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

Adopted: May 7th, 2008
Gallatin County Resolution No. _____

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Section 1. Title, Creation and Adoption

This Regulation shall be known as the "Gallatin County Interim Zoning Regulation for Operations that Mine Sand and Gravel Or Operations that Mix Concrete or Batch Asphalt" (hereinafter referred to as the "Interim Regulation").

1.1 This Interim Regulation is adopted to regulate sand and gravel mining operations and concrete or batch asphalt mixing operations for one year from the date of adoption in the area shown on the Interim Zoning District Map, while the County conducts additional studies.

1.2 This Interim Regulation is adopted pursuant to § 76-2-206, MCA, which permits the adoption of an interim zoning map or regulation.

1.3 A copy of this Interim Regulation, Interim Zoning Map and Description shall be kept on file for public inspection at the office of the Gallatin County Clerk and Recorder.

Section 2. Interpretation

Wherever the requirements of this Interim Regulation are at variance with the requirements of any lawfully adopted rules or regulations, or wherever there is an internal conflict within this Interim Regulation, the most restrictive requirement, or that which imposes the higher standard, shall govern.

Section 3. Purposes and Intent

3.1 The general purposes and intent of this Interim Regulation are to:

a. promote the public health, safety, morals, and general welfare pursuant to § 76-2-206, MCA;

b. implement the goals and policies set forth in the Belgrade Area Growth Policy, as adopted by the Commission on February 6, 2007, the Gallatin County Growth Policy, as adopted by the Commission on April 15, 2003 and the Four Corners Neighborhood Plan, adopted by the Commission on April 11, 2006;

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 Interim 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.

3.2 Specific purposes of this Interim 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 Interim 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 Interim Regulation;

f. protect surface and groundwater quality;

g. prevent the degradation of soil, water, air and plant life from potential point and non-point pollution sources;

h. prevent erosion resulting from activities regulated under this Interim 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 Interim Regulation to contribute their appropriate share of the costs of impacts resulting from those activities.

Section 4. Definitions

4.1. **Commission**: The Gallatin County Board of County Commissioners.

4.2. **Conditional Use**: A use which may be commenced only upon approval of a Conditional Use Permit and compliance with all applicable requirements and conditions.

4.3. **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 400 cubic yards in 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.

4.4. **MDEQ**: Montana Department of Environmental Quality.

4.5. **Planning Department.** The agent of the Gallatin County Commission that administers this Interim Regulation, either the Belgrade City-County Planning Department or the Gallatin County Planning Department depending on the location of the proposed sand and gravel mining operations and concrete or batch asphalt mixing operations.

4.6. **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 5. Boundaries

The Interim District includes private and public property located in Gallatin County, Montana, as described in the Description and as shown on the Interim Zoning District Map, which are attached hereto and made a part hereof, respectively, as **Attachments A and B.**

Section 6. Conditional Use Permits

6.1. Conditional Use. A Conditional Use Permit (CUP) shall be obtained prior to commencing work onsite for all new Operations or the expansion of existing

Operations following the CUP procedure described below. Granting of a CUP is contingent upon fulfillment of conditions imposed by the Commission pursuant to Section 6.3 and the requirements of Section 6.4.

CUPs shall be issued by the Commission only upon finding:

a. The Operations conform to the objectives of the applicable growth policy having jurisdiction over the proposed Operations site (Gallatin County Growth Policy or the Belgrade Growth Policy, and the Four Corners Community Plan) and the purposes and intent of this Interim Regulation;

b. The Operations will not have significant adverse impacts on nearby properties, property values, nearby land uses, or nearby residents;

c. The Operations will not have significant adverse impacts on groundwater, streams, or wetlands or, if significant adverse impacts are identified, the Applicant shall enter into a written agreement with Gallatin County providing for mitigation, including the provision of financial security, for the identified impacts;

d. The Operations will not have significant adverse impacts on public services and facilities or, if significant adverse impacts are identified, the Applicant shall enter into a written agreement with Gallatin County providing for mitigation, including the provision of financial security, for the identified impacts;

e. The Operations meet all other applicable federal, state or local regulations, including the Requirements of section 6.4 below; and

f. A public hearing, after notice has been given, has been held.

6.2 Permits, Terms of Issuance. A CUP may be issued for a revocable, temporary, permanent or term period. All CUPs issued for a definite term shall expire at the end of the term. Extensions can be obtained by following all procedures and payment of fees required for the original permitting.

6.3 Permits, Conditions. The Commission may make the granting of a CUP subject to reasonable limitations or conditions as it may deem necessary to protect the public health, safety, morals, 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 Interim Regulation. 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 of the time of activities, which may include a provision for operating 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.

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

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

i. 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;

ii. 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;

iii. obtain all necessary state and federal permits for the Operations including but not limited to all permits listed in Section 5.E.40 of 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 Interim 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 site plan approval, LUP, or commencement of the conditional use.

c. If Gallatin County adopts a permanent zoning regulation and district that governs Operations prior to expiration or revocation of this Interim Regulation conditions of approval placed upon the Operations pursuant to this Interim Regulation shall continue to run with the land until the expiration of the CUP as if adopted pursuant to the permanent zoning regulation.

d. Operations shall have a Plan of Operations and Reclamation Plan approved by MDEQ, and shall comply with those plans during the term of Operations.

e. All CUP applications shall be accompanied by the applicable fees, established by the Commission pursuant to the Resolution adopting these Interim Regulations. No CUP shall be issued nor shall any action be taken on proceedings before the Commission until such fees have been paid.

6.5 Conditional Use Permit Procedure.

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

b. 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. The pre-application meeting shall occur no sooner than 60 working days prior to submittal of the application.

c. 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 Interim Regulations.

d. Notice of the public hearing for CUPs shall be published in a newspaper of general circulation within the County via a legal advertisement and a display advertisement of minimum size of 3 inches by 5 inches no less than twice between 7 and 15 days prior to the hearing. Adjacent property owners and owners of property within 1000 feet shall be notified by certified mail

with all costs paid by the applicant. Applicant shall also provide postage for courtesy first-class mail to property owners between 1000 feet and one mile. Applicant shall post notice of the hearing in a conspicuous manner at two prominent locations on site within close proximity to a public road.

e. 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 6.1, above.

f. If possible, the Planning Department will schedule the hearing to occur simultaneously with any hearing MDEQ will have on the proposal.

g. If an applicant obtains a CUP under this Interim 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 Interim Regulation conflict in any way with the MDEQ's Opencut Mining Program permit approval, the more stringent condition shall apply.

h. If an applicant obtains approval under this Interim 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.

6.7 Authorized Use. For purposes of this Interim 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.

6.8 Revocation or Modification of Conditional Use Permits. A CUP may be revoked or modified by the County 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 County Commission determines the information provided 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.

6.9. Recording. Evidence of approval 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 7. Complaints, Enforcement and Appeals

7.1 **Complaints**. Any person may file a signed, written complaint with the ZEA regarding an alleged violation of this Interim Regulation. The complaint shall fully describe the facts supporting the alleged violation. Upon receipt of a signed written complaint, or upon its own initiative, the ZEA shall investigate the complaint, and if the ZEA determines that there is reasonable basis that a violation exists, then the ZEA shall take action to resolve the violation.

7.2 **Investigation**. When investigating an alleged violation, the ZEA shall review this Interim Regulation, CUP and other applicable documents, permits, information, regulations, rules or laws regarding the complaint. The ZEA may on reasonable notice and with consent of the CUP holder enter the subject premises and investigate the complaint documenting the inspection with an inspection report, field notes, interview(s) and/or photographs as appropriate. If access is denied, the ZEA may conduct an investigation by observations from adjacent lands entered upon with permission, if required, and interviews of any persons, including the CUP holder, by telephone, email, correspondence or other lawful means.

7.3 **Administrative Remedies.** If the ZEA determines that any of the provisions of these Interim Regulations are being violated, including operating conditions approved under the CUP process, the ZEA may pursue enforcement remedies provided by law. The ZEA shall notify an alleged violator in writing of the corrective action necessary to remedy the violation.

7.3.1 The ZEA may: (1) revoke any CUP or land use permit; (2) issue orders to obtain after-the-fact permits; (3) issue cease and desist orders requiring cessation of any building, moving, alteration, use, or activity which is in violation the Interim Regulation; (4) require mitigation and/or corrective action, which may include orders to dismantle or remove noncompliant structures to remedy the violation;

and/or (5) take any other action authorized by law to insure compliance with, or prevent violation of its provisions.

7.3.2 Persons liable for violations and compliance with any CUP, order, determination, decision, fine, penalty, proceeding, and 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."

7.3.3 Gallatin County, and/or the 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.

7.4 **Civil Fine.** The ZEA may assess violators an administrative fine of up to $500.00 per violation. Each day of violation may be considered a separate offense. When determining the amount and duration of the fine, the ZEA shall consider the nature, circumstances, extent and gravity of the violation, any prior history of such violations, the degree of culpability, and such other matters as justice may require. If the fine is not paid, it shall become a lien upon the property.

7.5 **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 or uses 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.

7.6 **Injunction**. The County Attorney may bring an action in the name of Gallatin County in the District Court to enforce these Interim Regulations, which may include without limitation injunctive relief.

7.7 **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).

7.8 **Board of Adjustment**. The Gallatin County Interim Zoning Board of Adjustment shall act as the Interim Regulation Board of Adjustment (BOA) that shall hear and decide appeals where it is alleged there is an error in any

order, requirement, decision or determination by the ZEA. All appeals from any order, decision, or determination of the ZEA must be made to the BOA within 30-days that the order, decision or determination is filed and served. The appeal must be submitted to the BOA and the ZEA via certified mail with the appeal fee as established by the Planning Department, and state the basis for the appeal. Upon receipt of the appeal, the BOA shall schedule a public hearing with sufficient time to allow the appellant to publish or cause to be published a notice of public hearing in a newspaper of record and serve via certified mail all adjacent property owners with a notice of the appeal and date of public hearing. The appellant shall produce at or before the public hearing an affidavit of publication and certificate of service showing compliance with these notice requirements as a precondition of any appeal. The BOA shall have the authority to reverse or affirm, wholly or in part, or modify the order, decision, or determination of the ZEA.

7.9 Appeals from the Board of Adjustment. Pursuant to §§ 76-2-227-228, MCA, a decision from the BOA may be appealed to the Eighteenth Judicial District Court within 30-days from the date the decision is filed in the office of the BOA.

Section 8. Invalidation and Severability

If any section, subsection, subdivision, sentence, clause, paragraph, or phrase of this Interim 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 portions of this Interim Regulation to render the same operative and reasonably effective for carrying out the purposes of this Interim Regulation.

Section 9. Adoption.

This Interim Regulation was adopted May 7, 2008, by Resolution 2008 - 053 .

Gallatin County Commission

Date: 5/08/08
William A. Murdock, Chair

Date: 5/08/08
Joe P. Skinner, Member

Date: 5/8/8
R. Stephen White, Member

Attested:

Date: 5/8/08
Charlotte Mills
Gallatin County Clerk and Recorder

Exhibit A (Description of Boundaries):

Legal Description for the Gallatin County Interim Zoning District for Operations that Mine Sand and Gravel and Operations that Mix Concrete or Batch Asphalt:

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

Exhibit B (Interim Zoning District Map) (*See* attached)

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