting activities. Upon request by the Planning Director, the operator shall provide access to the blasting logs to the County.
 - a. Blasting may occur Monday through Friday from 7 a.m. to 5 p.m. Blasting is not allowed on Saturdays, Sundays, or Holidays as enumerated in SDCL 1-5-1.
 - b. Log Details. An accurate blasting log shall be prepared and maintained for each blast fired. Each blasting log shall include, but not be restricted to the following information:
 - i. Name of the blaster in charge of the blast.
 - ii. Blast location references (latitude/longitude).
 - iii. Date and time of blast.
 - iv. Weather conditions at time of blast.
 - v. Diagram of blast hole layout.
 - vi. Number of blast holes.
 - vii. Blast hole depth and diameter.
 - viii. Spacing and burden of blast holes.
 - ix. Maximum holes per delay.
 - x. Maximum pounds of explosives per delay.
 - xi. Depth and type of stemming used.
 - xii. Total pounds of explosives used, including primers and initiating cord.
 - xiii. Distance to nearest habitable structure not owned by the owner or operator.
 - c. Control of Adverse Effects. Blasting shall be conducted in a manner designed to prevent injury to persons or damage to property outside the permit area.
 - i. *Flyrock.* Flyrock traveling in the air or along the ground, as a result of the blasting activity, shall be contained within the permit area.
 - ii. *Air Blast.* Air Blast shall not exceed a maximum limit of 133 peak dB at the location of any dwelling or habitable structure outside the permit area. The blaster shall conduct monitoring of every blast to ensure compliance with the air blast limit. In lieu of performing monitoring, the calculated Scaled Distance must be 1,000 feet or greater. The Scaled Distance (for air blast) shall be calculated using

the following equation:

- a) $SDA = D / CW^{1/3}$. SDA = Scale Distance (Air blast).
 D = Distance from blast to nearest dwelling or habitable structure outside the permit area.
 CW = Charge Weight per delay.

- iii. *Ground Vibration*. Peak Velocity. To ensure dwellings and structures are not damaged from blasting or vibration, the blaster shall comply with maximum allowable peak velocity for ground vibration. The maximum ground vibration at the location of any dwelling or habitable structure outside the controlled blasting site area shall not exceed limits as set forth in Table 1.

Table 1. Maximum Allowable Peak Velocity for Ground Vibration.

| Distance (D) From The Blasting Site (feet) | Maximum Allowable Peak Particle Velocity (Vmax) For Ground Vibration (in/sec) | Scaled-Distance (Ds)^a Factor To Be Applied Without Seismic Monitoring (feet) |
|---------------------------------------------------|--------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| 0 to 300 | 1.25 | 50 |
| 301 to 5,000 | 1.00 | 55 |
| 5,001 and Beyond | 0.75 | 65 |

(a) $D_s = D / (\text{square root of } W)$; W = max weight in lbs. of explosives per delay.

- aa. How Measured. The blaster shall use the ground vibration limits specified in the above table to determine the maximum allowable ground vibration. Ground vibration shall be measured as the peak particle velocity. Particle velocity shall be recorded in three (3) mutual perpendicular directions.
- bb. Record. The blaster shall make and keep a seismograph record, including both particle velocity and vibration frequency levels for each blast.
- cc. *Monitoring*. Seismic monitoring shall be completed at the nearest dwelling or habitable structure located outside of the permit area. If unable to obtain permission to conduct monitoring from the property owner, the blaster may monitor at another location approximately the same distance or closer from the blast site.
 - i. In lieu of performing seismographic monitoring, the maximum pounds of explosive per 8 millisecond delay shall be calculated using Table 1 and the equation provided. The distance used for the

calculation shall be measured from the blast to the nearest dwelling or habitable structure located outside of the permit area.

- dd. *Exceptions.* The maximum ground vibrations and air blast standards shall not apply to property owned by the permittee.
- 8. *Spill Prevention.* The applicant shall comply with all the applicable federal and state requirements regarding chemical storage, handling and spill response. This includes, but is not limited to: the Mine Safety and Health Administration (MSHA), the Environmental Protection Agency (EPA), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) rules and regulations.
- 9. *Dumping Prohibited.* The owner and/or operator of a hard rock mining operation shall not place junk material within or outside of the permit limit, nor shall they allow junk material to accumulate because of dumping by others.
- 10. *Screening and Berms.* A screening plan shall be developed by the applicant appropriate to the site. Berms shall meet the following requirements:
 - a. Berms shall be constructed within 14 days of stripped overburden and topsoil becoming available from the quarry site or from suitable outside sources. Berms may be constructed in phases as material becomes available.
 - b. Only clean overburden from the permit limit or suitable outside sources shall be used.
 - c. Safety berms shall be half the height of the largest wheel of equipment used in the mining operation, but in no case less than the height required by the Mine Safety and Health Administration. However, where a berm is adjacent to a public road, the berm shall be at least 10 feet above the surface of the center of the road.
 - d. The outward-facing slopes of said berm shall not be steeper than 2 horizontal units to 1 vertical unit. The inner-facing slopes may be steeper, but must be stabilized and maintained to ensure continued stability.
 - e. Berms shall be constructed to prevent flooding, concentrated runoff, inadequate drainage or excessive erosion or sedimentation.
 - f. Berms shall be kept free of noxious weeds, trash and debris.
- 11. *Road and Approaches.* Roads to be used off site, including all points of ingress and egress (approaches) and all primary routes for transportation of material to state or federal highways, must be approved by the governing street authority.

H. *Additional Requirements for Hard Rock Mining Operations.*

- 3. *Buffer Zone(s) and Waivers.*
 - a. Buffer Zone Requirements – Shall apply to all hard rock mining operations including, but not limited to: stockpiling and the storage of waste materials, inventory, and equipment. These are minimum requirements and greater setbacks may be required by the Board of Commissioners.
 - i. These buffer zone requirements are not applicable to access roads, haul roads, utility rights-of-way, berms, and other methods of landscaping.
 - ii. The hard rock mining operation shall be located at least 200 feet

from all exterior lot lines.

iii. The hard rock mining operation shall be located at least 300 feet from any Residential Zoning District.

b. Buffer Zone Waivers – A Buffer Zone of less than 200 feet from any property line and 300 feet from any Residential Zoning District may be allowed upon a public hearing in front of the Board of Commissioners and approved only when the applicant demonstrates that the proposed buffer does not:

i. Injure or interfere with existing land uses and enjoyment of other property; and,

ii. Substantially diminish or impair property values within 500 feet of the proposed area of disturbance.

I. Roads

3. All Pennington County Roads that service the mining operation must approved by the Pennington County Highway Department.

J. Reviews, Renewals, Transfers and Enlargements.

3. *Annual Review*

a. The County Commission may, at its discretion, require of the operator a written annual report, on-site review, or attendance at a County Commission meeting, or all of the above, on each anniversary date of the approval of the conditional use permit. The annual report, on-site review, or attendance at a County Commission meeting, or all of the above, shall update the County Commission on the operator's compliance with the terms, requirements, and conditions stipulated in the approval of the conditional use permit.

4. *Duration and Renewal of Hard Rock Mining Permit.* Hard Rock Mining Permits shall be valid for ten (10) years, unless a lesser time is specified by the Board of Commissioners or the Permit is revoked in accordance with Section 321-K. Renewal of Hard Rock Mining Permits shall be issued as follows:

a. An application for Hard Rock Mining Permit renewal must be submitted at least 60 days prior to the expiration date of the current Hard Rock Mining Permit. The Renewal Application must state any requested or proposed change of operation from the current Hard Rock Mining Permit.

b. The owner/operator shall give Notice of Renewal in accordance with Section 321-E-1.

c. The Board of Commissioners shall renew a Hard Rock Mining Permit unless the owner or operator has failed to comply with the requirements of Section 321 or conditions of the current Hard Rock Mining Permit, or continued operation poses a threat to public health, safety, or general welfare. To ensure compliance, the Planning Department shall inspect the mining operation prior to renewal.

d. Hard Rock Mining Permit renewal may be conditioned upon the remedying of any unanticipated and negative environmental impact of the current mining operation.

e. Notice of Hearing of the Renewal Application shall be given in accordance with Section 321-E. If the application provides for a material alteration in

- the method of operations or reclamation previously approved, a new Hard Rock Mining Permit shall be required.
- f. Each renewal of a Hard Rock Mining Permit shall not exceed an additional five (5) years.
5. *Transfer of Permit.* Upon transfer of interest in a hard rock mining operation, the prior owner or operator may be released of responsibilities under the Hard Rock Mining Permit, only if:
- a. Written notice of the transfer is given to the Planning Department;
 - b. The operation is in compliance with the requirements of Section 321 and the conditions of operation under the current Hard Rock Mining Permit;
 - c. The new owner and/or operator:
 - i. Has completed a transfer application with SD DANR; and,
 - ii. Has a replacement surety with SD DANR.
 - d. The Board of Commissioners have received a Notice of Board action affirming the transfer from the Board of Minerals and Environment.
6. *Permit Amendments (per ARSD 74:29:03).* A Permit Amendment is required for an increase of more than 20 percent of contiguous affected land within the permit area or for a minor modification of the terms and conditions of the operating or reclamation plans. Minor modifications include:
- a. An increase in the mining capacity;
 - b. A change in the reclamation plan timetable; or,
 - c. Addition to accessory facilities of minor nature.
7. All other amendments are considered major and will require a new Hard Rock Mining Permit Application in accordance with Section 321.

K. *Complaints.*

The Planning Department may inspect a hard rock mining operation on a complaint basis or as directed by the Planning Commission or Board of Commissioners. Any complaint received and record(s) of inspection shall be maintained by the Planning Department. Complaints will be handled and considered as follows:

3. Upon receipt of a complaint, the Planning Department shall investigate the complaint and substantiate the facts and circumstances alleged. The SD DANR will also be notified of the complaint;
4. Any necessary corrective action as determined by the Planning Department shall be submitted to the owner/operator in writing;
5. The Planning Department will set a reasonable time for the mining operation to comply with and complete the required corrective action; and,
6. If the mining operation fails to perform required corrective action or fails to comply with Section 321, the Planning Director shall recommend a hearing pursuant to Section 321-K.

L. *Revocation of Hard Rock Mining Permit.*

The Planning Director shall schedule a hearing before the Board of Commissioners upon the occurrence of any of the following:

3. The owner/operator has failed to comply with the conditions of the current Hard Rock Mining Permit;
4. The owner/operator has failed to comply with the Operation Plan as detailed in the Hard Rock Mining Permit Application;
5. The hard rock mining operation is not in compliance with Section 321;
6. The owner/operator failed to perform and complete required corrective action as determined in Section 321-J; or,
7. The performance standards or a material change in circumstances renders the continued operation of the mine a threat to public health, safety, or general welfare.

The Board of Commissioners may revoke the Hard Rock Mining Permit or order remedial action to be taken by the owner/operator. Notice of Hearing shall comply with the requirements of Section 321-E.

M. *Failure to Commence Mining Operation.*

Failure of an owner or operator to take substantial steps to commence mining operation within ten (10) years of issuance of the initial Hard Rock Mining Permit, shall terminate the Hard Rock Mining Permit. A new Hard Rock Mining Permit Application shall be required for any future mining operation.

N. *Abandonment of Mining Operations.* If hard rock mining operations are abandoned, new hard rock mining operations shall not be permitted except upon a new Application and Hard Rock Mining Permit, as required in Section 321. Temporary cessation approved by the State of South Dakota does not constitute abandonment of mining operations.

O. *Limits of Operation.*

3. All hard rock mining operations shall be limited to, and conducted within, the permit limit as described in the Hard Rock Mining Application.
4. Mining activities active prior to the enactment of Section 321 are allowed as a legal nonconforming use when **all** of the following conditions are met:
 - a. Mining activities were actively pursued at the time Section 321 became effective;
 - b. Area to be mined was clearly intended to be mined, as measured by objective manifestations and not by subjective intent (objective manifestations include, but are not limited to, previously issued County Mining Permit, and geological and/or engineering studies); and,
 - c. Continued operations do not, and/or will not, have a substantially different and adverse impact on the neighborhood.
5. Mining activities that are a legal, nonconforming use do not require a permit under Section 321. However, a legal, nonconforming use may not be expanded beyond the boundaries of the parcel on which the use was initiated or expand beyond the limits of operation at the time of enactment of Section 321 without a Hard Rock Mining Permit.

6. All legal, nonconforming uses must be registered with the Pennington County Planning Department within 180 days of the effective date of Section 321.
 - a. Registration shall be through a standardized form created by the Planning Department that will require the following information:
 - i. Name and contact information of the property owner;
 - ii. Description of the operations, including site plan with disturbance/mining boundary;
 - iii. Legal description of the property subject to the nonconforming use; and
 - iv. Date nonconforming use was first established on the property and supporting documentation.
 - v. Further information may be required by the Planning Director.
 - b. Notification of Planning Director's decision.
 - i. Pennington County shall notify all property owners (including recorded Contract for Deed buyers) of land located within one-half (0.5) mile, inclusive of any right-of-way, of the outer boundaries of the property of the Planning Director's decision on the Registration.
 - ii. Pennington County shall also notify the Tribal Historical Preservation Officer (THPO) for each of the Tribes listed on the Black Hills National Forest Tribal/THPO current mailing list of the Planning Director's decision on the Registration.
 - c. Appeal of Planning Director's decision – Appeals must be made, in writing, within 14 days of the Planning Director's decision pursuant to SDCL § 11-2- 61.1.
7. In addition, mining activities conducted as a legal nonconforming use must comply with the General Requirements for Mining Operations set forth in Subsection G of Section 321, permit requirements set forth in Section 507 of this Zoning Ordinance, and submit a Reclamation Plan in accordance with Section 321(F)(2)(d).

P. *Enforcement.*

Any person who fails to comply with the requirements in Section 321, is in violation of the Pennington County Zoning Ordinance and subject to penalties set forth in Section 511 and Section 514 of this Ordinance. The following enforcement actions may be taken to bring the property into compliance with Section 321.

3. *Stop Work Order.* The Planning Director may issue a Stop Work Order under the following circumstances:
 - a. A site is being operated or maintained in a manner which violates Section 321;
 - b. A site is being operated or maintained in a manner contrary to the conditions of the Hard Rock Mining Permit;
 - c. Hard rock mining operations are occurring without a required permit under Section 321 or other local, state, or federal law; or,
 - d. A site is being operated or maintained in a manner which may endanger the health, safety, or general welfare of the public.

The Planning Director may consult with outside Public Safety Officials and Mining Professionals for information and recommendations. The Planning Director will notify SD DANR of the Stop Work Order.

A Stop Work Order shall be issued in writing and delivered, via certified mail or hand-delivered, to the person responsible for the site, or his or her employee or agent. All mining operations and other site development shall cease at the time the Planning Director delivers the Stop Work Order, except such work necessary to stabilize or secure the site as allowed or required by the Planning Director. Hard rock mining operations and site development shall resume only when the Stop Work Order is lifted by the Planning Director via a Start Work Order.

Any person who fails to comply with a Stop Work Order issued by the Planning Director, is in violation of the Pennington County Zoning Ordinance and subject to the penalties set forth in Section 514 of this Ordinance.

4. *Injunction.* In addition to all other remedies available to Pennington County to prevent, correct, or abate violations of Section 321, the County may seek injunctive relief pursuant to SDCL 21-8 against any property owner, operator, or other person in violation of Section 321, or against any owner or operator in violation of the conditions of a Mining Permit issued under Section 321. The injunctive relief may include reparative action to bring or return any affected property into a condition that does not constitute a nuisance, as that term is defined in Section 321.
5. *Nuisance.* Violations of Section 321 which endanger the comfort, repose, health, or safety of persons, or which render persons insecure in life or in the use of property, are hereby declared nuisances. A violation of Section 320 constituting a nuisance is subject to abatement under the provisions of SDCL 21-10, SDCL 7-8-33, and applicable Pennington County Ordinances.
6. *Inspection Warrant.* The Planning Director and/or any certified law enforcement officer in Pennington County may obtain an inspection warrant, as set forth in SDCL 34-43, to verify that the requirements of any Mining Permit issued under Section 320 are complied with and to investigate any suspected violations of Section 321.
7. *Conflicting Ordinances.* If Section 321, or any part or portion thereof, is in conflict with any other Pennington County Ordinance, Section 321 shall be deemed to supersede any conflicting Ordinance in matters relating to storm water and erosion control, if more stringent.

Q. Fees.

Small-scale hard rock mining application - \$5,000
Large-scale hard rock mining application - \$10,000
Small-scale hard rock mining permit amendment - \$1,000
Large-scale hard rock mining permit amendment - \$2,000

RECOMMENDATION: Staff recommends to continue Ordinance Amendment / OA 22-01 to the May 23, 2022 Planning Commission meeting for any additional comments or changes.

Sack Cody

From: Molitor Brittney
Sent: Monday, March 21, 2022 5:24 PM
To: Sack Cody
Subject: Fwd: Hard Rock Mining Ordinance

Brittney

Begin forwarded message:

From: Laural Bidwell <labidwell@aol.com>
Date: March 21, 2022 at 2:09:19 PM MDT
To: Molitor Brittney <brittneym@pennco.org>
Subject: **Hard Rock Mining Ordinance**
Reply-To: Laural Bidwell <labidwell@aol.com>

CAUTION: This email is from an outside source. Use caution before opening attachments, clicking links or providing confidential information.

Greetings,

I am writing to ask that Pennington County review and change the Hard Rock Mining Ordinance, particularly in the arena related to our water supply. We are currently in a drought that doesn't appear to have an end as yet. We are experiencing phenomenal residential growth in our area. We need to protect our water and mining operations are upstream from Rapid City. There have been mining permits that are far too close to Pactola Reservoir.

There has been talk of bringing water to our area from the Missouri River - one of the most polluted rivers in the country. I suggest we start to stringently protect the water that we already have by carefully assessing the environmental impacts of all aspects of Hard Rock Mining - including waste rock and settling ponds.

Thank you for your time,
Laural

Laural A Bidwell
605/891-9037
809 Clark St
Rapid City, SD 57701

Sack Cody

From: Molitor Brittney
Sent: Thursday, March 17, 2022 1:39 PM
To: Sack Cody
Subject: FW: Hard Rock Mining Operations Ordinance (HRO)

Brittney Molitor, AICP, CFM, MAS

Planning Director
Planning and Zoning Department
130 Kansas City St., Suite 200
Rapid City, SD 57701
Phone: (605) 394-2186 ext. 1408
Fax: (605) 394-6016



From: Thomas Thorson <tdthorson60@gmail.com>
Sent: Monday, March 14, 2022 4:42 PM
To: Molitor Brittney <brittneym@pennco.org>
Subject: Hard Rock Mining Operations Ordinance (HRO)

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Dear Brittney M, representative of Pennington County,

I'm aware that most corporations are law abiding entities but that if the law doesn't exist they aren't going to voluntarily do anything that costs them resources. That's why I'm writing you regarding the **Hard Rock Mining Operations Ordinance (HRO)** which I understand is in the review process. I've lived in the black Hills nearly my entire life and and watched mining companies shuffle clean up efforts and budget as much as possible back onto the state or the county. It's beyond me why the department of natural resources is so willing to take it on over and over when it is my and your tax money that pays, essentially subsidizes the profit making of these mining operations, most of which take all that profit out of the state. I imagine you are aware of this frustrating history so will save you the reading of it again, here.

I would just like to urge that in the review of the ordinance some important safeguards are in place. Soil and plant and water quality reclamation course of course be a given and yet seems often enough to be inadequate. I believe it is called a bond that a mining company puts forward. The issue with that process is that the mining company can juggle its organization to look independent at just the right time and declare bankruptcy to get out of paying for the habitat and water resource destruction. I know you know what I'm talking about. These safeguards need without question to be in place impervious to any special lobbying or back door deals with officials.

As you also know, I'm sure, South Dakota has never denied a mining permit Pennington County is vulnerable to the high risk of great cost not only for land damage but irreparable water quality. At this time when we are working on

expensively piping water from the Missouri River to satisfy water wants the risk of ruining the water available right here in the county should not be a risk.

You are probably aware of the extremely increased flow of tourism since Covid. If you recreate at all in the National Forest or have talked with anyone who does you know that Custer State Park, Black Elk Wilderness, and Wind Cave national Park do not contain or satisfy the needs of people seeking solace in nature and the beautiful Black Hills, the shining gem of the state of South Dakota. People are out hiking, picnicking, hunting, taking Sunday drives, climbing, more than ever before. Not just locals who go home at night to their own beds but people coming from the entire country who pay for lodging and meals and bring a great deal of revenue to every county that contains any part of the Black Hills. Mining stands in direct conflict with all of that. It stands in conflict with drinking water for all locals. Including and maybe especially anybody who uses a well. I hope the county refers to if not defers to a hydrologist to remind them that water circulates deeply through the rock and resurfaces elsewhere and from any mining area carries with it any toxins used for the mining process or toxins dislodged by just the explosive efforts of searching for minerals and substances to mine.

I'm aware that mining companies often just go through the motions to look for, say, gold, to satisfy their shareholders, whether they expect to find gold or not. But that process of blasting can and does screw up how water circulates and percolates through the rock. People's well stand to be interrupted if not polluted just by the exploration process. So entities who own land with the intention of mining it or exploring to mine it can and do affect what happens off the limits of their property boundaries. So that needs to be addressed in the ordinance, to hold those entities as responsible as any coming in without specific top surface property rights.

It would serve us all well to up front create zoning where mining activity can and cannot take place depending on where these riots exist, not just to a degree but at all. The county stands to lose a lot of money. Residence of the county stand to lose a lot of money.

We all stand to lose quality of life for which we have chosen to live here. Profit from other kinds of businesses that serve the people who don't live here but come here during troubled times for restorative purposes. We owe it to ourselves as well as them to take care of this fragile place we call the Black Hills.

Thank you,
Tom Thorson

Sack Cody

From: Molitor Brittney
Sent: Thursday, March 17, 2022 1:39 PM
To: Sack Cody
Subject: FW: draft Hard Rock Mining Ordinance

Brittney Molitor, AICP, CFM, MAS
Planning Director
Planning and Zoning Department
130 Kansas City St., Suite 200
Rapid City, SD 57701
Phone: (605) 394-2186 ext. 1408
Fax: (605) 394-6016



From: Miana Fay <miana.mni5@gmail.com>
Sent: Thursday, March 17, 2022 11:51 AM
To: plz <plz@pennco.org>
Subject: draft Hard Rock Mining Ordinance

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Hello,

I am inquiring about the draft Hard Rock Mining Ordinance, because:

1. I am a resident of Pennington County and I am in support of the updated Hard Rock Mining Operations Ordinance. I want clean water for not only our community but for future generations yet to come.
2. It's important to have better protection in section H for historical and cultural resources, because it is vitally important to maintain a healthy connection to our past, so that the Pennington County community can have a better present AND future.

Thank you,

Miana

Sack Cody

From: Molitor Brittney
Sent: Friday, March 25, 2022 8:20 AM
To: Sack Cody
Subject: Fwd: Comment

Brittney

Begin forwarded message:

From: Crystal Willcuts <crystalwillcuts@yahoo.com>
Date: March 25, 2022 at 8:19:34 AM MDT
To: Molitor Brittney <brittneym@pennco.org>
Subject: Comment

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I am a Pennington County resident and I stand against the Hard Rock Mining Ordinance and the Rare Earth Processing Plant. Please protect the Black Hills.

[Sent from Yahoo Mail for iPad](#)

Sack Cody

From: Molitor Brittney
Sent: Sunday, March 27, 2022 7:28 PM
To: Sack Cody; Ervin Jeri
Subject: Fwd: Hard Rock Mining Ordinance Comments

Brittney

Begin forwarded message:

From: "Robin EH. Bagley" <robinehbagley@gmail.com>
Date: March 27, 2022 at 6:25:06 PM MDT
To: Molitor Brittney <brittneym@pennco.org>
Subject: Hard Rock Mining Ordinance Comments

CAUTION: This email is from an outside source. Use caution before opening attachments, clicking links or providing confidential information.

Dear Pennington County Commission,

Thank you for the opportunity to submit comments on the county's Hard Rock Mining Operations Ordinance. While I live in Custer County, I do recreate in Pennington County and firmly believe that what happens in one area of the Black Hills impacts all other areas. I am very grateful that your county has this ordinance, but I do think there are a couple of ways the ordinance can be improved.

I strongly recommend that you add waste rock disposal and settling ponds to the definition of operations so that you have language allowing you to regulate them. Both waste rock disposal and settling ponds are part of the mining process and can impact both surface and groundwater. Runoff from poorly managed waste rock disposal, which often includes a body of water, will have downstream impacts, including Rapid City.

Furthermore, since mining operations are often water-heavy, a water reclamation plan should be part of a mining company's operation plan, but right now it's not included. Water is a scarce resource and must be reclaimed properly.

Thank you for your time and consideration.

Sincerely,
Robin EH Bagley
25267 US Highway 385
Custer, SD 57730

Sack Cody

From: Molitor Brittney
Sent: Monday, March 28, 2022 8:03 AM
To: Ervin Jeri; Sack Cody
Subject: FW: FOR THIS MORNING'S PLANNING COMMISSION MEETING

Brittney Molitor, AICP, CFM, MAS

Planning Director

Planning and Zoning Department
130 Kansas City St., Suite 200
Rapid City, SD 57701
Phone: (605) 394-2186 ext. 1408
Fax: (605) 394-6016



From: Liliias Jarding <liliiasjarding@gmail.com>
Sent: Monday, March 28, 2022 7:39 AM
To: Molitor Brittney <brittneym@pennco.org>
Subject: FOR THIS MORNING'S PLANNING COMMISSION MEETING

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Dear Ms. Molitor --

Please pass this information to the members of the Planning Commission this morning. I am ill and unable to attend today's meeting.

I wanted to be sure the Commission knows the importance of having a Pennington County Hard Rock Mining Ordinance at this time. I looked in the Bureau of Land Management's database last night. There are currently 30,233 active mining claims by two companies in Pennington County. There may be others from other companies, but that is the information I was able to gather.

I am attaching a map. The left map shows the location of all active mining claims in the Black Hills as of the end of January (148,000 of them), and you can see that the claims in Pennington County are quite extensive. This map may not be complete, as the Bureau of Land Management is about six months behind in recording claims.

Although I have now missed two hearings on this ordinance -- and attended once when it wasn't considered -- I am quite willing to talk to any member of the Commission about this matter. My phone number is 605-787-2872, and my email address is on this email.

Thank you for your efforts on this important issue.

Liliias Jarding, Ph.D.

Sack Cody

From: Molitor Brittney
Sent: Monday, March 28, 2022 10:45 AM
To: Sack Cody; Ervin Jeri
Subject: Fwd: Draft Ordinance Section 321 - Hard Rock Mining Operations

Brittney

Begin forwarded message:

From: Cherlyn Leach <cherlynleach@yahoo.com>
Date: March 25, 2022 at 3:22:22 PM MDT
To: Molitor Brittney <brittneym@pennco.org>
Subject: Draft Ordinance Section 321 - Hard Rock Mining Operations

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Pennington County Planning Commissioners
130 Kansas Street
Rapid City, SD 57701

Re: Draft Ordinance Section 321 - Hard Rock Mining Operations

My name is Cherlyn Leach-Valades and I live in Spearfish. I am originally from Custer and Hot Springs. I have called the Black Hills my home my entire life. I am sure each board member loves the Hills with its beauty and history as much as I do.

I am gratified that the Commissioners are including hard rock mining into the county ordinances. This ordinance is extremely important as it stands between safe water/environment and mining operations that threaten to destroy our environment.

Hard rock mining uses several toxic chemicals including cyanide. The Northern Hills already has a Superfund site: Gilt Edge Mine just south of Deadwood. Our state, people, environment and water sources cannot afford another disastrous site.

I respectfully submit changes that could improve the ordinance. As written, property owners living within 1/2 mile of a site would be given notice of mining operations. This should be increased to at least one mile. The owners will be subjected to noise, traffic and dirt in which they have no control. This area needs to be expanded.

Tribal Historic Preservation Officers should not be given notice but be a part of the process. This land originally belonged to the Indigenous people and that should to be respected. The officers can provided valuable input.

Section A permits mining anywhere a person has a patented mining claim. This gives special treatment to hard rock mining companies. This does not protect the residents near the mining claims. Zoning districts need to be protected from mining.

Water is more valuable than gold! These mining corporations will exploit our land and water and leave the residents to clean up the mess. The beauty, agriculture and history of our Black Hills needs to be protected over mining. I'm grateful the commissioners are giving serious consideration to this ordinance.

Thank you for your time and consideration.

Cherlyn Leach Valades
1905 Windmill Drive
Spearfish, SD 57783

Sack Cody

From: Molitor Brittney
Sent: Monday, March 28, 2022 5:01 PM
To: Sack Cody; Ervin Jeri
Subject: Fwd: Hardrock Mining Ordinance comment

Brittney

Begin forwarded message:

From: Gena Parkhurst <gmp66@hotmail.com>
Date: March 28, 2022 at 4:16:32 PM MDT
To: Molitor Brittney <brittneym@pennco.org>
Subject: Hardrock Mining Ordinance comment

CAUTION: This email is from an outside source. Use caution before opening attachments, clicking links or providing confidential information.

Dear Brittney,

Thank you for the opportunity to comment on the Hardrock Mining Ordinance. I am in support of this ordinance.

As I mentioned in person at the February 9, 2022, meeting, I was exposed to toxic water while in the womb, and this resulted in boney birth defects that will impact me for the rest of my life. This life experience has generated a strong interest in access to clean water.

Regarding Section E. 3.e. - it should clearly state that a Water Reclamation Plan must be part of the Reclamation Plan. It is not currently included.

Thanks again for the opportunity to comment!

Gena Parkhurst
PO Box 1914
Rapid City, SD 57709
605-391-1250
gmp66@hotmail.com

Sack Cody

From: Molitor Brittney
Sent: Tuesday, March 29, 2022 9:57 AM
To: Sack Cody; Ervin Jeri
Subject: FW: Additional Comments on the draft Hardrock Mining Ordinance - Section 321
Attachments: 220328 Hardrock Mining Ordinance - Suggested Changes to section H-2.docx

Brittney Molitor, AICP, CFM, MAS

Planning Director

Planning and Zoning Department
130 Kansas City St., Suite 200
Rapid City, SD 57701
Phone: (605) 394-2186 ext. 1408
Fax: (605) 394-6016



From: Rick bell <etyview@yahoo.com>
Sent: Monday, March 28, 2022 3:16 PM
To: plz <plz@pennco.org>
Subject: Additional Comments on the draft Hardrock Mining Ordinance - Section 321

CAUTION: This email is from an outside source. Use caution before opening attachments, clicking links or providing confidential information.

Dear Sirs,

I attended this morning's meeting of the Planning Commission and made some verbal comments on the draft Hardrock Mining Ordinance - Section 321. I suggested changes to Section H.2. "Groundwater Monitoring" that appeared on pages 13 & 14 in the draft version that I had. The Chair asked me to submit these comments in writing, which I'm doing by way of the edited Word.doc attached to this email.

(Note: The distance away from the mining operation of a "nearby well owner" is not defined. Maybe that's good because it depends on the local hydrogeology and not defining this leaves it up to the discretion of experts from the County. However, if you believe that a number is required here, then I suggest using 3,000 feet.)

Please let me know if you have any questions about these suggested changes.

Thank-you.

Richard A. Bell, PE
1206 Clark St.