



A Confederation of the Salish,  
Pend d' Oreille  
and Kootenai Tribes

THE CONFEDERATED SALISH AND KOOTENAI TRIBES  
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A People of Vision

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Department of Environmental Quality  
Director Chris Dorrington  
P.O. Box 200901  
Helena, MT 59620-0901

September 20, 2022

Dear Director Dorrington:

The letter regards Opencut standard permit application #3415 for a proposed gravel mine/asphalt plant near White Coyote Road in Arlee, Montana. Marvin Rehbein of Riverside Contracting, Inc. submitted the application on April 7, 2022. The location of the proposed plant lies entirely within the exterior boundaries of the Flathead Indian Reservation, the homeland of the Confederated Salish and Kootenai Tribes (CSKT). Our two requests, discussed in more detail below, are that (1) DEQ conduct a full MEPA analysis of the proposed gravel mine/asphalt plant, and that (2) DEQ conduct a public meeting so that local community members can provide feedback and comments on the proposed gravel mine/asphalt plant.

**Full MEPA Analysis**

As you know, the impacts of operations such as these extend far beyond the location of the operations themselves. CSKT and local residents have a number of concerns about the potential impacts of the proposed gravel mine, including potential noise pollution, dust/air pollution, water quality impacts, traffic impacts, and wildlife impacts, as well as impacts to the rural character of the area. These potential impacts could be harmful and significant, yet the application contains no discussion of the potential impacts, and to our knowledge, there has been no disclosure of the potential impacts. The application simply notes that water, salt, and asphalt will be stored on site; there is no discussion of traffic impacts, water impacts, air quality impacts, etc. In fact, the application states that there are no surface water sources in the permit area, yet, as DEQ noted in their August 17, 2022 deficiency letter, Pellew Creek bisects the permit area. Additionally, the applicant stated that the groundwater table was 30 feet below ground, and that they would only mine down to 12 feet. However, again, as noted in DEQ's deficiency letter, "seasonal high groundwater levels in the area of the proposed site may be higher than 30 feet below ground surface in some areas of the site. The information provided to confirm water levels is not adequate." DEQ noted numerous additional deficiencies in the application, including wildlife present, on-site water storage, concrete stockpile location, and others, which taken together, are deeply concerning to local community members and the Tribes.

Indeed, the application has disclosed little information about the impacts of this proposed gravel pit/asphalt mine, and as a result, very little is known about potential environmental and other impacts. The CSKT are thus requesting that the DEQ perform a full MEPA analysis of the proposed development site. According to MCA 75-1-201, environmental reviews are required for any “major actions of state government significantly affecting the quality of the human environment in Montana.” The MEPA Model Rules define actions as including: “a project or activity involving the issuance of a lease, permit, license, certificate, or other entitlement for use or permission to act by the agency, either singly or in combination with other state agencies.” DEQ’s issuance of a permit would constitute an action, and although the potential impacts have not been disclosed to our knowledge, this proposed gravel mine/asphalt plant clearly has the potential, and even likelihood, to significantly impact the quality of the human environment. Thus, in accordance with Title 75, chapter 1, MCA, the Montana Environmental Policy Act (MEPA), and the MEPA Model Rules, CSKT requests that DEQ conduct a full MEPA analysis of the Opencut #3145 proposed gravel mine/asphalt plant.

### **Public Meeting**

We also have a number of concerns about the process to date for reviewing and approving this application. To our knowledge, no public meeting has been held allowing the public to comment or provide feedback on this proposed gravel mine/asphalt plant. As noted by several members of the public during DEQ’s July 19, 2022 public meeting on HB 599 (Montana’s new open cut mining law), local residents did not receive adequate notice about the proposed gravel mine/asphalt plant, and thus were not able to timely indicate their desire for a public meeting. As you are aware, HB 599 requires the applicant to provide notice as follows:

- (a) publish notice at least twice in a newspaper of general circulation in the locality of the proposed opencut operation. A map is not required in the notice if, in addition to the legal description of the proposed opencut operation, the notice provides an address for the map posted on the department's website and instructions for obtaining a paper copy of the map from an applicant. If the notice does not include a map, the applicant shall promptly provide a paper copy to a requestor.
- (b) mail the notice by first-class mail to the board of county commissioners of the county in which the proposed opencut operation is located and to surface owners of land located within one-half mile of the boundary of the proposed opencut permit area using the most current known owners of record as shown in the paper or electronic records of the county clerk and recorder for the county where the proposed opencut operation is located;
- (c) post the notice in at least two prominent locations at the site of the proposed opencut operation, including near a public road if possible; and
- (d) provide the department with the names and addresses of those notified pursuant to subsection (6)(b).

As residents noted at the July 19 DEQ hearing, many who live very near to the proposed location for this gravel mine/asphalt plant never saw any signs about the proposed operation, as required by MCA 82-4-432 (6)(c), listed above. Additionally, a number of residents that live within one half mile of the proposed opencut permit area did not receive notice via first-class mail as

required by MCA 82-4-432 (6)(b), listed above. Thus, the applicant failed to provide adequate notice that would have prompted nearby residents to timely request a public meeting.

Additionally, we understand that there may have been an inaccurate counting of the local residents that submitted requests, or were allowed to submit requests for a public meeting. MCA 82-4-432 (9)(a)(ii) requires the DEQ to hold a public meeting in the area at the request of “at least 51% of the *real property owners* on which occupied dwelling units exist or 10 real property owners on which occupied dwelling units exist, whichever is greater, notified pursuant to this section. For the purposes of this subsection (9)(a)(ii), multiple property owners of the same occupied dwelling unit are to be counted as a single real property owner.”

We understand that all residents living on tribal land may have been counted as one land owner (CSKT). While CSKT is the *landowner* of much of the land on the Reservation, there are numerous tribal members that live on tribal land and own *real property* (their homes), and thus should have been counted as separate individuals for purposes of MCA 82-4-432 (9)(a)(ii). Furthermore, because CSKT is the landowner, we believe these individuals who own their own homes but reside on tribal land, were not properly notified, as required by MCA 82-4-432 (6)(b). Thus, because of the failure to provide accurate notice to impacted local community members, and the failure to accurately count and consider letters from real property owners living on tribal land (or to notify them in the first place), we request that DEQ hold a public meeting to solicit feedback from local community members.

Thank you for considering these requests. We look forward to your prompt response, as well as your upcoming visit to the Flathead Indian Reservation.

Sincerely,  
Confederated Salish and Kootenai Tribes

A handwritten signature in blue ink, appearing to read "Tom McDonald".

Tom McDonald, Chairman  
Tribal Council