

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: Brittney Molitor

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. 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 Patented Mining Claim. If the subject property does not have a Patented Mining Claim; the mining of minerals is allowed **only** in the following Zoning Districts with an approved Hard Rock Mining Permit:

- AG Agriculture District (required minimum lot size of 10 acres);
- HI Heavy Industrial District;
- 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. The following provisions apply to the construction and interpretation of this Section.

1. *Plain and Ordinary Language.* The words used in this Section must be given their plain and ordinary meaning.
2. *Application of Definitions.* Whenever the meaning of a word or phrase is defined in this Section, then that definition is applicable to the same word or phrase wherever it occurs except where a contrary intention plainly appears.
3. *Conflict Between Definitions.* If a word is defined in both this Ordinance and PCZO § 103 and a conflict between the definitions exists, then the definition from this Section controls—not the definition incorporated by reference.
4. As used in this Section, the following definitions apply:
 - a. **ABANDONED PROPERTY.** Any deteriorated, wrecked, dismantled or partially dismantled; inoperable and/or abandoned property in unusable condition having no value other than nominal scrap or junk value, which has been left unprotected outside of a permanent structure from the elements. Without being so restricted, this shall include deteriorated, wrecked, dismantled, or partially dismantled, inoperable, abandoned, and/or unlicensed motor vehicles, abandoned mobile homes, trailers, boats, machinery, refrigerators, washing machines and other appliances, plumbing fixtures, furniture, building materials and any other similar articles in such condition. This shall not include any item which may be reasonably recognized as an antique by dealers in those types of items (as defined in Pennington County Ordinance 106).
 - b. **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.
 - c. **AIR BLAST.** A jet of air produced mechanically.
 - d. **BASELINE TESTING.** Testing prior to any activity for which a potential impact can be measured.

- e. **BERM.** An earthen mound designed to provide visual interest on a site, screen undesirable views, reduce noise, or fulfill other such purposes. See also definition of Landscape Berm.
- f. **COMMERCIAL SALES.** Operation(s) done or acting with sole or chief emphasis on salability, profit, or success.
- g. **DELAY (blasting).** Interval of time between blasts or explosive charges.
- h. **EXCAVATION.** The process of moving earth, rock or other materials with tools, machinery or explosives. Excavation activities include earthwork performed for purpose of removal of aggregate deposits, but excludes exploratory activities.
- i. **FLYROCK.** Fragments of rock propelled from the blast area by the force of an explosion.
- j. **HABITABLE.** Condition of premises that permits inhabitant to live free of serious defects to health and safety.
- k. **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.
- l. **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.
- m. **JUNK MATERIAL.** Any scrap, waste, worn out, discarded material or debris collected or stored for destruction, disposal or some other use.
- n. **LANDSCAPE BERM.** A level space, shelf, or raised barrier separating two areas serving as a barrier.
- o. **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.

- p. 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;
- q. NEIGHBORHOOD. A geographically localized community within a larger city, town, suburb or rural area.
- r. OPERATIONAL MEASURES. Techniques utilized during day-to-day operation to prevent or mitigate potential impacts.
- s. 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.
- t. 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.
- u. 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.
- v. PERMIT LIMIT. The area of mining operation as legally described on the Pennington County hard rock mining application.
- w. PERSONAL USE. Extraction and use by property owner for non-commercial purposes.
- x. 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.
- y. START WORK ORDER. An administrative order that allows a person to resume an activity that was the subject of a prior stop work order.
- z. 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.
- aa. SUBSTANTIAL STEP. Completion of 30 percent of a permitted use measured as a percentage of estimated total area of disturbance.

- bb. TAILINGS. The discharged valueless product of a beneficiation process.
- E. Application. Application must be made on a form provided by the Planning Department.
- 1. An incomplete application will result in denial of the Permit.
 - 2. All applications for a proposed hard rock mining operation shall include the following contact information:
 - a. The name, mailing address, e-mail address, and telephone number of the applicant.
 - b. The name, mailing address, e-mail address, and telephone number of the property owner and operator, if different from the applicant.
 - c. The name, mailing address, e-mail address, and telephone number of the owner of the substance to be mined.
 - d. If the applicant is a corporation; partnership; limited liability company; or limited liability partnership, the exact name of the business entity; the date of incorporation, registration, or organization; the state and/or nation in which the entity is incorporated, as well as the nations and states in which the entity is registered or organized; and the name, mailing address, email address and telephone number of the designated contact person for the applicant.
 - e. The name, mailing address, e-mail address, and telephone number of an individual who will be responsible for the daily operation and maintenance of the site and who will serve as the primary contact person for the County.
 - 3. The following documents must be submitted with the Hard Rock Mining Permit Application:
 - 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. Site Plan. A site plan, drawn at a scale that is clearly legible and includes the following:
 - i. North point, scale, and date.
 - ii. Property boundaries of land that is the subject of the application.
 - iii. Location and boundaries of the permit limit, including extent of the area to be excavated, related storage, stockpiling and processing areas, paving, and areas where mining by-products will be deposited.
 - iv. A contour basis for the mining operation.
 - v. The depth to which and the direction in which the mining operations are proposed to be conducted.

- vi. Location of all access points, roads, rights-of-way, and utility easements on or abutting the property.
 - vii. Location of all structures within 500 feet of the permit limit.
 - viii. Location and direction of flow of surface water on or within 300 feet of the permit limit.
 - ix. Benchmarks, if needed, for the contour maps.
 - x. A topographic map, with a contour interval of not more than 10 feet, of the proposed permit limit and the area within 300 feet of the permit limit. The site plan shall specify the reference elevation, such as mean sea level, an on-site benchmark or other commonly accepted references.
 - xi. Areas to be used for drainage and erosion control management or sedimentation ponds, if any.
 - xii. Location of proposed parking areas, signs, and fencing, and a description of proposed fencing.
 - xiii. Proposed berm locations.
 - xiv. Special Flood Hazard Area.
 - xv. Proposed and existing signs and locations.
 - xvi. All existing and proposed structures, dimensions, design specifications, and location of all facilities (i.e., pump stations, gas tanks, and the like).
 - xvii. All material storage areas.
 - xviii. All waste disposal sites.
 - xviii. The Planning Director may require submission of additional information as part of the site plan.
- d. Operation Plan. An operation plan that includes a description of the proposed hard rock mining operation and methods and procedures to be used in the mining of the site. The operation plan shall also include the following:
- i. The approximate date of the commencement of the operation.
 - ii. Type of mining, processing, and transportation equipment to be used.
 - iii. The proposed disposition of mine spoil and tailings.
 - iv. Estimated type and amount of minerals to be extracted.
 - v. The size of the area to be worked at any one time.
 - vi. Estimated number of truckloads per day, and estimated weight of material per truckload.
 - vii. Operational measures to comply with noise, dust, air contaminants, and vibrations laws, ordinances.
 - viii. Operational measures to prevent groundwater and surface water degradation (must meet all applicable Federal and State regulations).
 - ix. Measured or estimated depth to groundwater. If excavations below the water table are to occur, operational measures to prevent entry of contaminants into the groundwater.

- x. Operational measures to stabilize topsoil and other material stockpiles.
 - xi. Operational measures to ensure no wetland is disturbed or written approval from the U.S. Army Corps of Engineers or the South Dakota Department of Agriculture and Natural Resources (SD DANR) for disturbance of wetland.
- e. Reclamation Plan. The reclamation plan shall demonstrate that the site will be reclaimed to restore natural features or for use as an agricultural site that has soils that are comparable to pre-mining soils and/or neighboring fields and adequate drainage to support plant and animal life. The hard rock mining operation shall comply with all applicable local, state, and federal law, rule or regulation regulating mine reclamation activities.
- f. Socioeconomic Impact Study. As required in SDCL 45-6B-33.1.
4. *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 (ARSD) 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.
5. *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.
 - 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.
- 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.

F. Public Notice Requirements.

1. *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.
 - a. 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 property that is the subject of the application.
 - b. The applicant 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. The Planning Department shall provide the applicant with the “Application and Notice of Hearing” letters for this purpose, and the applicant shall send notices to all property owners identified on a list provided by the Planning Department, based upon Department of Equalization records. The applicant shall send the notices by certified mail with return receipt requested at least thirty (30) days prior to the public hearing on the application before the Planning Commission.
2. *Planning Commission Hearing.* The Planning Commission shall hold a public hearing on the application.
 - a. *Notice.* Notice of time and place of the hearing shall be published in the three legally designated newspapers of general circulation in the county once a week for two successive weeks prior to the hearing with one of those published at least ten (10) days prior to the hearing.
 - b. *Decision.* The Planning Commission shall recommend approval with conditions and safeguards as are appropriate, continue the application to obtain further information, or recommend denial or denial without prejudice of the application, if not consistent with the purpose of Section 321. The decision of the Planning Commission shall be a recommendation to the Board of Commissioners.
3. *Board of Commissioners Hearing.* The Board of Commissioner shall hold a public hearing on the application.

- a. *Notice.* Notice of time and place of the hearing shall be published in the three legally designated newspapers of general circulation in the county once a week for two successive weeks prior to the hearing with one of those published at least ten (10) days prior to the hearing.
 - b. *Decision.* Upon a recommendation from the Planning Commission, the Planning Director must schedule a hearing before the Board. In making its decision, the Board must
 - i. give the Planning Commission's recommendation due regard; and
 - ii. approve, continue, or deny.
- G. 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:
1. The effect of the proposed operation upon existing neighboring land uses.
 2. The effect of the proposed operation upon private and public water quality and quantity.
 3. The effect of the proposed operation on public health, safety, and general welfare.
 4. The effect and location of the proposed operation in Special Flood Hazard Areas and/or drainage paths.
 5. Staff recommendations regarding permit conditions to mitigate potential negative impact of the proposed operation.
- H. General Requirements for Hard Rock Mining Operations.
1. *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.
 2. *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.
 3. *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.
 4. *Lighting.* All lights shall use hoods and lenses that cast light downward.
 5. *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.

- a) **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.
 - b) **Record.** The blaster shall make and keep a seismograph record, including both particle velocity and vibration frequency levels for each blast.
 - c) **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.
 - d) **Exceptions.** The maximum ground vibrations and air blast standards shall not apply to property owned by the permittee.
1. **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.

2. *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.
3. *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.
4. *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.

I. Additional Requirements for Hard Rock Mining Operations.

1. *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 300 feet of the proposed area of disturbance.

- J. Roads. All Pennington County Roads that service the mining operation must meet at a minimum Ordinance 14 Road Standards.

- K. Reviews, Renewals, Transfers and Enlargements.
 - 1. *Annual Review.* 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.

 - 2. *Duration and Renewal of Hard Rock Mining Permit.* Hard Rock Mining Permits shall be valid for five (5) 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.
 3. *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.
 4. *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.
 5. All other amendments are considered major and will require a new Hard Rock Mining Permit Application in accordance with Section 321.
- L. *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:
1. 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;
 2. Any necessary corrective action as determined by the Planning Department shall be submitted to the owner/operator in writing;
 3. The Planning Department will set a reasonable time for the mining operation to comply with and complete the required corrective action; and,
 4. 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-M.

- M. 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:
1. The owner/operator has failed to comply with the conditions of the current Hard Rock Mining Permit;
 2. The owner/operator has failed to comply with the Operation Plan as detailed in the Hard Rock Mining Permit Application;
 3. The hard rock mining operation is not in compliance with Section 321;
 4. The owner/operator failed to perform and complete required corrective action as determined in Section 321-L; or,
 5. 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-F.

- N. Failure to Commence Mining Operation. Failure of an owner or operator to take substantial steps to commence mining operation within five (5) 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.
- O. 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.
- P. Limits of Operation.
1. All hard rock mining operations shall be limited to, and conducted within, the permit limit as described in the Hard Rock Mining Application.
 2. 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.
 3. 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 at the time of enactment of Section 321 without a Hard Rock Mining Permit.

4. 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.
 5. In addition, mining activities conducted as a legal nonconforming use must comply with the General Requirements for Mining Operations set forth in Subsection H of Section 321, permit requirements set forth in Section 507 of this Zoning Ordinance, and submit a Reclamation Plan in accordance with Section 321(E)(3)(e).
- Q. 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.
1. *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.

- 2. *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.
 - 3. *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.
 - 4. *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.
- R. *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.

Agenda Item #3
Pennington County
February 9, 2022

S. 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 approval of OA 22-01.

418 North 44th Street
Rapid City, SD 57702
605-787-2872
liliasjarding@gmail.com
February 5, 2022

Planning Commission Members
Pennington County
130 Kansas City Street
Rapid City, SD 57701
Emailed to brittneym@pennco.org

RE: Comments on Draft Hard Rock Mining Ordinance

Dear Planning Commission Members:

This letter includes my comments on Section 321, the Hard Rock Mining Operation Ordinance that is the subject of Wednesday night's meeting. I have a deep interest in this Ordinance, as well as some expertise to offer, but I teach a class on Wednesday nights this semester, and my students come first.

So I will do the best I can to communicate my concerns by letter. I am a semi-retired college professor who has taught at South Dakota State University, Oglala Lakota College, and other institutions in our region. I first moved to Rapid City in 1979. My Ph.D. is in Political Science with a focus on Environmental Policy. I have researched, written about, been published about, and spoken about mining in a variety of professional settings over most of the last 40 years.

My current focus is on protecting our water from gold and uranium companies that want to explore and/or mine in the Black Hills. Most specifically, I am concerned about gold companies that are exploring in the upper Rapid Creek watershed, most of which is in Pennington County. Rapid Creek and its connected groundwater supply all of the water for Rapid City, Ellsworth Air Force Base, and communities downstream. Without clean and plentiful water and beautiful scenery, our agricultural, tourism, and recreation economy will be threatened.

My specific comments on this draft Ordinance are:

1. This draft Ordinance has generally improved since its first version. It is clearer and more complete. Thank you for your work.
2. One addition since the last draft is a real problem, however. This is the sentence in Section A that says "The mining of minerals is allowed in any Zoning District provided that it is a Patented Mining Claim." This sentence is a gift to one gold company that wants to mine near Rapid Creek and Rochford and would exempt them from County regulation. A general Ordinance should not favor one company over all other interests and uses. If a company wants to do hard rock mining in Pennington County, they should submit an application and be subject to all the sections of


this ordinance, just like everyone else. This is bad policy. This sentence must be removed from the final version of the Ordinance. This is the strongest of my recommendations.

3. Section D.4.l – Definition of Hard Rock Mining Operation -- Add waste rock disposal and settling ponds to this definition. Mining companies are known to skirt regulations by putting their waste rock on a different parcel of land than their mine, thus ducking definitions like this draft definition. Also, settling ponds are a major risk in uranium operations. Both of these things should be part of the final version of the definition.
4. Section E.3.e – The Reclamation Plan should explicitly state that a Water Reclamation Plan must be part of the Reclamation Plan. This sub-section focuses on land reclamation.
5. Section F.1.A – Property owners within one mile should be notified of the mining application. As you know, many dwellings are quite remote in the upper Rapid Creek watershed. The sounds, lights, and traffic associated with mining can disrupt residents at a distance.
6. Sections F.1.b and F.4.b.ii both refer to Tribal “Historical” Preservation Officers (THPOs). The correct term is “Historic.” I strongly suggest that the County maintain its own list of tribal officials, as the Forest Service’s list was 4 years behind the times, when I last saw it. This has often insured that the correct tribal officials do not get notice of relevant events.
7. The requirement of a simple notice to THPOs does not ensure that relevant information is exchanged. I would suggest stronger language about involving THPOs in a specific part of the required process. This might be a requirement under section E.3 that any input from THPOs be part of the information that is required in the application process. Or an alternative is that this could be placed in Section G.
8. Section H should include protection for historical and cultural resources.

As the South Dakota state government has never denied a mining permit, according to a then-Department of Environment and Natural Resources staff person, we need this County Ordinance to protect us from operations that threaten the public health, safety, and general welfare. That is the goal of this Ordinance, and I am glad that the Planning Department and the Planning Commission have put a lot of time and effort into crafting a good Ordinance. My suggested amendments will improve the Ordinance’s ability to meet its goal.

If you have any questions, please let me know.

Sincerely,


Lillas Jarding

2/8/22

Pennington County Planning Commission
130 Kansas City St
Rapid City, SD 57701

RE: draft Zoning Ordinance Section 321 - Hard Rock Mining Operations.

Dear Pennington County Planning Commissioners;

Thank you for this opportunity to provide my comments. My name is Carla Marshall. I am Lakota and a resident of Rapid City, SD in Our Sacred Black Hills, Treaty Territory of the Octi Sakowan of the Great Plains.

It is exciting that you are including hard rock mining into the county ordinances and taking precautions. Pennington County can be on the forefront and a trailblazer to strengthen local mining ordinances, and I believe would be the first county in the State to do so. We must care for Water in a respectful manner and hold it dear for the next 7th generations to come. So please include language that will protect Black Hills Waters as a whole - because we can not control where the waters flow. And these natural waters flow all the way to the Missouri River.

Regarding Hard Rock Mining: It is estimated that large-scale gold mines (a hard rock mineral) can use up to 26 million gallons of water each day. 36,000 lbs of contaminated waste is generated for just one gold wedding ring. Hard Rock mining damages the land and using a miasma of toxic chemicals, such as cyanide, which cause health issue in our water, air and soil used for livestock, humans, and wildlife.

Mining is the nation's largest source of toxic pollution. We do not need to look far to see those toxic waste water ponds at the abandon Gilt Edge gold mine, in Lawrence County, who used cyanide in their heyday, and what is now a Superfund Site. And, let us not forget Whitewood Creek was a Superfund site for close to 20 years after Homestead Gold mine polluted it. Which, in my opinion gave South Dakota a black-eye in the environmental protections arena (which is embarrassing).

South Dakota, and Pennington County in particular, prides itself on the beauty of our area for outdoor recreation that brings in close to a billion dollar revenue for the state VS the \$24 million that Wharf, the only large-scale gold mine operating in the Northern Black Hills contributes.

Strengthen the ordinance with language that will not allow any legal loopholes; such as using MAY where WILL should be; EI: under A - Applicability. *A Storm Water Permit ~~may~~ (WILL) be required under Section 507 for hard rock mining operations. Or; Hard Rock Mining operations*

WILL not be allowed to operate without a Patented Mining Claim. Remove those other options; if they do not have a federalized recognized claim they can not mine in any zone in the county.

The Ordinance should state there is substantial consultation with Tribal Historic Preservation Officers from all the Indigenous nations who view this area being a sacred site. This list holds over 16 tribal nations, and most all of the tribal nations have had their traditional lands and water destroyed by past mining operations since the 1872 General Mining Act, which has left a legacy of water pollution. The Gos Ventre and Assionboine nations of the Fort Belknap Indian Reservation in Montana who were (and still are) deeply effected by the Pegasus Gold Corp., a Canadian company that owned that mine and several others in the state, went bankrupt and folded. There are still mining waste ponds there - and like us; Gilt Edge.

So, please create this ordinance legally strong to protect this beautiful area and water and keep in mind the following:

- The negative environmental and financial impacts of large-scale hard rock mining in the County would outweigh the positive impacts. Water is more valuable than gold in our semi-arid area.
- The Ordinance should clearly state that the County can deny a mining permit application, especially is that mining company, and/or its subsidiaries, who may have or had a mining operation that had environmental violations in the past, regardless of where these violation occurred.
- The “Hard Rock Mining Ordinance” should favor recreation, agriculture, cultural/historical sites, and tourism over mining.

In closing; the HeSapa (Black Hills) are very sacred for Lakota people. They tell of our creation and hold stories of traditional teachings and historical events. The HeSapa also holds spaces for our spiritual ceremonies, and it provides us with our natural medicines and wildlife; which still hold true today. Since time immemorial, these lands have been our Churches, our Temples, and together, as a whole, are known as Wamaka Ognake Icante - “The Heart of Everything That Is.” The HeSapa holds eons of memory in our DNA and Water is our main entity – Mni Wiconi; Water is Life. Water is Alive. Water is Sacred. Says so in the Christian Bible also.

Thank you.

Carla R. Marshall
3612 Chief Dr. Rapid City, SD 57701
605-545-1430
Email: carlaraemarshall@gmail.com

Richard A. Bell, PE
1206 Clark Street
Rapid City, SD 57701

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

(Sent via email to brittnym@pennco.org with a request to distribute it to all members of the Planning Commission.)

Subject: Comments on Pennington County Proposed Hard Rock Mining Ordinance

Dear Sirs,

I am a resident of Pennington County and I want to congratulate the Planning Commission for preparing this new draft of Section 321 "Hard Rock Mining Ordinance." I think it's very important that any mining done in this County is conducted properly and our water is well-protected at the same time. As you are probably aware, a mining permit has never been denied in this State. Therefore, it's critical that the County develop a strong local Ordinance to protect residents from mining problems that so often occur.

Having said this, I do have several comments and suggestions for how this draft Ordinance can be improved as noted below:

- 1.) In section A under Applicability, it says: "If the subject property does not have a Patented Mining Claim; the mining of minerals is allowed only in the following Zoning Districts with an approved Hard Rock Mining permit:" and then it goes on to list three allowances. However, this is one of the most egregious sections in the whole Ordinance and I suspect it only got inserted in here by someone who already has patented mining claims so they get special treatment. All zoning districts should be protected from mining and I believe this statement should be removed from the Ordinance.
- 2.) Section D.4.I, the definition of "Hard Rock Mining Operation," does not address the disposal of waste rock nor does it address any settling ponds that would normally be required. Both need to be regulated and should be included here.
- 3.) A Water Reclamation Plan is not included in Section E.3.e "Reclamation Plan" and it should also be included.

- 4.) In Section F.1.a "Public Notice Requirements," it says that the applicant shall notify property owners within a 0.5 mile radius, but this is too small – it should be at least 1 mile.
- 5.) Also in Section F.1.b. it says "The applicant shall also notify the Tribal Historical Preservation Officer (THPO) for each of the Tribes listed on the Black Hills National Forest Tribal/THPO mailing list. However, the THPO's should not just be given "notice," they must be consulted and given a substantial role in this process.
- 6.) Similarly, Section P.4.b.ii., under "Notification of Planning Director's decision" talks about notifying the THPOs, but as in Section F.1.b. above, simply notifying the THPOs after a decision will not be sufficient if they have been properly consulted beforehand.

Thank you in advance for your consideration of these suggested changes. I believe we can all work together to make it better.

Sincerely,

Richard A Bell

COMMENTS ON PROPOSED HARD ROCK MINING ORDINANCE, SECTION
#321
SUBMITTED TO PENNINGTON COUNTY PLANNING COMMISSION FOR
2/9/22 MEETING

Thank you, commissioners, for offering this much-improved hard rock mining proposal. It makes progress toward promoting the public health, safety, and general welfare of Pennington County residents.

However, there are still some important concerns that need to be addressed. As follows:

- 1) Section F. 1B specifies that tribal THPOs should be *notified*. Notification is simply not sufficient. Tribes need to be consulted with, and given time to submit a thorough analysis of tribal interests in identifying and preserving any applicable religious, archeological, or cultural factors related to a proposed mining site. Testimony from THPOs should be able to pause a new project until THPO concerns are resolved.
- 2) The proposal states that a mining project must be ½ mile from a residential area. Think for a moment—how would you like a mining operation a mere ½ mile from your house? Your property value would be diminished, and you would experience dust, noise, and light pollution. *Such an operation needs to be at least a mile from one's property.*
- 3) Sections F. 2a. & 3a.-- Notification of a mining application before a Planning Commission meeting or a Board of commissioners meeting. This section specifies that the public must be notified of the consideration of a mining application only 10 days before a Planning or Board meeting. This is not adequate for most of the public, most of the time. It might also give the public the impression that an application is being "ramrodded through." Rather than leave that impression it would be best that greater public notice time be given—a month would probably be adequate.
- 4) Section K2—specifies that the duration of the Hard Rock Mining Permit shall be 5 years. Given the history of abandoned mining projects in SD—whitch Commissioners are likely aware of—a more appropriate duration of permit would be about 2 years.

And finally, Commissioners, please keep in mind that the major sources of income west river are agriculture and tourism—by far. Mining will never replace these two. Secondly please recall that western SD has a very inadequate history of holding abandoned mine owners accountable for the destruction they cause, the costs to taxpayers for reclamation (if it ever occurs), and protection of the natural resources that are our strength and joy (cf. Brohm mine, a Superfund site: cf abandoned gas wells in Harding County, etc.)

Thank you for your attention.

Carol Hayse
Nemo, SD

Ervin Jeri

Subject: FW: Comments on Pennington County draft hardrock mining ordinance

From: Julie Santella <sante076@umn.edu>

Date: February 9, 2022 at 1:47:47 PM MST

To: Molitor Brittney <brittneym@pennco.org>

Subject: Comments on Pennington County draft hardrock mining ordinance

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

Hi there,

I live in Rapid City, and I am interested in the process around the draft hardrock mining ordinance, but I am currently out of town and unable to attend this evening's meeting. I would like to submit the below feedback on the draft ordinance.

I support the new Hard Rock Mining Operations Ordinance generally, because it will be an important tool to protect the land and water of Pennington County. However, there are a few things that could make the ordinance even stronger:

-the information on reclamation on p. 6 mentions soil reclamation, but not water reclamation. Water reclamation should be named explicitly in this section.

-on p. 8-9, several criteria for consideration of an application are named, including "the effect of the proposed operation upon private and public water quality and quantity." This is very important. The final ordinance should not read that this criterion "may be considered" but should require this criterion to be considered, and there should be clear grounds for denying a permit application if a proposed project is unable to demonstrate adequate reclamation/restoration, or if a proposed project stands to adversely impact private and public water quality and quantity.

-THPOs (Tribal Historic Preservation Officers) should have an established role in the review process beyond simply being notified.

-waste rock disposal sites should be added to the definition of "hard rock mining operation" on p. 3. Waste rock disposal is a crucial part of any mining operation and should be regulated and considered along with the other aspects of the process.

Could you please forward these comments to the members of the Planning Committee?
Thanks for your help--I look forward to hearing how the meeting this evening goes.

Sincerely,

Julie

Julie Santella, she/her

Graduate student - Department of Geography, Environment and Society

University of Minnesota

Based in Rapid City, SD

sante076@umn.edu / jasantella@gmail.com

