

STAFF REPORT

GENERAL INFORMATION:

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

REPORT BY: Brittney Molitor

GENERAL DESCRIPTION: On April 5, 2016 the Board of Commissioners approved the formation of a committee to review Construction Permits, Mining Permits, and Alternative Energy of the Zoning Ordinance and the submittal of possible Ordinance Amendments. A Committee was formed to discuss and propose changes to Section 507-B pertaining to Mining Permits. The Committee met for several months and, during that time, re-wrote sections of the Ordinance pertaining to mining.

Below is a DRAFT version of each Section requesting to be amended in the Zoning Ordinance:

Section 103 – Definitions
Section 205-B-17 – General Agriculture District Permitted Uses
Section 212-B-12 – Heavy Industrial District Permitted Uses
Section 320 – Mining Operation (New Section)
Section 507-B – Mining Permits (Remove and move to Section 320)
Section 511 - Fees

SECTION 103 – DEFINITIONS

To include: MINING OPERATION: See Section 320-D “Definitions.”

SECTION 205 - A-1 GENERAL AGRICULTURE DISTRICT

B. Permitted Uses:

17. Mining provided a ~~Construction~~ Mining Permit is obtained in accordance with Section 320. ~~with this Zoning Ordinance.~~

SECTION 212 - HI HEAVY INDUSTRIAL DISTRICT

- B. Property and buildings may include, but are not limited to the following purposes:
12. Rock, sand, gravel, or earth excavation, crushing or distribution, provided a Mining Permit is obtained in accordance with Section 320.

Adding: Section 320 – Mining Operation:

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, pegmatite minerals, limestone, iron ore, sand gypsum, or shale used to make cement or lime, or dredging for commercial resale.

- 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.

The mining of sand, gravel, or rock is allowed **only** in the following Zoning Districts:

1. A-1 General Agriculture District (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.

- 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.

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 year without reference to intent.

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.

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

HABITABLE: Conditional 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.

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

OVERBURDEN: Material that lies above an area, 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.

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

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 also make a good faith effort to notify all property owners (including Contract for Deed buyers) of land located within five hundred (500) feet, inclusive of any right-of-way, of the outer boundaries of the property that is the subject of the application. The Planning Department shall provide the applicant with the "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 ten (10) business 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 a legal newspaper of general circulation in the county at least ten (10) days prior to the hearing. The Planning Commission shall grant the application with conditions and safeguards as are appropriate, continue the application to obtain further information, or deny the application if not in harmony with the purpose and intent of Section 320. The decision of the Planning Commission shall be final unless an appeal is filed in accordance with Section 320-F.

3 Mining Permit Application Review

When reviewing a Mining Permit Application, the Planning Commission may consider all relevant information, 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. Appeal of Planning Commission Decision.

The applicant or any other person aggrieved by a decision of the Planning Commission on an application for a Mining Permit, may appeal to the County Board. The appeal shall be in writing and filed with the Planning Department within five (5) business days of the Planning Commission's decision. (The County Commissioner serving on the Planning Commission may also request any Mining Permit to be heard before the County Board). In the event of an appeal, the Planning Director shall present the Planning Commission's decision to the County Board for review. The County Board shall vote to uphold, overrule, or amend the decision of the Planning Commission.

G. 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.
 - 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 in which the entity is incorporated, 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 and/or State agency in response to an application for a Mining License or permit 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 wells onsite, both existing and proposed by the applicant, within the first 5 years of operation.
 - viii. Benchmarks, if needed, for the contour maps.
 - 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.

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

5. Road and Approaches

Roads to be used on 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. The Planning Commission may require Approach and/or Haul Road/Repair Agreements between the applicant and governing street authority to include Township Roads.

6. 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.

7. Waiver

The Planning Director may waive any of the application requirements upon finding that, due to the nature or method of the operation, such information is not relevant or is unnecessary to complete a full and proper evaluation of the application.

H. General Requirements for Mining Operations.

1. Setbacks

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 for mining operations necessary to protect the integrity of sloped perimeters from erosion.

These setback requirements are not applicable to berms or 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 exterior 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 within 300 feet of any existing dwelling, other than that of the mine owner or operator, unless written permission has been obtained from the homeowner.

2. Hours of Operation

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

3. Dust Control

The operator shall comply with the provisions of SDCL Chapter 34A-1. The operator shall use industry Best Management Practices in 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.

4. 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 in Section 106.

5. Lighting

All lights shall use hoods and lens that cast light downward.

6. 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.
- 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.

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)
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.

- 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.** The blaster shall monitor all blasts at a location closest to any dwelling or habitable structure that is outside and beyond the permit limit. However, if unable to obtain permission to conduct monitoring from the property owner, the blaster may monitor at another location approximately the same distance from the blast site or closer

7. **Groundwater Monitoring**

- a. At the Planning Director’s written request and direction, the applicant is responsible for baseline testing of up to three (3) wells located within 1,500 feet of the proposed perimeter of the mining extraction area. In addition, the applicant shall be responsible for baseline well testing of up to three (3) wells located on adjacent land where the property owners have requested, in writing, and grant permission for access and testing on their property. Baseline testing shall test for, at a minimum, bacteria, turbidity and drawdown.

- b. Testing must be completed and results obtained prior to commencing any permitted mining activity on site. Drawdown tests on up to three (3) 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. All tests shall be performed by a qualified third-party professional.

8. Spill Prevention

The applicant shall comply with all the applicable federal and state requirements regarding chemical storage, handling and spill response. This includes, but is not limited to: the Mine Safety and Health Administration (MSHA), the Environmental Protection Agency (EPA), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) rules and regulations

9. Limits of Operation

- a. All mining operation shall be conducted within the permit limit as stated in the application and within the area permitted and/or licensed by other local, state or federal governments.
- b. For mining operations previously approved and predating Section 320, the mining activity shall be limited to the permit limit, as described by the previously approved Construction and/or Mining Permit.

10. 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.

11. 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.
- g. Berms must be stabilized

12. Duration and Renewal of Permit

Mining permits shall be valid for 5 years, unless a lesser time is specified by the Planning Commission or the permit is revoked. The Planning Commission may revoke a permit or deny an application for renewal, when the owner or operator has failed to comply with a material term of the current permit, operation plan, or performance standards or a material change in circumstance renders the continued operation of the mine a threat to public health, safety, or general welfare. Prior to the revocation of a Mining Permit or denial of an application for renewal, the owner and/or operator shall be entitled to a public hearing to respond to allegations of non-compliance or public risk of harm. Renewal of permits shall be issued as follows:

- a. An application for permit renewal must be submitted at least 60 days prior to the expiration date of the current permit. The renewal application must state any requested or proposed change from the current permitted mining operation.
- b. The Planning Director shall renew a permit unless the owner or operator has failed to comply with the requirements of Section 320 or conditions of the current permit, or continued operation poses a threat to public health, safety, or general welfare. To ensure compliance, the Planning Department shall annually inspect the mining operation.
- c. No application for renewal shall be granted unless the operation is in compliance with the conditions of the current permit.
- d. Permit renewal may be conditioned upon the remedying of any unanticipated and negative environmental impact of the current mining operation.

- e. The Planning Director may approve the renewal of a permit without a public hearing unless a hearing is requested by a person who resides, owns property, or whose principal place of business is located within 300 feet of the permit limit. However, if the application provides for an enlargement of the previously approved permit limit, or, otherwise provides for a material alteration in the method of operations or reclamation previously approved, a new permit shall be required and approved only after a public hearing and finding that change will not adversely affect neighboring properties.
- f. Renewal permits shall be valid for an additional five (5) years.

13. Transfer of Permit

Upon transfer of interest in a mining operation, the prior owner or operator shall be released of responsibilities under the 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 320 and the conditions of operation under the current 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 provides financial assurance for such reclamation in the form of a performance or surety bond.

14. 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.

15. Failure to Commence Mining Operation

Failure of an owner or operator to take substantial steps to commence mining operation within 2 years of issuance of the initial permit, shall terminate the permit. A new Mining Permit Application shall be required for any future mining operation.

16. Abandonment of Mining Operations

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

I. 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;
- 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 Chapter 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 which 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 Chapter 21-10, SDCL 7-8-33, and the applicable Pennington County Ordinances

4. Performance Bond

The Planning Director may, in his or her discretion, require any applicant for a Mining Permit, issued under Section 320, to post a performance bond for any control measures, stabilization, or other work proposed in the applicant's Site Plan or Storm Water Pollution Prevent Plan. The Pennington County Board of Commissioners may authorize the Planning Director to use the performance bond to complete any work proposed in the permittee's Site Plan or Storm Water Pollution Prevent 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 Chapter 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.

SECTION 507 - CONSTRUCTION PERMITS

B. Mining Permits

~~No extraction of any mineral or substance exceeding 100 cubic yards from the earth shall be conducted without a Mining Permit issued by the Commission. No Mining Permit shall be issued except in conformity with the provisions of this Zoning Ordinance unless he/she receives a written order from the Board of Adjustment in the form of an Administrative Review, Conditional Use, or Variance, as provided in this Zoning Ordinance. In addition to an application, all Mining Permits will require a site plan to be submitted for review. Detailed~~

~~information, including a transportation plan, the location, amount, and type of material to be extracted shall be shown on a site plan. A written statement shall be submitted indicating the scope, duration of the mining activity, and plan outlining reclamation to be done at the conclusion of extraction. Mining Permits shall not be required for work in the A-1 General Agriculture District for construction, which is agriculturally related.~~

SECTION 511 - FEES

D. Mining Permit: ~~\$250~~

1. New Application: \$2,000.00
If applicant is a unit of state or local government, no fee shall be required.
2. Renewal Application: \$500.00
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
If applicant is a unit of state or local government, no fee shall be required

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.

RECOMMENDATION: Staff recommends approval of Ordinance Amendment / OA 17-02.