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Gallatin County Gravel Task Force,

On behalf of the Board of Directors of the Montana Contractors' Association, I am offering comments on proposed zoning regulations for operations that mine sand and gravel.

The MCA represents sand and gravel producers and paving contractors throughout Montana as well as in Gallatin County. We have been actively involved in passing legislation at the State level involving permitting/regulation of gravel operations, and we strive to work constructively with local governments.

We recognize that a great deal of work went into developing and drafting this document, and we have several suggestions for improvement. First, under Section 4 "Purposes and Intent," we suggest a statement be included affirming the understanding that sand and gravel is a vital building block for any/all future development. The county should make an affirmative statement that it is in the best interest of the residents, businesses, and future taxpayers to have affordable sources of gravel in a reasonable proximity to future growth.

We are concerned about Section 4.3, "specific purposes of this regulation," because it duplicates and possibly usurps the authority of the Montana Department of Environmental Quality (DEQ), which is statutorily charged with some of the same responsibilities Gallatin County proposes to assume for itself. We would argue that subsections a, f, g, h, and i are all redundant and unnecessary in light of DEQ's existing mandates and enforcement authority under state law. DEQ, by law, "regulates sand and gravel operations and concrete or batch asphalt mixing operations..." (4.3a) Similarly, DEQ is charged with "protecting surface and groundwater quality, (4.3f) preventing the degradation of soil, water, air, and plant life from potential and non-point pollution sources (4.3g), preventing erosion...(4.3h), and preventing the unreasonable depletion and degradation of natural resources including air quality, water quality, wildlife habitat (4.3i).

Gallatin County does not possess the scientific/professional expertise to either perform the level of analysis required under Section 4.3 or to enforce these provisions. It is highly unlikely the County will secure the resources in the future to perform these functions, unless an extraordinary tax or fee is imposed on the gravel industry to pay these costs. Nothing in this document explains how Gallatin County proposes to supersede, duplicate,

or replicate the activities of DEQ, or how it proposes to resolve conflicts with DEQ findings. What role will science play in the regulation of gravel operations in Gallatin County versus the role politics will play?

It is our position that Gallatin County should defer to the DEQ on all potential impacts that DEQ has enforceable standards and regulations for.

Section 7 of the document dealing with Conditional Use Permits also presents several problems. Under subsection (7.1c), it states: “The operations will not have *significant adverse impacts* on nearby properties, property values, nearby land uses, or nearby residents.” What is *significant* and who makes the determination? The subjectivity of this section will lead any opponent of any proposed gravel operation to emphatically insist that his/her property value or their health/safety will be significantly impacted, and there will be no objective measure to the contrary. Further, what is the definition of “nearby?” Many opponents to gravel operations will argue that they are “nearby” because they live in that school district, they drive by every day, etc. This needs clarification.

Similarly, section 7(d) states: “the operations will not have significant adverse impact on groundwater, streams or wetlands...” If the operation had these types of impacts, DEQ would not issue the permit. How will the county ascertain that DEQ’s analysis was insufficient or flawed? This section further states, “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.” The result of this provision is double bonding with both the DEQ and the County, with no sideboards given for how extensive the county’s requirements can be. This section should be deleted.

We do wish to convey our support for the concept of Section 7.2, which allows an applicant to secure a CUP for an area larger than the initial permitted acreage. This is good for the applicant, good for neighbors, and good for the county.

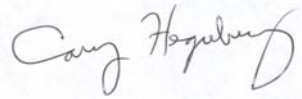
We are highly concerned about Section 7.6(g), which states, “...Notwithstanding the above, if the conditions of approval under this Regulation conflict in any way with the MDEQ’s Opencut Mining Program permit approval, the more stringent condition shall apply.” This says the County’s science is better, more credible, and more rigorous than the DEQ’s science. In reviewing Gallatin County’s personnel roster, we fail to see anyone with the professional expertise necessary for the County to even comply with this proposed regulation, not to mention have it supersede DEQ’s oversight.

Finally, we question the County’s ability under Section 7 to investigate alleged violations and impose proper administrative remedies. Who specifically is charged with this responsibility and what are his/her qualifications? We request the County give serious thought to the financial ramifications a gravel operator could suffer, for example, if an unwarranted cease and desist order is issued by the county. A company could pay significant liquidated damages for failing to complete a project because one angry

resident and one sympathetic county employee arbitrarily decided the company was out of compliance.

In conclusion, we ask that more time be given to resolve some of these issues. A win-win outcome is possible, but it will take more time. Thank you for allowing us to provide input.

Respectfully,

A handwritten signature in black ink that reads "Cary Hegreberg". The signature is written in a cursive style with a large, looped "C" and "H".

Cary Hegreberg  
Executive Director  
Montana Contractors Association