

Regulating Gold Mining Activities at the Local Level in Virginia



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In late 2022, a state-commissioned report by the National Academies of Sciences, Engineering, and Medicine found that “Virginia’s current regulatory framework is not adequate to address the potential impacts of commercial gold mining” and that “Virginia’s regulatory framework [falls] short in comparison to other states, the federal government, and modern best practices.”¹ The lack of adequate state-level protections from the impacts of commercial gold mining means many communities are looking for ways to regulate and control gold mining activities at the local level.

Virginia law gives localities the power to determine whether and where to allow, restrict, or prohibit gold mining—as well as other types of mining—through their zoning authority:

Any locality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape and size as it may deem best suited to carry out the purposes of this article, and in each district it may regulate, restrict, permit, prohibit, and determine the . . . excavation or mining of soil or other natural resources.
 — Va. Code § 15.2-2280(4)

Virginia law governing mineral mining activities also allows localities to “establish standards and adopt regulations” about mineral mining activities as long as they “are not less stringent than those adopted by the Director” of Virginia Energy. Va. Code § 45.2-1227.

“Virginia’s current regulatory framework is not adequate to address the potential impacts of commercial gold mining.”

— NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE REPORT

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This handout can help community members better understand the land use tools available at the local level to regulate, restrict, or prohibit gold mining activities, and how changes to those ordinances and polices are made. Although this handout focuses on gold mining, these land use tools also apply to other extractive activities.

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REFERENCE

¹ National Academies of Sciences, Engineering, & Medicine, The Potential Impacts of Gold Mining in Virginia (2022), available at <https://nap.nationalacademies.org/catalog/26643/the-potential-impacts-of-gold-mining-in-virginia>.

Comprehensive Plans

Under Virginia law, localities are required to adopt a comprehensive plan. Comprehensive plans are advisory documents that localities use to guide future development to “best promote the health, safety, morals, order, convenience, prosperity and general welfare of” residents. Although comprehensive plans are merely guidance documents (as opposed to actual laws that create enforceable requirements), they provide the framework that informs many of a locality’s zoning and other land use decisions, policies, and plans. See Va. Code § 15.2-2223.

That means the values, goals, objectives, and other policy statements identified in comprehensive plans play an important role in guiding local decision making. In the context of extractive activities like gold mining, localities in Virginia have included statements in their comprehensive plans about the appropriateness of, or stance of the community on, these activities.

Example: Albemarle County

Albemarle County’s comprehensive plan includes an objective related to extractive activities: “Recognize the economic value of the County’s mineral resources while giving due consideration to the potential harm mineral extraction activities and byproducts can have on human health and property values.” As part of this objective, the comprehensive plan explicitly states that “if natural gas ever were to be discovered in Albemarle County, extraction would not be appropriate due to fracking and its potential impact on water resources.” Albemarle Comprehensive Plan, Chapter 4: Natural Resources at 4.18-4.19 (amended July 3, 2019).

Example: Fauquier County

As part of a goal to “[e]ncourage the retention and restoration of the County’s terrestrial resources so that these resources and habitats are sustained and not degraded,” Fauquier County’s comprehensive plan includes an objective to “[d]evelop a firm position against mineral extraction and oil and gas exploration and development within Fauquier County.” Fauquier Comprehensive Plan, Chapter 2A: Natural Resources at 16 (adopted May 12, 2016).

Similar goals, objectives, or statements could be included in a locality’s comprehensive plan to specifically address the appropriateness of gold mining activities. These policy statements would be considered in future development and land use decisions, and they would play an important role in justifying ordinance changes and development decisions the locality makes if those ordinances or decisions are challenged.

Sample Comprehensive Plan Language #1 (prohibition)

Introduction:

Virginia’s geologic Gold-Pyrite Belt passes through the County. The Commonwealth has a long history of gold mining which has resulted in hundreds of abandoned gold mines up and down the Belt. While extractive activities can potentially bring economic development to the County, gold mining activities can also create conflicts with other important County goals, priorities, and plans. These include: compatibility with traditional rural economic sectors, such as agriculture, forestry, recreation, and tourism; costs associated with providing community services to address impacts to roads, emergency services, criminal justice, public health, and affordable housing that could potentially result from gold mining; protection of water quality, including drinking water; and conservation of natural resources.

Objective:

It is the County’s objective to protect public health, safety, and welfare and the environment, and gold mining activities are not appropriate in the County.

Sample Comprehensive Plan Language #2 (minimize impacts)

Introduction:

Virginia's geologic Gold-Pyrite Belt passes through the County. The Commonwealth has a long history of gold mining which has resulted in hundreds of abandoned gold mines up and down the Belt. While extractive activities can potentially bring economic development to the County, gold mining activities can also create conflicts with other important County goals, priorities, and plans. These include: compatibility with traditional rural economic sectors, such as agriculture, forestry, recreation, and tourism; costs associated with providing community services to address impacts to roads, emergency services, criminal justice, public health, and affordable housing that could potentially result from gold mining; protection of water quality, including drinking water; and conservation of natural resources. The County seeks to provide guidelines for minimizing potential land use conflicts.

Objective:

It is the County's objective to protect public health, safety, and welfare and the environment from adverse effects of gold mining activities and to minimize potential long- and short-term land use conflicts between those activities and current or planned land uses.

Policies:

1. The County will promote requirements designed to mitigate the impacts of gold mining activities on the public health, safety, and welfare, as well as all related accessory and ancillary uses, to the extent permitted by State and Federal law, including practices outlined in the International Cyanide Management Code and the Initiative for Responsible Mining Assurance's Standards for Responsible Mining. All applicable standards for noise, dust, odor, vibration, and other County code requirements intended to mitigate off-site impacts of uses of an industrial nature shall also apply to gold mining activities.
2. The County will require that applicants for gold mining activities provide information about the proposed quantity and source for any water required for the gold mining activity, including exploration. All such activities should adhere to local and regional water supply and protection plans and should not make excessive use of public water supplies or groundwater resources. The County will also require baseline testing and monitoring of surface, groundwater, and well water quality within and adjacent to gold mining sites prior to construction and during operation. Additionally, the County will discourage discharge of wastewater from gold mining activities in environmentally sensitive areas as defined in the Comprehensive Plan.
3. To limit the impact of industrial traffic and excessive traffic in rural, agricultural, and residential areas, primary access to gold mining activities shall not be permitted on local roads according to the VDOT functional classification of roadways, and should incorporate restrictions on access hours and routes to avoid hazardous use of roadways and to minimize potential conflicts with school bus routes and schedules, school traffic, and other local traffic patterns, as may be identified by the County. Access from or through residential neighborhood streets will not be permitted. To the extent permitted by State law, operators and/or their designated haulers will be required to post bonds with the County or with the State sufficient to cover the cost of excess road maintenance and damages related to gold mining activities.

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Sample Comprehensive Plan Language #2 (minimize impacts)

Policies (continued):

4. The County will require that applicants for gold mining activities directly engage with local communities, residents, and other stakeholders at each phase of the development plan, starting prior to exploration, to provide sufficient opportunity for comment on plans, operations, and performance, listen to concerns, and respond appropriately and promptly.
5. To the extent permitted by State law, the County will require explicit commitments by applicants who wish to pursue gold mining activities to accept responsibility and liability for compensation and/or mitigation of directly and indirectly related costs, nuisances, damages, and adverse impacts as a condition for issuance of permits dealing with gold mining activities. Such direct and indirect adverse impacts may be on-site or off-site and include, but are not limited to, damage to public and private roads, degradation of public or private water supplies, and degradation of environmentally sensitive areas.

Changes to comprehensive plans are made through amendments. Localities are required to review their comprehensive plans for potential amendments at least once every five years, but amendments can also be proposed at other times. A public hearing must be held on any proposed amendment before the locality's governing body may consider approving it. The timelines for public hearings, recommendations, and final actions on comprehensive plan amendments are governed by statutory requirements in the Code of Virginia and vary based on the type of amendment being considered. See Va. Code §§ 15.2-2229, 15.2-2230.

Zoning Ordinances

Virginia law grants localities the authority to classify land into areas and districts and to “regulate, restrict, permit, prohibit, and determine” the uses (such as agricultural, industrial, or residential), structures, areas of use, and “excavation or mining of soil or other natural resources” within its districts. See Va. Code § 15.2-2280. Localities exercise this power through the creation of zoning ordinances.

A zoning ordinance typically includes a map that divides the locality’s land into any number of different zoning districts, such that each parcel of land is within a particular district and is “zoned” for that use. For example, a parcel of land located within a locality’s “Agricultural” zoning district is said to be zoned Agricultural.

The zoning ordinance then spells out the specific uses that are allowed within each zoning district. Some uses are allowed within a district “**by-right**”—meaning no further approval from the governing body is required when a person proposes such a use. Other uses may be allowed only with a “**special use permit**”—meaning the use is only allowed within that zoning district if the locality’s governing body affirmatively approves it. If a locality wants to prohibit a use (in a district or in all districts), that use is simply not included in the list of uses that are allowed by right or by special use permit. Where uses are allowed, the zoning ordinance may spell out various **development, operation, and performance requirements** that those uses must meet.

Using these and other methods, gold mining activities could be regulated in a variety of ways under a zoning ordinance.

By-Right Uses

Extractive activities are sometimes allowed by localities as a by-right use in certain zoning districts. This means no approval from the governing body is required when such a use is proposed on land within that district.

Example: Buckingham County

Buckingham County allows mining by-right in its heavy industrial district. Buckingham County Zoning Ordinance, Art. 2 (amended May 14, 2018).

If a locality wants to prohibit or restrict a use within a zoning district, it will not include that use in the list of by-right uses allowed in the zoning district. Some localities also prohibit certain extractive activities in certain zoning districts. Similar prohibitions or restrictions could be specifically applied to gold mining in a zoning ordinance.

Example: Augusta County

Augusta County’s zoning ordinance prohibits enhanced recovery and hydraulic fracturing in General Industrial Districts and General Agricultural Districts. These districts account for much of the land in the county. Augusta County Code, §§ 25-74.1(B), 25-385(B) (Sept. 2022).

Sample Zoning Language #1 (prohibition)

Gold mining activities are prohibited in the [insert zoning district name].

Sample Zoning Language #2 (prohibition)

Soil, sand, gravel, stone, or other mineral extraction, except for gold mining activities, is permitted in [insert zoning district name].

Special Use Permits

Zoning ordinances can require special use permits, which are also called special exceptions or conditional use permits, to allow a “special use” on a property that is otherwise not permitted in the zoning district. Uses allowed by special use permit are considered to have potentially greater impacts than uses allowed by-right, or without special permission. The special use permit process allows for an individualized review of a use’s potential impacts and the imposition of conditions to address those impacts. See Va. Code §§ 15.2-2201, 2286.

In many counties, mining and other extractive activities, when allowed at all, are only allowed by special use permit in certain zoning districts.

Example: Pittsylvania County

When mining is permitted in a zoning district, it is only permitted by special use permit. Pittsylvania County Code, §§ 35-179, 35-384, 35-403 (amended Apr. 19, 2022).

Example: Buckingham County

Buckingham County requires a special use permit for mining in its agricultural and light industrial districts. Buckingham County Zoning Ordinance, Art. 2 (amended May 14, 2018).

Example: Orange County

Orange County requires a special use permit for mining in its general industrial district, the only district where mining is permitted. Orange County Code, § 70-543(k) (amended July 26, 2011).

Example: Augusta County

Augusta County allows the extraction of minerals, rock, gravel, sand, oil or natural gas and similar materials by special use permit in some districts, but specifically excludes the extraction of materials by enhanced recovery, hydraulic fracturing, and/or horizontal drilling from these provisions. Augusta County Code, §§ 25-74(D), 25-384(D) (Sept. 2022).

Development, Operation, and Performance Requirements

Zoning ordinances can also include development, operation, and performance requirements for specific uses. Some localities have specific requirements related to extraction activities to mitigate the adverse impacts of the operations. Common requirements include setbacks for mining activities and associated buildings from property lines or roads, screening and/or fencing requirements, dust mitigation requirements, and limitations on hours of operation (see Appendix). Similar requirements could be implemented for gold mining activities.

Example: Henrico County

Henrico County's zoning ordinance has certain development and operation requirements that apply to extractive

industries. Setbacks from adjoining properties and rights-of-way must be provided from certain buildings and excavation areas. Access to the extraction operation cannot go through residential areas and all roadways associated with the operation must ensure public safety, mitigate congestion, and be maintained to eliminate dust. Once the conditional use permit for the extraction operation has expired, or if extractive operations have ceased for 12 consecutive months, the premises must be restored in accordance with the approved reclamation plan. After the extraction operation is concluded, a financial guarantee, which must be provided prior to any land disturbance, is returned. Henrico County Municipal Code, § 24-4327 (amended Dec. 13, 2022).

Example: Pittsylvania County

Pittsylvania County's zoning ordinance includes supplementary regulations that "apply to permissible uses in all districts," regardless of whether those uses are allowed by-right or by special use permit. Activities associated with the extraction of natural resources, which includes soils, sand, gravels, stone, or other minerals, must meet certain siting, screening, and fencing requirements. When operators obtain a zoning permit, they must provide "comprehensive plans and proposals for the reuse of the property" after the extraction activities are completed, and "all excavated areas must be returned to a safe condition with adequate vegetative care" if the extraction activities are discontinued for more than one year. Pittsylvania County Code, § 35-139 (amended Apr. 19, 2022).

A zoning ordinance may also include "overlay districts," where additional requirements specific to the overlay district must be complied with in addition to the requirements of the underlying zoning district. This is a way to allow additional uses or establish additional requirements within specific areas of a larger zoning district. Some localities have used this method to designate areas where extractive activities are permitted and to establish heightened requirements when extractive activities take place.

Example: Albemarle County

Albemarle County has a Natural Resource Extraction Overlay District where soil, sand, gravel, stone, or other mineral extraction is allowed by-right. Other extractive activities—such as coal mining or extraction of oil and natural gas—are permitted within this overlay district with a special use permit. Natural Resource Extraction Overlay Districts “may be established where deposits of sand, gravel, stone or other minerals exist; where the uses permitted ... are unlikely to create effects adverse to public health, safety and welfare or to the value of adjacent property; and specifically where existing roads will not make it necessary to conduct trucking operations through developed residential areas or areas likely to be developed for residents during the course of any extractive use.” The overlay district includes requirements related to lot size, lot coverage, building location, lateral support, landscaping and screening, hours of operation, roadways, transportation of excavated materials, collection of water, performance standards, and parking requirements for extraction operations. Albemarle County Code, § 30.4 et seq. (amended Dec. 5, 2012).

Amending Zoning Ordinances

Zoning text amendments, which change the uses allowed within a zoning district, are initiated by a resolution of intent adopted by a locality’s governing body or a motion adopted by the planning commission. There is no statutorily required timeline associated with the approval of zoning text amendments. See Va. Code § 15.2-2286(A)(7).

Zoning map amendments or “rezonings,” which change the zoning district designation of a property, can be initiated by petition of the property owner (or contract purchaser or owner’s agent) or by the locality’s governing body or planning commission. Some localities have adopted additional requirements as part of the rezoning process when the property will be used for extractive activities in the future.

Example: Westmoreland County

Westmoreland County’s zoning ordinance includes a resource extraction district where oil and gas drilling is permitted by special exception. The zoning ordinance also includes additional requirements when a property’s designation is changed—or rezoned—to the resource extraction district. As part of both the special exception and rezoning approval processes, applicants are required to make detailed submittals, including an environmental assessment, analysis of public impacts, operation plans, conception site plans, and site closure plans. Development standards—such as minimum property size and required setbacks—and performance standards also apply for certain activities in this district. Westmoreland County Zoning Ordinance, § 2-26 (amended Dec. 11, 2017).

The planning commission must make a recommendation to the locality’s governing body within 100 days after the rezoning was referred to the commission or else it is deemed “approved.” In counties, but not other types of localities, the governing body must then act upon the application within a “reasonable time,” generally not to exceed 12 months. See Va. Code §§ 15.2-2285(B), 2286(A)(7).

Depending on the goals and priorities of a community, land use regulations can be leveraged in a variety of ways to regulate, restrict, or prohibit gold mining activities in Virginia. Understanding the various mechanisms available can help community members advocate for local protections from the impacts of commercial gold mining.

Appendix

Examples of development, operation, and performance requirements for extractive activities in Virginia localities.

COUNTY	PROPERTY SIZE	SETBACKS	SCREENING/FENCING	ROADWAYS	HOURS OF OPERATION
Albemarle County Code, § 30.4 et seq. (amended Dec. 5, 2012)	Minimum of 20 ac.	Operations, including associated uses and structures, must be at least 100 ft. from any public road right-of-way or adjoining property within any residential district, and at least 200 ft. from any occupied dwelling or any contiguous property subdivided into residential lots of 1 ac. or less not under the ownership or control of the applicant.	Fencing is required as deemed necessary by the zoning administrator for the protection of public safety; a minimum 5 ft. tall fence may be required to be placed at least 60 ft. outside the limits of the operation in certain situations. Existing trees and ground cover along public road frontage shall be preserved, maintained, and supplemented to lessen the visual impact of the activity and minimize noise and dust from the operation; in cases where roadside planting is not practical, the zoning administrator may permit the substitution of other screening devices such as fences, berms, and walls.	All internal roads shall be surfaced with bituminous or other dust free surface for a distance of 300 ft. from any public road. All vehicles used to transport excavated materials shall be loaded in such a manner that material cannot be unintentionally discharged from the vehicle, and all vehicles shall be cleaned of all material not in the load-bed prior to entering any public road.	Operations involving power equipment of an industrial type is limited to the hours of 7:00 a.m. to midnight, except in cases of a public emergency; blasting operations are limited to Monday to Friday between 8:00 a.m. and 5:00 p.m.
Henrico County Municipal Code, § 24-4327 et seq. (amended Dec. 13, 2022)		Excavation areas must be at least 100 ft. from any lot boundary line other than a public right-of-way; 200 ft. from any public right-of-way; and 400 ft. from any residential district. Any building containing power-driven or power-producing machinery or equipment must be at least 600 ft. from all adjoining property that is in a district other than an industrial district, and from the right-of-way of any public street.		All internal roadways and entrances to public streets must be located to ensure public safety, lessen congestion, and facilitate transportation, and be maintained to eliminate any nuisance from dust to neighboring properties.	
Pittsylvania County Code, § 35-139 (amended Apr. 19, 2022)		No extracting or processing of natural resources may be conducted within 200 ft. of a property line except in operations that cross property lines.	Vegetation shall be retained and/or fully developed to screen extraction processes from nearby residential areas and adjoining roadways.		
Westmoreland County Zoning Ordinance, § 2-26 et seq. (amended Dec. 11, 2017)	Minimum of 40.57 ac. for oil and gas well drilling operations	Consideration and integration of comprehensive setback buffers—ranging from 500 ft. to 0.63 mi. (equal to 1 km.)—predicated upon Resource Protection Areas, wetlands, structures, wellheads, and public infrastructure considerations; setbacks could range from 1,000 ft. to 3,300 ft. for various critical resources.	All resource extractive use, activity, storage, and operation shall be screened by solid fencing or by an adequate vegetated buffer from any public road, from anywhere outside of the development area identified by the special exception permit, or at otherwise provided in the special exception permit.		