

**GALLATIN COUNTY
GRAVEL PIT TASK FORCE**

Gallatin County Zoning Regulation for
Operations that Mine Sand and Gravel
Or Operations that Mix Concrete or Batch Asphalt

Improving Gallatin County's
Opencut Mine Permitting Process

December 3, 2009

**GALLATIN COUNTY ZONING REGULATION FOR
OPERATIONS THAT MINE SAND AND GRAVEL
OR OPERATIONS THAT MIX CONCRETE
OR BATCH ASPHALT**

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Section 1 Title, Creation and Adoption

- 1.1 This Regulation shall be known as the “Gallatin County Zoning Regulation for Operations that Mine Sand and Gravel and Operations that Mix Concrete or Batch Asphalt” (“Regulation”). It is adopted for the Gallatin County Zoning District for Operations that Mine Sand and Gravel and Operations that Mix Concrete or Batch Asphalt (District), which was adopted on _____.
- 1.2 These Regulations are adopted pursuant to Montana Code Annotated (MCA) §76-2-201 et. seq., in accordance with the Gallatin County Growth Policy (Growth Policy) and the Belgrade Growth Policy (Growth Policy).
- 1.3 Copies of these Regulations and Zoning Map are on file for public inspection with the Office of the Gallatin County Clerk and Recorder, the Gallatin County Planning Department (Planning Department), and the Belgrade Planning Department (Planning Department).

Section 2 Legal Description

Land within the Gallatin County Zoning District for Operations that Mine Sand and Gravel and Operations that Mix Concrete or Batch Asphalt is legally defined as the following:

All of Gallatin County, Montana, excepting the cities of Bozeman, Belgrade, Three Forks, and West Yellowstone, and the Town of Manhattan, and all zoning districts established pursuant to Title 76, Chapter 2, Parts 1 and 2.

Section 3 Application of Regulations

- 3.1 Minimum Requirements. The requirements established by this Regulation are minimum regulations and apply uniformly throughout the District. Regulation provisions shall be held to the minimum that protects and promotes the public health, safety and general welfare of the District.

These Regulations include a grandfather clause in accordance with MCA § 76-2-208, which allows existing non-conforming uses of land, and other characteristics which would otherwise be restricted or regulated under the terms of these Regulations, to continue as non-conforming. Property owners of legally existing non-conforming operations may apply for a Conditional Use Permit (Section 7) to change, alter, enlarge, or expand non-conforming uses.

- 3.2 Zoning Regulation Conformance. All Operations that Mine Sand and Gravel or Operations that Mix Concrete or Batch Asphalt are subject to the provisions of this Regulation. Property owners shall ensure all activity within District boundaries conforms to the Regulation. See Section 7 for permitting requirements.
- 3.3 Vesting. An application made within the District is subject to the regulations in effect at the time the application is submitted.
- 3.4 Contradictions. If the requirements of this Regulation conflict with the requirements of any other lawfully adopted rules, regulations or covenants, the most restrictive requirement, or that which imposes the higher standard, shall govern.

Section 4 Purposes and Intent

- 4.1 These Regulations have been made in accordance with the Gallatin County Growth Policy (adopted April 15, 2003) and the Belgrade Growth Policy (adopted February 6, 2007), for the purpose of promoting the public health, safety, and general welfare, and in accordance with § 76-2-203, MCA. Sand and gravel is a vital building block for all development. It is in the best interest of the residents, businesses and taxpayers of Gallatin County to have affordable sources of gravel in proximity to future growth, as well as, protect the environment and quality of life in Gallatin County.
- 4.2 The general purposes and intent of this Regulation are to:
- a. promote the public health, safety, morals, and general welfare pursuant to § 76-2-201, MCA;
 - b. implement the goals and policies set forth in the Gallatin County Growth Policy, as adopted by the Commission on April 15, 2003, and the Belgrade Area Growth Policy, as adopted by the Commission on February 6, 2007;
 - c. promote responsible recovery and processing of sand and gravel or other resources into concrete or asphalt by imposing reasonable conditions on sand and gravel operations and concrete or batch asphalt mixing operations within the boundaries of the District including new mines or the expansion of existing mines; and
 - d. require sand and gravel operations and concrete or batch asphalt mixing operations to provide adequate mitigation for significant adverse impacts to environmental and community resources caused by such operations.

4.3 Specific purposes of this Regulation are to:

- a. regulate sand and gravel mining operations and concrete or batch asphalt mixing operations and activities resulting from such operations, including the offsite hauling of raw or processed materials;
- b. protect and perpetuate the taxable property value of the regulated property and adjacent and neighboring properties;
- c. provide for compatible uses on adjacent or neighboring properties;
- d. mitigate significant adverse impacts to state and county transportation facilities and systems resulting from activities regulated under this Regulation in order to provide for the continued safe operation of those facilities and systems for the citizens of Gallatin County;
- e. minimize health and safety risks to adjacent or neighboring properties and all citizens of Gallatin County resulting from activities regulated under this Regulation;
- f. protect surface and groundwater quality;
- g. prevent the degradation of soil, water, air and plant life from potential and non-point pollution sources;
- h. prevent erosion resulting from activities regulated under this Regulation;
- i. prevent the unreasonable depletion and degradation of natural resources including air quality, water quality, wildlife habitat, among others; and
- j. protect the public from bearing the burden of impacts to public services and facilities by requiring activities regulated under this Regulation to contribute their appropriate share of the cost of impacts resulting from those activities.

Section 5 Definitions

The definitions provided are terms used frequently within the Regulation. Included as Appendix B are definitions of terms not used within the Regulation but important to understanding the gravel mining process.

- 5.1 Affected Land: Means the area of land and land covered by water that is disturbed by opencut operations, including the area from which overburden or materials are to be or have been removed and upon which the overburden is to be or has been deposited, existing private roads that are used and roads constructed to gain access to the materials, areas of processing facilities on or contiguous to the opencut mine, treatment and sedimentation ponds, soil and materials stockpile areas on or contiguous to the opencut mine, and any other surface or subsurface disturbance

- associated with opencut operations. For the purposes of this definition, an existing private road may be included as affected land only with the landowner's consent.
- 5.2 Commission: The Gallatin County Board of County Commissioners.
- 5.3 Conditional Use: A use which may be commenced only upon approval of a Conditional Use Permit and compliance with all applicable requirements and conditions.
- 5.4 Environmental Assessment (EA): The appropriate level of environmental review for actions either that do not significantly affect the human environment or for which the agency is uncertain whether an environmental impact statement (EIS) is required. Additionally, an EA is a study of land to determine any unique environmental attributes, considering everything from endangered species to existing hazardous waste to historical significance. Depending on the findings of an EA, an Environmental Impact Statement (EIS) may or may not be needed. (MCA 75-1-220)
- 5.5 Extension: Any request by an operator or its agents to extend an operation, or any portion thereof, beyond the term described in the Land Use or Conditional Use Permit.
- 5.6 Good Neighbor Provisions: A list of proposed conditions based on the “Good Neighbor Policy” for gravel operations prepared by the Gallatin County Planning Department and adopted by the Montana Contractors Association to provide market based balanced solutions to local resident concerns most often expressed. (A full list of the Good Neighbor Provisions has been included as Appendix A of this document.)
- 5.7 Geographic Area with Multiple Operations (GAMO): Any geographic area with two or more operational gravel pits less than one half mile between where any portion of the CUP boundaries; or where any portion of the permitted area boundaries of three or more operational gravel pits are within one half mile radius area. Additional mitigation may be required to address cumulative effects of fugitive dust haul routes (transportation), water quality, etc.
- 5.8 MDEQ: Montana Department of Environmental Quality.
- 5.9 Operator: A person or entity engaged in or controlling an opencut operation.
- 5.10 Opencut Operation (AKA Gravel Mine): Includes the following activities, if they are conducted for the primary purpose of sale or utilization of materials, (a) removing the overburden and mining directly from the exposed natural deposits or mining directly from natural deposits of materials; (b) mine site preparation, including access; (c) processing of materials within the area that is to be mined or contiguous to the area that is to be mined or the access road; (d) transportation of materials on areas referred to the aforementioned; (e) storing or stockpiling of materials on areas referred to in (a) through (c); (g) reclamation of affected land; and any other associated surface or subsurface activity conducted on areas referred to in (a) through(c).

- 5.11 Operations: A facility, business, function or area and related activities where 1) sand, gravel and rock fragment are mined or excavated and/or processed using any available technology in an amount greater than 10,000 cubic yards of the aggregate for off-site distribution, sale or use; or 2) raw materials are processed into concrete products using any available technology for off-site distribution, sale, or use; or raw materials are processed into asphalt products using any available technology for off-site distribution, sale or use. Operations include a new Operation or expansion of existing Operations as regulated by the Montana Opencut Mining Act.
- 5.12 Permitted Area: The delineated geographic area of land and land covered by water that is disturbed by opencut operations, including the area from which overburden or materials are to be or have been removed and upon which the overburden is to be or has been deposited, existing private roads that are used and roads constructed to gain access to the materials, areas of processing facilities on or contiguous to the opencut mine, treatment and sedimentation ponds, soil and materials stockpile areas on or contiguous to the opencut mine, and any other surface or subsurface disturbance associated with opencut operations.
- 5.13 Plan of Operations: A plan that meets the requirements of §82-4-434 MCA; and contains a description of current land use, topographical data, hydrologic data, soils data, proposed mine areas, proposed mining and processing operations, proposed reclamation, and appropriate maps.
- 5.14 Planned Gravel Mining: Allowance of an applicant to secure future mining expansion/extension under the current regulation and to inform future land owners of possible expansion/extension, an applicant may apply for a CUP that encompasses an area greater than what is or has been requested to be permitted by the DEQ Opencut permit.
- 5.15 Planning Department: The agent of the Gallatin County Commission that administers this Regulation, either the Belgrade City-County Planning Department or the Gallatin County Planning Department depending on the location of proposed sand and gravel mining operations and concrete or batch asphalt mixing operations.
- 5.16 Processing: Any combination or individual activity including crushers, screens, and pug mills, asphalt, wash, and concrete plants; and other equipment used in processing opencut materials.
- 5.17 Reclamation: The return of lands disturbed by mining or mining-related activities to an approved post-mining land use which has stability and utility comparable to that of the pre-mining landscape except for rock faces and open pits which may not be feasible to reclaim to this standard. Those rock faces and open pits must be reclaimed in accordance with 82-4-336, MCA. The term "reclamation" does not mean restoring the landscape to its pre-mining condition.
- 5.18 Storage: The collection of aggregate material in any form (piles, rows) for more than 30 consecutive days within the permitted area.

- 5.19 Site Plan: A scale drawing showing the accurate location of all structures, processing facilities, haul route(s), parking areas, spill containment areas, scales, and other descriptive components of the operation.
- 5.20 Site Preparation: Defined as the removal and stockpiling of soil and overburden material, installation of haul road(s), and any required berming pursuant to the operation MDEQ Opencut Permit.
- 5.21 Zoning Enforcement Agent (ZEA): Agents appointed by the Gallatin County Board of County Commissioners to supervise and enforce the provisions of this Regulation, including the Gallatin County Planning Director, Belgrade City-County Planning Department director, Code Compliance Specialist, and/or delegated staff.

Section 6 Boundaries of Regulation

The District includes private and public property located in Gallatin County, Montana, as described in the Legal Description (Section 2) and as shown on the Zoning District Map (TBD), which will be attached upon direction of the Commission.

Section 7 Conditional Use Permits

- 7.1 Conditional Use. A Conditional Use Permit (CUP) shall be applied for and obtained prior to commencing work onsite for all new Operations or any modification of existing Operations following the CUP procedure described below. The granting of a CUP is contingent upon fulfillment of conditions imposed by the Commission pursuant to the following requirements in Section 7 of this Regulation, and upon finding:
- a. The Operations conform to the objectives of the applicable growth policy having jurisdiction of 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 the 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 impacts are identified, the Applicant shall enter into a written agreement with Gallatin County providing for mitigation, including the provisions of financial security, for the identified impacts;
 - b. The Operations will not have significant adverse impacts on public roads, services, and facilities or, if significant adverse impacts are identified,

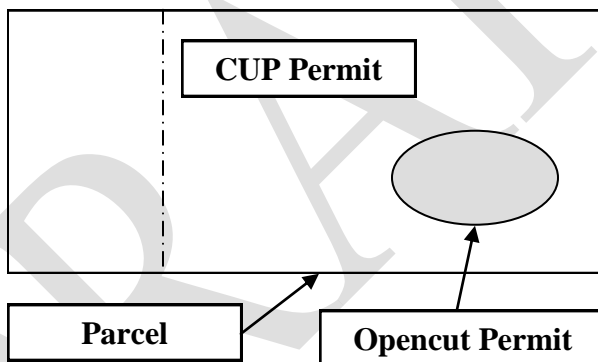
through conducting of a Traffic Impact Study (TIS), the Applicant shall enter into a written agreement with Gallatin County providing for mitigation, including the provision of financial security, for the identified impacts;

- c. The Operations meet all other applicable federal, state or local regulations, including the Requirements of Section 7.5 below; and
- d. A public hearing, after notice has been given, has been held.

7.2 Planned Gravel Mining Area. An applicant may apply for a CUP that encompasses an area greater than what is or has been requested to be permitted by the DEQ Opencut permit. However, if the applicant modifies their permit in any way other than what was originally approved with the CUP a new application shall be required.

Example:

DEQ Permit Area:	20-acres
CUP Permit Area:	120-acres
Parcel Area:	160-acres



Intent / Objective

The intent is to allow an applicant to secure future mining expansion/extension under current regulation and to inform future land owners of possible expansion/extension. Signage shall be required on the CUP boundary if the area is greater than the DEQ permit area, to inform future land owners that operations may be adjacent to their property. When an applicant chooses this option signage on the parcel shall be required for the length of the CUP, including applicants' phone number, and address on weather resistant material.

7.3 Permits, Terms of Issuance. A CUP may be issued for a revocable, temporary, permanent or long term period. All CUP's issued for a definite term shall expire at the end of the term. Extensions may be obtained by following all adopted CUP procedures and payment of fees required.

7.4 Permits, Conditions. The Commission may make the granting of a CUP subject to reasonable conditions as it may deem necessary to protect the public health, safety,

and general welfare, to reduce significant adverse impacts on nearby property or residences, to preserve the character of the area, to mitigate significant adverse impacts, and to give effect to the purposes and intent of this Regulation. A condition will be considered reasonable when it is not excessive or extreme and conforms to the established standards and rules of this Regulation. When requiring a condition, the Commission shall give due weight and consideration to the expressed preference of the applicant. The conditions may include but are not limited to the following:

- a. Vehicular ingress and egress.
- b. Right-of-way.
- c. Lighting.
- d. Term of the Operation.
- e. Signs.
- f. Noise.
- g. Dust and other air quality parameters.
- h. Vibrations.
- i. Erosion.
- j. Protection of water quality and quantity.
- k. Regulation for the time of activities, which may include a provision for operation beyond the required hours of operation under special circumstances.
- l. Landscaping and maintenance thereof.
- m. Placement of uses on the property.
- n. Method of water disposal.
- o. Nature and extent of use.
- p. Noxious weeds.
- q. Public safety measures, including fire protection.
- r. Submission of periodic monitoring reports.

7.5 Permits, Requirements. The following requirements apply to all new Operations or the expansion of existing Operations:

Prior to commencing work under the CUP onsite, the applicant must:

- a. comply with all pre-operating conditions of approval as stated in the Findings of Fact and Order for the CUP, including, if required, entering into a written agreement with Gallatin County to provide financial guarantees in a form and amount acceptable to Gallatin County;
- b. obtain a Land Use Permit (LUP). The LUP will only be issued by the Planning Department upon a determination by the Planning Department that the applicant has complied with all pre-operating conditions of approval in the CUP;
- c. obtain all necessary state and federal permits for the Operations including but not limited to all permits listed in the Gallatin County Subdivision Regulations; permits required pursuant to federal and state water and air protection acts and, if required, a beneficial water

use permit from the Montana Department of Natural Resources and Conservation;

- b. For the term of approval, conditions imposed pursuant to this Regulation shall constitute restrictions running with the land, shall apply and be adhered to by the owner of the land, its agents, successors or assigns, shall be binding upon the owner of the land, its agents, successors or assigns, shall be consented to in writing and shall be recorded as such with the Gallatin County Clerk and Recorder's Office by the property owner prior to the issuance of any building permits, final sale plan approval, LUP, or commencement of the conditional use.
- c. Operations shall have a Plan of Operations and Reclamation Plan approved by MDEQ, and shall comply with those plans during the term of Operations, for the DEQ permitted area.
- d. All CUP applications shall be accompanied by the applicable fees, established by the Commission pursuant to the adopted fee schedule. No CUP shall be issued nor shall any action be taken on proceedings before the Commission until such fees have been paid.

7.6 Conditional Use Permit Procedure.

Applicants shall complete and submit 24 printed copies of the Regulation CUP application form and required information, and electronic copy on compact disc, and all applicable fees to the Planning Department.

- a. Prior to submitting an application, applicants shall participate in a pre-application meeting with the Planning Department to discuss the application and to identify any information not identified by the CUP application, which may be necessary when determining a project impacts. The pre-application meeting shall occur no sooner than 60 working days prior to submittal of the application. Upon receipt of an application Staff shall have 20 working days to determine sufficiency and send a letter to the Applicant. Once sufficiency has been determined Staff shall have 60 working days to schedule a hearing before the Gallatin County Commission. Staff may request an extension of the 60 working days if necessary.
- b. The Planning Department shall then review the application and conduct such investigation as necessary to ensure sufficient information is submitted to allow a decision on the application consistent with the intent and purpose of these Regulations.
- c. Notice of the public hearing for CUP's shall be published in a newspaper of general circulation within the County via a legal advertisement and a display advertisement including a vicinity map of minimum size 3 inches by 5 inches no less than twice between 7 and 15

days prior to the hearing. Adjacent property owners of the property within 1000 feet of the parent parcel boundaries shall be notified by certified mail with all cost paid by the applicant. Applicant shall also provide postage for the courtesy first-class mail property owners between 1000 feet and ½ mile. Applicant shall post notice of the public hearing in a conspicuous manner at two prominent locations on-site or within close proximity to a public road, with their name and phone number clearly displayed on a minimum 8 ½ x 11” brightly colored weather resistant material.

- d. Upon completion of the investigation, the Commission shall hold a public hearing to accept public comment on the CUP application. The Commission may continue the hearing, if need be, to gather additional information. Thereafter, the Commission shall render a decision based on Section 7.1, above.
- e. If possible, the Planning Department will schedule the hearing to occur simultaneously with any hearing MDEQ will have on the proposal.
- f. If an applicant obtains a CUP under this Regulation prior to obtaining MDEQ approval and this approval conflicts in any way with the MDEQ’s Opencut Mining Program permit approval, the applicant may be required to amend the CUP application in order to comply with the MDEQ Opencut Mining Permit. Notwithstanding the above, if the conditions of approval under this Regulation conflict in any way with the MDEQ’s Opencut Mining Program permit approval, the more stringent condition shall apply.
- g. If an applicant obtains approval under this Regulation prior to obtaining approval from MDEQ, a condition of approval shall be that Gallatin County reserves the right to require additional conditions of approval addressing mitigation for impacts identified by MDEQ in the Final Environmental Assessment.

7.7 Authorized Use. For purposes of this Regulation, a conditional use permittee for Operations shall not engage in the conditionally permitted use on the site until all conditions of approval have been satisfied.

7.8 Revocation or Modification of Conditional Use Permits. A CUP may be revoked or modified by the Commission under the following circumstances. Modification or revocation may occur only after publishing notice and providing the public and the applicant an opportunity to be heard.

- a. If conditions related to the original approval of the CUP have changed substantially from those at the time the permit was granted;
- b. The Commission determines the information provide by the Applicant and upon which approval of the CUP was granted was either inaccurate or incomplete;

- c. Revocation or modification is necessary to protect the health, safety, and welfare of the area in which the subject property is situated or the residents of the County;
- d. A conditional use permittee has not materially changed his position by detrimentally relying on the CUP; or
- e. If the person holding the permit has not complied with the conditions upon which it was issued.

7.9 Recording. Evidence of a Conditional Use Permit showing all conditions shall be recorded, at the permittee's expense, in the Office of the Gallatin County Clerk and Recorder at the time of issuance of a Land Use Permit.

Section 8 Complaints, Enforcement and Appeals

8.1 Complaints. Any person may file a signed, written complaint with the ZEA regarding an alleged violation of this Regulation. The complaint shall fully describe the facts supporting the alleged violation. Upon receipt of a signed written complaint, signed complaint or discovery of an alleged violation by other means, the Planning Department/ZEA may record and investigate an alleged violation, and determine if a violation exists. If the Planning Department/ZEA determines a violation exists they may take appropriate action to resolve the violation. The ZEA shall investigate the complaint and notify the operator a complaint warranting investigation has been received.

8.2 Investigation. When investigating an alleged violation, the ZEA shall review these Regulations, and other applicable information, rules or laws regarding the alleged violation. The ZEA may inspect the alleged violation from public right-of-way, from a neighboring property or the site itself if permission from the CUP holder and landowner has been granted for inspection. Permission for access is assumed in the event an alleged violator has a permit application pending with the Planning Department. The investigator shall document the inspection with written notes and/or photographs as appropriate.

8.3 Administrative Remedies. If the ZEA finds any violation(s) of these Regulations, including conditions of approval for any permit, the Planning Department/ZEA shall attempt to obtain voluntary compliance pursuant to MCA § 76-2-210. If informal contact does not remedy the violation, the Planning Department/ZEA may serve a written notice to persons responsible for corrective action necessary to remedy the violation(s). If 30 days after service of the notice of the violations(s) has not been remedied or an agreement reached to remedy the violations(s), then further enforcement action may be taken as provided by these Regulations and law.

- 8.3.1 The Planning Department/ZEA may: (1) issue orders to obtain after-the-fact permits; (2) issue cease and desist orders requiring cessation of any building, moving, alteration, use or activity which is in violation the Regulation; (3) require mitigation and/or corrective action, which may include orders to dismantle or remove noncompliant structures to remedy the violation; (4) revoke any CUP or land use permit and/or (5) take any other action authorized by these Regulations and law to insure compliance with, or prevent violation of its provisions.
- 8.3.2 Persons liable for violation and compliance with any CUP, order, determination, decision, fine, penalty, proceeding and the remedial action shall include without limitation , any and all owners, tenants, leaseholders, builders, contractors, subcontractors, architects, agents, employees or other persons or entities that commits, maintains, participates, assists, causes or contributes to such violation; herein “Persons.”
- 8.3.3 Gallatin County, and/or ZEA shall have the right to proceed or take action jointly or severally against any or all Person(s), and the failure to proceed or take action against any Person or Persons shall not constitute a waiver of any rights or remedies whatsoever against any Person or Persons.
- 8.4 Administrative Fine. In addition to the above, and upon a recommendation from the Planning Department/ ZEA , the County Commission may, after a public meeting, duly notice and assess violators fines of up to \$500.00 per violation for non compliance. Each day of violation may be considered a separate offense. When determining the amount and duration of the fine, the County Commission shall consider the nature, circumstances, extent and gravity of the violation, any prior history of such violations, the degree of culpability, an such other matters as justice may require. In addition, the violator may be required to pay administrative costs associated with the investigation. If the fine is not paid, it shall become a lien upon the property.
- 8.5 Administrative Inspection. The Conditional Uses herein involve pervasively regulated business or industries that present significant risks to public safety and the environment, therefore the Planning Department and ZEA shall have the right to conduct reasonable administrative inspections of the subject premises to determine if the premises, operations, facilities, Conditional use(s) are in compliance with the CUP. Such administrative inspections shall be on reasonable notice, during ordinary and usual business hours, limited in scope, duration and frequency so as not to interfere with the business, and solely for the purpose of determining compliance.
- 8.6 Injunction. The Commission, through the County Attorney or otherwise, may bring an action in the name of Gallatin County in the District Court to enforce these Regulations, which may include without limitation injunctive relief.
- 8.7 Remedies, Cumulative. The remedies provided for herein shall be cumulative and not exclusive. No waiver shall result in the failure to enforce any provision(s).
- 8.9 Appeals/Board of Adjustment. The Gallatin County Consolidated Board of Adjustment shall hear and decide appeals where it is alleged there is an error in any

order, requirement, decision or determining by the Planning Department, and reverse or affirm, wholly or partly, or modify the order, decision, or determination of the Planning Department.

- a. An appeal from any final order, decision, or determination of the Planning Department may be made to the Consolidated Board of Adjustment within 30 days after the decision is filed and served or, in the case of official interpretations of these Regulations and/or the official Zoning Map, within 30 days from the official interpretation. The appeal must be submitted in writing to the Planning Department via certified mail or hand delivery, be accompanied by the appeal fee as established by the commission, and state the basis for the appeal.
- b. Upon receipt of appeal, a public hearing shall be scheduled before the applicable Board of Adjustment. Notice of the public hearing shall be sent to adjacent property owners via certified mail, and published in a newspaper of general circulation at least once 15 days prior to the hearing.

8.10 Appeals of the Board of Adjustment. Pursuant to MCA §76-2-227, a decision from the Board of Adjustment may be appealed to the Eighteenth Judicial District Court within 30-days from the date the decision is filed in the office of the Board.

8.11 Appeals from County Commission. Those aggrieved by a decision made by the County Commission may present to the Eighteenth Judicial District Court a petition, duly verified, setting forth at such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days of a decision made by the County Commission at a public hearing.

Section 9 Invalidation and Severability

If any section, subsection, subdivision, sentence, clause, paragraph, or phrase of this Regulation or any attachments hereto is for any reason held to be unconstitutional or void, such decision shall not effect the validity of the remaining parts of this Regulation to render the same operative and reasonably effective for carrying out the purposes of this Regulation.

APPENDIX A – Good Neighbor Policy

These good neighbor policies were drafted by the Gallatin County Planning Department for operations that mine gravel. It is understood that not all of the conditions will be applicable at every operation and that certain conditions will be developed based on site-specific situations.

1. Prior to operating the sand and gravel mining operation, an approved Weed Management Plan for the site shall be obtained from the Gallatin County Weed Control District. Notwithstanding the above, stockpiled topsoil and overburden berms shall be revegetated in accordance with the plan approved by the County Weed District.
2. Prior to commencing operation, a Traffic Impact Analysis may be required pursuant to Gallatin County requirements to determine the nature and extent of impacts of the operation on all federal, state or local transportation facilities. If warranted, operators may be required prior to commencement of operations to improve roads any other transportation infrastructure to mitigate impacts caused by the operation. Therefore, after issuance of a permit under the Opencut Mining Act and prior to commencing operations and issuance of any required encroachment permit onto any federal, state or county road, the Operators must enter into an agreement with Gallatin County and/or the Montana Department of Transportation that details the nature and extent of road and transportation improvements the operator will complete the timing of those improvements. Operators must complete all required improvements within six (6) months of commencing operations.
3. Where applicable, the operator shall restrict the hours of operation to 7:00a.m.-7:00p.m. Monday thru Friday. When exceptions to these hours are necessary to provide materials for extraordinary circumstances such as large or time-sensitive projects, the operator may notify and request the consent of both the Montana Department of Environmental Quality and the County Commission.
4. Trucks should avoid traveling through any school zones during the hours of 7:45 a.m.-9:00 a.m., and 3:00 p.m.-4:00 p.m., unless other routes are not available.
5. The use of jake brakes on hauling trucks is discouraged and should be avoided. If jake brakes are necessary in certain circumstances for public safety, they must be properly muffled in accordance with industry standards.
6. Any light used for the operation shall be directed in such a way as to be contained within the boundaries of the property and shall be hooded, screened or directed in a manner that minimizes impacts to the adjoining property owners or the neighborhood. Lights shall be extinguished at the close of business each day, with the exception of limited security lighting.

- i. Gravel storage piles shall generally not exceed 30 feet in height, as visible above adjacent ground level.
 - ii. No overnight residential use, camping or evidence thereof, shall take place on the site.
 - iii. The operator shall enforce safety measures, including preventing overfilled trucks, covering loads when required by law, education of truck drivers, and monitoring driver performance.
7. Dust abatement shall be performed consistently and conscientiously to limit any impacts to the surrounding properties and general air quality. Dust control will be monitored by onsite personnel during all hours of operation, and will be accomplished by the use of a combination of traps, water and spray bards. Fugitive dust from stockpiles and the site itself will be controlled through the use of sprinklers, water trucks and/or a combination of water and tactifier as needed.
8. The operator shall ensure a visual barrier made of natural material reasonably screens adjacent property owners from activities in the gravel pit.
9. Fuel containment measures shall be utilized as required by the application to MDEQ.
10. Drainage plans for the gravel pit operations shall be submitted to MDEQ for approval prior to conducting operations.
11. Any federal, state or locally adopted Best Management Practices relating to roads and construction sites shall be strictly adhered to.
12. Where appropriate, when mining will occur on the water table, operators will complete a thorough hydrologic study of the site and immediate surrounding area. Upon completion of the study the operator, in conjunction with the DEQ Opencut Division, shall place monitor wells as required around the perimeter of the site. These wells will be monitored and depths measured periodically and recorded on a data base that will be shared with DEQ. Well will also be sampled before mining begins, and every six months, or as required by DEQ. When possible, these wells and the data base will be in place at least six months prior to any mining activity. All data collected within the jurisdiction of the Gallatin County Local Water Quality District shall be provided to the District.
13. The applicant shall obtain a letter from the local fire district or fire service area having jurisdiction stating all access, parking, fire suppression, and emergency evacuation plans are acceptable.

14. Blasting operations may only occur upon 24 hour written notice to all landowners within 2500 feet of the site.
15. Sound-dampening measures shall be implemented on appropriate equipment on site to minimize noise impacts.
16. Signage, approved by the Gallatin County Road and Bridge Department and/or the Montana Department of Transportation, shall be erected to alert vehicular and pedestrian traffic to the presence of heavy truck travel along all main travel routes within X miles of the site.
17. All parking areas for employee vehicles and company vehicles shall be provided onsite.
18. The applicant shall store hazardous materials such as motor vehicle fuels in a manner mandated by MSHA and the DEQ.
19. If a hearing on an application is required pursuant to Montana law, MDEQ shall conduct the hearing in Gallatin County.
20. Gallatin County shall agree to impose and enforce these “Good Neighbor” policies on any County-owned/operated open cut mines within the proposed zoning areas.

Appendix B – Definitions and Glossary

These definitions have been compiled for clarity and consistency when interpreting information regarding gravel mining within Gallatin County.

Intent. For the purposes of this Regulation certain words and terms used herein as defined. All words in the Regulation shall be first defined as proves herein, and if not defined herein, shall be defined in the Gallatin County Growth Policy, and if not defined therein, shall have customary dictionary definitions.

The Rules of Interpretation. The following rules of interpretation and definitions apply to the definitions for this Regulation. The Rules of Interpretation include: (1) the present tense includes the future tense; and (2) all words in the plural number include the singular number unless the natural construction of the wording indicates otherwise; and (3) the word *shall* is always mandatory; and (4) the word *person* includes a firm, association, organization, partnership, trust, company or corporation as well as an individual or individuals; and (5) the word *used* as applied to any land or structures, shall be construed to include the words *intended, arranged, or designed to be uses or occupied.*

Active Mining: Any permitted activity that has commenced upon the issuance of the appropriate permit.

Adjacency of Operations: An opencut operation is *adjacent* when the parent tract of land that encompasses the CUP permitted area is; (a) contiguous with, shares a common border or corner with any other parent tract with another permitted opencut operation; (b) or the permitted area boundary is within 1,000 feet of another permitted opencut boundary. If a roadway bisects two or more Opencut Operations tracts of land, whether by a private road easement, County, State or Federal right-of-way, adjacency applies.

Cumulative Impacts: Means the collective impacts on the human environment of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type (§75-1-220(3), MCA).

Development Plan: A comprehensive, plan of operation, reclamation, phasing, and future development plan with physical and temporal components. The Development Plan includes the DEQ Operation Plan, Gallatin County Site Plan and more detailed phasing plan with a clearly delineated and defined future development plan. The intent is an operator discloses to the county/public their entire plan of mining (including operation time tables) reclamation (including timetables) and future use, for the permitted CUP area.

Environmental Impact Statement (EIS): A comprehensive evaluation of the impacts to the human environment that likely would result from an agency action or reasonable alternatives

to that action. An EIS also serves as a public disclosure of agency decision-making. Typically, an EIS is prepared in two steps. The draft EIS is a preliminary, detailed written statement that facilitates public review and comment. The final EIS is a completed, written statement that includes a summary of major conclusions and supporting information from the draft EIS, responses to substantive comments received on the draft EIS, a list of all comments on the draft EIS and any revisions made to the draft EIS, and an explanation of the agency's reasons for its decision. (MCA 75-1-201)

Good Neighbor Compliance: (GNC) The degree in which an operator complies with all applicable conditions of the CUP approval, DEQ Opencut Permit, and responds appropriately to neighbor concerns.

Industry:

- a. Light Industry – A use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products, but excluding basic industrial processing. Light industry is also characterized in terms of low intensity and impact, with performance standards such as noise, air pollution, emissions, odors, vibration, dust, dirt, glare, heat, fire hazards, wastes, traffic impacts, and visual impacts of a use.
- b. Heavy Industry – A use engaged in the basic processing and manufacturing of materials or products predominantly from extracted or raw materials, or a use engaged in storage of, or manufacturing processes using flammable or explosive material, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions, including animal feeding operations. Heavy industry is also defined in terms of intensity and impact. Performance and bulk standards would be less restrictive than for light industry.

OPA: Opencut Permit Application