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Improving the Safety of Capital Construction Facilities During Mineral Deposit Development: Contested Mining Facilities, State Regulation, and Supervision

The article examines the legal qualification of facilities as items of capital construction. This work has a practical value because the status assigned to quarries, opening and preparatory work, dumps, tailings ponds, sludge ponds, underground chambers, ventilation systems and drainage facilities determines whether design documentation, engineering surveys, state expertise, construction permits, construction supervision, industrial safety control and environmental assessment procedures are required. The study aims to develop criteria for distinguishing mining operations as technological results from engineering structures that have a stable connection with land and subsoil, a long service life and an independent function in the safety system or production cycle. The sources include the Urban Planning Code of the Russian Federation, legislation on subsoil use, industrial and environmental safety, by-laws for the state expertise and approval of technical projects, official materials of Federal Environmental, Industrial and Nuclear Supervision Service (Rostechnadzor), the Federal Supervisory Natural Resources Management Service, and Glavgosexpertiza of Russia to ensure the safety of capital construction facilities during mineral deposit development, and academic publications on underground construction, cadastral accounting of dumps, risk-based control and mining safety. The results show that current regulation does not have comprehensive criteria to qualify disputed mining and technical facilities, while an exemption from a construction permit under Government Decree No. 1816 does not in itself prove that a facility is non-capital. The article proposes a functional legal test, a three-group classification of facilities, and a cross-departmental decision making algorithm. The proposed approach can reduce abuse by subsoil users, prevent the withdrawal of hazardous engineering facilities from state control and improve accident prevention at mining facilities.
Keywords: *capital construction facility, subsoil use, industrial safety, state expertise, state construction supervision, mining facility, quarry, dump, tailings pond, temporary structure*

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INTRODUCTION

The qualification of mining and technical facilities as capital construction facilities is not only a basic issue but also a matter of public safety and administrative control. The legal status of a facility determines the regime for engineering surveys, design documentation, state expertise, construction permits, construction supervision, industrial safety control, property accounting and environmental procedures [1–8].

The issue is especially sensitive for subsoil operations. Mining combines extraction, creation of mines and construction of surface and underground engineering structures as one production cycle. Many of these structures are used for long periods and directly affect industrial, environmental and geomechanical safety. In practice, some stable and technologically significant facilities may be described as temporary, auxiliary or inseparable from the mining process in order to limit the application of urban planning procedures [9–14, 15].

Official data confirm the practical relevance of this problem. According to Federal Environmental, Industrial and Nuclear Supervision Service (Rostechnadzor), in 2024 federal industrial safety supervision covered 2,731 mining, non-metallic-industry and underground construction facilities, including 62 facilities of hazard class I and 526 facilities belonging to hazard class II. The number of mining operations amounted to 1,632 million cubic meters and the number of employees reached 192,000. In the same period, 4 accidents were recorded, and fatalities increased from 28 in 2023 to 51 in 2024 [16].

The preventive role of design review is also confirmed by state expertise. Glavgosexpertiza of Russia reported that, based on 2020 results, the declared estimated cost of construction facilities was reduced by RUB 329 billion after verification, while 707 projects, or 27 % of the most complex and unique facilities, contained technical solutions that could create emergency risks [17]. Therefore, the unjustified exclusion of disputed mining facilities from the control regime means the loss of an important preventive barrier.

Amendments to Government Decree No. 1816 expanded the list of cases in which a construction permit is not required for works connected with mining operations [4]. However, a procedural exemption does not determine the legal nature of a facility. The broader the list of procedural exceptions, the greater the need for transparent criteria for the qualification of disputed mining and technical objects.

The purpose of this article is to propose a functional legal test for identifying mining facilities that should be treated as capital construction facilities or should at least be subject to the similar expert and supervisory control. The study also develops a classification of such facilities and an interdepartmental algorithm for reducing safety risks.

MATERIALS AND METHODS

The research is based on doctrinal and comparative analyses of the Russian legislation and law-enforcement materials. The regulatory base includes the Urban Planning Code of the Russian Federation, the Law of the Russian Federation On Subsoil, the Federal Law On Industrial Safety of Hazardous Production Facilities, the Federal Law On Environmental Expertise, Government Decree No. 145 on state expertise of design documentation and engineering survey results, Government Decree No. 1816 on cases in which construction permits are not required, Government Decree No. 2127 on projects involving mineral deposits and underground structures, and Government Decree No. 694 on state environmental expertise [1–8, 18, 19].

Official materials of Federal Environmental, Industrial and Nuclear Supervision Service (Rostechnadzor), the Federal Subsoil Resources Management Agency, the Federal Supervisory Natural Resources Management Service, and Glavgosexpertiza of Russia were used to assess the institutional logic of the regulatory system and the practical consequences of an erroneous qualification of a facility [16–22]. The study also relies on academic literature on underground construction, administrative regulation of subsoil use, the relationship between the rights of a subsoil user and a land owner, cadastral accounting of rock dumps, risk-based industrial safety, environmental limitations in subsoil use and the stability monitoring of quarry sides [23–35].

The initial legal rule is clause 10 of Article 1 of the Urban Planning Code, which defines a capital construction facility as a building, structure, construction or construction in progress, excluding non-capital buildings, structures and inseparable land improvements [1]. Clause 10.2 of the same article defines non-capital buildings and structures through the absence of strong connection with the ground, the possibility of relocation without disproportionate damage to their purpose and, as a rule, the temporary nature of use [1].

These legal definitions do not provide a ready-made answer for mining facilities. A quarry, a mine shaft, a dump, a tailings pond, an underground chamber, a drainage complex and a ventilation facility differ significantly in design, function, service life and risk profile. For this reason, the verbal description chosen by a subsoil user cannot replace a substantive legal assessment.

The legislation on subsoil use has its own set of design documents and approval procedures. Government Decree No. 2127 is about technical projects for deposit development, construction and operation of underground structures, and liquidation or conservation of mines, wells and other structures connected with subsoil use [6]. This confirms that subsoil use modes apply to a broad range of structures but do not automatically answer whether each structure is a capital construction facility under the urban planning law.

The methodological premise of this research is the distinction between four interacting regulatory tracks: licensing and subsoil use, urban planning and state expertise, industrial safety, and environmental assessment. A mistake at the qualification stage can remove a facility from one or more of these tracks and thereby reduce the level of preventive control.

RESULTS

The analysis shows that disputed mining and technical facilities can be divided into three groups:

- facilities presumed to be capital construction facilities;
- facilities presumed to be non-capital structures or equipment;
- facilities requiring individual assessment.

The proposed groups are presented in Table 1.

The least problematic cases are mobile facilities and equipment. The main conflict zone concerns quarries, dumps, storage facilities and other items that combine technological and engineering features. For such facilities, qualification should be based on a functional and legal test rather than the name assigned by the subsoil user.

The proposed test includes six positive criteria: stable spatial connection with land or subsoil, independent design solutions and engineering calculations, independent function in the safety system or production cycle, long service life, serious consequences of failure for employees, third parties or the environment, and integration into a hazardous production facility, especially the one classified as particularly dangerous or technically complex [1, 3, 6, 8, 16].

A facility should not be treated as capital merely because it is located within the area occupied by a mine. At the same time, the mere fact that a structure is functionally connected with the mining process should not, in itself, justify its withdrawal from the scope of capital construction legislation. Structural permanence, independent engineering function, high risk, and the nature of the facility must prevail over its formal designation.

As Table 2 shows, no critical risk arises at the licensing stage. It arises when the technical project of subsoil use is transferred to the urban-planning, industrial-safety and environmental authorities responsible for the qualification of the structures.

Current practice often replaces the qualification stage with a reference to the approval of the technical project for subsoil use.

Table 1. Functional and legal qualification of disputed mining facilities

Group of items	Standard examples	Key features	Preliminary conclusion	Main risk of qualification mistakes
Presumed capital construction facilities	Mine shafts; slopes; above-ground buildings; underground chambers; ventilation and drainage complexes	Long-term operation; stable connection with land or subsoil; independent engineering function	As a rule, capital construction facilities	Loss of design and construction control over facilities whose failure affects life and health
Presumed capital construction facilities	Tailings ponds; sludge storage facilities; dams; drainage and fencing structures	Permanent nature; environmental consequences of failure; post-operational impact	As a rule, capital construction facilities	Pulp breakthrough, pollution and long-term damage after mining is completed
Individual assessment	Quarries; opening and preparatory workings; dumps; side-protection systems; quarry-transport elements	Mixed technological and engineering nature; different degrees of connection with land; variable service life	Functional and legal test is required	Withdrawal from the capital-construction mode by formal name despite actual engineering capital
Non-capital facilities or equipment	Mobile installations; replaceable pumps; container modules; canopies; short-term installation sites	Mobility; collapsible nature; relocation without disproportionate damage	As a rule, non-capital facilities or equipment	Substitution of capital facilities with temporary labels, or unnecessary procedures for genuinely mobile equipment

Table 2. Stages of document management, competent authorities and legal result

Stage	Main document	Competent authority	Legal result	Key risk point
1. Licensing of subsoil use	License and terms of subsoil use	Authorized authority/ Rosnedra	Right to use the subsoil area arises	Project begins without verifying the composition of facilities
2. Technical project	Technical project for field development or underground structures	Rosnedra	Design solutions in subsoil use are approved	Approval of technical project is substituted for construction qualification
3. Qualification of disputed facilities	Qualification matrix or reasoned conclusion	Developer, designer, expert and competent authority where necessary	Capital or non-capital regime is determined	Formal naming replaces functional and risk analysis
4. Design documentation and surveys	Engineering survey results and design documentation	State expertise/ Glavgosexpertiza	Expert opinion where required	Actual capital facility is excluded from expertise
5. Construction permit	Application, title documents and design documents, or reasoned reference to exemption	Authorized authority	Permit or lawful application of an exception under Decree No. 1816	Procedural exemption is confused with non-capital status
6. Construction and industrial supervision	Work program, hazardous production facility information and production control documents	Rostekhnadzor/State construction supervision authority	Supervision during construction and operation	Gap appears between construction and industrial control
7. Environmental contour	Environmental impact and state environmental expertise materials	Rosprirodnadzor	Environmental conclusion and other results	Independent environmental regime is ignored

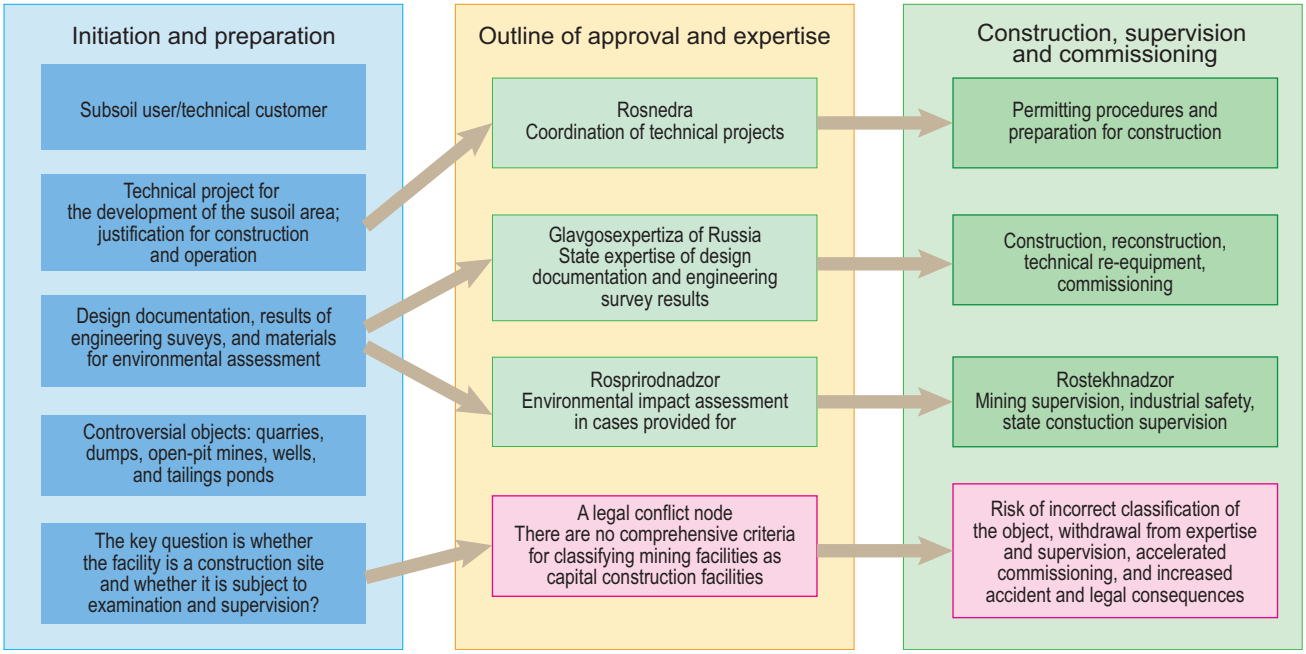

Fig. 1. Flow chart of documentation and qualification of facilities

This substitution is methodologically incorrect. The same facility may be considered by the Federal Subsoil Resources Management Agency as a subsoil item that is beyond the urban-planning and environmental control. The greatest uncertainty arises at the decision point shown in Fig. 1, whether subsoil use, urban planning, environmental control and industrial safety regulations should apply to a disputed facility at the same time.

The territorial structure of supervised hazardous mining facilities by hazard class in 2024 (Fig. 2) demonstrates the scale of the problem. Even where class III facilities predominate, the supervision system includes a significant number of class I and II facilities. For these facilities, any erroneous qualification involve particularly negative consequences.

The proposed system of criteria for practical qualification is summarized in Table 3. The criteria should be applied cumulatively. A single feature may be insufficient, but a combination of permanence, independent engineering function, long service life and high-consequence failure normally justifies a presumption in favor of the capital-construction regime or an equivalent expert-supervision regime.

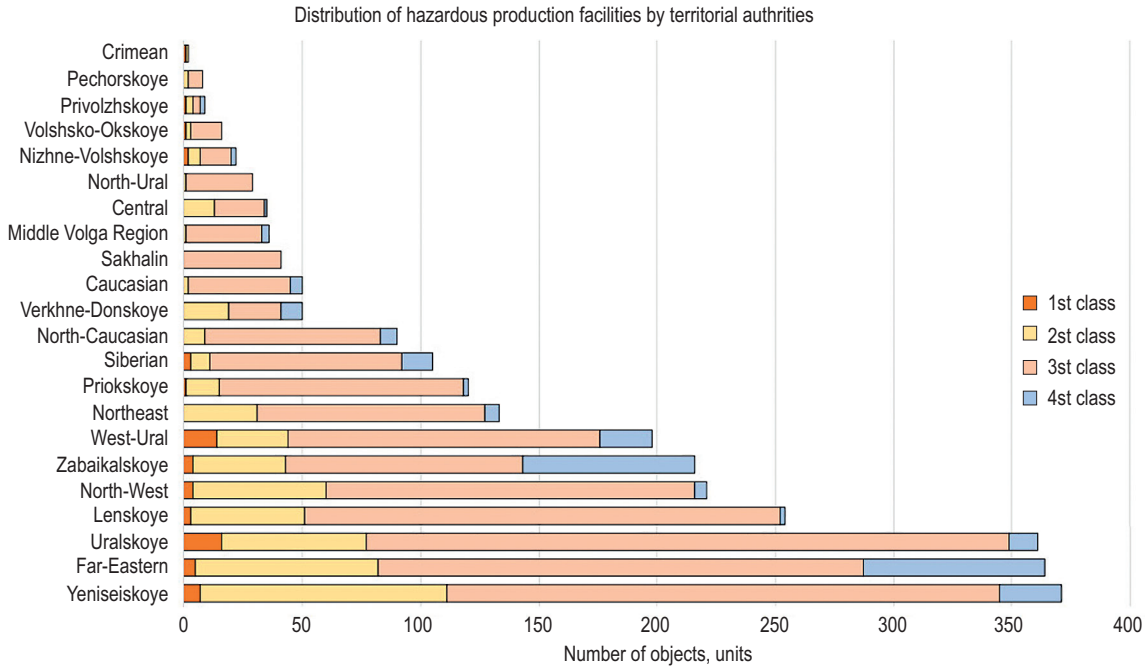

Fig. 2. Structure of supervised mining facilities by hazard class in 2024

Table 3. Proposed criteria for qualification of disputed mining facilities

Criterion	Signs in favor of capital construction	Signs against capital construction	Recommended result
Stable connection with land and subsoil	Facility is embedded in the mass or cannot be moved without destruction	Relocation is possible without disproportionate damage	Presumption in favor of capital construction
Independent design solution	Separate calculations of stability, drainage, ventilation, support or hydraulic protection exist	Object is described as a temporary technological position without independent calculations	Presumption in favor of capital construction
Independent function	Facility provides transportation, protection, drainage, ventilation, storage or treatment	Facility performs a short-term auxiliary function	Capital presumption during long-term operation
Service life	Operation continues for a significant part of deposit development or after closure	Use is limited to one short-term operation	Assessment based on the totality of features
Consequences of failure	Failure can cause injury, flooding, collapse, environmental pollution or shutdown of production	Damage is local and has no systemic impact	Enhanced expert-supervision regime
Integration into hazardous production facility	Facility supports operation of a particularly dangerous and technically complex complex	No connection with such a facility or only episodic connection exists	Presumption in favor of capital construction
Mobility and dismantlability	Absent or not confirmed	Expressed and constructively confirmed	Presumption against capital construction
Temporary nature	Not confirmed; actual operation is permanent	Confirmed by design and real dismantling possibility	Presumption against capital construction

DISCUSSION

The principal risk is that the formal withdrawal of a facility from the capital-construction category allows a subsoil user to minimize or avoid engineering surveys, preparation of design documentation, state expertise, construction permits and construction supervision [1, 4, 8]. For facilities with high technogenic hazards, this approach reduces the preventive capacity of the state.

Artificially classifying stable engineering facilities as temporary has several negative effects. First, the design quality may decrease because the developer has less incentive to conduct comprehensive engineering surveys and to design the facility as a durable item of infrastructure. Second, external expert control is weakened; the materials of Glavgosexpertiza of Russia show that expertise detects both inefficient and dangerous design solutions [17]. Third, interdepartmental diffusion of responsibility increases: Federal Environmental, Industrial and Nuclear Supervision Service (Rostechnadzor), the Federal Subsoil Resources Management Agency, the Federal Supervisory Natural Resources Management Service, expert organizations focus on different legal issues, and a facility may be found between them [18–22]. Fourth, misqualification can affect property, cadastral and tax accounting because the issue of capital construction also has civil law and cadastral consequences [12, 14, 15].

Federal Environmental, Industrial and Nuclear Supervision Service (Rostechnadzor) has a special role here. It acts simultaneously as an industrial safety supervisor, a mining supervision authority and, where the law provides, a state construction supervision

authority [16, 22]. If a disputed mining facility is both capital and part of a particularly dangerous or technically complex facility, the absence of construction supervision would create an artificial rupture in a consolidated safety system.

The analysis supports four regulatory proposals. First, it is necessary to clarify that being on the list of cases which require no construction permit does not determine non-capital status. This clarification can be incorporated into Government Decree No. 1816 or issued as an explanation [4].

Second, the Ministry of Construction, the Ministry of Natural Resources, Federal Environmental, Industrial and Nuclear Supervision Service (Rostechnadzor), the Federal Subsoil Resources Management Agency should adopt functional and legal criteria for classifying mining facilities as capital construction facilities. Such an act should include an indicative list of facilities presumed capital, facilities presumed non-capital and facilities subject to individual assessment.

Third, facilities whose failure may cause fatalities, flooding, destruction of quarry sides, breakthrough of pulp, environmental pollution or loss of stability of the rock mass should be subject to tighter design and expert control. This control should apply, among other things, to tailings ponds, sludge storage facilities, permanent drainage and ventilation complexes, side-reinforcement systems, protective barriers and major underground structures [23–30, 34].

Fourth, law-enforcement practice should apply the principle of substance over form. Where a facility exhibits the structural, functional, and risk-related characteristics of a capital construction facility, its classification should not be altered solely on the basis of the name assigned to it by the subsoil user.

CONCLUSIONS

The failure to qualify disputed mining and technical facilities as capital construction facilities is a systemic problem. It arises from the mismatch between the logic of urban-planning regulation, subsoil-use regulation, industrial-safety control and environmental assessment. Quarries, dumps, mines in operation, side-protection systems, tailings ponds, sludge storage facilities, and other integrated items give way for inconsistent and sometimes biased qualification.

Government Decree No. 1816 does not provide an exhaustive answer to the question of whether a disputed facility is capital or non-capital. Approval of a technical project for subsoil use by the Federal Subsoil Resources Management Agency also does not replace state expertise of design documentation, state environmental expertise or construction supervision. These regimes have different legal purposes and should not be substituted for one another.

For safety purposes, the decisive elements are not the formal name of a facility but its function, service life, connection with land and subsoil, consequences of failure and integration into the system of a hazardous production facility. Therefore, a special functional and legal test is necessary for disputed facilities. Its introduction can reduce abuse, improve design quality, limit conflicts and improve accident prevention at mining facilities.

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Повышение безопасности объектов капитального строительства при освоении месторождений полезных ископаемых: спорные горнотехнические объекты, государственное регулирование и надзор

В статье исследуется проблема правовой квалификации объектов, создаваемых при освоении месторождений полезных ископаемых, в качестве объектов капитального строительства. Актуальность темы обусловлена тем, что спор о статусе карьеров, вскрывающих и подготовительных выработок, отвалов, хвостохранилищ, шламохранилищ, подземных камер, вентиляционных и водоотливных сооружений нередко используется для вывода технологически значимых и потенциально опасных объектов из режимов государственной экспертизы, разрешительной деятельности и строительного надзора. Целью работы является выработка критериев, позволяющих разграничивать горную выработку как результат технологического процесса и объект капитального строительства, как инженерное сооружение, обладающее устойчивой связью с землей и недрами, длительным сроком службы и самостоятельной функцией обеспечения безопасности либо производственного цикла. В ходе выполнения работы были проанализированы положения Градостроительного кодекса Российской Федерации, законодательства о недрах, промышленной и экологической безопасности, подзаконные акты о государственной экспертизе и согласовании технических проектов недропользования, официальные материалы Ростехнадзора, Роснедр, Росприроднадзора и Главгосэкспертизы России. Установлено, что действующее регулирование не содержит исчерпывающих критериев квалификации спорных горнотехнических объектов, при этом освобождение от получения разрешения на строительство по постановлению Правительства РФ от 12.11.2020 г. № 1816 не тождественно признанию объекта некапитальным. Обоснован вывод о необходимости введения специального функционально-правового теста отнесения горнотехнических объектов к объектам капитального строительства, а также о необходимости нормативного разграничения объектов, презюмируемо относимых к объектам капитального строительства, объектов, презюмируемо относимых к некапитальным сооружениям, и объектов, требующих индивидуальной оценки. В данной статье будут предложены система критериев отнесения объектов к различным категориям и механизм межведомственного алгоритма, ориентированные на снижение рисков нарушения безопасности, а также на устранение злоупотреблений недропользователей.

Ключевые слова: *объект капитального строительства, недропользование, промышленная безопасность, государственная экспертиза, государственный строительный надзор, горные выработки, карьер, отвал, хвостохранилище, шламохранилище, временное сооружение*

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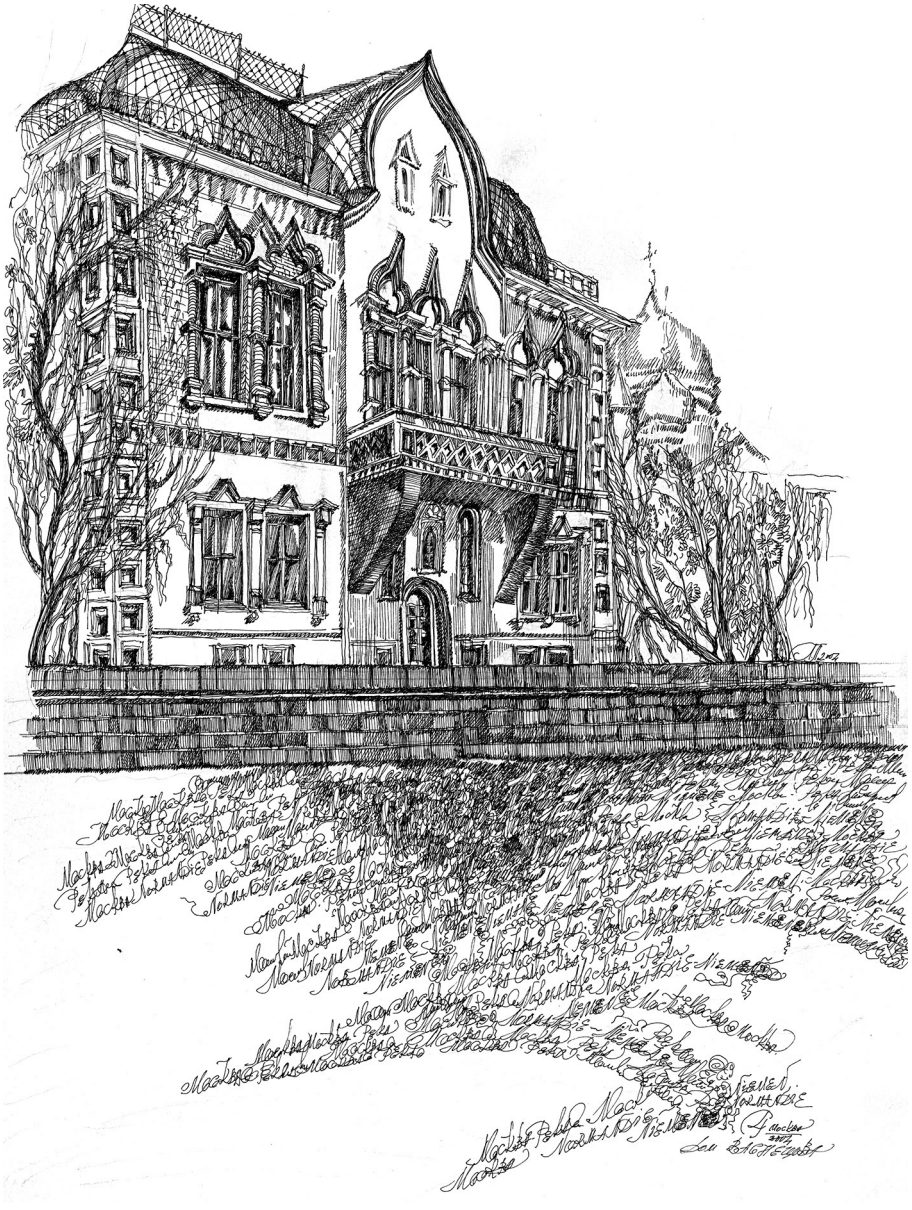

Дом Васнецова. Рисунок, тушь, перо