

STAFF REPORT

I. INTRODUCTION

REQUEST:	<u>MINING PERMIT / COMP 25-0001:</u> <ul style="list-style-type: none"> To allow a Mining Operation on the subject property.
APPLICANT:	63 Industries, LLC; Clyde Lipp <ul style="list-style-type: none"> P.O. Box 3372, Rapid City, SD 57709
LANDOWNER:	Mule Ear, LLC <ul style="list-style-type: none"> P.O. Box 1820, Rapid City, SD 57709
EXISTING LEGAL DESCRIPTION(S):	All Less ROW, Section 16, T2N, R9E, BHM, Pennington County, South Dakota.
LOCATION:	Located at the corner of 225 th Street and 151 st Avenue
TAX ID:	15290
SIZE:	640 acres
PHYSICAL DESCRIPTION:	Rolling Hills
CURRENT ZONING:	Agriculture District
EXISTING LAND USE:	Vacant / Agriculture
SURROUNDING ZONING:	North <ul style="list-style-type: none"> Agriculture District Suburban Residential District City Limits of Box Elder South <ul style="list-style-type: none"> City Limits of Box Elder Agriculture District East <ul style="list-style-type: none"> Agriculture District West <ul style="list-style-type: none"> City Limits of Box Elder
ACCESS:	225 th Street and 151 st Avenue
FLOOD HAZARD:	Flood Zone A and Floodway
ZONING ORDINANCE REFERENCE:	§§ 205 and 320
REPORT BY:	Cody Sack

II. RECOMMENDATION

- A. Staff recommends denial of Mining Permit / COMP 25-0001 as it is not in harmony with existing and future land uses, lacks adequate access and infrastructure, and impacts to water quality are undetermined.

III. CRITERIA

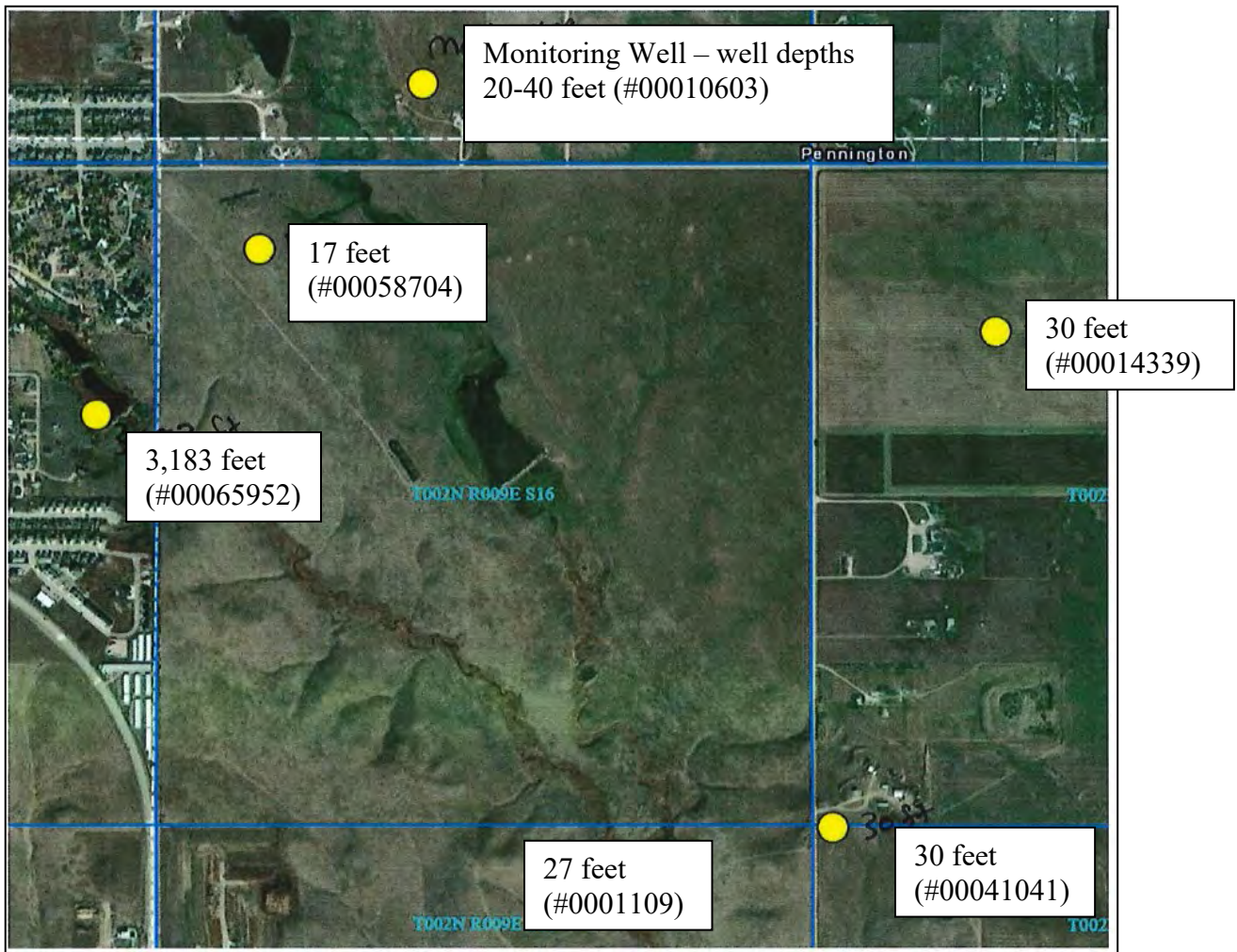
The Zoning Ordinance lists seven (7) criteria that the Planning Commission may consider in their review of Conditional Use Permit applications. They are as follows:

Criteria	Findings		
1. Will the establishment, maintenance or operation of the conditional use be detrimental to or endanger the public health, safety, or general welfare?	Yes ✓	No	The requested use should not be detrimental or endanger the public health, safety, or general welfare. However, the mining operation will increase traffic on roads that do not meet Pennington County Ordinance #14 standards.
2. Will the establishment, maintenance or operation of the conditional use, in any foreseeable manner, substantially impair or diminish the uses, values or enjoyment of other property in the neighborhood for purposes already permitted?	Yes ✓	No	Mining Operations by their very nature create nuisances such as loud noise, airborne particles such as dust, and visual intrusions such as stock piles and heavy equipment.
3. Will the establishment of the conditional use impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district?	Yes ✓	No	Current zoning and future land use for Pennington County identifies the surrounding property as agriculture. The mining operation should not impede development and uses of these properties.
4. Are adequate utilities, access roads, drainage and other necessary site improvements provided?	Yes	No ✓	The proposed mining operation will take access off of 151 st Avenue, which does not meet Pennington County Ordinance #14 standards for the proposed use.
5. Have adequate measures been, or will measures be, taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets?	Yes	No ✓	The Highway Department stated the approach for 225 th Street would need to be removed. There is no turn lane on 151 st Avenue to accommodate increased truck traffic to the property.
6. Will the Conditional Use conform to all applicable regulations of the district in which it is located?	Yes ✓	No	The current zoning district is Agriculture District. A Mining Permit is required for the requested use in an Agriculture District.
7. Is the Conditional Use consistent with the adopted County Comprehensive Plan?	Yes	No ✓	Future Land Use of the property is Rural Residential, Commercial, and Agriculture District. Although Future Land Use for the proposed mining is identified as Agriculture, another large portion of the subject property is identified as Rural Residential. Consistent development of these areas may be impeded by an adjacent mining operation.

The Zoning Ordinance lists seven (5) criteria that the Planning Commission and Board of Commissioners may consider in their review of Mining Permit applications. They are as follows:	
Criteria	Findings
1. The effect of the proposed operation on existing neighboring land uses.	Mining Operations by their very nature create nuisances such as loud noise, airborne particles, and visual intrusions.
2. The effect of the proposed operation on water quality or availability of private or public water supply.	Per the application, water will be provided from an outside source and not drawn by a well on the property. The impact to the availability of water should not be a factor. Water quality is a concern when working within a drainage boundary. The applicant stated no ground water was detected within the proposed 15-foot depth to be excavated. However, the application submitted indicates the depth of excavation is from 0-40 feet. No information was provided regarding ground water deeper than 15-feet. Well logs in the area indicate static water levels are less than 40-feet.
3. The effect of the proposed operation on the health, safety, or general welfare of the County.	The requested use should not be detrimental or endanger the public health, safety, or general welfare. However, the mining operation will increase traffic on roads that do not meet Pennington County Ordinance #14 standards.
4. The effect and location of the proposed operation in Special Flood Hazard Areas or drainage paths.	The application indicates a buffer of not less than 50-feet to the drainage and flood hazard area. However, it indicates the pond on the property would be used to filter out any sediment leaving the site. The pond on the property is a Army Corps of Engineers designated wetland and FEMA designated Floodway. The anticipated impacts on the Wetlands, Floodplain, or Floodway have not been determined.
5. Staff recommendations regarding permit conditions to prevent, limit or reduce adverse impact of the proposed operation.	NA

IV. PROPOSED OPERATION PLAN

- A. *Commencement and estimated completion date:*
 - 1. June 2025 to June 2045.
 - a. The applicant stated at the May 12, 2025, Planning Commission meeting that the estimated time frame for operations would be no more than 5 years.
- B. *Material to be mined and amount per year:*
 - 1. Sand and gravel.
 - 2. 150,000 tons.
 - 3. 0-40 feet excavation depth.
 - a. The applicant stated at the May 12, 2025, Planning Commission meeting that the depth of excavation would be no more than 14-feet.
 - 4. Number of trucks per day has not provided to the Planning Department by the applicant.
- C. *Mining Method:*
 - 1. Construction equipment including excavators, dozers, scrapers, etc. and crushers will be used.
 - 2. No blasting.
- D. *Operation measures to manage dust, noise, vibrations, and air contaminants:*
 - 1. Berms will be placed to minimize noise and sight intrusion.
 - 2. Water will be used on the crusher and throughout the site to minimize dust.
- E. *Water Protection:*
 - 1. The application narrative states surface and ground water will not be affected due to the following:
 - a. A 50-foot buffer will be implemented between the operation site and the wetlands/floodplain.
 - b. Ground penetrating radar does not show water at a depth of 15 feet.
 - 2. An environmental assessment was not provided to the Planning Department.
- F. *Wells:*
 - 1. There is one well on the subject property.
 - a. Static water level of 17 ft per well completion report (#00058704).
 - 2. There does not appear to be neighboring wells within 1,500 feet of the Permit Limit.
 - 3. Static water levels in the area are between 17 and 50 feet.



Well Log information from SDDANR

G. *Reclamation Plan:*

1. A reclamation plan was submitted.
2. Only 10-15 acres will be disturbed at a time. Each area will be reclaimed prior to moving onto next phase.
3. The applicant has proposed to re-contour the land and reclaim to pasture land.

H. *Drainage and Erosion Control Permits:*

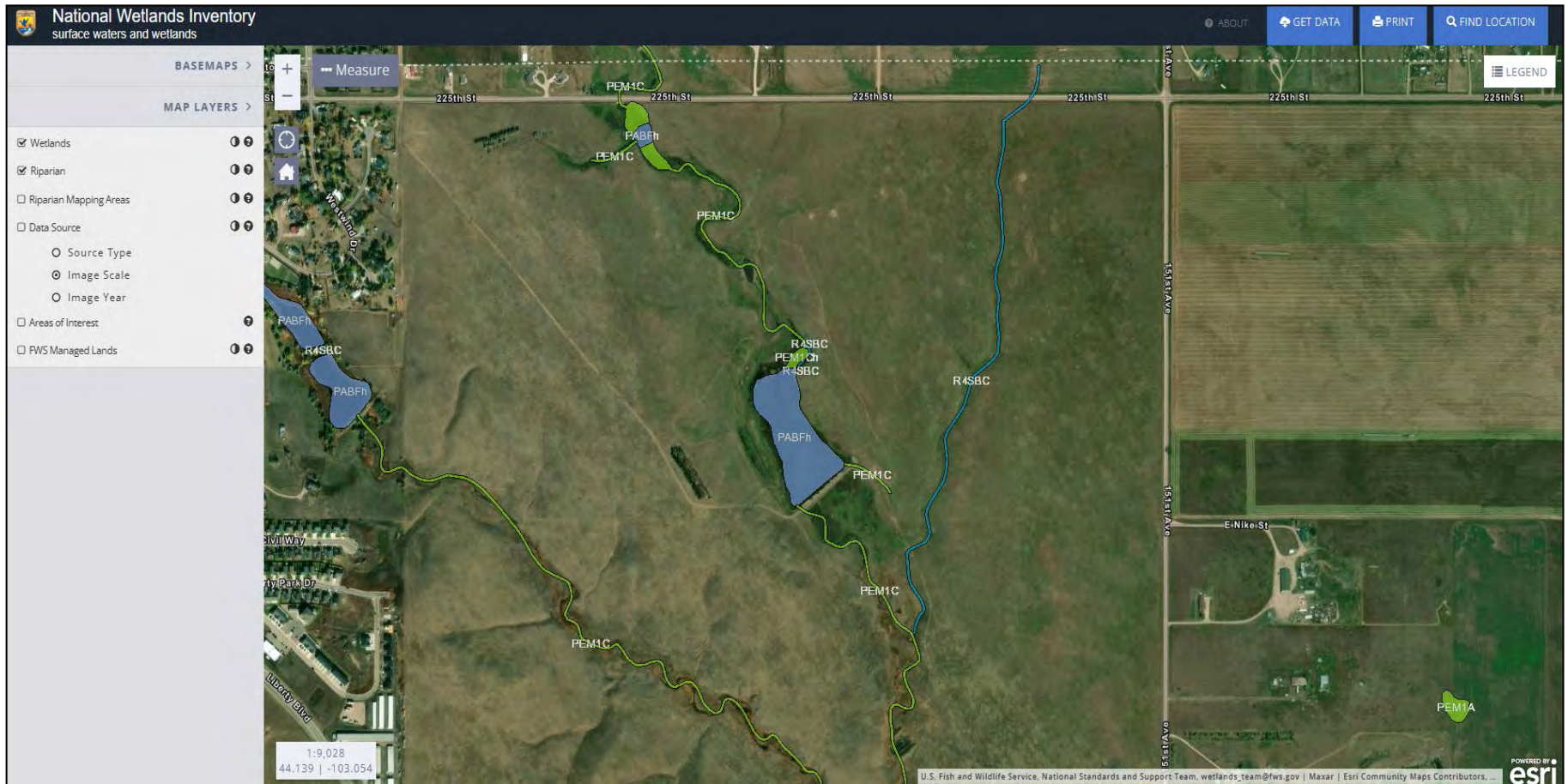
1. The applicant submitted a Stormwater Permit application with the Planning Department and the South Dakota Department of Agriculture and Natural Resources.
2. Erosion check dams, berms, vegetative buffers, vehicle track out, and dust control will be implemented as best management practices (BMP's).
3. All BMP's must be in compliance with the Pennington County Stormwater Manual.

- I. *Bonding:*
 - 1. A surety or cash bond is required if the Mining Permit is approved.
 - a. The cost estimate for the surety must include erosion control measures, stabilization, and reclamation.
- J. *Nearby Residences:*
 - 1. The nearest residence is approximately 400-feet to the mining operation.

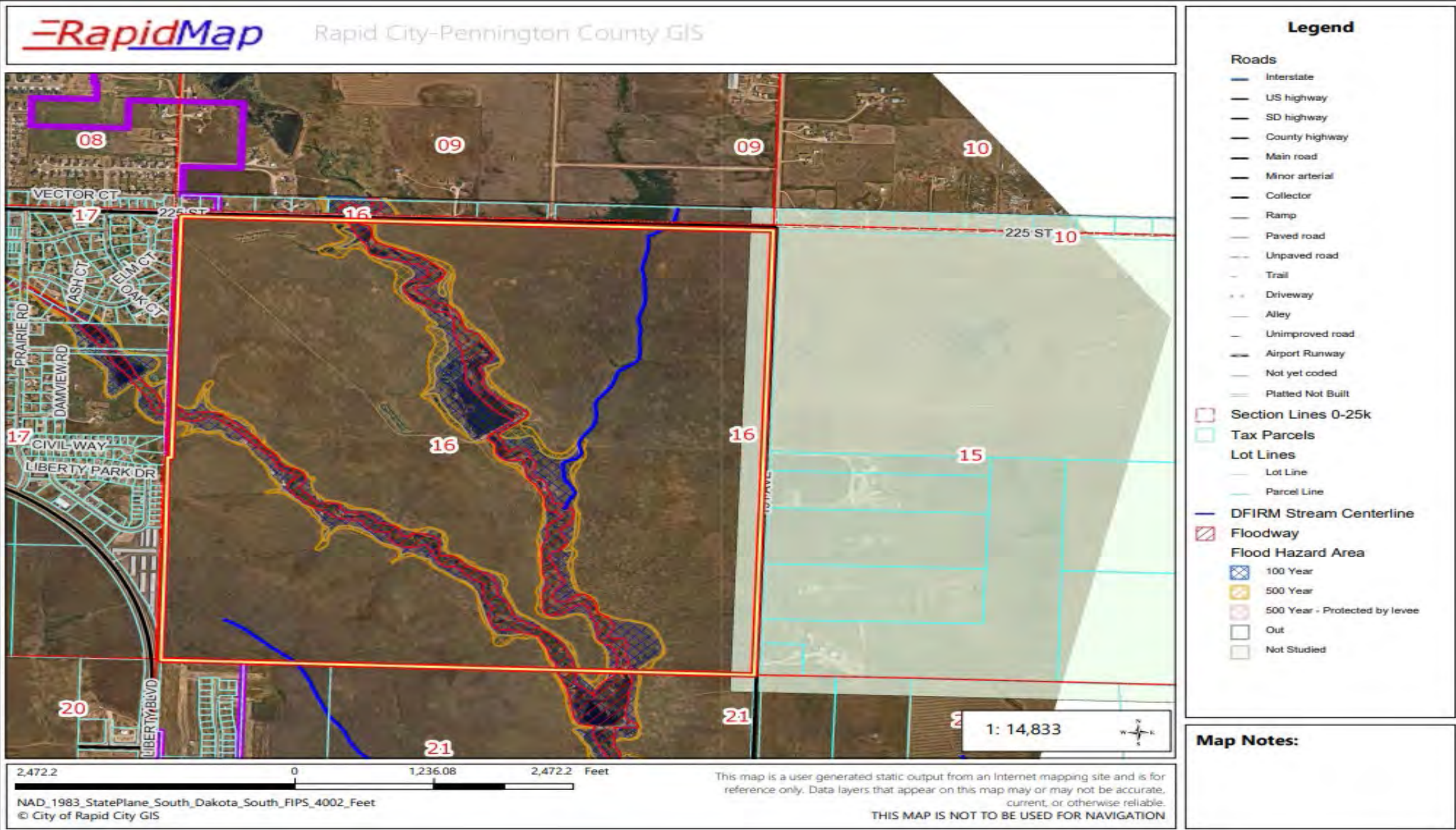


Setbacks of Mining Operation to nearest residence

K. SPECIAL FLOOD HAZARD AREA / WETLANDS



Wetlands Map



Special Flood Hazard Area / Floodway

V. SITE PLAN AND PERMIT BOUNDARY

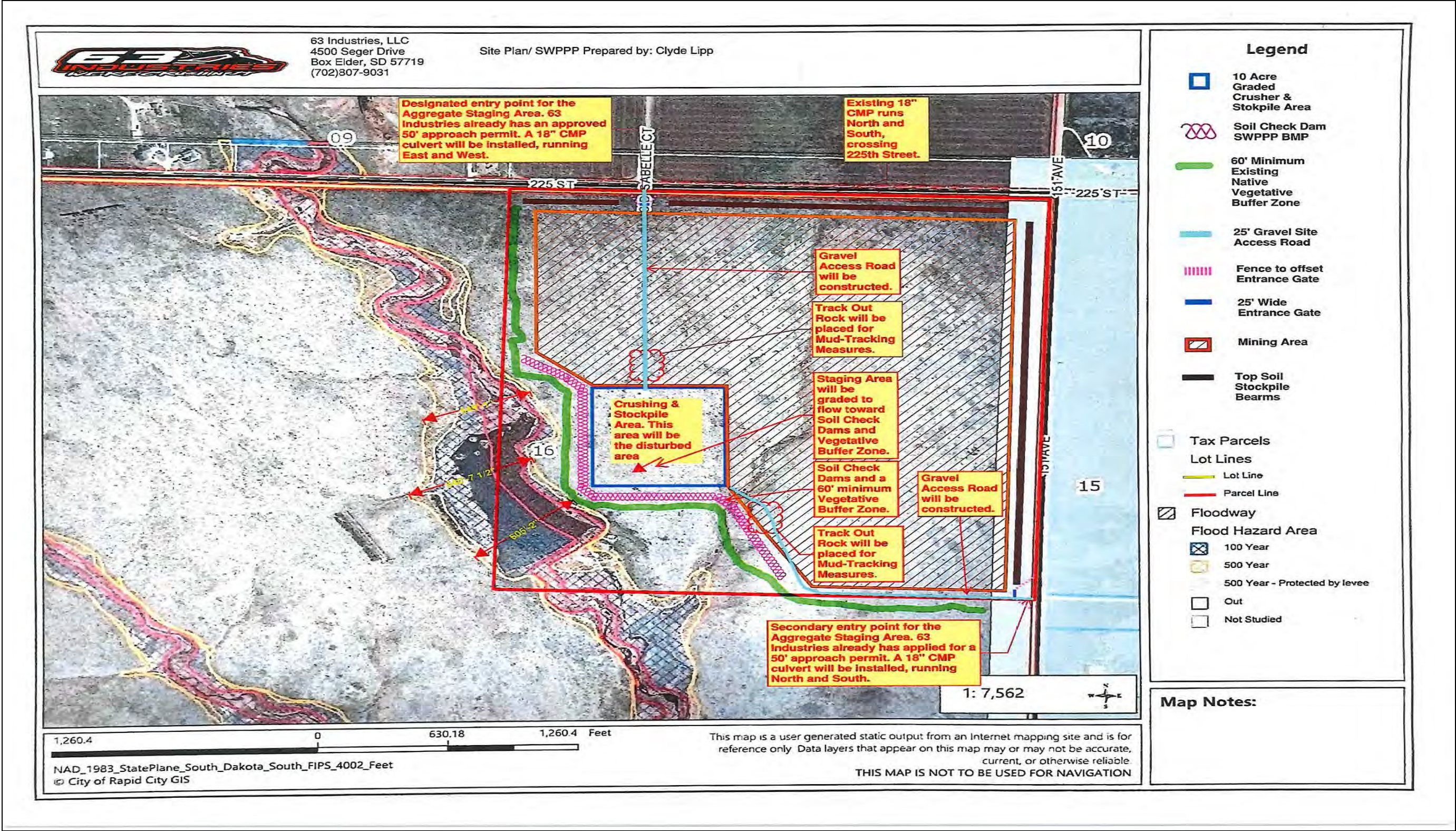
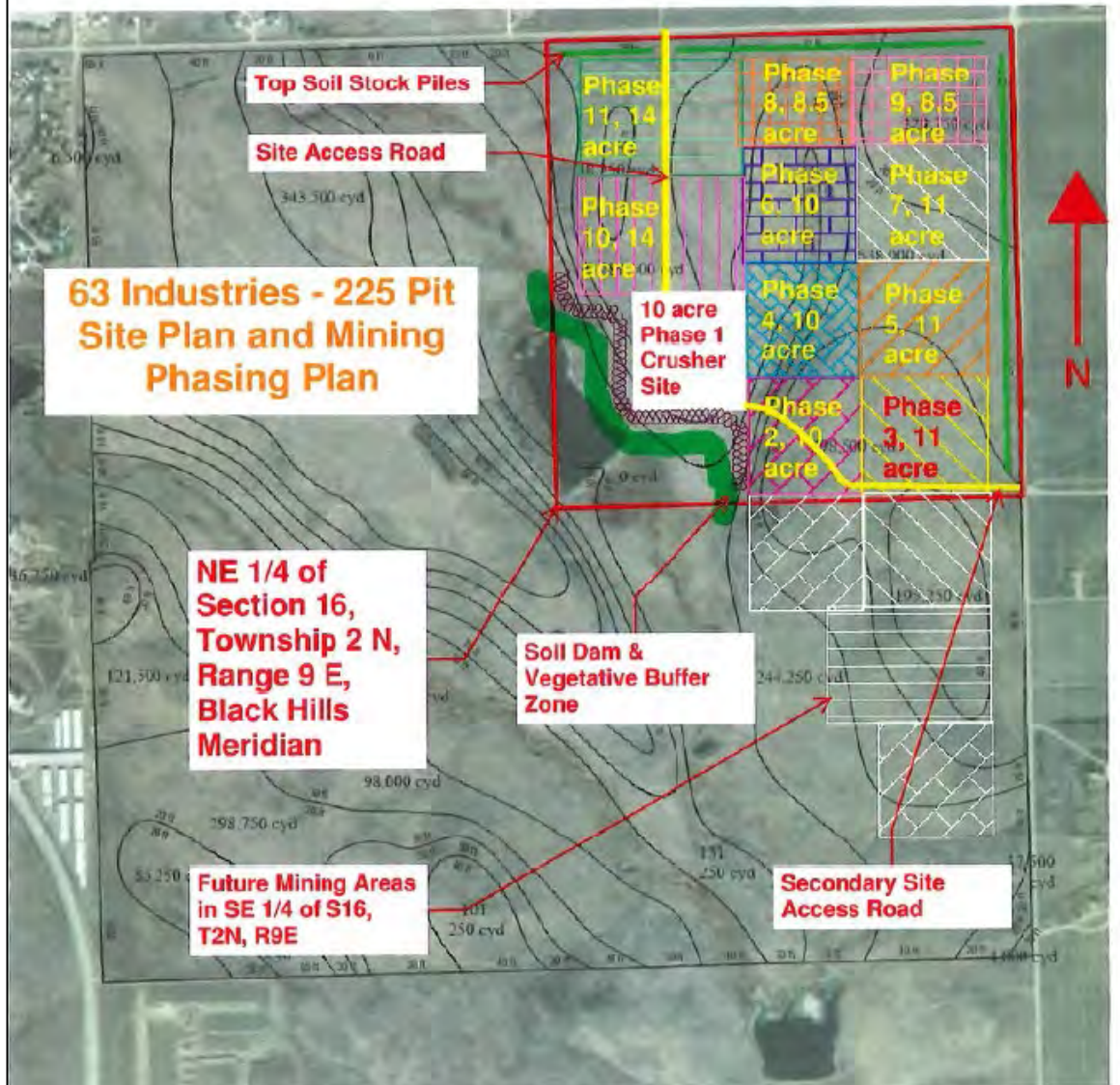


Figure 1: 63 Industries 225 Pit at 15061 225th Street, Box Elder, SD 57719



VI. §320(H) PCZO GENERAL REQUIREMENTS FOR MINING OPERATION

- A. *Hours of operation:*
 - 1. Have not been provided by the applicant.
- B. *Dust control measures:*
 - 1. Dust suppression on rock crusher.
 - 2. Water on site.
 - 3. Vegetated berms.
 - 4. Soil roughening.
- C. *Noise Control:*
 - 1. Berms must be installed to reduce noise.
 - a. MSHA regulations for miner Permissible Exposure Level time weighted average-8 hour (TWA8) is 90 dBA. *Title 30 of the Code of Federal Regulations Volume 1, Chapter I, Part 62.*
- D. *Lighting:*
 - 1. A lighting plan was not provided by the applicant.
- E. *Vibration and Blasting:*
 - 1. The application indicates no blasting will occur during the operation.
- F. *Spill Prevention:*
 - 1. The application indicates a Spill Prevention Plan is not required as bulk storage is less than 1,320 gallons.
 - 2. Equipment will be refueled using mobile refuelers not parked on site.
 - a. Secondary containment is required.
 - 3. No chemicals will be stored on site.
- G. *Dumping Prohibited:*
 - 1. No junk material shall be stored on or disposed of at the site.
- H. *Screening and Berms:*
 - 1. The applicants are proposing berms along 225th Street and 151st Avenue.
 - 2. All berms will be required to meet the PCZO requirements for berm height, construction, and vegetated.

VII. ACCESS ROADS

A. *225th Street:*

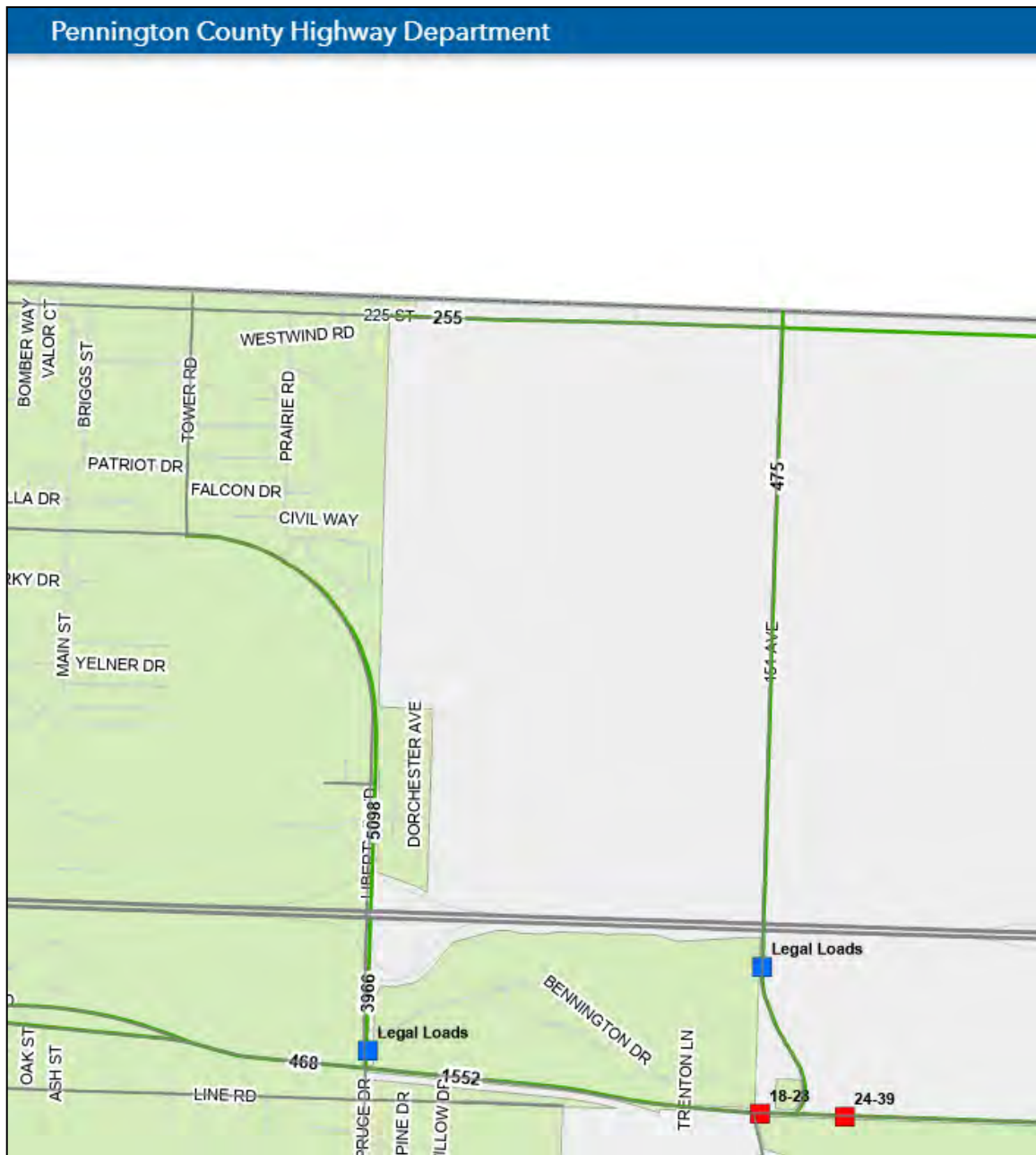
1. 66-foot-wide public right-of-way (Section Line).
2. 19-foot-wide paved surface.
3. No shoulder or turn lane.
4. Average Daily Traffic Count:
 - a. 255 vehicles per day (outside Box Elder city limits).
 - b. 3,000 vehicles per day (inside Box Elder city limits per 2014 Strategic Transportation Plan).

B. *151st Avenue:*

1. 66-foot-wide public right-of-way (Section Line).
2. 21-foot-wide paved surface.
3. No shoulder or turn lane.
4. Average Daily Traffic Count:
 - a. 475 vehicles per day.

C. Ordinance #14 Standards:

1. Agriculture zoning requires a 24-foot-wide gravel road.
 - a. While paved, neither road meets Ordinance #14 standards for width.
2. Commercial/Industrial zoning or uses.
 - a. Requires a 32-foot-wide paved road (10-foot driving lanes with 10-foot turn lane and 1-foot shoulders).



Traffic Count Map



225th Street looking west



225th Street looking east



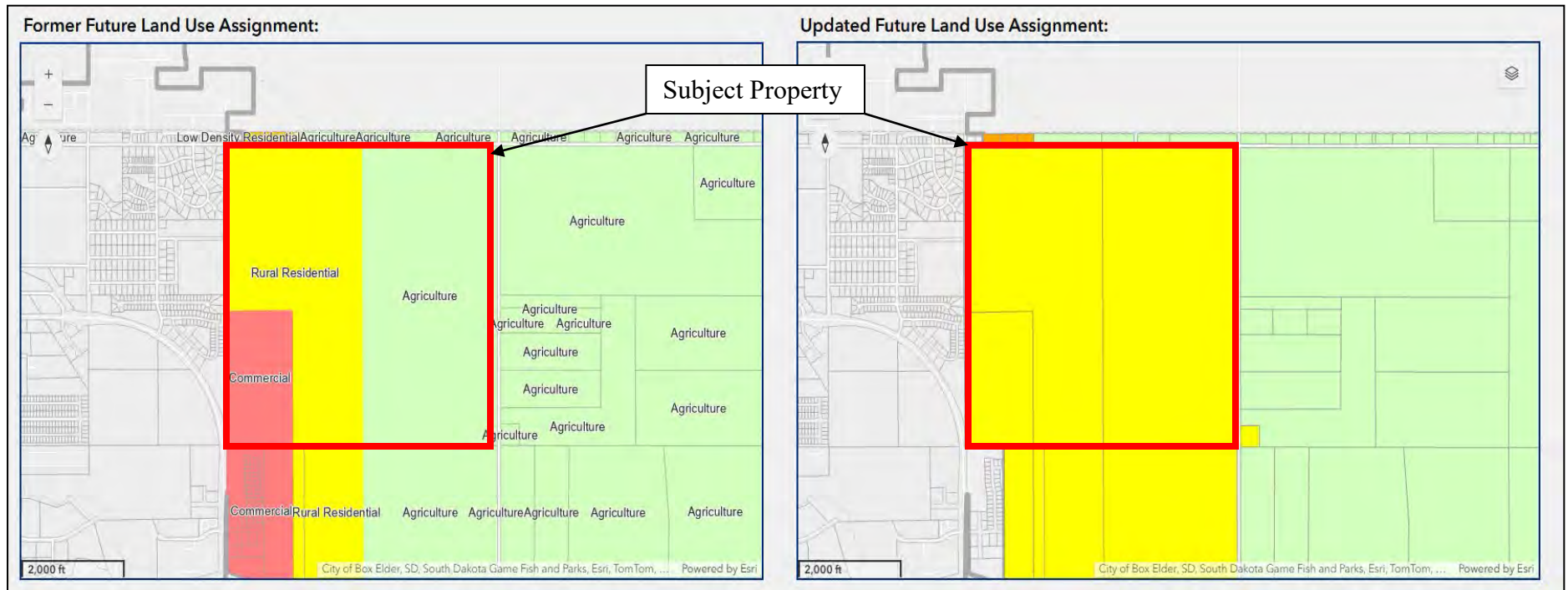
151st Avenue looking south

VIII. FUTURE LAND USE

A. Pennington County:

1. The Future Land Use of the property is a mix of Commercial, Rural Residential and Agriculture.
2. Pennington County is currently in the process of amending the Future Land Use map which identifies the entire subject property as Rural Residential.
 - a. The first public meeting for the amendment was April 9, 2025.
 - b. The first reading for the amendment was approved at the June 17th, Board of Commissioners meeting.
3. Future Land Use of the surrounding properties are Agriculture, Rural Residential and Low Density Residential.

Agenda Item #12
63 Industries, LLC; Clyde Lipp
June 23, 2025



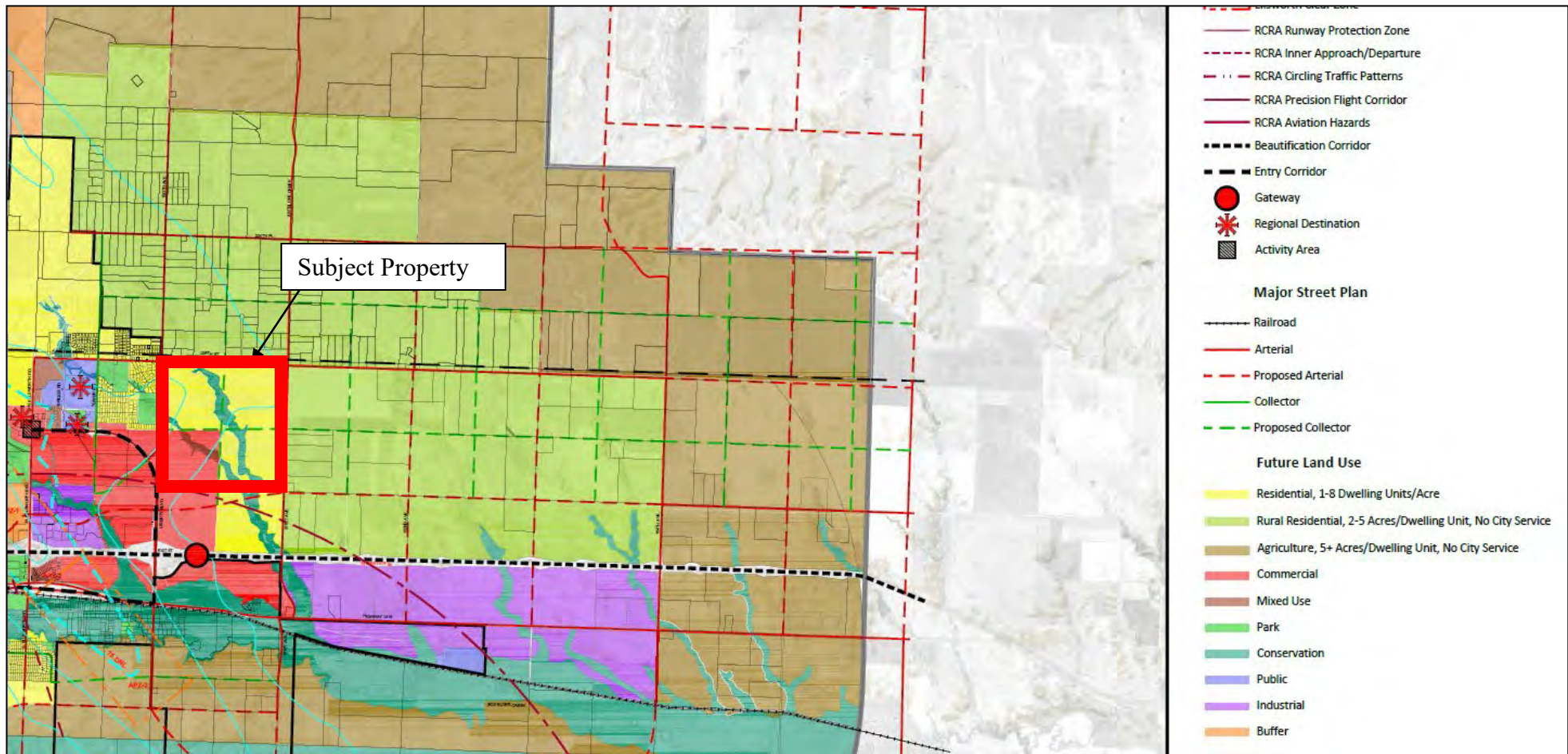
FLU Designations: Rural Residential (yellow), Agriculture (green), and Ranchette (tan).

B. *Box Elder:*

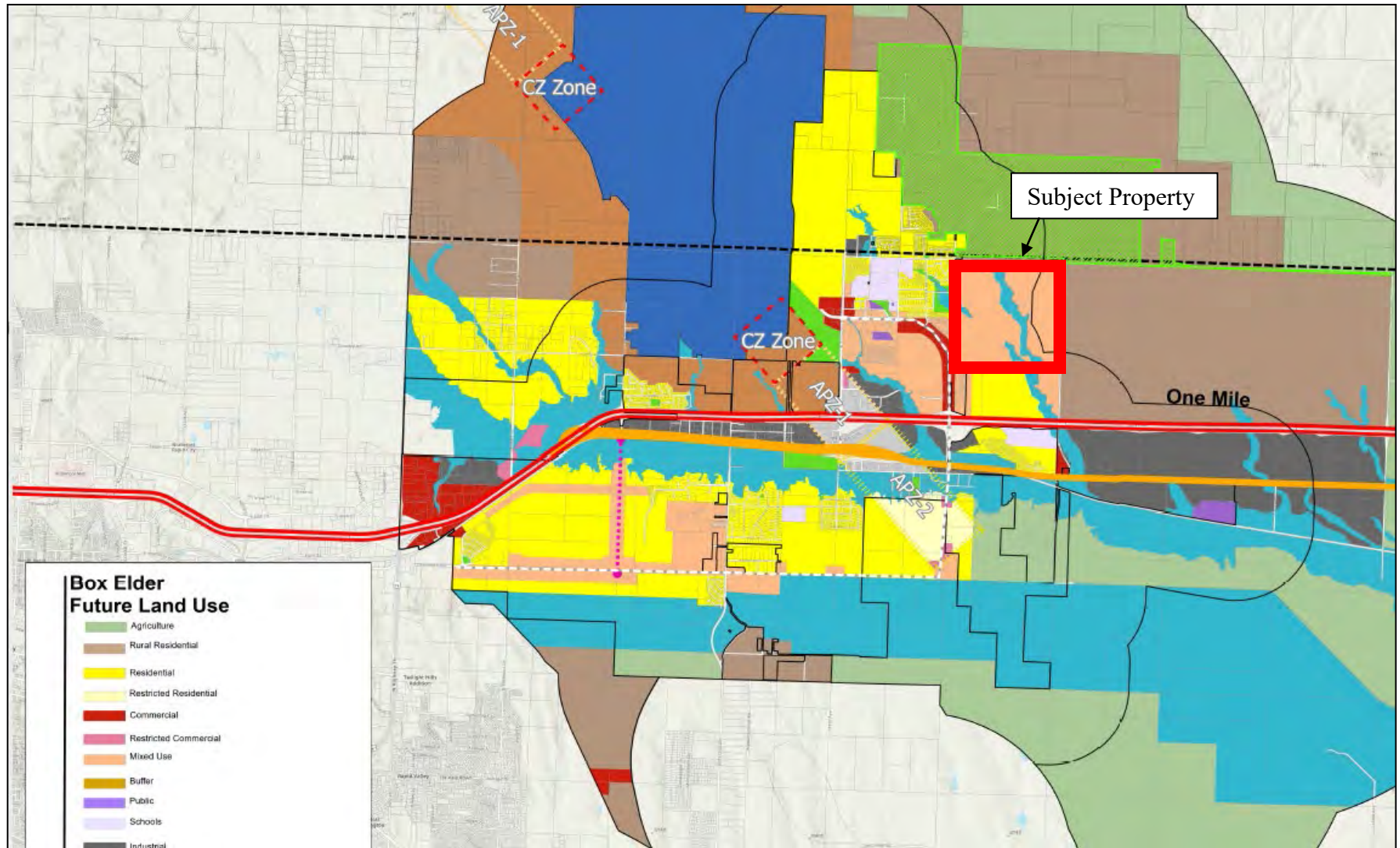
1. The Future Land Use of the subject property is a mix of Commercial and Residential.
2. There is industrial zoning within ½ mile of the subject property.
3. The City is currently updating their Comprehensive Plan.
 - a. The updated plan identifies the subject property as a mixed use (commercial with higher-density residential).
 - b. The adjacent properties are Rural Residential and Residential.

Table 3-1. Future Land Use Categories.				
Density	Use	Purpose / Goal	Location	Zoning
Agricultural (AG)				
Typically 5+ acres in size.	Primary: Ranching and Farming operations with accessory structures Secondary: Single-family Residential	<ul style="list-style-type: none"> Not served by city utilities, unless the location allows. This land use category is intended to protect agricultural lands and to preserve the natural beauty and open character of forested and other natural growth areas from incompatible land uses. 	Primarily to the north and northeast, and southeast portions of Box Elder	County Designated Land
Rural Residential (RR)				
Typically 2 to 5 acres in size	Primary: Single-family Residential Secondary: Ranching and Farming operations with accessory structures	<ul style="list-style-type: none"> Not served by city utilities, unless the location allows. 	Rural settings and urban edges	County Designated Land, General AG
Residential (RD)				
Typically 1 to 8 dwelling units per acre in size	Primary: Single-family and two-family residential Secondary: Other uses include parks, religious facilities, schools, and recreation	<ul style="list-style-type: none"> This category is intended to be for family housing that is in a neighborhood setting. 	Established neighborhoods and future growth areas	Single-family and Multi-family Residential, manufactured homes.
Commercial (C)				
Typical floor area ratios of 0.5 to 2	Primary: Variety of retail, civic, financial institutions, restaurant, cultural, lodging, and professional offices Secondary: other uses include parks, religious facilities, schools, and recreation	<ul style="list-style-type: none"> Intended to provide a range of services to meet Box Elder residents' daily needs. Will vary in scale and character. Intended to provide specialty retail and recreation specific to Box Elder. Intended to provide highway services to residents and travelers. 	Located along transportation corridors and activity centers.	General Commercial, Office Commercial, Neighborhood Commercial, Highway Service, Neighborhood Commercial
Mixed-Use Commercial (MC)				
Typical floor area ratios of 0.5 to 2	Primary: Small specialty shops, hotels, restaurants, health services, entertainment venues, retail services, and business and professional services Secondary: higher-density residential, live-work facilities, parks, plazas, civic uses	<ul style="list-style-type: none"> Allow for mixed uses. Should be integrated into surrounding neighborhoods. 	Located along transportation corridors and activity centers.	General Commercial, Office Commercial, Medium and High Density Residential, Neighborhood Commercial,

Box Elder Land Use Table



Current Box Elder Future Land Use map

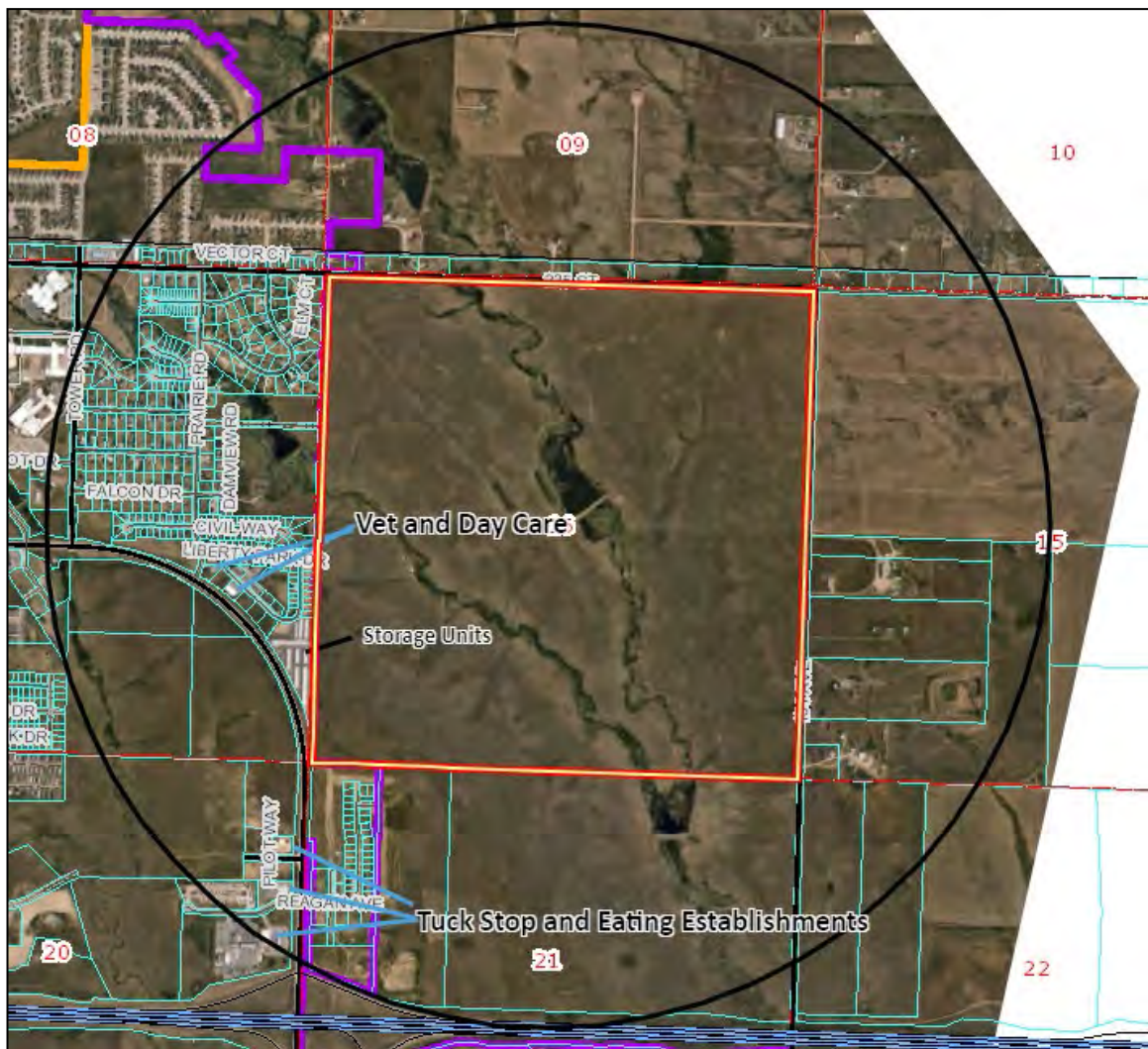


Proposed Box Elder Future Land Use Map

- C. Based on Box Elder and Pennington County Future Land Use designations, it does not appear that a Mining Operation would be compatible within the area.

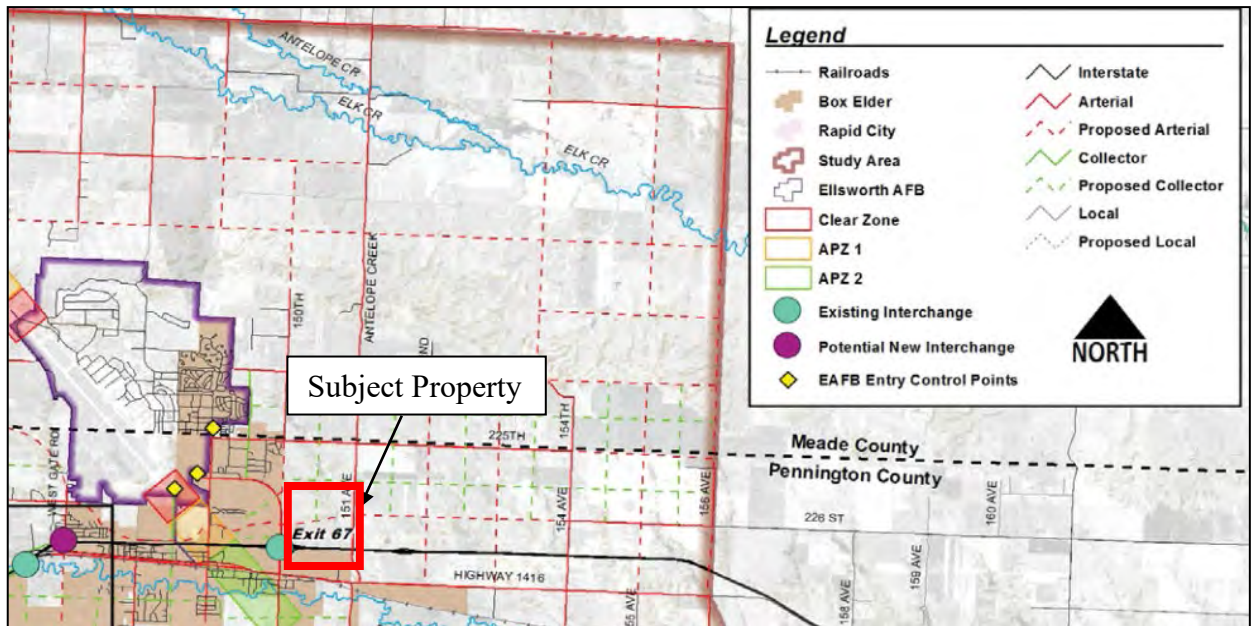
IX. CURRENT LAND USES IN THE AREA

- A. *Existing land uses within 1/2 mile of the subject property are:*
1. Commercial:
 - a. Truck Stop, food and drink establishments, storage units, day/child care, and a veterinarian clinic.
 2. Residential.
 3. Agriculture.
- B. It does not appear that the proposed Mining Operation is compatible with established land uses in the area.

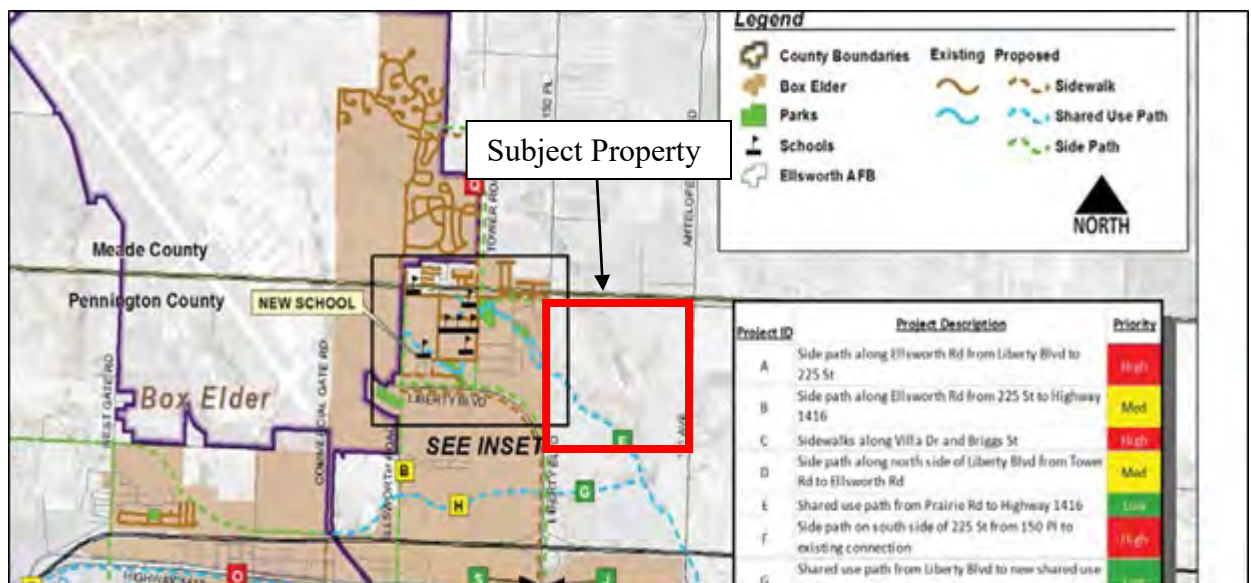


X. MAJOR STREET PLAN AND UTILITIES

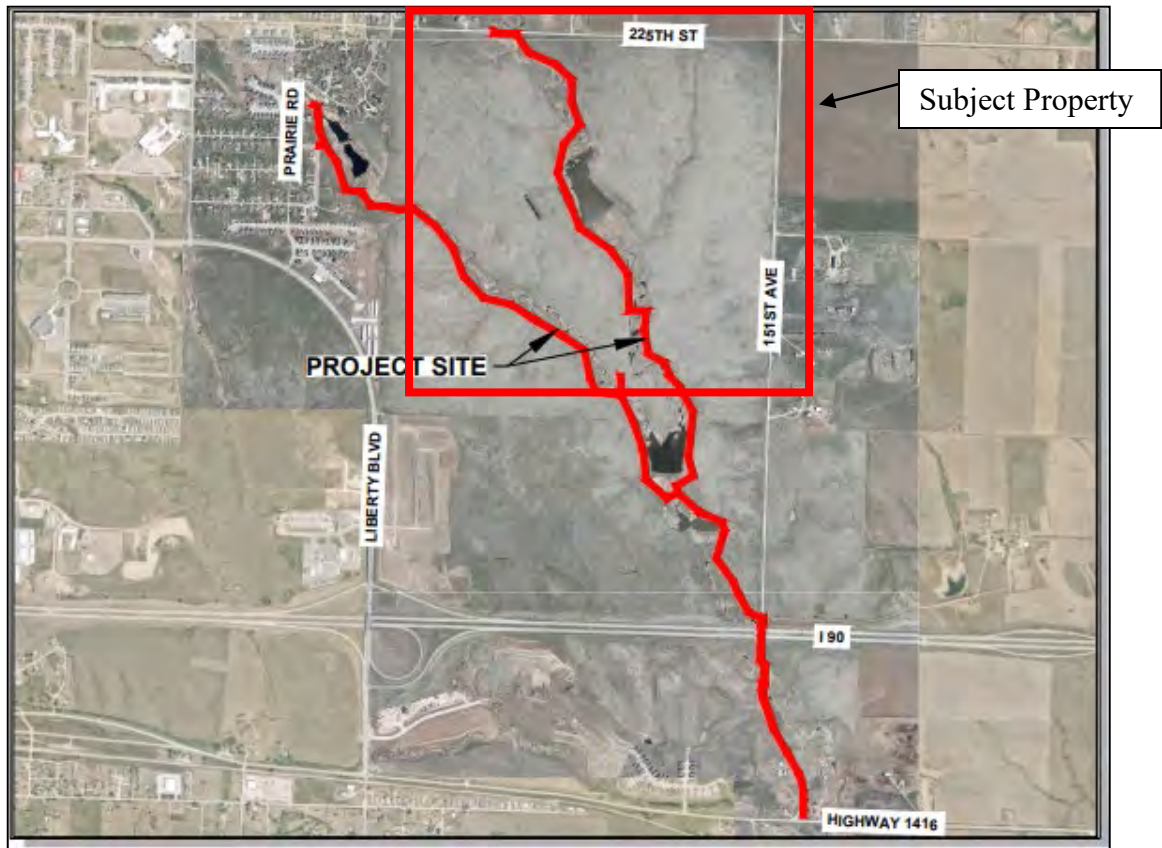
- A. The city of Box Elder Major Street Plan identifies several collector roads crossing the property with a shared use path (pedestrian use such as bicycle, walkers/joggers, and wheel chairs).
- B. The City completed a preliminary plan for a sewer line to cross the property, in preparation for future residential development.
 1. Resources have been invested into planning by the City.



Major Street Plan



Proposed Shared Use Path



Location of proposed sewer line

XI. PROPERTY HISTORY

- A. *Building Permit*
 - 1. Vacant.
- B. *On-Site Wastewater Treatment System (OSWTS)*
 - 1. Vacant.
- C. *Stormwater Permit*
 - 1. COSW 25-0007 – The applicant is proposing approximately 10 acres of land be disturbed, not including access roads.
 - 2. The applicant has an approved Stormwater Permit with the SD DANR.
- D. *Conditional Use Permit*
 - 1. COCU 25-0012 – The applicant applied to have a contractor's storage yard on the subject property.

XII. INTERDEPARTMENTAL REVIEW

- A. The request was routed to: *County Highway Department, County Addressing Coordinator, County Ordinance Enforcement, County Floodplain Manager, Emergency Services, Box Elder Planning and Box Elder Engineering, and Ellsworth Housing Authority:*

1. County Highway
 - a. If approved, the Highway Department's comments are:
 - i. 151st Ave must be improved to Ordinance 14 Commercial standards.
 - ii. The approved approach on 225th St must be removed as an additional access to the mining location to limit truck traffic on this road segment. 225th St approach was approved not knowing this was an additional access to the mining location.
2. County Floodplain Manger
 - a. The proposed operation is close to the Special Flood Hazard area and Floodway. It is also close to a designated wetland. There is a proposed stream crossing that would need engineered plans to show that a proposed 18-inch culvert is adequate for the drainage.
 - b. The application states that the pond will be used to filter any sediment that leaves the site. This would be prohibited as it is a wetland.
 - c. There are concerns with groundwater contamination as the applicant is proposing to excavate 40 feet and well data in the area shows depths or wells and static water level to be in the 17-50-foot range.

XIII. ANALYSIS

- A. The applicants are proposing to mine 160 acres for sand and gravel.
 1. The depth of excavation will be 40-feet.
 2. The operation is expected to last until 2045.
- B. Access roads are not adequate for the proposed use.
- C. The property is within the 3-mile platting jurisdiction of the city of Box Elder.
 1. City Future Land Use identifies the property and surrounding area as residential and mixed use.
- D. Pennington County Future Land Use identifies the property and surrounding area as a mix of Commercial, Rural Residential, and Agriculture.
 1. The Future Land Use Amendment for the County identifies the property as Rural Residential.
- E. The established land uses in the area are Commercial, Residential, and Agriculture.
- F. Aggregate mining is an allowed use in Agriculture District with an approved County Mining Permit.
- G. The proposed Mining Operation is not in harmony with existing and future land uses in the area.