

RESOLUTION NO. 2010 - 032

**A RESOLUTION OF INTENTION ADOPTING THE
AMSTERDAM/CHURCHILL ZONING DISTRICT, REGULATION & MAP**

WHEREAS, this Resolution was introduced by the Gallatin County Planning Department, moved by Commissioner Murdock, and seconded by Commissioner Skinner. The Resolution passed unanimously. Commissioner White was excused.

WHEREAS, in April 2003, the Gallatin County Commission adopted the Gallatin County Growth Policy pursuant to § 76-1-601, *et seq.*, Mont. Code Ann. as a comprehensive plan to guide land use and development outside of the County's existing municipalities and existing citizen petitioned "Part 1" zoning districts; and

WHEREAS, pursuant to § 76-1-601(4)(a), Mont. Code Ann., the Growth Policy may include neighborhood plans; and

WHEREAS, landowners within the proposed district met in the Summer of 2007 with the intent of guiding a planning and zoning process for the Amsterdam/Churchill Community, and early in 2008 formed the Amsterdam/Churchill Community Planning Group (ACCPG), a non-profit organization, to draft a community plan, zoning regulation and map. The ACCPG is open to all residents within the proposed boundaries of Amsterdam/Churchill Zoning District; and

WHEREAS, The Gallatin County Commission recognizes landowner driven planning and zoning as one of the most important methods to implement the Gallatin County Growth Policy; and

WHEREAS, on January 19, 2010, the Gallatin County Commission adopted the Amsterdam/Churchill Community Plan as a component of the Gallatin County Growth Policy pursuant to Resolution #2010-010; and

WHEREAS, the Amsterdam/Churchill Community Plan includes numerous references to adoption of a zoning regulation and map as a necessary tool to implement the Plan, including Policy 6.1, which directly calls for adoption of a zoning regulation as a primary implementation tool; and

WHEREAS, the ACCPG and landowners within the Amsterdam/Churchill Community Plan boundary have worked with the Gallatin County Planning Department since the Fall of 2007 to draft a zoning regulation and map implementing the goals and policies of the Amsterdam/Churchill Community Plan. The ACCPG sent a letter attesting to the zoning efforts to all residents within the proposed Amsterdam/Churchill Zoning District in January, 2010; and

WHEREAS, Section 6.2 of the Gallatin County Growth Policy recommends adopting zoning districts under "Part 2" zoning statutes; and

WHEREAS, the Amsterdam/Churchill Zoning District, Regulation and Map have been drafted as a result of significant public participation over the course of two and a half years; and

WHEREAS, the proposed Amsterdam/Churchill Zoning District, like much of the Gallatin Valley, contains deposits of sand and gravel; and

WHEREAS, the mining of sand and gravel and the processing of sand and gravel materials into concrete or asphalt contributes significantly to the economic prosperity of the people of Gallatin County and is a critical resource in the physical development of the communities of Gallatin County; and

WHEREAS, the mining of sand and gravel and the processing of sand and gravel materials into concrete or asphalt has impacts on the health, safety, and general welfare of the people of Gallatin County; and

WHEREAS, reasonable regulation of operations that mine sand and gravel and operations that mix concrete or batch asphalt can mitigate these impacts to the health, safety and general welfare of the people of Gallatin County; and

WHEREAS, the County Commission adopted the Gallatin County Interim Zoning District, Regulation and Map Regulating Operations that Mine Sand and Gravel and Operations that Mix Concrete or Batch Asphalt (Interim Zoning Regulation) on May 7, 2008, by Resolution 2008-053. This Resolution incorporates into the record the May 7, 2008 decision, findings, and testimony given at hearings held by the Commission concerning the adoption of the Interim Zoning Regulation, in particular that exigent circumstances existed to warrant the adoption of the Interim Zoning Regulation as referenced in Resolution 2008-053 and exhibits thereto. On April 29, 2009, the County Commission extended the Interim Zoning Regulation for one year, pursuant to § 76-2-206, Mont. Code Ann., by Resolution 2009-060. This Resolution incorporates into the

record the April 29, 2009 decision, findings, and testimony concerning extending the Interim Zoning Regulation; and

WHEREAS, on May 7, 2010, the Interim Zoning Regulation expires; and

WHEREAS, the ACCPG and landowners within the Amsterdam/Churchill Community Plan boundary have proposed a zoning district, regulation and map to implement the goals and objectives of the Community Plan. Specifically, Policy 5.5 states that zoning regulations should be adopted addressing sand and gravel mining operations to continue the permitting process provided by the Interim Zoning Regulation; and

WHEREAS, the ACCPG and landowners intend to continue to work on additional and more comprehensive zoning to further implement the goals and policies of the Amsterdam/Churchill Community Plan; and

WHEREAS, the jurisdictional area of the Amsterdam/Churchill Zoning District is shown on the attached map and will include the following lands:

Township 1 North Range 3 East
Sections 31 - 36 = All

Township 1 North Range 4 East
Section 31 = All

Township 1 South Range 2 East
Section 24 = SE $\frac{1}{4}$; S $\frac{1}{2}$ of the NE $\frac{1}{4}$; NE $\frac{1}{4}$ of the NE $\frac{1}{4}$;
Section 25 = All

Township 1 South Range 3 East
Sections 1-36 = All

Township 1 South Range 4 East
Sections 6-7 = All;
Sections 18 - 19 = All;
Section 20 = W $\frac{1}{2}$;
Section 28 = SW $\frac{1}{4}$;
Sections 29 - 33 = All;
Section 34 = All west of the centerline of River Road

Township 2 South Range 3 East
Sections 1-11 = All;
Section 13 = All north of the centerline of Norris Road;

Section 14 = All north of the centerline of Norris Road;
Section 15 = All north of the centerline of Norris Road;
Section 16 = All;
Section 17 = N ½;
Section 18 = All;
Section 19 = All north of the centerline of the Norris Road;
Section 21 = All north of the centerline of Norris Road;
Section 22 = All north of the centerline of Norris Road

Township 2 South Range 4 East

Section 3 = All west of the centerline of River Road;
Sections 4 – 9 = All;
Section 10 = All land west of the centerline of Norris Road with the exception of a parcel described in the Clerk and Recorder's Office at Tract C-1 of Certificate of Survey 2513A;
Section 17 = All north of the centerline of Norris Road;
Section 18 = All north of the centerline of Norris Road.

WHEREAS, on February 23, 2010, the Gallatin County Planning Board held a public meeting to consider the request to adopt the proposed Amsterdam/Churchill Zoning District Map, Regulations and Boundaries pursuant to § 76-2-201 Mont. Code Ann.;

WHEREAS, during the public hearing the Gallatin County Planning Board made the following recommendation:

- Voted (6:3, 1 abstention) to recommend the Gallatin County Commission adopt the boundary of the proposed Amsterdam/Churchill Zoning District;
- Voted (3:6 – motion failed) to recommend the Gallatin County Commission adopt the Amsterdam/Churchill Zoning District Regulation;

WHEREAS, notice was posted in five locations around the proposed Amsterdam/Churchill zoning district the week of February 5, 2010, and legal notice of the County Commission hearing on this Resolution of Intention was published in the Bozeman Daily Chronicle on February 21 and 28, 2010; and a display ad was published in the Belgrade News on February 23 and March 2, 2010.

NOW THEREFORE BE IT RESOLVED:

1. The Gallatin County Commission finds the procedural requirements of § 76-2-201 et seq. Mont. Code Ann. have been met;
2. The Gallatin County Commission finds the Amsterdam/Churchill Zoning Regulation complies with the goals and intent of the Amsterdam/Churchill Community Plan. Specifically Goal 4.5.3 Require high-intensity uses to hold a public hearing and Goal 5.5.1 Draft standards prohibiting sand and gravel mining operations within the Town Core;
3. The Gallatin County Commission adopts the Staff Findings from the March 23, 2010 Staff Report;
4. The Gallatin County Commissioners finds public comment submitted to the Commission as part of this hearing was adequately addressed by the staff report and/or the proposed Zoning District;
5. An applicant for a permit under these Regulations attached hereto shall be required to submit to the Gallatin County Planning Department, in addition to all costs related to mailing and publication of legal notice, a review fee of \$4,000.00.
6. The Gallatin County Commissioners find the proposed Amsterdam/Churchill Zoning District, Map, Regulations, and Boundary is consistent with the goals, policies, and intent of the Gallatin County Growth Policy and the Amsterdam/Churchill Community Plan.

The Gallatin County Commission approves the Resolution of Intent to Adopt the proposed Amsterdam/Churchill Zoning District, Map, Regulations and Boundaries and, pursuant to § 76-2-205 Mont. Code Ann., shall provide and notice a 30-day protest period whereby the County Clerk & Recorder will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county; and

The Commission will consider a Final Resolution to Adopt the Amsterdam/Churchill Zoning District, Map, Regulations and Boundaries following the expiration of the protest period, on May 4, 2010.

Dated this 23rd day of March, 2010

GALLATIN COUNTY COMMISSION



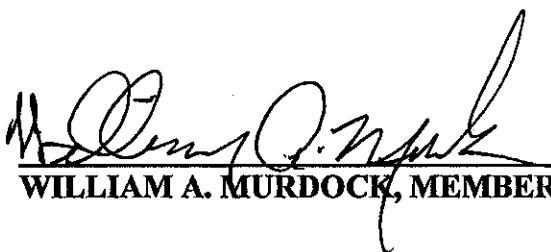
JOE P. SKINNER, CHAIRMAN

DATE 3/26/10

EXCUSED

R. STEPHEN WHITE, MEMBER

DATE _____



WILLIAM A. MURDOCK, MEMBER

DATE 3/26/10

ATTEST:

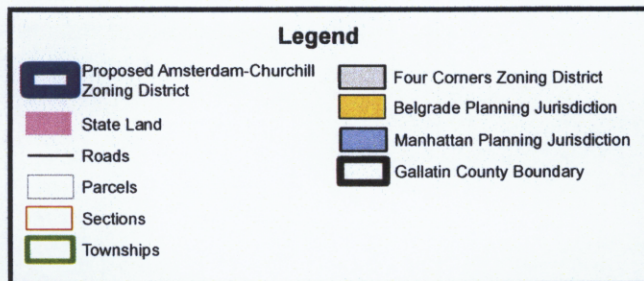
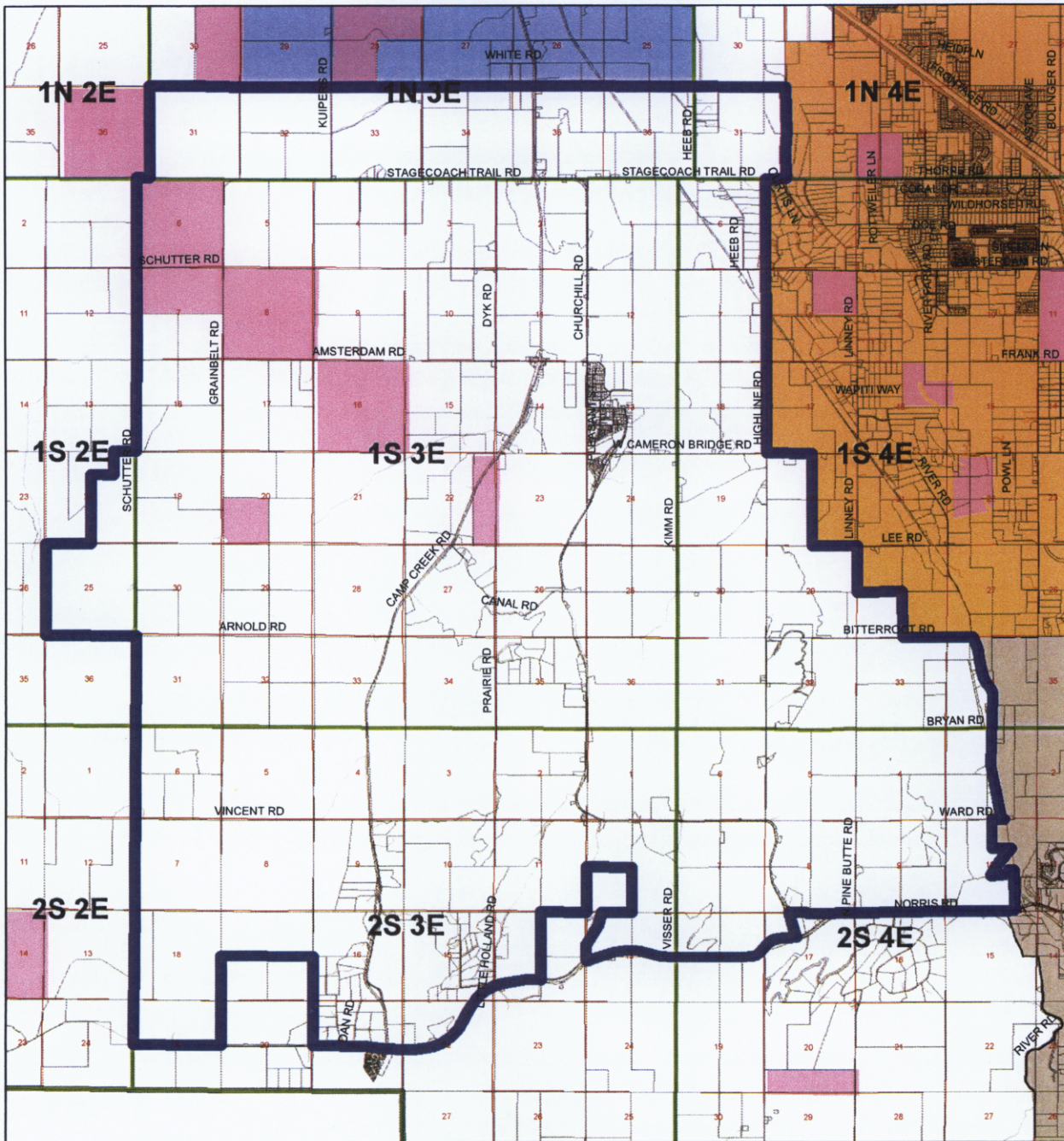


**CHARLOTTE MILLS,
CLERK & RECORDER**

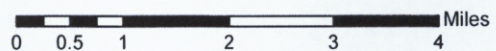
Proposed Amsterdam - Churchill Zoning District

Gallatin County, MT

DRAFT
01/27/2010



Map Generated by Gallatin County Planning Department for reference purposes only. For exact boundaries of the Amsterdam Churchill Neighborhood Plan, please refer to Resolution 2010-010.



**AMSTERDAM/CHURCHILL
ZONING REGULATION**

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SECTION 1 GENERAL PROVISIONS

1.1 Title, Creation and Adoption

- 1.1.1** These Regulations shall be known as the Amsterdam/Churchill District Regulations. They are adopted for the Amsterdam/Churchill Zoning District (District), which was adopted on ____.
- 1.1.2** These Regulations are adopted pursuant to Montana Code Annotated (MCA) §76-2-201 et. seq. in accordance with the Gallatin County Growth Policy (Growth Policy) and the Manhattan Growth Policy (Growth Policy).
- 1.1.3** Copies of these Regulations and Zoning Map are on file for public inspection with the Office of the Gallatin County Clerk and Recorder and the Gallatin County Planning Department (Planning Department).

1.2 Legal Description

Land within the Amsterdam/Churchill Zoning District is legally defined as the following:

Township 1 North Range 3 East

Sections 31 - 36 = All

Township 1 North Range 4 East

Section 31 = All

Township 1 South Range 2 East

Section 24 = SE ¼; S ½ of the NE ¼; NE ¼ of the NE ¼;

Section 25 = All

Township 1 South Range 3 East

Sections 1-36 = All

Township 1 South Range 4 East

Sections 6-7 = All;

Sections 18 – 19 = All;

Section 20 = W ½;

Section 28 = SW ¼;

Sections 29 – 33 = All;

Section 34 = All west of the centerline of River Road

Township 2 South Range 3 East

Sections 1- 11 = All;

Section 12 = All excluding the SW ¼;

Section 13 = All north of the centerline of Norris Road in the N ½ excluding a parcel described in Deed 126-472;

Section 14 = All of the W ½ north of the centerline of Norris Road;

Section 15 = All north of the centerline of Norris Road;

Section 16 = All;
Section 17 = All in the N ½;
Section 18 = All;
Section 19 = All north of the centerline of the Norris Road;
Section 21 = All north of the centerline of Norris Road;
Section 22 = All north of the centerline of Norris Road

Township 2 South Range 4 East

Section 3 = All west of the centerline of River Road;
Sections 4 – 9 = All;
Section 10 = All land west of the centerline of Norris Road with the exception of a parcel described in the Clerk and Recorder’s Office at Tract C-1 of Certificate of Survey 2513A;
Section 17 = All north of the centerline of Norris Road excepting Tracts 1, 2, and 3 of Certificate of Survey 1190F;
Section 18 = All north of the centerline of Norris Road.

1.3 Application of District Regulations

1.3.1 Application. The requirements established by these Regulations are minimum regulations and apply uniformly to each class or kind of Structure or land throughout the District. Regulation provisions shall be held to the minimum that protects and promotes the public health, safety and general welfare of the District.

These Regulations include a grandfather clause in accordance with MCA § 76-2-208, which allows existing non-conforming Lots, Structures, uses of land, and other characteristics which would otherwise be restricted or regulated under the terms of these Regulations, to continue as non-conforming. Non-conforming uses cannot be enlarged upon, expanded, or extended, nor used as grounds for adding other Structures or uses prohibited in the same District. Property owners of legally existing non-conforming Structures may apply for a Conditional Use Permit (CUP, Section 2.4) to change, alter, enlarge, or expand non-conforming uses.

1.3.2 Zoning Regulation Conformance. All new construction is potentially subject to the provisions of these Regulations. Property owners are responsible for ensuring all activity within District boundaries conforms to these Regulations.

1.3.3 Exception. Under certain circumstances, the Planning Department may exempt public utility pipelines, wells, or Structures necessary for provision of services required for public health and safety, from provisions of these Regulations.

1.3.4 Vesting. An application made within the District is subject to the Regulations in effect at the time the application is submitted.

1.3.5 Contradictions. If the requirements of these Regulations conflict with the requirements of any other lawfully adopted rules, regulations or covenants, the most restrictive (or higher standard) shall govern.

1.3.6 Interpretations. The Planning Department, Code Compliance Specialist, Gallatin County Planning Board (Planning Board) and the Gallatin County Commission (County

Commission) can make official interpretations of the Amsterdam/Churchill Zoning District Regulations, boundaries, and map. If questions arise concerning the appropriate classification of a particular use, or if the specific use is not listed, the County Commission shall determine the appropriate classification of that use.

In interpreting a use classification, the County Commission shall consider the matter in an official meeting and determine that the use:

- A. Is compatible with the uses allowed in the District.
 - B. Is similar to one or more uses allowed in the District.
 - C. Will not adversely affect property in the neighborhood or the District.
 - D. Will not abrogate the intent of the Growth Policy or these Regulations.
- 1.3.7 Natural Resources. These Regulations may not prevent the complete use, Development, or recovery of any mineral (including an operation that mines sand and gravel or mixes concrete or batches asphalt), forest, or agricultural resource, except as authorized by MCA §76-2-209(2).

1.4 Intent and Purpose

- 1.4.1 These Regulations have been made in accordance with the Gallatin County Growth Policy (adopted April 15, 2003) for the purpose of promoting the public health, safety, and general welfare. Additionally, in accordance with MCA §76-2-203, these Regulations are designed to:
- A. Secure safety from fire and other dangers.
 - B. Promote public health, public safety, and the general welfare; and
 - C. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

Further, these Regulations give reasonable consideration to the character of the District and its peculiar suitability for particular uses with a view to conserving the value of buildings and encouraging the most appropriate use of land.

1.5 Establishment of Zoning Districts and Official Zoning Map.

- 1.5.1 **Official Zoning Map.** The official Zoning Map shall be available in the Office of the Gallatin County Clerk and Recorder and shall bear certificate with the signature of the Chairman of the County Commission attested by the Clerk and Recorder, and the date of adoption of the official Zoning Map. If any changes to the official Zoning Map are made by amendment of these Regulations in accordance with Section 2.7 hereof, such changes shall be made to the official

Zoning Map and signed, dated and certified upon the map or upon documentation attached thereto.

- 1.5.2 **Interpretation of Map Boundaries.** Where uncertainty exists as to the boundaries of districts as shown on the official Zoning Map, the boundaries shall be interpreted as following the nearest logical line to that shown. Boundaries indicated as approximately following the centerline of roads or highways shall be construed to follow such centerlines. Boundaries indicated as approximately following platted Lot lines shall be construed as following such Lot lines. Boundaries indicated as following the centerline of streams, rivers, canals, or ditches shall be construed to follow such centerlines. Boundaries indicated as parallel to or extensions of features indicated on the official Zoning Map shall be determined by the scale of the map.

1.6 Invalidation and Severability

- 1.6.1 If any section, subsection, subdivision, sentence, clause, paragraph, or phrase of these Regulations, or any attachments hereto, is for any reason held to be unconstitutional or void, such decision shall not affect the validity of the remaining portions of these Regulations to render the same operative and reasonably effective for carrying out the main purpose and intention of these Regulations.

SECTION 2 ADMINISTRATIVE PROVISIONS

2.1 Administration

- 2.1.1 Zoning Enforcement Agent. The Zoning Enforcement Agent is designated to be the Gallatin County Planning Department (Planning Department). The Planning Department supervises and enforces the provisions of these Regulations pursuant to MCA §76-2-210. This consists of, but is not limited to, issuing permits, enforcing violations and reviewing applications for variances, rezoning requests and amendments to these Regulations.
- 2.1.2 Code Compliance Specialist. The Code Compliance Specialist ensures compliance with the provisions of these Regulations in conjunction with the Planning Department. This consists of, but is not limited to, revoking permits, issuing cease and desist orders, requiring removal/dismantling of Structures, determining compliance with these Regulations, and issuing fines. All decisions made by the Code Compliance Specialist follow the same administrative and appeals procedures as that of the Planning Department.
- 2.1.3 Advisory Committee. The County Commission may create a non-remunerative advisory committee, of up to five (5) members, to make recommendations within the District. Members are freeholders in the District. Advisory Committee members are appointed for two- (2) year staggered terms. Initially, two (2) members are appointed for one- (1) year terms and three (3) members are appointed for two- (2) year terms.

Advisory Committee recommendations are advisory only and are not binding upon the County Commission. Advisory Committee meetings are open to the public and noticed accordingly. The Advisory Committee may also notify the Planning Department of alleged violations within the District.

- 2.1.4 Board of Adjustment. Pursuant to §76-2-221, MCA, the County Commission has appointed a five-member Gallatin County Consolidated Board of Adjustment (“BOA”). The Gallatin County Consolidated BOA shall have jurisdiction over all matters within the Amsterdam/Churchill Zoning District within the BOA’s powers. Those powers shall be:
- A. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of these Regulations.
 - B. To hear and decide variances (special exceptions) to these Regulations that will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of these Regulations will result in an unnecessary hardship, and so that the spirit of these Regulations is observed and substantial justice done.
 - C. In exercising the above mentioned powers, the BOA may, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or administrative determination made by the Planning Department or Code Compliance Specialist appealed and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all of the powers of the officer from whom the appeal is taken, (MCA §76-2-223).

D. The concurring vote of three members of the BOA shall be necessary to grant a variance, reverse any order, requirement, decision, or determination of any such administrative official (MCA §76-2-224).

2.1.5 County Planning Board. The 11-member Gallatin County Planning Board (Planning Board) consists of resident freeholders serving in an advisory capacity to the County Commission. The Planning Board's role is to make recommendations on the revision of boundaries and the amendment of regulations (MCA §76-2-204 and MCA §76-2-205).

2.1.6 County Commission. The County Commission reserves the right to, after public notice and hearing, deny, approve or conditionally approve all conditional use applications.

2.1.7 Schedule of Fees. The County Commission sets fees for all applications; including but not limited to zone changes, conditional use permits, official interpretations, and variances. The County Commission will not take action on an item until fees are paid in full.

2.2 Non-Conforming Uses

2.2.1 Intent. Within the districts established by these Regulations, there are non-conforming uses that were lawful prior to the adoption of these Regulations but no longer conform to present Regulation requirements. It is the intent of these Regulations to establish a "grandfather" clause, allowing such uses to remain in their present state and location.

Non-conforming uses are incompatible with allowed uses in the District. However, to avoid undue hardship, nothing in these Regulations shall be deemed to require a change in the plans, construction or designated use of any non-conforming use on which actual construction lawfully began prior to the effective date of adoption or amendment to these Regulations. Actual construction includes excavation or other work conducted on site in preparation for an Opencut Operation.

2.2.2 Non-conforming Uses of Land. Where, at the time of the adoption of these Regulations, lawful use of land exists which would not be allowed by these Regulations, the use may be continued so long as it remains otherwise lawful, provided:

A. A non-conforming use may be enlarged or increased, and may occupy a greater area of land than was occupied at the adoption and/or amendment of these Regulations, provided such enlargement, increase or occupation of a greater area of land is within the terms of the operator's MDEQ permit.

B. A non-conforming use shall not be moved in whole or in part to any portion of the Lot or Parcel other than its original location at adoption and/or amendment of these Regulations.

C. Pursuant to the terms of the Operator's MDEQ permit, if any such non-conforming use of land ceases for any reason then subsequent use of such land shall conform to these Regulations.

- D. Any non-conforming use of land superceded by an allowed use shall thereafter conform to these Regulations of the Sub-District in which it is located, and the non-conforming use may not thereafter be resumed.

2.2.3 Determination of Status of Non-Conforming Uses. It shall be the responsibility of the Planning Department and Code Compliance Specialist to determine the status of non-conforming land uses. If the Planning Department/Code Compliance Specialist determines that a use meets the applicable criteria in these Regulations and above, the use shall be deemed an approved non-conforming land use. The following procedures shall be followed to determine the status of non-conforming land uses:

- A. The owner of record of subject use shall make an application for a determination of status of a land use.
- B. The applicant has the burden of proving entitlement to approved non-conforming status by furnishing the Planning Department/Code Compliance Specialist with supporting information. Such information shall include, but not be limited to, business licenses or permits, knowledge of the past history of the site, and dated photographs.
- C. The Planning Department/Code Compliance Specialist shall determine on a case-by-case basis whether a land use is an existing non-conforming use and determine any terms or conditions of approval that may apply.
- D. Appeals of Planning Department/Code Compliance decisions may be submitted under the Administrative Appeal Process.

2.3 Land Use Permits

2.3.1 Intent. Land Use Permits (LUPs) are required prior to commencing any onsite Operations and will only be issued upon demonstration of conformity with Regulation and CUP requirements.

2.3.2 Procedure. Landowners shall submit LUP applications (with accompanying fee, if applicable) to the Planning Department. The Planning Department inspects applications to determine if projects comply with provisions of these Regulations within 30 days of receipt of a complete LUP.

2.3.3 Appeals. Appeals of Planning Department decisions may be submitted under the Administrative Appeal Process.

2.3.4 Expiration. Land Use Permits are valid for the duration of the original approved CUP.

2.4 Opencut Operation Conditional Use Permits

2.4.1 Intent. The general intent of this section is as follows:

- A. Promote responsible recovery and Processing of Opencut Operations by imposing reasonable conditions on Opencut Operations, including new mines or the expansion of existing mines;
- B. require Opencut Operations to provide adequate mitigation for significant adverse impacts to environmental and community resources caused by such Operations.
- C. regulate Opencut Operations and activities resulting from such Operations, including the offsite hauling of raw or processed materials;
- D. provide for compatible uses on adjacent or neighboring properties;
- E. mitigate significant adverse impacts to state and county transportation facilities and systems resulting from Opencut Operations in order to provide for the continued safe operation of those facilities and systems;
- F. minimize health and safety risks to adjacent or neighboring properties resulting from Opencut Operations;
- G. protect surface and groundwater quality;
- H. prevent the degradation of soil, water, air and plant life from potential point and non-point pollution sources;
- I. prevent erosion resulting from Opencut Operations;
- J. prevent the unreasonable depletion and degradation of natural resources including air quality, water quality, wildlife habitat, among others; and
- K. protect the public from bearing the burden of impacts to public services and facilities by requiring Opencut Operations to contribute their appropriate share of the costs of impacts resulting from those activities.

2.4.2 General Requirements. A CUP shall be obtained prior to commencing work onsite for all new Opencut Operations or the expansion of existing Opencut Operations following the CUP procedure described below. Granting of a CUP is contingent upon fulfillment of conditions imposed by the County Commission pursuant to Section 2.4.5 and the requirements of Section 2.4.6.

CUPs shall be issued by the County Commission only upon finding:

- A. The Opencut Operation conform to the objectives of the Growth Policy and the purposes and intent of these Regulations;
- B. The Opencut Operation will not have significant adverse impacts on nearby properties, property values, nearby land uses, or nearby residents;
- C. The Open Cut Operation will not have significant adverse impacts on groundwater, streams,

Water Conveyance Facilities, 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.

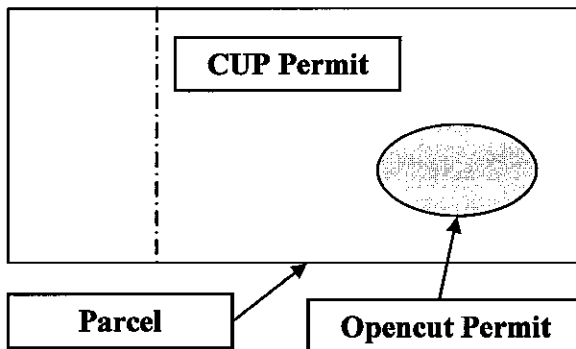
- D. The Opencut Operation will not have significant adverse impacts on public services and facilities or, if significant adverse impacts are identified through data and conclusions generated during the review of the application, the Applicant shall enter into a written agreement with Gallatin County providing for mitigation, including the provision of financial security, for the identified impacts;
- E. The Opencut Operation meet all other applicable federal, state or local regulations, including the Requirements of Section 2.4.6 below; and
- F. A public hearing, after notice has been given, has been held.

2.4.3 Planned Gravel Mining Area. An applicant may apply for a phased CUP. The phased CUP application may request that mining be undertaken in specified phases. The phases may encompass an area greater than the Operator's existing DEQ Opencut permit. If the applicant modifies the scope of their DEQ permit a new application may be required under this regulation. Modifications that may trigger a new application include, but are not limited to, increased depth or volume of extracted material; changes in the ingress or egress to the property; or changes in the on-site Processing equipment. Any hearing required by this Section shall be held only for the purposes of addressing the modifications.

Signage shall be required on the boundary of the phased CUP to inform land owners that future gravel Operations may take place adjacent to their property. When an applicant is granted a phased CUP signage must be placed on the property. Signage shall be placed on 3 feet by 5 feet weather resistant material. The signage must be up and visible for the length of the phased CUP, and must include the applicants' or Operators' phone number, and address. Signs shall be placed every 1,000 feet along the phased CUP property unless the County Commission approves fewer signs as part of the phased CUP process.

Example:

DEQ Permit Area:	20 acres
CUP Permit Area:	120 acres
Parcel Area:	160 acres



2.4.4 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.

2.4.5 Permits, Conditions. The County 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 mitigate significant adverse impacts, and to give effect to the purposes and intent of these Regulations. 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.

2.4.6 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 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 these Regulations 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. Operations shall have a Plan of Operations and Reclamation plan approved by MDEQ, and shall comply with those plans during the term of Operations for the DEQ Permitted Area.
- D. All CUP applications shall be accompanied by the applicable fees, established by the County Commission. No CUP shall be issued nor shall any action be taken on proceedings before the County Commission until such fees have been paid.

2.4.7 Conditional Use Permit Procedure.

- A. Applicants shall complete and submit 24 printed copies of the 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, which may be necessary when determining a project impacts. The pre-application meeting shall be held prior to submittal of the application. The applicant shall supply all information required in the application for an Opencut Operation CUP. Upon receipt of an application Staff shall have 20 working days to determine sufficiency and send a letter to the Applicant. Once sufficiency has been determined the County Commission hearing must be held within 60 days. Staff may request an extension of the 60 days if necessary;
- 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 Regulations;
- D. Notice of the public hearing for CUP's shall be published in a newspaper of general circulation within the County via a legal advertisement, and a display advertisement including a vicinity map of minimum size 3 inches by 5 inches, no less than twice between 7 and 15 days prior to the hearing. Adjacent property owners of the property within 1000 feet of the parent parcel boundaries shall be notified by certified mail with all cost paid by the applicant. Applicant shall also provide postage for the courtesy first-class mail property owners between 1000 feet and ½ mile. Applicant shall post notice of the public hearing in a conspicuous manner at two prominent locations on-site or within close proximity to a public road, with their name and phone number clearly displayed on a minimum 8 ½ x 11 inches brightly colored weather resistant material;

- E. Upon completion of the investigation, the County Commission shall hold a public hearing to accept public comment on the CUP application. The County Commission may continue the hearing, if need be, to gather additional information. Thereafter, the County Commission shall render a decision based on Section 2.4.2, 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 these Regulations 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 these 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 these Regulations 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.

2.4.8 Extension of Opencut Operation Conditional Use Permit. The expiration date of an Opencut Operation CUP may be extended by the Commission upon written application if the following criteria are met:

- A. The applicant demonstrates the Opencut Operation is still within the scope of work of the original CUP approval and that the only change being requested is a time extension;
- B. The applicant demonstrates the Opencut Operation is still within the scope of work of the original MDEQ permit;
- C. All previously approved conditions are being met; and
- D. A public hearing is held.

2.4.9 Authorized Use. For purposes of these Regulations, a conditional use permittee for Opencut Operations shall not engage in the conditionally permitted use on the site until all conditions of approval have been satisfied.

2.4.10 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.
- 2.4.11 Recording. Evidence of approval of a CUP showing all conditions shall be recorded, at the applicant's expense, in the Office of the Gallatin County Clerk and Recorder at the time of issuance of a LUP.

2.5 Variances

- 2.5.1 Intent. It is the intent of this section to provide a process for relief from the occasional inequities created by the physical standards of these Regulations when such standards create a substantially unequal burden on a particular Parcel of land in a fashion that would otherwise prevent the reasonable use of the property owing to physical circumstances unique to that Parcel. In addition, the intent of this section is to prohibit the granting of variances that would be contrary to the public interest and endanger public health, safety and welfare. No variance shall be granted to allow the use or Development of property for a purpose not authorized within the Sub-District in which the proposed Development would be located.
- 2.5.2 Criteria. In granting a variance, the BOA shall issue findings setting forth factual evidence that the variance:
- A. Will observe the intent and purpose of these Regulations, including the Gallatin County Growth Policy, and do substantial justice.
 - B. Will not be injurious to the public health, safety, and general welfare.
 - C. Will not be contrary to and will serve the public interest.
 - D. Is necessary, owing to conditions unique to the property, to avoid unnecessary hardship which would unavoidably result from the enforcement of the literal meaning of these Regulations:
 - i.* Hardship does not include self-imposed difficulties arising from actions by the applicant or previous predecessors in interest; and
 - ii.* Hardship does not include potential for greater financial returns;
 - iii.* Conditions unique to the property may include slope, presence of Watercourses, after-the-fact imposition of additional regulations on previously lawful Parcels, and governmental actions outside of the owner's control.

E. Is the minimum relief necessary to provide reasonable use of the property.

2.5.3 Procedure. All variance applications shall be submitted to the Planning Department on the required form with the accompanying fee. A hearing on the matter is scheduled before the BOA, and the BOA shall either approve or deny the application based on the facts. The BOA may impose reasonable conditions, as it may deem necessary to mitigate project impacts. The concurring vote of three members of the BOA shall be necessary to decide in favor, wholly or partly, of any variance from these Regulations.

2.5.4 Notice. Notice of the public hearing shall be published at least once fifteen (15) days prior to the hearing in a newspaper of general circulation. Adjacent property owners shall be noticed by certified mail.

2.6 Amendments

2.6.1 Intent. These Regulations and the boundaries of the zoning map may be amended or revised whenever the public health, safety and general welfare requires such amendment. Amendments shall follow the procedure prescribed by MCA §76-2-201 et seq., and these Regulations.

2.6.2 Procedure. An amendment may be initiated by submittal of one of the following to the Planning Department:

A. The petition of (1) or more landowners in the District. The petition shall be filed on the required application and accompanied by the required fee; or

B. Resolution of intention of the County Commission; or

C. Resolution of intention of the Planning Board.

2.6.3 Planning Board. The Planning Board shall make recommendations on the revision of boundaries and the amendment of these Regulations to the County Commission.

2.6.4 Hearing. The County Commission shall consider all proposed amendments at a public hearing. The County Commission may adopt the amendment in accordance with the procedure prescribed by MCA §76-2-205.

2.6.5 Notice. Notice of the public hearing shall be published in a newspaper of general circulation pursuant to MCA §76-2-205.

2.7 Appeals Process

2.7.1 Appeal from Planning Department/Code Compliance Specialist. The Board of Adjustment shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision

or determination by the Planning Department/Code Compliance Specialist, and reverse or affirm, wholly or partly, or modify the order, decision, or determination of the Planning Department.

A. An appeal from any final order, decision, or determination of the Planning Department/Code Compliance Specialist may be made to the Board of Adjustment within 30 days after the decision is filed and served or, in the case of official interpretations of these Regulations and/or the official Zoning Map, within 30 days from the official interpretation. The appeal must be submitted in writing to the Planning Department via certified mail or hand delivery, be accompanied by the appeal fee as established by the County Commission, and state the basis for the appeal.

B. Upon receipt of appeal, a public hearing shall be scheduled before the applicable Board of Adjustment. Notice of the public hearing shall be sent to adjacent property owners via certified mail, and be published in a newspaper of general circulation at least once 15 days prior to the hearing.

2.7.2 Appeal from County Commission. Those aggrieved by a decision made by the County Commission may present to the Eighteenth Judicial District Court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days of a decision made by a County Commission at a public hearing.

2.8 Complaints and Enforcement

2.8.1 Complaints. Any person may file a signed, written complaint with the Planning Department or Code Compliance Specialist addressing an alleged violation of these Regulations. The complaint shall fully describe the facts supporting the complaint. Upon receipt of a written, signed complaint or discovery of an alleged violation by other means, the Planning Department/Code Compliance Specialist may record and investigate an alleged violation, and determine if a violation exists. If the Planning Department/Code Compliance Specialist determines a violation exists, they may take appropriate action to resolve the violation.

2.8.2 Investigations. When investigating an alleged violation, the Planning Department or Code Compliance Specialist shall review these Regulations and other applicable information, regulations, rules or laws regarding the alleged violation. The Planning Department/Code Compliance Specialist may inspect the alleged violation from public right-of-way, from a neighboring property or the site itself if permission has been granted for the inspection. Permission for access is assumed in the event an alleged violator has a permit application pending with the Planning Department. The investigator shall document the inspection with written notes and/or photographs as appropriate.

2.8.3 Administrative Remedies. If the Planning Department/Code Compliance Specialist finds any violation(s) of these Regulations, including conditions of approval for any permit, the Planning Department/Code Compliance Specialist shall attempt to obtain voluntary compliance pursuant to MCA § 76-2-210. If efforts to obtain voluntary compliance are not successful, the Planning Department/Code Compliance Specialist may serve a written notice

on persons responsible for corrective action necessary to remedy the violation(s). If 30 days after service of the notice the violation(s) has not been remedied or an agreement reached to remedy the violation(s), then further enforcement action may be taken as provided by these Regulations and at law.

- A. The Planning Department/ Code Compliance Specialist may: (i) revoke any Land Use Permit; (ii) issue orders to obtain after-the-fact permits; (iii) issue cease and desist orders requiring cessation of any building, moving, alteration or use which is in violation of these Regulations, (iv) require mitigation and/or corrective action, which may include orders to dismantle or remove noncompliant Structures to remedy the violation; (v) determine when compliance has been achieved and approve permits for Structures brought into compliance with these regulations; and/or (vi) take any other action authorized by these Regulations and law to insure compliance with, or prevent violation of its provisions.
- B. Persons liable for violations and compliance with any order, determination, decision, fine, penalty, proceeding, and remedial action shall include without limitation, any and all owners, tenants, leaseholders, or other persons or entities that commits, maintains, participates, assists, causes or contributes to such violation; hereinafter “persons.”
- C. The owner of any building, sign, premises, or part thereof, shall be held liable for any and all violations, remedies, remedial actions, fines, penalties, enforcement actions or proceedings, and shall be required to comply with any order, determination and decision of the Planning Department/Code Compliance Specialist. In addition to the owner, any person as defined herein shall each, jointly and severally, be held liable for any and all violations, remedies, remedial actions, fines, penalties, enforcement actions or proceedings, and shall be required to comply with any order, determination and decision of the Planning Department/Code Compliance Specialist.
- D. Gallatin County and/or the Planning Department/Code Compliance Specialist shall have the right to proceed or take action jointly or severally against any or all persons, 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.

2.8.4 Administrative Fine. In addition to the above, and upon a recommendation from the Planning Department/Code Compliance Specialist, the County Commission may, after a public meeting, assess violators fines of up to \$500.00 per violation for noncompliance. Each day of violation may be considered a separate offense. When determining the amount and duration of the fine, the County Commission 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. In addition, the violator may be required to pay administrative costs associated with the investigation. If the fine is not paid, Gallatin County may seek a lien against the real property where the violation(s) have occurred.

2.8.5 Injunction. The County Commission, through the County Attorney or otherwise, may bring an action in the name of Gallatin County in the District Court to enforce these Regulations, which may include without limitation injunctive relief.

2.8.6 Remedies, Cumulative. The remedies provided for herein shall be cumulative and not exclusive.

SECTION 3 ZONING STANDARDS

3.1 Intent.

This Section establishes the Amsterdam/Churchill District. The intent of the Amsterdam/Churchill District is to establish standards for Opencut Operations in compliance with the Gallatin County Growth Policy and the Amsterdam/Churchill Community Plan.

3.2 Uses.

All uses are allowed by right except for Opencut Operations. Opencut Operations require an Opencut Operations Conditional Use Permit (Section 2.4).

SECTION 4 DEFINITIONS

- 4.1 Environmental Assessment (EA): The appropriate level of environmental review for actions either that do not significantly affect the human environment or for which the agency is uncertain whether an environmental impact statement (EIS) is required. Additionally, an EA is a study of land to determine any unique environmental attributes, considering everything from endangered species to existing hazardous waste to historical significance. Depending on the findings of an EA, an Environmental Impact Statement (EIS) may or may not be needed. (MCA 75-1-220).
- 4.2 Extension: Any request by an Operator or its agents to extend an operation, or any portion thereof, beyond the term described in the Land Use or Conditional Use Permit.
- 4.3 MDEQ: Montana Department of Environmental Quality.
- 4.4 Operator: A person or entity engaged in or controlling an opencut operation.
- 4.5 Opencut Operation (AKA Gravel Mine): Includes the following activities, if they are conducted for the primary purpose of sale or utilization of materials, (a) removing the overburden and mining directly from the exposed natural deposits or mining directly from natural deposits of materials; (b) mine site preparation, including access; (c) Processing of materials within the area that is to be mined or contiguous to the area that is to be mined or the access road; (d) transportation of materials on areas referred to the aforementioned; (e) Storage or stockpiling of materials on areas referred to in (a) through (c); (g) Reclamation of affected land; and any other associated surface or subsurface activity conducted on areas referred to in (a) through(c).
- 4.6 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 10,000 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.
- 4.7 Permitted Area: The delineated geographic area of land and land covered by water that is disturbed by Opencut Operations, including the area from which overburden or materials are to be or have been removed and upon which the overburden is to be or has been deposited, existing private roads that are used and roads constructed to gain access to the materials, areas of Processing facilities on or contiguous to the opencut mine, treatment and sedimentation ponds, soil and materials stockpile areas on or contiguous to the opencut mine, and any other surface or subsurface disturbance associated with Opencut Operations.
- 4.8 Plan of Operations: A plan that meets the requirements of §82-4-434 MCA; and contains a description of current land use, topographical data, hydrologic data, soils data, proposed mine areas, proposed mining and Processing Operations, proposed Reclamation, and appropriate maps.

- 4.9 Processing: Any combination or individual activity including crushers, screens, and pug mills, asphalt, wash, and concrete plants; and other equipment used in Processing opencut materials.
- 4.10 Reclamation: The return of lands disturbed by mining or mining-related activities to an approved post-mining land use which has stability and utility comparable to that of the pre-mining landscape except for rock faces and open pits which may not be feasible to reclaim to this standard. Those rock faces and open pits must be reclaimed in accordance with 82-4-336, MCA. The term "Reclamation" does not mean restoring the landscape to its pre-mining condition.
- 4.11 Site Plan: A scale drawing showing the accurate location of all structures, Processing facilities, haul route(s), parking areas, spill containment areas, scales, and other descriptive components of the operation.
- 4.12 Water Conveyance Facility: A Water Conveyance Facility is an agricultural water user facilities and other facilities that convey water for agriculture, stock, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, recreation, aquifer recharge or mitigation, and all other beneficial uses set forth in Section 85-2-101, *et seq.*, MCA. These facilities include, but are not limited to, ditches, canals, pipelines, flumes, wells, infiltration galleries, diversion structures, headgates, pumps, blowoffs, swales, and associated infrastructure.