

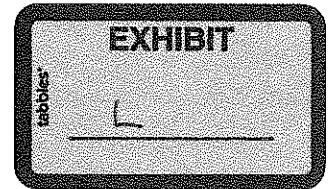
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***Gateway Opencut Mining Action Group***

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January 19, 2008

Gallatin County  
311 West Main  
Bozeman, MT 59715



**RE: Comments on Huttinga Pit CUP Application**

Dear Gallatin County Commissioners, Planning and Legal Departments:

The CUP process to date, through the Morgan and Storey Pit CUP Applications, has been well thought out and has achieved mitigation of adverse impacts that will make it much more tolerable to co-exist with gravel mining operations in our neighborhoods. Although the Huttinga CUP Application does not include the same rigor of analysis of the potential impacts of the operations to the human and natural environment, we hope that the conditions of the permit will be at least comparable to those of the previous two CUPs.

Our input is organized here into three parts.

- A. **Issues Comparable to Previous CUP Applications:** The first part is that which will likely be addressed by permit conditions if the process follows that which we have seen for the previous two CUP Applications.
- B. **Issues Unique to Huttinga CUP Application:** The second part is things that are unique about the Huttinga Pit and have not yet been encountered by the Gallatin County Interim/Emergency Zoning CUP process.
- C. **Issues Not Addressed by Previous CUP Conditions:** The third part is those issues that have remained un-addressed or inadequately addressed by CUP conditions developed for previous CUP Applications

**A. Issues Comparable to Previous CUP Applications:****1. Dust and Noise**

Baseline air quality and sound monitoring should be performed by qualified technical experts to determine the potential impact of the proposed amendment and appropriate mitigation of the proposed operations. The Plan of Operations should consider real-time monitoring of air quality and noise. Mitigation requirements should be triggered by ongoing monitoring results that exceed certain threshold air quality (to be determined) and noise (10 db over background day-night average) measurements.

**2. Ground Water**

There has not been adequate monitoring of seasonal high ground water levels to clearly define the depth to the ground water table throughout the area of the proposed expansion.

**B. Issues Unique to Huttinga CUP Application:****1. Environmental Analysis**

There has been no Draft Environmental Assessment performed for the current expansion application, submitted to DEQ on February 25, 2008. Recent queries to the DEQ Opencut Mining Division concerning availability of a Draft EA indicated that there has been no work yet performed on an environmental analysis for the proposed Huttinga Pit expansion. It is critical that this information be provided for incorporation in County CUP analysis.

There are errors, significant weaknesses and elements lacking in the original EA and subsequent Supplemental EAs that were performed for the original permit (HUT-001) and Amendments to that permit (No. 1 and No. 2). Comparison of these to the relatively thorough and professional EAs that were performed by Garcia and Associates for the Morgan and Storey Pits show the inadequacy of the previous DEQ environmental analyses for the Huttinga Pit. The comparison between the professional 3<sup>rd</sup> party EAs and those submitted with the Huttinga Pit CUP Application is striking.

**2. Dust and Noise**

Additional consideration of the mitigation of the adverse impacts of dust and noise should be made for the subdivision on the bench above the Huttinga Pit. The topographic configuration precludes any mitigation of dust and noise by berms for these residences, approximately 120 feet above the pit. Although this subdivision was created, residential lots were sold and homes were built before the Huttinga Pit was originally permitted, the

impacts of the operation to this subdivision, particularly to the residences on the edge of the bench, have never been considered or mitigated, through errors and oversight in the DEQ environmental analysis.

Additional considerations will also be needed concerning mitigation of fumes and odors from any asphalt plant included in the CUP. The asphalt plants are subject to Air Quality Standards have been developed to be protective of human health to a level that is tolerable by our society. What is not addressed by the air quality standards, is those levels of emissions that do not necessarily cause respiratory illnesses or damage (except in sensitive receptors), but those levels that none-the-less cause adverse impacts. Asphalt plant emissions that are in compliance with State and Federal Air Quality Regulations still routinely cause headaches and nausea in many people. Conditions must be developed to mitigate those adverse impacts of asphalt plant emissions.

### 3. Ground and Surface Water

It is unclear from the CUP Application how much mining will be performed below ground water, and clarification should be requested from the Applicant. In some places in the application it is stated that the plan is to mine above ground water, but in other places it states that the 1.5-acre pond (current size) will be expanded to 6 acres. It is not clear if this below-ground water mining will be in a single location, or throughout the area, moving as mining progresses. The permit application estimates the depth of mining from ground surface in the amendment area as "50-75 feet", which could be as much as approximately 60 feet deep into ground water. Please note that the pond and stream elevations included on the map showing the topographic survey of the proposed permit area are from December 12, which is typically a time of low seasonal ground water elevations and surface water flows.

A professional hydrogeological analysis should be done to assess the potential impacts of this permit application on ground water and surface water in the Gallatin River watershed, which is within a basin closed to further surface water rights, particularly in consideration of the Smith River decision by the Montana Supreme Court in April 2006. The pond in the Huttinga gravel pit that is visible in the 2005 aerial photos is approximately 845 feet from Big Bear Creek, but the permit boundary comes to within 195 feet of Big Bear Creek. Please include review and input from Montana Fish, Wildlife and Parks (MFWP) and the Greater Gallatin Watershed Council concerning potential impacts to surface water, and the Gallatin Local Water Quality District concerning potential impacts to ground water quality and quantity.

### 4. Aquatic and Terrestrial Wildlife

MFWP records show that cutthroat trout in Big Bear Creek have been genetically analyzed and determined to be 100% pure Yellowstone Cutthroat Trout (MFISH database, 2008). This subspecies is ranked G2 S2 by the state of Montana (*At risk because of very limited and potentially declining numbers, extent and/or habitat, making*

*it vulnerable to global extinction or extirpation in the state*), and is considered to be “sensitive” by the US Forest Service and Bureau of Land Management. Although the Supplemental EA for Amendment No. 2, dated 12/13/2006, cites evidence that thermal impacts to ponds are dissipated in ground water within “hundreds of meters down gradient of the pond”, the boundary of the permit area is within 195 feet (60 meters) of the stream. Therefore the location of below-ground water mining and location of both operational and reclamation ponds must be clearly defined and impacts of those locations to the stream fisheries evaluated.

It must be remembered that *ground water* quality standards and regulations are developed to be protective of human health. Yet these same levels of constituents in ground water that are legal and do not cause any impacts to human health may adversely impact aquatic organisms. Because the Huttinga Pit is close to Big Bear Creek, operations plans and monitoring must be sure that impacts to ground water that may be legal via human health-based ground water standards will not increase levels of constituents in Big Bear Creek to a level that will adversely impact aquatic life. The Huttinga Pit may also require additional protections since the lateral transport distance of any impacts to ground water from the Huttinga Pit may not be sufficiently large to treat/ remove impacts to ground water (particularly biological pollutants).

MFWP should also be consulted concerning potential need for mitigation of impacts to elk breeding and migration areas. As stated in the Staff Report for the Gateway Planning Area, the area in the immediate vicinity of the Huttinga Pit “has commonly been identified by Montana Fish, Wildlife, and Parks as being high in wildlife value.”

#### 5. Public Health and Safety on County Roads:

The Huttinga Pit is accessed by county roads that are used by many walkers, joggers and bike-riders. These roads (Little Bear Road and Little Bear Spur Road) have little or no shoulder or berm on which these recreational users can shelter if there are vehicles in both lanes of the road. Conditions should be developed to ensure public health and safety despite commercial use of these roads by gravel trucks.

**C. Not Addressed by Previous CUP Conditions:****1. Permit Creep and Predictability**

This is the history of this pit:

<b>Permit:</b>	<b>Permit Date</b>	<b>Total Area:</b>	<b>Maximum Depth:</b>	<b>Reclaimed By:</b>	<b>Operating Hours</b>
Hutt 001	7/5/1996	5 acres	20 feet	10/1/2010	Not specified
Amendment 1	9/25/2003	15 acres	30 feet	10/1/2015	Not specified
Amendment 2	12/13/2006	25 acres	Same	Same	Not specified
Proposed Amendment 3		48.56 acres	50-75 feet	10/20/2020	Not specified

There has been no reclamation to date, and none of the reclamation bond has been released by the state. The adjacent residents have been faced with a changing story / picture of the future. This slow "death by a thousand cuts" has essentially obliterated any ability the neighbors and neighborhood have had to plan for its future and their properties.

**2. Property Values**

Property values are a significant portion of the human (social, economic) environment for which potential impacts must be analyzed under MEPA [ARM17.4.206(3)(3)]. Moving forward with the CUP conditions without the appropriate MEPA analysis and an in-depth, scientifically valid study of the impacts of gravel pits to property values of different types within the Gallatin Valley has made consideration of these impacts and conditions to mitigate these impacts problematic.

There are an immense number of variables to be considered that impact the value and marketability of a single property. There are an additional large number of variables concerning different gravel operations. Because of the number of variables, a statistically and scientifically valid study must include thousands of properties to be able to correctly isolate the portion of impact on property value that is due to a gravel operation. The problem requires an extremely large database to appropriately isolate the impact of a gravel pit. The large body of peer-reviewed, published, academic and research literature concerning the impacts of an environmental disamenity such as a gravel pit has should be considered in the CUP process.

Application of small appraisal-based studies to the question of the impact of a gravel pit on property values in the vicinity of that pit is scientifically and statistically invalid. These small studies do not sufficiently adjust for many of the variables that will impact property value. For example, in the Rygg study from the Flathead Valley, which DEQ has tried to apply to the Gallatin Valley, the homes are located in densely forested area and the gravel operations are only visible from one of the homes included in the study.

Appraisal methods have been developed to consider the variables such as number of bedrooms, number of bathrooms, size of the home, but not the variation in impact to property value of a 5-acre, 2-year gravel operation versus a 50-acre, 26-year gravel operation.

Finally, although there are statistically valid studies that attest to the impact of gravel pits on property values in the vicinity, we have not yet found any published research showing that mitigation of specific impacts (noise, dust, etc.) actually mitigate the impact to property values.

### 3. Cumulative and Secondary Impacts

DEQ MEPA analyses, where available, have never yet made appropriate analysis of the cumulative and secondary impacts of permitted gravel operations. There is a pervasive failure throughout DEQ Opencut Mining Permitting to properly include cumulative and secondary impacts analysis as required by ARM17.4.609(3)(d) and (e), and ARM17.4.603(7).

Two blatant cumulative impacts related to gravel operations are the impacts of multiple gravel operations to air quality and wildlife habitat. Cumulative environmental impacts analysis should include air quality data and meteorological data, in order to adequately address the full impact of permitting any additional sources in the Gallatin Gateway Planning Area, regardless of DEQ authority over any of these other sources. Cumulative impact analysis should consider the long-term impact of permitting of gravel operations (as well as any other development) to the quantity, quality and connectivity of wildlife habitat.

There are particular concerns about secondary impacts of this and other gravel pit permits to the development and community of Gallatin Gateway. There are very real concerns in the community that the area is becoming industrial and/or a gravel-mining district. The Huttinga Pit CUP should be examined in the setting of the cumulative impact of opencut mining permits on the community with particular attention to traffic and property values.

### 4. Compliance with Gallatin County Growth Policy:

It is not clear to the citizens of the Gallatin Gateway Area how permitting a 48-acre, 24-year major industrial facility in an area of the County that is categorized in the Gallatin County Growth Policy as "agricultural/rural" is in compliance with that growth policy. It is not clear to owners of residences in the vicinity of the Huttinga Pit how, per the Gallatin County Interim Zoning Regulation for Operations that Mine Sand and Gravel Or Operations that Mix Concrete or Batch Asphalt, this major industrial use will "preserve the character of the area" (Section 6.3).

Thank you for your continued hard work on the issue of co-existing with gravel mining in Gallatin County.

Sincerely,



Carol Lee-Roark, Co-Chair  
Gateway Opencut Mining Action Group