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PLANNING DEPARTMENT

MEMORANDUM

TO: PENNINGTON COUNTY BOARD OF COMMISSIONERS

FROM: PENNINGTON COUNTY PLANNING DEPARTMENT

ITEM: PUBLIC HEARING OF ORDINANCE AMENDMENT / OA 22-01: To add Section 321 “Hard Rock Mining” [to add Section 321 “Hard Rock Mining”] to the Pennington County Zoning Ordinance.

PLANNING COMMISSION RECOMMENDATION:
Planning Commission recommended approval of Ordinance Amendment / OA 22-01.

STAFF REPORT

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

REPORT BY: Cody Sack

GENERAL DESCRIPTION: To establish Hard Rock Mining requirements.

PROPOSED TEXT:

SECTION 321 – HARD ROCK MINING OPERATION

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

A. *Applicability.*

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

1. Agriculture District (required minimum lot size of 10-acres).
2. Heavy Industrial District.
3. 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.*
1. *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.
 2. *AIR BLAST.* A jet of air produced mechanically.
 3. *BERM.* An earthen mound designed to provide visual interest on a site, screen undesirable views, reduce noise, or fulfill other such purposes.
 4. *DELAY (blasting).* Interval of time between blasts or explosive charges.
 5. *HABITABLE.* Condition of premises that permits inhabitant to live free of serious defects to health and safety.
 6. *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.
 7. *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.
 8. *JUNK MATERIAL.* Any scrap, waste, worn out, discarded material or debris collected or stored for destruction, disposal or some other use.
 9. *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.
 10. *Log:* A record of Performance, events, or day-to-day-activities.
 11. *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;
 12. *Mining Operation:* 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, milling and processing located on the land described in the application for a mining permit, and stand-alone milling and processing facilities utilizing chemical or biological leaching agents. 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;

13. *NEIGHBORHOOD*. A geographically localized community within a larger city, town, suburb or rural area.
14. *OPERATOR*. Any person, firm, partnership, limited liability company, association, or corporation or any department, division, or agency of federal or state government or any political subdivision of the state.
15. *OVERBURDEN*. Material, such as rock or soil that lies above an ore body. When mining is completed, it is either used to backfill the mined areas or hauled to an external dumping or storage site.
16. *PARCEL*. Any legally described piece of land designated by the owner or developer as land to be used or developed as a unit, or that has been developed as a unit.
17. *PERMIT LIMIT*. The area of mining operation as legally described on the Pennington County hard rock mining application.
18. *Record*: A document(s) kept in the ordinary course of business by an operator.
19. *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.
20. *START WORK ORDER*. An administrative order that allows a person to resume an activity that was the subject of a prior stop work order.
21. *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.
22. *SUBSTANTIAL STEP*. Completion of 30 percent of a permitted use measured as a percentage of estimated total area of disturbance.
23. *TAILINGS*. The discharged valueless product of a beneficiation process.

E. *Hard Rock 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 Hard Rock Mining Permit Application. The applicant shall place the sign on the property that is the subject of the Hard Rock Mining Permit Application and in a location with the greatest visibility to the public. The applicant shall post the sign on the property at least thirty (30) days prior to the public hearing on the application.

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

2. *Public Hearing.*

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

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

3. *Hard Rock Mining Permit Application Review.*

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

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

F. *Hard Rock Mining Permit Application.*

1. An incomplete application will not be accepted.
2. All applications for a proposed hard rock mining operation shall include the following information:
 - a. Signed Statement. A signed statement by the applicant or operator, if different from the applicant, acknowledging review of and compliance with the provisions in Section 321, including responsibility to pay required fees and penalties for any violation.
 - b. Mineral Rights Verification. The applicant must provide proof, in writing, that the owner of the mineral rights has given permission to enter and begin operations.
 - c. Map of Affected area: A site plan/map of affected area as required by SDCL 45-6B-10.
 - d. Operation Plan. An operation plan that includes information required by SDAR 74:29:02
 - e. Reclamation Plan. The reclamation plan shall contain the information as required by SDCL 45-6B-7.
3. *Drainage and Erosion Control Permits*.
 - a. All hard rock mining operations shall comply with the South Dakota Water Pollution Control Act and Administrative Rules of South Dakota (SDAR) Chapters 74:52:01 through 74:52:12 regulating erosion control measures, water drainage and discharge from the permit limit. Prior to the start of mining operations, the applicant must obtain and provide a copy of a Storm Water Permit issued by SD DANR.
 - b. The applicant must submit copies of all other required local, state and federal erosion control and runoff management permits.
 - c. All mining operations must meet the requirements set forth in Section 507 of this Zoning Ordinance, which may require a Pennington County Storm Water Permit and/or Grading Permit.
4. *Road and Traffic Impact Study*. Each large-scale application shall be accompanied by a Road and Traffic impact study which identifies the potential impact of the development on Pennington County Roads, and mitigation measures proposed to address those impacts. The Board of Commissioners may determine, based upon circumstances unique to the application, that additional areas will be addressed by the study. In such cases, the applicant will be informed at the earliest practical stage of the application process.
 - a. The following areas shall be addressed in the study for large-scale operations:
 - i. Average amount of traffic per day;
 - ii. Road design standards;
 - iii. Impact of additional mining traffic; and,
 - iv. Any improvements that need to be made.
 - v. Any additional information required by the Pennington County Highway Department

- b. At a minimum, each small-scale application shall be accompanied by the following impact data:
 - i. Roads;
 - ii. Proposed reclamation plan; and,
 - iii. Adjacent land use.
 - iv. Any additional information required by the Pennington County Highway Department
- c. By written request, the Planning Director may require submission of other information necessary to determine the nature of the proposed hard rock mining operation and reclamation and effect on the surrounding area. This information may include, but is not limited to: applicable access easements or agreements.

G. *General Requirements for Mining Operations.*

- 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. *Site Contact.* The Operator shall post at the entrance of the property contact information for responsible contact to be contacted during and after operation hours.
- 3. *Surface and Ground Water.* All operations must follow all Local, State, Federal regulations for water quality.
- 4. *Dust Control.* The operator shall comply with the provisions of SDCL 34A-1. The operator shall use industry Best Management Practices in an effort to control and minimize fugitive dust, to include but not limited to: landscaped earthen berms, paved entrance roadways, standard methods of water spray, dust covers on transfer points, and sweeping, if needed.
- 5. *Noise Control.* The operator shall comply with all applicable noise regulations and industry recommendations, provided such recommendations are allowed by Mine Safety and Health Administration. The Planning Department will address noise complaints and mitigation under Pennington County Ordinance 106.
- 6. *Lighting.* All lights shall use hoods and lenses that cast light downward.
- 7. *Vibration and Blasting.* The hard rock mining operation and activities shall comply with all local, state, and federal law, rule or regulation pertaining to blasting activities. Upon request by the Planning Director, the operator shall provide access to the blasting logs to the County.
 - a. Blasting may occur Monday through Friday from 7 a.m. to 5 p.m. Blasting is not allowed on Saturdays, Sundays, or Holidays as enumerated in SDCL 1-5-1.
 - b. Log Details. An accurate blasting log shall be prepared and maintained for each blast fired. Each blasting log shall include, but not be restricted to the following information:
 - i. Blast Record.
 - ii. Name of the blaster in charge of the blast.

- iii. Blast location references (latitude/longitude).
 - iv. Date and time of blast.
 - v. Weather conditions at time of blast.
 - vi. Diagram of blast hole layout.
 - vii. Number of blast holes.
 - viii. Blast hole depth and diameter.
 - ix. Spacing and burden of blast holes.
 - x. Maximum holes per delay.
 - xi. Maximum pounds of explosives per delay.
 - xii. Depth and type of stemming used.
 - xiii. Total pounds of explosives used, including primers and initiating cord.
 - xiv. Distance to nearest habitable structure not owned by the owner or operator.
- c. Control of Adverse Effects. Blasting shall be conducted in a manner designed to prevent injury to persons or damage to property outside the permit area.
- i. Flyrock. Flyrock traveling in the air or along the ground, as a result of the blasting activity, shall be contained within the permit area.
 - ii. Air Blast. Air Blast shall not exceed a maximum limit of 133 peak dB at the location of any dwelling or habitable structure outside the permit area. The blaster shall conduct monitoring of every blast to ensure compliance with the air blast limit. In lieu of performing monitoring, the calculated Scaled Distance must be 1,000 feet or greater. The Scaled Distance (for air blast) shall be calculated using the following equation:
 - a) $SDA = D / CW^{1/3}$. SDA = Scale Distance (Air blast).
D = Distance from blast to nearest dwelling or habitable structure outside the permit area.
CW = Charge Weight per delay.
 - iii. Ground Vibration. Peak Velocity. To ensure dwellings and structures are not damaged from blasting or vibration, the blaster shall comply with maximum allowable peak velocity for ground vibration. The maximum ground vibration at the location of any dwelling or habitable structure outside the controlled blasting site area shall not exceed limits as set forth in Table 1.

Table 1. Maximum Allowable Peak Velocity for Ground Vibration.

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

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

- aa. **How Measured.** The blaster shall use the ground vibration limits specified in the above table to determine the maximum allowable ground vibration. Ground vibration shall be measured as the peak particle velocity. Particle velocity shall be recorded in three (3) mutual perpendicular directions.
- bb. **Record.** The blaster shall make and keep a seismograph record, including both particle velocity and vibration frequency levels for each blast.
- cc. **Monitoring.** Seismic monitoring shall be completed at the nearest dwelling or habitable structure located outside of the permit area. If unable to obtain permission to conduct monitoring from the property owner, the blaster may monitor at another location approximately the same distance or closer from the blast site.
 - i. In lieu of performing seismographic monitoring, the maximum pounds of explosive per 8 millisecond delay shall be calculated using Table 1 and the equation provided. The distance used for the calculation shall be measured from the blast to the nearest dwelling or habitable structure located outside of the permit area.
- dd. **Exceptions.** The maximum ground vibrations and air blast standards shall not apply to property owned by the permittee.
- 8. **Spill Prevention.** The applicant shall comply with all the applicable federal and state requirements regarding chemical storage, handling and spill response. This includes, but is not limited to: the Mine Safety and Health Administration (MSHA), the Environmental Protection Agency (EPA), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) rules and regulations.
- 9. **Dumping Prohibited.** The owner and/or operator of a hard rock mining operation shall not place junk material within or outside of the permit limit, nor shall they allow junk material to accumulate because of dumping by others.

10. *Screening and Berms.* A screening plan shall be developed by the applicant appropriate to the site. Berms shall meet the following requirements:
 - a. Berms shall be constructed within 14 days of stripped overburden and topsoil becoming available from the quarry site or from suitable outside sources. Berms may be constructed in phases as material becomes available.
 - b. Only clean overburden from the permit limit or suitable outside sources shall be used.
 - c. Safety berms shall be half the height of the largest wheel of equipment used in the mining operation, but in no case less than the height required by the Mine Safety and Health Administration. However, where a berm is adjacent to a public road, the berm shall be at least 10 feet above the surface of the center of the road.
 - d. The outward-facing slopes of said berm shall not be steeper than 2 horizontal units to 1 vertical unit. The inner-facing slopes may be steeper, but must be stabilized and maintained to ensure continued stability.
 - e. Berms shall be constructed to prevent flooding, concentrated runoff, inadequate drainage or excessive erosion or sedimentation.
 - f. Berms shall be kept free of noxious weeds, trash and debris.
11. *Road and Approaches.* Roads to be used off site, including all points of ingress and egress (approaches) and all primary routes for transportation of material to state or federal highways, must be approved by the governing street authority.

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

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 50 feet from all exterior lot lines.
 - iii. The hard rock mining operation shall be located at least 300 feet from any existing habitable dwelling other than a dwelling belonging to the mine owner or operator.
 - b. Buffer Zone Waivers – A Buffer Zone of less than 50 feet from any property line and 300 feet from any existing habitable dwelling, may be allowed upon a public hearing in front of the Board of Commissioners and approved only when the applicant demonstrates that the proposed buffer does not:
 - i. Injure or interfere with existing land uses and enjoyment of other property; and,

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

I. *Roads*

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

J. *Reviews, Renewals, Transfers and Enlargements.*

1. *Annual Review*

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

2. *Duration and Renewal of Hard Rock Mining Permit.* Hard Rock Mining Permits shall be valid for ten (10) years, unless a lesser time is specified by the Board of Commissioners or the Permit is revoked in accordance with Section 321-L. 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-2. 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-E and 321-F.

K. *Complaints.*

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

- 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-L.

L. *Revocation of Hard Rock Mining Permit.*

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

- 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-J; 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-E.

M. *Failure to Commence Mining Operation.*

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

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

O. *Limits of Operation.*

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 or expand beyond the limits of operation 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;
 - 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 G of Section 321, permit requirements set forth in Section 507 of this Zoning Ordinance, and submit a Reclamation Plan in accordance with Section 321(F)(2)(d).

P. *Enforcement.*

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

- 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 DNR of the Stop Work Order.

A Stop Work Order shall be issued in writing and delivered, via certified mail or hand-delivered, to the property owner, operator, or site contact. 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 the Pennington County Zoning 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.
5. *Conflicting Ordinances.* If Section 321, or any part or portion thereof, is in conflict with any other Pennington County Ordinance, Section 321 shall be deemed to supersede any conflicting Ordinance in matters relating to storm water and erosion control, if more stringent.

Q. Fees.

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

RECOMMENDATION: Staff recommends approval of Ordinance Amendment / OA 22-01.

From: NoReply <NoReply@pennco.org>

Sent: Wednesday, June 29, 2022 12:28 PM

To: Martin Joan <joan.martin@pennco.org>; Hennies Holli <hollih@pennco.org>

Subject: WEBFORM: Board Of Commissioners - Contact Us

Ervin Jeri

Subject: FW: Hard Rock ordinance

From: Gary Drewes <gary.drewes@gmail.com>
Sent: Monday, June 27, 2022 8:39 AM
To: Carol Hayse <carolhaysie@icloud.com>
Cc: Molitor Brittney <brittneym@pennco.org>
Subject: Re: Hard Rock ordinance

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

Thank you for in input.
Gary Drewes

On Mon, Jun 27, 2022 at 7:29 AM Carol Hayse <carolhaysie@icloud.com> wrote:

Ms. Drewes—Thank you for your work on the Hard Rock Ordinance. It is greatly improved from the no-ordinance that previously existed. However, I have serious concerns about the current draft. 1) A buffer zone of 50 ft. From other property lines is mentioned. As you know, cattle operations can found throughout Pennington County. A mining operation 50 ft. From grazing cattle would surely affect the cattle property and could nullify its use for grazing. 2) I am surprised that the ordinance says so little about the importance of water to our tourism industry. As you know, there are threats to Pactola from mining exploration right now. Although that is federally governed, your ordinance does not look at the totality of threats to water QUANTITY in our region. As you know, the US west is now under threat from depletion of snowpacks in the Rockies, depletion of the Colorado River, depletion of dams, etc. The ordinance SHOULD HAVE a provision that allows the Commission to evaluate the water situation in THE ENTIRE COUNTY before being permitted. If we continue to just look at each application to mine as a discrete entity we may drive our water resources into the ground.

Ervin Jeri

FW: WEBFORM: Board Of Commissioners - Contact Us

-----Original Message-----

From: NoReply <NoReply@pennco.org>

Sent: Monday, June 27, 2022 7:41 PM

To: Martin Joan <joan.martin@pennco.org>; Hennies Holli <hollih@pennco.org>

Subject: WEBFORM: Board Of Commissioners - Contact Us

The following information was submitted from a web form on the Pennington County website.

DO NOT click reply. To reply, copy and paste the e-mail address below into the "To" field of an outgoing message.

[illegible]

Submitted Information:

Your name: Liz Fayer

Your e-mail address: liz.fayer@gmail.com

Your phone number: 6056421580

Who would you like to send your message to? All 5 Commissioners

Message: Dear Commissioners:

I am in favor of the Hard Rock Mining Ordinance which would help protect Pennington County's water, landscapes, and agriculture/tourism economy. The County needs to have a say when companies want to mine.


I am against mining all together and especially if any waterway may be affected even slightly. Our water is precious and we need it clean for us and our children!

Thank you!

Liz and Harvey Fayer

LITHIUM PROJECTS

Legend

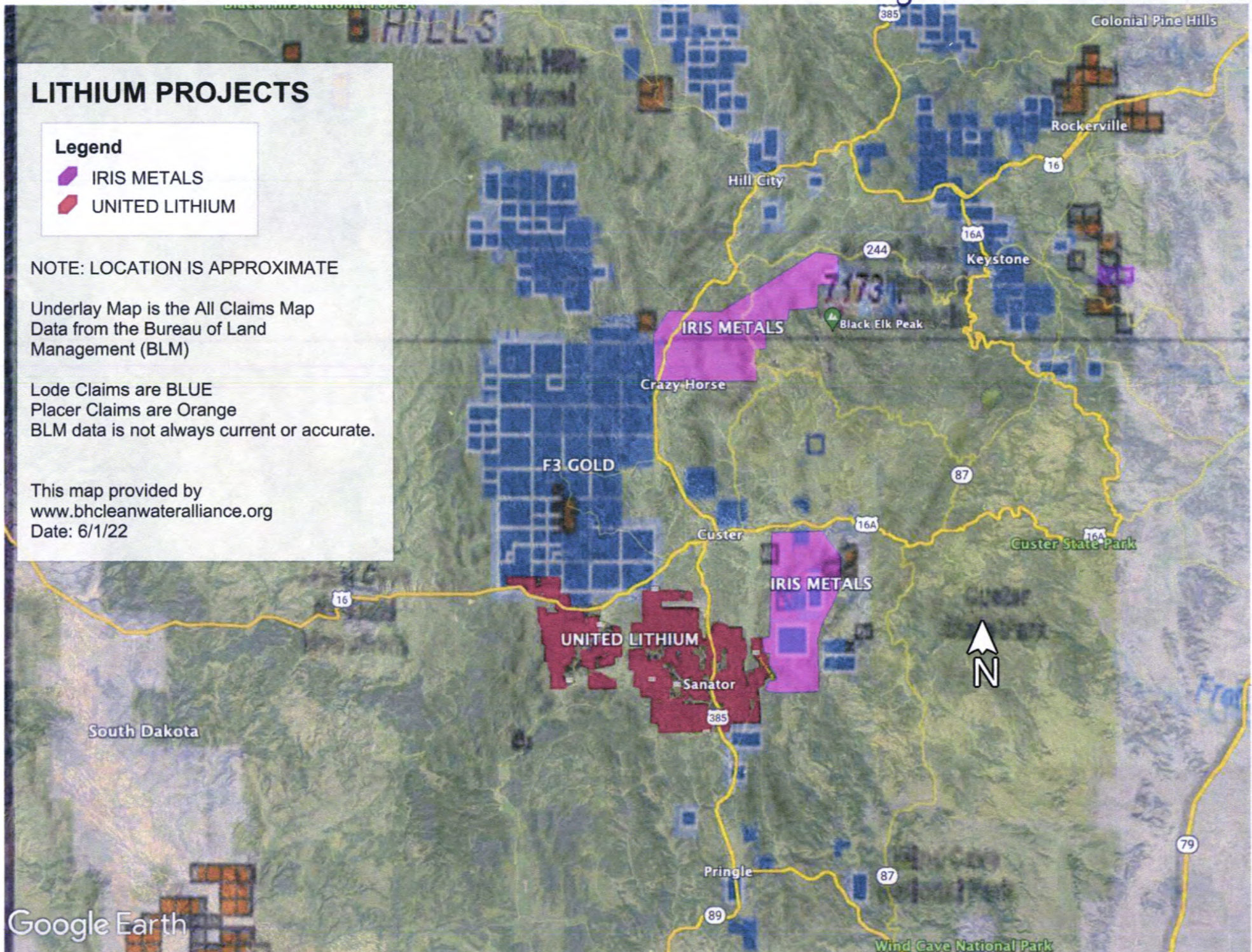
-  IRIS METALS
-  UNITED LITHIUM

NOTE: LOCATION IS APPROXIMATE

Underlay Map is the All Claims Map
Data from the Bureau of Land
Management (BLM)

Lode Claims are BLUE
Placer Claims are Orange
BLM data is not always current or accurate.

This map provided by
www.bhcleanwateralliance.org
Date: 6/1/22



Ervin Jeri

Subject: FW: Several things for Monday

----- Forwarded message -----

From: **Karen McGregor** <karenmcgregor924@gmail.com>
Date: Fri, Jun 10, 2022 at 7:19 AM
Subject: Re: New Information
To: Liliias Jarding <liliiasjarding@gmail.com>

Thank you for the information.

On Thu, Jun 9, 2022 at 4:31 PM Liliias Jarding <liliiasjarding@gmail.com> wrote:

Hi, Karen --

One of our workers was reviewing the latest draft of the Hard Rock Mining Ordinance and noticed that the introduction and the definitions omit pegmatite mining from the Ordinance. This is not a good idea, as lithium mining is a type of pegmatite mining, and there are currently lithium claims in Pennington County. The attached map shows where IRIS Metals says it has lithium claims in the County.

Note that these claims are not yet registered with the Bureau of Land Management database, as they are very new and the BLM is six months behind in its work.

Modern pegmatite lithium mining involves large open pits and substantial water impacts. There is also the possibility of lithium mining in the County on some of the claims on the map that are closer to Keystone. There was lithium mining in that area until the 1950s. One of the same persons who has claims by Keystone is part of a corporation that also includes IRIS Metals.

I would strongly urge the Planning Commission to remove the language that omits pegmatite mining from the Ordinance. I am not sure if you will get to that agenda item before I leave (I have now had to leave for other appointments twice), but if I am there, I will talk about this. If I am not there, please ask for this amendment.

Thank you --

Liliias

Provided at 5-23-22 mtg.
member of the public

2. Groundwater Monitoring.

- a. ~~Based on site specific conditions~~ For all large-scale operations, the Board of Commissioners, as a condition of approval for the Hard Rock Mining Permit, ~~may~~ shall require the applicant to ~~perform baseline testing of up to install~~ three (3) wells located within 1,500 feet of the proposed perimeter of the mining extraction area ~~and perform baseline testing of them. 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 Existing wells may be used instead of installing new wells if they are located within the perimeter of the mining extraction area or on adjacent land within 1,500 feet the proposed perimeter of the mining extraction area, and if they are completed at the appropriate depth, and if the where the~~ property owners have ~~requested~~ allowed testing, ~~in writing, and granted permission for access to their property in writing.~~ These three (3) wells must be located in such a manner as to allow proper triangulation required to determine groundwater flow direction. Baseline testing shall ~~establish~~ include, at a minimum, ~~measuring groundwater elevations and obtaining analytical results for bacteria and turbidity level~~ concentrations in these tree (3) wells, ~~and potential groundwater drawdown due to~~ In addition, if any pumping occurs at the proposed mining area, the potential groundwater drawdown will be estimated.
- b. Testing must be completed and results obtained prior to commencing any permitted mining activity on site.
- c. ~~If any pumping occurs at the proposed mining area, d~~ Drawdown tests on the original baseline wells shall be conducted when requested in writing by a nearby well owner who ~~demonstrates~~ alleges that the quantity of water in their well(s) has ~~(have)~~ been impacted by the mining activities.
- d. ~~If a nearby well owner in the downgradient direction from the mining operation alleges in writing that the quality of water in their well(s) has (have) been impacted by the mining operations, the applicant shall be required to conduct testing of the original baseline wells plus the well(s) of the nearby owner to evaluate the likelihood that the mining operation is responsible for such impact.~~
- e. All tests shall be performed by a qualified third-party professional.

APR 06 2022

April 1, 2022

Pennington County Planning & Zoning
130 Kansas City St.
Suite 200
Rapid City, SD 57701

To whom it may concern:

I am writing you because
I am extremely concerned about
the devastating effects of large
scale mining & gold exploration
in our area!

I urge you to do whatever
you can to pursue and sting -
then the ordinance you are
currently drafting to prevent
the hard rock mining and ex-
ploration, to protect our precious
water from becoming contaminated.

With much appreciation
Marilyn Domastie
3313 Grand Ave, #108
Rapid City, SD
57702

April 1, 2022

Pennings Co. Commissioners
130 Kansas City St Suite 200
Rapid City, SD 57701

To whom it may concern:

I am writing you because I am extremely concerned about the devastating effects of large scale mining and gold exploration on our water.

I urge you to do whatever you can to pursue and strengthen the ordinance you are currently drafting in order to protect our precious water from becoming contaminated.

With much appreciation,
Marilyn Remaster
3313 Grand Ave Apt #106
Rapid City, SD
57702

RECEIVED

APR 06 2022

COMMISSIONER'S OFFICE

Ervin Jerl

From: Martin Joan
Sent: Wednesday, March 30, 2022 1:12 PM
To: Molitor Brittney; Ervin Jeri
Subject: FW: WEBFORM: Board Of Commissioners - Contact Us

Please add to the packet.

Joan

-----Original Message-----

From: NoReply <NoReply@pennco.org>
Sent: Wednesday, March 30, 2022 1:10 PM
To: Martin Joan <joan.martin@pennco.org>; Hennies Holli <hollih@pennco.org>
Subject: WEBFORM: Board Of Commissioners - Contact Us

The following information was submitted from a web form on the Pennington County website.

DO NOT click reply. To reply, copy and paste the e-mail address below into the "To" field of an outgoing message.

[illegible]

Submitted Information:

Your name: Linda Sandness

Your e-mail address: lsandness@hotmail.com

Your phone number: 6055843827

Who would you like to send your message to? All 5 Commissioners

Message: Hard Rock Mining Issue

I live out by Rochford, and am very concerned about what mining does to water resources, property values, tourism, and the fragile beauty of the Black Hills. Why let private companies come in rape the land, pollute our water, take the money, and go back to their home out of state? Please, please protect especially our water. Without it, we can't live here. The Forest Service says their hands are tied. Yours aren't. Protect us and our resources.

Thank you for your service.

Linda Sandness

Ervin Jeri

FW: WEBFORM: Board Of Commissioners - Contact Us

-----Original Message-----

From: NoReply <NoReply@pennco.org>

Sent: Thursday, March 31, 2022 10:09 AM

To: Martin Joan <joan.martin@pennco.org>; Hennies Holli <hollih@pennco.org>

Subject: WEBFORM: Board Of Commissioners - Contact Us

The following information was submitted from a web form on the Pennington County website.

DO NOT click reply. To reply, copy and paste the e-mail address below into the "To" field of an outgoing message.

[illegible]

Submitted Information:

Your name: genevieve newell

Your e-mail address: jackienewell@rushmore.com

Your phone number: 6057219427

Who would you like to send your message to? Deb Hadcock (Commissioner District 3)

Message: I urge the commission to strengthen the hard rock mining ordinance. It's long overdue. Failure to address this will impact critical water resources and quality of life for residents and visitors alike. Sincerely, Genevieve Newell

Ervin Jeri

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

Brittney Molitor, AICP, CFM, MAS

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



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

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

Dear Sirs,

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

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

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

Thank-you.

Richard A. Bell, PE
1206 Clark St.

2. Groundwater Monitoring.

- a. ~~Based on site specific conditions~~For all large-scale operations, the Board of Commissioners, as a condition of approval for the Hard Rock Mining Permit, ~~may~~shall require the applicant to perform baseline testing of up to install three (3) wells located within 1,500 feet of the proposed perimeter of the mining extraction area and perform baseline testing of them. ~~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~~Existing wells may be used instead of installing new wells if they are located within the perimeter of the mining extraction area or on adjacent land within 1,500 feet the proposed perimeter of the mining extraction area, and if they are completed at the appropriate depth, and if the where the~~ property owners have ~~requested~~allowed testing, ~~in writing, and granted permission for access to their property in writing.~~ These three (3) wells must be located in such a manner as to allow proper triangulation required to determine groundwater flow direction. Baseline testing shall establish~~include,~~ at a minimum, measuring groundwater elevations and obtaining analytical results for bacteria and turbidity level~~concentrations in these tree (3) wells, and potential groundwater drawdown due to~~ In addition, if any pumping occurs at the proposed mining area, the potential groundwater drawdown will be estimated.
- b. Testing must be completed and results obtained prior to commencing any permitted mining activity on site.
- c. If any pumping occurs at the proposed mining area, d~~Drawdown~~ tests on the original baseline wells shall be conducted when requested in writing by a nearby well owner who demonstrates~~alleges that the~~ quantity of water in their well(s) has (have) been impacted by the mining activities.
- d. If a nearby well owner in the downgradient direction from the mining operation alleges in writing that the quality of water in their well(s) has (have) been impacted by the mining operations, the applicant shall be required to conduct testing of the original baseline wells plus the well(s) of the nearby owner to evaluate the likelihood that the mining operation is responsible for such impact.
- e. All tests shall be performed by a qualified third-party professional.

Ervin Jeri

From: Molitor Brittney
Sent: Monday, March 28, 2022 8:05 AM
To: Ervin Jeri; Sack Cody
Subject: FW: FOR THIS MORNING'S PLANNING COMMISSION MEETING

Brittney Molitor, AICP, CFM, MAS

Planning Director

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



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

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

Dear Ms. Molitor --

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

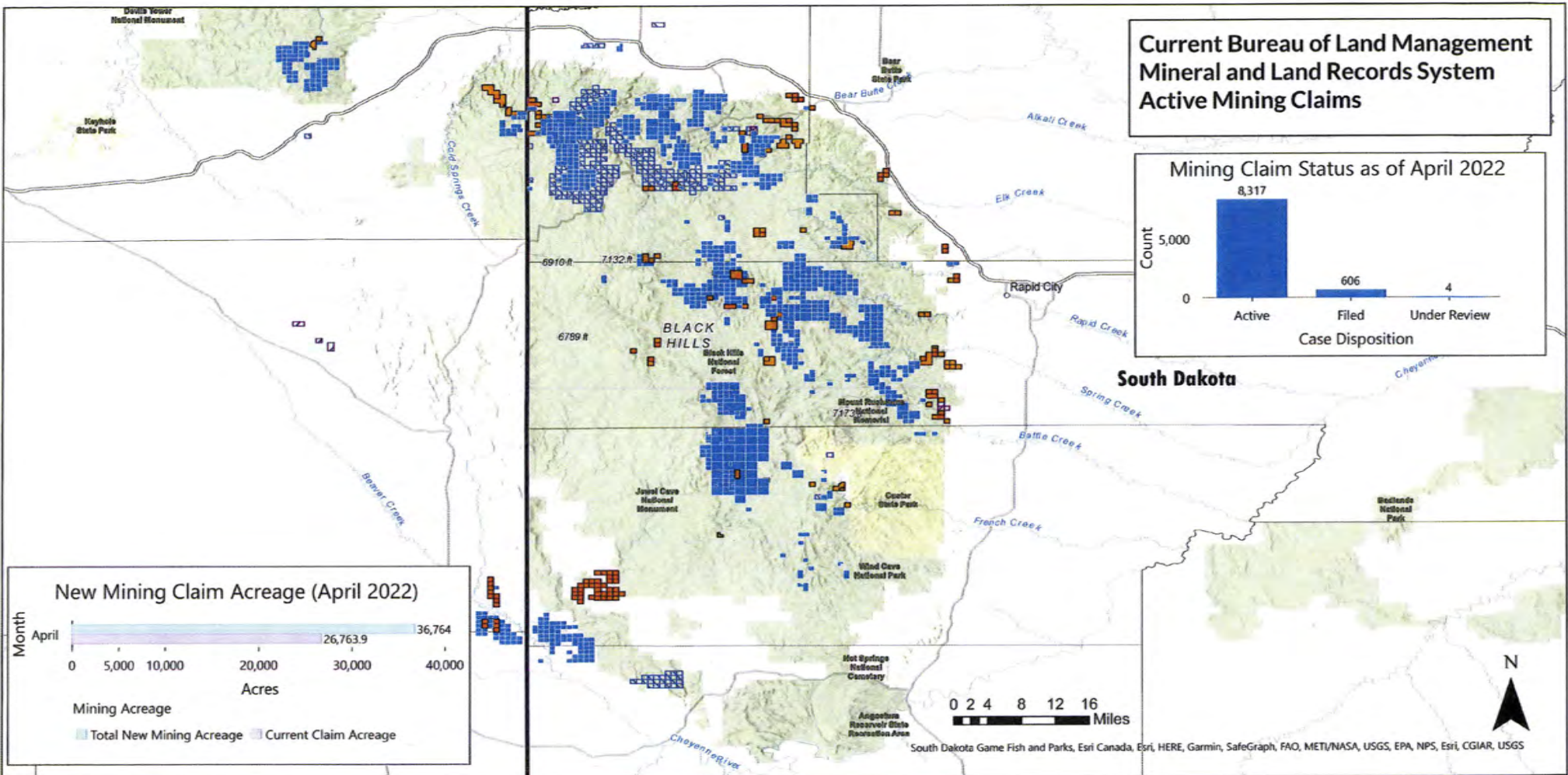
I wanted to be sure the Commission knows the importance of having a Pennington County Hard Rock Mining Ordinance at this time. I looked in the Bureau of Land Management's database last night. There are currently 30,233 active mining claims by two companies in Pennington County. There may be others from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

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

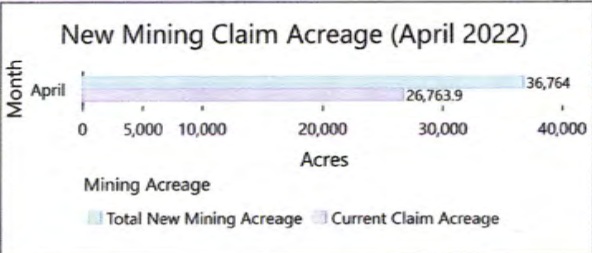
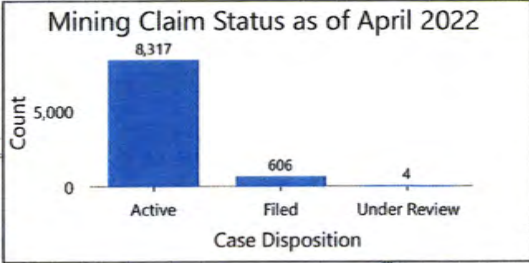
Although I have now missed two hearings on this ordinance -- and attended once when it wasn't considered -- I am quite willing to talk to any member of the Commission about this matter. My phone number is 605-787-2872, and my email address is on this email.

Thank you for your efforts on this important issue.

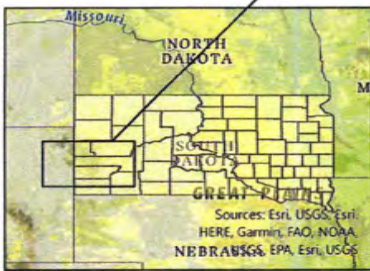
Lillas Jarding, Ph.D.



Current Bureau of Land Management Mineral and Land Records System Active Mining Claims



- Legend**
- Active Mining Claims January 2022
 - Lode Claim
 - Placer Claim
 - Active Mining Claims April 2022
 - New Lode Claims
 - New Placer Claims
 - National and State Parks
 - National Park or Forest
 - State Park or Forest



Types of Claims

Lode Claims - Deposits subject to lode claims include classic veins or lodes having well-defined boundaries. They also include other rock in-place bearing valuable minerals and may be broad zones of mineralized rock.

Placer Claims - Placer claims are defined as "...including all forms of deposit, excepting veins of quartz, or other rock in-place." In other words every deposit, not located with a lode claim, should be appropriated by a placer location.

Strategic Mapping Provided by:

Mato Ohitika Analytics LLC
©2022 All Rights Reserved.

Black Hills Clean Water Alliance

South Dakota Study Area
BLM Mining Claims
Paha Sapa
(Black Hills, South Dakota)
April 20, 2022

MAPBOOK
BLM Mining Claims
Lode Claims / Placer Claim
Updated Claims
Q2 2022

Ervin Jeri

Subject: FW: Hardrock Mining Ordinance comment

From: Molitor Brittney <brittneym@pennco.org>
Sent: Monday, March 28, 2022 5:01 PM
To: Sack Cody <cody.sack@pennco.org>; Ervin Jeri <jerie@pennco.org>
Subject: Fwd: Hardrock Mining Ordinance comment

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

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

Dear Brittney,

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

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

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

Thanks again for the opportunity to comment!

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

Ervin Jeri

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

Brittney

Begin forwarded message:

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

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

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

Re: Draft Ordinance Section 321 - Hard Rock Mining Operations

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

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

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

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

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

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

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

Thank you for your time and consideration.

Cherlyn Leach Valades
1905 Windmill Drive
Spearfish, SD 57783

Ervin Jeri

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

Brittney

Begin forwarded message:

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

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

Dear Pennington County Commission,

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

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

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

Thank you for your time and consideration.

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

Sack Cody

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

Brittney

Begin forwarded message:

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

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

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

Sent from Yahoo Mail for iPad

Sack Cody

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

Brittney

Begin forwarded message:

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

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

Greetings,

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

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

Thank you for your time,
Laural

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

Sack Cody

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

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



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

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

Hello,

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

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

Thank you,

Miana

Sack Cody

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

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



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

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

Dear Brittney M, representative of Pennington County,

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

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

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

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

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

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

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

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

Thank you,
Tom Thorson

Ervin Jeri

Subject:

FW: Comments to be read at todays Planning Commission Meeting

-----Original Message-----

From: Rajni Lerman <rajni1love@gmail.com>

Sent: Monday, February 28, 2022 8:10 AM

To: toplz@pennco.org; Molitor Brittney <brittneym@pennco.org>

Subject: Comments to be read at todays Planning Commission Meeting

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Good morning,

I was planning on coming to the Planning Commission today, but am now unable to do so. I was hoping someone could read my comments below.

My name is Rajni Lerman and I support the new Pennington County Hard Rock Mining Operations Ordinance, because it will help protect the precious resource of water! Water is necessary for LIFE and we cannot allow any activity that could potentially containment a necessity to our citizens.

I would however, suggest a few changes to the Ordinance would make it even better. In Section D.4.I – Definition of Hard Rock Mining Operation. We need to add waste rock disposal and settling ponds to the final version of this definition, so we have a way to regulate them. Both are dirty parts of the mining process. Waste rock disposal usually means a dam, a body of water, and the actual waste rock. This is a bad situation that could be made worse if it isn't properly regulated – especially since in Pennington County it would probably be upstream from Rapid City.

Section E.3.e should clearly say that a Water Reclamation Plan must be part of the Reclamation Plan. Right now, it isn't included.

Additionally, Tribal Historic Preservation Officers should have a clear role in the Ordinance process, not just be given notice that someone has applied to mine. We have already taken too much from the original peoples of this land without their consent. Their voices matter and they need a seat at the table.

Thank you for your consideration, I am sorry I was not able to make it today in person.

Sincerely,
Rajni Lerman
Hot Springs, SD

418 North 44th Street
Rapid City, SD 57702
605-787-2872
lillasjarding@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

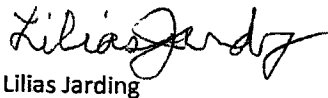
this ordinance, just like everyone else. This is bad policy. This sentence must be removed from the final version of the Ordinance. This is the strongest of my recommendations.

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,



Liliás 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 Ojibwe, Lakota, and Arapaho 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 abandoned 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; E.g.: 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 brittneym@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

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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

Good evening members of the Pennington County Planning Commission.

My name is Rebecca Terk, I'm a resident of Pennington County, and I reside in Dark Canyon.

In the past several years, I worked with a group of experts and concerned citizens East River to develop a training for county decision-makers on zoning ordinances & the conditional use permitting process. Over three years of that training, we hosted decision-makers from over half the counties in the state.

Those trainings included presentations from state government officials and other entities on issues related to that process—including the scope of state and county government authority, water protection and setbacks, mitigation of potential nuisances, infrastructure costs, and legal considerations in creating permit conditions and in denying permit applications.

I'm glad to see Pennington County developing a Hard Rock Mining Ordinance. If we are going to allow this activity in the county, we ought to regulate it for the benefit of those who live here. Thank you for your work on this and for your careful consideration of public comment.

I'd like to make a couple of recommendations on this draft ordinance based on my experience.

The first, most major issue is the Applicability Section of the draft ordinance, which states that "The Mining of minerals is allowed in any zoning district provided that it is a Patented Mining Claim." It also says that if the claim is unpatented, mining can only occur in specific zoning districts. However, the process of patenting a claim involves exploration, and this ordinance does not address issues surrounding exploratory drilling, which is invariably rubber-stamped on the state level.

This language opens up the possibility of exploration and mining almost anywhere in the county. That flies in the face of the purpose of zoning—to provide for the orderly development of the county and to protect existing uses. I can't think of any other county that allows for this kind of wide-open development potential for a heavy industrial use.

The second issue that raises concern is that while a permit application needs to provide a Road & Traffic Impact study, it does not spell out when a county haul route agreement is required. Those agreements, signed *in advance* of any mining permit issuance, are imperative for protecting taxpayers from footing the bill for wear and tear on our roads and bridges. This was the number one point made by SD Local Transportation Assistance Program officials in our trainings: Protect your taxpayers; protect your infrastructure.

Lastly, Pennington County should strongly consider a prohibition on cyanide leaching. Cyanide heap leaching is favored by the mining industry because it's an efficient way of extracting gold

and silver from low grade ore rock. However, it also incentivizes the extraction of many thousands of tons *more rock*, creating many thousands of tons *more waste*—waste that contains and can leach other toxic heavy metals such as arsenic & cadmium and endanger our water, wildlife and fisheries, and our tourism and recreation economies.

We can look to the Gilt Edge SuperFund site in Lawrence County to see the damage that can be wrought. Since there are no large scale mines currently operating in Pennington County, prohibiting use of this method would not constitute a taking from existing operations. Other states (Montana & Wyoming) and entire countries have banned this process, and we have the opportunity to protect our precious water by putting this measure in place *before* the damage is done.

Thank you for your consideration of my comments.

Respectfully,

Rebecca M. Terk

8265 Dark Canyon Road

Rapid City, SD 57702

(605) 343-1309

rebecca.terk@gmail.com

BRUCE ELLISON
8265 Dark Canyon Road
Rapid City, S.D. 57702
605-348-1117
Belli4law@aol.com

PENNINGTON COMMISSION MEMBERS

130 Kansas City Street

Rapid City, SD 57701

Emailed to brittneym@pennco.org

And hand-delivered at 2/9/22 Planning Commission Hearing

Re: Comments on Draft of Section 321

Dear Planning Commission Members

Thank you for the obvious hard work creating this current, more detailed and expansive draft of Section 321 Hard Rock Mining Operation Ordinance. It is well on the way toward creating a draft ordinance which can provide substantive protection of our water resources from immediate and/or potential long-term adverse impacts of a proposed hardrock mining operation.

I am a land-owner and resident along Rapid Creek, down stream and down flow from the massive land areas being seriously explored for gold and other hardrock mining on public and private lands to the west, within the Rapid Creek Watershed I depend upon for my domestic water resources. Due to the catastrophic consequences on watershed from current and past hard rock mining north of the proposed sites in western Pennington County, I believe it imperative to ensure protection of the major watershed out of the eastern Black Hills from contamination due to hard rock mining operations.

Since the time allotted for oral public comment is limited and would not permit me to fully present my comments on the current draft of Section 321, I am hereby and respectfully submitting the following for your consideration as amendments or additions to the current draft:

More specifically:

1. If not already in existence, pursuant to SDCL 7-18-20, the County needs to establish an ordinance establishing "well head protection areas" prior to determining any applications for hard rock mining or processing or transportation." Such WHPAs are

required to comply with the requirements of the Department of Agriculture and Natural Resources Guidelines established under SDCL 34A-3A-17 designed "for a wellhead protection program to protect the public water supplies from new and existing facilities which may be potential or actual pollution sources."

2. Section A: I am concerned about an addition of a sentence since the previous draft in Section A. The addition states: "The mining of minerals is allowed in any Zoning District provided that it is Patented Mining Claim." My concern is that at least one mining company involved in extensive geo-mapping exploration and appears interested in mining near Rapid Creek and Rochford. Under the new draft language, it would seem to exempt this company or other company seeking a similar mining area from County regulation. The County should neither give preference to any company based upon where it intends to mine and any company wanting to do so in our County should be required to not only submit an application for a permit, but address and be subject to all sections of this Ordinance. I would request this sentence be removed.
3. Section B: Of concern in Section B is the use of the term Best Management Practices being required to "minimize" damage to the environment. The term "Best Management Practices," while an industry term, is not defined in the proposed draft. My suggestion is that it be defined by the County as the most advanced technological and safety processes in existence, regardless of cost, which would provide significant assurance that there would be no catastrophic or even major [more than a barrel] contamination of water resources from mining or processing or waste during hard-rock mining operations, or at most extremely limited contamination. Mining engineers had stated to me that this is technologically and procedurally possible, its just very expensive. With existing superfunds in the Black Hills, I would respectfully submit the cost of the long-term basic loss of the Rapid Creek Watershed for agricultural, domestic, and recreational uses from major contamination caused or potentially caused by largescale hardrock mining projects would far outweigh the costs to the company. If they can't afford it, the Ordinance should prohibit granting the permit.
4. Section D(4)(l): Due to the practice and potential of some companies disposing of waste rock and settling ponds on land areas that are not part of the permit application, I would request the draft of this definition section be expanded to include waste rock disposal and settling ponds.
5. Section E(3)(c): Due to the highly irregular and to a large extent unknown geohydrology in the area, including somewhat known water conduits from proposed mining areas near Rochford and Mystic to Elk Creek, Cleghorn Springs, and Spring Creek, the application should include a detailed three-dimensional geohydrological map of the proposed mining and/or processing site of not only the surface but the

subsurface water resources, conduits, recharge areas. The map should further include the location of any non-flowing water resources in the crystalline rock and other formations where such water exists. The water resource map should reflect water resources outside the project area which are hydrologically connected to water resources or conduits in the proposed mining/processing areas. The map should further include any subsurface water resources below the proposed operational area. The map must be drawn from all available data resources as well as after any further study of the geohydrology in the proposed mining/processing area(s) needed to provide the County with a full understanding of all water resources which could be potentially contaminated by the applicant's proposed operation.

6. Section E(3)(c): (viii): In addition to surface water flow, the applicant should be required to show the direction and speed of movement of each and all subsurface water resources.
7. Section E(3)(d)(i): It is requested that in addition to the date of planned "operation", the application include the proposed start date of any pre-operation construction.
8. Section E(3)(d)(ii): As to the method of processing or extracting the ore from the rock, it is respectfully requested that this County advise mining and processing applicants that use of cyanide will not be permitted. This addition would ensure that the devastation to watershed in the northern Black Hills due to use of cyanide processing will not occur in Pennington County's principal water resources.
9. Section E(3)(d)(vi): Due to potential road damage from truck traffic during construction and operation of a hard-rock mine, it is requested that the applicant also be required to designate the specific routes of each proposed road use within and without the proposed permit area. For any such routes, it is respectfully requested that the draft Ordinance include a requirement that a road hauling agreement with the County be in place prior to the start of any pre-operational construction.
10. Section E(3)(d)(viii): As discussed above, any operational plans and procedures to prevent water contamination should not only comply with State and Federal laws, but language is requested to include best known industry technology and practices determined to prevent any or any major contamination, along with proof from applicant showing the history of success of each such particular technology or practice.
11. Section E(3)(e): It is respectfully requested that the Reclamation Plan in this subsection expressly state that a Water Reclamation Plan must be part of the Reclamation Plan, in addition to land reclamation.

12. Section H: Please include protection of historical and cultural resources in this Section.

Since the DANR Mining Board has never denied a mining permit, and the Water Management Board in the past number of years has not seriously considered potential water contamination of a project before authorizing whatever amounts of public water private, often foreign mining and hazardous transportation companies, it is imperative that a Section 321 Ordinance be maximally protective of our water resources.

I respectfully submit the above proposals regarding the draft Ordinance will help in the protection of our limited and most precious resource – our water.

Thank you for your time in considering them.

Sincerely,

Bruce Ellison

And on behalf of my children and grandchildren

RED-LINED DOCUMENT FOR
SECTION 321 – HARD ROCK MINING.

SECTION 321 – HARD ROCK MINING OPERATION

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

A. Applicability.

Section 321 applies to the extraction of minerals in excess or equal to 100 cubic yards of material. Section 321 does not apply to the extraction of aggregate regulated under Section 320 **or for subsurface Hard Rock Mining Operations**. A Storm Water Permit may be required under Section 507 for hard rock mining operations. All hard rock mining operations must comply with all other applicable local, state, and federal law, rules or regulations. The Mining of minerals is allowed in any Zoning District provided that it is a ~~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. Log. A record of performance, events, or day-to-day activities.
- q. 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;
- r. Mining Operation. 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, milling and

processing located on the land described in the application for a mining permit, and stand-alone milling and processing facilities utilizing chemical or biological leaching agents. 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;

- s. NEIGHBORHOOD. A geographically localized community within a larger city, town, suburb or rural area.
- ~~t. OPERATIONAL MEASURES. Techniques utilized during day-to-day operation to prevent or mitigate potential impacts.~~
- u. 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.
- v. 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.
- w. 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.
- x. PERMIT LIMIT. The area of mining operation as legally described on the Pennington County hard rock mining application.
- ~~y. PERSONAL USE. Extraction and use by property owner for non-commercial purposes.~~
- z. Record. A document(s) kept in the ordinary course of business by an operator
- aa. 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.
- bb. START WORK ORDER. An administrative order that allows a person to resume an activity that was the subject of a prior stop work order.
- cc. 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.

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

ee. TAILINGS. The discharged valueless product of a beneficiation process.

E. ~~Application. Application must be made on a form provided by the Planning Department~~
Hard Rock Mining and Permit Process and Public Notice Requirements.

1. ~~An incomplete application will result in denial of the Permit.~~

Application and Notice Hearings

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.

f. *Site Plan.* ~~A site plan, drawn at a scale that is clearly legible and includes the following:~~ *Map of Affected area: A site plan/map of affected area as required by SDCL 45-6B-10.*

e. _____

- 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.
- xviv. — The Planning Director may require submission of additional information as part of the site plan.

g. 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: — An operation plan that includes information required by SDAR 74:29:02:04

d. —

- 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.~~

h. 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.~~ **The reclamation plan shall contain the information as required by SDCL 45-6B-7.**

e.

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

c. ~~_____~~

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

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. *Site Contact:* The Operator shall post at the entrance of the property contact information for responsible contact to be contacted during and after operation hours.
3. *Surface and Ground water:* All Operations must follow all Local, State, Federal regulations for water quality.
4. *Dust Control.* The operator shall comply with the provisions of SDCL 34A-1. The operator shall use industry Best Management Practices in an effort to control and minimize fugitive dust, including one of the following but **not limited to:** landscaped earthen berms, paved entrance roadways, standard methods of water spray, dust covers on transfer points, and sweeping, if needed.
5. *Noise Control.* The operator shall comply with all applicable noise regulations and industry recommendations, provided such recommendations are allowed by Mine Safety and Health Administration. The Planning Department will address noise complaints and mitigation under Pennington County Ordinance 106.
6. *Lighting.* All lights shall use hoods and lenses that cast light downward.
7. *Vibration and Blasting.* The hard rock mining operation and activities shall comply with all local, state, and federal law, rule or regulation pertaining to blasting activities. Upon request by the Planning Director, the operator shall provide access to the blasting logs to the County.
 - a. Blasting may occur Monday through Friday from 7 a.m. to 5 p.m. Blasting is not allowed on Saturdays, Sundays, or Holidays as enumerated in SDCL 1-5-1.
 - b. Log Details. An accurate blasting log shall be prepared and maintained for each blast fired. Each blasting log shall include, but not be restricted to the following information:
 - i. **Blast Record**
 - ii. Name of the blaster in charge of the blast.
 - iii. Blast location references (latitude/longitude).
 - iv. Date and time of blast.
 - v. Weather conditions at time of blast.
 - vi. Diagram of blast hole layout.
 - vii. Number of blast holes.
 - viii. Blast hole depth and diameter.
 - ix. Spacing and burden of blast holes.
 - x. Maximum holes per delay.
 - xi. Maximum pounds of explosives per delay.

- xii. Depth and type of stemming used.
 - xiii. Total pounds of explosives used, including primers and initiating cord.
 - xiv. 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) $Ds = D / (\text{square root of } W)$; 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~~ 50 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~~ 50 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)~~ **ten (10)** years, unless a lesser time is specified by the Board of Commissioners or the Permit is revoked in accordance with Section 321-~~K-L~~. *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~~ L.
- 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)~~ ten (10) years of issuance of the initial Hard Rock Mining Permit, shall terminate the Hard Rock Mining Permit. A new Hard Rock Mining Permit Application shall be required for any future mining operation.
- 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.
- 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

Martin Joan

From: Nancy Hilding <nihilshat@rapidnet.com>
Sent: Friday, July 1, 2022 4:56 PM
To: Martin Joan; County Commissioners
Subject: Comments on Hard Rock Mining Ordinance - GFP and Endangered Species - SDCL 45-6B-7 (4) & SDCL 34A-8-9
Attachments: Environmental Review South Dakota Game, Fish, and Parks.pdf; User account South Dakota Environmental Review Tool.pdf

Nancy Hilding
President
Prairie Hills Audubon Society
P.O. Box 788
Black Hawk, SD 57718.

Pennington County Commission c/o Staff e-mail

To Pennington County Commission.

COMMENTS ON DRAFT HARD ROCK MINING ORDINANCE

We request that the Commission add a clause to the ordinance, similar to SDCL 45-6B-7(4) that requires the mining applicant to submit a wildlife survey to Pennington County. and that they abide by any reasonable restrictions asked for by the Department (subject to review by BME) concerning riparian habitat or threatened and endangered species. We are not sure where/when it should be required to be submitted, but perhaps be required to be submitted with mining application to Pennington County.

We also request that Pennington County , consistent with state law, out-law mining activities that result in the take of federal or state endangered species. We are very concerned about the northern long eared bat, a species that is harmed by an imported disease and the USFWS is likely to change listing from threatened to endangered soon. The bats could be disturbed in winter in their caves by mining noise or vibrations.

Below are screen shots of applicable law. - SDCL 34A-8-9 and SDCL 45-6B-7. Below that are 2 PDFs of SDGFP's web site showing its' offers to help businesses search for information about at "risk species" on their property/projects

=====

Nancy Hilding

6300 West Elm, Black Hawk, SD 57718

or

Prairie Hills Audubon Society

P.O. Box 788, Black Hawk, SD 57718

nhilshat@rapidnet.com

nhilding@rapidnet.com

phas.wsd@rapidnet.com

605-787-6779, does not have voice mail

605-787-6466, has voice mail

605-787-2806, cell (rarely used)

<http://www.phas-wsd.org>

<https://www.facebook.com/phas.wsd/>

<https://phas-wsd.blogspot.com/>

Skype phone & name -605-787-1248, nancy.hilding

45-6B-7. Reclamation plan--Contents.

The reclamation plan shall be based on provision for, or satisfactory explanation of, all general requirements for the type of reclamation proposed to be implemented by the operator. Reclamation is required on all affected lands except as provided in §§ [45-6B-8](#) and [45-6B-9](#). The reclamation plan shall include:

- (1) A description of the types of reclamation the operator proposes to achieve in the reclamation of the affected land, why each was chosen, and the amount of acreage accorded to each;
- (2) A standard soil survey of the affected land prepared by the local conservation district, paid for by the applicant, or if not available, a comparable soil survey prepared by a competent person;
- (3) A vegetative survey of the affected land prepared by the local conservation district, paid for by the applicant or prepared by a competent person, including a description of the dominant species of vegetation present, approximate size and density;
- (4) A preliminary wildlife survey of the affected land conducted by the Department of Game, Fish and Parks, paid for by the applicant, or conducted by a competent person approved by that department. Such survey shall include a description of the dominant species of wildlife inhabiting the area. The operator shall abide by any reasonable restrictions subject to review and approval by the Board of Minerals and Environment at the request of the operator concerning riparian habitat or threatened or endangered species as notified by that department. Restrictions concerning riparian habitat for mining operation activities are limited to such habitat located within one hundred feet of each stream bank. Further, restrictions concerning riparian habitat may include temporarily diverting the stream flow, bank restoration, and revegetation of the riparian habitat area;
- (5) A statement of any characteristics of the affected land of historic, archaeological, geologic, scientific, or recreational significance which are known to the applicant;
- (6) A description of how the reclamation plan will be implemented to meet the requirements of §§ [45-6B-37](#) to [45-6B-46](#), inclusive;
- (7) A description of how the reclamation plan will rehabilitate the affected land. This description shall include, but not be limited to, natural vegetation, wildlife, water, air, and soil;
- (8) A map of all of the proposed affected land by all phases of the total scope of the mining operation. It shall indicate the following:
 - (a) The expected physical appearance of the area of the affected land; and
 - (b) Portrayal of the proposed final land use for each portion of the affected land;
- (9) The baseline water quality and water level of all areas of aquifers potentially affected by the proposed mining operation. The Department of Agriculture and Natural Resources may designate, from the parameters set forth below, which parameters must be provided. The applicant shall use testing methods designated by the department:

(a) Alkalinity	(p) Hydrocarbon	(bb) Radon
(b) Aluminum	potential	(cc) Selenium
(c) Ammonia	(q) Iron	(dd) Silica
(d) Arsenic	(r) Lead	(ee) Silver
(e) Barium	(s) Magnesium	(ff) Sodium
(f) Bicarbonate	(t) Manganese	(gg) Sulfate
(g) Boron	(u) Mercury	(hh) Temperature
(h) Cadmium	(v) Molybdenum	(ii) Total alpha,
(i) Calcium	(w) Nickel	beta and gamma
(j) Carbonate	(x) Nitrate as	radiation
(k) Chloride	nitrogen	(jj) Total dissolved
(l) Chromium	(y) pH	solids
(m) Conductivity	(z) Potassium	(kk) Uranium
(n) Copper	(aa) Radium 226	(ll) Vanadium
(o) Fluoride	and 228	(mm) Zinc
- (10) The location of proposed reservoirs, tailings ponds, tailings disposal sites, dams, dikes, and diversion canals;
- (11) Provisions for the stripping, storage, and, if required, the replacement of the overburden and topsoil;
- (12) The estimated cost of implementing and completing the proposed reclamation.

Source: SL 1982, ch 305, § 7; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

34A-8-9. Possession, transportation and sale of endangered and threatened species prohibited--Violation as misdemeanor.

Except as otherwise provided in this chapter, no person may take, possess, transport, import, export, process, sell, or offer for sale, buy or offer to buy, nor may a common or contract carrier transport or receive for shipment, any species of wildlife or plants appearing on the following lists:

- (1) The list of wildlife and plants indigenous to the state determined to be endangered or threatened within the state pursuant to §§ 34A-8-3 and 34A-8-4.
- (2) The United States list of endangered or threatened native wildlife effective on January 1, 1977.
- (3) The United States list of endangered or threatened foreign wildlife effective on January 1, 1977.
- (4) The United States list of endangered or threatened plants effective on January 1, 1977.

A violation of this section is a Class 2 misdemeanor.

Source: SL 1977, ch 335, § 5; SL 1992, ch 158, § 48.

34A-8-10. Importation, possession, sale, or purchase of endangered or threatened species under permit, license, or other documentation. Violation as misdemeanor.



CONSERVATION

Photo © SDTourism

[HABITAT CONSERVATION](#)

[ENVIRONMENTAL REVIEW](#)

[NATURAL HERITAGE PROGRAM](#)

[SCIENTIFIC COLLECTOR'S PERMIT](#)

[WILDLIFE DISEASES](#)

[WILDLIFE DIVERSITY PROGRAM](#)

[WILDLIFE/FISHERIES MANAGEMENT PLANS](#)

[WILDLIFE REPORTS AND SURVEYS](#)

Environmental Review

South Dakota's wildlife depends upon the quality and quantity of native habitats including lands, waters, and other environmental components necessary for species survival and perpetuation.

South Dakota Game, Fish and Parks is often asked to help evaluate the impact of projects or land use changes to game or nongame species, rare species and native habitats. Our environmental review of projects helps fulfill our state-wide mission to manage wildlife and the habitats upon which they depend, for their ecological values and enjoyment by the citizens of South Dakota and visiting publics. We also want to prevent or minimize unnecessary damage to species and their habitats by offering possible mitigation measures or alternative project actions.

We may contribute our input in various ways, whether submitting official comment letters or providing feedback in a more informal setting. If a project is funded by a federal agency or tied to the federal government, an environmental review is typically mandated by that federal agency.

The [South Dakota Environmental Review Tool](#) is an interactive resource for conservation planning and environmental review by South Dakota Game, Fish and Parks (GFP). This site provides access to information on biological diversity, protected lands and other natural resources for conservation planning purposes. It also allows users to submit projects for review of potential impacts to rare, state or federal listed species and their habitats in South Dakota.




To obtain an environmental review, submit a project using the [environmental review tool](#), or submit a letter or email requesting a review, along with the following information, to [Hilary Morey](#), Environmental Review Coordinator, 523 E. Capitol Avenue, Pierre, SD 57501

- Description of the entire project, conceptual or whole, including the project purpose, timing, area (acres) to be disturbed and current and proposed future land use of the project area,
- Explanation of the type of state and/or federal permits required for the project and funding source,
- Project location and county (including section, township, range OR latitude, longitude coordinates).
- Aerial photo delineating the project area, including any off-site areas that will be used for things such as communication, power or energy infrastructure, borrow sites, waste sites, access/haul roads, buildings, disposal areas, etc.
- Occurrence of various species and habitats, if known.
- Proposed project alternatives, mitigation measures and monitoring, if developed.
- Contact information (name, mailing address, email address, and phone number) of the person submitting the request for review.

We encourage early consultation and notice of proposed projects. Please plan accordingly and allow sufficient time for our internal review to be completed.

The South Dakota Natural Heritage Database described above is one tool used to evaluate impacts to rare species or unique ecosystems, but there may be other resources within the agency that can be used to evaluate environmental impacts.

Related Documents

-  [2020 Threatened and Endangered Status Reviews](#)
-  [Threatened and Endangered Species List by County](#)
-  [Threatened and Endangered Species Nomination Form](#)

[See More](#)

Related News

10/26/20
[State Threatened and Endangered Species Status Reviews Available](#)
PIERRE, S.D. – In September, the South Dakota Game, Fish and Parks (GFP) Commission completed its biennial review of the state list of threatened and endangered species, with no changes made. The North

[See More](#)

Related Pages

[Threatened and Endangered Species](#)

SOUTH DAKOTA GAME, FISH AND PARKS
523 East Capitol Ave
Pierre, SD 57501

HUNTING AND FISHING:
WildInfo@state.sd.us

PARKS AND RECREATION:
ParkInfo@state.sd.us

CUSTOMER SERVICE:
605.223.7660

#SDInTheField



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- [Frequently Asked Questions](#)
- [Landowner and Habitat Programs](#)
- [Donate to Habitat](#)
- [Multi-Media](#)
- [Parks and Wildlife Foundation](#)
- [Project Bids and Contracts](#)
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User account

Create new account Log in Request new password

E-mail *

A valid e-mail address. All e-mails from the system will be sent to this address. The e-mail address is not made public and will only be used if you wish to receive a new password or wish to receive certain news or notifications by e-mail.

Salutation

First name *

Last name *

Organization *

Organization or Business Affiliation

Address *

Street address, e.g. 123 Main St

Address line 2

Optional second line of address, e.g. Suite 987

City *

State/Province *

ZIP Code *

Phone number *

Fax number

Terms and Conditions of Use

Terms & Conditions

By using this website, you acknowledge that you have read and agree to these Terms & Conditions of Use. South Dakota Department of Game, Fish and Parks (Department) staff may revise these terms periodically. If you wish to continue using our website after changes to terms are posted, you will be required to review and re-accept the terms prior to login. If at any time you do not wish to accept the terms, you will not be granted access to the website as a registered user.

1. This Environmental Review Tool (ERT) was developed and intended for the purpose of aiding conservation planning and screening projects for potential impacts to threatened, endangered and other at risk species and natural heritage resources. By indicating your agreement to the terms of use for this website, you warrant that you will not use this website for any other purpose.
2. The Department reserves the right at any time, without notice, to enhance, modify, alter, or suspend the website and to terminate or restrict your access to the website.
3. This Environmental Review is based on the project study area that was entered. If the project area, location, or type of project changes, the project should be resubmitted if you wish to receive updated information. If additional information becomes available, the review may need to be reconsidered. The Department recommends that projects be resubmitted for review after one year has passed since the most recent review.
4. Unauthorized attempts to upload or change information, to defeat or circumvent security measures, or to utilize this system for other than its intended purposes are prohibited and may be punishable under the Computer Fraud and Abuse Act of 1986 and/or the National Information Infrastructure Protection Act.
5. The accuracy of the information obtained through use of this system is dependent upon accurate information being input into the system by the user.
6. Although reports or queries may not show records for rare species within the vicinity of a project, it does not necessarily mean that they are not present. It may simply indicate that the area has not been surveyed or that records have not been reported to the South Dakota Natural Heritage Program. The ERT is constantly being updated and expanded. Information contained in the ERT does not constitute an official opinion by the Department, nor will it, by itself, meet any regulatory requirements. The information in the ERT does not replace the need for conducting field work. The information must be used in consultation with appropriate federal, state, and local offices. The absence of data confirming the occurrence of a species within a geographic area does not constitute a negative declaration.
7. The ERT operates on a complex computer system. This system is monitored to ensure proper operation, to verify the functioning of applicable security features and for other like purposes. Anyone using this system expressly consents to such monitoring and is advised that if monitoring reveals possible evidence of criminal activity, system personnel may provide the evidence to law enforcement officials.
8. This website maintains a record of each environmental review search result as well as all contact information. This information is maintained for internal tracking purposes only. Information collected in this application will not be shared outside of the purposes of the Department.

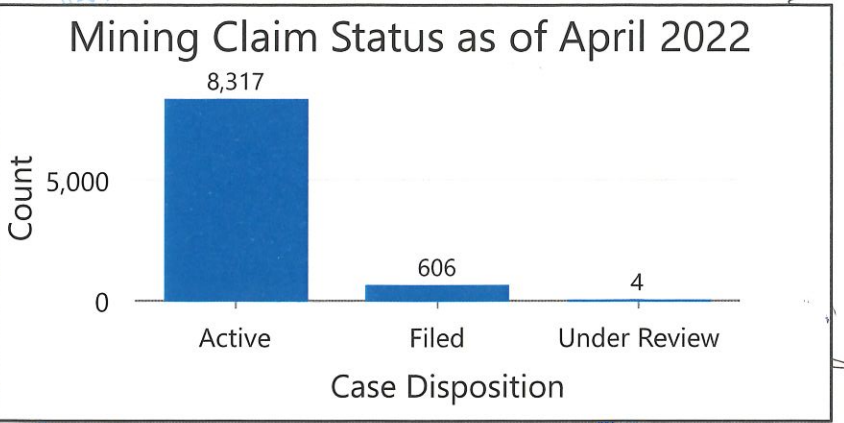
You must accept these Terms & Conditions of Use in order to use the Environmental Review Tool website and tools.

☐ Accept Terms & Conditions of Use *

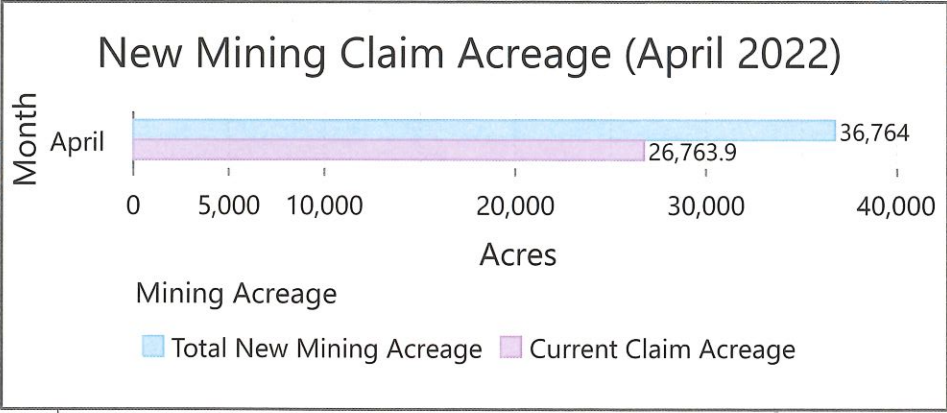
Create new account



Current Bureau of Land Management Mineral and Land Records System Active Mining Claims

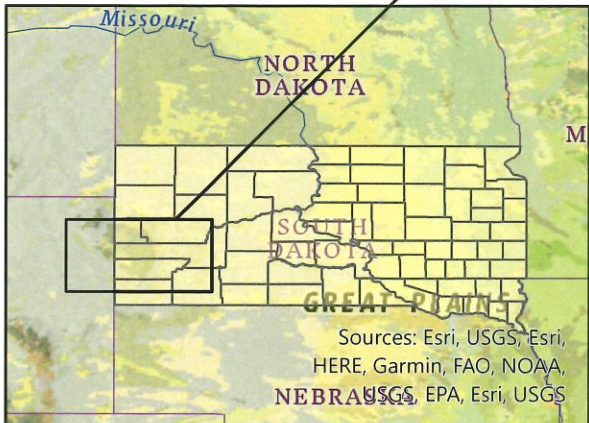


Presented at the 7-5-22 BOC meeting by Dr. Lilius Jarding
Item 18.j



Legend

- Active Mining Claims January 2022
- Active Mining Claims April 2022
- New Lode Claims
- New Placer Claims
- National and State Parks
- National Park or Forest
- State Park or Forest



Types of Claims

Lode Claims - Deposits subject to lode claims include classic veins or lodes having well-defined boundaries. They also include other rock in-place bearing valuable minerals and may be broad zones of mineralized rock.

Placer Claims - Placer claims are defined as "...including all forms of deposit, excepting veins of quartz, or other rock in-place." In other words every deposit, not located with a lode claim, should be appropriated by a placer location.

Strategic Mapping Provided by: Mato Ohitika Analytics LLC ©2022 All Rights Reserved.	South Dakota Study Area BLM Mining Claims Paha Sapa (Black Hills, South Dakota) April 20, 2022
 Black Hills Clean Water Alliance	MAPBOOK BLM Mining Claims Lode Claims / Placer Claim Updated Claims Q2 2022

Laws that may be referenced in testimony 7/5/22

Nancy Hilding
President
Prairie Hills Audubon Society
P.O. Box 788
Black Hawk, SD 57718
nhilshat@rapidnet.com
605-787-6466

Emphasis of underline and/or colored text is added

A. Can Pennington County do anything but xerox the state laws and drop into ordinance?

6-12-5. Standards to be at least as stringent as state law.

Neither charter nor ordinances adopted thereunder may set standards and requirements which are lower or less stringent than those imposed by state law, but they may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise.

=====

45-6B-4. Local government permit--Additional bond or surety not authorized--Conditional mining permit.

Any county or first or second class municipality which has adopted a comprehensive plan and zoning ordinances may adopt ordinances or requirements governing mining operations which are not inconsistent or in conflict with applicable state laws or administrative rules. However, such county or municipality may not require additional bonds or sureties if the same are required by state law or administrative rule. The Board of Minerals and Environment may not grant a permit for a mining operation unless the applicant has complied with all county or city ordinances and requirements and obtained necessary county or city permits. However, if the applicant has substantially complied with the procedure for obtaining any necessary county or city permits but has not obtained such permits due to administrative delay, the Board of Minerals and Environment may grant a mining permit which is conditioned upon the issuance of all necessary county or city permits within sixty days of the date of the board's issuance of the conditioned mining permit. If a county or municipality has adopted an ordinance governing mining operations, any proceedings of and any action taken by the county or municipality with regard to the proposed mining operation may be considered by the Board of Minerals and Environment before the issuance or denial of a permit pursuant to this chapter, including a permit conditioned upon the issuance of all necessary county or city permits.

No mining operations may be commenced under a permit conditioned upon the issuance of all necessary county or city permits until the Board of Minerals and Environment is notified by the applicant in writing that the required county or city permits have been obtained by the applicant.

Source: SL 1982, ch 305, § 4; SL 1987, ch 319; SL 1992, ch 60, § 2.

1-41-3.4. Limitation on stringency of certain rules.

No rule that has been promulgated pursuant to Title 34A, 45, 46, or 46A may be more stringent than any corresponding federal law, rule, or regulation governing an essentially similar subject or issue.

Source: SL 1992, ch 254, § 100; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 56, eff. Apr. 19, 2021.

B. Socio-economic study and protection of endangered are in State Law

45-6B-33. Unsuitable land--No permit issued.

No permit may be issued for a mining operation proposed on unsuitable land. Land is unsuitable if the following conditions cannot be satisfactorily mitigated:

- (1) Reclamation of the affected land pursuant to the requirements of this chapter is not physically or economically feasible;
- (2) Substantial disposition of sediment in stream or lake beds, landslides, or water pollution cannot feasibly be prevented;
- (3) The land to be affected by a proposed mining operation includes land that is special, exceptional, critical, or unique as defined in § [45-6B-33.3](#) and satisfactory mitigation is not possible;
- (4) The proposed mining operation will result in the loss or reduction of long-range productivity of aquifer, public and domestic water wells, watershed lands, aquifer recharge areas, or significant agricultural areas;
- (5) The biological productivity of the land is such that the loss would jeopardize threatened or endangered species of wildlife indigenous to the area; or
- (6) The board finds that any probable adverse socioeconomic impacts of the proposed mining operation outweigh the probable beneficial impacts of the operation.

Source: SL 1982, ch 305, § 33; SL 1987, ch 320, § 1; SL 1989, ch 381, § 1.

45-6B-33.1. Socioeconomic impact study--Preparation at operator's expense--Contents--Determination of sufficiency.

Before making a determination pursuant to subdivision 45-6B-33(6), the board shall require the applicant to submit a socioeconomic impact study. The socioeconomic impact study shall be prepared at the operator's expense by a contractor approved by the board. An applicant may request board approval of a contractor at any time before or after filing a permit application.

The socioeconomic impact study shall evaluate the potential impacts of the proposed mining operation including the following areas:

- (1) Population base;
- (2) Employment and income;
- (3) Tax base;

- (4) Housing;
- (5) Community services, including schools, law enforcement and fire protection, solid waste, water and wastewater, and roads; and
- (6) Recreational opportunities or other beneficial uses of land within and adjacent to the permit area.

If applicable, a study shall include an evaluation of the cumulative impacts of the proposed operation considered together with existing operations in the surrounding region. If an applicant is required to submit a socioeconomic impact study to a county government pursuant to county zoning ordinance or requirements, the board shall determine upon receipt of an application for a mining operation permit whether the required county socioeconomic impact study will satisfy the board requirements for such a study as provided for in this section.

Source: SL 1987, ch 320, § 2; SL 2011, ch 165, § 203.

45-6B-7. Reclamation plan--Contents.

The reclamation plan shall be based on provision for, or satisfactory explanation of, all general requirements for the type of reclamation proposed to be implemented by the operator. Reclamation is required on all affected lands except as provided in §§ [45-6B-8](#) and [45-6B-9](#). The reclamation plan shall include:

- (1) A description of the types of reclamation the operator proposes to achieve in the reclamation of the affected land, why each was chosen, and the amount of acreage accorded to each;
- (2) A standard soil survey of the affected land prepared by the local conservation district, paid for by the applicant, or if not available, a comparable soil survey prepared by a competent person;
- (3) A vegetative survey of the affected land prepared by the local conservation district, paid for by the applicant or prepared by a competent person, including a description of the dominant species of vegetation present, approximate size and density;
- (4) A preliminary wildlife survey of the affected land conducted by the Department of Game, Fish and Parks, paid for by the applicant, or conducted by a competent person approved by that department. Such survey shall include a description of the dominant species of wildlife inhabiting the area. The operator shall abide by any reasonable restrictions subject to review and approval by the Board of Minerals and Environment at the request of the operator concerning riparian habitat or threatened or endangered species as notified by that department. Restrictions concerning riparian habitat for mining operation activities are limited to such habitat located within one hundred feet of each stream bank. Further, restrictions concerning riparian habitat may include temporarily diverting the stream flow, bank restoration, and revegetation of the riparian habitat area;
- (5) A statement of any characteristics of the affected land of historic, archaeological, geologic, scientific, or recreational significance which are known to the applicant;
- (6) A description of how the reclamation plan will be implemented to meet the requirements of §§ [45-6B-37](#) to [45-6B-46](#), inclusive;
- (7) A description of how the reclamation plan will rehabilitate the affected land. This description shall include, but not be limited to, natural vegetation, wildlife, water, air, and soil;

- (8) A map of all of the proposed affected land by all phases of the total scope of the mining operation. It shall indicate the following:
 - (a) The expected physical appearance of the area of the affected land; and
 - (b) Portrayal of the proposed final land use for each portion of the affected land;
- (9) The baseline water quality and water level of all areas of aquifers potentially affected by the proposed mining operation. The Department of Agriculture and Natural Resources may designate, from the parameters set forth below, which parameters must be provided. The applicant shall use testing methods designated by the department:

(a) Alkalinity	(p) Hydrocarbon	(bb) Radon
(b) Aluminum	potential	(cc) Selenium
(c) Ammonia	(q) Iron	(dd) Silica
(d) Arsenic	(r) Lead	(ee) Silver
(e) Barium	(s) Magnesium	(ff) Sodium
(f) Bicarbonate	(t) Manganese	(gg) Sulfate
(g) Boron	(u) Mercury	(hh) Temperature
(h) Cadmium	(v) Molybdenum	(ii) Total alpha,
(i) Calcium	(w) Nickel	beta and gamma
(j) Carbonate	(x) Nitrate as	radiation
(k) Chloride	nitrogen	(jj) Total dissolved
(l) Chromium	(y) pH	solids
(m) Conductivity	(z) Potassium	(kk) Uranium
(n) Copper	(aa) Radium 226	(ll) Vanadium
(o) Fluoride	and 228	(mm) Zinc
- (10) The location of proposed reservoirs, tailings ponds, tailings disposal sites, dams, dikes, and diversion canals;
- (11) Provisions for the stripping, storage, and, if required, the replacement of the overburden and topsoil;
- (12) The estimated cost of implementing and completing the proposed reclamation.

Source: SL 1982, ch 305, § 7; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

34A-8-9. Possession, transportation and sale of endangered and threatened species prohibited--Violation as misdemeanor.

Except as otherwise provided in this chapter, no person may take, possess, transport, import, export, process, sell, or offer for sale, buy or offer to buy, nor may a common or contract carrier transport or receive for shipment, any species of wildlife or plants appearing on the following lists:

- (1) The list of wildlife and plants indigenous to the state determined to be endangered or threatened within the state pursuant to §§ [34A-8-3](#) and [34A-8-4](#).
- (2) The United States list of endangered or threatened native wildlife effective on January 1, 1977.
- (3) The United States list of endangered or threatened foreign wildlife effective on January 1, 1977.
- (4) The United States list of endangered or threatened plants effective on January 1, 1977.

A violation of this section is a Class 2 misdemeanor.

Source: SL 1977, ch 335, § 5; SL 1992, ch 158, § 48.



16442

Federal Register / Vol. 87, No. 56 / Wednesday, March 23, 2022 / Proposed Rules

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds. (Authority: 42 U.S.C. 7401 *et seq.*)

Dated: March 18, 2022.

KC Becker,

Regional Administrator, Region 8.

[FR Doc. 2022-06172 Filed 3-22-22; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R3-ES-2021-0140; FF09E21000 FXES1111090FEDR 223]

RIN 1018-BG14

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the northern long-eared bat (*Myotis septentrionalis*), a bat species found in all or portions of 37 U.S. States, the District of Columbia, and much of Canada, as an endangered species under the Endangered Species Act of 1973, as amended (Act). The northern long-eared bat is currently listed as a threatened species with an accompanying rule issued under section 4(d) of the Act ("4(d) rule"). This document complies with a court order, which requires the Service to make a new listing decision for the northern long-eared bat. After a review of the best available scientific and commercial information, we find that the northern long-eared bat meets the Act's definition of an endangered species. Accordingly, we propose to list the northern long-eared bat as an endangered species under the Act. If we finalize this rule as proposed, it would reclassify this species as an endangered species on the List of Endangered and Threatened Wildlife and remove its species-specific 4(d) rule. Additionally, this proposed rule serves as our 5-year review of the species. We also are notifying the public that we have scheduled an informational meeting followed by a public hearing on the proposed rule.

DATES: We will accept comments received or postmarked on or before May 23, 2022. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

Public informational meeting and public hearing: We will hold a public informational meeting from 6:00 p.m. to 7:30 p.m., Central Time, followed by a public hearing from 7:30 p.m. to 8:30 p.m., Central Time, on April 7, 2022.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box,

enter FWS-R3-ES-2021-0140. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on "Comment."

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R3-ES-2021-0140, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Public informational meeting and public hearing: The public informational meeting and the public hearing will be held virtually using the Zoom platform. See *Public Hearing*, below, for more information.

FOR FURTHER INFORMATION CONTACT: Shauna Marquardt, Field Supervisor, U.S. Fish and Wildlife Service, Minnesota Wisconsin Ecological Services Field Office, 4101 American Boulevard East, Bloomington, MN 55425; telephone 952-252-0092.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

- (b) Genetics and taxonomy;
- (c) Historical and current range, including distribution patterns;
- (d) Historical and current population levels, and current and projected trends; and
- (e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your comments and materials concerning this proposed rule by one of the methods listed in ADDRESSES. We request that you send comments only by the methods described in ADDRESSES.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <https://www.regulations.gov>.

Because we will consider all comments and information we receive

during the comment period, our final determination may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species should remain listed as a threatened species instead of reclassified as an endangered species, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the Federal Register. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3). See DATES and ADDRESSES for information on a public hearing that we have scheduled for this rulemaking action.

Previous Federal Actions

On October 2, 2013, we proposed to list the northern long-eared bat as an endangered species under the Act (78 FR 61046); please refer to that proposed rule for a detailed description of previous Federal actions concerning this species.

On January 16, 2015, we proposed to create a 4(d) rule to provide measures that are necessary and advisable to provide for the conservation of the northern long-eared bat should we determine the species warrants listing as a threatened species under the Act (80 FR 2371). That document also reopened the public comment period on the October 2, 2013, proposed rule for another 60 days, ending on March 17, 2015.

On April 2, 2015, we finalized a rule listing the northern long-eared bat as a threatened species and established an interim 4(d) rule for the species (80 FR 17974). We solicited public comment on the interim 4(d) rule for 90 days, ending on July 1, 2015. On January 14, 2016, we finalized the 4(d) rule for the northern long-eared bat (81 FR 1900). On April 27, 2016, we published a not-prudent determination for critical habitat (81 FR 24707).

A January 28, 2020, court order requires the Service to make a new listing decision for the northern long-eared bat (*Center for Biological Diversity v. Everson*, 435 F. Supp. 3d. 69 (D.D.C. 2020)). The court order remanded our April 2, 2015, listing decision (80 FR 17974) but did not vacate that rule. This

document complies with the court order.

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the northern long-eared bat (Service 2021, entire). The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. In accordance with our joint policy on peer review published in the Federal Register on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of five species experts regarding the SSA report. We received responses from three of the five experts. We also sent the SSA report to approximately 150 State, Federal, Tribal, and other (for example, nongovernmental organizations) partners with expertise in bat biology or threats to the species for review. We received reviews from approximately 35 partners.

Proposed Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the northern long-eared bat is presented in the SSA report (Service 2021, entire).

The northern long-eared bat is a wide-ranging bat species found in 37 States (Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming), the District of Columbia, and 8 Canadian provinces. The species typically overwinters in caves or mines and spends the remainder of the year in forested habitats. As its name suggests, the northern long-eared bat is distinguished by its long ears, particularly as compared to other bats in its genus, *Myotis*. The bat is medium to dark brown on its back, with dark brown ears and wings, and tawny to pale-brown fur on its ventral side. Its weight ranges from approximately 5 to 8 grams (0.2 to 0.3 ounces). Female northern long-eared bats produce a maximum of one pup per year;

therefore, loss of one pup results in missing one year of recruitment for a female.

The individual, population-level, and species-level needs of the northern long-eared bat are summarized below in

tables 1–3. For additional information, please see the SSA report (Service 2021, chapter 2).

TABLE 1—THE ECOLOGICAL REQUISITES FOR SURVIVAL AND REPRODUCTIVE SUCCESS OF NORTHERN-LONG-EARED BAT INDIVIDUALS

Life stage	Season			
	Spring	Summer	Fall	Winter
Pups (non-flying juveniles).		Roosting habitat with suitable conditions for lactating females and for pups to stay warm and protected from predators while adults are foraging.		
Juveniles		Other maternity colony members (colony dynamics, thermoregulation), and suitable roosting and foraging habitat near abundant food and water resources.	Suitable roosting and foraging habitat near abundant food and water resources.	Habitat with suitable conditions for prolonged bouts of torpor and shortened periods of arousal.
All adults	Suitable roosting and foraging habitat near abundant food and water resources, and habitat connectivity and open-air space for safe migration between winter and summer habitats.	Summer roosts and foraging habitat near abundant food and water resources.	Suitable roosting and foraging habitat near abundant food and water resources, cave and/or mine entrances or other similar locations (for example, culvert, tunnel) for conspecifics to swarm and mate, and habitat connectivity and open-air space for safe migration between winter and summer habitats.	Habitat with suitable conditions for prolonged bouts of torpor and shortened periods of arousal.
Reproductive females		Other maternity colony members (colony dynamics), a network of suitable roosts (<i>i.e.</i> , multiple summer roosts in close proximity) near conspecifics, and foraging habitat near abundant food and water resources.		

TABLE 2—POPULATION-LEVEL REQUISITES FOR A HEALTHY NORTHERN LONG-EARED BAT POPULATION

Parameter	Requirements
Population growth rate, λ	At a minimum, λ must be ≥ 1 for a population to remain stable over time.
Population size, N	Sufficiently large N to allow for essential colony dynamics and to be adequately resilient to environmental fluctuations.
Winter roosting habitat	Safe and stable winter roosting sites with suitable microclimates.
Migration habitat	Safe space to migrate between spring/fall habitat and winter roost sites.
Spring and fall roosting, foraging, and commuting (<i>i.e.</i> , traveling between habitat types) habitat.	A matrix of habitat of sufficient quality and quantity to support bats as they exit hibernation (lowest body condition) or as they enter hibernation (need to put on body fat).
Summer roosting, foraging, and commuting habitat	A matrix of habitat of sufficient quality and quantity to support maternity colonies.

TABLE 3—SPECIES-LEVEL ECOLOGY: REQUISITES FOR LONG-TERM VIABILITY

[Ability to maintain self-sustaining populations over a biologically meaningful timeframe]

3 Rs	Requisites for long-term viability	Description
Resiliency (populations able to withstand stochastic events).	Healthy populations across a diversity of environmental conditions.	Self-sustaining populations are demographically, genetically, and physiologically robust, and have enough suitable habitat.
Redundancy (number and distribution of populations to withstand catastrophic events).	Multiple and sufficient distribution of populations within areas of unique variation (representation units).	Sufficient number and distribution of populations to guard against population losses.
Representation (genetic and ecological diversity to maintain adaptive potential).	Maintain adaptive diversity of the species Maintain evolutionary processes	Populations maintained across a range of behavioral, physiological, ecological, and environmental diversity. Maintain evolutionary drivers—gene flow, natural selection—to mimic historical patterns.

Regulatory and Analytical Framework Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. The Act defines an “endangered species” as a species that is in danger of extinction throughout all or a significant portion of its range, and a “threatened species” as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species’ continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term “threat” to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term “threat” includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term “threat” may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an “endangered species” or a “threatened species.” In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an

individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an “endangered species” or a “threatened species” only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term “foreseeable future,” which appears in the statutory definition of “threatened species.” Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term “foreseeable future” extends only so far into the future as the Service can reasonably determine that both the future threats and the species’ responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. “Reliable” does not mean “certain”; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species’ likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species’ biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the northern long-eared bat, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the

further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS-R3-ES-2021-0140 on <https://www.regulations.gov>.

To assess the northern long-eared bat’s viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry or warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species’ ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species’ viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species’ life-history needs. The next stage involved an assessment of the historical and current condition of the species’ demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species’ responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the northern long-eared bat and its resources, and the threats that influence the species’ current and future condition, in order to assess the species’ overall viability and the risks to that viability. For a full description, see the SSA report (Service 2021, entire).

Although there are other stressors affecting the northern long-eared bat, the primary factor influencing its viability is white-nose syndrome (WNS), a disease of bats caused by a fungal pathogen. Some of the other factors that influence the northern long-eared bat's viability (though to a far lesser extent than the influence of WNS) include wind energy mortality, effects from climate change, and habitat loss. These stressors and their effects to the northern long-eared bat are summarized below:

- WNS has been the foremost stressor on the northern long-eared bat for more than a decade. The fungus that causes the disease, *Pseudogymnoascus destructans* (*Pd*), invades the skin of bats. Infection leads to increases in the frequency and duration of arousals during hibernation and eventual depletion of fat reserves needed to survive winter, and results in mortality. Since its discovery in New York in 2006, *Pd* has been confirmed (or presumed) in 37 States and 7 Canadian provinces. There is no known mitigation or treatment strategy to slow the spread of *Pd* or to treat WNS in bats. WNS has caused estimated northern long-eared bat population declines of 97–100 percent across 79 percent of the species' range.

- Wind energy-related mortality of the northern long-eared bat is a stressor at local and regional levels, where northern long-eared bat populations have been impacted by WNS. In 2020, northern long-eared bats were at risk from wind mortality in approximately 49 percent of their range, based on the areas where wind turbines were in place

and operating (using known northern long-eared bat occurrences, average migration distance, and the spatial distribution of wind turbines) (Service 2021, p. iv). Most bat mortality at wind energy projects is caused by direct collisions with moving turbine blades.

- Climate change variables, such as changes in temperature and precipitation, may influence the northern long-eared bat's resource needs, such as suitable roosting habitat for all seasons, foraging habitat, and prey availability. Although a changing climate may provide some benefit to the northern long-eared bat, overall negative impacts are anticipated, especially at local levels.

- Habitat loss (including but not limited to forest conversion or hibernacula disturbance or destruction) may include loss of suitable roosting or foraging habitat, resulting in longer flights between suitable roosting and foraging habitats due to habitat fragmentation, fragmentation of maternity colony networks, and direct injury or mortality. Loss or modification of winter roosts (*i.e.*, making hibernaculum no longer suitable) can result in impacts to individuals or at the population level. However, habitat loss alone is not considered to be a key stressor at the species level, and habitat does not appear to be limiting.

In evaluating current conditions of the northern long-eared bat, we used the best available data. Winter hibernacula counts provide the most consistent, long-term, reliable trend data and provide the most direct measure of WNS impacts. We also used summer data in evaluating population trends, although

the availability and quality of summer data varies temporally and spatially.

Available evidence, including both winter and summer data, indicates northern long-eared bat abundance has and will continue to decline substantially under current demographic and stressor conditions, primarily driven by the effects of WNS. As part of our assessment of the current condition of northern long-eared bat's representation, we identified and delineated the variation across the northern long-eared bat's range into geographical representation units (RPU) using the following proxies: Variation in biological traits, genetic diversity, peripheral populations, habitat niche diversity, and steep environmental gradients.

Winter abundance (from known hibernacula) has declined rangewide (49 percent) and declined across all but one RPU (declines range from 0 to 90 percent). The number of extant winter colonies also declined rangewide (by 81 percent) and across all RPUs (40–88 percent). There has also been a noticeable shift towards smaller colony sizes, with a 96–100 percent decline in the number of large hibernacula (≥ 100 individuals) across the RPUs (figure 1.). We created projections (highest plausible and lowest plausible scenarios) for the species using its current condition and the current rates of mortality from WNS effects and wind energy. Rangewide abundance is projected to decline by 95 percent and the spatial extent to decline by 75 percent from historical conditions by 2030. Declines continue to be driven by the catastrophic effects of WNS.

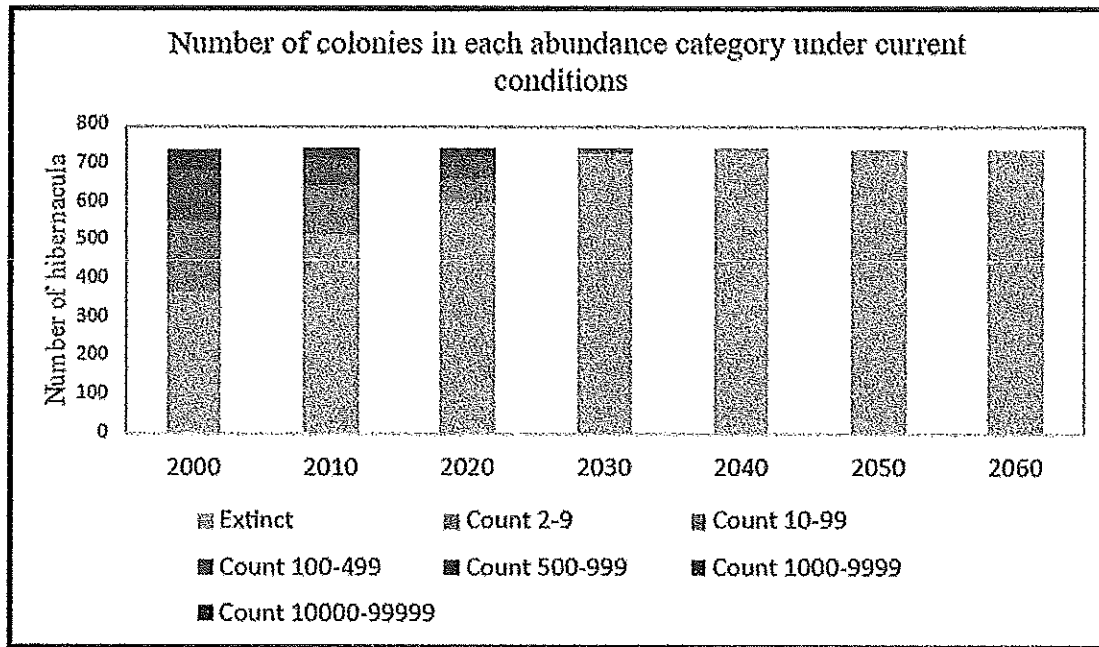


Figure 1. The number of hibernacula in each colony abundance category under current conditions.

Declining trends in abundance and extent of occurrence are also evident across much of the northern long-eared bat's summer range. Rangewide occupancy has declined by 80 percent from 2010–2019. Data collected from mobile acoustic transects found a 79 percent decline in rangewide relative abundance from 2009–2019, and summer mist-net captures declined by 43–77 percent (across RPUs) compared to pre-WNS capture rates.

As discussed above, multiple data types and analyses indicate downward trends in northern long-eared bat population abundance and distribution over the last 14 years, and the best available information indicates that this downward trend will continue. Northern long-eared bat abundance (winter and summer), number of occupied hibernacula, spatial extent, and summer habitat occupancy across the range and within all RPUs are decreasing. Since the occurrence of WNS, northern long-eared bat abundance has steeply declined, leaving populations with small numbers of individuals. At these low population sizes, colonies are vulnerable to extirpation from stochastic events and the deleterious effects of reduced population sizes such as limiting natural selection processes and decreased genetic diversity. Furthermore, small populations generally cannot rescue one another from such a depressed state because of the northern long-eared bat's low

reproduction output (one pup per year) and its high philopatry (tending to return to a particular area). These inherent life-history traits limit the ability of populations to recover from low abundances. Consequently, effects of small population sizes exacerbate the effects of current and future declines due to continued exposure to WNS, mortality from wind turbines, and impacts associated with habitat loss and climate change.

Therefore, northern long-eared bat's resiliency is greatly compromised in its current condition. Because northern long-eared bat's abundance and spatial extent have so dramatically declined, it has also become more vulnerable to catastrophic events. In other words, its redundancy has also declined dramatically. The steep and continued declines in abundance have likely led to reductions in genetic diversity, and thereby reduced northern long-eared bat adaptive capacity, and a decline in the species' overall representation. Moreover, at its current low abundance, loss of genetic diversity will likely accelerate. Consequently, limited natural selection processes and decreased genetic diversity will further lessen the species' ability to adapt to novel changes and exacerbate declines due to continued exposure to WNS, mortality from wind turbines, and impacts associated with habitat loss and climate change. Thus, even without further WNS spread and additional wind energy development (northern

long-eared bat's current condition), its viability is likely to continue to rapidly decline over the next 10 years.

Future Condition

As part of the SSA, we also developed two future condition scenarios to capture the range of uncertainties regarding future threats and the projected responses by the northern long-eared bat. Our scenarios included a plausible highest impact scenario and a plausible lowest impact scenario for each primary threat. Because we determined that the current condition of the northern long-eared bat is consistent with an endangered species (see Determination of Species Status, below), we are not presenting the results of the future scenarios in this proposed rule. Please refer to the SSA report (Service 2021) for the full analysis of future scenarios.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors

that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Conservation Efforts and Regulatory Mechanisms

Below is a brief description of conservation measures and regulatory mechanisms currently in place. Please see the SSA report for a more detailed description (Service 2021, Appendix 4).

Multiple national and international efforts are underway in an attempt to reduce the impacts of WNS. Despite these efforts, there are no proven measures to reduce the severity of impacts of WNS. More than 100 State and Federal agencies, Tribes, organizations, and institutions are engaged in this collaborative work to combat WNS and conserve affected bats. Partners from all 37 States in the northern long-eared bat's range, Canada, and Mexico are engaged in collaborations to conduct disease surveillance, population monitoring, and management actions in preparation for or response to WNS.

To reduce bat fatalities, some wind facilities "feather" turbine blades (*i.e.*, pitch turbine blades parallel with the prevailing wind direction to slow rotation speeds) at low wind speeds at times when bats are more likely to be present. The wind speed at which the turbine blades begin to generate electricity is known as the "cut-in speed," and this can be set at the manufacturer's recommended speed or at a higher threshold, typically referred to as curtailment. The effectiveness of feathering below various cut-in speeds differs among sites and years (Arnett *et al.* 2013, entire; Berthinussen *et al.* 2021, pp. 94–106); nonetheless, most studies have shown all-bat (based on dead bats detected from all bat species) fatality reductions of greater than 50 percent associated with raising cut-in speeds by 1.0–3.0 meters per second (m/s) above the manufacturer's cut-in speed (Arnett *et al.* 2013, entire; USFWS unpublished data). The effectiveness of curtailment at reducing fatality rates specifically for the northern long-eared bat has not been documented.

All States have active forestry programs with a variety of goals and objectives. Several States have established habitat protection buffers around known Indiana bat hibernacula that will also serve to benefit other bat

species by maintaining sufficient quality and quantity of swarming habitat. Some States conduct some of their forest management activities in the winter within known listed bat home ranges as a measure that would protect maternity colonies and non-volant (non-flying) pups during summer months.

Depending on the type and timing of activities, forest management can be beneficial to bat species (for example, maintaining or increasing suitable roosting and foraging habitat). Forest management that results in heterogeneous (including forest type, age, and structural characteristics) habitat may benefit tree-roosting bat species such as northern long-eared bat (Silvis *et al.* 2016, p. 37). Silvicultural practices can meet both male and female northern long-eared bats' roosting requirements by maintaining large-diameter snags in early stages of decay, while allowing for regeneration of forests (Lacki and Schwierjohann 2001, p. 487).

Many State and Federal agencies, conservation organizations, and land trusts have installed bat-friendly gates to protect important hibernation sites. All known hibernacula within national grasslands and forestlands of the Rocky Mountain Region of the U.S. Forest Service (USFS) are closed during the winter hibernation period, primarily due to the threat of WNS, although this will reduce disturbance to bats in general inhabiting these hibernacula (USFS 2013, unpaginated). Because of concern over the importance of bat roosts, including hibernacula, the American Society of Mammalogists developed guidelines for protection of roosts, many of which have been adopted by government agencies and special interest groups (Sheffield *et al.* 1992, p. 707). Also, regulations, such as the Federal Cave Resources Protection Act (16 U.S.C. 4301 *et seq.*), protect caves on Federal lands by limiting access to some caves, thereby reducing disturbance. Finally, many Indiana bat hibernacula have been gated, and some have been permanently protected via acquisition or easement, which provides benefits to other bats that also use the sites, including the northern long-eared bat.

The northern long-eared bat is listed as endangered under Canada's Species at Risk Act (COSEWIC 2013, entire). In addition, the northern long-eared bat receives varying degrees of protection through State laws, which designate the species as endangered in 9 States (Arkansas, Connecticut, Delaware, Indiana, Maine, Massachusetts, Missouri, New Hampshire, and Vermont); as threatened in 10 States

(Georgia, Illinois, Louisiana, Maryland, New York, Ohio, Pennsylvania, Tennessee, Virginia, and Wisconsin); and as a species of special concern in 10 States (Alabama, Iowa, Michigan, Minnesota, Mississippi, Oklahoma, South Carolina, South Dakota, West Virginia, and Wyoming).

Determination of Northern Long-Eared Bat Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an "endangered species" as a species in danger of extinction throughout all or a significant portion of its range, and a "threatened species" as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

WNS has been the foremost stressor on the northern long-eared bat for more than a decade and continues to be currently. The fungus that causes the disease, *Pd*, invades the skin of bats and leads to infection that increases the frequency and duration of arousals during hibernation that eventually deplete the fat reserves needed to survive winter and results in mortality. There is no known mitigation or treatment strategy to slow the spread of *Pd* or to treat WNS in bats. WNS has caused estimated northern long-eared bat population declines of 97–100 percent across 79 percent of the species' range (Factor C). Winter abundance (from known hibernacula) has declined rangewide (49 percent) and declined across all but one RPU (declines range from 0 to 90 percent), and the number of extant winter colonies also declined rangewide (81 percent) and across all RPUs (40–88 percent). There has also been a noticeable shift towards smaller colony sizes, with a 96–100 percent decline in the number of large hibernacula (≥ 100 individuals). Rangewide summer occupancy has

declined by 80 percent from 2010–2019. Summer data collected from mobile acoustic transects found a 79 percent decline in rangewide relative abundance from 2009–2019, and summer mist-net captures declined by 43–77 percent (across RPUs) compared to pre-WNS capture rates. We created projections for the species using its current condition and the current rates of mortality from WNS effects and wind energy. Rangewide abundance is projected to decline by 95 percent and the spatial extent is projected to decline by 75 percent from historical conditions by 2030.

As a result of these steep population declines, the northern long-eared bat's resiliency is greatly compromised in its current condition. Because the northern long-eared bat's abundance and spatial extent substantially declined, its redundancy has decreased such that northern long-eared bats are more vulnerable to catastrophic events. The northern long-eared bat's representation has also been reduced, as the steep and continued declines in abundance have likely led to reductions in genetic diversity, and thereby reduced the northern long-eared bat's adaptive capacity. Further, the projected widespread reduction in the distribution of occupied hibernacula under current conditions will lead to losses in the diversity of environments and climatic conditions occupied, which will impede natural selection and further limit the northern long-eared bat's ability to adapt to changing environmental conditions. Moreover, at its current low abundance, loss of genetic diversity via genetic drift will likely accelerate. Consequently, limiting natural selection process and decreasing genetic diversity will further lessen the northern long-eared bat's ability to adapt to novel changes (currently ongoing as well as future changes) and exacerbate declines due to continued exposure to WNS and other stressors. Thus, even without further *Pd* spread and additional pressure from other stressors, the northern long-eared bat's viability has declined substantially and is expected to continue to rapidly decline over the near term.

Current population trends and status indicate this species is currently in danger of extinction. The species continues to experience the catastrophic effects of WNS and the compounding effect of other stressors from which extinction is now a plausible outcome under the current conditions. Therefore, the species meets the Act's definition of an endangered species rather than of a threatened species. Thus, after assessing the best available information, we

determine that the northern long-eared bat is in danger of extinction throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the northern long-eared bat is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the northern long-eared bat warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity v. Everson*, 2020 WL 437289 (D.D.C. Jan. 28, 2020), because that decision related to significant portion of the range analyses for species that warrant listing as threatened, not endangered, throughout all of their range.

Determination of Status

Our review of the best available scientific and commercial information indicates that the northern long-eared bat meets the Act's definition of an endangered species. Therefore, we propose to list the northern long-eared bat as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and

threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline, and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened ("downlisting") or removal from protected status ("delisting"), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (<https://www.fws.gov/species/northern-bat-myotis-septentrionalis>), or from our Minnesota Wisconsin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (for example, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

For listed species, funding for recovery actions is available from a

variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming will continue to be eligible for Federal funds to implement management actions that promote the protection or recovery of the northern long-eared bat. Information on our grant programs that are available to aid species recovery can be found at: <https://www.fws.gov/grants>.

Please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include, but are not limited to, management and any other landscape-altering activities on Federal lands administered by the U.S. Fish and

Wildlife Service, U.S. Forest Service, Bureau of Land Management, National Park Service, and other Federal agencies; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any species listed as an endangered species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the *Federal Register* on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing.

At this time, we are unable to identify specific activities that would not be considered to result in a violation of section 9 of the Act because the northern long-eared bat occurs in a variety of habitat conditions across its

range and it is likely that site-specific conservation measures may be needed for activities that may directly or indirectly affect the species.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act if they are not authorized in accordance with applicable law; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

(2) Incidental take of the species without authorization pursuant to section 7 or section 10(a)(1)(B) of the Act.

(3) Disturbance or destruction (or otherwise making a hibernaculum no longer suitable) of known hibernacula due to commercial or recreational activities during known periods of hibernation.

(4) Unauthorized destruction or modification of suitable forested habitat (including unauthorized grading, leveling, burning, herbicide spraying, or other destruction or modification of habitat) in ways that kills or injures individuals by significantly impairing the species' essential breeding, foraging, sheltering, commuting, or other essential life functions.

(5) Unauthorized removal or destruction of trees and other natural and manmade structures being used as roosts by the northern long-eared bat that results in take of the species.

(6) Unauthorized release of biological control agents that attack any life stage of this taxon.

(7) Unauthorized removal or exclusion from buildings or artificial structures being used as roost sites by the species, resulting in take of the species.

(8) Unauthorized building and operation of wind energy facilities within areas used by the species, which results in take of the species.

(9) Unauthorized discharge of chemicals, fill, or other materials into sinkholes, which may lead to contamination of known northern long-eared bat hibernacula.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Minnesota Wisconsin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Effects of This Rule

If this rule is adopted as proposed, it would reclassify the northern long-eared bat from a threatened species to an endangered species on the List of Endangered and Threatened Wildlife. It would also remove the species-specific section 4(d) rule for the northern long-eared bat, because 4(d) rules apply only to species listed as threatened species under the Act. The Act's full suite of prohibitions and exceptions to those prohibitions for endangered species (see sections 9 and 10 of the Act) would then apply to the northern long-eared bat.

Public Hearings

We have scheduled a public informational meeting with a public hearing on this proposed rule for the northern long-eared bat. We will hold the public informational meeting and public hearing on the date and time listed above under *Public informational meeting and public hearing* in **DATES**. We are holding the public informational meeting and public hearing via the Zoom online video platform and via teleconference so that participants can attend remotely. For security purposes, registration is required. To listen and view the meeting and hearing via Zoom, listen to the meeting and hearing by telephone, or provide oral public comments at the public hearing by Zoom or telephone, you must register. For information on how to register, or if you encounter problems joining Zoom the day of the meeting, visit <https://www.fws.gov/species/northern-bat-myotis-septentrionalis>. Registrants will receive the Zoom link and the telephone number for the public informational meeting and public hearing. If applicable, interested members of the public not familiar with the Zoom platform should view the Zoom video tutorials (<https://support.zoom.us/hc/en-us/articles/206618765-Zoom-video-tutorials>) prior to the public informational meeting and public hearing.

The public hearing will provide interested parties an opportunity to present verbal testimony (formal, oral comments) regarding this proposed rule. While the public informational meeting will be an opportunity for dialogue with the Service, the public hearing is not: It is a forum for accepting formal verbal testimony. In the event there is a large attendance, the time allotted for oral statements may be limited. Therefore, anyone wishing to make an oral statement at the public hearing for the record is encouraged to provide a prepared written copy of their statement to us through the Federal eRulemaking

Portal, or U.S. mail (see **ADDRESSES**, above). There are no limits on the length of written comments submitted to us. Anyone wishing to make an oral statement at the public hearing must register before the hearing <https://www.fws.gov/species/northern-bat-myotis-septentrionalis>. The use of a virtual public hearing is consistent with our regulations at 50 CFR 424.16(c)(3).

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive

Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We solicited information, provided updates, and invited participation in the SSA process in emails sent to Tribes, nationally, in April 2020 and November 2020. We will continue to work with Tribal entities during the development of the northern long-eared bat final listing determination.

References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Minnesota Wisconsin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are staff members of the Fish and Wildlife Service's Species Assessment Team and the Minnesota Wisconsin Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

- 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

- 2. Amend § 17.11, in paragraph (h), by revising the entry for “Bat, northern long-eared” under MAMMALS in the

List of Endangered and Threatened
Wildlife to read as follows:

**§ 17.11 Endangered and threatened
wildlife.**

(h) * * *

* * * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				
* Bat, northern long- eared.	* <i>Myotis septentrionalis</i>	* Wherever found	* E	* 80 FR 17973, 4/2/2015; [Federal Register citation when published as a final rule].
*	*	*	*	*

§ 17.40 [Amended]

■ 3. Amend § 17.40 by removing and
reserving paragraph (o).

Signing Authority

The Director, U.S. Fish and Wildlife
Service, approved this document and

authorized the undersigned to sign and
submit the document to the Office of the
Federal Register for publication
electronically as an official document of
the U.S. Fish and Wildlife Service.
Martha Williams, Director, approved

this document on March 18, 2022, for
publication.

Madonna Baucum,
*Regulations and Policy Chief, Division of
Policy, Risk Management, and Analytics of
the Joint Administrative Operations, U.S. Fish
and Wildlife Service.*

[FR Doc. 2022-06168 Filed 3-22-22; 8:45 am]

BILLING CODE 4333-15-P

Martin Joan

From: NoReply
Sent: Monday, July 4, 2022 9:24 PM
To: Martin Joan; Hennies Holli
Subject: WEBFORM: Board Of Commissioners - Contact Us

Follow Up Flag:	Follow up
Flag Status:	Flagged

The following information was submitted from a web form on the Pennington County website.

DO NOT click reply. To reply, copy and paste the e-mail address below into the "To" field of an outgoing message.

[illegible]

Submitted Information:

Your name: Kerry manuel

Your e-mail address: Kerry@jbjoiner.com

Your phone number: 6127490713

Who would you like to send your message to? Ron Rossknecht (Commissioner District 1)

Message: I am in favor of the hard rock mining bill and think it should be somewhat stronger

From: NoReply
Sent: Tuesday, July 5, 2022 2:22 PM
To: Martin Joan; Hennies Holli
Subject: WEBFORM: Board Of Commissioners - Contact Us

WATER being the main concern. Water protection should be first priority, and surface and ground water protection at all stages of a project should be in the ordinance. There are also other hard rock minerals like lithium that need to be included in the ordinance. Lithium is being explored for in the Southern part of the county.

Residents must be protected from mining operations. The distances for giving people notice, the distance from residences to a mine, and the distance from residences to blasting should be increased in this ordinance amendment.

The Hard Rock Mining Ordinance should protect the County from the impacts of exploration, not just mining.

Also, the social and economic impacts issues must be added back into the ordinance.

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 or other hard rock mineral 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.

Thank you.

Carla Marshall

P.O. Box 3184

Rapid City, SD 57709

South Dakota law provides for broad authority of counties to regulate development within their borders through the use of zoning ordinances and the conditional use permitting process. While the legislature has chipped away at local control somewhat over the past several years, it has not undermined the central tenet: counties with zoning ordinances have the final say over projects within their jurisdiction.

The state's part in any permitting process is typically limited to the basics required under federal environmental laws. It is not designed to replace county decision-making, and a state permit to conduct an activity does NOT supersede the county's own rigorous decision-making process. That's the literal definition of local control.

So long as the county's ordinance is not weaker, and does not specifically undermine the state's requirements (which are in this state typically just the federal requirements), you are in safe territory. Does it mean you won't get sued over a decision? No. But circuit court as well as SD Supreme Court review of county conditional use permit decisions give great deference to the county's authority.

Requirements by counties have included things like dust, odor, light, and noise mitigation; non-transference of permits with ownership changes, graduated setbacks depending on size of operation, protection of property values and the character of "neighborhoods" (including rural and farming communities), wear & tear on infrastructure & road haul agreements, and yes, socio-economic studies, regular inspections, monitoring wells, and more frequent reporting than the state requires.

The authority of counties in the crafting of zoning ordinances and the conditional use permitting process is so broad that IF you could tie it credibly to issues of protecting the community's health, safety, and welfare, you could probably require an applicant to dance an Irish jig in front of the commission as part of the process. Obviously, you can't make that connection, so you wouldn't make that a requirement.

One more thing: a strong ordinance not only protects your county & constituents—it also saves YOU the commissioners an incredible amount of work on the back end and makes the process much more clear for the applicant. You don't end up with a bunch of yahoos & speculators applying for permits because the stated criteria are weak. A weak ordinance means that every stipulation that should have been made clear up front in the ordinance now has to be implemented as a condition on each individual permit—and that's often where applicants who thought the process looked easy end up feeling like it was "unfair" and suing over a denial or over additional conditions they can't meet.

Your constituents are depending on you to protect our communities, our economy, our water supply, and our quality of life. Please don't abdicate your power to do so. Pennington County needs a strong hard rock mining ordinance that embraces the power of local control and prevents speculation.

Thank you. I'm happy to take questions or to otherwise assist the commission in this process."