

PENNINGTON COUNTY BOARD OF COMMISSIONERS
Meeting of February 27, 2018

The Pennington County Board of Commissioners met at 9:02 a.m. on Tuesday, February 27, 2018, in the Commission Chambers in the County Administration Building, Rapid City, South Dakota. Chair Lloyd LaCroix called the meeting to order with the following Commissioners present: Mark DiSanto, George Ferebee and Deb Hadcock. Commissioner Ron Buskerud joined by videoconference. Pursuant to SDCL 1-25-1, the votes were taken by roll call.

REVIEW AND APPROVE AGENDA

MOVED by DiSanto and seconded by Hadcock to approve the agenda as presented. The motion carried unanimously on a roll call vote: Buskerud – yes, DiSanto – yes, Ferebee – yes, Hadcock – yes, LaCroix – yes.

SECOND READING AND PUBLIC HEARING OF ORDINANCE AMENDMENT / OA 17-02: Pennington County. To amend Section 103 “Definitions”; Section 205-B-17 “General Agriculture District”; Section 212-B-12 “Heavy Industrial District”; Section 507-B “Mining Permits”, and Section 511 “Fees” and to add Section 320 “Mining Operation” to the Pennington County Zoning Ordinance.

MOVED by Hadcock and seconded by Buskerud to approve pages one through twelve, sections A through G, as presented. The motion carried unanimously on a roll call vote: Buskerud – yes, DiSanto – yes, Ferebee – yes, Hadcock – yes, LaCroix – yes.

MOVED by Ferebee and seconded by DiSanto to change Section H-1-c from 300 feet to 1,500 feet, add the letter ‘s’ to the word homeowner, and add to the last sentence, ‘and an approved variance is obtained from the Pennington County Board of Adjustment’.

Substitute motion: MOVED by Hadcock to make no changes. The motion died for the lack of a second.

The original motion carried 3-2 on a roll call vote: Buskerud – yes, DiSanto – yes, Ferebee – yes, Hadcock – no, LaCroix – no.

MOVED by DiSanto and seconded by Hadcock to change Section H-2-a to read ‘testing up to three (3) wells located within 1,500 feet of the proposed perimeter of the mining extraction area. If there are no existing wells within 1,500 feet, baseline testing may be required of the nearest located wells’. The motion carried unanimously on a roll call vote: Buskerud – yes, DiSanto – yes, Ferebee – yes, Hadcock – yes, LaCroix – yes.

MOVED by DiSanto and seconded by Hadcock to reconsider Section H-1-c to take out the rest of the sentence after the word homeowner(s). The motion carried 4-1 on a roll call vote: Buskerud – yes, DiSanto – yes, Ferebee – no, Hadcock – yes, LaCroix – yes.

MOVED by Buskerud and seconded by DiSanto to approve Section H-1-c taking out the words ‘an approved variance is obtained from the Pennington County Board of Adjustment’. The motion carried 4-1 on a roll call vote: Buskerud – yes, DiSanto – yes, Ferebee – no, Hadcock – yes, LaCroix – yes.

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MOVED by DiSanto and seconded by Hadcock to reconsider section H-1-c, 'setbacks'. The motion carried 3-2 on a roll call vote: Buskerud – no, DiSanto – yes, Ferebee – no, Hadcock – yes, LaCroix – yes.

MOVED by DiSanto and seconded by Hadcock to change the second sentence in section H-1 to read 'These are minimum setback requirements and greater setbacks may be required by the Board of Commissioners' and Section H-1-c should read, 'at least within 300 feet'. The motion carried 4-1 on a roll call vote: Buskerud – yes, DiSanto – yes, Ferebee – no, Hadcock – yes, LaCroix – yes.

MOVED by DiSanto and seconded by Hadcock for a five minute recess. The motion carried unanimously on a roll call vote: Buskerud – yes, DiSanto – yes, Ferebee – yes, Hadcock – yes, LaCroix – yes.

The Board reconvened at 10:49 a.m.

MOVED by DiSanto and seconded by Buskerud to change section I-2 back to the language of the first reading for page fifteen. The motion carried 4-1 on a roll call vote: Buskerud – yes, DiSanto – yes, Ferebee – no, Hadcock – yes, LaCroix – yes.

MOVED by Buskerud and seconded by DiSanto to approve pages fourteen & fifteen as presented with the changes. The motion carried unanimously on a roll call vote: Buskerud – yes, DiSanto – yes, Ferebee – yes, Hadcock – yes, LaCroix – yes.

MOVED by DiSanto and seconded by Buskerud to approve page sixteen. The motion carried unanimously on a roll call vote: Buskerud – yes, DiSanto – yes, Ferebee – yes, Hadcock – yes, LaCroix – yes.

MOVED by Buskerud and seconded by DiSanto to take a recess to allow County Counsel to consult with attorneys. The motion carried unanimously on a roll call vote: Buskerud – yes, DiSanto – yes, Ferebee – yes, Hadcock – yes, LaCroix – yes.

The Board reconvened at 12:00 p.m.

MOVED by DiSanto and seconded by Buskerud to approve Section N with the changes proposed using the word 'parcel'. The motion carried 4-1 on a roll call vote: Buskerud – yes, DiSanto – yes, Ferebee – yes, Hadcock – no, LaCroix – yes.

MOVED by Hadcock and seconded by DiSanto to add to N-2-c-ii, 'including site plan with disturbance boundary'. The motion carried unanimously on a roll call vote: Buskerud – yes, DiSanto – yes, Ferebee – yes, Hadcock – yes, LaCroix – yes.

MOVED by Hadcock and seconded by Buskerud to approve Section N with the limits of operations up to Section O.

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Substitute motion: MOVED by Ferebee and seconded by DiSanto to add a paragraph to require approval from the Pennington County Commissioners after the registration and requirements have been submitted. The motion failed 2-3 on a roll call vote: Buskerud – no, DiSanto – yes, Ferebee – yes, Hadcock – no, LaCroix – no.

Original motion carried 3-2 on a roll call vote: Buskerud – yes, DiSanto – no, Ferebee – no, Hadcock – yes, LaCroix – yes.

MOVED by Hadcock and seconded by Buskerud to approve Section O as presented.

Substitute motion: MOVED by Ferebee to change O-1 to read, ‘The Pennington County Board of Commissioners may issue a stop work order’, instead of The Planning Director. The motion failed 2-3 on a roll call vote: Buskerud – no, DiSanto – yes, Ferebee – yes, Hadcock – no, LaCroix – no.

The original motion carried 3-2 on a roll call vote: Buskerud – yes, DiSanto – no, Ferebee – no, Hadcock – yes, LaCroix – yes.

MOVED by Hadcock and seconded by Buskerud to approve pages 19-20. The motion carried unanimously on a roll call vote: Buskerud – yes, DiSanto – yes, Ferebee – yes, Hadcock – yes, LaCroix – yes.

MOVED by DiSanto and seconded by Buskerud to approve adding the definition to the word ‘parcel’ within Section 320, to be placed below the word overburden. The motion carried 4-1 on a roll call vote: Buskerud – yes, DiSanto – yes, Ferebee – no, Hadcock – yes, LaCroix – yes.

MOVED by Ferebee and seconded by DiSanto to add to Section C, page three after the last period, a note referencing (SDCL 11-2-66 and SDCL 11-4-30 relative to GCC Dacotah Inc). The motion carried 3-2 on a roll call vote: Buskerud – no, DiSanto – yes, Ferebee – yes, Hadcock – yes, LaCroix – no. It was further clarified by Ferebee and the Board that the intent of the motion was not to exclude GCC Dacotah Inc. from the requirements of Ordinance Amendment OA 17-02, but only to reference the statutes for prosperity.

MOVED by Buskerud and seconded by LaCroix to approve the second reading and the adoption of Ordinance Amendment OA 17-02. The motion carried 4-0 with Ferebee abstaining on a roll call vote: Buskerud – yes, DiSanto – yes, Hadcock – yes, LaCroix - yes.

ORDINANCE #34-35

AN ORDINANCE AMENDMENT TO THE PENNINGTON COUNTY ZONING ORDINANCE.

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BE IT HEREBY ORDAINED BY THE PENNINGTON COUNTY BOARD OF COMMISSIONERS THAT THE PENNINGTON COUNTY ORDINANCE #34 BE AMENDED AS FOLLOWS:

SECTION 103: Definitions:

To include: Mining Operation Definitions: See Section 320-D “Definitions.”

SECTION 205-B-17: General Agriculture District shall be removed:

- ~~17. Mining provided a Construction Permit is obtained in accordance with these Zoning Ordinances.~~

SECTION 205-C: General Agriculture District shall be amended to include the following:

32. Mining provided a Mining Permit is obtained in accordance with Section 320.

SECTION 212-B-12: Heavy Industrial District shall be removed:

- ~~12. Rock, sand, gravel, or earth excavation, crushing or distribution.~~

SECTION 212-C: Heavy Industrial District shall be amended to include the following:

4. Rock, sand, or earth excavation, crushing or distribution, provided a Mining Permit is obtained in accordance with Section 320.

SECTION 320 – MINING OPERATION

An operator shall obtain a Mining Permit from Pennington County to extract:

- Sand, gravel, or rock to be crushed and used in construction; or,
- Pegmatite minerals; or,
- Limestone, iron ore, sand, gypsum, shale, pozzolan, or other materials used in the process of making cement or lime.

A. Applicability.

Section 320 applies to the extraction of sand, gravel, or rock in excess or equal to 100 cubic yards of material. Section 320 does not apply to the extraction of sand, gravel, or rock to be crushed and used in construction by an individual for personal use. However, a Storm Water and/or Grading Permit may be required under Section 507 for mining for personal use. All mining operations must comply with all other applicable local, state, and federal law, rules or regulations.

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The mining of sand, gravel, or rock is allowed **only** in the following Zoning Districts or Future Land Use designations with an approved Mining Permit:

1. A-1 General Agriculture District (required minimum lot size of 40 acres);
2. HI Heavy Industrial; and,
3. Forest Service Lands / Public Lands (prior approval of mining activity from appropriate authority or agency required).

B. Purpose.

The purpose of Section 320 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. (SDCL 11-2-66 and 11-4-30 as relative to GCC Dacotah, Inc.)

D. Definitions.

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).

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.

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AIR BLAST: A jet of air produced mechanically.

BASELINE TESTING: Testing prior to any activity for which a potential impact can be measured.

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.

COMMERCIAL SALES: Operation(s) done or acting with sole or chief emphasis on salability, profit, or success.

DELAY (blasting): Interval of time between blasts or explosive charges.

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.

FLYROCK: Fragments of rock propelled from the blast area by the force of an explosion.

HABITABLE: Condition of premises that permits inhabitant to live free of serious defects to health and safety.

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.

JUNK MATERIAL: Any scrap, waste, worn out, discarded material or debris collected or stored for destruction, disposal or some other use.

LANDSCAPE BERM: A level space, shelf, or raised barrier separating two areas serving as a barrier.

MINING OPERATION: The act, process, or industry of extracting resources from the earth.

NEIGHBORHOOD: A geographically localized community within a larger city, town, suburb or rural area.

OPERATIONAL MEASURES: Techniques utilized during day-to-day operation to prevent or mitigate potential impacts.

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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.

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.

PERMIT LIMIT: The area of mining operation as legally described on the Pennington County mining application.

PERSONAL USE: Extraction and use by property owner for non-commercial purposes.

START WORK ORDER: An administrative order that allows a person to resume an activity that was the subject of a prior stop work order.

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.

SUBSTANTIAL STEP: Completion of 30 percent of a permitted use measured as a percentage of estimated total area of disturbance.

E. Mining Permit Process and Public Notice Requirements.

1. 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 Mining Permit Application. The applicant shall place the sign on the property that is the subject of the 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 property that is the subject of the application. 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

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least thirty (30) days prior to the public hearing on the application before the Planning Commission.

2. Public Hearing

The Planning Commission shall hold a public hearing on the application at a time and location determined by the Planning Commission, provided the Mining Application and required documents are in compliance with the provisions of Section 320. 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 and, at least ten (10) days prior to the hearing. 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 320. The decision of the Planning Commission shall be a recommendation to the Board of Commissioners.

3 Mining Permit Application Review

When reviewing a 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. Mining Permit Application.

1. All applications for a proposed 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.

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- c. 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.
 - d. 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.
2. The applicant shall also submit the following documents with the 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 320, including responsibility to pay required fees and penalties for any violation.
 - b. Agency Comments. All comments received from any Federal (i.e. NEPA), State (i.e. SDCL Chapter 45-6) and/or Tribal agency in response to an application for a South Dakota Mining License concerning the property that is the subject of the current application.
 - 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. Location of all access points, roads, rights-of-way, and utility easements on or abutting the property.
 - v. Location of all structures within 300 feet of the permit limit.
 - vi. Location and direction of flow of surface water on or within 300 feet of the permit limit.
 - vii. Location of registered wells onsite and within 1,500 feet outside the boundary, both existing and proposed by the applicant, within the first 5 years of operation.
 - viii. Benchmarks, if needed, for the contour maps.

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- ix. 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.
- x. Areas to be used for drainage and erosion control management or sedimentation ponds, if any.
- xi. Location of proposed parking areas, signs, and fencing, and a description of proposed fencing.
- xii. Proposed berm locations.
- xiii. Special Flood Hazard Area.

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 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. Estimated type and amount of materials to be extracted.
 - iv. Estimated number of truckloads per day, and estimated weight of material per truckload.
 - v. Operational measures to comply with noise, dust, air contaminants, and vibrations laws, ordinances.
 - vi. Operational measures to prevent groundwater and surface water degradation (must meet all applicable Federal and State regulations).
 - vii. 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.
 - viii. Operational measures to stabilize topsoil and other material stockpiles.
 - ix. 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 Environment and Natural Resources (SD DENR) for disturbance of wetland.
 - x. 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 mining operation shall comply with all

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applicable local, state, and federal law, rule or regulation regulating mine reclamation activities.

3. Drainage and Erosion Control Permits

- a. All mining operations shall comply with the South Dakota Water Pollution Control Act and Administrative Rules of South Dakota (ARSD) Chapters 74:52:01 through 74:52:11 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 DENR.
- 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.

4. The Planning Director may recommend, in his or her discretion, as a condition of approval of the Mining Permit, to require any applicant for a Mining Permit issued under Section 320 to post a surety or bond for any control measures, stabilization, reclamation or other work proposed in the applicant's Operation Plan or Storm Water Pollution Prevention Plan. The applicant shall submit a cost estimate for reclamation for review by the Planning Department as a basis for the amount of bond required.

5. Additional Information

By written request, the Planning Director may require submission of other information necessary to determine the nature of the proposed mining operation and reclamation and effect on the surrounding area. This information shall include, but is not limited to: proof of performance or surety bond and applicable access easements or agreements.

G. General Requirements for Mining Operations.

1. Hours of Operation

The hours of mining operation may be restricted to address special circumstances or demonstrated problems, and noticed in writing, prior to the effected change.

2. Dust Control

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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 lens that cast light downward.

5. Vibration and Blasting

The 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.

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.

a. 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.

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- xiii. Distance to nearest habitable structure not owned by the owner or operator.
- b. 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:

$$SDA = D / CW^{1/3}$$

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.
 - aa. 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)
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0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and Beyond	0.75	65

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

bb. 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.

cc. Record. The blaster shall make and keep a seismograph record, including both particle velocity and vibration frequency levels for each blast.

dd. 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.

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.

ee. Exceptions.

The maximum ground vibrations and air blast standards shall not apply to property owned by the permittee.

6. 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.

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7. Dumping Prohibited

The owner and/or operator of a 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.

8. 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.

9. 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 Mining Operation.

1. Setbacks

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Setback requirements shall apply to all mining operations including, but not limited to: stockpiling and the storage of waste materials, inventory, and equipment. These are minimum setback requirements and greater setbacks may be required by the Board of Commissioners. These setback requirements are not applicable to roads, berms, and other methods of landscaping.

- a. The mining operation shall be located at least 50 feet from all exterior lot lines, unless written permission is obtained from the adjacent property owner. Adjoining mining operations are not subject to the interior lot line setback for a shared lot line, if agreed to by the adjoining landowner or operator.
- b. The mining operation shall be located at least 100 feet from a public road centerline or 25 feet from the road right-of-way, whichever is greater.
- c. No mining operation shall be conducted at least 300 feet of any existing dwelling, other than that of the mine owner or operator, unless written permission has been obtained from the homeowner(s).

2. Groundwater Monitoring

- a. Based on site specific conditions, the Board of Commissioners, as a condition of approval for the Mining Permit, may require the applicant to perform baseline testing of up to three (3) wells located within 1,500 feet of the proposed perimeter of the mining extraction area. If there are no existing wells within 1,500 feet, baseline testing may be required of the nearest located wells. Preference will be given to wells located on adjacent land where the property owners have requested testing, in writing, and granted permission for access to their property. Baseline shall establish, at a minimum, bacteria and turbidity levels, and potential groundwater drawdown due to pumping at the proposed mining area.
- b. Testing must be completed and results obtained prior to commencing any permitted mining activity on site.
- c. Drawdown tests on the original baseline wells shall be conducted when requested in writing by a well owner who demonstrates quantity of water in the well has been impacted by the mining activities.
- d. All tests shall be performed by a qualified third-party professional.

I. Renewals, Transfers and Enlargements.

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1. Duration and Renewal of Mining Permit

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 320-K. Renewal of Mining Permits shall be issued as follows:

- a. An application for Mining Permit renewal must be submitted at least sixty (60) days prior to the expiration date of the current Mining Permit. The Renewal Application must state any requested or proposed change of operation from the current Mining Permit.
- b. The owner/operator shall give Notice of Renewal in accordance with Section 320-E-1.
- c. The Board of Commissioners shall renew a Mining Permit unless the owner or operator has failed to comply with the requirements of Section 320 or conditions of the current 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. 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 320-E. If the application provides for a material alteration in the method of operations or reclamation previously approved, a new Mining Permit shall be required.
- f. Each renewal of a Mining Permit shall not exceed an additional five (5) years.

2. Transfer of Permit

Upon transfer of interest in a mining operation, the prior owner or operator shall:

- a. Written notice of the transfer is given to the Planning Department;
- b. The operation is in compliance with the requirements of Section 320 and the conditions of operation under the current Mining Permit; and,
- c. The new owner and/or operator assumes responsibility for the reclamation of the entire permit limit by written, signed, and notarized document and

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provides financial assurance for such reclamation in the form of a performance or surety bond.

3. Permit Limit Enlargement

Any proposed expansion of a permit limit shall be considered as a new application under Section 320. All provisions of Section 320 shall apply to the proposed expansion.

J. Complaints

The Planning Department may inspect a 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;
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 320, the Planning Director shall recommend a hearing pursuant to Section 320-K.

K. Revocation of 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 Mining Permit;
2. The owner/operator has failed to comply with the Operation Plan as detailed in the Mining Permit Application;
3. The mining operation is not in compliance with Section 320;
4. The owner/operator failed to perform and complete required corrective action as determined in Section 320-J; or,

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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 Mining Permit or order remedial action to be taken by the owner/operator. The Notice of Hearing shall comply with the requirements of Section 320-E.

L. 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 Mining Permit, shall terminate the Mining Permit. A new Mining Permit Application shall be required for any future mining operation.

M. Abandonment of Mining Operations.

If mining operations are abandoned, new mining operations shall not be permitted except upon a new Application and Mining Permit, as required in Section 320. Temporary cessation approved by the State of South Dakota does not constitute abandonment of mining operations.

N. Limits of Operation.

1. All mining operations shall be limited to, and conducted within, the permit limit as described in the mining application.
2. Excavation activities active prior to the enactment of Section 320 are allowed as a legal nonconforming use when **all** of the following conditions are met:
 - a. Excavation activities were actively pursued at the time Section 320 became effective;
 - b. Area to be excavated was clearly intended to be excavated, as measured by objective manifestations and not by subjective intent (objective manifestations include, but are not limited to, previously issued County Construction and/or Mining Permit or State Mining License, 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.

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Excavation activities that are a legal nonconforming use do not require a permit under Section 320. However, 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 320 without a Mining Permit.

All legal nonconforming uses must be registered with the Pennington County Planning Department within 180 days of the effective date of Section 320. 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 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.

Further information may be required by the Planning Director.

In addition, excavation activities conducted as a legal nonconforming use must comply with the General Requirements for Mining Operations set forth in Subsection G of Section 320 and permit requirements set forth in Section 507(A) of this Zoning Ordinance, submit a Reclamation Plan and post a surety or bond if required by the Planning Director in his or her discretion.

O. Enforcement.

Any person who fails to comply with the requirements in Section 320, 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 320.

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 320;
- b. A site is being operated or maintained in a manner contrary to the conditions of the Mining Permit;

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- c. Mining operations are occurring without a required permit under Section 320 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.

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. 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 320, the County may seek injunctive relief pursuant to SDCL 21-8 against any property owner, operator, or other person in violation of Section 320, or against any owner or operator in violation of the conditions of a Mining Permit issued under Section 320. 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 320.

3. Nuisance

Violations of Section 320 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. Performance Bond

The Pennington County Board of Commissioners may authorize the Planning Director to use the performance bond to complete any work proposed in the

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permittee's Operation Plan or Storm Water Pollution Prevention Plan, if the permittee cannot or will not complete such work.

5. 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 320.

6. Conflicting Ordinances

If Section 320, or any part or portion thereof, is in conflict with any other Pennington County Ordinance, Section 320 shall be deemed to supersede any conflicting Ordinance in matters relating to storm water and erosion control, if more stringent.

SECTION 507-B: Construction Permits shall be amended to read as follows:

B. Minerals

The extraction of minerals, equal to or in excess of 100 cubic yards, are only allowed in A-1 General Agricultural and HI Heavy Industrial Zoning Districts and shall require a Conditional Use Permit. Any Conditional Use Permit Application for mineral extraction shall be in conformance with and reviewed under the standards set forth in Section 320, with exception of bonding and surety requirements. See SDCL 45-6B-4.

Minerals include, but are not limited to 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.

SECTION 511: Fees shall be amended to include and read as follows:

D. Mining Permit:

1. New Application: \$2,500.00
If applicant is a unit of state or local government, no fee shall be required.
2. Renewal Application: \$1,000.00
If applicant is a unit of state or local government, no fee shall be required.
3. Transfer of Mining Permit, prior to expiration: \$250.00

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If applicant is a unit of state or local government, no fee shall be required

F. Conditional Use Permit:

4. Mineral (Mining): \$5,000.00

U. Sign Deposit: A \$50.00 refundable deposit is required for signs obtained from the Planning Department for Variance, Conditional Use Permits, Mining Permits, Rezoning, Planned Unit Developments, and Comprehensive Plan Amendment applications. The \$50.00 deposit is refunded when the sign is returned within six (6) months of County Board action.

Dated this 27th day of February, 2018.

/s/ Lloyd LaCroix, Chairman
Pennington County Board of Commissioners

ATTEST: (SEAL)

/s/ Julie A. Pearson, Auditor

First Reading: February 20, 2018

Second Reading: February 27, 2018

Date Published: March 7, 2018

Date Effective: March 28, 2018

ADJOURN

MOVED by Buskerud and seconded by Hadcock to adjourn the meeting. The motion carried unanimously on a roll call vote: Buskerud – yes, DiSanto – yes, Ferebee – yes, Hadcock – yes, LaCroix – yes.

There being no further business, the meeting adjourned at 1:43 p.m.

/s/ Julie A. Pearson, Auditor

Published once at an approximate cost of _.

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