

**BEFORE THE
GALLATIN COUNTY COMMISSION**

**GALLATIN COUNTY
STATE OF MONTANA**

**IN THE MATTER OF THE REQUEST BY
HUTTINGA GRAVEL PIT FOR
CONDITIONAL USE PERMIT FOR A
OPERATION THAT MINE SAND AND
GRAVEL OR OPERATIONS THAT MIX
CONCRETE OR BATCH ASPHALT**

**FINDINGS OF FACT
AND
ORDER**

PURSUANT to the Interim Regulations for Operations that Mine Sand and Gravel or Operations that Mix Concrete or Batch Asphalt (“Interim Regulation”) adopted by Gallatin County Commission Resolution No. 2008-053 pursuant to authority found in §76-2-206, MCA and the Gallatin County Growth Policy, the Gallatin County Commission (Commission) in a public hearing on January 27, 2009 reviewed the proposed Huttinga Gravel Pit operation application, and Staff Report dated January 27, 2009 to determine if the information submitted meets the requirements of the Interim Regulations and the Gallatin County Growth Policy, and in addition, to listen to public testimony concerning the application and to consider written comments.

THEREFORE, with completion of the review and the receipt of all public input, the Commission being fully advised of all matters presented regarding this application, the Commission makes the following Findings of Fact:

FINDINGS OF FACT

I.

The application for the Huttinga Gravel Pit submitted by Rocky Mountain Engineering, P.L.L.C., on behalf of Richard Huttinga ("Applicant") was made on November 7, 2008 and deemed sufficient to meet the Interim Regulation application requirements. Pursuant to Section 6 of the Interim Regulation, a public hearing was scheduled for January 27, 2009. Notice of the hearing was given in the *Bozeman Daily Chronicle* on January 11th and 18th, 2009. Adjoining property owners were notified by certified mail, return receipt requested. A public hearing before the County Commission was held on January 27, 2009.

II.

Applicant requested a Conditional Use Permit ("CUP") to expand an existing mining operation to mine sand and gravel on a 23.56-acre parcel. The proposed operation will commence in three phases and will operate for a period of eleven years in concurrence with the Huttinga (HUT-001 Amendment #3) Montana Department of Environmental Quality ("MDEQ") Open Cut and Mining Permit.

III.

The property is located on portions of the South Half (S ½) Northeast One-Quarter (NE ¼) and the North One-Half (N ½) Southeast One-Quarter (SE ¼), Section 25, Township Three South (T3S), Range Four East (R4E), P.M.M., Gallatin County, Montana. In general, the property is located at 1750 Little Bear Road.

IV.

The subject property is an un-zoned portion of the County and is subject to the Gallatin County Growth Policy (“Growth Policy”).

V.

The Gallatin County Planning Department caused the Applicant submittal to be forwarded for comments to the Gallatin County Road & Bridge Department (County Road Department), the Montana Department of Transportation (MDT), the Gallatin County Local Water Quality Department, the Gallatin County Floodplain Administrator, the Gallatin City-County Health Department, the Montana Department of Environmental Quality.

VI.

The Operator has obtained an approved weed management plan from the Gallatin County Weed District (Weed District).

VIII.

Section 6.1 of the Interim Regulation, provided below, contains the required findings for approval. Please note the Applicant’s submittal material contains a detailed discussion of the required approval criteria.

- 6.1. *Conditional Use. A Conditional Use Permit (CUP) shall be obtained prior to commencing work onsite for all new Operations or the expansion of existing Operations following the CUP procedure described below. Granting of a CUP is contingent upon fulfillment of conditions imposed by the Commission pursuant to Section 6.3 and the requirements of Section 6.4.*

CUPs shall be issued by the Commission only upon finding:

- a. The Operations conform to the objectives of the applicable growth policy having jurisdiction over the proposed Operations site (Gallatin County Growth Policy or the Belgrade Growth Policy, and the Four Corners Community Plan) and the purposes and intent of this Interim Regulation;*
- b. The Operations will not have significant adverse impacts on nearby properties, property values, nearby land uses, or nearby residents;*
- c. The Operations will not have significant adverse impacts on groundwater, streams, or wetlands or, if significant adverse impacts are identified, the Applicant shall enter into a written agreement with Gallatin County providing for mitigation, including the provision of financial security, for the identified impacts;*
- d. The Operations will not have significant adverse impacts on public services and facilities or, if significant adverse impacts are identified, the Applicant shall enter into a written agreement with Gallatin County providing for mitigation, including the provision of financial security, for the identified impacts;*
- e. The Operations meet all other applicable federal, state or local regulations, including the Requirements of section 6.4 below; and*
- f. A public hearing, after notice has been given, has been held.*

IX.

In the public hearing on January 27, 2009, the Commission considered the Staff Report dated January 27, 2009, Applicant Submittal, applicant presentation and public testimony during the public hearing. Public comments included statements for and against approval of the application. Comments supporting approval included job preservation, community engagement, and effort to address adverse impacts. Comments in opposition focused on the effects the operation will have on adjacent property values, the length of the permit, health affects the operation will have on people, haul truck and

machinery noise, the presence of an asphalt batch plant on human health, and hours of operation.

X.

In Board discussion, the Commission evaluated all submitted information, Applicants' testimony, and the requirements of the Interim Zoning Regulation with suggested conditions of approval. Commissioner Murdock made a motion to approve the Huttinga Gravel Pit Conditional Use Permit. Commissioner Skinner seconded the motion. The Commission adopted staff findings and amended the Conditions of approval (3:05:16). In accordance with the Interim Regulation, the Commission considered the following criteria as a basis to approve, conditionally approve or disapprove of the CUP, and found as follows (complete findings can be found on the recorded Commission hearing dated Tuesday, January 27, 2009):

1. Does the proposed operation conform to the objectives of the Gallatin County Growth Policy and the purposes and intent of this Interim Regulation?

Water Quality

The Commission found that geographic conditions and mitigation measures, the operation will protect both surface water and groundwater quality. Additionally, potential impacts discussed in the original Environmental Assessment found that surface water would not be impacted by this operation. The Bear Creek is well outside of the proposed addition and would not be impacted. Mining would maintain a minimum of a 3 foot separation between active mining and ground water except for the 6-acre permitted pond where mining will enter groundwater and therefore, would not significantly impact drinking water, irrigation, or other groundwater supplies. No

permanent fuel storage is proposed for the site. A wash plat would not be installed at the location. The Commission continued finding that these measures, in addition to requirements imposed by MDEQ, will adequately protect surface water quality. To protect groundwater quality, the conditions of approval require the Applicant to monitor groundwater levels and quality throughout the life of the operation and require the Applicant to maintain a minimum three-foot vertical separation between the high groundwater level and active mining.

Air Quality

The Commission found that air quality would not be adversely affected by the proposed operation. Specifically, the operation is required as a condition of approval to obtain a permit under the Clean Air Act, if required by MDEQ. Second, the operation is required by the conditions of approval to prevent impacts to air quality through the use of tactifiers or other dust control measures on all driving surfaces and stockpiles of material, the application of geographic specific seeding mix of topsoil stockpiles, and proper loading and/or covering of all loads leaving the operation. Finally, if asphalt and/or concrete plants are used onsite valid MDEQ Air Quality permits are required.

Soils

Through Conditions of approval, topography, and permit requirements the Commission found that adequate measures are in place to mitigate adverse effects on soils and will protect soil erosion. Specifically, the topography of the subject site is generally low angle which minimizes water runoff and erosion. The operation is

required as a condition of approval to obtain a permit under the Opencut Mining Program which, in part, through the MDEQ permit conditions, will mitigate potential negative externalities caused by the operation. In addition, the Applicant will be required by the conditions of approval to secure an approved Weed Management Plan from the Gallatin County Weed District. The Plan is in force for the duration of the operation.

Industrial / Commercial Area Compliance

Through keen analysis of the property, the temporary land use conversion, connectivity, and the intended future agricultural use of the subject property the Commission found the proposed action is in compliance with the Growth Policy. The Commission noted the operation will not adversely burden existing infrastructure by its nature and that the dispersion of gravel mines inherently mitigates infrastructure demands. *Growth Policy* objectives will be further realized through dust control measures, noise abatement, hours of operation and water quality and depth monitoring. Additionally, the Commission found that through limiting haul truck movement on Little Bear Spur Road impacts on infrastructure will be lessened.

- 2. Will the operation have significant adverse impacts on nearby properties, property values, nearby land uses, or nearby residents or, if significant adverse impacts are identified, has the applicant provided for adequate mitigation, including the provision of financial security, for the identified impacts?**

The Commission found that the proposed operation would not have significant effects nearby properties, property values, nearby land uses, or nearby residents. Through the cumulative effect of suggested conditions and proposed mitigation plan

possible negative externalities are effectively mitigated. Specifically, the comprehensive noise suppression plan (Condition 20 – 24), the dust suppression and control plan (Condition 26 – 29), and general operating conditions that the potential significant adverse impacts were sufficiently mitigated to meet the requirements of the Interim Regulations.

3. Will the operation have significant adverse impacts on groundwater, streams, or wetlands or, if significant adverse impacts are identified, has the applicant provided for adequate mitigation, including the provision of financial security, for the identified impacts?

The Commission noted the proposed operation will enter the ground water only within the 6-acre MDEQ permitted area. All other mining will maintain a minimum, of 3 feet of vertical separation between active mining operations and the estimated high ground water level. The Applicant is required as a condition of operation to monitor ground water for extractable petroleum hydrocarbons and ground water depth. Additionally, the Commission found the hydrologic separation between Bear Creek and active mining operation will minimize potential contamination. In conjunction with the storm water management program, isolation basins for all permanent and temporary fuel storage permitted by the MDEQ will further mitigate potential water quality impacts. Therefore, evaluating the conditions of approval for their cumulative efficacy the Commission found the proposed operation would sufficiently mitigate the mines impacts on groundwater, streams, and wetlands. Specifically, the environmental quality mitigation (Condition (10 – 17), the integration of MDEQ approval requirements (Condition 41), and the ground water monitoring program would provide sufficient mitigation to protect water quality and

quantity. Additionally, the Commission found that the minimum three foot separation between active mining operation and the estimated ground water level would minimize adverse impacts. There are no hazardous materials stored on site. Finally, the Commission found the ground water quality and quantity program would provide additional measure of mitigation for water resources.

4. Will the operations have significant adverse impacts on public services and facilities or, if significant adverse impacts are identified, the Applicant provided for adequate mitigation, including the provision of financial security, for the identified impacts?

The Commission found that having only one pit does not benefit the general public. Dispersion of gravel truck traffic over the transportation grid reduces direct impacts on a few individuals. The operation is commercial in nature and, therefore, does not burden the school system. There is no permanent storage of hazardous material on site. The Commission stated that with the conditions of approval the operation will not have adverse impacts on public services.

5. Has or will the operations be required to meet all other applicable federal, state or local regulations, including the Requirements of section 6.4 of the Interim Regulation; and

The Commission found all federal, state and local regulations will be met through the operation plan and Conditions of approval.

6. Has a public hearing, after notice has been given, been held?

Pursuant to §6.5(d) of the Interim Regulation legal notice of the Commission hearing was sent to property owners adjacent to and 1,000 feet of the subject property via certified mail. Property owners between 1,000 feet and one mile were notified via

US Mail. Notice was also published in the *Bozeman Daily Chronicle* on January 11th and 28th, 2009. A public meeting was held on January 27, 2009.

In conclusion the, the Commission evaluated all submitted information and the requirements of the Interim Regulation, compliance with the Gallatin County Growth Policy, and public comment. Commissioner Murdock made a motion to approve the Conditional Use Permit (CUP), which was seconded by Commissioner Skinner. After consideration of all matters presented to them regarding this CUP application, the Commission determined that with the conditions below, the CUP for the Huttinga Gravel Pit, complies with the Interim Regulation, Gallatin County Growth Policy, and voted unanimously to approve the CUP (3:0 vote), subject to the conditions suggested by Staff and modifications made by the Commission.

ORDER

IT IS HEREBY ORDERED that the Conditional Use Permit for the Huttinga Gravel Pit is approved, subject to the conditions listed below. Final approval shall be contingent upon completion and compliance with these conditions:

1. For the duration of the operation, all facets of the operation shall be in substantial compliance with the information, discussion, and proposed mitigation included in the application for this CUP. Any deviation from the proposals suggested in the application materials may be considered a violation of this condition.
2. Unless otherwise authorized by these conditions of approval, prior to commencing any onsite mining or processing operations, Applicant shall demonstrate compliance with any pre-operating conditions of approval contained herein and obtain a Land Use Permit from the Gallatin County Planning Department. No fee shall be charged for the Land Use Permit.
3. The operation shall be permitted to operate for a period of eleven years from the date of issuance of the MDEQ Opencut Permit. However, at the end of the third year, commencing upon the date of issuance of the Opencut Mining Permit from MDEQ, Applicant shall initiate review by the Board of County Commissioners for compliance with applicable regulations and these operating conditions. Upon a showing the operation has been in substantial compliance with all applicable conditions of approval, the Gallatin County Commission may expand the approval for the remainder of the permitted eleven year term. Failure to obtain Commission approval prior to the expiration of the third year shall be a violation of this condition. All other enforcement provisions pursuant to the Regulation shall apply at all times.
4. If the installation of a 35 gpm exempt well is required to satisfy conditions of approval, evidence of the installation and registration of a 35 gpm exempt well shall be submitted to the Planning Department.
5. Applicant shall record with the Gallatin County Clerk and Recorder a waiver of right to protest, approved in form and content by the Gallatin County Attorney, any future Rural Improvement Districts (RIDs) or Special Improvements Districts (SIDs).

Hours of Operation

6. Hours of operation for all facets of the operation, including but not limited to off-site truck hauling, gravel crushing concrete mixing, and asphalt mixing, shall be restricted to the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday.

7. Saturday operations are limited to 7:00 a.m. to 5:00 p.m. for loading, hauling, and maintenance. No crushing, asphalt batching or concrete mixing shall occur on Saturdays. No other operations are permitted.
8. Maintenance shall be restricted to the hours of 7:00 a.m. to 10:00 p.m., Monday through Friday
9. No operations shall commence on Sunday.

Environmental Quality

10. Prior to issuance of a Land Use Permit, the Applicant shall provide adequate on-site sanitary facilities for employees. The Applicant shall make a reasonable good faith effort to screen the facilities from view.
11. Mining shall at all times maintain a three (3) foot vertical separation between annual high ground water level and lowest level of mining activity, except within the MDEQ permitted pond area. Notwithstanding the above the applicant shall install at least two on site ground water monitoring wells in locations to be determined by consultation with Gallatin County Local Water Quality District within the proposed expansion boundary. Applicant shall monitor ground water depth on no less than a monthly basis during the course of the operation.
12. If, at any time during operations any other environmental permit, such as required by the federal Clean Air Act or Clean Water Act, are required by any other federal, state, or local permitting agency, the Applicant shall obtain approval for the appropriate permit and provide a copy of the application and approval to the Gallatin County Planning Department.
13. Prior to commencing active mining operations, Applicant shall install at least two off site monitoring wells in locations to be determined by consultation with Gallatin County to monitor and ensure adequate groundwater monitoring for water quality and ground water depth. Applicant shall collect adequate baseline data in said wells prior to commencing active mining operations and shall monitor water quality and ground water depth on no less than six-month basis during the course of the operation. Water quality testing shall include for extractable petroleum hydrocarbons. All data collected shall be provided to the Gallatin Local Water Quality District and the Planning Department on a six-month basis.
14. Spill Prevention and Contingency Plan (SPCP) is recommended.
15. Prior to issuance of a Land Use Permit, drainage plans for the operation shall be submitted to the County and approved by MDEQ, if required.

16. The applicant shall not store hazardous materials such as unleaded fuel onsite. Diesel fuel shall be contained in a manner prescribed by MDEQ.
17. If concrete will be mixed on site the applicant shall submit a concrete mixing site plan to the Gallatin County Planning Department for review prior to commencing any onsite processing operations. The plan shall substantially comply with the criteria outlined in finding No. 5.

Roadway Improvement and Traffic Safety

18. All haul trucks shall be prohibited on Little Bear Spur Road. Two “No Haul Trucks” signs shall be installed on Little Bear Spur Road due to its narrow gravel width and three narrow bridges.
19. All areas within public right-of-ways disturbed by construction shall be sodded and seeded and controlled for noxious weeds.

Noise Suppression

20. Applicant shall to the greatest extent possible enclose all pumps or other noise producing systems within appropriate noise containment apparatus.
21. Notwithstanding any other condition, if audible backup alarms are installed on any on-site equipment all backup alarms shall be Mine Safety and Health (MSHA) – approved and not exceed MSHA approved sound levels.
22. Equipment selection shall be commensurate with geographic location to minimize noise.
23. High-grade mufflers or other sound-dampening devices shall be installed on all diesel powered generators and equipment to reduce noise impacts.
24. Applicant, using a certified specialist, shall measure noise levels at two representative residential locations around the proposed site to establish general ambient noise conditions. One measurement shall be during regular operating hours (7 am – 5 pm) and the other in evening (23:00 – 23:30). During the course of this CUP, Applicant, using a certified specialist, shall continue to monitor noise levels on a monthly basis during active operations at a minimum of two locations on site. Noise levels shall be measured using the same techniques as used to determine the ambient noise levels. Acceptable noise levels measured during active operations shall in no circumstance exceed 10 dBA above the existing day and night average noise level (L_{dn}) calculated during the general ambient noise condition measurements. Applicant shall provide all data to the County Planning Department on a routine basis for the term of the CUP.

25. The use of jake (compression) brakes on hauling trucks shall be prohibited on Little Bear or Little Bear Spur Roads.

Dust Suppression and Control

26. Prior to issuance of a Land Use Permit, the Applicant shall complete a Permit Determination process with the MDEQ Air Resources Management Bureau and provide documentation of completion to the Planning Department.
27. Dust abatement shall be performed consistently and conscientiously to limit the impacts to the air quality of surrounding properties and the general air quality of Gallatin County. To comply with the above, the operator may be required to continuously spray water on all materials during the crushing process and use tackifiers on fines storage to minimize dust emanation from any stored materials. Applicant shall spray magnesium chloride (or other dust control measures as approved by the Gallatin County Road and Bridge Department) on interior roads so that dust emanation from interior roads is minimized.
28. All haul trucks leaving the facility shall be adequately covered or properly loaded to prevent unsafe amount of material from escaping onto public roads.
29. Gravel storage piles shall not exceed 50-feet in height measured from the excavated area grade.

Noxious Weed Management

30. Prior to issuance of a Land User Permit, the Applicant shall obtain an approved Weed Management and Revegetation Plan ("Plan") from the Gallatin County Weed District ("Weed District") for the proposed expansion. The approved Plan must address weed control operations for the duration of this CUP. Upon obtaining a Land Use Permit, the Applicant shall immediately begin implementation of the Plan.

Notwithstanding the above, all areas disturbed by construction, including areas on-site and areas off-site, including stockpiled topsoil, overburden berms and roads shall be controlled for noxious weeds and revegetated in accordance with the rules, regulations, standards and requirements of the Weed District.

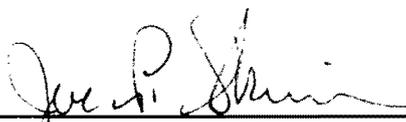
Prior to closure of the mining operation the developer shall fulfill all requirements of the Plan and obtain a Memoranda of Understanding from the Weed District. If the Applicant has failed to complete all requirements of the Plan the Applicant shall enter into an Improvements Agreement with the Gallatin County Board of County Commissioners. The Improvements Agreement shall state that any revegetation and/or weed control required to be completed prior to closure of the

GALLATIN COUNTY COMMISSION



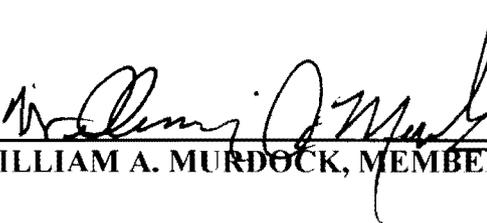
R. STEPHEN WHITE, CHAIRMAN

DATE = 2/12/09



JOE P. SKINNER, MEMBER

DATE 2/13/09



WILLIAM A. MURDOCK, MEMBER

DATE 2/13/09

ATTEST:



CHARLOTTE MILLS,
CLERK & RECORDER