

Gallatin County Gravel Pit Task Force

Report and Recommendations to
the Gallatin County
Board of County Commissioners

Improving Gallatin County's
Opencut Mine Permitting Process

December 2, 2009

ACKNOWLEDGEMENTS

GALLATIN COUNTY GRAVEL PIT

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SPECIAL THANKS

On behalf of the Gallatin County Gravel Pit Task Force we would like to acknowledge and sincerely thank the efforts of a number of dedicated individuals who provided direction, support, and assistance during the development of these recommendations. And to the Gallatin County Board of County Commissioners who articulated our objectives and set us on this task.

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Report is hosted at:
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EXECUTIVE SUMMARY

Gallatin County's landscape has been transformed by development. The County is blessed with ranch land, open spaces, and vibrant communities that provide a quality of life matched by few places in the United States. These attractions are leading to unprecedented growth. In fact, Gallatin County has been Montana's fastest growing county. Growth demands resources. Aggregate is the foundation of this development. The unique demand, transportation characteristics, and land use controls in the County lead to the dispersion of gravel pits and increased conflict between non-compatible land uses. Although, widely dispersed gravel mining operations have benefits to County residents the conflicts created between residential areas and mining operations caused residents to mobilize and demand some measure of local control not provided through the Montana Department of Environmental Quality (MDEQ) Opencut Permit process.

The Gallatin County Board of County Commissioner's (Commission) by resolution created the Gallatin County Gravel Pit Task Force to develop recommendations for the Commission to consider. This report and recommendations are the result of those efforts. The following recommendations should be seen as a comprehensive program. Each component depends on the other to make the suggested action effective. A piecemeal approach to the regulation may have unintended consequences and render the proposed program ineffective.

Although it may appear the proposed "program" to address the issues related to gravel mining operations is substantially similar to the existing Interim Zoning Regulation, a great deal of significant discussion, alternative proposals and nuanced alterations has been presented and are being proposed. The Task Force has taken the directives written by the Commission seriously and respectfully presents our recommendations with the assumption the Commission will take equal consideration of these recommendations. The issue is complicated, important and deserves adequate time to review and we suggest taking measured steps to fully implement our recommendations.

In response to concerns of the Department of Environmental Quality (DEQ), Opencut Program the Legislative Audit Division reviewed the mine permitting process for the Montanan Legislature. Findings and recommendations addressed a wide range of issues related to how the department permits opencut mines including the timelines of issuing permits, improving management information, and operating more efficiently. The report titled "Improving Montana's Opencut Mine Permitting Process" can be found

at: <http://leg.mt.gov/content/Publications/Audit/Report/08P-04.pdf>. The Task force being mindful of the report and recommendations, developed local strategies and solutions that permit influence over local land use decisions. This influence has historically been ceded to the State under the DEQ's Opencut Program.

Primary Concerns:

The Task Force addressed a diverse and complex set of issues. Each stakeholder group has a disparate set of issues that are of concern. The neighbors adjacent to an active mining operation have one set of concerns while the operator has another and the local governmental agencies must balance those and have a third set of concerns. With those disparate viewpoints in mind the Task Force wrestled with balancing these diverse stakeholder perspectives. Although the following list is not comprehensive, it provides context for substantive changes to the Regulation and the environment the Commission will be acting in. Primary issues include:

Neighbors of the Gravel Industry

- **Permit Creep** – Arguably the most difficult aspect of mining operations has been the possibility and reality that permitted mining operations are allowed to extend or expand an operation with little notice and consideration to neighboring properties. The current situation allows a 5-year 10-acre permit State approved permit is allowed to expand to twenty years and 100 acres without a corresponding expanded impact assessment, a review of cumulative impacts of any kind, or local governing body review. The unregulated extension and/or expansion of a mining operation may negatively affect property values depending on a number of variables.
- **Property Values** – Most people who own and live on properties adjacent or near a mining operation are concerned about loss of home value. Considering the fact that for many their home is the single most valuable asset it is of critical importance to those who are affected by a mining operation. Duration and extension appears to be a significant influence on value fluctuations.
- **Quality of Life** – Depending on the nature and location of a mining operation numerous negative externalities are present including noise, dust, light pollution, increased traffic and degradation of visual amenities among others. Long term exposure to these can cause significant distress to individuals. Duration and operation extensions are significant factors.

- **Quality of Environment** – A frequent issue raised was the potential impacts a mining operation may have on the environment including affects on ground water, air quality, surface water, agricultural facilities and others.

In support of these concerns, as adopted by a Constitutional Convention and ratified by Montanans in 1972 (Article II, Section 3), **Section 3 of the Montana Constitution states**, *“Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life’s basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.”*

Justice Terry N. Trieweler, writing for the Montana Supreme Court, concluded that the Montana Constitution protects not only real damages to the environment, but also anticipated pollution. This makes the constitutional protections both anticipatory and preventive. In his opinion he stated, “Our constitution does not require that dead fish float on the surface of our state’s rivers and streams before its farsighted environmental protections can be invoked.”

Planning Issues

- **Compliance with Adopted Plans** – The Task Force was cognizant of adopted plans and the requirements that any future initiative must be integrated.
- **Effects of Mining operation on the landscape** – Mining operations may alter future land use. For example, an operation may convert a parcel of land from what has historically been used for agricultural to a water feature by mining deeper than the ground water level. How this conversion may affect a planning area or municipality’s future development was considered.
- **Regulatory Avoidance or Unintended Consequence** – If the Commission adopts regulation for a part but not all areas of Gallatin County an operator may choose to develop mining sites outside of the regulated area. By pushing operation to more distal areas of the County will result in an increase in miles traveled by gravel trucks and, therefore, increase impacts on public resources (roads) and safety concerns. On the other-hand, moving operations into the hinterlands may reduce the potential of non compatible land use conflict.

Industry Concerns

- **Profitability** – If the Commission adopts regulations for opencut mining operations would those regulations cause operators in Gallatin County to be non competitive with operations outside of Gallatin County. If the County adopts a permitting process that is overly cumbersome and costly it may allow competing operations outside a regulated area an unfair pricing advantage.
- **Over Regulation** – Concern over redundant reviews between County and the State. Historically, DEQ has been the sole authority to permit opencut mining operations within the County. Adding a second permitting process may be burdensome for a perspective operator. Additionally, the industry suggested that the additional layer of review may be cost prohibitive for smaller operators to permit mining operations in the County reducing potential price competition and, therefore, increasing product cost to the consumer.
- **Right to Mine** – Montana Code Annotated (MCA) has a provision expressly addressing the prohibition of the use, development, or recovery of a mineral. Specifically, *MCA 76-2-209. Effect on natural resources states (1) Except as provided in [82-4-431](#), [82-4-432](#), and subsection (2) of this section, a resolution or rule adopted pursuant to the provisions of this part, except [76-2-206](#), may not prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner of any mineral, forest, or agricultural resource.*
 - (2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel or an operation that mixes concrete or batches asphalt may be reasonably conditioned or prohibited on a site that is located within a geographic area zoned as residential, as defined by the board of county commissioners.*
 - (3) Zoning regulations adopted under this chapter may reasonably condition, but not prohibit, the complete use, development, or recovery of a mineral by an operation that mines sand and gravel and may condition an operation that mixes concrete or batches asphalt in all zones other than residential.*
- **Expertise** – If the County adopts a regulation to allow local control over land use decisions and requires environmental monitoring would the County have the expertise to adequacy evaluate data and/or provide objective review of the data.

The overarching issues are twofold; (1) potential conflict between adjacent properties non-compatible land use and (2) local land use control and decision authority. The

potential conflict, or non-compatible land use, between adjacent properties evolves when a residential structure is placed near an existing mining operation or when a mining operation opens near existing residential development. The other issue is how, or who makes local land use decisions and who is involved.

The Task force considered all available options to address non-compatible land use. Currently, under Montana law there appears to be one option, zoning authority. The recommendation contained in this report is designed to allow mining operations with conditions. The conditions are relative to the intensity, duration, environmental impact(s), location, and whether the operation is expanding or extending an existing permit. If there are no known environmental concerns or non-compatible land use present on site it is suggested few conditions would be required to mitigate potential impacts. On the other hand if a proposed operation is proposed adjacent to a residential development and numerous environmentally sensitive areas, it would follow more restrictive conditions may be placed on the operation.

Prior to the adoption of Interim Zoning for operations that mine sand and gravel or operations that mix concrete or batch asphalt the DEQ was the reviewing authority. An operator submitted an application to the DEQ who reviewed the application and approved or disapproved the permit. Little or no local notification was required or occurred. A DEQ Opencut permit requires a Zoning Compliance form prior to issuance of an opencut permit. A Zoning Compliance form establishes whether or not the operations meet any adopted zoning regulation. If there was no zoning the operation complied. As stated earlier the DEQ has undergone extensive review which resulted in the passing of HB 678 revising laws related to opencut mining. The conversion of land from an existing use to industrial use may not comply with local adopted Growth Policy. Additionally, DEQ does not address off site impacts related to gravel mining operations. They only regulate activities within the permit boundary.

BACKGROUND

Aggregates and gravels are used as base construction materials in many facets of development and construction, including material for structural foundations and roads. Although they are generally fundamental, low-value natural resources, the availability of gravel and construction aggregate is essential to construction, and in many respects, local and regional economic growth. While these resources are critical to development and construction, a major challenge associated with their production is the cost of transportation of the material from the mine and production location to the site for final use. Thus, because aggregate and gravel are low-value materials, and because the net cost of production raises quickly when accounting for transportation costs, these resources should be mined within a certain proximity of the final location of use. Although local market conditions vary, it is generally not cost-effective for the suppliers of these materials to haul aggregate more than 20 miles from its mining and production site.

Many localities nationwide have experienced shortages of construction aggregate. The ultimate reason for this shortage appears to be widespread urbanization, which, on the one hand, increases the demand for construction aggregates, and on the other, tends to remove aggregate-bearing lands from production through land development and zoning decisions that preclude mining. When sources of aggregate are eliminated locally, thus becoming more remote from the final places of use, the costs of construction can rise significantly. In high growth areas with rising land values, this is one factor that leads to potential conflicts between the land development and mining industries. Often these interdependent industries compete for use of the same land.

In Gallatin County, sand and gravel operations can involve many different processes. The degree of processing depends upon the type of finished product the operator is seeking to produce. The more refined the product the greater the on-site processing requirements. All use mechanical equipment, such as front-end loaders, to extract the resources and stockpile for processing. Depending on the nature of the deposit and the market the operator is seeking, most operations will process the mined material into several grades of product from “pit run” to “washed” material.

In Gallatin County, not only does the type of product produced vary but also the ownership of these operations is diverse, from family owned operations to corporately owned large scale operations. The length of time the operations are active varies greatly, too. Several individual local operations have been in continual production for decades while others have been in production for only a limited period of time. Essentially, the

rapid population increase Gallatin County resulted, until recently, in high demand for these resources and thus increased competition in the market and thus the request for several new operations.

Evolution of Interim Zoning

On April 25, 2007 the Commission sent a letter to the Montana Department of Environmental Quality (MDEQ). In the letter the Commission asked whether MDEQ might impose certain conditions upon gravel pit operations. Most of the Commission's suggested conditions could not be imposed by MDEQ, either because MDEQ did not have the authority to impose such conditions or, where authority did exist to impose a condition, because MDEQ traditionally did not impose such conditions or did not impose conditions at the level the Commission deemed adequate to protect the public welfare.

During numerous public hearings the Commission conducted extensive hearings on whether to impose interim zoning to regulate gravel pits in specific areas of Gallatin County. The Commission heard the concerns of residents in the area of the current and proposed new gravel operations. Those concerns included increased truck traffic; dust; noise; light; loss of residential property values; water quality; and water quantity.

The Findings of Fact and Order referenced by the Wednesday, March 26, 2008 Commission Hearing describes the exigent issues the Commission considered prior to adopting emergency zoning to regulate operations that mine sand and gravel operations that mix concrete or batch asphalt. Based on those findings the Commission found that residents living in the area of gravel pits have numerous valid concerns regarding the impact that gravel pit and/or asphalt operations may have on their properties, homes, and quality of life. Those concerns included traffic; wear and tear on county roads; noise; dust; hours of operation; water quality; water quantity; and diminution of property values. These concerns, if not addressed through an interim zoning regulation, would have a serious adverse impact on the health, safety and welfare of residents living in the area of gravel pit operations.

Additionally, as part of its permitting process it is possible the MDEQ might be able to adequately address the concerns set forth in these Findings of Fact. Whether MDEQ does not have adequate legal authority, and/or whether it does not have adequate resources, MDEQ's permitting and regulatory processes are not sufficient to protect residents living in the vicinity of gravel pit and/or asphalt batch plant operations.

Subsequently, the Commission created the Gallatin County Gravel Pit Task Force to provide long-term solutions to issues related to gravel mining operations and non-compatible uses by Resolution 2008-101. The purpose of the Task Force was to

investigate sand, gravel, asphalt and concrete resources and operations throughout Gallatin County and to study methods for mitigating the impacts of these resources, and, if necessary, propose revisions to the Interim Zoning Regulation and make recommendations to the Gallatin County Commission on long term strategies for ensuring mining operations are conducted in a manner that ensures compatibility with existing neighborhoods and environmental resources. Specifically:

- a. the nature and extent of gravel resources in Gallatin County;
- b. compatibility of future gravel operations with the adopted Growth Policies and any other related adopted planning documents;
- c. impacts of gravel and related operations on the environment, the surrounding public and private infrastructure, and neighborhood compatibility;
- d. long term strategies and methods, including but not limited to local development requirements and recommendations for changes to existing state and local requirements, for operation of sand and gravel pits and concrete and asphalt operations to be more compatible with the public health and safety, the environment, surrounding public infrastructure, and adjoining neighborhoods;
- e. the social and economic benefits provided by gravel operations to the people of Gallatin County; Changes, amendments, additions, and recommendations, if any, to the adopted Interim Zoning Regulation; and
- f. proposed changes, amendments, additions, and recommendations, if any, to the adopted Interim Zoning Regulation; and

The Task Force met on a bi-monthly basis beginning October 20, 2008, which morphed into weekly meetings to grapple with the aforementioned tasks. The Task Force explored many options through the establishment of subcommittees to investigate pertinent issues and provide alternatives to the original Interim Zoning Regulation document. The Commission extended the terms of the Task Force, to not require a completed document until September 2009. On September 24, 2009 the Task Force met for the last time to consider the proposed regulation, and vote whether to forward the document to the County Planning Boards and ultimately the Gallatin County Commission.

Attached to this document is the proposed regulation, minutes from the September 24, 2009 meeting (Exhibit F), when the votes occurred, a letter from the Montana

Contractors Association and an after the fact vote from an Industry Member of the Task Force. Additional minutes from the Task Force are available on the county website.

The attached documents are the components that will be assembled with Planning Board and City Council comments as a final report presented to the Commission for consideration. It must be stressed that if the Commission decides to initiate zoning authority to retain local land use control and allow gravel mining operations with certain conditions the Planning Board will be required to review the draft regulation in detail.

TASK FORCE VOTE SUMMARY

During a regularly scheduled meeting on September 24, 2009 the Task Force summarized their recommendations in the following votes. Due to the length, complexity and nuance of the topics and concepts discussed the Task Force created an opportunity for each individual member to express their support or concern for a particular part of their work. The official meeting minutes are included as Exhibit F.

The Task Force members were encouraged to submit comments for the record for each vote. The comments would allow an opportunity to express specific issues the member had and provide additional resonating for the Commission to consider.

1. The Gravel Pit Task Force recommends that the Gallatin County Commission adopt zoning regulations to allow gravel pit operations in the un-zoned areas of Gallatin County. (4:3)

The purpose for this vote is to allow those Task Force members who may not want to see zoning for gravel pits the ability to show the Commissioners that they would rather not have zoning.

	Yes / For	No / Against	Reason if provided
Alvin Vander Vos		X	
Don Seifert	X		
Richard Huttinga		X	
Drew Jenkins			
Jacqueline Flikkema*			
Rich Morse	X		
Ron Pike		X	
Sandy Lee	X		
Shane Skinner	X		

* Ron Pike voted on the Industry alternate for all votes.

Discussion

Dick is opposed to it because under state law they are allowed to mine and zoning regulations are not allowing him to mine.

Ron is opposed as most of his operations are with agriculture people there is no zoning and they feel this is somewhat of a single use zoning. Agriculture and ranch people do not want to see it.

Don asked for further discussion.

2. **The Gravel Pit Task Force recommends that, should the Gallatin County Commission adopt zoning to allowing gravel mining operations in the un-zoned areas of Gallatin County, that the zoning be single issue (to allow gravel pits) and stand alone. And that any subsequent zoning amendments be limited to gravel pit zoning. (5:2)**

The purpose of this vote is to say that **if** the Commission does decide to adopt zoning in the un-zoned areas of the county that it is to allow gravel pits only. And that the Task Force does not endorse using this initial zoning as the “nose under the tent flap” for other zoning, such as density, set-backs, land uses, etc.

	Yes / For	No / Against	Reason if provided
Alvin Vander Vos	X		
Don Seifert	X		
Richard Huttinga		X	
Drew Jenkins			
Jacqueline Flikkema*			
Rich Morse	X		
Ron Pike		X	
Sandy Lee	X		
Shane Skinner	X		

Discussion

Ron asked if it was allowed in un-zoned areas? Don said yes. Commissioner Skinner had a conversation with the Task Force regarding single issue zoning. Don said he thought everyone understood that amendments to the document must be made according to law. Don said they are creating a zoning district. Ron asked if we are recommending the creation of zoning district 21. He said we were talking about all the areas outside of zoning districts. Don said all the un-zoned. There is another vote that the currently zoned areas of the County adopt this regulation. Don asked if

everyone was clear. Rich said we were voting to send the Commission a recommendation regarding gravel, and that we understand if they want to add at a later date they could. Don said we are making sure this is single issue. It is strictly to allow gravel pits in currently un-zoned areas of the County. Rich asked about the regulations? That is the next vote.

Dick said once we open the door to single use zoning he does not think it will ever be contained to gravel pits. Shane said there is notification and protest. Alvin said it is generally during the day and hard to attend. Don said there are public hearings and protest periods. An interesting note is the large landowners actually gain from this. As zoning expands in the County their percentage of land in the zoning district expands. Ron’s opinion was totally opposite. He thought we were starting single use zoning on the agriculture and ranch people. Ron was opposed. Rich said that regarding the agriculture and ranch people we were streamlining a process that had not been in the past. This would make things more predictable for them and not make them stuck like Dick has been. A person could run the gauntlet with predictability.

Don asked for any other discussion

3. **The Gravel Pit Task Force recommends that, should the Gallatin County Commission adopt zoning to allow gravel mining operations in the un-zoned areas of Gallatin County, the Gallatin County Commission adopt the “Gallatin County Zoning for Operations that Mine Sand and Gravel or Operations that Mix Concrete or Batch Asphalt” (as approved by the Task force) as the regulations for the areas of the County to be zoned to allow gravel mining operations in Gallatin County. (7:0 - Unanimous)**

The purpose is to say that **if** the Commissioners decide to adopt zoning to allow gravel pits that they use the **“Gallatin County Zoning Regulations for Operations that Mine Sand and Gravel or Operations that Mix Concrete or Batch Asphalt”** (as approved by the task force) as the regulation of choice.

	Yes / For	No / Against	Reason if provided
Alvin Vander Vos	X		
Don Seifert	X		
Richard Huttinga	X		
Drew Jenkins			
Jacqueline Flikkema*			
Rich Morse	X		

Ron Pike	X		
Sandy Lee	X		
Shane Skinner	X		

Discussion

Don said this states that if the County decides to adopt zoning the Commission use the document we produced.

No discussion

- 4. The Gravel Pit Task Force recommends that the Gallatin County Commission support the adoption of the “Gallatin County Zoning Regulations for Operations that Mine Sand and Gravel or Operations that Mix Concrete or Batch Asphalt” (as approved by the task force) into the regulations for the areas of the county currently zoned in Gallatin County. (7:0 - Unanimous)**

This says that the Task Force recommends that current zoning districts in the County adopt the “Gallatin County Zoning Regulations for Operations that Mine Sand and Gravel or Operations that Mix Concrete or Batch Asphalt” (as approved by the task force) as a text amendment to their existing zoning regulations.

	Yes / For	No / Against	Reason if provided
Alvin Vander Vos	X		
Don Seifert	X		
Richard Huttinga	X		
Drew Jenkins			
Jacqueline Flikkema*			
Rich Morse	X		
Ron Pike	X		
Sandy Lee	X		
Shane Skinner	X		

Discussion

Rich had discussion. He was concerned about imposing the document on the zoning districts that exist. Commissioner Skinner asked if the majority was 101. The land area of 201 districts is greater. The adoption would be different. Sandy said we are asking the County to support the adoption into the districts if they want it. Tom thought it would level the playing field in case there was a district that did not have any regulation about gravel pits.

5. The Gravel Pit Task Force recommends to the Gallatin County Commission that all zoning regulation to allow gravel pits be applied to all gravel pits within the district. (7:0 - Unanimous)

This vote recommends that the “regulation” apply to all (including private, commercial and governmental) gravel pits in the zoning area.

	Yes / For	No / Against	Reason if provided
Alvin Vander Vos	X		
Don Seifert	X		
Richard Huttinga	X		
Drew Jenkins			
Jacqueline Flikkema*			
Rich Morse	X		
Ron Pike	X		
Sandy Lee	X		
Shane Skinner	X		

Discussion

Don said what this does is make every pit liable. All county and state pits were included. Commissioner Skinner asked if it was onsite pits? Don said if it meets the triggers for a pit it applies.

6. The Gravel Pit Task Force recommends the “concept” of Site Assessment as a tool to assist the Commission and requests the Commission continue to evaluate and implement the Site Assessment component of the regulation. (7:0 - Unanimous)

This is recommending to the Commission that there be continued work on the Site Assessment part of our work to be used as a tool for make fact based decisions concerning gravel pits.

	Yes / For	No / Against	Reason if provided
Alvin Vander Vos	X		
Don Seifert	X		
Richard Huttinga	X		
Drew Jenkins			
Jacqueline Flikkema*			
Rich Morse	X		
Ron Pike	X		
Sandy Lee	X		
Shane Skinner	X		

Discussion

The site assessment was the issue Tom was developing a matrix and scoring system that could develop over time to easily map pits in the County. It would help the Commission score and evaluate the component of a pit. Shane said once it was refined it could be a good tool to help everyone make decisions. Ron said this was very vague. Belgrade is a good tool for them but nobody wants to discuss it. It would talk about compatible use. Don said that is where site assessment would be refined. This vote is to say that it is a valuable tool and should be looked into more. Rich said that he thought the criteria Tom came up with was really important for the Commission to review apples to apples when looking at pits.

PLANNING BOARD COMMENTS

The Gallatin County Commission directed Staff to present the Gravel Pit Task Force recommendations to the local planning boards for comment and discussion. With support from Mr. Don Seifert staff noticed a public hearing before the Gallatin County Planning Board on Tuesday, November 10, the Manhattan Planning Board on Wednesday, November 18, the Three Forks City-County Planning Board on Thursday, November 19 and the Belgrade City-County Planning Board on Monday, November 23, 2009. Comments and suggestions are included in this report as Exhibit G. However, Staff has prepared a brief overview summary of those discussions below.

To assist the Boards in their deliberations on this difficult task, Staff suggested commenting on the following points.

- 1. Comments on the substantive changes made from the Interim Zoning Regulation to the Proposed Regulation.**
- 2. Comments on the Proposed Regulation as a whole.**
- 3. Comments on site assessment proposal.**
- 4. General comments on zoning to allow gravel operations in un-zoned areas of the County.**
- 5. Whether or not the Board would consider adopting these regulations to current or future zoning in their jurisdiction. The Gallatin County Planning Board was asked to comment on whether or not the Commission should follow the Task Force's recommendation to adopt zoning authority to allow gravel mining operations and regain local land use authority that has been ceded to the State.**

During Planning Board review a number of alternative proposals were discussed including an altered gravel mining district. The District would include a one-mile buffer around all Planning area boundaries, existing zoning districts, and the future planning

areas of Amsterdam/Churchill and the Three Forks planning area. The one-mile buffer was based on where non-compatible land use issue may arise. Using a Geographical Information System (GIS) provided by the Gallatin County GIS Department, a number of supporting maps were generated showing where residential structures are located and potential impacts from gravel mining operations. This alternative was not officially discussed or voted on by the Task Force. An informal meeting of the Task Force was convened on November 18, 2009. Four participants attended the meeting representing each of the three stakeholder groups.

Gallatin County Planning Board – Tuesday, November 10, 2009

Six members of the public presented oral statements on the record urging the Planning Board to follow the Task Force’s recommendation and adopt County wide regulation for mining operations. Comments focused on the predictability of the Interim process, the ability for local enforcement, allowing a venue to air concern and compromise and appreciation for the Task Forces’ efforts.

Board discussion included a number of issues. These issues included how mining operations were granted permits prior to the adoption of the Interim Zoning, how the County manages local land use decisions, the issue of permit creep, property values, the Site Assessment concept, the Montanan Contractors Association letter, and the process and nuances of the regulation. Board members submitted comments individually and not as a Board.

Manhattan Planning Board, Wednesday, November 18, 2009

Mr. Walt Sales was present as a members of the public at the Manhattan Planning Board meeting.

The Manhattan Planning Board voted as one unit and forwarded adopting the Task Force recommendation that they agree with the substantive changes made to the Interim Zoning Regulation to the Proposed Regulation, they consider the Proposed Regulation as a whole is a reasonable means to address the diverse interest, the Commission should continue evolving the site assessment proposal and the Board would incorporate zoning to allow gravel operations within their planning jurisdiction. The Board did not explicitly forward comments on whether or not the Commission should adopt zoning to allow local review of mining operations within the County.

Three Forks Planning Board, Thursday, November 19, 2009

Numerous public comments were heard at the Three Forks Planning Board hearing. Public comments included the impacts mining operations would have on ground water, economic impacts both positive and negative and that the proposed civil fine for non-compliance was grossly inadequate.

The Three Forks Planning Board voted as one unit and forwarded adopting the Task Force recommendation that they agree with the substantive changes made to the Interim Zoning Regulation to the Proposed Regulation, they consider the Proposed Regulation as a whole is a reasonable means to address the diverse interest, the Commission should continue evolving the site assessment proposal and the Board would incorporate zoning to allow gravel operations within their planning jurisdiction. The Board did not explicitly forward comments on whether or not the Commission should adopt zoning to allow local review of mining operations within the County.

Belgrade Planning Board, Monday, November 23, 2009

There were no members of the public present at the Belgrade Planning Board meeting.

The Belgrade Planning Board focused on a number of key issues including the efficacy of allowing a State agency sole permitting authority for mining operations within their planning jurisdiction, the effects of opencut operations on city growth, whether or not adopting the regulation for the Belgrade planning jurisdiction would push operators outside that area and economic considerations. Additional information is listed in the Belgrade Planning Board meeting minutes in Exhibit D.

SUBSTANTIVE CHANGES TO REGULATION

Based on analysis of the available information the Task Force has suggested the following substantive changes to the current regulation. In addition to the substantive changes listed below numerous minor changes were made to improve the effectiveness and clarity of the proposed regulation. Those minor changes are not perceived as substantive to the Task force and, therefore, are not expressly highlighted in this report.

To aid the Commission in understanding the recommended changes the Task Force has provided reasoning and justification for what were deemed significant in the proposed regulation. The following changes are those that have been made from the Interim Regulation to the proposed regulation attached as Exhibit E. Significant changes include:

- **Addition of Section 3. Application of Regulations**

Purpose/Justification – Section 3 was added upon review by the Gallatin County Attorney’s office.

- **Section 5. Definitions**

Purpose/Justification – During initial discussions, most involved realized a standardized language was necessary to reduce confusion and misunderstanding. Therefore, based on definitions culled from DEQ, EPA, MEPA and other resources a more comprehensive set of terms have been added to the proposed regulation.

- **Section 7. Conditional Use Permits**

Section 7.1 (b-d) - Purpose/Justification – The phrase “significant adverse impacts” was reviewed and discussed. In part, it was suggested that a mining operation that has undergone the permitting process would eliminate significant adverse impacts in some cases may provide a benefit. Exhibit C contains a letter from the Montana Contractors Association which touches on this language, pg. 2 paragraph 2. This concern is addressed through the procedural provisions of the regulation, the discretion and authority of the Commission and recommendations by the County Attorney’s Office. Therefore, it was determined the language must include the word “significant”, for the County Commission to make findings.

Section 7.2 Planned Gravel Mining Area - Purpose/Justification – This provision was added to allow operators to adequately notice future development and residents of the potential of a mining operation expansion. In addition to the notice of residents of a mining operation it allows the operator to secure a CUP that will cover the entire operation without being required to undergo County review a second time. This provision allows an applicant to apply for a CUP permit greater than the DEQ permit.

Section 7.6 (a) - Purpose/Justification – Specific review time lines improves transparency and predictability for the operator. This provision is similar to the requirements of Montana HB 486 passed by the 61st Legislature. Additional language was added to include working days for Staff to respond to applicants.

Section 7.6(c) - Purpose/Justification – Notification requirements were bolstered to insure adequate public notice for a pending mining operation. Discussion and analysis of offsite effects of mining operations area of influence informed the suggestion of altering the original notice requirements. This notification size and distance was made clear for the Industry.

- **Section 8. Complaints, Enforcement and Appeals**

Section 8 was reviewed by the Gallatin County Attorney’s Office and the Gallatin County Code Compliance Officer. In addition, changes were made reflecting legislative law changes, regarding HB 486.

Section 8.1 - Purpose/Justification – Based on industry comments the Task Force added language requiring the ZEA to notify the operator of any potential violation being investigated. The purpose of the added language is to improve communication on the nature and extent of a violation and provide, to the greatest extent possible, time to respond and/or remedy the violation.

- **Appendix A. Good Neighbor Policy (GNP).** The GNP was drafted after Interim Zoning was denied and has been printed in pamphlets by the industry and is included in Appendix A as a reminder to all of good operation practices.

- **Appendix B. Definitions and Glossary.** The appendix is an inclusion of definitions not referenced in the proposed regulation but important for further understanding of mining operations.

CONCLUSION

The Gallatin County Gravel Pit Task Force recommends that the Gallatin County Commission adopt zoning authority for all un-zoned portions of the County to allow for gravel mining operations with the attached proposed regulation. The Task Force did not vote unanimously in support of zoning all un-zoned portions of the County. However, the Task Force voted unanimously that if the Commission chooses to adopt zoning to allow gravel mining operations, the proposed regulation is a fair and equitable means of mitigating the diverse needs of neighbors, industry and long term growth of the County. It is understood that aggregate is a necessary component of development whether for roads, residential and commercial construction or other purposes and that mining operations may have impacts on their surroundings depending on site specific considerations. Adopting the draft regulations creates transparency in the permitting process, predictability for the operators and level playing field for future mining operations. In addition, the perceived success of the Interim Zoning regulation suggested the Conditional Use Permitting process allowed reasonable public comment and input on a proposed operation while creating a predicable process for an operator.

The Task Force is recommending that the Commission continue to examine the Site Assessment concept. The site assessment (SA) informs the decision making body of the severity of non-compatible land use within predetermined distances from a proposed mining operation. Operations that are located near existing non-compatible uses may create conflict between residents of the area and the operation and those operations may not be in compliance with adopted plans. The site assessment provides a measurement the governing body can use as the bases for two critical decisions; first, whether or not to require an applicant to undergo a more rigorous mitigation, and secondly, to bring the proposed action into compliance with any adopted plans.

In addition, the Task Force recommends that if the Commission adopts zoning authority to allow opencut mining operations that the attached Regulation should be adopted as the regulation. The Task Force thoroughly reviewed the document and included the suggested changes outlined in the Substantive Changes section of this report. Based on Task Force analysis the process and regulation meets the needs of the stakeholders while allowing adequate public involvement, a predicable process for operators and reasonable opportunity for the governing body to assess potential impacts.

The final three recommendations of the Task Force are adopting the regulation to existing zoning districts, the regulation shall apply to operators including County operated operations, and that the Commission should continue developing the Site

Assessment concept. Taken together these recommendations level the playing field and create a fair and equitable climate to operate opencut mining operations and address potential conflict between neighboring properties.

The Gallatin County Task Force respectfully submits this report and recommendation for the Gallatin County Commission to consider. We believe our recommendations are sound solutions to the challenging issues presented. Gallatin County has been fortunate to have a healthy discourse between the mining industry, neighbors of the industry and policy makers to arrive at a reasoned, rational, and respectful solution to address these potentially contentious issues.

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 and other transportation infrastructure to mitigate impacts caused by the operation. Therefore, after issuance of a permit under the Openpit 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 and 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.
7. Gravel storage piles shall generally not exceed 30 feet in height, as visible above adjacent ground level.
8. No overnight residential use, camping or evidence thereof, shall take place on the site.
9. The operator shall enforce safety measures, including preventing overfilled trucks, covering loads when required by law, education of truck drivers, and monitoring driver performance.
10. 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.
11. The operator shall ensure a visual barrier made of natural material reasonably screens adjacent property owners from activities in the gravel pit.
12. Fuel containment measures shall be utilized as required by the application to MDEQ.
13. Drainage plans for the gravel pit operations shall be submitted to MDEQ for approval prior to conducting operations.
14. Any federal, state or locally adopted Best Management Practices relating to roads and construction sites shall be strictly adhered to.
15. 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.

16. 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.
17. Blasting operations may only occur upon 24 hour written notice to all landowners within 2500 feet of the site.
18. Sound-dampening measures shall be implemented on appropriate equipment on site to minimize noise impacts.
19. 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 route within X miles of the site.
20. All parking areas for employee vehicles and company vehicles shall be provided onsite.
21. The applicant shall store hazardous materials such as motor vehicle fuels in a manner mandated by MSHA and the DEQ.
22. If a hearing on an application is required pursuant to Montana law, MDEQ shall conduct the hearing in Gallatin County.
23. 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 & 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 (Gallatin County Growth Policy):

- 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