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GALLATIN COUNTY CLERK
 OF DISTRICT COURT
 JENNIFER BRADDOCK

2008 MAY 7 PM 2 08

FILED

BY _____
 DEPUTY

Attorneys for Plaintiffs Kathy Brekke and Jody Gryder

**MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT
 GALLATIN COUNTY**

* * * * *

**KATHY BREKKE and JODY
 GRYDER,**)

Plaintiffs,)

Cause No. DV-08-385C

vs.)

COMPLAINT

**SPANISH PEAKS SAND & GRAVEL,
 LLC; CAMERON SPRINGS, LLC;
 MONTANA DEPARTMENT OF
 ENVIRONMENTAL QUALITY; and
 RICHARD OPPER, its Director,**)

Defendants.)

* * * * *

Kathy Brekke and Jody Gryder (hereinafter "Homeowners") hereby allege as follows:

I. Parties, Nature of Plaintiffs' Claims, and Standing

1. This suit is brought for injunctive relief, to enjoin Cameron Springs, LLC from constructing and/or operating the gravel pit located on 76.1 acres in the NW 1/4, Sec. 19, T. 1 S, R. 5 E, and declare that the Montana Department of Environmental Quality's ("DEQ") actions were unconstitutional, invalid and unlawful.

2. This suit is brought for injunctive relief, to enjoin Spanish Peaks Sand & Gravel, LLC, from constructing and/or operating the gravel pit located on Defendant Spanish Peaks Sand & Gravel, LLC, enjoining it from conducting open cut operations on 113.3 acres in the 1/4 SE 1/4, Sec. 18, T. 1S, R. 5E and the 1/4 SW 1/4, Sec. 18, T. 1S, R. 5E Gallatin County, Montana, and declare that the DEQ's actions were unconstitutional, invalid and unlawful.

3. This suit is also brought for declaratory relief, to declare that the DEQ acted arbitrarily, capriciously, unreasonably, and unconstitutionally.

3. Plaintiff, Kathy Brekke, owns property at 1350 East Cameron Bridge Road, which is only 100 feet from the Spanish Peaks Sand & Gravel property line and adjacent to the Cameron Springs' property.

4. Plaintiff, Jody Gryder, owns a home and business that is located at 615 E. Cameron Bridge Road, which is only 1/3 of a mile away from the proposed gravel pits.

II. Jurisdiction and Venue

5. The affected properties are entirely within Gallatin County, Montana.

6. Plaintiffs seek an injunction against the Cameron Springs, LLC and the Spanish Peaks Sand & Gravel, LLC (hereafter "Gravel Pit Operators") under the following statutory provision:

a) M.C.A. §27-19-101, et. seq.

7. Plaintiffs seek a declaratory judgment against the DEQ under the following provisions:

a) M.C.A. § 27-8-101, et. seq.

b) Article II, Section 3, Montana Constitution

- c) Article II, Section 8 Montana Constitution
- d) Article 17, Section 17 Montana Constitution
- e) M.C.A. § 75-1-101, et. seq.
- e) M.C.A. § 82-4-401, et. seq.

III. General Allegations

8. The Defendant, Cameron Springs, LLC, applied for a permit in December 2007 and Defendant, Spanish Peaks Sand & Gravel, LLC, applied for a permit in October 2007 from the DEQ for an open cut gravel pit mining operation at a location near the Homeowners' property immediately South of Interstate 90 in Belgrade, Montana.

9. The DEQ did not conduct the MEPA analysis and review.

10. On March 26, 2008, after proper notice, the Gallatin County Commissioners held a public hearing on the Citizens' Request to Establish an Interim Zoning District and Regulation Pursuant to Section 76-2-206, MCA, for the Regulation of Operations that Mine Sand and Gravel or Operations that Mix Concrete or Batch Asphalt in All or Portions of the Belgrade City-County Planning Jurisdiction of Gallatin County (Heidi Jensen, Belgrade City-County Planner).

11. During the hearing, individuals, including the Plaintiff Homeowners, testified about numerous concerns, including:

- Dust particulates and air quality;
- Emission of particulates that cause acidic changes in nearby streams, rivers and lakes;
- Breathing problems caused by the increased particulates in the air;
- Noise pollution caused by the gravel pit operations;

18. Plaintiff Homeowners were surprised about the Court order and had no prior notice of the ruling. Within days of hearing of the ruling, the Plaintiff Homeowners filed a Motion to Intervene in the Cameron Springs, LLC case on May 2, 2008 because the Court had not considered all of the legal and factual issues and the DEQ did not adequately represent the Homeowners' issues.

19. On April 25, 2008, the Defendant, Spanish Peaks Sand & Gravel, LLC, filed a case in the First Judicial District Court in Lewis and Clark County requesting an Alternate Writ of Mandate.

20. The Court held a hearing on April 29, 2008.

21. The Plaintiff Homeowners attended the hearing of which they learned about the day before on April 28, 2008.

22. The Plaintiff Homeowners filed a Motion to Intervene in the Spanish Peaks Sand & Gravel, LLC case on April 28, 2008, and the Court denied the Motion.

23. On May 1, 2008, the Court issued an order in the Spanish Peaks Sand & Gravel, LLC case and requested that the DEQ issue the permit.

24. On May 2, 2008, the Plaintiff Homeowners filed a Motion for Reconsideration in the Spanish Peaks Sand & Gravel, LLC case since the Court had not considered all of the issues and the DEQ did not adequately represent the Homeowners' issues.

25. At this time, the Court has not ruled on Plaintiff Homeowner's Motion for Reconsideration.

26. The DEQ issued the permits on Tuesday, May 6, 2008. See Permits attached as Exhibit "A".

27. Both Permits provide:

This permit is void if the District Court or the Montana Supreme Court vacates, reverses or withdraws the District Court order entered in Lewis and Clark County Cause No. BDV-2008-373 on May 1, 2008, or the Montana Supreme Court determines that the Department did not have a clear legal duty to issue the permit forthwith without preparation of an environmental review document under the Montana Environmental Policy Act or the District Court should not have otherwise issued a writ of mandamus. If the permit is void, the permittee loses its legal right to mine and shall cease operations until it applies for and is granted another permit to mine. If the permittee does not apply for and receive another permit, it shall reclaim the disturbed land.

28. The County Commissioners are holding a hearing today, May 7, 2008 at 1:30 to discuss and vote upon the pending Interim Zoning measure, including boundaries and regulations.

29. The actions of the Gravel Pit Operators and the DEQ have damaged Plaintiff Homeowners because they have Constitutional rights to a clean and healthful environment that have been impacted because the DEQ failed to conduct the required MEPA analysis.

30. The actions of the Gravel Pit Operators and the DEQ have damaged Plaintiff Homeowners because they have Constitutional rights to public participation and due process.

31. The actions of the Gravel Pit Operators and the DEQ have damaged Plaintiff Homeowners and will continue to do so because the construction and operation of the open cut pits without sufficient MEPA analysis may result in environmental, water quality and other damage to Plaintiffs' property, livelihoods, and health.

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COUNT 1

Injunctive Relief Against Gravel Pit Operators

30. Plaintiffs re-allege each paragraph stated above to be included in the following count.

31. Plaintiff Homeowners have filed concurrently with this Complaint and incorporate by reference a Motion for a Temporary Restraining Order and for a Preliminary Injunction.

COUNT II

Declaration That the DEQ's Actions Violate the Plaintiffs' Rights to a Clean and Healthful Environment

32. Plaintiffs re-allege each paragraph stated above to be included in the following count.

33. The DEQ failed to conduct the required analysis about the impacts on the environment.

34. This failure violated Plaintiffs' constitutional rights to a clean and healthful environment.

COUNT III

Declaration that the DEQ's Actions Violate the Plaintiffs' Rights to Public Participation

35. Plaintiffs re-allege each paragraph stated above to be included in the following count.

36. The DEQ failed to provide Plaintiffs with any public participation.

37. This failure violated Plaintiffs' constitutional rights to public participation.

COUNT IV

Declaration That the DEQ's Actions Violate the Plaintiffs' Rights to Due Process

38. Plaintiffs re-allege each paragraph stated above to be included in the following count.

39. The DEQ failed to provide Plaintiffs with any due process.

40. This failure violated Plaintiffs' constitutional rights to due process.

COUNT V

Declaration That the DEQ's Actions Violate MEPA

41. Plaintiffs re-allege each paragraph stated above to be included in the following count.

42. The DEQ failed to conduct any MEPA analysis or review before issuing the permits.

43. This failure is a violation of MEPA.

COUNT VI

Declaration That the DEQ's Actions Violate the Open Cut Mining Act

44. Plaintiffs re-allege each paragraph stated above to be included in the following count.

45. The Open Cut Mining Act incorporates Plaintiffs right to clean and healthful environment.

46. The DEQ failed to follow the Constitution and MEPA, both of which are required by the Open Cut Mining Act.

47. The DEQ violated the Open Cut Mining Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. That this Court enjoin the Gravel Pit Operators from constructing and operating the mines.
2. That this Court declare that the decisions and permits regarding Cameron Springs, LLC, and the Spanish Peaks Sand & Gravel, LLC made by the DEQ were unlawful and in violation of MEPA and the Open Cut Mining Act, and that the DEQ's decision to issue a Permit for the gravel pit is unconstitutional, invalid and unlawful.
5. That Plaintiffs be awarded attorneys' fees and costs associated with this action in an amount to be proven at trial.
6. That Plaintiffs be awarded such other equitable and supplemental relief as the Court may deem appropriate.

DATED this 7th day of May, 2008.

By

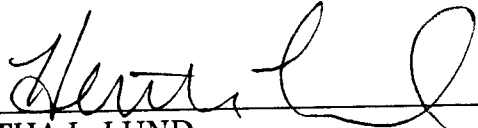

HERTHA L. LUND
Attorney for Plaintiffs

Exhibit “A”

DEQ OPENCUT MINING PROGRAM • 1520 EAST SIXTH AVENUE • HELENA MT 59620 • PHONE: 406-444-4970 • FAX: 406-444-1923

Permit # (provided by DEQ): C5L-001

OPENCUT PERMIT

This permit is issued by the STATE OF MONTANA, DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) of Helena, Montana to Cameron Springs, LLC (OPERATOR). Pursuant to Section 82-4-422(1), MCA, the DEQ is authorized to issue Opencut Permits where it is found that the requirements of the law and rules can be carried out and will be observed.

In consideration of the above and other good and sufficient consideration, the following applies to this permit:

1. The DEQ hereby authorizes the OPERATOR to conduct opencut operations, as described in the application which was previously submitted and is hereby approved and made a part of this permit, on 76.1 acres in the

NW ¼, Sec. 19, T. 1 S, R. 5 E

NE ¼, Sec. 19, T. 1 S, R. 5 E

Gallatin County, Montana, to be known as the Cameron Springs Gravel Pit site. This permit does not authorize opencut operations other than as described in the application or as described above. Operating without a permit is a violation of law subject to civil penalties. The application is hereby incorporated as a part of this permit for all purposes.

2. OPERATOR shall comply with all requirements of the Opencut Mining Act in Title 82, Chapter 4, Part 4, MCA, and all rules adopted pursuant thereto.

3. OPERATOR shall reclaim all affected land in accordance with the Plan Of Operation, which is part of the application and of this permit. The DEQ may periodically review each plan and require modifications as necessary. Reclamation shall be as concurrent with mining as feasible and will be completed within the time frame specified in the plan.

4. OPERATOR may submit amendment applications to the permit at any time. If approved, the amendments shall be attached to the permit and become a part of the permit for all purposes.

5. OPERATOR (unless the State of Montana, a county, city, or town, or the U.S. Government) has submitted a bond to ensure that the affected land is reclaimed in accordance with the Plan Of Operation. Failure to reclaim in accordance with the plan shall result in forfeiture of the bond. If the bond is revoked or otherwise becomes invalid, the OPERATOR shall submit a new bond within 30 days. Failure to submit a new bond may suspend this permit.

6. OPERATOR shall allow access by the DEQ and its representatives at all times in order to determine whether the terms of this permit are being complied with.

7. If reclamation according to the Plan Of Operation has not been completed in the time specified, the DEQ, after 30 days written notice, may order the OPERATOR to cease mining and issue an order to reclaim. If the OPERATOR does not cease, the DEQ may institute action to enjoin further opencut mining by the OPERATOR and issue an order to reclaim.

8. A person who violates any of the provisions of Title 82, Chapter 4, Part 4, MCA, or any rules or order adopted under this part is subject to the penalty provisions of Section 82-4-441, MCA.

9. This permit is effective upon approval by the DEQ.

10. Attached Permit Condition.

STATE OF MONTANA, DEPARTMENT OF ENVIRONMENTAL QUALITY

Neil Harrington
Chief, Industrial & Energy Minerals Bureau

5/6/08 2:38 PM
Date

Condition of Approval of Permit CSL-001

This permit is void if the District Court or the Montana Supreme Court vacates, reverses or withdraws the District Court order entered in Lewis and Clark County Cause No. BDV-2008-325 on April 28, 2008, or the Montana Supreme Court determines that the Department did not have a clear legal duty to issue the permit forthwith without preparation of an environmental review document under the Montana Environmental Policy Act or that the District Court should not have otherwise issued a writ of mandamus. If the permit is void, the permittee loses its legal right to mine and shall cease operations until it applies for and is granted another permit to mine. If the permittee does not apply for and receive another permit, it shall reclaim the disturbed land.

PROPERTY DESCRIPTION: NW¼ and NE¼ of Section 19, T1S, R5E; Gallatin County

COMPANY NAME: Cameron Springs LLC, Cameron Springs Gravel Pit Site

DATE: May 6, 2009

PREPARED BY: Neil Harrington

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST

DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS UNDER THE PRIVATE ASSESSMENT ACT?

YES	NO	
X		1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?
	X	2. Does the action result in either a permanent or indefinite physical occupation of private property?
	X	3. Does the action deprive the owner of all economically viable uses of the property?
	X	4. Does the action deny a fundamental attribute of ownership?
	X	5. Does the action require a property owner to dedicate a portion of property or to grant an easement? (If answer is NO, skip questions 5a and 5b and continue with question 6.)
		5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?
		5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?
	X	6. Does the action have a severe impact on the value of the property?
	X	7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? (If the answer is NO, skip questions 7a-7c)
		7a. Is the impact of government action direct, peculiar, and significant?
		7b. Has the government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?
		7c. Has the government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?

Taking or damaging implications exist if YES is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if NO is checked in response to questions 5a or 5b.

If taking or damaging implications exist, the agency must comply with § 5 of the Private Property Assessment Act, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.

DEQ OPENCUT MINING PROGRAM • 1520 EAST SIXTH AVENUE • HELENA MT 59620 • PHONE: 406-444-4970 • FAX: 406-444-1923

Permit # (provided by DEQ): 5 PL - 001

OPENCUT PERMIT

This permit is issued by the STATE OF MONTANA, DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) of Helena, Montana to Spanish Peaks Sand and Gravel LLC OPERATOR. Pursuant to Section 82-4-422(1), MCA, the DEQ is authorized to issue Opencut Permits where it is found that the requirements of the law and rules can be carried out and will be observed.

In consideration of the above and other good and sufficient consideration, the following applies to this permit:

1. The DEQ hereby authorizes the OPERATOR to conduct opencut operations, as described in the application which was previously submitted and is hereby approved and made a part of this permit, on 113.3 acres in the

1/4 SE 1/4, Sec. 18, T. 1S, R. 5E

1/4 SW 1/4, Sec. 18, T. 1S, R. 5E

Gallatin County, Montana, to be known as the Spanish Peaks site. This permit does not authorize opencut operations other than as described in the application or as described above. Operating without a permit is a violation of law subject to civil penalties. The application is hereby incorporated as a part of this permit for all purposes.

2. OPERATOR shall comply with all requirements of the Opencut Mining Act in Title 82, Chapter 4, Part 4, MCA, and all rules adopted pursuant thereto.

3. OPERATOR shall reclaim all affected land in accordance with the Plan Of Operation, which is part of the application and of this permit. The DEQ may periodically review each plan and require modifications as necessary. Reclamation shall be as concurrent with mining as feasible and will be completed within the time frame specified in the plan.

4. OPERATOR may submit amendment applications to the permit at any time. If approved, the amendments shall be attached to the permit and become a part of the permit for all purposes.

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8. A person who violates any of the provisions of Title 82, Chapter 4, Part 4, MCA, or any rules or order adopted under this part is subject to the penalty provisions of Section 82-4-441, MCA.

9. This permit is effective upon approval by the DEQ.

10. Permit Condition attached.

STATE OF MONTANA, DEPARTMENT OF ENVIRONMENTAL QUALITY

Neil Harrington
Chief, Industrial & Energy Minerals Bureau

5/6/08 2:39 PM
Date

Condition of Approval of Permit SPL-001

This permit is void if the District Court or the Montana Supreme Court vacates, reverses or withdraws the District Court order entered in Lewis and Clark County Cause No. BDV-2008-373 on May 1, 2008, or the Montana Supreme Court determines that the Department did not have a clear legal duty to issue the permit forthwith without preparation of an environmental review document under the Montana Environmental Policy Act or that the District Court should not have otherwise issued a writ of mandamus. If the permit is void, the permittee loses its legal right to mine and shall cease operations until it applies for and is granted another permit to mine. If the permittee does not apply for and receive another permit, it shall reclaim the disturbed land.

PROPERTY DESCRIPTION: SW¼ and SE¼ of Section 18, T1S, R5E; Gallatin County

COMPANY NAME: Spanish Peaks Sand and Gravel, LLC; Spanish Peaks Site

DATE: May 6, 2009

PREPARED BY: Neil Harrington

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST

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MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

KATHY BREKKE and JOY GRYDER,,

Plaintiff,

vs.

SPANISH PEAKS SAND AND GRAVEL,
LLC, CAMERON SPRINGS, LLC,
MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY and
RICHARD OPPER, its Director,,

Defendants.

Cause No.: DV-08-38⁵-C

John C. Brown

ORDER FOR DISMISSAL WITH
PREJUDICE

Plaintiffs, Kathy Brekke and Joy Gryder, and Defendants, Spanish Peaks Sand and Gravel, LLC and Cameron Springs, LLC, and the Montana Department of Environmental Quality, and Richard Opper its Director, Defendants, having filed a Stipulated Motion to Dismiss and good cause having been shown

IT IS HEREBY ORDERED that the complaint filed in this matter is dismissed, with prejudice, each party to bear its own costs and fees.

DATED this 9 day of October, 2008.

Original Signed by
John C. Brown

Honorable John C. Brown
District Court Judge

cc: James L. Shuler
Susan Swimley
Tara DePuy
Hertha Lund
Jane B. Amdahl