

## APPENDIX I - A

### CHECKLIST FOR REQUIREMENTS FOR A HARD-ROCK MINING IMPACT PLAN

**A. CONTENTS OF A PLAN:** An impact plan may consist of more than what is required by statute or rule, but not less, and must provide information necessary to its efficient review and implementation. [ARM 8.104.203] An impact plan should be compatible with the community's overall planning efforts.

For purposes of the impact plan a "local government unit" means a county, incorporated city or town, school district, or any of the following independent special purpose districts: (a) rural fire district; (b) public hospital district; (c) refuse [solid waste] disposal district; (d) county water district; (e) county sewer district; (f) county water and sewer district; or (g) county park district. [90-6-302(5), MCA] "Affected local government units" include, at least, the local government units within which the mineral development is located and those that will experience an increased need to provide services and facilities as a result of the mine. [90-6-307(1) and (2); 90-6-402(1), MCA] For the specific purpose of the State's allocation of metal mines license tax revenue, the impact plan may also identify "as potentially affected" the counties and school districts within which mineral development employees reside, even if these local government units do not experience increased local government costs. [15-37-117(1) (d), MCA]

The minimum specific statutory and regulatory requirements for the fiscal impact plan are detailed in sections (1) and (2) of 90-6-307, MCA, and in ARM 8.104.203. Depending on the plan itself, other requirements may also pertain, as described below.

1. The impact plan must include:

\_\_\_\_\_ a definition of the "persons coming into the impacted area as a result of the development" that is consistent with the immigration expected to result from the mineral development; [90-6-307(1) (b), MCA; ARM 8.104.203(4) (e)]

\_\_\_\_\_ a definition of the commencement of "commercial production" that is consistent with common usage and appropriate to the specific large-scale mineral development; [90-6-311(1) (b), MCA; ARM 8.104.203(4) (e)]

\_\_\_\_\_ a timetable for development, including the opening date of the development and anticipated closing date; [90-6-307(1) (a), MCA; ARM 8.104.203(4) (a)]

\_\_\_\_\_ the estimated number of persons coming into the impacted area as a result of the development; [90-6-307(1) (b), MCA; ARM 8.104.203(4)]

\_\_\_\_\_ the increased capital, operating and net operating costs to local government units for providing services which can be expected as a result of the development and; [90-6-307(1)(c) and (2), MCA; ARM 8.104.203(4)(a)]

\_\_\_\_\_ the financial or other assistance the developer will give to local government units to meet the increased need for services and facilities. [90-6-307(1) (d) and (2), MCA; ARM 8.104.203(4) (a)]

2. In the impact plan, the developer must:

\_\_\_\_\_ commit itself to pay all of the increased capital and net operating cost to local government units that will be a result of the development, as identified in the plan, either from tax prepayments, as provided in 90-6-309, facility impact bonds, as provided in 90-6-310, or other funds obtained from the developer and; [90-6-306(2), MCA; ARM 8.104.203(4)(b)]

\_\_\_\_\_ provide a schedule within which it will meet these commitments. [90-6-302, MCA; ARM 8.104.203(4) (b)]

3. If the plan requires the prepayment of taxes, identifies a jurisdictional revenue disparity that will trigger tax base sharing, or identifies fiscal or economic impacts in more than one county, then the plan may be required to provide additional information:

\_\_\_\_\_ If the plan provides for the prepayment of property taxes, the plan must specify the criteria and methods by which the recipient local government unit will calculate and credit prepaid taxes during the productive life of the mine, without shifting the costs over time to the non-developer local taxpayer. [90-6-301, 90-6-307(1) and (2), and 90-6-309(4) and (5), MCA; ARM 3.104.203(c) and 8.104.215]

\_\_\_\_\_ For purposes of tax crediting, the plan must define "start of production" in a manner that is both consistent with common usage and appropriate to the specific large-scale mineral development. [90-6-309(4), MCA; ARM 8.104.203(e)]

\_\_\_\_\_ If the plan identifies a jurisdictional revenue disparity, it must also project the place of residence of employees and the district of

enrollment of their school-age children. [90-6-405(2), MCA] The plan must also take into account how tax base sharing may affect net operating costs, tax prepayments and tax crediting, and facility impact bond financing. [90-6-307(1) and (2), 90-6-309, 90-6-310, MCA]

\_\_\_\_\_ As anticipated by the statute that provides for the allocation of the State's metal mines license tax revenue, the plan should identify the county or counties that will experience fiscal and economic impacts, resulting in increased employment or increased local government costs as a result of the mineral development, and should project each county's proportionate share of the fiscal and economic impacts resulting from the mine. [15-37-117(1) (d), MCA]

- \_\_\_\_\_ 4. In the plan, the developer must commit to notify the Board and the affected local government units within 30 days of the start of production, if applicable, and within 30 days of the commencement of commercial production. [90-6-309(4), 90-6-311(1), MCA; ARM 8.104.203(4)]
- \_\_\_\_\_ 5. Each plan must specify whether the developer is to make its impact payments directly to local government units or through the Board. In either case, payments must be transmitted to the county treasurer to be deposited in the impact fund of the affected local government unit. [90-6-307(10), MCA; ARM 8.104.203 and 8.104.211] The plan may also specify how any accrued interest is to be used, whether the interest is accrued by the State or by an affected local government unit.
- \_\_\_\_\_ 6. If adverse fiscal impacts and beneficial economic impacts will be experienced in more than one county, the plan should provide information contemplated by section 15-37-117(1) (d), MCA.
- \_\_\_\_\_ 7. As authorized by statute, the plan may:  
specify conditions for its own amendment. [90-6-311, MCA]  
modify the tax base sharing formulae, if appropriate. [90-6-404(5), MCA]
- \_\_\_\_\_ 8. *The plan must contain, at a minimum, information specifically required by statute, information necessary to the implementation of statute, and information necessary to the review and implementation of the plan.* [ARM 8.104.203(4)]

**B. FORMAT OF PLAN:** The Board has adopted administrative rules that include the following requirements for the format of an impact plan:

- \_\_\_\_\_ 1. The format and substance of the plan must allow for a ready review and analysis of the plan, its several parts, and how they relate to one another. [ARM 8.104.203(1)]
- \_\_\_\_\_ 2. The format of the plan must contain the following elements:
  - \_\_\_\_\_ a. the name, address and phone number of the developer's contact person;
  - \_\_\_\_\_ b. a brief summary of the impact plan which includes the schedule of impact payments and other commitments by the developer;
  - \_\_\_\_\_ c. a list of the local government units which the developer believes might potentially be affected by the development;
  - \_\_\_\_\_ d. a table of contents; and
  - \_\_\_\_\_ e. numbered pages throughout. [ARM 8.104.203(2)]
- \_\_\_\_\_ 3. The plan must be bound in a manner that will allow for ready removal and insertion of pages. [ARM 8.104.203(3)]

**C. MISCELLANEOUS PROCEDURES:** To facilitate the process of preparing and reviewing an impact plan, the Board makes the following requests of the mineral developer and the affected county:

1. **BEFORE PREPARING THE PLAN**

**List of Affected Local Government Units and Others.** The Board encourages the mineral developer and the affected county to prepare, as early in the process as possible, a list of the potentially affected local government units, their designated representatives, and others who will be participating in the preparation of the plan. The developer shall also prepare a list of those to whom the plan is to be provided for review and implementation. When the lists are ready, the developer is asked to file it with the Hard-Rock Mining Impact Board.

2. **BEFORE SUBMITTING THE PLAN FOR REVIEW**

**Notification.** The Board requests that the developer provide advance notice to the Board and to the affected local government units of its intention to submit the plan for review, specifying the approximate date of submission

## APPENDIX I - B

### OUTLINE OF A SAMPLE IMPACT PLAN

Appendix I-A summarizes the statutory and regulatory requirements for an impact plan, as found in the Title 90, Chapter 6, Parts 3 and 4 of the *Montana Code Annotated* and in the *Administrative Rules of Montana*, especially rule 8.104.203. Chapters I through IV of the *Guide* also provide information helpful to persons who have administrative or adjudicatory responsibilities as a result of the Impact and Tax Base Sharing Acts or who are preparing, reviewing, or implementing impact plans. To supplement this information, the Board has included the following outline of a sample impact plan, by reference, in its "Statement of Policies."

In conjunction with the information required by statute and rule, a typical plan should include the data, information, analyses, and projections on which the plan is based and the provisions that enable the plan to be implemented in an effective and timely manner. These may include the following:

1. definitions, assumptions, and methodologies on which the plan is based;
2. baseline data and information about current conditions within the impact area, such as:
  - a. current population;
  - b. current capacity, condition, needs, and maintenance and operating requirements of facilities;
  - c. capacity, adequacy, and needs of current services, including planning and management capabilities;
  - d. current revenues and expenditures (by service and by fund);
  - e. current availability of housing or housing sites; and
  - f. data and assumptions about the number and skills of potential employees in the local workforce who might fill jobs created or vacated as a result of the proposed mine.

3. analyses and projections of changes anticipated over time without the proposed mining project, such as:
  - a. anticipated major economic and fiscal changes,
  - b. anticipated population changes, including school enrollments;
  - c. effect of anticipated economic or population changes on local government facilities, services, revenues and expenditures ;
4. proposed timetable for the mineral development, including the anticipated opening and closing dates;
5. analyses and projections of anticipated changes resulting from the proposed mining project, such as:
  - a. employment and population changes anticipated as a result of the mineral development, including:
    - (1) types, numbers, and timing of jobs created or vacated as a result of the mineral development;
    - (2) policies and practices of the mineral developer that could affect the number of people hired from the local workforce, the number of persons moving into the area as a result of the development, and where inmigrants might live;
    - (3) number of employees projected to move into the area as a result of the mineral development;
    - (4) number of persons projected to move into the area as a result of the development;
    - (5) when inmigrating persons are expected to arrive and how long they are expected to stay in the impact area; and
    - (6) related demographic information that may affect the location of housing and the provision of local government services;
  - b. housing needs anticipated as a result of the mineral development, including:

- (1) where in-migrants are expected to live;
  - (2) when the additional housing will be needed;
  - (3) the types and amount of additional housing needed;
- c. the increased need for local government services and facilities resulting from the proposed mineral development, including both needs resulting from the mining project itself and those resulting from the immigration it generates:
- (1) where services and facilities will be needed (by community or school district), and
  - (2) what the need will be (facility, equipment, maintenance and operating, staffing);
- d. identification of when and how the increased local government facility and service needs resulting from the mineral development will be met, including at least:
- (1) when the service or facility will be needed;
  - (2) how (and by whom) the service or facility will be provided;
  - (3) when the service or facility will be available; and
  - (4) how much lead-time the local government unit will require in order to provide the service or facility when it is needed;
- e. projected increase in local government capital and operating costs resulting from the mineral development for each affected service and facility (by year and by fund);
- f. projected increase in revenues resulting from the mineral development (by revenue source, year, fund and service; i.e., the increase that would occur without increasing local government mill levies or fees); and



- i. The plan may also provide for the amendment of its own tax base sharing formula it uses); and
- j. if more than one county will experience fiscal or economic impacts as a result of the mining project, the plan should also provide the information contemplated by section 15-37-117(1)(d), MCA.

The Board considers this information, in conjunction with that required by statute and rule, to be appropriate to the review and implementation of the plan, and potentially helpful if the Board is called upon to adjudicate disputes. As noted, the Board has summarized the minimal statutory and regulatory requirements for the content and format of an impact plan in its administrative rule, ARM 8.104.203. The rule also provides that:

**The format and substance of the plan must allow for a ready review and analysis of the plan, its several parts, and how they relate to one another.**

**The plan must contain information specifically required by statute, information necessary to the implementation of statute, and information necessary to the review and implementation of the plan.**

In addition to their specific statutory requirements, the Impact Act, the Tax Base Sharing Act, and the statutes that allocate metal mines license tax revenues, all impose certain expectations on the content and function of an impact plan. The plan should reflect these expectations.

## APPENDIX I - C

### **AFFECTED LOCAL GOVERNMENT UNITS REQUEST FOR ASSISTANCE IN PREPARING FOR AND EVALUATING AN IMPACT PLAN**

**At the request of the governing body of an affected unit of local government, the mineral developer, prior to the end of the 90-day review period, must provide financial or other assistance as necessary to prepare for and evaluate the impact plan. The governing body of the affected county must contract with the developer to obtain the requested financial assistance for affected local government units within the county. Any disbursement to a unit of local government under this section must be credited against future tax liabilities, if any. [90-6-307(3), MCA]**

As provided by section 90-6-307(3), MCA, the governing body of any affected local government unit may request financial or other assistance from the mineral developer to help it prepare for and evaluate the impact plan. The developer must provide the requested assistance. Any financial assistance constitutes a tax prepayment by the developer to the affected local government unit, if the mineral development is, or becomes, a property taxpayer within its jurisdiction.

The governing body of the county must contract with the developer for the provision of requested financial assistance. This allows the county to act separately on behalf of individual local government units or, more typically, jointly on behalf of all affected local government units within the county. Usually, the county requests financial assistance to contract with a single consultant who then works with, and on behalf of, all affected local government units within the county.

Local government units may also request non-financial assistance from the developer. For example, if the information they have received during the planning process is inadequate for their preliminary reviews of draft data, they may request additional information, such as the data sources and the assumptions, definitions, and methodologies the developer is using in identifying, calculating or projecting numbers of employees; local workforce participation; number and distribution of immigrants; housing needs and availability; service and facility needs and costs; and the timing of immigration, impacts and impact payments. To review an impact plan, local government units need to know and be able to evaluate the data, definitions, assumptions, projections, and commitments that form the basis of the impact plan.

Following is a general procedure for requesting assistance from the developer. Although details will vary with the circumstances, basic requirements remain the same.

1. The affected local governing body, or its representative, discusses with the developer, or its representative, the governing body's concerns and need for assistance. This enables the developer to better understand and respond to the concerns of the affected local government unit.

While some requests for information may be dealt with fairly informally, the governing body and the developer may wish to record or keep minutes of their pre-planning meetings, in order to assure appropriate follow-through by both parties and avoid future misunderstandings.

2. The governing body must provide the developer with a written, signed request for *all* financial assistance and for any major non-financial assistance, detailing to the extent possible what is needed. The governing body may submit more than one request during the course of the impact planning process.
3. The governing body of the affected local government unit must send a copy of each request for financial assistance to the governing body of the county and a copy to the Board. The county may ask other local government units to provide it with copies of any written requests for information or other non-financial assistance from the developer, in order to coordinate pre-plan assistance and assure consistency of information among the local government units.
4. The county should work with affected local government units to help them evaluate the extent of their needs for assistance before and during the preparation and evaluation of the impact plan.
5. The governing body of the affected local government unit may wish to discuss its needs and concerns with representatives of other affected local government units, including the governing body of the county, and with others who have had experience with the impact planning process. This may help the governing body to specify in greater detail the type and extent of information it needs, the type and extent of work it would like a consultant to perform, and the type and amount of financial or other assistance that will be needed. The local governing body, or the governing body of the county, will need this level of detail to draft a request for proposals (RFP) or to contract with a consultant.

Because smaller local government units, in particular, may lack staff, they may need help in generating and assembling data needed by the mineral developer, as well as help in reviewing and evaluating draft materials received from the developer. Local government units of any size may need help in updating information about the capacity, condition, and current needs of their facilities. This provides the baseline from which the developer projects the additional needs that will result from the mineral development. Local governments may also need to update local growth policies and subdivision criteria or zoning regulations. They may need help in identifying increased service and facility needs and in evaluating alternative ways of meeting increased needs and estimating costs. When a facility or service will be upgraded to meet a mix of existing and impact needs, the local government unit may need help in identifying its share of the costs and in identifying potential non-mine related sources of funding.

6. The governing body of the county must enter into a contract with the developer for the provision of the requested financial assistance. Either the county may contract with the developer separately on behalf of each affected local government unit, or it may enter into a single contract for a single consultant to work with all affected local government units, provided that the contract encompasses the expressed needs of each affected local government unit. In this instance, the county governing body acts as a party to the contract for tax prepayments to be made to other local government units, *but neither the county nor the developer may deny any local government unit the assistance it considers necessary to enable it to prepare for and evaluate the impact plan.*

Ordinarily, the county has no authority to enter into financial obligations for another local government unit, and its authority in this instance is primarily that of a lead agency or coordinator. Therefore, the contract with the developer should also be signed by the governing body of each affected local government unit that is committing itself through the contract to the receipt and expenditure of tax prepayments.

7. The fact that the county has entered into a contract with the developer for tax prepayments to help other local government units prepare for and evaluate the plan does not necessarily mean that the county must also select and enter into a contract with the consultant on their behalf or in their stead. How the contract with the consultant is arrived at depends on the arrangements made between the local government unit that requested the assistance and the county. However, because the county has

committed to the developer that the prepaid tax money it advances will be used for certain purposes, as provided by statute, the county should at least be a party to the contract between the affected local government unit and the consultant to ensure that the contract with the consultant is consistent with the local government's request for assistance and with the county's contract with the mineral developer.

If the county enters into a single contract for one consultant to assist all affected local government units, it may apportion the tax prepayment obligations among the affected local government units, reflecting their individual requests; or, as typically occurs, the county itself may assume the tax prepayment/tax crediting obligation on behalf of all the affected local government units within the county.

The latter approach may be to the developer's benefit, as well as to the benefit of the county and its individual units of local government. It may make it easier for the county to carry out the lead-agency or coordinator role given it by the Impact Act. It may allow for prompter crediting of prepaid taxes, particularly if the impact plan results in substantial tax prepayments to small local government units. And, it enables the developer to prepay taxes and receive a tax credit for its early planning-related financial assistance, even if the development's taxable valuation is, and will remain, outside the taxing jurisdiction of some of the affected local government units that need assistance, such as special districts. Otherwise, the developer would be able to provide pre-plan financial assistance to these local government units only through grants or contributions.

8. The governing body of the county and the developer should provide the Board with a signed copy of each contract it enters into for financial or other assistance.
9. The developer should provide the assistance requested of it in a timely manner. All requests for financial assistance must be met before the end of the review period, as required by section 90-6-307(3), MCA.

*If pre-plan assistance is provided through property tax prepayments, the impact plan must provide for crediting back to the developer the amount prepaid.*

The Impact Act also provides for other types of financial assistance for local government costs associated with the process of reviewing and implementing an impact plan.

Section 90-6-307(13), MCA, provides compensation for reasonable local government costs and attorneys fees associated with filing and defending a successful objection to a proposed plan or for successfully appealing a decision of the Board or the District Court. In addition, the plan itself may provide for financial assistance for planning activities that are to be carried out after the plan is approved, and for planning and administrative activities required in order to implement the approved plan.

## APPENDIX II

### KEY DEFINITIONS AND EVENTS

Sections 90-6-302 and 90-6-402, MCA, define certain terms used in the Impact Act and the Property Tax Base Sharing Act, respectively. Other terms used in the two Acts must be defined by the plan. In addition, the plan itself may define certain terms it uses in order to assure a consistent interpretation by the parties to the plan and those reviewing, adjudicating or implementing it.

For the most part, the same statutory definitions apply to both Acts. However, a few definitions differ because of the separate functions of the two Acts. Their **definitions of "local government unit"** differ, as discussed below.

**Local Government Units and Affected Local Government Units.** The Impact Act includes counties, incorporated cities and towns, school districts and certain special purpose districts in its definition of the local government units that participate in the impact plan. The Tax Base Sharing Act excludes all special districts from its definition of local government units that participate in tax base sharing.

The Tax Base Sharing Act defines an "affected local government unit" as one "that will experience a need to increase services or facilities as a result of the commencement of large-scale mineral development or within which a large-scale mineral development is located in accordance with an [approved] impact plan...." Within affected local government units, the Tax Base Sharing Act focuses both on where employees and students reside (the statutory allocation formula) and, alternatively, on where increased costs and revenues are incurred (the optional modified formula).

The Impact Act does not specifically define "affected" local government unit, but a definition parallel to that contained in the Tax Base Sharing Act is considered to apply to local government units encompassed by the Impact Act. That is, an impact plan *de facto* includes as affected local government units those that are expected to experience increased local government costs as a result of the mineral development and those in which the mineral development is located.

The statute that allocates 24 percent of the State's metal mines license tax revenue interjects a third definition of an affected local government unit, for purposes of the allocation only. Usually the county in which the mine is located is the recipient of the annual allocation of metal mines license tax revenue. However, when the mineral development will cause fiscal or economic impacts in more than one county, the

allocation is made to the county or counties that will experience increased costs or increased employment as a result of the mineral development, as identified in the impact plan. The statute that allocates metal mines license tax revenues contemplates that the impact plan will identify the counties that experience an increase in employment as a result of the mineral development, as well as those in which the mineral development is located and those that will experience a need to increase services and costs as a result of the mineral development. In addition, the statute expects the plan to project the proportionate impacts between or among counties experiencing adverse fiscal impacts (increased costs) and beneficial economic impacts (increased employment.) [15-37-117, MCA]

**Definitions in Plan to be Consistent with Statutes.** Apart from the definitions contained in statute, the plan itself must provide certain definitions. Some are necessitated by statute and some by the plan itself. Definitions in the plan must not conflict with definitions in statute or administrative rule. If, because of the different requirements of the individual statutes, some terms used in the plan apply only to the impact plan, only to tax base sharing, or only to the allocation of metal mines license tax revenues, this distinction should be made clear in the plan. Identical definitions are assumed to apply, unless there is a statutory basis, specific or implied, for the dissimilarity. Except as noted with respect to separate statutes, definitions and usages must not be internally inconsistent, that is, they must not be inconsistent from one part of the plan to another.

**"Estimated Number of Persons Coming into the Impacted Area as a Result of the Mineral Development" and "Impacted Area."** Each impact plan must identify "the estimated number of persons coming into the impacted area as a result of the mineral development." [90-6-307(1)(b), MCA; ARM 8.104.203] The "**impacted area**" is that geographic and jurisdictional area encompassed by the affected and potentially affected local government units. [90-6-307, MCA; ARM 8.104.203A] Before the plan can estimate how many people may be coming into the area as a result of the development, it must identify the specific local government units that will be affected by the mineral development and must define "**persons coming into the impacted area as a result of the mineral development.**" The definition should be appropriate to the circumstances, given the mining project, the impact area, and the needs of the affected local government units. [90-6-307(1)(b), MCA; ARM 8.104.203]

**"Start of Production" and "Beginning of Commercial Production."** Each plan must define the **beginning of "commercial production,"** to establish the statutory timeframe within which either the developer or the county may file a unilateral petition to amend an approved plan because of material inaccuracies in the assessment of

impacts and needed mitigations. [90-6-311(1), MCA] If the plan requires the developer to prepay property taxes, it must also define "**start of production**" to establish when local government units are to begin calculating and providing for tax credits. [90-6-309(4), MCA] Definitions should be appropriate to the mining project and to the needs of the impact plan. (In the plan, the developer must commit to notify the Board and affected local government units within 30 days of the **start of production** and of the **beginning of commercial production**.)

**Terms and Key Events Specific to the Plan.** The developer and local government units may want to define other terms, key events, and conditions in ways specific to the plan itself, in order to achieve a clear and functional plan that can be implemented without generating dissension about its meaning or intention. When the plan relies on specific "when...then" and "if...then" provisions to trigger activities or commitments, the plan should state these conditions clearly. The plan should also delineate whose responsibility it is to determine when each key event, condition, or circumstance has occurred and to notify the Board and other affected parties to the plan.

Definitions should be carefully articulated. A definition that is appropriate for one set of circumstances and one impact plan may not be appropriate for another.

Sample definitions derived from approved plans are given below. Because they come from different sources and are for purposes of illustration only, individual sample definitions within a series may not be consistent with one another. In a plan, however, related definitions must be consistent.

**A. Mineral Development and Mine-Related Employees, Students, and Families and Inmigrating Population**

**1. Employees**

- a. "Mineral employee" or "Mineral development employee"** means an employee of the developer or its contractors or subcontractors at the mine or mill site or at off-site, mine-related offices or facilities within the impact area.
- b. "Mine-related secondary employee"** means a person who fills a job created by the additional demand for goods and services resulting from the mineral development and its inmigrating mineral employees and their households.

- c. **"Mine-related indirect employee"** means a person who fills a job vacated by a person who becomes a mineral development employee.
- d. **"Mineral development employment"** means the total number of mineral development employees.

Only mineral development jobs and secondary jobs are new jobs. Indirect jobs, at the time they are vacated, are existing jobs. Any of the jobs may be filled by existing local residents or by persons moving into the area as a result of the development.

## 2. **Inmigrating Employees and Others**

- a. **"Inmigrating employee"** means a person who moves into the [*impact area/an affected local government unit*] within [*six months/one year/two years*] prior to or any time after [*applying for/obtaining*] employment resulting from the mineral development.

By combining, the definitions of employee and inmigrating employee one can arrive at consistent definitions of *inmigrating* mineral development, secondary and indirect employees.

- b. **"Inmigrant employee family"** means the spouse, children, wards, relatives and other unrelated individuals who continually reside with an inmigrant employee and thereby constitute a single household.

By combining, the definitions of inmigrating employee and inmigrating family one can arrive at consistent definitions of *inmigrating* mineral development, secondary and indirect employee families.

- c. **"Other mine-related inmigrants"** means people who move into the area in anticipation of finding employment because of the mineral development, but who either remain unemployed or who, after having been hired, are let go from a mine-related job. [Note: this definition and the definition of inmigrating employee should be worded so that they are not contradictory.]

Developers and local governing bodies sometimes have difficulty in reaching agreement about their respective responsibilities for this category of immigrant and may need to address certain types of impacts associated with this group separately from impacts associated with immigrating employees and their families.

- d. **"Impact population"** means the total immigrating population in the impact area, the county, or a local governmental unit thereof, generated by the immigrating mineral and mine-related employees and their immigrating families; the impact population includes other mine-related immigrants as specified in the plan.

### 3. **Students and Immigrating Students**

- a. **"Mineral development student"** means a student whose parent or guardian resides within the jurisdiction of an affected local government unit as a result of employment with the mineral developer, its contractors or subcontractors.
- b. **"Immigrating mineral development student"** means a student whose parent or guardian is an immigrating mineral development employee.
- c. **"Immigrating mine-related student"** means a student whose parent or guardian is a mine-related immigrant.

## B. **Impact Needs, Costs and Revenues**

- 1. **"Resulting from the mineral development" or "as a result of the mineral development"** means as a consequence of the mineral development itself, the resultant immigrating population, or both, or as a consequence of their effect on the community and its local governmental services.
- 2. a. **"Impact Costs"** means those additional costs projected to be incurred by units of local government for providing services and facilities needed as a result of the mineral development; or

- b. **"Impact needs"** or **"impact costs"** means the local government fiscal needs resulting from the mineral development, described in terms of expected personnel costs, capital outlays and support costs necessary to maintain the present level of service provided to the existing population, except when the plan identifies that a qualitatively or quantitatively different service or level of service is needed as a result of the mineral development; or
  - c. **"Impact personnel costs"** means costs associated with hiring additional employees to meet the demand for local government services resulting from the mineral development; or
  - d. **"Impact capital costs"** means the costs of new buildings, equipment, roads and any material purchases that are not identified as an ongoing expenditures in recent budgets of the affected local government unit and that are needed as a result of the mineral development; or
  - e. **"Impact support costs"** means non-payroll expenditures such as supplies, materials, utilities, travel expenses and other operating costs of the governmental unit which are a result of the mineral development.
3. a. **"Impact revenues"** means those additional local tax revenues projected to be generated by the impact population and the mineral development; or
- b. **"Impact revenues"** means revenues generated as a result of the mine, including property taxes paid by the developer and contractors at the site (for property at the site); property taxes paid by new, immigrating residents and new commercial activity resulting from the mine; and additional per capita revenues, such as licenses, fees and permits, and intergovernmental transfers.

### C. Beginning/Commencement/Start of Development, Production, Commercial Production

1. **"Notice of intention to begin development"** means notification by the developer to the Board and the affected units of local government of the anticipated starting date of the development, specifying that the developer intends to begin construction within [*whatever lead-time is agreed to in the plan*] and including the project schedule.
2. **"Commencement of development," "commencement of mining"** and **"commencement of mining operations"** each means the date on which the developer initiates on-site disturbance directly related to the beginning of mine development or the construction of the mine and associated facilities under an operating permit issued by the Department of Environmental Quality. The developer will notify the Board and the affected county of this date [*anytime prior to or within 30 days following/not less than three months prior to/not less than six months prior to/not less than nine months prior to*] commencement of development.
3. **"Start of production"** means the date that ore is first removed from the mine and transported to the completed mill for processing. The developer will notify the Board and the affected units of local government of this date within 30 days following start of production.
4. **"The date the facility begins commercial production"** for purposes of 90-6-311, MCA, means the date on which the developer first ships mineral concentrate from its mill for further processing. The developer will notify the Board and the affected units of local government any time prior to, or within 30 days after, such shipment.

### D. Impact Period, Impact Year, Project Year

1. **If there is a reason consistent with the Impact Act for doing so, a plan may define an impact period:**

- a. **"Impact period"** means the time period [*commencing six months/three months/60 days/30 days*] prior to the start of construction at the mineral development site and continuing until the developer has paid its [*first/second/third*] property tax assessment following the start of commercial mining operations.
  - b. **"Impact period"** means the period of time beginning with the developer's notice of intention to begin development through the developer's [*first/second*] payment of property taxes based on full production, provided that mineral development taxable valuation is not less than [*85/90/percentage specified*] the amount projected by the impact plan.
  - c. **"Impact period"** means the period of time beginning with the first impact payment required by the impact plan and extending through the last tax prepayment required by the impact plan. Bond payments, grants and other impact payments may be made following the impact period.
2. **"Impact year"** means the local government fiscal year in which identified costs are projected to occur, except that Impact Year 1 may include the partial fiscal year in which the first costs are incurred and all of the following fiscal year.
  3. **"Project year"** means the calendar year in which a mineral development related activity is expected to occur.
- E. Terms Unique to a Plan.** In addition to its definition of terms common to most plans, a plan may need to define terms unique to itself, such as:

**"Impact assistance contingency fund"** means a fund of \$10,000.00 established by the developer under control of the governing body of the county as provided in the plan. The fund will be used to provide additional impact assistance payments to address problems or pay costs resulting from the mineral development which were not anticipated by the plan at the time it

was approved. Eligible applicants for money from the contingency fund include all affected service providers and jurisdictions in the county, including, individually, the several departments of city and county government, special districts, and the following quasi-governmental non-profit entities: the city volunteer fire department, the quick response units, and the volunteer ambulance service.

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**APPENDIX IV-A**  
**SAMPLE SCHEDULES OF IMPACT PAYMENTS**  
**FROM 1988 AMENDED SMC IMPACT PLAN**  
2.0 MITIGATION OVERVIEW

GOVERNMENTAL UNIT	FINANCING METHOD	TRIGGER MECHANISM	AMOUNT OF PAYMENT BY YEAR							
			88-89	89-90	90-91	91-92	92-93	93-94	94-95	95-96
<b>STILLWATER COUNTY</b>	TAX PREPAY		88-89	89-90	90-91	91-92	92-93	93-94	94-95	95-96
	S(A)-1		79,240							
	S(A)-2			24,931						
	S(A)-3				44,738					
	S(A)-4					63,481				
	S(A)-5						675,186			
	S(A)-6							135,186		
S(A)-7									395,186	
<u>WELFARE MEDICAL</u>	TAX PREPAY		SPECIFIC CLAIMS UNDER SPECIFIC CONDITIONS							
<b>TOWN OF COLUMBUS</b>	TAX PREPAY									
	C(A)-1		2,300							
<b>ABSAROEKE ELEM.</b>	TAX PREPAY	STUDENTS								
	AE(A)	>55	30,000							
	AE(A)	>68	40,000							
	AE(A)	>80	20,000							
	AE(A)	>90	<u>16,100</u>							
			106,100							
<u>FACILITY EXP</u>	BOND	>68	800,000							
<b>ABSAROEKE H.S.</b>	TAX PREPAY	STUDENTS								
	AH(A)-1	>36	20,000							
	AH(A)-2	>46	20,000							
	AH(A)-3	>56	<u>18,400</u>							
			58,400							
	AH(A)-4			2,400						
<u>FACILITY EXP</u>	BOND	46	800,000							
<b>COLUMBUS ELEM</b>	TAX PREPAY	STUDENTS								
	CE(A)-1	>10	16,800							
	CE(A)-2	>14	10,000							
	CE(A)-3	>18	<u>10,000</u>							
			36,800							
	CE(A)-4	>16		7,850						
	CE(A)-5	>18		<u>7,850</u>						
				15,700						
	CE(A)-6	>18			5,700					
<b>FISHTAIL ELEM</b>	TAX PREPAY	STUDENTS								
	FE(A)-1	YEAR/87	25,200							
	FE(A)-2	>14	15,000							
	FE(A)-3	>18	10,000							
	FE(A)-4	>21	<u>8,100</u>							
			58,300							
	FE(A)-5	>21		10,300						
	FE(A)-6				2,000					
<u>FACILITY EXP</u>	GRANT	>18	52,000							
<b>NYE ELEMENTARY</b>	TAX PREPAY	STUDENTS								
	NE(A)-1	>5	9,000							
	NE(A)-2	>8	4,500							
	NE(A)-3	>10	<u>4,200</u>							
			17,700							
	NE(A)-4	>10		3,800						
	NE(A)-5	>15			1,000					
	NE(A)-6					2,000				
<u>REMODELING</u>	GRANT		45,000							
<b>ABSAROEKE FIRE DIST</b>	GRANT		26,000							
<b>TOTAL OBLIGATION BY YEAR</b>			<b>2,081,840</b>	<b>57,131</b>	<b>53,438</b>	<b>65,481</b>	<b>0</b>	<b>675,186</b>	<b>135,186</b>	<b>395,186</b>
<b>TOTAL OBLIGATION</b>			<b>(3,463,448)</b>							

**APPENDIX IV-B  
SAMPLE SCHEDULES OF IMPACT PAYMENTS  
FROM 1992 MONTANORE IMPACT PLAN**

SUMMARY TABLE 1

IMPACT ASSESSMENT AFFECTED LOCAL GOVERNMENT UNITS –  
MONTANORE STUDY AREA

<b>LOCAL GOVERNMENT</b>	<b>PROJECT YEAR</b>	<b>PROJECTED FISCAL DEFICIT</b>	<b>PROPOSED MITIGATION</b>
<b>Lincoln County</b>	1	(\$36,164)	<b>Noranda would satisfy the projected net fiscal deficit through tax prepayments in accordance with 90-6-309, MCA</b>
	2	(\$83,030)	
	3	(\$48,549)	
	4	(\$ 9,672)	
<b>Municipality of Libby</b>	1	(\$12,089)	<b>Noranda would satisfy the projected net fiscal deficit through tax prepayments in accordance with 90-6-309, MCA</b>
	2	(\$ 9,285)	
	3	(\$ 2,864)	
<b>Libby Elementary School District #4</b>	1	(\$141,361)	<b>Noranda would satisfy the projected net fiscal deficit through tax prepayments in accordance with 90-6-309, MCA</b>
	2	(\$ 11,464)	
<b>Libby High School District #4</b>	1	(\$15,112)	<b>Noranda would satisfy the projected net fiscal deficit through tax prepayments in accordance with 90-6-309, MCA</b>
	2	(\$ 3,148)	
<b>Total - Local Governments</b>		<b>(\$372,738)</b>	

**APPENDIX V**  
**SAMPLE CONDITIONS AND ASSUMPTIONS**  
**FOR IMPACT PLAN PROJECTIONS MONITORING,**  
**ADJUSTMENTS AND AMENDMENT**

**A. SAMPLE CONDITIONS AND ASSUMPTIONS FOR IMPACT PLAN PROJECTIONS**

*Following is an example of the assumptions that provided the basis for the original impact plan for the Stillwater Mining Company (SMC) Nye Project in Stillwater County. Several significant changes occurred after the plan was approved. SMC decided to develop two subdivisions; to amend its operating permit, increasing both production and employment; and to construct a smelter within the County. With these changes, both SMC and the affected local government units recognized the need for major amendments to the original plan. In the process of preparing their amended plan, SMC and the affected local government units were able to evaluate their original assumptions and compare them to actual and proposed events and circumstances. In the amended plan, they revised their assumptions, projections, commitments, and provisions for amendment, as needed.*

**A.1. Project Development**

1. A 1,000 TPD mining development starting in 1985 or 1986 will be developed which will employ about 220 workers on an annual average once full production is achieved.
2. Construction workers at the job site may increase the annual average above the 220 long-term operations worker level for one or two development years.
3. Taxable valuation added to the local tax rolls by developer will start at \$900,000 in Year 1, increase to \$1,900,000, \$2,500,000, \$3,400,000, and \$3,700,000 in Years 2 through 5, respectively.
4. SMC would rely on private housing developers to add the needed housing for construction and operations workers and families.
5. SMC would not underwrite or provide busing service for employees.

## A.2. Population

1. Of the total mineral employment, 46 percent (or approximately 100 persons) is assumed to be either local residents or workers who would commute from outside the county. Stillwater County currently has more than 200 unemployed workers who have applied for employment through the Job Service. Surrounding counties have unemployed workers who may be willing to commute.

Housing Development Associates and the U.S. Bureau of Mines have indicated that 40 to 50 percent local residents participating in the workforce is reasonable in Stillwater County.

2. Of the in-migrating mineral employees (54%), 20 percent would be single and 80 percent would have families averaging 3.0 dependents. Although a family size of 4.0 persons is higher than the Montana or County average, mining employees apparently have a larger average family size.

3. In Stillwater County each basic (or direct) job generates an average of 1.37 secondary jobs. However, most secondary jobs are filled by residents and dependents. Few secondary jobs pay salaries that would attract people to in-migrate. Fifteen percent of the secondary jobs are assumed to induce in-migration, because they require skills which may not be available in the county (e.g., teachers, deputies), and paid salaries sufficient to attract non-local persons.

4. Of the in-migrating secondary employees, 54 percent are assumed to be single, 45 percent would be married with 2.5 dependents (approximately the state and county average family sizes).

5. The 1980 population of Stillwater County was 5,598; the U.S. Census Bureau estimates the 1982 population at 5,782. We assume the 1984 county population is 5,900.

The 1980 population of Columbus was 1,439; the Census Bureau estimate for 1982 was 1,465. We assume a 1984 population of 1,500. The increase in water and sewer meters is the primary basis for our estimate.

Stillwater County and Columbus have been increasing since 1980 at approximately 1 percent per year. Those units of government are projected to continue that growth without the mining project until "caps" of 6,700 and 1,700, respectively, are reached.

6. Absarokee's population was 767 in 1980. The 1984 population is assumed to be 775.

### A.3. Population Distribution

1. Of the in-migrating population, 220 are expected to live in Absarokee or the immediate vicinity, 200 in Columbus. Absarokee's proximity to the mine and its community amenities account for the majority of the new population centering in Absarokee. The road between Columbus and Absarokee will act as a deterrent to a higher settlement rate in Columbus. Although Fishtail and Nye are closer to the mining project, the schools and other community amenities in Absarokee are expected to attract employees.

2. Absarokee's growth will be constrained by its limited sewage treatment system capacity and its covenants precluding the placement of mobile homes on existing lots.

3. It has been assumed that no new mobile home developments will be installed along the FAS 419 corridor between Fishtail and the project site.

### A.4. School Enrollment and Distribution

1. In-migrating mining workers with families are assumed to have an average of two children per family. In-migrating secondary workers with families are assumed to have 1.5 children per family.

2. Of the total children 0 - 18, 76 percent are assumed to be school age: 53 percent in elementary (K - 8), 23 percent in high school (grades 9 - 12).

3. BMML identified a "bulge" in baseline school age children who were born 1975 to 1979. The "bulge" moves through the grades, and is reflected in both the baseline (without mining) enrollments and the enrollment projections with the mine.

4. The baseline enrollment for Absarokee and Columbus were assumed to increase slightly over the planning period. Nye and Fishtail school enrollments were projected to remain near their current levels because of uncertainty about any future trends.

5. The in-migrating elementary students are expected to be distributed less than 40 percent in Absarokee, 40 percent in Columbus, 3 percent in Nye and 2 percent in Fishtail. We assume that the current pattern of students residing in the Fishtail and Nye school districts attending Absarokee will continue. We also assume that Absarokee Elementary School will expand to handle the total increases and will not deny attendance by students from the Nye and Fishtail school districts.

The projected percentages for Absarokee and Columbus are higher than the expected distribution of residences within the school districts, but a significant portion of Fishtail and Nye students are anticipated to attend the larger schools.

6. In-migrating high school students are assumed to attend the high school in the district in which they reside.

7. Baseline high school enrollments are projected to increase slightly from the current enrollments during the 25-year planning period.

#### A.5. Stillwater County -- Needs, Costs, and Revenue Assumptions

1. General Fund: The County Commissioners and Planning Department each will require one FTE during the first three years. Salary, benefits and expenses per FTE totals \$30,000.

The sanitarian will require a per capita increase over the first three years for additional travel and telephone costs.

The Sheriff's Department will require an additional deputy. One deputy will cost \$30,000 per year. The vehicle will cost \$2,000 per year.

2. Road Fund: Since SMC generated use of FAS 419 is forecast to be 20 percent of total use, developer's impact costs for any reconstruction or maintenance is limited to 20 percent of total costs.

The company costs for maintaining streets in Absarokee for 220 impact residents (assuming the sewage treatment plant is replaced) would be \$16 per capita.)

The mine would require a sand shed at Fishtail (at \$15,000) and a new sanding truck and a maintenance pickup (at a total of \$43,000, or \$8,600 per year, assuming a five-year life). One additional FTE will be needed at \$30,000 per year.

3. Bridge Fund: Developer would generate 40 percent of the need for bridge maintenance on FAS 419.

4. Solid Waste: Four additional green boxes would be needed in the Absarokee area to serve the impact population and two additional boxes would be needed at Nye to serve the mineral operation. The annual capital and replacement costs would be \$460 per year. Disposal, at \$16 per ton and .56 tons per person per year, could cost approximately \$9 per capita per year.

5. Stillwater County Impact Revenues: County licenses, fees, fines and permits, state shared revenues and federal revenue sharing are assumed to increase on a direct per capita basis.

The taxable valuation for the road fund excludes the Town of Columbus. The taxable valuation for all other funds includes the valuation within Columbus.

Thus, the road fund receives property taxes on only 80 percent of the mineral taxable valuation, assuming 20 percent of the mine workers reside in the Town of Columbus.

The taxable valuation is lagged one year; tax revenues are lagged an additional year.

#### A.6. Town of Columbus - Needs, Costs, and Revenue Assumptions

1. General Government: Costs of police court and Town attorney will increase in proportion to the increase in population.

2. Streets: Maintenance and operation costs will increase in proportion to the increase in population.

The costs of paving residential streets to serve 26 single-family residences (assumed to locate in the north and northeast part of town) will be \$48,000, at \$54/linear foot and lots averaging 75 feet in frontage. Costs of constructing

gravel streets for 7 mobile home lots, averaging 20-foot frontage and costs \$17.50 per linear foot.

3. Parks: Maintenance and operation costs will increase in proportion to the increase in population. No new parks or playgrounds are needed.
4. Swimming Pool: Maintenance and operation costs will increase in proportion to the increase in population.
5. Solid Waste: Disposal of solid waste costs the Town \$16 per ton; annual volume of waste is .56 tons per capita, or an annual cost of \$9 per capita basis (because of added pickups, wear, and time).
6. Water System: Maintenance and operation costs (at \$92 per household) and replacement costs (at \$23 per household) will increase in proportion to the increase in number of households.
7. Sewer System: Maintenance and operation costs (at \$30 per household) and replacement costs (at \$5 per household) will increase in proportion to the increase in number of households.

Construction of new sewer lines will cost the company \$24,000 at one-half of 1,800 feet of replacement lines costing \$27 per foot.

### Town of Columbus Revenues

1. Town fees, fines, and licenses will increase in proportion to the increase in population.
2. State and federal shared revenues will increase in proportion to the increase in population.
3. Because more than 20 percent of the impact population is projected to reside in Columbus, 20 percent of the developer's mining taxable valuation will be realized by the Town of Columbus. Increased taxable valuation from new residences will average \$1,818 during the first two years, and \$2,212 per residence thereafter (during operation). Commercial taxable valuation will average 13 percent of the residential taxable valuation.
4. The town's 1984 mill levy of 79.33 mills is used.

A.7. Absarokee, Columbus, Nye, and Fishtail Schools - Needs, Costs, and Revenue Assumptions

1. Costs for books and supplies, special education, athletics and extracurricular activities will increase on a direct per student basis.
2. A school district will receive increased state school foundation funds for impact students on a basis of Annual Number Belonging (ANB) at a rate of 1.03 ANB per projected student enrollment.
3. ANB funds are lagged one year - based on the previous year's enrollment. The level of ANB funding has been projected on an average ANB funding rate which reflects the range of enrollment.
4. The taxable valuation generated by the mineral development and associated development lags by one year. (State property tax statutes require use of the taxable valuation recorded as of January 1st of each year).
5. The year in which tax revenues are received has been lagged one year behind the taxable valuation. The first half-year's taxes are due in November of the current calendar year, the second half year's taxes in May. Thus, in reality, the tax revenues are not received until the following year.

**B. SAMPLE CONDITIONS FOR IMPACT PLAN MONITORING, ADJUSTMENT AND AMENDMENT**

The following example is taken from the impact plan for the Stillwater Mining Company (SMC), Nye Project in Stillwater County:

14.1 Amendments

As provided in Section 90-6-311(1), MCA, the Stillwater Mining Company Impact Plan may be reviewed, and amended in whole or in part, as and where appropriate, to address the changes condition or circumstance giving rise to the revision or amendment under the following conditions:

1. For any given year, the average annual level of SMC's In-Migrating Mineral Employment is more than 15 percent greater than the level projected in this Impact Plan;

2. The average annual In-Migrating Mineral Employment residing in the Town of Columbus, or in the community of Absarokee (defined as that area served by the Absarokee sewer system), is more than 15 percent greater than the number projected in this Impact Plan;
3. The number of In-Migrating Mineral Development Students enrolled in Absarokee or Columbus elementary or high school exceeds the number projected in this Impact Plan by more than 15 percent;
4. The number of In-Migrating Mineral Development Students in Columbus or Absarokee school systems contributes, or is projected to contribute based on advance registration, more than 15 percent toward overcrowding conditions (defined as student/teacher and/or student /classroom levels above state accreditation standards) if such conditions would require the addition of teachers and/or classrooms to remedy over and above those remedies outlined in this Plan;
5. The number of In-Migrating Mineral Development Students enrolled in either the Nye or Fishtail schools exceeds 10;
6. The beginning of the mineral development construction does not occur in 1985 or 1986;
7. The taxable valuation of the SMC mineral development is more than 15 percent lower than that projected in this Impact Plan in any given year, other than Year 1;
8. Funding becomes available to Stillwater County for reconstruction of FAS 419. Under this contingency the Impact Plan would be amended to provide that SMC would pay for a percentage of the reconstruction costs of the highway and bridges in proportion to traffic volumes related to the mineral operation.

[As provided for in the Hard-Rock Impact Act, Stillwater County or Stillwater Mining Company may petition the Hard-Rock Mining Impact Board for an amendment to the Plan.]

#### 14.2 Monitoring

STILLWATER MINING COMPANY will provide monitoring information to Stillwater County and other affected units of government as outlined in this Plan on a quarterly basis for the first three years and annually thereafter.

Such information shall include:

1. The number of mineral development employees living in each affected school district and the Town of Columbus;
2. The number of elementary and high school students of mineral development employees living in each affected school district;
3. The level of In-Migrating mineral development employment and the number living in the Town of Columbus and in the community of Absarokee;
4. The number of In-Migrating Mineral Development Students attending each affected elementary and high school;

Each affected unit of local government will be responsible for establishing monitoring procedures which would determine and quantify actual fiscal impacts resulting from the mineral development.

**APPENDIX VI - A**  
**PREPARATION, REVIEW AND APPROVAL**  
**OF A HARD-ROCK MINING IMPACT PLAN**  
**TIMETABLES AND PROCEDURES**

**A. THE IMPACT PLAN PREPARATION AND REVIEW PROCESS AND THE DEQ 'S MINE OPERATING PERMIT APPLICATION AND EIS PROCESS**

Procedurally, the preparation, review and approval of a hard-rock mining impact plan are carried out separately from the developer's application to the Department of Environmental Quality (DEQ) for an operating permit and separately from the DEQ's preparation of an environmental assessment or environmental impact statement (EIS). However, the procedures connect at certain points. The discussion and illustration below outline the timetable for preparing, reviewing, and approving an impact plan with reference to the DEQ 's operating permit and EIS procedures.

As required by the Metal Mines Reclamation Act, the mineral developer gathers required baseline data, develops a mine plan and a reclamation plan, and prepares its application for an operating permit. [82-4-335, MCA] *At the same time, the developer begins gathering baseline data for the local government impact mitigation plan required by the Hard-Rock Mining Impact Act.* [90-6-307, MCA]

The developer submits its operating permit application to the Department of Environmental Quality. [82-4-335, MCA] The DEQ reviews the permit application for completeness and notifies the developer of any deficiencies. The developer responds to DEQ's requests for additional information. This review-response process continues until the DEQ considers the application to be substantially complete.

After receiving a substantially complete permit application, the DEQ may prepare an environmental assessment to determine whether the project is likely to cause significant impact to the human environment. If mitigation measures cannot reduce the impact below the level of significance, the DEQ must prepare an environmental impact statement (EIS), as required by the Montana Environmental Policy Act, to evaluate impacts and propose alternative actions or mitigations. [75-1-201, MCA; ARM 26.2.643(4)] If the proposed mine is on federal lands, the responsible federal agencies, usually the US Forest Service or the Bureau of Land Management, will either join with the DEQ in preparing the EIS or will prepare a separate document. If additional permits or approvals are needed from other State and federal agencies, they also participate in the

EIS process. The EIS addresses significant issues of concern to the public or to the agencies responsible for administering and enforcing state and federal laws.

Before preparing an EIS, the DEQ typically holds one or more public scoping meeting to identify issues of public concern. When the draft EIS is complete, the DEQ distributes it for review by the public, the developer, and the affected state, local and federal agencies. During the draft EIS review period, the DEQ receives written comments and typically holds at least one public hearing. In response to the issues raised during the review period, the DEQ prepares the final EIS on the proposed project.

While the State and federal agencies are preparing the EIS (with input from local government units and the public), the developer is preparing the local government impact mitigation plan with input from the affected local government units. Any time after applying to DEQ for an operating permit, the developer may submit the proposed impact plan to the Hard-Rock Mining Impact Board and to the affected local governments for formal review by the latter. [90-6-307(1), MCA] Local governments usually review the completed draft of the impact plan informally before it is submitted for formal review. Usually, the developer does not submit the impact plan for formal review until after DEQ has issued, and held its hearing on, the draft EIS.

The public participates in the impact planning and review process through the affected local government units. The governing body of the most affected county holds a public hearing on the plan during the formal impact plan review period. [90-6-307(4), MCA]

The EIS describes the social and economic context in which the impact plan will operate. The EIS is broader in scope and, in terms of local government fiscal impacts, is less detailed than the impact plan. Like the impact plan, the EIS projects the number of people expected to come into the impact area as a result of the mineral development and identifies where immigrating people are expected to live. The EIS identifies the anticipated beneficial and adverse social and economic impacts to affected communities and local government units expected as a result of the mine.

After completing the final EIS, the DEQ issues its record of decision on the mine's operating permit. The DEQ may attach such conditions to the operating permit as may be necessitated by the project and indicated by the EIS. *As a statutory condition of the mine's operating permit, the developer must comply with the requirements of the Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act and with its commitments in the approved hard-rock mining impact plan.* [82-4-335, MCA and 336, 90-6-307, MCA] *The mineral developer may not begin activities requiring the permit until the impact plan has been approved, the Board and DEQ have received the developer's written*

*guarantee of compliance, and the developer's financial guarantee to the Board is fully executed.* [82-4-335, MCA; 90-6-309(3), MCA; ARM 8.104.214]

The EIS may recommend, but cannot require, mitigation measures for adverse impacts. The DEQ, however, may attach to its operating permit conditions that are intended to mitigate certain impacts identified in the EIS. In contrast, *the impact plan identifies anticipated local government impacts and potential mitigating measures and costs in detail and requires that the developer pay all identified capital and net operating costs incurred by local governments as a result of the mineral development.* [90-6-307(1) and (2), MCA]

## **B. IMPACT PLAN REVIEW AND APPROVAL PROCESS**

The impact plan review and approval process operates, in general, as follows:

1. **90-DAY REVIEW PERIOD.** Affected local government units and the public formally review the proposed impact plan. The public communicates its concerns about the plan to the governing body of the appropriate local government unit. In addition, the governing body of the county holds a public hearing on the proposed plan for the benefit of all persons and local government units affected by the plan.
  - a. **RESPONSIBILITY FOR COMPLIANCE.** The developer and affected local governing bodies are responsible for the substantive accuracy and adequacy of the plan and for its compliance with statutory and regulatory requirements.
  - b. **OBJECTIONS AND MODIFICATIONS.** The governing body of an affected local government unit may file objections to the proposed plan or, jointly with the developer, may submit written modifications to the proposed plan. Only the governing body may file an objection or agree to a modification to the proposed impact plan on behalf of its local government unit and its constituency.
  - c. **30-DAY REVIEW EXTENSION.** The governing body of an affected local government unit may petition the Board for a 30-day extension to the review period. The extension applies only to the local government unit that requests it.

**If no objections have been filed, the plan is automatically approved at the end of the review period, or its extension. The Board will acknowledge the plan's approval and will notify all parties to the plan.**

2. **30-DAY NEGOTIATION PERIOD.** If objections are filed, the developer and the objecting governing bodies have 30 days within which to reach an agreement on the disputed issues.
  - a. **EXTENDED NEGOTIATIONS:** The developer and the objecting governing bodies may jointly petition the Board to extend the negotiation period for whatever length of time they specify in their petition.
  - b. **CONCLUSION OF NEGOTIATIONS.** At the end of the negotiating period, they must notify the Board of the outcome of their negotiations, identifying any issues that remain and providing copies of any changes to which they have agreed.

**If the developer and affected governing bodies resolve all disputed issues within the negotiation period, or its extension, the plan is automatically approved. The Board will acknowledge the plan's approval and will notify all parties to the plan.**

3. **BOARD ADJUDICATES UNRESOLVED ISSUES.** If issues raised by the objection remain unresolved at the end of the negotiation period, the Hard-Rock Mining Impact Board adjudicates the remaining disputes.
  - a. **CONTESTED CASE HEARING.** The Board provides notice and holds a contested case hearing in the most affected county. The hearing addresses only the unresolved issues raised by the objection. A hearing may last a few hours or may be continued over a period of days or weeks, depending on the number and complexity of issues to be addressed.
  - b. **BOARD ISSUES DETERMINATIONS.** Within 60 days after the hearing closes, the Board issues its findings of fact, conclusions of law, and order.

- c. **BOARD MAY AMEND PLAN.** The Board amends the plan, if necessary, to resolve the objections in a manner consistent with its order.

**Following adjudication of the unresolved contested issues, the Board approves the plan with its amendments, if any, and provides the amendments or the amended plan to the affected parties.**

4. **JUDICIAL APPEAL.** Any party to the plan may appeal the Board's decision to the District Court serving the most affected county.
5. **POST-APPROVAL GUARANTEES.**
  - a. **WRITTEN GUARANTEE.** Within 30 days the developer must guarantee in writing to the Board and to the Department of Environmental Quality that it will comply with its commitments in the approved impact plan.
  - b. **FINANCIAL GUARANTEE.** The developer submits a financial guarantee to the Board, covering all tax prepayment commitments in the plan. The guarantee must be reviewed, approved, and fully executed before any impact costs are incurred by local government units under the impact plan or before the developer commences activities under the operating permit, whichever occurs first.
6. **DEVELOPER'S COMPLIANCE.** The developer must comply with its commitments in the approved impact plan and with the requirements of the Impact and Tax Base Sharing Acts as a statutory condition of the mine's operating permit.

### **C. IMPACT PLAN REVIEW AND APPROVAL TIMELINE**

The impact plan review procedure requires a minimum of 90 days after the plan is submitted. If extensions are requested, the review period may extend to 120 days. If an objection is submitted, the negotiation period may continue another 30 days, or more upon request of both parties.

If the Board is required to adjudicate objections, the Board must provide notice of the hearing. The parties are entitled to such time to prepare for the hearing as is provided by contested case proceedings. The Board may continue the hearing as necessary.

The Board must reach its findings and conclusions within 60 days following the closure of the hearing. The Board must then amend the plan in a manner consistent with its determinations, and must approve the amended plan.

The length of time required for the review and approval of an impact plan depends partly on statutory time constraints and partly on the decisions of the affected parties during the review process. As illustrated in the following table, the timing could range from 90 days to more than 240 days, excluding judicial review.

<b>TIME</b>	<b>ACTIVITY</b>
As Needed	PREPARE and informally review draft impact plan.
90 Days	Submit plan to Board and local governments for formal REVIEW by local governments and the public. Hold Required Public Hearing File Modifications and Objections, if needed
30 Days	EXTENSION OF REVIEW, if requested by local government
30 Days	NEGOTIATE resolution of objections Request extension, if needed Notify Board of outcome of negotiations
As Requested	EXTENSION OF NEGOTIATIONS, as requested jointly by developer and affected local government units
Minimum of 20 Days	If unresolved issues remain, Board works with developer and objecting local government units to clarify the issues in dispute, arrive at the matters Of fact and issues of law upon which the parties agree, and establish the procedures to be followed in discovery, submitting evidence, and providing testimony at the hearing. The Board schedules and provides NOTICE of contested case hearing.
As Needed	Board holds HEARING on objections
0 Days	Board ISSUES FINDINGS of Fact, Conclusions of Law and Order  Based on its determinations, Board AMENDS THE PLAN, if needed
As Needed	Board APPROVES the plan, as amended Board SERVES the amended plan (or the amendments on the affected parties
Within 30 Days of the Approval of the Plan	Developer provides a WRITTEN GUARANTEE TO THE Board and to the Department of Environmental Quality. Board notifies DEQ of

<p>Before Local Governments Incur Impact Costs or Developer Begins Activities Requiring and Requiring an Operating Permit</p>	<p>its receipt of the written guarantee.</p> <p>If taxes are to be prepaid, developer provides an acceptable FINANCIAL GUARNATEE to the Board.</p> <p>Board notifies DEQ that developer has met all requirements for an approved impact plan.</p>
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JUDICIAL APPEAL. Any party to the plan may appeal the Board's determination in the District Court in the county in which the hearing was held. The potential judicial appeal of the Board's determinations does not appear to affect the commencement of activities under the operating permit, except as a result of a court order.

TOTAL TIME ESTIMATE. The total time for review and approval of the impact plan will probably fall within one of the following categories:

- 90 Days
  - Minimum Review Period (beginning the day after the day the plan is received and ending on a day that is neither a holiday nor a weekend.)
  - Assumes no extensions, no objections.
- 120 Days
  - A. Review and 30-Day Review Extension. No objections.
  - B. Review, objections, successful negotiations. No extensions and no adjudication.
- 180 Days
  - Review, no extensions, objections, unsuccessful negotiations, Board hearing, and adjudication; minimal amendments if any.
- 240 Days or More
  - Review, extension, unsuccessful extended negotiations, Board hearing, and adjudication; amendments.

In terms of potential time and expense, it is clearly worthwhile for the affected parties to attempt to resolve as many potential issues as possible before the developer submits the plan for formal review. A summary of the review and approval timeline in a different format follows.

**APPENDIX VI - B**  
**IMPACT PLAN REVIEW CHECKLIST**  
**OF PROCEDURAL POLICIES AND REQUIREMENTS**  
**AND SAMPLE FORMATS FOR REQUIRED NOTICES**

**1. CHECKLIST OF PROCEDURAL POLICIES AND REQUIREMENTS**

The following policies and procedures apply *before* the plan is submitted for review:

- \_\_\_\_\_ **List of Affected Local Government Units and Others.** The Board encourages the mineral developer and the affected county to prepare, as early in the process as possible, a list of the potentially affected local government units, their designated representatives, and others who will be participating in the preparation of the plan and a list of those to whom the plan is to be provided for review and implementation. When the list is ready, the developer should file it with the Hard-Rock Mining Impact Board.
  
- \_\_\_\_\_ **Notification.** The Board requests that the developer provide advance notice to the Board and to the affected local government units of its intention to submit the plan for review, specifying the approximate date of submission.

The following policies and procedures concern the submission of the proposed plan for formal review:

- \_\_\_\_\_ **Submission of Plan.** The developer must submit 12 copies to the Board and a sufficient number of copies to each affected county for distribution and review. [ARM 8.104.204]
  
- \_\_\_\_\_ **Proof of Receipt of Plan by Affected Local Government Units.** The Board will accept as proof of the date of receipt of the impact plan by an affected county a dated receipt, signed by an authorized representative of the county, confirming delivery of the plan by registered mail, hand delivery, or otherwise, or an acknowledged statement by the developer certifying the date of delivery of the plan to the county, or to the county and other individual affected local government units. If the county distributes the plan to the other affected local government units, the county must also provide the Board with a signed, dated receipt from each affected local government unit. [90-6-307(1), MCA; ARM 8.104.204] Attached is a sample verification that the affected local government unit has received the plan.

The following policies and procedures apply after the plan has been submitted for review:

- \_\_\_\_\_ **County's Public Notice That Impact Plan is Available for Review.** After the plan has been received, the governing body of the county must publish notice of its receipt of the

plan in a newspaper of general circulation in the county, specifying where copies of the plan will be available for public review. [90-6-307(1), MCA] The Board asks that the notice appear as soon as possible after the county's receipt of the plan; that the notice appear in large, readable format; that it specify that the county will be holding a public hearing on the plan during the review period; and that it specify the date on which the review period will end. The county is to provide a copy of the published notice to the Board. [90-6-307(1), MCA; ARM 8.104.205] Attached is a sample of the county's public notice that the plan has been submitted and is available for public review.

\_\_\_\_\_ **County's Notice and Public Hearing on Plan.** During the 90-day review period, the governing body of the county must provide notice and hold a public hearing on the proposed impact plan. If impacts are expected in more than one county, the county that is expected to have the greatest impacts must hold the required hearing. [90-6-307(4), MCA] (The other county or counties may also hold hearings, if they wish to do so.) Attached is a sample of the county's notice of its public hearing on the proposed plan.

NOTE: Notice of receipt of the impact plan and notice of the public hearing may be combined.

## 2. PROOF OF RECEIPT OF IMPACT PLAN

When the impact plan is formally submitted for local review, the mineral developer or an authorized representative of the county or recipient local government unit must provide the Board with proof of the date on which the plan is submitted and must verify the number of copies received. [90-6-307, MCA; ARM 8.104.204] The proof of receipt, which may be a statement prepared by the developer, must be dated and signed by the authorized representative of the county or recipient local government unit.

SAMPLE:

### PROOF OF RECEIPT OF IMPACT PLAN

Notice is hereby given to the Hard-Rock Mining Impact Board that on  
    (Date)    , 19    ,     (Name of County or Local Government Unit)     has  
received     (Number of Copies)     copies of the proposed     (Name of Mining  
Project)     Hard-Rock Mining Impact Plan, as submitted by     (Name of  
Mineral Developer)    .

\_\_\_\_\_  
Clerk and Recorder

\_\_\_\_\_  
Recipient County, Montana  
Date:

### 3. PUBLIC NOTICE OF RECEIPT OF IMPACT PLAN

Upon receipt of the plan, the governing body of each affected county must notify the public that the impact plan has been received and is available for review by affected local government units and the public. The notice must be published in a newspaper of general circulation in the county. The Board asks that the public notice be printed in a large, readable format and that it specify where copies are available for public review. The county must submit a copy of the published notice to the Hard-Rock Mining Impact Board.

SAMPLE:

#### PUBLIC NOTICE OF RECEIPT OF IMPACT PLAN

Notice is hereby given that on (Date), 19\_\_, the (Name of Mineral Developer) submitted to (Name of County) County and affected local government units within the County the proposed Hard-Rock Mining Impact Plan for the (Name of Mining Project). The local government review period ends (Date), 19\_\_. The plan is available for public review at the (Locations Where Available). The public may submit its comments about the proposed plan at a public hearing to be held by the County or to the governing body of any affected local government unit.

In providing the Board with a copy of the public notice, the county must attest to the date of its publication:

The above notice was published in the (Name of Newspaper) on (Date of Publication).

Attested to by:

\_\_\_\_\_  
Clerk to the Board of Commissioners  
\_\_\_\_\_ County, Montana

Date: \_\_\_\_\_

#### 4. NOTICE OF PUBLIC HEARING

During the 90-day review period, the governing body of the county must provide public notice and hold a public hearing on the impact plan. The notice must be published in a newspaper of general circulation in the county.

The county must provide the Board with a copy of the notice, attesting to the date and place of its publication.

SAMPLE:

#### NOTICE OF PUBLIC HEARING

On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the Board of Commissioners of \_\_\_\_\_ County received for review the proposed (Name of Project) Hard-Rock Mining Impact Plan, as submitted by the (Mineral Developer) pursuant to the Hard-Rock Mining Impact Act, 90-6-307, MCA. The purpose of the impact plan is to identify the increased need for local government services and facilities resulting from the (Name of Mining Project) and the increased capital, operating and net operating costs to affected local government units. The (Mineral Developer) is to pay to the affected counties, towns, school districts and special districts all increased local government capital and net operating costs resulting from the (Name of Project), as identified in the impact plan. The plan specifies the proposed method and schedule of payment and other commitments of the (Mineral Developer).

In accordance with the Hard-Rock Mining Impact Act, the Board of Commissioners of \_\_\_\_\_ County will conduct a public hearing on the proposed plan at \_\_\_\_\_ o'clock on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at (Location of Hearing).

Interested parties may also submit written questions or comments to the \_\_\_\_\_ County Commissioners at (Address), (City), Montana, (Zip).

The final day for governing bodies of affected local government units to submit modifications or formal objections to the proposed plan is \_\_\_\_\_, 19\_\_\_\_.

## APPENDIX VII

### OBJECTION TO A PROPOSED HARD-ROCK MINING IMPACT PLAN

The governing body of an affected local government unit may file an objection to a proposed impact plan during the formal 90-day review period or, if the governing body has requested a 30-day extension, during an approved extension. The objection must contain the information listed below and may contain additional information, as needed (ARM, Section 8.104.207)

1. a. Date objection is filed.  
b. Final date of review or extension period.
2. Name of mineral developer, proposed mining project and county or counties in which the mineral development will be located.
3. Name(s) of local government unit(s) filing the objection, with the name, address and telephone number of the authorized contact person for each unit.
4. Name(s) local government unit(s) potentially affected by the objection.
5. Elements of the plan that are the subject of the objection; identify pages.
6. *Substance of the objection*, including reasons for making the objection.
7. Relevant data, information, or analysis in support of the objection; when referring to specific elements of the proposed plan, identify pages.
8. Local government unit's recommendation for resolving the disputed issue(s).

*Attach a resolution dated and signed by the governing body of each objecting local government unit confirming that the above statements appropriately reflect its views and concerns.*

*File the signed original and 15 copies with the Hard-Rock Mining Impact Board:*

**Hard-Rock Mining Impact Board  
Montana Department of Commerce  
301 South Park Avenue, P.O. Box 200523  
Helena, MT 59620  
Telephone No. (406) 841-2789 or 841-2782**

*File at least one copy of the objection with each affected local government unit identified in the proposed plan. The Board will forward copies to the developer.*

Refer also to 90-6-307, MCA; ARM 8.104.203 and Arm 8.104.207 through 8.104.209.

**APPENDIX VIII**  
**SAMPLE WRITTEN GUARANTEE OF COMPLIANCE**

The large-scale mineral developer must guarantee in writing to the Hard-Rock Mining Impact Board and to the Department of Environmental Quality that it will meet the increased costs of public services and facilities as specified in the approved impact plan and according to the payment schedule in the plan. [82-4-335, MCA; 90-6-307, MCA]

The developer must submit the written guarantee within 30 days of when the plan is approved. [82-4-335, MCA; 90-6-307, MCA] Some developers have chosen to incorporate the guarantee into the proposed plan, anticipating, presumably, that the approved plan will not differ significantly from the submitted plan. However, if the Board adjudicates an objection to the plan and amends the plan in any way, the developer must also submit a written guarantee of compliance **after** the Board approves the plan.

Following is a sample written guarantee of compliance:

Date: \_\_\_\_\_

Hard-Rock Mining Impact Board  
Montana Department of Commerce  
301 South Park Avenue  
Helena, MT 59601

Dear (Chairman) and Members of the Board:

In accordance with Sections 82-4-335 and 90-6-307, MCA, (the Developer) hereby guarantees to the Hard-Rock Mining Impact Board and to the Department of Environmental that (the Developer) will comply with its financial and other commitments to pay all identified increased capital and net operating costs to affected local government units according to the schedule specified in the approved Hard-Rock Mining Impact Plan for the (Name of Mining Project).

Sincerely,

\_\_\_\_\_  
Signature of Developer

\_\_\_\_\_  
Title

cc: Department of Environmental Quality, Hard-Rock Bureau

## **APPENDIX IX FINANCIAL GUARANTEE REQUIREMENTS**

When an approved impact plan specifies that the mineral developer will make property tax prepayments to meet impact costs, the developer must also provide the Hard-Rock Mining Impact Board with a financial guarantee. The guarantee is made through a third party financial institution and must be acceptable to the Board. [90-6-309(3), MCA]

The purpose of the financial guarantee is to ensure that the tax prepayment commitments in the approved impact plan can be met, regardless of the continued willingness or ability of the developer to meet its commitments. [90-6-301, MCA; 90-6-307(1) and (2), MCA; 90-6-309(3), MCA] The financial guarantee is a safeguard, ensuring that the burden of local government costs resulting from the development and identified in an approved impact plan is not shifted to the local taxpayer. The guarantee ensures that affected local government units will be able to meet financial obligations arising from their good-faith implementation of an approved plan, whether these obligations are incurred because of actual impact needs or anticipated needs identified in the plan. [90-6-301; 90-6-307(1) and (2); and 90-6-309(3), MCA]

Most often, a financial guarantee takes the form of a letter of credit. In one instance, when the few identified impact costs occurred during a brief impact period, an escrow account, subject to specific restrictions, served as the financial guarantee.

The Board has concluded that, at a minimum, a financial guarantee must exhibit the following characteristics or criteria:

1. The financial guarantee must be made through a reputable third-party financial institution in which the developer has no major financial interest.
2. The financial guarantee must cover the total amount of money the developer has committed to prepay at any given time, including all unmet prepayment commitments encompassed by the approved plan, its adjustments or amendments. For the adjustment provisions of an approved plan to work smoothly, the guarantee should provide reasonable additional capacity for the increased prepayments that may result from conditional "if...then" payments or adjustments.
3. The financial guarantee is made by the developer to the Board and only the Board may authorize disbursements of money through the guarantee mechanism. Release of funds or termination of the guarantee must occur

only as established in the guarantee document approved by the Board or upon authorization of the Board.

4. The money provided through the guarantee must be protected from all uses not specified or provided for in an approved impact plan, an approved amendment, or an acknowledged adjustment. (An acknowledged adjustment means that the affected parties have notified the Board in writing that they concur in the specified adjustment and the Board has acknowledged receipt of the written, signed adjustment, confirming that the adjustment is consistent with the terms of the plan and with the criteria for adjustments.)

In the guarantee document, or an accompanying document, both the total amount covered by the guarantee and the amount and purpose of each prepayment specified in the plan must be identified with sufficient clarity that the Board can readily determine that the guarantee corresponds with and is sufficient to all prepayment commitments in the approved impact plan or its amendment.

The financial guarantee must be fully executed before any activities commence under the operating permit or prior to any expense being incurred by an affected local government unit in its implementation of the approved impact plan, whichever occurs first. [82-4-335(5), MCA; 90-6-307(15), MCA; 90-6-309(3), MCA; ARM 8.104.214] The Board will notify the DEQ after approving the financial guarantee. When the financial guarantee is fully executed, the Board will notify DEQ that the impact plan approval process will be complete when the developer executes the financial guarantee.

**APPENDIX IX - A**  
**SAMPLE FINANCIAL GUARANTEES**

**A. LETTER OF CREDIT.** The following sample letter of credit may be modified to fit individual impact plans. The letter of credit, modified as appropriate, may serve as a financial guarantee insuring that tax prepayments will be provided to pay for services and facilities when and where needed according to the impact plan.

**LETTER OF CREDIT**

NAME OF BANK  
MAILING ADDRESS  
CITY, STATE, ZIP CODE

DATE ISSUED: \_\_\_\_\_  
IRREVOCABLE DOCUMENTARY CREDIT NO. \_\_\_\_\_

**BENEFICIARY:**  
Hard-Rock Mining Impact Board  
Montana Department of Commerce  
301 South Park Avenue  
Helena, MT 59601

**APPLICANT:**  
Developer (Corporation) on behalf of  
(Mining Company), (Company Address),  
(City, State, Zip Code)

**EXPIRES ON:** (Date impacts are expected to cease)

We hereby issue in your favor our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ which is available by your drafts drawn on us at sight up to an amount of \$ (Total Amount of Tax Prepayments). Your draft must be accompanied by your signed and dated statement referring to (Bank Name) and (Letter of Credit No. \_\_\_\_\_) as follows:

The undersigned, a duly appointed member of the Hard-Rock Mining Impact Board, acting in his/her official capacity, hereby certifies that: (Mining Company) has failed to pay the Montana Hard-Rock Mining Impact Board the amount of (Tax Prepayment Amount Due) Dollars (\$\_\_\_\_\_), lawful money of the United States for the use and benefit of the governing body of an affected local government unit, the property tax prepayments for expenditures created by the impacts of the large-scale mineral development to be constructed or located within the State of Montana by the (Mining Company), as required by Section 90-6-309, MCA, and by the property tax prepayment schedule contained in the Hard-Rock Mining Impact Plan dated (Date of Plan) prepared by (Mining Company) and approved as of (Plan Approval Date).

A draft from the Board may be presented and negotiated until the above sum is paid, until the Bank has obtained approval from the Board to release this letter, or until the letter terminates on (Specified Date at End of Impact Period), whichever occurs sooner, at which time this obligation will be null and void.

**PARTIAL DRAWINGS ARE PERMITTED**

All drafts must be marked: "drawn under (Name of Bank, Credit No. \_\_\_\_\_)" (indicate the name and date of this Standby Letter of Credit) and the amount drawn will be endorsed by us.

Unless otherwise expressly stated, this Standby Letter of Credit is subject to the Uniform Customs and Practices for Commercial Documentary Credits (1983 Revision) International Chamber of Commerce Publication No. 400. We hereby engage with the drawers, endorsers and bona fide holders of the drafts drawn under and in compliance with the terms of this Standby Letter of Credit that these drafts will be duly honored by the above drawee.

NAME OF BANK

Authorized Signature

Date

**B. ESCROW AGREEMENT.** The following sample escrow agreement may be modified to fit individual impact plans. The escrow agreement, with appropriate modifications, may serve as the required financial guarantee insuring that tax prepayments will be provided to pay for services and facilities when and where needed according to the impact plan.

ESCROW AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, between (Mineral Developer), of (Town), (State), hereafter referred to as (Developer); and (Financial Institution) of (Town), (State), hereafter referred to as (the Bank); and the Montana Hard-Rock Mining Impact Board, an agency of the State of Montana, Helena, Montana, hereafter referred to as "the Board."

WITNESSETH:

WHEREAS, the Developer is developing mineral properties in \_\_\_\_\_ County, Montana, and desires to establish an escrow account with the Bank to comply with the terms and conditions of the Hard-Rock Mining Impact Act, Sections 90-6301, et seq., MCA;

WHEREAS, the Bank agrees to the establishment of the escrow account and to the holding and disbursement of such funds in accordance with the terms of this agreement; and

WHEREAS, the Board has accepted this escrow agreement in satisfaction of the requirement of Section 90-6-309(3), MCA, that a large-scale mineral developer guarantee that property tax prepayments called for by an approved hard-rock mining impact plan, including any approved amendment to the impact plan, will be paid as needed for expenditures created by the impacts of the mineral development.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Establishment of Account. The Developer will deposit in an escrow account with the Bank the sum of (Amount of Tax Prepayment) (\$\_\_\_\_\_), as the initial deposit of impact funds. The fund balance will be reviewed on a quarterly basis, or more frequently if necessary, and the Developer will replenish the fund as required to meet its commitments under the Impact Act. The escrow account will hold funds pledged as tax prepayments (and other commitments for donations and grants).

2. Duration of the Escrow Account. The initial funds will be deposited by the Developer in the escrow account within \_\_\_\_\_ business days of the date the Developer receives its operating permit from the Montana Department of Environmental Quality. The parties estimate that the initial funding date will be approximately \_\_\_\_\_, 19\_\_\_\_. The escrow account will continue to exist until the impact period terminates or until the Developer's tax prepayment commitments specified in the impact plan have been met, whichever is later, as certified by the Board. Before the end of the impact period and before approving the termination of the escrow account, the Board will notify Developer and the affected jurisdictions that the account is to be terminated and that within \_\_\_\_\_ days the affected jurisdictions must notify the Board of any pending claims or anticipated requests for tax prepayments from that account or forfeit the right to receive payment from the account.

3. Fees Paid to the Bank. The Developer agrees to pay the Bank the sum of \$\_\_\_\_\_ as an initial setup charge for the escrow account, and the sum of \$\_\_\_\_\_ for each disbursement made from the escrow account. The Bank will bill the Developer for its services and the Developer will pay the Bank within \_\_\_\_\_ days of the date of invoice.

4. Interest Bearing Account. The escrow account will bear interest and all interest earned thereby will be the property of the Developer and may be withdrawn by the Developer at any time. Otherwise, the Bank will not withhold monies or make payments from the account except as authorized herein for payments to the affected jurisdictions identified in paragraph 5 below made in accordance with the impact plan or as directed by the Board in resolution of disputes, or to the Developer as directed by the Board at such time as the Board determines that the Developer is released from further obligations under this agreement.

5. Affected Jurisdictions. The following governmental and public agencies are eligible to receive tax prepayments or potential prepayments from this account in accordance with the impact plan: (List here the local government units listed in the impact plan. Example below.)

- (a) \_\_\_\_\_ County
- (b) \_\_\_\_\_ Town
- (c) \_\_\_\_\_ High School District #\_\_\_\_
- (d) \_\_\_\_\_ Elementary School District #\_\_\_\_
- (e) \_\_\_\_\_ Elementary School District #\_\_\_\_

6. Maximum Allowable Payments. Each of the affected jurisdictions above is entitled to receive impact assistance payments up to the maximum amount shown below:

(Specific to individual impact plan)

7. Procedures of Distribution of Impact Plan Payment. The following procedures will be followed by the parties for the application and distribution of payments from the escrow account:

- (a) The affected jurisdiction will submit a written request to the Developer with a copy to the Bank and the Board, providing the information specified on the "Request for Payment" form appended to this escrow agreement as Attachment A.
- (b) For each request for an impact payment for which a maximum amount is specified above, the Bank shall make disbursements directly to the County Treasurer, \_\_\_\_\_ County Courthouse, \_\_\_\_\_, Montana, to be deposited in the impact fund of the affected jurisdiction. These payments will be made no sooner than \_\_\_\_\_ days but within \_\_\_\_\_ days of the Bank's receipt of the funding request, except as provided below.
- (c) With \_\_\_\_\_ days of its receipt of a fund request, the Developer may object in writing to the Bank, the Board and the affected jurisdiction, questioning all or a portion of the request. If an objection is made, the Bank will not disburse that portion of the requested payment to which an objection has been made until the Bank has been notified in writing by the Board that the dispute has been resolved by the parties or that a final decision has been made by the Board. The Bank will make payment in resolution of the dispute as is directed by the Board.
- (d) In the event that an affected jurisdiction submits a request for payment for a purpose or an amount that appears not to be authorized by the impact plan, the Developer or the Board may object in writing to all affected parties within \_\_\_\_\_ days of receipt of notice of the payment request. Upon receipt of such an objection, the Bank will withhold the requested payment until it is notified in writing by the Board that the dispute has been resolved by the parties or that a final decision has been made by the Board. The Board will authorize only such impact payments as are specified in or provided for by the impact plan, or an approved amendment to the impact plan.
- (e) When any payment is made by the Bank to an affected jurisdiction, the Bank will notify the Developer and the Board of the payment, providing the information specified on the "Payment" form appended to this escrow agreement as Attachment B.

8. Notices. Any notices required to be given pursuant to the terms of this agreement will be delivered personally or mailed by first class mail, postage prepaid, to the parties at the following addresses:

- (a) Developer (Name and Address)
- (b) Bank Representative (Name and Address)
- (c) Administrative Officer, Hard-Rock Mining Impact Board, Montana Department of Commerce, 301 South Park Avenue, P. O. Box 200523, Helena, MT 59620.

9. The Bank's Duties. In performing its duties under this escrow agreement, the Bank's liabilities and responsibilities will be limited and defined as follows:

- (a) The Bank need not inquire into the authorization, execution, genuineness, accuracy, validity, legality or binding effect of any notices delivered to it pursuant to this escrow agreement, so long as such document appears on its face to meet any requirements set forth in this escrow agreement, and purports to be signed by a proper person identified in the appended list of authorized signatures.
- (b) The Bank may employ attorneys for the reasonable protection of this escrow agreement and itself. Should the Bank be made a defendant in any suit by any party to this escrow agreement, or any other party, the cost of such suit, including attorney's fees, may be received from the Developer.

10. Amendment or Termination. This agreement may be amended or terminated only upon the written consent of the three parties hereto and as provided in paragraph 2. The Developer hereby acknowledges that if, for any reason, this agreement fails to guarantee adequately the tax prepayments required of the Developer under the impact plan or its approved amendment, the Developer remains responsible for making these payments under Section 90-6-307, MCA.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

DEVELOPER

BY: \_\_\_\_\_

Title: \_\_\_\_\_

BANK

BY: \_\_\_\_\_

Title: \_\_\_\_\_

HARD-ROCK MINING IMPACT BOARD

BY: \_\_\_\_\_

Board Chairman

**APPENDIX X  
SAMPLE BUDGET:  
STILLWATER COUNTY IMPACT YEAR 2  
  
(under construction)**



## APPENDIX XI

### IMPACT PLAN PAYMENT PROCEDURES

Following is a more detailed explanation of the procedures and documentation requirements for making and receiving impact payments as specified in an approved impact plan. [See 90-6-307(3), (10), and (12) and 90-6-323, MCA; ARM 8.104.211 and 8.104.215.]

The governing body of each local government unit that will be receiving impact payments must create an **impact fund** and must budget for the receipt and expenditure of impact payments. The impact fund budget may be adopted as an amendment to the regular budget by majority vote of the governing body. [90-6-307(10) and 90-6-323, MCA; ARM 8.104.211] The impact fund consists of line items that correspond to expenditure categories for similar services that are provided through the regular funds of the local government unit (such as, general fund, road fund, bridge fund, library fund). In accounting terms, a tax prepayment is treated as a deficit in the corresponding fund, because, subject to certain conditions, the prepayment constitutes a debt which, within the limits established by the Act, must be repaid from potential tax revenues that would otherwise be credited to that fund. [90-6-309(4) and (5), MCA; ARM 8.104.215]

If impact payments will include prepaid property taxes, the county treasurer must maintain the impact fund, because property taxes must be paid to the county treasurer. The county treasurer credits all impact payments to the impact fund of the appropriate local government unit and, within the impact fund, distinguishes tax prepayments from grants or contributions, for purposes of tax crediting.

If an incorporated city or town is to receive *only* grants or contributions, the plan may provide for the city or town treasurer to maintain the municipality's impact fund. However, if the city or town will be receiving tax prepayments, the county treasurer must maintain the impact fund.

Impact payments may be made directly to the affected local government unit or through the Board, whichever is specified in the plan. [90-6-304(1), MCA; 90-6-307(10), MCA] A payment made to an affected local government unit may, in fact, be paid to the county treasurer of the county in which the local government unit is located, to be deposited to the impact fund of the appropriate local government unit. If payments are made through the Board, the Board will transmit each payment to the county treasurer to be deposited to the impact fund of the appropriate local government unit.

Whether the developer makes impact payments through the Board, directly to the affected local government units, or to the county treasurer for the local government unit, the following documentation must be sent to the Board, as noted below:

- A. **Local Governing Body: Impact Fund Budget and Resolution.** As noted above, the affected governing body must create an impact fund and must budget for the receipt and expenditure of impact payments. Each fiscal year during which impact payments are to be expended, *the local governing body must provide the Board with a copy of the impact fund budget and a copy of the signed resolution by which the governing body has adopted the impact budget.*
- B. **County Governing Body: Request Tax Prepayments.** After the developer has received permission to begin activities under the operating permit, the governing body of the county is to request that the developer make tax prepayments as specified in the impact plan. [90-6-309(1), MCA] This request is made on behalf of all affected local government units entitled to receive prepayments. *The county is to send a copy of the general tax prepayment request to the Board.* This request often signals the beginning of the implementation of the impact plan, particularly when there has been a delay between the approval of the plan and the construction of the mining project.
- C. **Local Governing Body: Request Impact Payments.** For the most part, each affected local governing body must request individual impact payments in writing from the developer. [90-6-309(2), MCA] Each request must be consistent with the financial commitment, conditions and impact payment schedule specified in the approved impact plan. The affected governing body must specifically request each tax prepayment provided for by the plan, but, unless the plan provides otherwise, the governing body may make a one-time request for annual or recurring grant payments, asking the developer to make all future grant payments according to the payment schedule.

*Each payment request from the affected local governing body must be made in writing to the developer with a copy of the signed request to the Board. The request must be signed by the governing body or its designated representative, such as the county treasurer.*

A sample payment request form is provided in Appendix XI-B. The completed form or a letter of transmittal must accompany each request for payment, transmittal of payment, or receipt of payment and must include the following:

1. name of developer;
2. date of request, transmittal or receipt;
3. name of recipient local government unit;
4. amount, purpose, and type of payment (i.e., grant, tax prepayment, or other type of payment as specified in the plan); and

5. citation of the page or pages in the text of the plan on which the payment is specified or citation of the payment as it appears in the impact payment schedule. [90-6-307(10), (11) and (12), MCA]

D. **Local Governing Body Verification of Intention to Provide Service.** If payment is made through the Board, the request for payment must be accompanied by a letter from the governing body which:

1. certifies that the local government unit is providing or is preparing to provide the service or facility for which payment is being requested; and
2. specifies the date on which it anticipates the service or facility will be made available. If there will be multiple payments for a single purpose, the information needs to be provided only with the initial payment request each fiscal year, but should be updated if changes occur. [90-6-307(10) and (12), MCA]

E. **Developer: Impact Payments.** The developer makes each payment upon receipt of the request from the local government unit, pursuant to the payment schedule in the plan or within the time frame established in the impact plan. (For example, one plan provides that certain conditional payments will be made within 90 days of when the local government notifies the developer that the "triggering" circumstance has occurred.)

1. **Payment Check and Developer's Letter of Transmittal to Board, Copy to Local Government Unit.** *If payment is made through the Board, the developer must send both the payment check and a letter of transmittal or completed payment form to the Board with a copy to the affected local governing body.* The payment check is to be made out to the Hard-Rock Mining Impact Board and should refer to the pass-through subaccount number assigned by the Board. [90-6-304(1), MCA; 90-6-307(10), MCA] Several impact payments may be included in a single check, provided that the letter of transmittal or payment forms includes the required information for each payment.
2. **Payment Check and Developer's Letter of Transmittal to Local Government Unit/County Treasurer, Copy to Board.** To send a tax prepayment to the affected local government unit or, on its behalf, to the county treasurer, the developer must send *both the check and a copy of a letter of transmittal.* In addition to the information specified above or on the payment form, the letter must request the county treasurer to credit the impact payment to the impact fund of the appropriate local government unit. *The developer must send the original of the letter of transmittal to the*

*governing body of the affected local government unit and a copy to the Board.* [90-6-307(10) and (11), MCA]

- F. **Local Governing Body/County Treasurer: Notify Board of Receipt of Payment.** The local governing body or the county treasurer must provide the Board with a notice of receipt for each payment received from the developer. [90-6-307(10) and (11), MCA] The notice must include the transmittal information cited above and may consist of a copy of the developer's letter of transmittal, marked "received" and signed and dated by the treasurer. [90-6-307(10), MCA]

If the requested or actual impact payment differs in amount, kind, or timing from what is required by the plan, the Board should be notified of this difference through the developer's letter of transmittal, the treasurer's notice of receipt, or a letter from the governing body. The notification should explain what was required by the plan, what was requested by the local government unit, how the payment differs from the plan or the request, and, if possible, the reason for the difference. *Unless the plan is adjusted or amended, the developer and affected local government units are bound by their commitments in the plan.*

The purpose of the procedure outlined above is to comply with the requirements of statute and to ensure that accurate records of impact payments are available to the affected local government units, the developer and the Board. In some instances, the Board may agree to modify the payment procedure in order to facilitate implementation of an impact plan, provided that it receives all documentation required by statute. At times, the specific provisions of the plan may cause the Board to require additional documentation, as well. An example is given below:

In an impact plan the developer makes several commitments to a rural fire district. The developer will provide a grant within the first 90 days of Impact Year I for the purchase of additional equipment. In addition, the developer and the district trustees agree to a *memorandum of understanding or mutual aid agreement*, which they will review annually and revise or renew as needed. The purpose of the mutual aid agreement is to define respective responsibilities for training fire fighting personnel and emergency medical technicians, for making equipment available, and for providing fire protection for surface structures at the mine site and within the fire district. The agreement identifies the scope of assistance and circumstances under which the developer will provide equipment or fire fighting assistance away from the mine site; the scope of services and conditions under which the district will provide assistance at the mine site; other assistance from the developer that will help the district provide additional services

identified in the plan or specified in the agreement; and the method of calculating reimbursement for the actual cost of certain fire fighting services provided by the district on behalf of the developer or as a result of the development. In addition, as specified in both the plan and the mutual aid agreement, the developer commits to making an annual grant to the district of \$1,000 for its increased training and operating expenses.

Pursuant to the plan and the agreement, the district will request impact payments. The letter requesting each payment will show that the request is consistent with both the agreement and the impact plan. Each impact year, with the first copy of a payment request sent to the Board, the district, in addition to citing the appropriate reference in the impact plan, will either attach a copy of the current mutual aid agreement or will notify the Board in writing that the terms of the agreement are unchanged from the previous year.

In effect, the memorandum of understanding, or mutual aid agreement, becomes part of the approved impact plan and changes to the agreement are either adjustments or amendments to the plan, depending on the language of the plan and the agreement.

The Board's staff is available to assist the mineral developer and the affected local government units in establishing an efficient payment process that is consistent with the requirements of statute and the provisions of the approved plan.



**B. DEVELOPER'S IMPACT PAYMENT**

**When an impact payment is made, a copy of the information specified above must be sent to the Hard-Rock Mining Impact Board, Department of Commerce, 301 South Park Avenue P. O. Box 200523, Helena, Montana 59620.**

**Developer:** Please provide the following information when making a payment as provided in an approved impact plan.

- 1. Date payment request was received: \_\_\_\_\_
- 2. Date payment was made: \_\_\_\_\_
- 3. a. Amount requested: \$ \_\_\_\_\_  
b. Amount authorized by Plan: \$ \_\_\_\_\_  
c. Amount of current payment: \$ \_\_\_\_\_
- 4. Form of payment (i.e. tax prepayment, grant, etc.): \_\_\_\_\_
- 5. Page or payment citation in Plan or in impact payment schedule: \_\_\_\_\_
- 6. Purpose of payment (as specified in the approved impact plan):  
\_\_\_\_\_  
\_\_\_\_\_

Signature(s) of designated representative(s) of the developer:  
\_\_\_\_\_

**C. LOCAL GOVERNMENT'S RECEIPT OF PAYMENT**

**When an impact payment is received, a copy of the information specified above must be sent to the Hard-Rock Mining Impact Board, Department of Commerce, 301 South Park Avenue, P. O. Box 200523, Helena, Montana 59620.**

**Governing Body or County Treasurer:** Please provide the following information upon receipt of a payment in compliance with an approved impact plan.

- 1. Date payment received: \_\_\_\_\_
- 2. Amount received: \$ \_\_\_\_\_
- 3. Amount requested: \$ \_\_\_\_\_
- 4. Amount authorized by Plan: \$ \_\_\_\_\_
- 5. Form of payment (i.e., tax prepayment, grant, etc.): \_\_\_\_\_
- 6. Page or payment citation in Plan or in impact payment schedule: \_\_\_\_\_
- 7. Purpose of payment (as specified in the approved impact plan):  
\_\_\_\_\_  
\_\_\_\_\_

Signature of governing body, county treasurer or other designated local government representative: \_\_\_\_\_

## **APPENDIX XII TAX PREPAYMENT AND TAX CREDITING**

### **INTRODUCTION**

The Hard-Rock Mining Impact Act authorizes the developer of a new large-scale hard-rock mine to **prepay property taxes to meet increased local government costs resulting from the mineral development.** [90-6-307(2), MCA; 90-6-309, MCA] Typically, the developer prepays taxes when revenue resulting from the mineral development is less than increased costs for services and facilities normally supported by property tax revenues. Tax prepayment and tax crediting apply only to the taxable property of the mineral developer. Unlike tax base sharing, tax prepayment and crediting do not affect contractors and subcontractors at the mine site.

**Governing Bodies Request Prepayments.** After the Department of Environmental Quality has issued the mine's operating permit, the governing body of the county initiates the prepayment of taxes by requesting the developer to prepay taxes as specified in the approved impact plan. [90-6-309(1), MCA] Then, the governing body of each affected local government unit requests its individual prepayments, as provided by the plan. [90-6-309(2), MCA] The developer either sends tax prepayments to the county treasurer on behalf of the affected local government unit or transmits the payments through the Board, whichever the plan specifies. [90-6-307(10), MCA]

**County Treasurer Credits Prepayments to Impact Fund.** The county treasurer credits each tax prepayment to the impact fund of the appropriate local government unit to be used as stipulated by the impact plan. [90-6-307(1), (2), and (10), MCA; ARM 8.104.211] The impact fund consists of line items that correspond to expenditure categories for similar services that are provided through the regular funds of the local government unit (such as, general fund, road fund, bridge fund, library fund). In accounting terms, a tax prepayment is treated as a deficit in the corresponding fund, because, subject to certain conditions, the prepayment constitutes a debt which must be repaid from potential tax revenues that would otherwise be credited to that fund. [90-6-309(4) and (5), MCA; ARM 8.104.211 and 8.104.215]

**Governing Body Calculates and Provides for Tax Credits During Budget Process.** As part of the annual budget process beginning the year after the mine starts production, the governing body of each local government unit that has received a tax prepayment must, *in the manner specified in the impact plan*, calculate and, if applicable, provide the tax credit due from the corresponding fund. [90-6-309(4) and (5), MCA; ARM 8.104.215] Tax credits occur after the taxable valuation of the mineral development has increased sufficiently to enable the local government unit to meet increased costs resulting from the development. [90-6-301, MCA; 90-6-307(1) and (2), MCA]

**Statutory Constraints to Tax Crediting.** The Impact Act imposes certain limitations on the provision of tax credits. A tax credit must not exceed the tax obligation of the developer for the fiscal year in which the credit is given and must not have the effect of shifting the increased costs over time to the non-developer local taxpayer. [90-6-301, MCA; 90-6-307(1) and (2), MCA; 90-6-309(5), MCA; ARM 8.104.215] The provision of tax credits is limited to the productive life of the mine, except for plans submitted prior to July 1, 1985, in which case tax crediting terminates 10 years after the prepayment was made. [90-6-309(5), MCA]

**Factors That May Affect Tax Prepayments and Tax Crediting.** Several variables may affect the prepayment and crediting of taxes, including actual taxable valuation that differs from projected taxable valuation; modifications to the tax base sharing formula, either as provided by statute or as provided by the plan itself; changes in county, school district or municipal classifications that increase service requirements or costs or alter mill levy limits; and legislative actions affecting local property taxation, mill levy limits, revenue sources and budgeting. Because external events may affect costs, prepayments and credits, the parties to the plan may want to specify in the plan the conditions or circumstances that will allow them to amend their plan's tax prepayment and tax crediting provisions. [90-6-307(6) last sentence; 90-6-309(4) and (5); 90-6-311(1); 90-6-404(2) through (5); and 90-6-405, MCA]

**Method of Providing Tax Credits Differs Before and After July 1, 1985.** Unless otherwise amended, impact plans submitted prior to July 1, 1985 are subject to the statutory tax crediting formula contained in the Impact Act as amended in 1983, which specifies how tax credits will be calculated and requires that taxes be credited by reducing the taxable valuation of the developer. Plans submitted on or after July 1, 1985 are subject to the Act as amended in 1985 and thereafter. The 1985 amendment does not allow the reduction of taxable valuation. Instead, it requires dollar-for-dollar tax crediting from potential tax payments. It also enables the parties to a plan to establish their own procedure, or to modify the 1983 formula, for calculating tax credits, as long as tax crediting is consistent with other budgeting, accounting and statutory requirements.

Under the pre-1985 statute a tax credit would be due if the local government unit could meet its budget needs, both impact and non-impact, at a mill levy that would be lower than the three year average mill levy prior to the commencement of mining and if, at the historic mill levy, the property tax revenue from the mineral developer would exceed increased costs resulting from the mineral development. Under the 1985 statute a tax credit might or might not be due in that situation, depending on the provisions of the plan itself.

While the pre-1985 statute specifies the method of calculating and providing a tax credit and limits the tax crediting obligation of the local government unit to 10 years after the prepayment was made, the 1985 statute, by contrast, provides that the plan will specify

the manner of calculating tax credits and extends the tax crediting obligation of the local government unit until the credit is paid in full or until the end of the productive life of the mine, whichever occurs first. [90-6-309(5), MCA] Under the 1985 statute, therefore, the parties to the plan could choose to allow for some reduction in historic mill levies during the tax crediting period while extending tax crediting over a longer period of time.

The 1985 amendment does not affect the purposes of the Impact Act nor change the basic principles underlying the provision of tax prepayments and tax credits.

Both the current and the pre-1985 tax prepayment and crediting statutes are presented below, with a discussion of the procedures for calculating and providing tax credits. [Section 90-6-309, MCA] In the statutes "Board" refers to the Hard-Rock Mining Impact Board. Tax prepayment and crediting are also discussed in Chapters II and IV of the Guide and in the Board's administrative rules. [ARM 8.104.211 and 8.104.215]

## **STATUTORY REQUIREMENTS FOR PLANS APPROVED AFTER JULY 1, 1985**

**90-6-309. Tax prepayment -- large-scale mineral development. (1) After permission to commence operation is granted by the appropriate governmental agency, and upon request of the governing body of a county in which a facility is to be located, a person intending to construct or locate a large-scale mineral development in this state shall prepay property taxes as specified in the impact plan. This prepayment shall exclude the 6-mill university levy established under 20-25-423 and may exclude the mandatory county levies for the school BASE funding program established in 20-9-331 and 20-9-333.**

**(2) The person who is to prepay under this section shall not be obligated to prepay the entire amount established in subsection (1) at one time. Upon request of the governing body of an affected local government unit, the person shall prepay the amount shown to be needed from time to time as determined by the board.**

**(3) The person who is to prepay shall guarantee to the hard-rock mining impact board, through an appropriate financial institution, as may be required by the board, that property tax prepayments will be paid as needed for expenditures created by the impacts of the large-scale mineral development.**

**(4) When the mineral development facilities are completed and assessed by the department of revenue, they shall be subject during**

**the first 3 years and thereafter to taxation as all other property similarly situated, except that in each year after the start of production, the local government unit that received a property tax prepayment shall provide for repayment of prepaid property taxes in accordance with subsection (5).**

**(5) A local government unit that received all or a portion of the property tax prepayment under this section shall provide for tax crediting as specified in the impact plan. The tax credit allowed in any year may not, however, exceed the tax obligation of the developer for that year, and the time period for tax crediting is limited to the productive life of the mining operation.**

**History: Enc. Sec. 10, Ch. 617, L. 1981; amd. Sec. 4, Ch. 489, L. 1983; amd. Sec. 6, Ch. 582, L. 1985.**

In section 90-6-309, MCA, the Impact Act refers to certain events that occur during the development of a mine: "commence operation" and "start of production." Plans submitted after June, 1985, should define these terms, as discussed in Appendix II. The developer must notify the Board and the affected local government units within 30 days of when each event occurs. If a plan does not otherwise define these terms, the following definitions will apply:

1. As used in section 90-6-309, MCA, "commence operation" means the date on which the developer initiates the first on-site disturbance related to the development and construction of the mine and associated milling facility under an operating permit issued by the Department of Environmental Quality.
2. As used in section 90-6-309(4), MCA, "start of production" and as used in 90-6-309(5), MCA, prior to July 1, 1985, "commencement of mining" both mean the date on which the first ore is removed from the mine and transported to the mill for processing.

**STATUTORY REQUIREMENTS  
FOR PLANS APPROVED PRIOR TO JULY 1, 1985**

Prior to July 1, 1985, subsection 90-6-309(5), MCA read as follows:

**(5) A local government that received all or a portion of the property tax prepayment under this subsection shall provide for repayment according to the following procedure:**

**(a) In each year after the commencement of mining, the local government shall:**

**(i) divide its budget by the average mill levy of its jurisdiction during the 3 years immediately preceding commencement of mining operations, to arrive at a taxable valuation needed to fund its budget using the average 3-year mill levy;**

**(ii) reduce the taxable valuation of property of a person who prepaid property taxes by the excess, if any, of the total taxable value of the taxing jurisdiction including the person's property over the taxable value determined under subsection (5)(a)(i), but in no case by an amount greater than the taxable value of the person's property.**

**(b) The reduction in taxable value, if any, determined under subsection (5)(a)(ii) times the average mill levy used in subsection (5)(a)(i) equals the property tax prepayment credit allowed for the taxable year for that local government unit. Any local government unit not receiving a payment shall not be affected by this section, and no reduction in value shall be used in the computation of taxes due that unit of local government. In no event shall the credit allowed under this part extend more than 10 years beyond the date the prepayment is made under this section.**

**(c) The procedure established under subsection (5)(b) shall continue from year to year until the total credit allowed the person who prepaid property taxes equals the total property taxes prepaid.**

For impact plans submitted prior to July 1, 1985, for purposes of 90-6-309(5), MCA, "commencement of mining" and "commencement of mining operations" refer to the date on which the developer initiates the first on-site disturbance related to the development and construction of the mine or associated milling facility under an operating permit issued by the Department of Environmental Quality.

The local government unit calculates its average mill levy for the three fiscal years preceding the fiscal year in which "commencement of mining operations" occurs. The relevant three years and average mill levy are calculated as follows:

The local government fiscal year during which the developer commences mining operations under the permit is the Base Year. (Again, the local government fiscal year begins on July 1.)

The fiscal year preceding the Base Year is Year 1. For example, if "commencement of mining operations" occurs between July 1, 1987 and June 30, 1988, FY 88 is the Base Year, FY 87 is Year 1, FY 86 is Year 2 and FY 85 is Year 3 preceding the Base Year.

Add the mill levies for the appropriate fund for FY 87, FY 86 and FY 85. Divide the total by 3. The resulting amount is the average or base mill levy for that fund for purposes of calculating tax credits under 90-6-309, MCA.

## **CALCULATING TAX CREDITS**

The local government unit begins calculating tax credits in the calendar year following the year when the mine starts production. The sequence of events is:

1. Calendar Year I - The mine starts production.
2. Calendar Year II - In January the Department of Revenue assesses the mining property.
3. Calendar Year II (late spring and summer) - The local governing body prepares its budget for the new fiscal year and calculates how much, if any, tax credit will be due.

The local government fiscal year begins on July 1. The fiscal year for which the budget is being prepared encompasses the second half of Calendar Year II and the first half of Calendar Year III. Mill levies are to be set by mid-August. Property tax payments for that fiscal year are due in November of Calendar Year II and in May of Calendar Year III.

Two sample tax crediting procedures are attached. For tax crediting purposes, "budget" refers to that portion of each fund's total budget which is financed through property taxes. Typically, this means the total budget less reserves, non-tax revenues and intergovernmental transfers.

Stillwater County was the first local government unit to attempt tax crediting, using the 1983 statutory formula. The County developed a tax crediting procedure that integrates

well with the usual county assessment, budgeting and taxation processes. A modified version of their procedure is outlined below. It does not show the calculations the governing body made to ensure that the increased costs resulting from the development would be covered by the budget and mill levy after the tax credit. Up to the point of calculating the reduction in taxable valuation, the Stillwater procedure appears usable for local governments units and impact plans operating under the 1985 amendment.

The second sample procedure also appears to be consistent with the purpose and requirements of the Act, appropriate to plans submitted after July 1, 1985, and compatible with local government budgeting and accounting requirements.

In any calculation of tax credits, the governing body needs to take into account the requirements and constraints imposed by statute or rule, including the fundamental principle that tax credits must not have the effect of shifting the increased costs over time to the non-developer taxpayer, and, if applicable, the criteria and methods specified in the plan.

## **SEQUENCE OF ASSESSMENTS, BUDGETS AND TAX NOTICES**

The following annual schedule of assessments, budgets and tax notices will be relevant to the calculation and provision of tax credits:

January of each year: Department of Revenue assesses mining property.

By July 1st of each year: County Assessor sends assessment notices to all property owners.

By the second Monday in July each year: County Assessor sets the taxable valuation.

By the first Monday after the first Wednesday in August each year, the governing body sets the final budget. As soon as possible after setting the budget, and no later than September first, the governing body notifies the County Assessor how much tax credit (or reduction in taxable valuation) is to be given by fund.

In October each year (unless delayed): the County Treasurer sends out individual tax statement.

**ATTACHMENT A**  
**SAMPLE TAX CREDITING PROCEDURE # 1**

(Modified from Stillwater County's approach using the 1983 formula.)

Each year following the year in which the mine starts production, the governing body of each local government unit that received prepaid taxes from the mineral developer must calculate how much, if any, tax credit is due in that fiscal year.

The following sample procedure for calculating tax credits parallels a county's normal budgeting process and uses the three-year average mill levy as the basis for its calculations. This procedure assumes the governing body understands how to apply the constraints associated with prepayment and tax crediting.

All impact payments are made into the impact fund. Each payment is for a service that would otherwise be paid for from a corresponding fund in the regular budget: general fund, library fund, road fund, and so forth. The three-year average mill levy and tax credits are calculated on a fund by fund basis.

In any given fiscal year, no tax credit is due from a fund that supports a service for which a net operating cost exists; similarly, no tax credit is provided that would create a net operating cost.

Following is a procedure for calculating and providing tax credits in a manner consistent with the 1983 Impact Act. Refer to the accompanying tax crediting chart, Attachment A-1.

- A. Calculate the three year average mill levy separately for each fund that corresponds to a service for which a tax prepayment was made.

List the affected County Funds:

General Fund  
Road Fund  
Bridge Fund  
Poor Fund  
Library Fund  
District Court Fund  
Mental Health Fund

Commencement of Mining Operations: 1986

3-Year Average Calculated for Budget Years: 1983, 1984, 1985

Add the mill levies for the fund for each of the three years. Divide by three. The result is the three year average mill levy, or base mill levy for purposes of crediting prepaid taxes as provided by the Impact Act.

- B. For each fund, determine the total budget for the coming fiscal year.
- C. From the total budget, subtract cash-on-hand and non-property tax revenue, as identified in column 7 of the tax levy requirement schedule, to arrive at the portion of the budget financed through property taxes.
- D. Divide the property tax budget, as determined above, by the three year average mill levy to determine the taxable valuation necessary to maintain services.

NOTE: If the three year average mill levy exceeds the statutory mill levy limit, use the statutory limit in making this calculation and the calculations below.

- E. 1. Subtract the amount in D from the total taxable valuation of the taxing jurisdiction.

If the total taxable valuation is less than D, no tax credit is due.

- 2. As a cross-check, you may also wish to divide the increased costs attributed to the mineral development by the three year average mill levy (or statutory limit, if that is less) to determine the base valuation the development will need to maintain in order to meet increased costs. If the actual valuation is less than the base valuation, no tax credit is due. A tax prepayment may be needed, unless non-tax revenue resulting from the development is sufficient to make up the difference, so that there is no net operating cost. If the actual valuation of the development is greater than the base valuation, a tax credit may be due, provided that the total taxable valuation exceeds D (the amount necessary to maintain services at the base mill levy).

- F. If the total taxable valuation exceeds D (the amount necessary to maintain services at the base mill levy) [and if, as a cross-check, the valuation of the mineral development exceeds the base valuation identified in E-2], reduce the taxable valuation of the property of the developer for which taxes were prepaid by the amount of the "excess," but not by an amount greater than the taxable valuation of the property. (NOTE: the mineral developer prepays taxes pertaining

only to its own property; tax prepayments and credits do not involve mineral development property belonging to contractors or subcontractors.)

- G. The reduction in taxable valuation times the three-year average mill levy (or statutory limit, if applicable) equals the tax credit allowed for that fund for that tax year.
- H. After the final budget is set and well before individual tax statements must be sent out, the governing body must notify the County Assessor of the amount of tax credit by fund. This should be done before September 1st of each year.

**ATTACHMENT B  
SAMPLE TAX CREDITING PROCEDURE # 2**

- A. List tax crediting criteria and policies, as provided in the plan.
- B. Calculate the average mill levy for the three years prior to the commencement of mining activity under the operating permit. Adjust for special circumstances, if necessary, to arrive at an acceptable base mill levy unrelated to mining activity.
- C. Using the following data and steps, calculate tax credits by fund and by fiscal year. Refer to the accompanying tax crediting sheet, Attachment B-1:
  - 1. Tax prepayment. Identify from plan and from monitoring.

NOTE: No tax credit is due from a fund in a year in which a tax prepayment is owed for increased services financed by that fund.

- 2. Development related increased costs. Identify from plan and from monitoring.
- 3. Development related increased non-tax revenue. Identify from plan and from monitoring.
- 4. Development related tax revenue needed to pay net costs: (4) = (2) - (3) - (1).
- 5. Property tax revenue budget. From budget sheet: total budget for fund less non-tax revenue, intergovernmental transfers, and prior year revenues (reserves).
- 6. Total taxable valuation. From Department of Revenue, county assessor.
- 7. Mill levy: (5)                       $\square$  (6) = (7).

NOTE: If the potential mill levy exceeds the three-year average or base mill levy, an adjustment may be necessary. See item (11) below.

- 8. Developer's taxable valuation. From Department of Revenue, county assessor. Assessment date is January 1.

9. Developer's potential tax obligation:  $(7) \times (8) = (9)$ .

NOTE: (a) Increased costs are being met if:

$$(9) = (4), \text{ and} \\ (9) + (1) + (3) = (2)$$

(b) An additional tax prepayment may be needed if

$$(9) \text{ is less than } (4), \text{ and} \\ (9) + (1) + (3) \text{ is less than } (2)$$

(c) A tax credit is due if:

$$(9) \text{ is greater than } (4), \text{ and} \\ (9) + (1) + (3) \text{ is greater than } (2)$$

10. Developer's tax credit, depending on the plan's tax crediting policies, may be either:

a. Eligible tax credit =  $(9) - (4)$ ; or

b. Adjusted tax credit =  $[(9) - (4)] \times \_\_ \%$ .

11. Developer's adjusted tax obligation:  $(9) - (10) = (11)$ .

12. Developer's adjusted tax prepayment, if any. An additional tax prepayment may be needed as indicated by (9)(b) or if the mill levy (7) is greater than the base mill levy. The amount of additional tax prepayment can be calculated as follows:

a. If 9(b) indicates the need for an additional tax prepayment:  
 $(2) - [(9) + (3) + (1)] =$  the amount of the prepayment needed.

b. If the potential mill levy (7) exceeds the base mill levy, determine how much, if any, of this excess is a result of the mineral development:

(a) Non-mining related property tax budget:  $(a) = (5) - (4)$ .

(b) Adjusted mill levy:  $(b) = (a) \times \frac{(7)}{(8)}$   
Replace (7) with the adjusted mill levy (b), and recalculate the subsequent steps.

(c) Additional tax prepayment. If increased costs resulting from the development are to be paid by increased revenues resulting from the development  $(9) + (3) + (1)$  should =  $(2)$ . If  $(9) + (3) + (1)$  is less than  $(2)$ , an additional tax prepayment may be needed. The amount of the additional prepayment =  $(2) - [(9) + (3) + (1)]$ . A tax prepayment that was not projected by the impact plan requires an adjustment or an amendment to the impact plan.

13. Remaining credits due. Running total of remaining credits due = total of all tax prepayments less total of all tax credits.

D. After the final budget is set and well before individual tax statements must be sent out, the governing body must notify the County Assessor of the amount of tax credit by fund. This should be done before September 1st of each year.

**NOTES:**

1. If the potential mill levy is greater than the base mill levy (or the statutory mill levy limit), whichever is less, refer to instructions for (11).
2. Does  $(9) = (4)$  and do  $(9) + (3) + (1) = (2)$ ? If not, see instructions for (9) and (12).
3. If (10) exceeds (13) from the previous fiscal year, use (13) from the previous fiscal year in place of (10).

See tax crediting policies, Attachment C. (10) may equal  $(9) - (4)$  times a percentage established in the tax crediting policies, criteria and procedures contained in the impact plan.

4. An additional tax prepayment must be authorized through an adjustment or amendment to the impact plan.

## **ATTACHMENT C**

### **SAMPLE TAX CREDITING POLICIES**

Beginning the year following the year in which the mine begins production, the governing body will calculate and provide tax credits in a manner consistent with the purpose and requirements of the Hard-Rock Mining Impact Act and the policies, criteria and requirements of this impact plan.

Requirements include:

A tax credit must be provided from the fund that corresponds to the service for which the tax was prepaid.

A tax credit is not due from the corresponding fund in a year in which a tax prepayment is owed for services ordinarily financed from that fund.

In any given year, the tax credit may not exceed the developer's tax obligation for that year.

The governing body need not provide a tax credit if the credit will have the effect of shifting the increased cost resulting from the development over time to the non-developer taxpayer.

Tax crediting is limited to the productive life of the mine.

Tax crediting criteria and policies should be specified in the impact plan. Policies might include considerations such as the following:

In calculating tax credits, the governing body may take into account the effect of inflation on current costs attributable to the mineral development to ensure that the tax credit does not have the effect of shifting current costs resulting from the development onto the non-developer taxpayer.

Based on calculations using the tax crediting procedure outlined in Attachment B to Appendix XII, each year the governing body may credit the developer with [specified percentage] of the potential tax credit identified in column (10). (Spreading credits out over more years of the mine's life will both accelerate and "even out" the mineral development's beneficial impact on the local tax base. However, any such percentage should be calculated in a way that ensures that, barring other constraints, all prepaid taxes will be credited to the developer during the anticipated productive life of the mine.)

# APPENDIX XIII IMPLEMENTATION OF THE PROPERTY TAX BASE SHARING ACT

## INTRODUCTION

All real property in the State is located in at least three major local government taxing jurisdictions: a county, a high school district and an elementary school district. The property may also be located in, and taxed by, an incorporated city or town or one or more special purpose districts, such as a rural fire district or a county water or sewer district. The governing body of each local government unit sets its own budget and applies its mill levy to the taxable valuation of all property within its taxing jurisdiction.

Under the Hard-Rock Mining Impact Act, the developer of each proposed large-scale mineral development in the State must prepare an impact plan that identifies the increased cost to local government units for services and facilities that will be needed as a result of the mineral development. [90-6-307, MCA] These increased costs may occur in the taxing jurisdictions in which the mine is located or they may occur in jurisdictions in which the mine is not located and which, therefore, cannot tax the mine. Sometimes a mineral development overlaps jurisdictional boundaries and is located in more than one county, high school district or elementary school district. Even jurisdictions in which part of the mineral development is located may not realize sufficient taxable valuation from the development to meet their increased costs. The *inequitable distribution* of local government costs, revenues and taxable valuation resulting from a mineral development is referred to as a "**jurisdictional revenue disparity.**" [90-6-402(3), MCA]

The Tax Base Sharing Act provides that when an impact plan identifies a jurisdictional revenue disparity, all of the taxable valuation of the new, large-scale mineral development that occurs after the operating permit is issued must be shared between those counties and school districts in which the mine is located and those counties, municipalities and school districts which will incur increased costs as a result of the mine. [90-6-401 through 90-6-404, MCA]

## GENERAL REQUIREMENTS

**Base versus Increase in Mineral Development Taxable Valuation.** Under the Property Tax Base Sharing Act, when the impact plan identifies a jurisdictional revenue disparity, the Department of Revenue must allocate among the affected local government units the *increase* in taxable valuation of the mineral development that occurs after the mine receives its operating permit. [90-6-403, MCA] The taxable valuation of the mineral development just prior to the issuance of the permit is the base amount from which the increase is calculated

each year. The *base* taxable valuation remains with the jurisdictions in which the mine is located. In addition, 20 percent of the gross proceeds taxable valuation is reserved to each local government unit in which the ore body is located. [90-6-404(1), MCA]

**Allocation Within Categories of Affected Local Government Units.** Tax base sharing applies to affected counties and municipalities, high school districts, and elementary school districts, but, unlike the Impact Act and impact plan, tax base sharing does not involve special purpose districts, which continue to tax, or not tax, the mineral development as usual. By definition, affected local government units include those in which the mineral development is located and those that will experience a need to increase services or facilities as a result of the mineral development. [90-6-402(1), MCA]

A separate allocation occurs for each of three categories of affected local government units: counties and municipalities; high school districts; and elementary school districts. Tax base sharing is triggered separately for each category. For example, tax base sharing may be triggered for counties and municipalities and for elementary school districts, but not for high school districts. In any category in which tax base sharing is not triggered, the local government unit in which the mine is located taxes the entire taxable valuation of the mineral development, as usual.

**Allocation by Statutory Formula or Formula in Plan.** The allocation of taxable valuation is made according to either a statutory formula or a modification of that formula provided by the plan itself. [90-6-404, MCA] The Tax Base Sharing Act authorizes the plan to modify the statutory formula if the modification is needed to ensure a reasonable correspondence between the occurrence of increased costs resulting from the mineral development and the allocation of taxable valuation resulting from the mineral development. [90-6-404(5), MCA]

**Mineral Development Taxable Valuation.** Mineral development taxable valuation consists of the gross proceeds and real and personal property of the mineral development during the construction and operation of the mine and associated milling facility. [90-6-302(5); 90-6-402(4) and (8), MCA] As noted above, when tax base sharing occurs, 20 percent of the taxable valuation of the gross proceeds is reserved to the local government units in which the ore body is located, before the balance of the post-permit increase in mineral development taxable valuation is allocated among the local government units in the affected category. [90-6-403, MCA; 90-6-404, MCA]

**Annual Employee and Student Place-of-Residence Report.** The statutory allocation is based on a report filed with the Department of Revenue each year by the mineral developer. The report identifies the *place of residence* of mineral development employees and their school-age children, by county, municipality, and high school or elementary school district. [90-6-405, MCA] The report includes both local and immigrating mineral development employees and students. Based on the report, the county assessor calculates the

percentage of employees or students residing in each affected local government unit within each local government category for which tax base sharing is triggered. Each affected local government unit within the affected category receives a percentage of the *remaining, unreserved increase* in taxable valuation that corresponds to the percentage of mineral development employees or students residing within its jurisdiction, except that, under the statutory formula, municipalities in total may not receive more than 20 percent of the city-county allocation. [90-6-404, MCA]

### **Reservation of Gross Proceeds and Allocation of Remaining Increase in Mineral Development Taxable Valuation.**

1. Instead of the entire increase in taxable valuation of the mineral development being subject to taxation by the county in which the mine is located, 20 percent of the gross proceeds valuation is reserved to the county or counties in which the ore body is located and the *unreserved increase* in valuation is shared among the affected counties and municipalities, although no more than 20 percent of the amount shared may be allocated to all municipalities combined.
2. Instead of the entire increase in taxable valuation of the mineral development being subject to taxation by the high school district in which the mine is located, 20 percent of the gross proceeds valuation is reserved to the high school district or districts in which the ore body is located and the *unreserved increase* in valuation is shared among the affected high school districts.
3. Instead of the entire increase in taxable valuation of the mineral development being subject to taxation by the elementary school district in which the mine is located, 20 percent of the gross proceeds valuation is reserved to the elementary district or districts in which the ore body is located and the *unreserved increase* in valuation is shared among the affected elementary school districts.

The *total* taxable valuation of the mineral development continues to be subject to statewide levies for the university system and the school BASE funding program. [90-6-403(2), MCA]

The statutory tax base sharing formula divides mineral development taxable valuation among affected local government units solely on the basis of where mineral development employees and students reside, which may or may not correspond to where increased costs occur. However, the impact plan must assure that the increased costs resulting from the development are identified and that the developer commits to pay the capital and net operating costs. Therefore, whenever tax base sharing will not generate adequate revenue to meet increased costs in any affected local government unit, the remaining costs must still be paid as provided by in the impact plan. The plan may also modify the statutory formula

to ensure a more reasonable correspondence between increased costs resulting from the mineral development and the allocation of the mineral development's taxable valuation. In jurisdictions where the mine is not located, tax base sharing allows the developer to meet some or all of the increased costs resulting from the development through the payment or prepayment of taxes, rather than only through grants or contributions.

Each mineral development, local government unit, and impact plan represents a unique set of circumstances, and not every impact plan results in tax base sharing. However, whenever the Tax Base Sharing Act is implemented, the same statutory requirements and procedural considerations apply.

### **SAMPLE TAX BASE SHARING PROCEDURE ADAPTED FROM STILLWATER COUNTY**

The Tax Base Sharing Act was first implemented in Stillwater County as a result of the impact plan for the platinum and palladium mine developed by the Stillwater Mining Company (SMC) near Nye, Montana. The following sample tax crediting procedure is adapted from an outline originally prepared by the Stillwater County Assessor to implement the statutory formula in the Tax Base Sharing Act of 1983. The procedure outlined here differs somewhat from Stillwater County's procedure because it incorporates the 1991 amendments to the Tax Base Sharing Act. The 1991 amendments apply only to plans approved after December 31, 1990. The 1991 changes include the requirement for reserving 20 percent of the gross proceeds valuation to the local government units in which the ore body is located and the authority for the impact plan to modify the statutory formula. In the following sample, the 20 percent allocation has been inserted into the original Stillwater procedure. Calculations of the 20 percent reservation, along with the calculation of base valuation, precede the allocation of the remaining, unreserved increase in mineral development taxable valuation.

#### **I. Definitions**

- A. **"Affected Local Government Unit"** means a local government unit that will experience a need to increase services or facilities as a result of the commencement of large-scale mineral development or within which a large-scale mineral development is located in accordance with an impact plan adopted pursuant to 90-6-307. [90-6-402, MCA]
  
- B. **"Jurisdictional Revenue Disparity"** means property tax revenues resulting from large-scale hard-rock mineral developments that are inequitably distributed among affected local government units as finally determined by the [hard-rock mining impact] board in an approved impact plan. [90-6-402, MCA]

- C. **"Large-Scale Mineral Development"** means the construction or operation of a hard-rock mine and the associated milling facility for which a permit is applied ... under 82-4-335 on or after May 18, 1981, and for which the average number of persons on the payroll of the mineral developer exceeds or is projected to exceed 75 persons for any consecutive six-month period. [90-6-302, MCA]  
 (Note: The impact plans for the SMC and TVX Mineral Hill mines are subject to the original Impact Act which defines a "large-scale mineral development" as one which employs at least 100 people at any given time or which causes an increase of 15 percent in the population of an affected local government unit.)
- D. 1. **"Mineral Development [Residing] Employee"** means a person who resides within the jurisdiction of an affected local government unit as a result of employment with a large-scale mineral development or its contractors or subcontractors. [90-6-402, MCA, and Plan]
2. **"Total Mineral Development Employees"** means the total number of persons employed at any given time in the construction or operation of the mineral development by the mineral developer or its contractors or subcontractors. [Plan]
- E. **"Mineral Development [Residing] Student"** means a student whose parent or guardian resides within the jurisdiction of an affected local government unit as a result of employment with a large-scale mineral development or its contractors or subcontractors. [90-6-402, MCA, and Plan]
- F. **"Taxable Valuation"** of a mineral development means the total of the gross proceeds taxable percentage specified in 15-6-132(2)(a) when added to the taxable percentages of real property, improvements, machinery, equipment, and other property classified under Title 15, chapter 6, part 1. [90-6-402, MCA]

For purposes of tax base sharing, a person who *resides in* an affected local government unit is one who is living there at the time of the employee survey, whether or not the person considers that to be his or her permanent place of residence for purposes of voting and paying income taxes. It is nonetheless his or her place of residence for impact planning and tax base sharing purposes.

## **II. Role of the County Assessor and the County Treasurer**

When tax base sharing is required, the County Assessor, as an agent of the Department of Revenue, will allocate the increase in taxable valuation as provided by sections 90-6-403 and 90-6-404, MCA. The allocation will be consistent with the provisions of sections 15-6-101 through 15-6-146, MCA, and with other requirements of the assessment procedure.

Montana law establishes 12 classes of property subject to property taxation. The taxable value of property in each class is calculated by multiplying the market value of the property by a percentage which, as provided by statute, may range from 0 percent to 100 percent. Each formula for calculating taxable valuation is denoted by a specific "code."

As required by section 15-8-701, MCA, the County Assessor provides an assessment notice to each taxpayer. The assessment notice identifies the market value and the taxable value of the taxpayer's property, the class and code by which it is assessed, and the revenue districts in which the property is located.

The County Treasurer sends a tax notice to each taxpayer in the county. The tax notice applies to the taxable valuation of the taxpayer's property the individual mill levies of the county, municipality (if applicable), special districts (if applicable), elementary school district and high school district in which the property is located. The tax notice identifies each mill levy and the total amount of tax to be paid by the taxpayer.

Tax base sharing does not affect the taxable valuation of the mineral development. However, where tax base sharing is in effect, the assessment and tax notices will include a greater number of local government units, each of which will apply its own mill levy to its allocated portion of the taxable valuation of the mineral development.

### **III. Taxable Valuation of the Mineral Development and the Base Year**

As defined by statute, the taxable valuation of the mineral development encompasses all property associated with the mineral development: the taxable property of the developer, including gross proceeds of the mine, and other taxable property located at the site of the mine and mill but owned by contractors or subcontractors. Tax base sharing does not apply to increased taxable valuation which results from, but is not part of, the mineral development itself, such as the valuation of a new mobile home park or subdivision.

The increase in the development's taxable valuation is calculated each year by reference to its taxable valuation as of January 1st of the year in which the permit was issued. January 1st is the assessment date established by section 15-8-408, MCA, and represents the most recent assessment prior to the issuance of the permit. The base taxable valuation remains constant and is not allocated.

As the development is constructed and moves into production, its total taxable valuation will increase. However, from year to year the taxable value of property within an individual class and code may be greater or less than it was in the base year.

The allocation procedure described below provides a formula to ensure that the base year taxable valuation is held constant in calculating and allocating each year's increase in taxable valuation.

Under the 1991 amendments to the Tax Base Sharing Act, at least 20 percent of the mine's gross proceeds taxable valuation is reserved to the local government units in which the ore body is located, in addition to their base year taxable valuation.

#### **IV. The Mineral Developer's Employee Place-of-Residence Survey**

The Property Tax Base Sharing Act requires the mineral developer to conduct annual employee surveys to identify the number and place of residence of all mineral development employees and their school-age children. The employee survey encompasses all persons, whether local or immigrating, who reside within an affected local government unit as a result of employment with a large-scale mineral development or its contractors or subcontractors.

The developer must file an employee place-of-residence report with the Department of Revenue on or before May 1 of each year. Copies of the Stillwater report are provided to the Department of Revenue in Helena, the Stillwater County Assessor (an agent of the Department), each affected local government unit, and the Hard-Rock Mining Impact Board. (Because of other provisions in the Stillwater impact plan, until the mine reached full production SMC, also prepared a quarterly monitoring report for Stillwater County local governments and the Board. The company used its March 31 monitoring report for its annual report to the Department of Revenue.)

Sample employee place-of-residence surveys and reports are attached.

Before submitting its annual report to the DOR, the developer may wish to provide a preliminary copy of its survey to each affected local government in order to confirm whether its report coincides with the governing body's perception of the number of employees or students residing within its jurisdiction. If local government officials find any apparent inaccuracy in the report, they should notify the developer and the county assessor as soon as possible to enable the developer to review the questioned numbers and correct any errors. The parties to tax base sharing might want to establish a time limit within which the local governments and developer must review and offer corrections to employee reports. The Stillwater County Assessor recommends that the review and corrections should be completed within 30 days of the filing date of the report in order not to delay the assessment process.

School districts may find that the number of mineral development students *attending* school in the district differs from the number *residing* in the district because some students attend school in a district other than the one in which they reside. The impact plan is based on the number of *immigrating mine-related students attending* school within the district. Tax base sharing is based on the total number of *local and immigrating mineral development students residing* in the district.

**V. Adjusting the Total Number of Mineral Development Employees from the Place-of-Residence Report for Tax Base Sharing Purposes**

Because the developer's employee place-of-residence report includes all employees of the mineral development, it may show that some employees or students live in local government units which are not identified in the impact plan as "affected local government units." If this occurs, these employees or students must be subtracted from the appropriate allocation category. That is, for tax base sharing purposes, 100 percent of the employees or 100 percent of the students means all of the employees or students *who reside in affected local government units*. This is illustrated in the example below:

The impact plan identifies County A and Town A as the only affected county and municipality. The developer's employee report identifies a total of 120 mineral development employees. The report also shows that 7 employees live in County B, which the plan does not identify as an affected local government unit. In calculating the allocation of taxable valuation, subtract the 7 employees who do not live in an affected local government unit from the 120 total and for the allocation calculations use only the 113 employees who reside in affected local government units. The 113 employees are referred to below as "Mineral Development Residing Employees."

Similar adjustments may have to be made for the high school and elementary school district student counts to arrive at the total numbers of Mineral Development Residing Students in affected high school districts and in affected elementary school districts.

Use the adjusted totals, that is, the Mineral Development Residing Employees or Students, in calculating the percentage of employees or students who reside in each affected local government unit within each local government category for which tax base sharing is triggered.

**VI. Calculating the Percentage of Employees or Students Residing in Each Affected Local Government Unit in Each Allocation Category**

The Tax Base Sharing Act may require a separate allocation for each category of local government units: counties and municipalities, high school districts, and elementary school districts. Within each category, the percentage of taxable valuation allocated to an affected local government unit is the same as the percentage of Mineral Development Employees or Students residing in that affected local government unit. Again, tax base sharing is triggered by category of local government units and, therefore, may involve one or two categories but not all three. In that case, allocation calculations need to be done only for the categories that are subject to tax base sharing.

From the employee place of residence report filed by the developer on or before May 1 of each year the county assessor should:

- A. Adjust the total number of employees or students in each allocation category to include only those living in affected local government units, as shown above. The adjusted totals are referred to as the "mineral development residing employees" or "mineral development residing students."
- B. Calculate the percentage of employees or students living in each affected local government unit within each category, as illustrated below.

<u>Local Government Units</u> <u>by Allocation Category</u>	<u>Total Mineral Development</u>			
	<u>Residing Employees</u>		<u>Residing Students</u>	
	Number	Percent	Number	Percent
1. by County-Municipality				
County	214	90%		
<u>Municipality</u>	<u>24</u>	<u>10%</u>		
County Total	238	100%		
2. by High School District				
HIS. District #1			7	15%
<u>HIS. District #2</u>			<u>039</u>	<u>85%</u>
High School Total			46	100%

3. by Elementary District

Elem. District #3	13	11%
Elem. District #4	58	51%
Elem. District #5	19	17%
<u>Elem. District #6</u>	<u>24</u>	<u>21%</u>
Elementary Total	114	100%

**VII. Adjustments to County-Municipality Allocation Percentages:**

Although Stillwater County did not have to deal with this issue, more than 20 percent of the Mineral Development Employees might live in one or more municipalities. When this is the case, further adjustment is necessary because by statute no more than 20 percent of the increase in taxable valuation may be allocated to all municipalities combined.

Therefore, even if the number of employees residing in municipalities represents, for example, 40 percent of the total Mineral Development Employees, no more than 20 percent of the taxable valuation is to be allocated to municipalities. The percentage of taxable valuation to be allocated to each municipality can be calculated by determining what percentage of the total municipal employee population resides in each municipality and multiplying that percentage by 20 percent.

Example:

Allocation Category:                      Mineral Development Residing Employees

<u>County-Municipality</u>	<u>Number</u>	<u>Unadjusted Percentage</u>	
County A	120	60%	
Municipality A-1	30	15%	Exceeds 20% Maximum
Municipality A-2	<u>50</u>	<u>25%</u>	For Municipalities
County Total	200	100%	

Percentage Adjusted for 20% Maximum Allocation to Municipalities

Adjustment:

Municipality A-1	$3030 \div 80 = 38\% \times 20\% = 7.6\%$
<u>Municipality A-2</u>	$5050 \div 80 = \underline{62\%} \times 20\% = \underline{12.4\%}$
Municipal Total	80                      100% of 20.0%

Adjusted Percentage to Apply to Increase in Taxable Valuation:

County A	110	80.0%
Municipality A-1	30	7.6% = 20%
<u>Municipality A-2</u>	50	<u>12.4%</u>
County Total	200	100.0% of increase

**VIII. Adjustments for Taxable Valuation Differences among School Districts:**

Usually each high school district contains one or more elementary school districts within its boundaries and the taxable value of the high school district equals the total taxable values of the elementary districts. Tax base sharing, however, may cause the taxable value of the high school district to differ from the total taxable values of the elementary school districts within its boundaries.

In the Stillwater example, the mine is located in Elementary District 6 and in High School District 2. The base taxable valuation stays with those districts, as does the 20 percent of gross proceeds taxable valuation which is reserved to the local government units in which the ore body is located. This means that High School District 2 is entitled to the base amount, plus the 20 percent gross proceeds reservation, plus 85% of the unreserved increase in taxable valuation (based on 85 percent of the mineral development residing high school students). High School District 2 includes Elementary Districts 4, 5 and 6. Based on their percentages of mineral development residing elementary students, Elementary Districts 4, 5 and 6 are entitled to a total of 89% of the unreserved increase in taxable valuation (i.e., 51% + 17% + 21%). District 6 is also entitled to the base taxable valuation and 20 percent of the gross proceeds taxable valuation. This means that the high school district valuation (85% plus base plus gross proceeds reservation) does not equal the combined valuations of the elementary districts it encompasses (89% plus base plus gross proceeds reservation).

To ensure that the total valuation is correct for the mineral development (and not counted twice) and that each school district applies its mill levy only to the percentage of taxable valuation allocated to that district, plus the base valuation and the reserved 20 percent of gross proceeds valuation where appropriate, Stillwater County has created "paper" school districts. Each "paper" district reflects only the allocated taxable valuation of the mineral development, plus the base valuation and the 20 percent gross proceeds reservation where appropriate, and the mill levy of the corresponding "real" district. The mine-only valuation of each "paper" district added to the non-mine valuation of the corresponding "real" district represents the total tax base of the school district.

Example:

<u>School Districts</u>	<u>Mill Levy</u>	<u>Taxable Valuation</u>
H.S. #1	45.98	All property in district
H.S. #1-Mine Only	45.98	15% of unreserved increase in mine taxable value
H.S. #2	36.79	All property in district, except mine
H.S. #2-Mine Only	36.79	85% of unreserved increase in mine taxable value, plus base taxable valuation, plus 20 percent of gross proceeds taxable valuation
E.S. #3	42.68	All property in district
E.S. #3-Mine Only	42.68	11% of unreserved increase in mine taxable value
E.S. #4	31.24	All property in district
E.S. #4-Mine Only	31.24	51% of unreserved increase in mine taxable value
E.S. #5	6.55	All property in district
E.S. #5-Mine Only	6.55	17% of unreserved increase in mine taxable value
E.S. #6	29.12	All property in district, except mine
E.S. #6-Mine Only	29.12	21% of unreserved increase in mine taxable value, plus base taxable valuation, plus 20% of gross proceeds taxable valuation.

**IX. Adjustment to Maintain Constant Base Taxable Valuation and Achieve an Accurate Allocation of the Increase in Taxable Valuation:**

Because taxable valuation is assessed by class and code for each individual taxpayer and because individual taxable valuations will vary from year to year, it is possible that within certain classes and codes the valuation will decrease rather than increase in a given year. However, according to the Department of Revenue, the Act requires the total base taxable valuation to remain constant for the jurisdictions in which the mine is located. [90-6-404(1), MCA] Therefore, further calculation is needed in order to offset any decreases in valuation in individual classes and codes and maintain a constant total base taxable valuation.

The purpose of this calculation is to determine for each individual taxpayer and for each affected local government unit, by class and code of property, the base amount of taxable

valuation that remains with the jurisdictions in which the mine is located, the amount of gross proceeds taxable valuation to be reserved under the 20 percent reservation to jurisdictions in which the ore body is located, the unreserved increase in taxable valuation that is to be allocated, and the percentage and amount of the allocation to each affected local government unit.

To ensure that the base taxable valuation remains constant and to facilitate the application of mill levies, the following formula takes the calculation one step further and establishes for each local government unit the percentage and amount of the **total** taxable valuation of the mineral development against which each taxing jurisdiction may apply its mill levy. For each taxpayer the appropriate percentage is applied by class and code to property that is part of the mineral development to arrive at the amount of taxable valuation (for each taxable property) which is subject to the application of mill levies by each affected local government unit. The formula takes into account a constant base taxable valuation for the jurisdictions in which the mine is located, the 20 percent gross proceeds reservation, the unreserved increase in taxable valuation (the amount in excess of the total base amount and the 20 percent reservation), and the place-of-residence percentage shown above. The dollar amounts shown in the examples are used for illustration only and are not intended to correspond to the Stillwater or any other mine.

A. To arrive at the **Total Increase** in Taxable Valuation of the Mineral Development:

Current Year **Total Taxable** Valuation of Mineral Development  
 - Base Year Taxable Valuation of Mineral Development  
 Total **Increase in Taxable** Valuation of Mineral Development

Example:

\$2,200,000 Current Year **Total Taxable** Valuation  
 - 500,000 **Base Year Taxable** Valuation  
 \$1,700,000 **Increase in Taxable** Valuation

B. To arrive at the **Unreserved Increase** in Taxable Valuation, subtract 20% of the Gross Proceeds Taxable Valuation from the Increase in Taxable Valuation:

\$1,000,000	Current Year <b>Gross Proceeds</b> Taxable Valuation
x <u>      .20</u>	<b>20% Reserved</b> to Local Government in Which Ore Body is Located
\$ 200,000	<b>Reserved Increase</b> in Taxable Valuation
\$1,700,000	<b>Increase</b> in Taxable Valuation

- 200,000  
\$1,500,000

**Reserved Increase** in Taxable Valuation  
**Unreserved Increase** in Taxable Valuation

C. The **Unreserved Increase** in taxable valuation is allocated **three** times, once in each allocation category. In the Stillwater County example, the allocation occurs: (1) between one county and one municipality; (2) between two high school districts; and (3) among four elementary school districts. The allocations correspond to percentages that reflect on the place-of-residence of Mineral Development Employees and Mineral Development Students:

1. County-Municipality

County	90%
Municipality	<u>10%</u>
	100% of unreserved increase in taxable valuation

2. High School Districts

H.S. Dist. #1	15%
H.S. Dist. #2	<u>85%</u>
	100% of unreserved increase in taxable valuation

3. Elementary Districts

Elem. Dist. #3	11%
Elem. Dist. #4	51%
Elem. Dist. #5	17%
Elem. Dist. #6	<u>21%</u>
	100% of unreserved increase in taxable valuation

These Stillwater **place-of-residence percentages** will be used in the following examples.

D. Each taxing jurisdiction applies its own mill levy to its share of the unreserved increase in taxable valuation. Each jurisdiction in which the mine is located also applies its mill levy against the base year taxable valuation, which remains constant and is not allocated. Each jurisdiction in which the ore body is located applies its mill levy to 20 percent of the gross proceeds taxable valuation. The examples below assume that the entire mineral development, including the ore body, is located in one county, High School District #2 and Elementary School District #6. Taking all of this into account, the following formula calculates the percentage of total taxable valuation belonging to each affected local government unit.

Procedure: Within each allocation category, make the following calculations to determine the percentage of total taxable valuation of the mineral development to be allocated to each affected local government unit from the taxable valuation of property belonging to each mineral development taxpayer:

1. For each local government unit in which the mine is **not** located:

a. Multiply: Example: H.S. District #1

	\$1,500,000
Unreserved Increase in Taxable Valuation	
X <u>Place-of-Residence Percentage</u>	X <u>15%</u>
Allocated Taxable Valuation	\$ 225,000

b. Divide:

Allocated Taxable Valuation - Current Total Taxable Valuation =  
 Percentage of Current Total Taxable Valuation  
 $\$225,000 \div \$2,200,000 = .102$  or 10.2%

2. For each local government unit in which the mine and ore body are located:

a. Multiply: Example: H.S. District #2

	\$1,500,000
Unreserved Increase in Taxable Valuation	
X <u>Place-of-Residence Percentage</u>	X <u>85%</u>
Allocated Taxable Valuation	\$1,275,000

b. Add:

	\$1,275,000
Allocated Taxable Valuation	
+ 20% Gross Proceeds Taxable Valuation	200,000
+ <u>Base Taxable Valuation</u>	<u>+ 500,000</u>
Combined Taxable Valuation	\$1,975,000

c. Divide:

Combined Taxable Valuation  Total Taxable Valuation  
 Percentage of Current Total Taxable Valuation to which the local  
 government unit may apply its mill levy

$\$1,975,000 \div \$2,200,000 = .898$  or 89.8%

Example: Following are the calculations shown above, for local governments in each allocation category:

1. County-Municipality

- Municipality:      a.      \$1,500,000 X 10% = \$150,000  
                             b.      \$150,000 ÷ \$2,200,000 = .0682 or 6.82%
- County:             a.      \$1,500,000 X 90% = \$1,350,000  
                             b.      \$1,350,000 + \$500,000 (base) + \$200,000 = \$2,050,000  
                             c.      \$2,050,000 ÷ \$2,200,000 = .9318 or 93.18%

2. High School Districts

- H.S. District #1:    a.      \$1,500,000 X 15% = \$225,000  
                             b.      \$225,000 ÷ \$2,200,000 = .1023 or 10.23%
- H.S. District #2:    a.      \$1,500,000 X 85% = \$1,275,000  
                             b.      \$1,275,000 + \$500,000 (base) + \$200,000 = \$1,975,000  
                             c.      \$1,975,000 ÷ \$2,200,000 = .8977 or 89.77%

3. Elementary School Districts

- E.S. District #3:    a.      \$1,500,000 X 11% = \$165,000  
                             b.      \$165,000 ÷ \$2,200,000 = .075 or 7.5%
- E.S. District #4:    a.      \$1,500,000 X 51% = \$765,000  
                             b.      \$765,000 ÷ \$2,200,000 = .3477 or 34.77%
- E.S. District #5:    a.      \$1,500,000 X 17% = \$255,000  
                             b.      \$255,000 ÷ \$2,200,000 = .1159 or 11.59%
- E.S. District #6:    a.      \$1,500,000 X 21% = \$315,000  
                             b.      \$315,000 + \$500,000 (base) + 200,000 = \$1,015,000  
                             c.      \$1,015,000 ÷ \$2,200,000 = .4614 or 46.14%

D. As shown above, the total amount of mineral development taxable valuation added to the tax base of each local government unit is:

Municipality:	\$ 150,000	
County:	<u>1,050,000</u>	(including base + 20% GPTV)
	\$2,200,000	
H.S. District #1:	\$ 225,000	
H.S. District #2:	<u>1,975,000</u>	(including base + 20% GPTV)
	\$2,200,000	

Elem. District #3:	\$ 165,000	
Elem. District #4:	765,000	
Elem. District #5:	255,000	
Elem. District #6:	<u>1,015,000</u>	(including base + 20% GPTV)
	\$2,200,000	

- E. However, the allocation process is not yet complete. The county assessor must complete a series of more detailed calculations, as outlined below, to make adjustments for variations within classes and codes in order to hold the overall base valuation constant; to provide individual taxpayers with the market value and the taxable value of each property taxable in each local government unit, as required for assessment and tax notices; and to comply with procedural and record-keeping requirements. For each taxable mineral development property, the county assessor must calculate by class and code the amount of market value and of taxable value allocated to each local government unit.

The amount of mineral development taxable valuation added to the tax base of each local government unit, as shown above, should be the same as the amount arrived at by carrying out the calculations by class and code, as shown below:

1. Determine by class and code for each taxable property within the mineral development, the amount of market value allocated to each local government unit:

Multiply:

$$\begin{array}{r}
 \text{Market Value of Taxpayer's Property (by class and code)} \\
 \times \text{Percentage of Total Taxable Value Allocated} \\
 \hline
 \text{Amount of Market Value Allocated to the Local Government Unit} \\
 \text{(including base and 20\% GPTV if appropriate)}
 \end{array}$$

Example:

A mineral development property is classified as Class 4 property. Its market value is appraised at \$16,200. The taxable value of the property will be determined by applying Code 3817 to the appraised/market value.

For each affected local government unit, multiply the market value of this Class 4 property times the percentage of total taxable valuation to which the local government is entitled. The result is the amount of market value allocated by class and code for that specific property to each local government unit:

Municipality:	\$16,200 X .0682	=	1,105
County:	16,200 X .9318	=	<u>15,095</u>
TOTAL:			\$16,200

H.S. District #1	\$16,200 X .1023	=	1,657
H.S. District #2	16,200 X .8977	=	<u>14,543</u>
TOTAL:			\$16,200
Elem. District #3	\$16,200 X .0750	=	1,215
Elem. District #4:	16,200 X .3477	=	5,632
Elem. District #5:	16,200 X .1159	=	1,878
Elem. District #6:	16,200 X .4614	=	<u>7,475</u>
TOTAL:			\$16,200

2. To determine the amount of taxable value allocated to the local government unit (which will include base taxable valuation and 20 percent GPTV reservation where appropriate), calculate the taxable value of the allocated market value as usual according to the class and code of the property.

Repeat steps 1 and 2 for each item of taxable property that is part of the mineral development. The market and taxable values will appear 3 times, because 100% of the value is allocated in each of three separate allocations: to the County and affected Municipality, to the affected High School Districts, and to the affected Elementary School Districts.

3. To determine or verify the total amount taxable valuation that will be added to the tax base of each local government unit from the mineral development: for each local government unit, add all valuations within each class and code, then add the totals of all classes and codes.

From the above calculations, the assessor and treasurer can determine the total taxable valuation to be allocated to each local government unit by class and code of property, by individual mineral development taxpayer, and by all mineral development taxpayers in the aggregate. The total taxable valuation of the taxpayer's property is not affected by the allocation process.

## **X. Additional Assessment Procedures**

- A. **Assessment notice.** To achieve tax base sharing, the assessment process outlined above segregates the application of mill levies into three separate allocations of taxable valuation rather than applying each mill levy to the same taxable valuation.

As a result, in the assessment notice, the market and taxable valuations of each class and code of property will appear at 300% of the true market and taxable valuations. The assessor must correct this apparent distortion on the assessment notice mailed to the taxpayer, by summarizing the market and taxable valuations and dividing the apparent valuations by three. This will show the true market and taxable values.

- B. Recapitulation report.** The assessor must establish new corresponding classes and codes for the recapitulation report. In each corresponding class and code, divide the apparent taxable valuation by three to arrive at the true taxable valuation. Add the amount of taxable valuation in the corresponding class and code (mine only) to the amount in the original class and code (non-mine) to arrive at a total for that class and code of property.

Example: (a)	Existing (non-mine)	Class 4	Code 3817
	New Corresponding (mine only)	Class 84	Code 9817
(b)	Existing (non-mine)	Class 9	Code 6311
	New Corresponding (mine only)	Class 89	Code 9311

To recap, using example (a): divide by 3 the amount arrived at in Class 84 Code 9817; add the result to the amount arrived at in existing Class 4 Code 3817. The sum is the actual total of Code 3817.

Repeat the process for all classes and codes.

## SUMMARY

In conjunction with an impact plan, tax base sharing is intended to help meet the increased costs to local government units of services and facilities needed as a result of the mineral development.

Tax base sharing does not change the taxable valuation of the mineral development. Tax base sharing will mean that the taxpayers that comprise the mineral development will be paying taxes to a greater number of local government units, each of which will apply its own mill levy to its allocated share of the mineral development's taxable valuation. Because of differences in mill levies among the taxing jurisdictions, tax base sharing may affect the amount of tax paid by the mineral development.

Taxes are likely to be higher whenever taxable valuation is allocated to a municipality, because, except for the county road mill levy, property within an incorporated city or town is taxed by both the city and the county.

The approach outlined above appears to meet the requirements of the Tax Base Sharing Act and the statutory, procedural and reporting requirements of the county assessor and the county treasurer.

**MINERAL DEVELOPMENT EMPLOYEE PLACE-OF-RESIDENCE SURVEY**

**This survey is to be completed by each person employed by [mineral developer] or its contractors or subcontractors engaged in the construction or operation of the [mineral development].** The purpose of the survey is to comply with the requirements of section 90-6-405, MCA, of the Hard-Rock Mining Property Tax Base Sharing Act. The Act provides for the distribution of the taxable valuation of the mineral development among affected local government units in which employees and their school age children reside. As defined by statute and as identified in the approved impact plan, an affected local government unit is one that expects to have increased costs as a result of the mineral development or one in which the mineral development is located. One of the ways the mineral development helps to meet increased costs resulting from the development is by apportioning its taxable valuation according to the percentage of employees and students residing in each affected local government unit. Alternatively, the approved impact plan may modify the allocation formula.

**Please complete, sign and return the questionnaire to the [mineral developer] within 10 days.**

1. Name of Employee: \_\_\_\_\_

2. Mailing Address: \_\_\_\_\_

3. Place of Residence: (The enclosed map will help you identify the school district in which you reside.)

Elementary School District No.: \_\_\_\_\_ Town (if any): \_\_\_\_\_

High School District No.: \_\_\_\_\_

County: \_\_\_\_\_

4. If you do not reside in the attached mapping area, please identify your place of residence by specifying the name of your landlord (if any), school districts, town (if any), and county:

\_\_\_\_\_

5. Length of residence in this County: \_\_\_\_\_ Years \_\_\_\_\_ Months

Length of residence in these School Districts: \_\_\_\_\_ Years \_\_\_\_\_ Months

6. School-age children of whom the employee is parent or guardian or who reside in the employee's household (please add an additional sheet, if necessary):

Student's Full Name	Grade	Name of School Attending	District No.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**CERTIFICATE OF PERSON SUBMITTING INFORMATION**

I, the undersigned, certify that the above information is true and correct upon the signing and dating of this statement.

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

**APPENDIX XIV**  
**PETITION TO AMEND**  
**AN APPROVED HARD-ROCK MINING IMPACT PLAN**

Under certain circumstances the mineral developer or the governing body of an affected county may petition the Hard-Rock Mining Impact Board to amend an approved impact plan. The requirements and procedures for petitioning to amend a plan are provided in section 90-6-311, MCA, and 8.104.217. Procedurally, the governing body of an affected county formally files petitions on behalf of affected local government units within the county.

1. As requested by the Board, the petition to amend an approved impact plan should include the following information:
  - a. Date petition is filed (postmarked or hand delivered).
  - b. Name of mineral developer.
  - c. County in which mineral development is located.
  - d. Name, address, phone number and signature(s) of each petitioner (county governing body and/or mineral developer).
  - e. A resolution that requests the amendment and authorizes the county to submit the petition, dated and signed by the governing body of the affected local government unit.
  - f. List of local government units believed by the petitioner(s) to be affected by the proposed amendment.
  
2. As required by section 90-6-311(2), MCA, and ARM 8.104.217 each petition must include the following information:
  - a. An explanation of the need for an amendment;
  - b. A statement of the facts and circumstances underlying the need for an amendment; and
  - c. A description of the corrective measures proposed by the petitioner.
  
3. In the approved impact plan, the developer commits to pay the increased capital and net operating costs resulting from the mineral development, as identified in the plan. Indicate which identified costs and commitments in the approved plan will be changed as a result of

the proposed amendment. Refer by number to the pages of the plan on which these matters are addressed.

4.If other provisions of the approved plan will also be affected by the proposed amendment, also identify these provisions and the pages in the plan where they appear.

5.Section 90-6-311, MCA, specifies that a party to an approved impact plan may petition to amend the plan under any of the following circumstances. Indicate which of the following circumstances provides the legal authority for filing this petition:

- a. The impact plan provides for amendments under definite conditions specified in the plan. Please refer to the specific pages in the plan which set forth the conditions under which the plan may be amended and describe those conditions.

If the authority to petition for the amendment is based on "definite conditions specified in the plan," the petitioner or the affected governing body, or both, should attest to the existence of the requisite conditions.

- b. Employment at the large-scale mineral development is forecast to increase or decrease by at least 75 persons, as determined under 90-6-302(4), over or under the employment levels contemplated by the approved impact plan.
- c. The approved impact plan is materially inaccurate because of errors in the assessment of impacts and less than two years have passed since the date the facility began commercial production.

Date the facility began commercial production: \_\_\_\_\_

- d. The governing body of an affected county and the mineral developer are joining in the petition to amend the impact plan.

If you have questions about the requirements for filing a petition to amend an approved impact plan, contact the Hard-Rock Mining Impact Board:

**Hard-Rock Mining Impact Board  
Department of Commerce  
301 South Park Avenue  
P. O. Box 200523  
Helena, Montana 59620**

**Telephone (406) 841-2789 or 841-2789**

## APPENDIX XV

### OBJECTION TO A PROPOSED AMENDMENT TO AN APPROVED HARD-ROCK MINING IMPACT PLAN

Any party to an approved plan may file objections to a proposed amendment within 60 days after the Board publishes notice that it has received the petition to amend the plan. The review period begins the day after the day on which the notice is published and extends to the 60th day that is neither a holiday nor weekend.

The objection to a proposed amendment must contain the information listed below and may contain additional information.

1. a. Date objection is filed.  
b. Final date of review period.
2. Name of hard-rock mining impact plan.
3. Name of local government unit or mineral developer that filed a petition to amend the impact plan.
4. Name of local government unit or mineral developer filing the objection to the proposed amendment with the name, address and phone number of objector's authorized contact person.
5. Portions or provisions of the proposed amendment to which the objection pertains.
6. Reasons why the impact plan should not be amended as proposed.
7. Recommendations for resolving the disputed issue(s) or for changing the proposed amendment.

Refer also to 90-6-307 and 90-6-311, MCA; ARM 8.104.203, 8.104.207, 8.2.104.217.

**File the signed original and 15 copies of the objection with the Hard-Rock Mining Impact Board:**

**Hard-Rock Mining Impact Board  
Department of Commerce  
301 South Park Avenue  
P. O. Box 200523  
Helena, Montana 59620  
Telephone (406) 841-2789 or 841-2789**

## APPENDIX XVI

### METAL MINES LICENSE TAX ALLOCATIONS AND COUNTY AND SCHOOL RESERVE ACCOUNTS

The State allocates 24 percent of its annual metal mines license tax collections to the counties in which the taxpaying mines are located, or to those counties that an impact plan identifies as experiencing increased local government costs or increased employment as a result of the mine. In turn, the county allocates a portion of this revenue to school districts affected by the taxpaying mine. When the mine closes or experiences a 50 percent or greater reduction in workforce, the county may also provide grants and loans to other local government units affected by the change in mining activity.

#### HARD-ROCK TRUST AND METAL MINES RESERVE ACCOUNTS

Counties and school districts that receive metal mines license tax revenue are authorized to establish special reserve accounts, from which they may make expenditures only as provided by law. [7-6-2225, MCA; 7-6-2226, MCA; 15-37-117(1)(d), MCA; 20-9-231, MCA]

A. **County/School Hard-Rock Trust Reserve Account** (Mine Workforce Reduction or Closure) [7-6-2225, MCA; 15-37-117(1)(d), MCA]

1. **Revenue Sources for the Hard-Rock Trust Reserve Account.**

- a. Annually, the Department of Revenue transfers 25 percent of the State's metal mines license tax collections to the county in which the mine is located or the counties that an impact plan identifies as experiencing increased costs or increased employment as a result of the mine. [15-37-117(1)(d), MCA] The county must hold *at least 40 percent* of the amount it receives in a hard-rock trust reserve account. [15-37-117(1)(d)(i) and 7-6-2225, MCA]
- b. At the end of each fiscal year, if there is an uncommitted balance in the State's Hard-Rock Mining Impact Trust Account, the Board allocates it among the counties in which the taxpaying mines are located and transfers each county's pro-rated share to its hard-rock mine trust reserve account. [90-6-331, MCA]

- c. All money credited to the hard-rock trust reserve account must be invested. Interest accrues to the account and is to be expended in the same manner as the principal. [7-6-2225, MCA]

2. **Distribution and Uses of the Hard-Rock Trust Reserve Account.** [7-6-2225, MCA]

- a. Monies may be expended from the hard-rock trust reserve account only after the mine closes or reduces its workforce by 50 percent or more, based on the average number of persons employed full-time by the mining operation in mining activities during the immediately preceding 5-year period. [7-6-2225, MCA]
- b. When the mine workforce reduction or closure occurs, the county must allocate *at least one-third* of the principal and interest in its trust reserve account "proportionally" among the "affected" school districts within the county. [7-6-2225, MCA]

The statute does not define "proportionally" or "affected." The Board of County Commissioners must define and apply these terms as it deems appropriate, presumably after consulting with the potentially affected school districts. Districts affected by a workforce reduction or mine closure might include those in which mine employees' school age children reside or attend school and those in which the mine is located, both elementary and high school, because the mine has been part of their tax base. Under certain circumstances, the definition might need to be expanded, for example, in order to include school districts in communities (within the county) that provide significant support services to the mine or its employees and which, consequently, may experience an increase in secondary employment and students and, perhaps, tax base as a result of the mine.

- c. The governing body of the county may expend the remaining principal and interest in the trust reserve account, or it may make grants or loans to other local government units within the county. [7-6-2225, MCA] The county may:
  - (1) pay for outstanding capital project bonds or other expenses incurred prior to the end of mining activity or the reduction in the mining workforce;

- (2) decrease property tax mill levies that are directly caused by the cessation or reduction or mining activity;
- (3) promote diversification and development of the economic base within the jurisdiction of a local government unit;
- (4) attract new industry to the impact area;
- (5) provide cash incentives for expanding the employment base of the area impacted by the changes in mining activity; or
- (6) provide grants or loans to other local government jurisdictions to assist with impacts caused by the changes in mining activity. [7-6-2225, MCA]

**B. County and School Metal Mines Reserve Accounts** [7-6-2226, MCA; 20-9-231, MCA]

**1. Revenue source and distribution.**

- a. Each year, after retaining at least 40 percent of the State's metal mines license tax allocation in its hard-rock trust reserve account, the governing body of the county distributes the balance (up to 60 percent of the 25 percent) as provided by statute: *one-third* to the county, *one-third* to the affected high school districts and *one-third* to the affected elementary school districts. [15-37-117(1)(d), MCA]
- b. Money credited to a metal mines reserve account must be invested. Interest accrues to the account and is to be expended in the same manner as the principal. [7-6-2226, MCA; 20-9-231, MCA]

**2. Use.**

- a. School districts and the county may hold the principal and accrued interest in their individual metal mines reserve accounts for any period of time. [7-6-2226, MCA; 20-9-231, MCA] Money held in a school district's metal mines reserve account may not be considered as cash balance for the purpose of reducing the mill levy. [20-9-231, MCA]
- b. School districts may expend money from their accounts for any purpose provided by law. [ 20-9-231, MCA]

- c. The county may expend money from its metal mines reserve account only for planning and economic development purposes. [7-6-2226, MCA; 15-37-117(1)(d), MCA]

Local government units must budget for expenditures from their hard-rock and metal mines reserve accounts. The special budget amendment provisions of section 90-6-323, MCA, do not apply.

## **METAL MINES LICENSE TAXES, PROPERTY TAXES, AND THE DEFINITION OF GROSS PROCEEDS**

The definition of **gross proceeds** used in calculating metal mines license taxes is also used for local property tax assessment, but in a different manner. [15-6-132, MCA; 15-23-801, MCA; 15-37-103, MCA] The cumulative definition, as changed in 1989, reads as follows:

**"Gross proceeds" or "gross metal yield" or "gross value of product" means the receipts realized from the extraction and sale of metals or concentrate containing metals. [15-23-801(3), MCA]**

**"Merchantable value" means the receipts of all salable metals produced or extracted in a county over a 12-month period. If the extracted ores are milled, smelted, or reduced by the taxpayer, the merchantable value in the county in which they are extracted is the receipts received for these metals after processing. [15-23-801(4),MCA]**

**"Receipts received" means the monetary payment or refined metal received by the mining company from the metal trader, smelter, roaster, or refinery, determined by multiplying the quantity of metal received by the metal trader, smelter, roaster, or refinery by the quoted price for the metal and then subtracting basic treatment and refinery charges, quantity deductions, price deductions, interest, and penalty metal, impurity, and moisture deductions as specified by contract between the mining company and the receiving metal trader, smelter, roaster, or refinery. Deductions are not allowed, either directly or indirectly as an offset to payments, for the cost of transportation from the mine or mill to the smelter, roaster, or refiner. Demurrage, storage, interest, or any other miscellaneous costs related to transporting the mineral product are considered transportation and are not deductible. [15-23-801(5), MCA]**

Although the same definition applies, gross proceeds/gross value are taxed differently for metal mines license tax purposes than for property tax purposes.

**A. Property Tax**

For property tax purposes, the mine's gross proceeds are assessed at 3 percent of their value; that is, the mill levy is applied to 3 percent of the gross value. [15-6-132, MCA]

**B. Metal Mines License Tax**

The metal mines license tax rate depends on the mineral and the extent of processing that occurs before the mineral is transported; both rates exclude the first \$250,000 of gross value. [15-37-103, MCA] The rates are:

1. 1.81 percent of gross value in excess of \$250,000 of concentrate shipped to a smelter, mill or reduction work, or
2. 1.6 percent of gross value in excess of \$250,000 of gold, silver or any platinum-group metal that is dore, bullion, or matte and that is shipped to a refinery. [15-37-103, MCA]

Ore grade, production level, production costs, and metals prices all affect both metal mines license tax revenues and county gross proceeds taxable valuation.

**APPENDIX XVII**

**SAMPLE**

**INFORMAL CONTESTED CASE HEARING PROCEDURE**

During the 90-day review period, the governing body of an affected local government unit may file an objection to a proposed impact plan. [90-6-307(5) and (6), MCA] During and following the review period, the parties to the dispute should attempt to resolve their differences by negotiation. By the end of the formal negotiating period, they must notify the Board of the outcome of their negotiations, specifying which issues raised by the objection have been resolved, if any, and which remain, if any. They are to provide the Board with a signed copy of the agreements and proposed changes to the plan that have resulted from their negotiations. [90-6-307(7), MCA; ARM 8.104.209]

If, by the end of the negotiation period, the parties to the dispute have not resolved all of the issues raised by the objection, the remaining issues come before the Board for adjudication. [90-6-307(7), MCA] In that event, the Board and the parties must follow contested case proceedings, as required by the *Montana Code Annotated* and the *Administrative Rules of Montana*. [90-6-305(2), MCA; 90-6-307(7), MCA] Parties to the dispute may agree to informal proceedings. [2-4-603, MCA; 2-4-604, MCA]

Although the remaining issues now fall within the quasi-judicial jurisdiction of the Board, which must approve any changes to the plan, the affected parties are encouraged to continue their efforts to resolve differences among themselves prior to the hearing. If they reach agreement on any of the matters in dispute, the Board will review their proposed resolution to determine whether it is (1) consistent with the purposes and requirements of law; (2) fair to all parties and to the constituents of the affected local government units; and (3) generally appropriate and workable. The Board must concur in any agreements that are negotiated after the end of the negotiation period; that is, after the objection comes under its jurisdiction.

If unresolved issues come to hearing, neither the plan nor the objection carries with it a presumption of correctness. [90-6-307(7), MCA]

Like impact plans themselves, an adjudication process will vary somewhat with circumstances, within the requirements of statute and rule. To date, the Board has held a contested case hearing only through informal proceedings. In that situation, the informal contested case proceedings operated, overall, as described below.

After the parties inform the Board which issues remain in dispute, the Board will initiate a pre-hearing process designed to narrow the issues; clarify each party's position with

respect to these issues; establishment of a pre-hearing schedule for requesting and exchanging information, including the identification of proposed exhibits, witnesses, and testimony; and establish the schedule and procedures for the hearing. To discuss these matters, the Board's staff will schedule a pre-hearing conference at which each party is represented. The Board's administrative officer or its attorney will preside over this conference.

#### **A. PRE-HEARING CONFERENCE**

At the pre-hearing conference, each party should be prepared to identify and address:

1. Issues of fact on which the parties agree;
2. Issues of fact that remain in contention;
3. Issues of law on which the parties agree;
4. Issues of law that are disputed;
5. Exhibits to be presented prior to or at the hearing;
6. Witnesses to be called at the hearing;
7. The primary contact person who will represent each party during the proceedings;
8. The schedule for discovery, if any, and for the exchange of exhibits;
9. The motions and objections of the parties that should be resolved prior to the hearing;
10. The proposed pre-hearing procedure and schedule;
11. The proposed hearing procedure and schedule;
12. The proposed pre-hearing memorandum and order.

Through the pre-hearing conference, the Board's staff will work with the parties to clarify and narrow the issues that will be brought before the Board and to estimate the time

required for the exchange of position statements and exhibits and for the presentation of each party's case at the hearing.

## **B.PRE-HEARING MEMORANDUM**

Following the pre-hearing conference, the Board's staff will prepare a pre-hearing memorandum, which may be distributed in draft form among the parties in order to clarify specific items, revise schedules, and reach as much concurrence as possible. In the memorandum the parties may agree to utilize informal contested case proceedings. All parties to the dispute must sign the memorandum prior to the hearing.

1. The memorandum identifies:
  - a. stipulated facts,
  - b. stipulations of law,
  - c. contentions of the parties,
  - d. resolutions of issues proposed by the parties,
  - e. issues of fact to be determined by the Board,
  - f. issues of law to be determined by the Board,
  - g. a list of exhibits to be admitted at the hearing without objection,
  - h. a list of exhibits admission of which may be contested and which will require ruling by the Board,
  - i. a list of exhibits to be introduced at the request of the Board,
  - j. a list of witnesses that may be called by each party,
  - k. a list of witnesses that may be called by the Board,
  - l. the exchange dates agreed upon by the parties at the prehearing conference, and
  - m. additional procedural stipulations.

2. In addition to enumerating proposed exhibits and witnesses, the party proposing a witness or exhibit must indicate which issue of fact the witness or exhibit will address.
3. In the memorandum the parties will agree to the order and manner in which testimony is to be given. For example, they may agree that:
  - a. each party will begin its testimony with an opening statement or narrative summarizing its position, followed by the calling of witnesses;
  - b. witnesses will present their testimony in narrative format, when possible, but the party calling the witness may use a question-and-answer format if it prefers to do so;
  - c. cross questioning of a witness may be conducted by no more than one representative of the opposing party; and
  - d. following the testimony of witnesses, each party will be given an opportunity to rebut arguments and summarize its position.
4. The pre-hearing memorandum will identify the statutes giving the Board jurisdiction over the issues before it and will recite that:
  - a. neither the plan nor the objection carries with it a presumption of correctness;
  - b. the Board may subpoena witnesses or request exhibits as it considers necessary to making an informed and impartial determination;
  - c. the Board may adjourn the hearing or may recess it to reconvene at a later date until it is satisfied that it has received the information necessary to its decision making;
  - d. in its determinations the Board will address only those issues brought before it through the objection, not the plan as a whole, except as it relates to those issues; and

- e. the Board may accept the position of either party or may amend the plan in any way it considers appropriate to resolve the issues in contention, whether or not such amendments were contemplated by the parties.

### **C. POSITION STATEMENT**

Following the pre-hearing conference and within the schedule established at, or subsequent to, the conference, each party will file with the Board and all other parties a Position Statement that includes the party's:

1. Contentions of fact, in which it sets out the essential facts to be relied upon in meeting its burden of proof under the legal basis for its contentions;
2. Contentions of law, in which it sets out its legal theory, supported by appropriate statutory or case citations;
3. Prayer for relief sought, in which it sets forth precisely what relief it desires should it prevail, including, as nearly as possible, any language, it would want to have incorporated into or deleted from the Impact Plan;
4. List of proposed exhibits; and
5. List of proposed witnesses.

### **D. REQUESTS FOR INFORMATION**

Following receipt and review of the Position Statements and within the schedule established during or after the pre-hearing conference, each party will file its requests for information. The Board, as well as the disputants, may request information from any of the parties.

### **E. FILING OF REQUESTED INFORMATION**

Within the established schedule, each party will file with the Board and all other parties, the information requested of it.

### **F. FILING OF RESPONSES TO POSITION STATEMENTS**

Within the established schedule, each party will file its responses to the other party or parties' position statements. The responses may include the party's:

1. Contentions of fact;
2. Contentions of law;
3. Relief sought;
4. Objections to proposed exhibits; and
5. Objections to proposed witnesses.

#### **G. REPLIES TO RESPONSES**

Within the schedule established during the pre-hearing conference, each party will file its replies to the responses and identifies its proposed rebuttal exhibits and witnesses.

#### **H. NOTICE OF HEARING**

The Board will publish notice of the contested case hearing in a newspaper of general circulation in the most affected county, as determined by the Board.

#### **I. PRE-HEARING ORDER**

The pre-hearing order incorporates, by reference, the pre-hearing memorandum, specifies that the parties have stipulated to an informal contested case hearing, and outlines the conduct of the hearing, addressing:

1. The applicable rules of evidence,
2. The order of presentation of cases,
3. The presentation of physical or testimonial evidence,
4. The list of the information requested by the Board prior to the hearing,
5. Objections to the admission of evidence,
6. Interrogation of witnesses by the parties and the Board,
7. Closing statements,

8. Adjournment or continuance of the hearing, and
9. The post-hearing legal memoranda in which the parties set out their proposed findings of fact and conclusions of law.

The pre-hearing order is signed by all parties to the proceedings.

## **J. INFORMAL CONTESTED CASE HEARING**

The hearing is held in the county considered by the Board to be most affected. Following is an outline of a model Order of Proceedings for an informal contested case hearing.

### ORDER OF PROCEEDINGS

#### CONTESTED CASE HEARING BEFORE THE HARD-ROCK MINING IMPACT BOARD

on the matter of

THE [local government unit] OBJECTION TO THE [mineral developer] IMPACT PLAN

Docket No: [199\_\_ - \_\_]

[TIME AND PLACE OF HEARING]

Opening of Hearing by Presiding Officer

Presentation of Cases by the Parties

- A. Parties will present their cases in the following sequence:
  1. Objecting Local Government Unit
  2. Mineral Developer
  3. Affected County
  4. Affected City
- B. Each party will present its case using the following procedure:

1. Opening Statement
2. Testimony of Witnesses
  - a. Direct Testimony (Narrative or Question and Answer)
  - b. Cross-Questioning by Other Parties
  - c. Questions by Board and Staff
  - d. Redirect

Parties' Rebuttal Witnesses, if any

- A. Parties may call rebuttal witnesses in the same order as "A" above.
- B. Testimony of Rebuttal Witness: same procedure as "B.2" above.

Board's Witnesses, if any: same procedure as "B.2" above.

Parties' Closing Statements: same sequence as "A" above.

Adjournment or Continuance of Hearing

#### **K. BOARD'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

In considering the matter before it, the Board reviews the post-hearing memoranda (and any authorized responses or replies) in which the parties set out their proposed findings of fact and conclusions of law. The Board must make its determinations within 60 days after the hearing is adjourned. At the end of the 60 days, the Board serves its findings of fact, conclusions of law and order on all parties to the plan. [90-6-307(8), MCA]

#### **L. BOARD AMENDS THE PLAN, IF NECESSARY, AND APPROVES THE PLAN**

The Board amends the plan, if necessary, to reflect its findings, conclusions and order, and approves the plan with its amendments, if any. The length of time required for the Board to amend and approve the plan depends on the extent and complexity of the issues and of the changes to the plan. After approving the amendments and, then, the plan as amended, the Board serves either the amendments, in the form of replacement pages, or the re-printed plan in its entirety on all parties to the plan. [90-6-307(8), MCA]

## **M. APPEAL**

Any party to the proceedings is entitled to judicial review of the Board's decision in the district court in the judicial district in which the hearing was held. [90-6-307(8), MCA]

## **N. AWARDING OF COSTS**

If it is determined that an objection is valid, in whole or in part, and it results in a remedial order being issued by the Board or the court, the Board or court must award and the developer must pay to the affected local government unit its reasonable costs and attorneys fees. [90-6-307(13), MCA]

# **OVERVIEW OF THE HARD-ROCK MINING IMPACT ACT AND THE PROPERTY TAX BASE SHARING ACT**

## **I. THE PURPOSES OF THE IMPACT ACT**

The purposes of the Hard-Rock Mining Impact Act are to ensure that:

- local government services and facilities will be provided when and where they are needed as a result of a new, large-scale mineral development, and
- existing local taxpayers will not have to bear increased local government costs as a result of the development.

## **II. THE ROLE OF THE HARD-ROCK MINING IMPACT BOARD**

The Hard-Rock Mining Impact Board is a five-member quasi-judicial board, appointed by the Governor. The Board administers the Impact Act and parts of the Property Tax Base Sharing Act. The Board also adjudicates disputes related to proposed impact plans, proposed plan amendments, the proposed termination of tax base sharing, proposed impact plan waivers, and the developer's noncompliance with its commitments in an approved plan or with the requirements of the Impact and Tax Base Sharing Acts.

## **III. LARGE-SCALE MINERAL DEVELOPERS AND THE IMPACT PLAN**

The impact plan program became law on May 18, 1981. Each "large-scale" hard-rock mineral developer that applies for an operating permit after that date is required to prepare an impact plan. As defined by the Act, a large-scale mineral development is one that employs more than 75 persons in any consecutive six-month period in the construction or operation of the mine and associated mill. If the development becomes "large-scale" after obtaining a permit, it must either prepare a plan or obtain a waiver or conditional waiver from the Board.

## **IV. PREPARATION OF AN IMPACT PLAN**

The Impact Act requires the mineral developer to prepare an impact plan that identifies all increased capital, operating, and net operating costs which will be incurred by local government units as a result of the proposed mineral development. The developer must commit to pay all increased capital and net operating costs identified in the plan. Impact payments may take the form of property tax prepayments, grants, facility impact bonds or other financing mechanisms that do not shift increased costs to the local

taxpayer. The plan must include a schedule that specifies when and by what method of payment the developer will meet the identified costs.

Local governments cooperate in the preparation of the impact plan, helping to assure that it meets statutory requirements and contains accurate data, reasonable assumptions, and adequate provisions for the mitigation of impacts. Affected local government units may require the developer to provide financial or other assistance to help them prepare for and evaluate the impact plan. Local government units must treat this financial assistance as a tax prepayment by the developer.

## **V. REVIEWING AN IMPACT PLAN**

When the plan is complete, the developer submits it to the Board and to affected local government units for review by the latter during a formal 90-day review period. During this review, the governing body of the county must hold a public hearing on the proposed plan.

In reviewing a proposed plan, local governments should ask the following questions:

- a. Does the plan include appropriate definitions? Is it based on accurate data and reasonable assumptions?
- b. Does the plan adequately identify all increased service and facility needs and costs likely to result from the mineral development?
- c. Does the plan identify when services, facilities, and financing will be needed? Does it allow adequate lead time for local government units to prepare for the needed services and facilities?
- d. In the plan has the developer committed to pay all increased capital and net operating costs in a timely manner and to use a method of payment that ensures that the costs will not be shifted to other local taxpayers?
- e. Does the plan contain such specific provisions as may be needed for its implementation, adjustment and amendment? Does the plan provide for appropriate monitoring?
- f. Does the plan comply with all statutory and regulatory requirements of the Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act? Does it conflict with other applicable local government laws or regulations?

- g. Does the plan specify all of the agreements and "understandings" between local government units and the developer that are relevant to the review and implementation of the plan?
- h. Is the plan sufficiently clear that it can be understood by persons who have not helped to prepare or review it?

If, during the formal review period, a local governing body disagrees with something in a proposed plan, or concludes that something has inappropriately been omitted from the plan, the governing body may negotiate with the mineral developer to modify the plan or it may file a formal objection with the Hard-Rock Mining Impact Board.

## **VI. FILING AND RESOLVING OBJECTIONS**

If a governing body files a formal objection and cannot resolve its differences with the developer within 30 days following the end of the review period, the Hard-Rock Mining Impact Board will hold a contested case hearing and adjudicate the dispute. If the developer and affected local government unit both want to extend the negotiating period, they may ask the Board for an extension for whatever period of time they specify.

Only the governing body of an affected local government unit may file an objection to a plan or enter into an agreement with the developer to change a plan after it has been submitted for review. Other local government officials and citizens participate in the review process through the governing body of the affected unit of local government. As defined in the Impact Act, "local government units" include counties, incorporated cities and towns, elementary and high school districts, rural fire districts, public hospital districts, refuse disposal districts, county water and/or sewer districts and county park districts.

If no objections are filed by the end of the formal review period or if all objections are resolved during the negotiation period, the plan is approved automatically. If objections are not resolved by the affected parties during the negotiation period, the Board will hold a contested case hearing in the county which is most affected, and will adjudicate the disputed issues. The Board will arrive at its determination within 60 days following the hearing. After amending the plan as necessary to reflect its determination and resolve the dispute, the Board will approve the plan.

## **VII. AMENDMENT OF AN APPROVED IMPACT PLAN**

The developer and the governing body of the county may amend an approved impact plan at any time by filing a joint petition with the Board. The governing body of the

county acts as petitioner on behalf of any local government unit within the county. In addition, either the developer or the governing body of the county may unilaterally file a petition to amend an approved plan, provided that (a) the petition is filed within two years of when the mine goes into commercial production and the plan is materially inaccurate because of errors in assessing the impacts, or (b) employment at the mine is forecast to increase or decrease by at least 75 persons over or under the number projected in the plan, or (c) the plan itself specifies conditions which allow either party to petition for amendment.

The petition must include a description of the conditions that allow the plan to be amended, a statement of the facts and circumstances underlying the need for the amendment, and a description of the proposed corrective measures. A proposed amendment is subject to a 60-day review period during which any party to the plan may file an objection to the amendment with the Board. By mutual agreement, parties to the plan may sometimes make minor changes to the plan, if such changes are contemplated by the plan itself and are within the guidelines for adjustments established by the Board.

#### **VIII. ENFORCEMENT OF THE DEVELOPER'S COMMITMENTS IN AN IMPACT PLAN**

The mineral developer's compliance with its commitments in an approved impact plan is a condition of the operating permit issued to the developer by the Department of Environmental Quality (DEQ). If the developer fails to comply with its commitments in the plan or with the review and implementation requirements of the Impact and Tax Base Sharing Acts, the Board must notify the DEQ. The DEQ must suspend the mine's operating permit until such time as the developer meets its obligations under the plan or complies with the statutes.

#### **IX. THE HARD-ROCK MINING PROPERTY TAX BASE SHARING ACT**

Tax base sharing affects local government units in which the mine is located and those that will need to increase services and facilities as a result of the mine. Tax base sharing is required when an impact plan predicts that increased costs resulting from the development will exceed increased revenues in local government units where the mine is not located or when the plan indicates there will be an inequitable distribution of tax revenue and tax base among any of the affected local government units. Tax base sharing involves only the increase in taxable valuation of the mineral development which occurs after the operating permit is issued.

Every mine is located in at least one county, one high school district and one elementary school district. Without tax base sharing, each of these taxing jurisdictions applies its mill levy to 100% of the taxable valuation of the mine. With tax base sharing, these local government units share the post-permit increase in mineral development taxable valuation with other affected local government units, except that at least 20 percent of the gross proceeds valuation is reserved to the local government unit in which the ore body is located. Each affected local government unit applies its mill levy to its portion of the mineral development taxable valuation.

Unless otherwise provided in the plan itself, the allocation of taxable valuation is based on the number and place of residence of all mineral development employees and their school-age children. Mineral development employee means a person who is employed by the developer, its contractors and subcontractors in the construction or operation of the mine and its associated milling facility. A mineral development student is one whose parent or guardian resides within the jurisdiction of an affected local government unit as a result of employment with a large-scale mineral development, including employment by a contractor or subcontractor. Both local and immigrating employees and students are included in the formulae.

A plan may modify the employee and student based formula for allocating mineral development taxable valuation if a modification is needed in order to ensure a reasonable correspondence between the occurrence of increased costs resulting from the mineral development and the allocation of taxable valuation resulting from the development.

Tax base sharing does not affect the total taxable valuation of the mineral development, but, because of differences in the number of mills levied by each affected local government unit, tax base sharing may affect the amount of tax actually paid by the developer.

## **X. SOCIAL AND ECONOMIC IMPACTS AND THE HARD-ROCK MINING IMPACT ACT**

The Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act do not attempt to mitigate the full array of social and economic impacts resulting from the opening of a new large-scale hard-rock mine. They deal only with service, facility and fiscal impacts to local government units. The purpose of the Acts is to enable local governments to provide the governmental services and facilities needed as a result of the new development and to ensure that the local taxpayer will not have to pay increased capital and net operating costs resulting from the development.

However, for the plan to identify the need for local government services and facilities, a broad range of social and economic impacts must be assessed. For example, to identify which local government units will be affected, the kinds and levels of services that will be needed and when and where they will be required, the plan must first project the number of people who will move into the area as a result of the development, when they will arrive, where they will live and attend school, and their approximate distribution by grade. The plan must also identify the housing needs that will result from the mineral development and where and how these needs can be met with existing or new, temporary or long-term housing.

The developer, counties and towns may influence the location of new housing. The developer may decide to help mitigate nongovernmental impacts, such as housing and transportation, in order to help meet the needs of its employees, to minimize increased demands on local government services and facilities, or to reduce other social and economic impacts. Decisions the developer makes about non-governmental impacts may affect the impact plan. Mitigation measures cannot be imposed by the plan under the Impact Act, unless they fall within the "other assistance" provided by the developer to help mitigate governmental impacts.

## **XI. SOCIAL AND ECONOMIC IMPACTS AND THE HARD-ROCK MINE OPERATING PERMIT**

If an environmental impact statement (EIS) for a proposed new mine is prepared by the Department of Environmental Quality, the EIS must assess a broad range of potential social and economic impacts. Its data and projections are to be made available to local government units to help them with the preparation and review of an impact plan. The EIS may recommend specific measures for mitigating adverse social and economic impacts. Under a recent court decision, if the EIS identifies a social or economic impact which might be mitigated by the developer, the Department of Environmental Quality may impose conditions on the operating permit that require the developer to undertake specific mitigation measures, although this is not often done.

The Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act are found in Sections 90-6-301 through 90-6-405, MCA. Questions may be directed to:

**Hard-Rock Mining Impact Board  
Department of Commerce  
301 South Park Avenue  
P. O. Box 200523  
Helena, Montana 59620  
Telephone (406) 841-2789 or 841-2782**

## **HARD-ROCK MINING IMPACT AND PROPERTY TAX BASE SHARING ACTS SUMMARY OF ROLES AND RESPONSIBILITIES**

The **mineral developer** prepares the impact plan in cooperation with the affected local government units. The developer commits to pay all increased capital and net operating costs for local government services and facilities needed as a result of the mineral development, as identified in the plan. The developer guarantees to comply with its commitments in the approved plan, provides a third-party financial guarantee as required, makes such payments and provides such other assistance or information as may be required by statute, rule or the approved plan.

Affected **local government units** assist with the preparation of the impact plan and upon reviewing the submitted document may negotiate modifications with the developer or file formal objections with the Board, as needed. Pursuant to the impact plan, local government units provide the services and facilities needed as a result of the development. They enter into facility impact bond agreements, request tax prepayments, provide tax credits, and maintain impact funds and documentation, as provided by the plan or as required by statute. The **county** performs certain "lead agency" functions on behalf of all affected local government units.

Under circumstances specified by statute or by the plan itself, the **developer** or the **county** (on its own behalf or for another **affected local government unit**) may unilaterally petition the Board to amend an approved impact plan. At any time, the developer and county may jointly petition for amendment.

The **public** may participate in the preparation and review of the impact plan as authorized by Montana's open meeting and public participation laws. In general, the public participates through the governing bodies of the affected local government units. During the 90-day review period, the governing body of the affected **county** must hold a public hearing on the proposed impact plan.

The **Hard-Rock Mining Impact Board** is a quasi-judicial board responsible for administering the Impact Act and for adjudicating disputes about the impact plan. The Board clarifies the processes and procedures by which the Act is implemented and adopts policies and administrative rules as necessary; performs administrative functions related to the review, guarantee, implementation and amendment of an impact plan; resolves formal objections to the proposed plan or plan amendment; grants, denies or

repeals waivers of the impact plan requirement for certain large-scale mine permittees; specifies the terms of conditional waivers; determines and notifies the Department of Revenue when to initiate or terminate tax base sharing; and determines and notifies the Department of Environmental Quality if the developer fails to comply with its commitments in an approved impact plan or with the requirements of the Impact and Property Tax Base Sharing Acts.

The **Department of Environmental Quality** notifies the Board and the mineral developer, if an applicant for an operating permit is, or a mine permittee becomes, a large-scale mineral developer. If the Board notifies the Department that the developer is not complying with its commitments in an approved impact plan or with the requirements of the Impact and Tax Base Sharing Acts, the Department must withhold or suspend the developer's operating permit until the developer achieves or resumes compliance.

If the impact plan identifies a jurisdictional revenue disparity, as defined by the Property Tax Base Sharing Act, the **Department of Revenue** must allocate among the affected local government units the increase in taxable valuation of the mineral development that occurs after the operating permit is issued. This taxable valuation is allocated among those counties and municipalities, high school districts, and elementary school districts in which the mine is located and those which will experience an increased need to provide services and facilities as a result of the mineral development.

Please address questions or concerns about the Hard-Rock Mining Impact Act or Property Tax Base Sharing Acts to:

**Hard-Rock Mining Impact Board  
Montana Department of Commerce  
301 South Park Avenue  
P. O. Box 200523  
Helena, Montana 59620**

**Ellen Hanpa, Administrative Officer  
Tel. (406) 841-2789**

## THE HARD-ROCK MINING IMPACT ACT (2007)

**90-6-301. Declaration of necessity and purpose.** The large-scale development of mineral deposits in the state may cause an influx of people directly related to the area of the development. This influx of people and the corresponding increase in demand for local government facilities and services may create a burden on the local taxpayer. There is a significant lag time between the time when additional facilities and services must be provided and the time when additional tax revenue is available as a result of the increased tax base. In addition, local government units in whatever jurisdiction the development is not located may receive substantial adverse economic impacts without benefit of a major increased tax base in the future. There is therefore a need to pro a system to assist local government units in meeting the initial financial impact of large-scale mineral development.

**90-6-302. Definitions.** In this part, the following definitions apply:

- (1) "Board" means the hard-rock mining impact board established in 2-15-1822.
- (2) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific revenues, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.
- (3) "Facility" means a facility that is owned, operated, or maintained by a local government unit and that, under the impact plan submitted under the provisions of 90-6-307, can be expected to have increased capital and operating costs as a result of the large-scale mineral development.
- (4) "Large-scale mineral development" means the construction or operation of a hard-rock mine and the associated milling facility for which a permit is applied for under 82-4-335 on or after May 18, 1981, and for which the average number of persons on the payroll of the mineral developer and of contractors at the mineral development exceeds or is projected to exceed 75 for any consecutive 6-month period. A mining operation that would qualify as a large-scale mineral development under this subsection is not a large-scale mineral development if the mine owner and operator are small miners as defined in 82-4-303.
- (5) "Local government unit" means a county, city, town, school district, or any of the following independent special districts:
  - (a) rural fire district;
  - (b) public hospital district;
  - (c) refuse disposal district;
  - (d) county water and sewer district;
  - (e) county water district;
  - (f) county sewer district; or
  - (g) park district.

6) (a) "Property tax prepayment" means a potentially reimbursable impact payment made by the developer of a large-scale mineral development to the impact fund of an affected unit of local government pursuant to an approved impact plan to be expended for the purpose or purposes identified in the plan.

(b) The term does not mean a payment or prepayment of property taxes for general distribution among funds or accounts.

**90-6-303. Chairman -- meetings -- facilities -- funding.** (1) The board shall elect a chairman from among its members.

(2) The board shall meet as necessary or as called by the chairman or a majority of the members.

(3) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121.

(4) The administrative and operating expenses of the board shall be paid from revenue deposited to the credit of the hard-rock mining impact trust account from the license tax on metal mines imposed under Title 15, chapter 37.

**90-6-304. Accounts established.** (1) There is within the state agency fund type a hard-rock mining impact account. Money is payable into this account from payments made by a mining developer in compliance with the written guarantee from the developer to meet the increased costs of public services and facilities as specified in the impact plan provided for in 90-6-307. The state treasurer shall draw warrants from this account upon order of the board.

(2) There is within the state special revenue fund a hard-rock mining impact trust account. Within this trust account, there is established a reserve account not to exceed \$100,000.

(a) Money within the hard-rock mining impact trust account may be used:

(i) for the administrative and operating expenses of the board, as provided by 90-6-303(4);

(ii) to establish and maintain the reserve account; and

(iii) for distribution to the counties of origin, as provided by 90-6-331(1) and this section.

(b) Money within the hard-rock mining impact trust reserve account may be used for the administrative and operating expenses of the board if:

(i) the revenue provided under 15-37-117(1)(b) is less than the amount appropriated for the administrative and operating expenses of the board; or

(ii) the use of the reserve account revenue is necessary to allow the board to meet its quasi-judicial responsibilities under 90-6-307, 90-6-311, or 90-6-403(3).

(3) Money is payable into the hard-rock mining impact trust account under the provisions of 15-37-117. After first deducting the administrative and operating expenses of the board, as provided in 90-6-303, and then establishing and maintaining the reserve account in the amount of \$100,000, as provided in subsection (2) of this section, the remaining money must be segregated within the account by county of origin. The state treasurer shall draw warrants from this account upon order of the board.

**90-6-305. Hard-rock mining impact board -- general powers.** (1) The board may:

- (a) retain professional staff, including its administrative staff, and retain consultants and advisers, notwithstanding the provisions of [2-15-121](#);
  - (b) adopt rules governing its proceedings, determinations, and administration of this part;
  - (c) make payments to local government units from money paid to the hard-rock mining impact account as provided in [90-6-307](#);
  - (d) make determinations as provided in [90-6-307](#), [90-6-311](#), and [90-6-403](#)(3); and
  - (e) accept grants and other funds to be used in carrying out this part.
- (2) The provisions of the Montana Administrative Procedure Act apply to the proceedings and determinations of the board.

**90-6-306. Basis for awarding grants.** Grants shall be awarded to local government units on the basis of:

- (1) need;
- (2) severity of impact from mineral development;
- (3) availability of funds; and
- (4) extent of local effort in meeting its needs.

**90-6-307. Impact plan to be submitted.** (1) After an application for a permit for a large-scale mineral development is made under 82-4-335, the person seeking the permit shall submit to the affected counties and the board an impact plan describing the economic impact the large-scale mineral development will have on local government units and shall file proof of such submission to the counties with the board. Whenever an environmental impact statement on the permit application is prepared under 75-1-201, the lead agency shall cooperate to the fullest extent practicable with the affected local government units to eliminate duplication of effort in data collection. The governing bodies of the affected counties shall publish notice of the submission of an impact plan at least once in a newspaper of general circulation in the county. The mineral developer and the affected local government units shall ensure that the impact plan includes:

- (a) a timetable for development, including the opening date of the development and the estimated closing date;
- (b) the estimated number of persons coming into the impacted area as a result of the development;
- (c) the increased capital and operating cost to local government units for providing services which can be expected as a result of the development;
- (d) the financial or other assistance the developer will give to local government units to meet the increased need for services.

(2) In the impact plan, the developer shall commit itself to pay all of the increased capital and net operating cost to local government units that will be a result of the development, as identified in the impact plan, either from tax prepayments, as provided in 90-6-309, special industrial local government facility impact bonds, as provided in 90-6-310, or other funds obtained from the developer, and shall provide a time schedule within which it will do so. The plan may provide for funding from other revenue sources or funding mechanisms if the developer guarantees that the amount to be provided from these sources will be paid.

(3) Upon request of the governing body of an affected unit of local government, the mineral developer, prior to the end of the 90-day review period, shall provide financial or other

assistance as necessary to prepare for and evaluate the impact plan. The governing body of the affected county must contract with the developer to obtain the requested financial assistance for each unit of local government within the county. Any disbursements to a unit of local government under this subsection shall be credited against future tax liabilities, if any.

(4) The governing body of the county where the fiscal impacts on local government units are forecasted in the impact plan to be most costly shall, within 90 days after receipt of the impact plan from the developer, conduct a public hearing on the impact plan.

(5) An affected local government unit that has not been identified in an impact plan submitted to the board as being likely to experience increased capital and operating costs for providing services which can be expected as a result of the development may object to the impact plan under the provisions of this section if the local government unit clearly demonstrates that it is likely to experience increased capital and operating costs from the mineral development.

(6) An affected local government unit shall, within 90 days after receipt of the impact plan from the developer, notify the board in writing if that local government unit objects to the impact plan, specifying the reasons why the impact plan is objected to. During the 90-day period, an affected local government unit may petition for one 30-day extension by submitting a written request to the board stating the need and justification for the extension. The board shall grant the extension unless it finds there is no reasonable basis for the request. If no objection is received within the 90-day period or any extension thereof, the impact plan is approved without any review by the board. An approved plan is binding and may only be altered under the amendment provisions of 90-6-311.

(7) If objections are received from a local government unit, the board shall, within 10 days, notify the developer and forward a copy of the local government unit's objections to the developer. The local government unit and the developer have 30 days, or a longer period if both the local government unit and the developer request an extension, to resolve the objection. If the objections are not resolved, the board shall conduct a hearing on the validity of the objections, which shall be held in the affected county or, if objections are received from local government units in more than one county, shall be held in the county which, in the board's judgment, is more greatly affected. The provisions of the Montana Administrative Procedure Act shall apply to the conduct of the hearing. The impact plan filed by the developer shall carry no presumption of correctness at the hearing.

(8) Following the hearing, the board shall, within 60 days, make findings as to those portions of the impact plan which were objected to and, if appropriate, amend the impact plan accordingly. The findings and impact plan, as amended, shall be served by the board upon all parties. Any local government unit or the developer, if aggrieved by the decision of the board, is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court in and for the judicial district in which the hearing was held.

(9) The developer shall, within 30 days of receipt of the approved impact plan, provide the board with a written guarantee that the developer will meet the increased costs of public services and facilities as specified in the approved impact plan and according to the time schedule contained in the approved impact plan.

(10) The developer may make payments as specified in the approved impact plan directly to a local government unit or to the board. The governing body of a local government unit receiving payments shall deposit the payments into an impact fund. The developer and the affected governing body shall each issue to the board written verification of each payment and its intended use in compliance with the impact plan. The board shall deposit payments received from a developer into the hard-rock mining impact account established by 90-6-304.

(11) The board shall notify the Department of Environmental Quality of its receipt of the written guarantee of payment and of any failure of the developer to comply with this section.

(12) Upon receipt of evidence that an affected local government unit identified in the approved impact plan is providing or is preparing to provide an additional service or facility provided for in the approved impact plan, the board shall, if the hard-rock mining impact account is used to deliver payments to the local government unit, pay to that local government unit, in one sum or in parts, the money from the hard-rock mining impact account identified in the plan as the increased cost to the local government unit of providing that public service or facility.

(13) If it is determined that an objection filed by an affected local government unit under subsections (5) and (6) or 90-6-311(3) is valid and it results in some remedial order by the board or court of competent jurisdiction, the local government unit shall be awarded and the developer shall pay reasonable costs and attorney fees associated with any administrative or judicial appeals filed under this section. Any attorney fees and costs awarded shall be in addition to any amounts paid by the developer under this part.

(14) Upon a determination by the Department of Environmental Quality that a permittee under 82-4-335 has become or will become a large-scale mineral developer, the permittee may petition the board for a waiver of the impact plan requirement. The board may grant a waiver or conditional waiver of this requirement only if it has provided notice and opportunity for hearing to the permittee and to all affected local government units. The board shall adopt criteria under which a waiver may be granted. A waiver issued by the board may be revoked as provided in the conditional waiver or if the permittee and contractors at the mineral development increase their payrolls from the date of the waiver by 75 or more persons, provided the revocation is requested by an affected local government unit and notice and opportunity for hearing are given to the permittee and all affected local government units. The board shall notify the board of land commissioners of any waiver that has been revoked.

(15) When a person who holds an operating permit under 82-4-335 and who has filed an impact plan fails to comply with the review and implementation requirements in this part and part 4 of this chapter, the board shall certify to the board of land commissioners that the failure to comply has occurred and shall certify when a permittee who has previously failed to comply comes into compliance.

**90-6-308. Permit procedure and review of impact plan to run concurrently.** It is intended that the procedure for fulfilling the permit requirement of 82-4-335 and the review of the impact plan by the board under 90-6-307(5) and (6), if review occurs, are to run concurrently.

**90-6-309. Tax prepayment -- large-scale mineral development.** (1) After permission to commence operation is granted by the appropriate governmental agency, and upon request of the governing body of a county in which a facility is to be located, a person intending to construct or locate a large-scale mineral development in this state shall prepay property taxes as specified in the impact plan. This prepayment shall exclude the 6-mill university levy established under 20-25-423 and may exclude the mandatory county levies for the school BASE funding program established in 20-9-331 and 20-9-333.

(2) The person who is to prepay under this section is not obligated to prepay the entire amount established in subsection (1) at one time. Upon request of the governing body of an affected local government unit, the person shall prepay the amount shown to be needed from time to time as determined by the board.

(3) The person who is to prepay shall guarantee to the hard-rock mining impact board, through an appropriate financial institution, as may be required by the board, that property tax prepayments will be paid as needed for expenditures created by the impacts of the large-scale mineral development.

(4) When the mineral development facilities are completed and assessed by the department of revenue, they are subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that in each year after the start of production, the local government unit that received a property tax prepayment shall provide for repayment of prepaid property taxes in accordance with subsection (5).

(5) A local government unit that received all or a portion of the property tax prepayment under this section shall provide for tax crediting as specified in the impact plan. The tax credit allowed in any year may not, however, exceed the tax obligation of the developer for that year, and the time period for tax crediting is limited to the productive life of the mining operation.

**90-6-310. Local government facility impact bonds.** (1) When the need for the construction, renovation, improvement, or acquisition of local government facilities as a result of the large-scale mineral development is determined under 90-6-307, the owners of a large-scale mineral development may enter into a written agreement with the local government unit having the burden for the increased capital and operating costs expected to be incurred by the facilities. The local government unit may execute a written agreement with the owner of a large-scale mineral development for the issuance of any special industrial local government facility impact bonds provided for in this section.

(2) The agreement with the owners of a large-scale mineral development shall provide for a payment guarantee, in addition to the taxes imposed by the local government unit on property owners generally, of the principal and interest on the bonds provided for in this section. Payment will then be made by an annual special tax levy on the property of the large-scale mineral development sufficient to retire the principal and interest on these special impact bonds. The bonds shall not be an obligation of the local government unit, but shall be special obligations limited to the revenue derived from the special tax levy. A local government unit shall establish a levy and, to the extent bonds are issued as provided in this section, shall pledge the special fund and all revenues of the special tax levy to the repayment of the bonds.

(3) The debt limits set forth in 7-7-2203, 7-7-4201, and 20-9-406 do not apply to bonds issued in accordance with this section. The interest on such bonds shall not be subject to state taxes.

(4) The impact bonds shall be authorized by the governing body of the local government unit by a resolution that states:

- (a) the facility for which the bonds are issued;
- (b) the amount of the bonds;
- (c) the rate of interest the bonds bear;
- (d) the date of the bonds and the maturity date or dates of the bonds;
- (e) the dates interest is payable on the bonds;
- (f) the redemption options, if any, with respect to the bonds; and
- (g) the manner of execution of the bonds.

(5) The impact bonds shall be:

- (a) in registered form as to principal and interest;
- (b) payable in installments and at times not exceeding 30 years from their date of issuance; and
- (c) payable at a place or places and be evidenced in a manner the governing body determines is in the best interest of the local government unit.

(6) Any impact bonds issued under the authority of this section may be sold at public or private sale in a manner, at a time or times, and at a price above or below par as may be determined by the governing body of the local government unit. All expenses, premiums, and commissions that the local government unit considers necessary or advantageous in connection with the authorization, sale, and issuance of the bonds may be paid by the governing body of the local government unit from the proceeds of the sale of the bonds.

(7) If more than one local government unit adopts a resolution to issue impact bonds, the local government units may enter into an interlocal agreement under 7-11-101 through 7-11-105, 7-11-107, and 7-11-108, providing for the issue of impact bonds of the local government units to be combined in a single offering, if the governing body of each local government unit authorizing the bonds determines that the pooling of bonds:

- (a) is in the best interest of the local government units;
- (b) will facilitate the sale of the bonds under more advantageous terms;
- (c) will lower the interest rates; or
- (d) will lower the cost of issuance.

(8) In addition to the specific requirements of 7-11-105, the interlocal agreement shall provide:

- (a) that the bond titles shall denote that impact bonds of different local government units have been pooled and shall refer to each local government unit executing the interlocal agreement;
- (b) for a single debt service fund, to be held by a qualified trust company, to which each local government unit shall pledge and pay the annual special tax levies levied against the large-scale mineral development; and
- (c) that the bonds are payable solely from and against the debt service funds under the interlocal agreement.

**90-6-311. Impact plan amendments.** (1) The impact plan may provide for amendment under definite conditions specified in the plan. Also, the governing body of an affected county or the mineral developer may petition the board for an amendment to an approved impact plan if:

(a) employment at the large-scale mineral development is forecast to increase or decrease by at least 75 persons, as determined under 90-6-302(4), over or under the employment levels contemplated by the approved impact plan; or

(b) it becomes apparent that an approved impact plan is materially inaccurate because of errors in assessment and 2 years have not elapsed since the date the facility begins commercial production; or

(c) the governing body of an affected county and the mineral developer join in a petition to amend the impact plan.

(2) Within 10 days of receipt the board shall publish notice of the petition at least once in a newspaper of general circulation in the affected county. The petition must include:

(a) an explanation of the need for an amendment;

(b) a statement of the facts and circumstances underlying the need for an amendment; and

(c) a description of the corrective measures proposed by the petitioner.

(3) Within 60 days after notice that the petition has been received, an affected local government unit or the mineral developer must notify the board in writing if such person objects to the amendments proposed by the petitioner, specifying the reasons why the impact plan should not be amended as proposed. If no objection is received within the 60-day period, the impact plan must be amended by the board as proposed by the petitioner.

(4) If an objection is received, within 10 days of its receipt, the board shall notify the petitioner and include a copy of all objections received by the board. If the objecting party and the petitioner cannot resolve the objections within 30 days after the expiration of the 60-day period, the board shall conduct a hearing on the validity of the objections within 30 days after the failure of the parties to resolve the objections. The hearing must be held in the affected county or, if objections are received from local government units in more than one county, must be held in the county which in the board's judgment is more greatly affected. The provisions of the Montana Administrative Procedure Act apply to the conduct of the hearing.

(5) Following the hearing, the board shall make findings as to those portions of the amendments which were objected to and, if appropriate, amend the impact plan accordingly. The board shall cause the findings and impact plan, as amended, to be served on all parties. Any local government unit or the developer is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court for the judicial district in which the hearing was held.

**90-6-323. Local government budget authority.** A local government unit may budget and expend payments received from a mineral developer under this part or part 4 of this chapter or pursuant to a plan approved under this part. If a payment is requested or received after the adoption of the budget for the fiscal year in which the payment is to be expended, the governing body of the local government unit may by a majority vote amend its budget to provide for the receipt and expenditure of the payment.

**90-6-331. Fund transfer.** Prior to each October 31, all money segregated by county in the hard-rock mining impact trust account following allocation to the hard-rock mining impact trust account established in [90-6-304](#)(2) as of September 30 immediately preceding must be transferred to the county for which the funds have been held in deposit. The funds transferred must be deposited in the county hard-rock mine trust account established in [7-6-2225](#).

## **HARD-ROCK MINING IMPACT PROPERTY TAX BASE SHARING ACT**

**90-6-401. Declaration of necessity and purpose.** The commencement of new large-scale hard-rock mineral developments often results in revenue disparities among adjacent local government units. This occurs primarily when a mine that locates in one taxing jurisdiction causes population influxes in neighboring jurisdictions. The result can be that some jurisdictions will experience a need to increase expenditures and receive no corresponding increase in revenue, while others will experience an increase in revenue and receive no comparable increase in expenditures. There is therefore a need to allocate the increase in property tax base resulting from the development and operation of new large-scale mines so that property tax revenues will be equitably distributed among affected local government units.

**90-6-402. Definitions.** As used in this part, the following definitions apply:

(1) "Affected local government unit" means a local government unit that will experience a need to increase services or facilities as a result of the commencement of large-scale mineral development or within which a large-scale mineral development is located in accordance with an impact plan adopted pursuant to 90-6-307.

(2) "Board" means the hard-rock mining impact board established in 2-15-1822.

(3) "Jurisdictional revenue disparity" means property tax revenues resulting from a large-scale hard-rock mineral development that are inequitably distributed among affected local government units as finally determined by the board in an approved impact plan.

(4) "Large-scale mineral development", for the purposes of this part, is defined in 90-6-302.

(5) "Local government unit", for the purposes of this part, means a county, municipality, or school district.

(6) "Mineral development employee" means a person who resides within the jurisdiction of an affected local government unit as a result of employment with a large-scale mineral development or its contractors or subcontractors.

(7) "Mineral development student" means a student whose parent or guardian resides within the jurisdiction of an affected local government unit as a result of employment with a large-scale mineral development or its contractors or subcontractors.

(8) "Taxable valuation" of a mineral development means the total of the gross proceeds taxable percentage specified in 15-6-132(2) when added to the taxable percentages of real property, improvements, machinery, equipment, and other property classified under Title 15, chapter 6, part 1.

**90-6-403. Jurisdictional revenue disparity -- conditioned exemption and reallocation of certain taxable valuation.** (1) When an impact plan for a large-scale mineral development approved pursuant to [90-6-307](#) identifies a jurisdictional revenue disparity, the board shall promptly notify the developer, all affected local government units, and the department of revenue of the disparity. Except as provided in [90-6-404](#) and this section, the

increase in taxable valuation of the mineral development that occurs after the issuance and validation of a permit under [82-4-335](#) is not subject to the usual application of county and school district property tax mill levies. This increase in taxable valuation must be allocated to local government units as provided in [90-6-404](#). The increase in taxable valuation allocated as provided in [90-6-404](#) is subject to [15-10-420](#) and the application of property tax mill levies in the local government unit to which it is allocated. The increase in taxable valuation allocated to the local government unit is considered newly taxable property in the recipient local government unit as provided in [15-10-420](#).

(2) Subject to [15-10-420](#), the total taxable valuation of a large-scale mineral development remains subject to the statewide mill levies and basic county levies for elementary and high school BASE funding programs as provided in [20-9-331](#) and [20-9-333](#).

(3) The provisions of subsection (1) remain in effect until the large-scale mineral development ceases operations or until the existence of the jurisdictional revenue disparity ceases, as determined by the board.

**90-6-404. Allocation of taxable valuation for local taxation purposes.** When property of a large-scale mineral development is subject to the provisions of [90-6-403](#), the increase in taxable valuation must be allocated by the department of revenue as follows:

(1) The local government unit in which the ore body or the mineral deposit being mined is located must be allocated 20% of the total increase in taxable valuation of the gross proceeds.

(2) The remaining increase in taxable valuation of the mineral development must be allocated between affected counties and affected municipalities according to the following formula based on the place of residence of mineral development employees:

(a) A portion, not to exceed 20%, to affected municipalities, based on that percentage of the total number of mineral development employees that reside within municipal boundaries. The taxable valuation allocated to affected municipalities must be distributed to each municipality according to its percentage of the total number of mineral development employees who reside within municipal boundaries. That portion of the taxable valuation distributed to a municipality pursuant to this section is subject to the same county mill levy as other taxable properties located in the municipality.

(b) The remaining portion of the taxable valuation must be distributed to each affected county according to its percentage of the total number of mineral development employees that reside within the county.

(3) The increase in taxable valuation equal to that subject to subsection (2) must be distributed pro rata among each affected high school district according to the percentage of the total number of mineral development high school students that reside within each district.

(4) The increase in taxable valuation equal to that subject to subsection (2) must be distributed pro rata among each affected elementary school district according to the percentage of the total number of mineral development elementary school students that reside within each district.

(5) The distribution formula specified in subsections (2) through (4) may be modified by an impact plan approved as provided in [90-6-307](#) or amended as provided in [90-6-311](#), if the

modification is needed in order to ensure a reasonable correspondence between the occurrence of increased costs resulting from the mineral development and the allocation of taxable valuation resulting from the mineral development.

**90-6-405. Employee surveys.** (1) Each large-scale mineral development subject to the provisions of 90-6-403 and 90-6-404 shall, on or before May 1 of each year, conduct a survey of its employees and promptly submit a report of its findings to the department of revenue. The report must include:

(a) the number of mineral development employees residing within each affected county;  
(b) the number of mineral development employees residing within each affected municipality;

(c) the number of mineral development students residing in each affected high school district; and

(d) the number of mineral development students residing in each affected elementary school district.

(2) The initial allocation of the increase in taxable valuation made as provided in 90-6-403 and 90-6-404 shall be made on the basis of the place of residence of employees and the district of enrollment of students as projected in the approved impact plan for that period of time between the issuance and validation of the permit and the submission of an employee survey as provided for in this section.

## HARD-ROCK MINING IMPACT BOARD

### ENABLING LEGISLATION, ORGANIZATION, AND GENERAL POWERS

**2-15-1822. Hard-rock mining impact board.** (1) There is a hard-rock mining impact board.

(2) The hard-rock mining impact board is a five-member board.

(3) (a) Subject to subsections (3)(b) and (3)(c), the hard-rock mining impact board must include among its members:

- (i) a representative of the hard-rock mining industry;
- (ii) a representative of a major financial institution in Montana;
- (iii) a person who, when appointed to the board, is an elected school district trustee;
- (iv) a person who, when appointed to the board, is an elected county commissioner;
- (v) a member of the public-at-large.

(b) Three persons appointed to the board must reside in an area impacted or expected to be impacted by large-scale mineral development.

(c) At least two persons must be appointed from each district provided for in [5-1-102](#).

(4) The hard-rock mining impact board is a quasi-judicial board subject to the provisions of [2-15-124](#) except that one of the members need not be an attorney licensed to practice law in this state. The board shall elect a presiding officer from among its members.

**90-6-303. Chairman -- meetings -- facilities -- funding.** (1) The board shall elect a chairman from among its members.

(2) The board shall meet as necessary or as called by the chairman or a majority of the members.

(3) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121.

(4) The administrative and operating expenses of the board shall be paid from revenue deposited to the credit of the hard-rock mining impact trust account from the license tax on metal mines imposed under Title 15, chapter 37.

**90-6-305. Hard-rock mining impact board -- general powers.** (1) The board may:

- (a) retain professional staff, including its administrative staff, and retain consultants and advisors notwithstanding the provisions of 2-15-121;
- (b) adopt rules governing its proceedings, determinations, and administration of this part;
- (c) award grants to local government units subject to 90-6-306;

(d) make payments to local government units from money paid to the hard-rock mining impact account as provided in 90-6-307;

(e) make determinations as provided in 90-6-307, 90-6-311, and 90-6-403(3);  
and

(f) accept grants and other funds to be used in carrying out this part.

(2) The provisions of the Montana Administrative Procedure Act apply to the proceedings and determinations of the board.

**2-15-121. Allocation for administrative purposes only.** (1) An agency allocated to a department for administrative purposes only in this chapter shall:

(a) exercise its quasi-judicial, quasi-legislative, licensing, and policymaking functions independently of the department and without approval or control of the department;

(b) submit its budgetary requests through the department;

(c) submit reports required of it by law or by the governor through the department.

(2) The department to which an agency is allocated for administrative purposes only in this title shall:

(a) direct and supervise the budgeting, record keeping, reporting, and related administrative and clerical functions of the agency;

(b) include the agency's budgetary requests in the departmental budget;

(c) collect all revenues for the agency and deposit them in the proper fund or account. Except as provided in 37-1-101, the department may not use or divert the revenues from the fund or account for purposes other than provided by law.

(d) provide staff for the agency. Unless otherwise indicated in this chapter, the agency may not hire its own personnel.

(e) print and disseminate for the agency any required notices, rules, or orders adopted, amended, or repealed by the agency.

(3) The department head of a department to which any agency is allocated for administrative purposes only in this chapter shall:

(a) represent the agency in communications with the governor;

(b) allocate office space to the agency as necessary, subject to the approval of the department of administration.

**2-15-124. Quasi-judicial boards.** If an agency is designated by law as a quasi-judicial board for the purposes of this section, the following requirements apply:

(1) The number of and qualifications of its members are as prescribed by law. In addition to those qualifications, unless otherwise provided by law, at least one member shall be an attorney licensed to practice law in this state.

(2) The governor shall appoint the members. A majority of the members shall be appointed to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining members shall be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term and until their successors are appointed. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of his term and the remaining members in the middle of his term. As used in this subsection, "majority" means the next whole number greater than half.

(3) The appointment of each member is subject to the confirmation of the senate then meeting in regular session or next meeting in regular session following the appointment. A member so appointed has all the powers of the office upon assuming that office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy shall be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which he is appointed.

(5) The governor shall designate the chairman. The chairman may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless otherwise provided by law, each member is entitled to be paid \$50 for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members except when they perform their board duties outside their regular working hours or during time charged against their annual leave, but such members are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. Ex officio board members may not receive compensation but shall receive travel expenses.

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of all members of a board is required to adopt any resolution, motion, or other decision, unless otherwise provided by law.

## EXCERPTS: METAL MINES RECLAMATION ACT HARD-ROCK MINE OPERATING PERMIT

**82-4-335. Operating permit -- limitation -- fees.** (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the department. Except as provided in subsection (2), a separate operating permit is required for each complex.

(2) (a) A person who engages in the mining of rock products or a landowner who allows another person to engage in the mining of rock products from the landowner's land may obtain an operating permit for multiple sites if each of the multiple sites does not:

(i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or ground water;

(ii) have any water impounding structures other than for storm water control;

(iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;

(iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as threatened or endangered under the Endangered Species Act of 1973; or

(v) impact significant historic or archaeological features.

(b) A landowner who is a permittee and who allows another person to mine on the landowner's land remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission. The performance bond required under this part is and must be conditioned upon compliance with this part, the rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the landowner's consent.

(3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

(4) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(5) The person shall submit an application on a form provided by the department, which must

contain the following information and any other pertinent data required by rule:

(a) the name and address of the operator and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) the minerals expected to be mined;

(c) a proposed reclamation plan;

(d) the expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;

(i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site; and

(o) an assessment of the potential for the post mining use of mine-related facilities for other industrial purposes, including evidence of consultation with the county commission of the county or counties where the mine or mine-related facilities will be located.

(6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale mineral development, as defined in [90-6-302](#), must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under [90-6-307](#) and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the

approved impact plan, as provided in [90-6-307](#). If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(7) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to [82-4-339](#) and [90-6-302](#) and provides notice as required under [82-4-339](#), within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(8) Compliance with [90-6-307](#) is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(9) A person may not be issued an operating permit if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in [82-4-360](#);

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to [82-4-361](#);

(c) that person has failed to post a reclamation bond required by [82-4-305](#); or

(d) that person has failed to comply with an abatement order issued pursuant to [82-4-362](#), unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(10) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (5)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members.

**82-4-339. Annual report of activities by permittee -- fee -- notice of large-scale mineral developer status.** (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at such later date as may be provided by rules of the board and each year thereafter until reclamation is completed and approved, the permittee shall pay the annual fee of \$100 and shall file a report of activities completed during the preceding year on a form prescribed by the board which report shall:

- (a) identify the permittee and the permit number;
- (b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;
- (c) estimate acreage to be newly disturbed by operation in the next 12-month period;
- (d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient to enable a determination of the permittee's status under 90-6-302(4);
- (e) update the information required in 82-4-335(5)(a); and
- (f) update any maps previously submitted or specifically requested by the board. Such maps shall show:
  - (i) the permit area;
  - (ii) the unit of disturbed land;
  - (iii) the area to be disturbed during the next 12-month period;
  - (iv) if completed, the date of completion of operations;
  - (v) if not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and
  - (vi) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

(2) Whenever the department determines that the permittee has become or will, during the next permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the permittee, the hard-rock mining impact board, and the county or counties in which the operation is located.

**82-4-340. Successor operator.** When one operator succeeds to the interest of another in any uncompleted operation by sale, assignment, lease, or otherwise, the board may release the first operator from the duties imposed upon him by this part as to such operation, provided that both operators have complied with the requirements of this part and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the board shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this part.

## METALLIFEROUS MINES LICENSE TAX

### DEFINITIONS, TAX RATE, ALLOCATION BY STATE, DISTRIBUTION BY COUNTY, COUNTY AND SCHOOL DISTRICT RESERVE ACCOUNTS

**15-23-801. Definitions.** As used in this part, the following definitions apply:

(1) "Agreement not at arm's length" means an agreement between parties when the sales price does not represent market value.

(2) "Basic treatment and refinery charges" means the costs or charges incurred in the smelting, refining, or other treatment of ore and includes:

(a) labor costs, including wages, salaries, and fringe benefits;

(b) utility and fuel costs;

(c) costs of maintenance, repairs, and supplies;

(d) costs of materials;

(e) depreciation computed on a straight-line basis with a 20-year life for buildings and improvements and a 7-year life for all other depreciable assets;

(f) equipment and machinery rental;

(g) costs of pollution control, environmental testing, and slag removal;

(h) costs incurred for training, freight, engineering services, insurance, and license fees directly attributable to smelting or refining;

(i) administrative services in Montana, including that portion of accounting, laboratory, purchasing, human resources, and warehouse allocable to smelting or refining; and

(j) any costs, charges, or fees paid by the mining company to other persons or entities for treating or processing ore, concentrate, dore, bullion, matte, or other form of processed concentrate.

(3) "Gross proceeds" or "gross metal yield" or "gross value of product" means the receipts realized from the extraction and sale of metals or concentrate containing metals.

(4) "Merchantable value" means the receipts of all salable metals produced or extracted in a county over a 12-month period. If the extracted ores are milled, smelted, or reduced by the taxpayer, then the merchantable value in the county in which they are extracted is the receipts received for these metals after processing.

(5) "Receipts received" means the monetary payment or refined metal received by the mining company from the metal trader, smelter, roaster, or refinery, determined by multiplying the quantity of metal received by the metal trader, smelter, roaster, or refinery by the quoted price for the metal and then subtracting the following:

(a) basic treatment and refinery charges;

(b) costs of transporting the mineral product from the mine or mill to the smelter or other processor, including costs of demurrage, storage, interest, and other miscellaneous costs related to transporting the mineral product;

(c) quantity deductions;

(d) price deductions;

(e) interest; and

(f) penalty metal, impurity, and moisture deductions as specified by contract between the mining company and the receiving metal trader, smelter, roaster, or refinery.

**15-37-103. Rate of tax.** (1) The annual license tax to be paid by a person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones are produced shall be an amount computed on the gross value of product which may have been derived by the person from mining business, work, or operation within this state during the calendar year immediately preceding.

(2) Concentrate shipped to a smelter, mill, or reduction work is taxed at the following rates:

<b>Gross Value of Product</b>	<b>Rate of Tax</b> (percentage of gross value)
first \$250,000	0%
more than \$250,000	1.81% of the increment

(3) Gold, silver, or any platinum-group metal that is dore, bullion, or matte and that is shipped to a refinery is taxed at the following rates:

<b>Gross Value of Product</b>	<b>Rate of Tax</b> (percentage of gross value)
first \$250,000	0%
more than \$250,000	1.6% of the increment

**15-37-117. Disposition of metalliferous mines license taxes.** (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

- (a) to the credit of the general fund of the state, 58% of total collections each year;
- (b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;
- (c) to the state resource indemnity trust fund, 15.5% of total collections each year;
- (d) to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:
  - (i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and
  - (ii) all money not allocated to the account pursuant to subsection (1)(d)(i) to be further allocated as follows:
    - (A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(d) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(d). The allocation to the county described by subsection (1)(d) is a statutory appropriation pursuant to 17-7-502.

**7-6-2225. County hard-rock mine trust reserve account -- expenditure restrictions.**

(1) The governing body of a county receiving an allocation under 15-37-117(1)(e) shall establish a county hard-rock mine trust reserve account.

(2) Money received by a county pursuant to 15-37-117 or 90-6-331 must remain in the account and may not be appropriated by the governing body until:

(a) a mining operation has permanently ceased all mining related activity; or

(b) the number of persons employed full-time in mining activities by the mining operation is less than one-half of the average number of persons employed full-time in mining activities by the mining operation during the immediately preceding 5-year period.

(3) If the circumstances described in subsections (2)(a) or (2)(b) occur, the governing body of the county must allocate at least one-third of the funds proportionally to affected high school districts and elementary school districts in the county, and may use the remaining funds in the account to:

(a) pay for outstanding capital project bonds or other expenses incurred prior to the end of mining activity or the reduction in the mining work force described in subsection (2)(b);

(b) decrease property tax mill levies that are directly caused by the cessation or reduction of mining activity;

(c) promote diversification and development of the economic base within the jurisdiction of a local government unit;

(d) attract new industry to the impact area;

(e) provide cash incentives for expanding the employment base of the area impacted by the changes in mining activity described in subsection (2); or

(f) provide grants or loans to other local government jurisdictions to assist with impacts caused by the changes in mining activity described in subsection (2).

(4) Except as provided in subsection (3)(b), money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(5) Money in the reserve account must be invested as provided by law. Interest and income from the investment of funds in the account must be credited to the account.

**7-6-2226. Metal mines tax reserve account.** (1) The governing body of a county receiving tax collections under 15-37-117(1)(e) may establish a metal mines tax reserve account to be used to hold the collections. The governing body may hold money in the account for any time period deemed appropriate by the governing body. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(2) Money may be expended from the account as provided in 7-6-2225.

(3) Money in the account must be invested as provided by law. Interest and income from the investment of the metal mines tax reserve account must be credited to the account.

**20-9-231. Metal mines tax reserve fund.** (1) The governing body of a local school district receiving tax collections under 15-37-117(1)(e) may establish a metal mines tax reserve fund to be used to hold the collections. The governing body may hold money in the fund for any time period considered appropriate by the governing body. Money held in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(2) Money may be expended from the fund for any purpose provided by law.

(3) Money in the fund must be invested as provided by law. Interest and income from the investment of the metal mines tax reserve fund must be credited to the fund.

(4) The fund must be financially administered as a nonbudgeted fund under the provisions of this title.

**DEPARTMENT OF COMMERCE**

**Chapter 104**

DEPARTMENT OF COMMERCE

Chapter 104

HARD-ROCK MINING IMPACT BOARD

**Sub-Chapter 1  
Organizational Rule**

Rule [8.104.101](#) Organization of Board

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[8.104.211](#)B Evidence of the Provision of Service or Facility

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### **Sub-Chapter 3 Rules Governing Awarding of Grants**

Rule [8.104.301](#) General Provisions (REPEALED)

[8.104.302](#) Content of Grant Applications (REPEALED)

[8.104.303](#) Submittal Deadlines (REPEALED)

[8.104.304](#) Application Review Process (REPEALED)

[8.104.305](#) Contract with Successful Applicant (REPEALED)

## **Sub-Chapter 1 Organizational Rule**

**8.104.101 ORGANIZATION OF BOARD** (1) The hard-rock mining impact board is created by [2-15-1822](#), MCA, and appointed by the governor. By statute the board comprises five members, three of whom reside in an area impacted by large-scale mineral development. At least one member must reside in each district provided for in [5-1-102](#), MCA. The board consists of:

- (a) a representative of the hard-rock mining industry;
- (b) a representative of a major financial institution in Montana;
- (c) an elected school district trustee;
- (d) an elected county commissioner; and
- (e) a member of the public-at-large.

(2) Information or submissions: Inquiries regarding the board may be addressed to the Hard-Rock Mining Impact Board, Department of Commerce, 301 South Park, P.O. Box 200523, Helena, Montana 59620-0523.

(3) For administrative purposes the board is attached to the department of commerce. For staffing purposes the board is attached to the department's community development division. A chart of the department's organization is found at page 8-13 of these rules and by this reference is made a part of the board's organizational rules. (History: Sec. [2-4-201](#), MCA; [IMP](#), Sec. [2-4-201](#), MCA; [NEW](#), 1982 MAR p. 2140, Eff. 12/17/82; [AMD](#), Eff. 9/30/89; [AMD](#), Eff. 6/30/92; [AMD](#), 1994 MAR p. 2718, Eff. 10/14/94; [AMD](#), 2002 MAR p. 1660, Eff. 6/14/02.)

## **Sub-Chapter 2 Procedural Rules**

**8.104.201 PUBLIC PARTICIPATION** (1) The hard-rock mining impact board hereby adopts and incorporates by reference ARM [8.2.201](#) through [8.2.206](#) which sets forth the department of commerce's public participation rules. A copy of the rules may be obtained from the Hard-Rock Mining Impact Board, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523. (History: Sec. [2-3-103](#), MCA; [IMP](#), Sec. [2-3-103](#), MCA; [NEW](#), 1982 MAR p. 2140, Eff. 12/17/82; [AMD](#), 1994 MAR p. 2718, Eff. 10/14/94.)

**8.104.202 GENERAL PROCEDURAL RULES** (1) The hard-rock mining impact board hereby adopts and incorporates by reference ARM [1.3.101](#) through 1.3.233 which sets forth the attorney general's model procedural rules. A copy of the model rules may be obtained from the Hard-Rock Mining Impact Board, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523. The board will treat the hearing provided for by [90-6-307](#) (4), MCA, as a contested case hearing under the model rules. (History: Sec. [90-6-305](#), MCA; [IMP](#), Sec. [90-6-307](#), MCA; [NEW](#), 1982 MAR p. 2140, Eff. 12/17/82; [AMD](#), 1994 MAR p. 2718, Eff. 10/14/94.)

**8.104.203 FORMAT AND CONTENT OF PLAN** (1) The format and substance of the plan must allow for a ready review and analysis of the plan, its several parts, and how they relate to one another.

(2) The format of the plan must contain the following elements:

- (a) the name, address and phone number of the developer's contact person;
  - (b) a brief summary of the impact plan, which includes the schedule of impact payments and other commitments by the developer;
  - (c) a list of the local government units which the developer believes might potentially be affected by the development;
  - (d) a table of contents;
  - (e) numbered pages throughout.
- (3) The plan must be bound in a manner that will allow for ready removal and insertion of pages.
- (4) The impact plan must contain information specifically required by statute, information necessary to the implementation of statute, and information necessary to the review and implementation of the plan, including but not limited to:
- (a) As required by [90-6-307](#) (1) , MCA, the plan must contain the following information:
    - (i) a timetable for development, including the opening date of the development and the estimated closing date;
    - (ii) the estimated number of persons coming into the impacted area as a result of the development;
    - (iii) the increased capital and operating cost to local government units for providing services which can be expected as a result of the development;
    - (iv) the financial or other assistance the developer will give to local government units to meet the increased need for services.
  - (b) As required by [90-6-307](#) (2) , MCA, in the impact plan the developer shall commit itself to pay all of the increased capital and net operating cost to local government units that will be a result of the development, as identified in the impact plan, either from tax prepayments, as provided in [90-6-309](#) , MCA, facility impact bonds, as provided in [90-6-310](#) , MCA, or other funds obtained from the developer, and shall provide a time schedule within which it will do so. The plan may provide for funding from other revenue sources or funding mechanisms if the developer guarantees that the amount to be provided from these sources will be paid.
  - (c) If the plan provides for the prepayment of property taxes, the plan must specify the conditions under which the recipient local government unit will credit prepaid taxes, as provided by [90-6-309](#) (5) , MCA, and ARM [8.104.215](#).
  - (d) If the plan identifies a jurisdictional revenue disparity as provided for by [90-6-403](#) (1) , MCA, the plan must project the place of residence of employees and the district of enrollment of students as required for [90-6-405](#) (2) , MCA.
  - (e) The plan must define the following terms in a manner consistent with common usage and appropriate to the specific large-scale mineral development:
    - (i) "persons coming into the impacted area as a result of the development," as required for [90-6-307](#) (1) (b) , MCA;
    - (ii) if property taxes are to be prepaid, "start of production", as required for [90-6-309](#) (4) , MCA;
    - (iii) "commercial production", as required for [90-6-311](#) , MCA.
  - (f) In the plan the developer shall commit to notify the board and the affected local government units within 30 days of each applicable date identified in (e) of this subsection.
  - (g) If the mineral development will result in increased employment or increased local government costs in more than one county, the plan must identify the counties and evaluate the proportional impact to each county for purposes of [15-37-117](#) , MCA.
  - (h) The plan must specify whether the developer will make impact payments directly to the affected local government unit or through the hard-rock mining impact board to be deposited to the impact fund of the affected local government unit. (History: Sec. [90-6-305](#) , MCA; [IMP](#) , Sec. [90-6-307](#) , MCA; [NEW](#) , 1982 MAR p. 2140, Eff. 12/17/82; AMD, 1984 MAR p. 1843, Eff.

12/28/84; AMD, 1986 MAR p. 1826, Eff. 10/31/86; AMD, 1994 MAR p. 2718, Eff. 10/14/94.)

**8.104.203A DEFINITIONS** (1) For purposes of these rules, the term "impact, or impacted area" means the geographic or jurisdictional area or areas of the affected or potentially affected local government units identified in an impact plan. (History: Sec. [90-6-305](#), MCA; [IMP](#), Sec. [90-6-307](#), MCA; [NEW](#), 1986 MAR p. 1826, Eff. 10/31/86; AMD, 1987 MAR p. 1781, Eff. 10/16/87; AMD, 1997 MAR p. 2070, Eff. 11/18/97.)

#### **8.104.204 SUBMISSION AND PROOF OF SUBMISSION OF PLAN**

(1) The developer shall submit 12 copies to the board and a sufficient number of copies to each affected county for distribution.

(2) The board will accept as proof of the date of receipt of an impact plan by an affected county a dated receipt, signed by an authorized representative of the county, confirming delivery of the plan by registered mail, hand delivery, or otherwise or an acknowledged statement by the developer certifying the date of delivery of the plan to the county. (History: Sec. [90-6-305](#), MCA; [IMP](#), Sec. [90-6-307](#), MCA; [NEW](#), 1982 MAR p. 2140, Eff. 12/17/82; AMD, 1984 MAR p. 1843, Eff. 12/28/84; AMD, 1994 MAR p. 2718, Eff. 10/14/94.)

#### **8.104.205 NOTICE OF RECEIPT OF PLAN FOR REVIEW**

(1) Upon receiving the submitted plan, the governing body of each affected county shall publish notice of its receipt of the plan at least once in a newspaper of general circulation in the county. The notice must appear in large, readable format and must specify where copies of the plan will be available for public review. (History: Sec. [90-6-305](#), MCA; [IMP](#), Sec. [90-6-307](#), MCA; [NEW](#), 1982 MAR p. 2140, Eff. 12/17/82; AMD, 1984 MAR p. 1843, Eff. 12/28/84; AMD, 1994 MAR p. 2718, Eff. 10/14/94.)

**8.104.206 COMPUTATION OF TIME** (1) In computing any period of time prescribed by [90-6-301](#) through [90-6-311](#), MCA, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or a holiday. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days will be added to the prescribed period. (History: Sec. [90-6-305](#), MCA; [IMP](#), Sec. [90-6-307](#), MCA; [NEW](#), 1982 MAR p. 2140, Eff. 12/17/82; AMD, 1994 MAR p. 2718, Eff. 10/14/94.)

**8.104.207 CONTENTS OF OBJECTION TO PLAN** (1) An objection to an impact plan submitted to the board must contain or show:

- (a) the name(s) of the developer(s) , the project and the impact plan;
- (b) the date the objection is submitted;
- (c) the name of the local government unit(s) raising the objection;
- (d) the name, address, and phone number of the contact person(s) for the objecting local government unit(s) ;
- (e) the name of the local government unit(s) affected by the objection;
- (f) the specific elements of the plan being objected to, giving the page number(s);
- (g) the substance of the objection;

- (h) the reasons for the objection;
- (i) supportive data, information or analysis, including references to related portions of the plan (giving page numbers) , such as:
  - (i) analysis of employment and population;
  - (ii) analysis of location, nature, extent and cost of impact;
  - (iii) proposed mitigation measure;
  - (iv) proposed timing and cost of mitigation measure;
  - (v) proposed method, amount, and source of financing of the mitigation measure.
- (j) the objector's proposal for resolving the disputed issues;
- (k) a resolution dated and signed by the governing body of each objecting unit of local government confirming that the above statements appropriately reflect its views and concerns.

(2) A form outlining the contents required by this rule is available from the board. (History: Sec. [90-6-305](#), MCA; [IMP](#), Sec. [90-6-307](#), MCA; [NEW](#), 1982 MAR p. 2140, Eff. 12/17/82; AMD, 1986 MAR p. 1826, Eff. 10/31/86; AMD, 1994 MAR p. 2718, Eff. 10/14/94.)

**8.104.208 SUBMISSION OF OBJECTIONS TO BOARD** (1) At least 15 copies of the objection(s) must be filed with the board and a copy filed with each affected local government unit. (History: Sec. [90-6-305](#), MCA; [IMP](#), Sec. [90-6-307](#), MCA; [NEW](#), 1982 MAR p. 2140, Eff. 12/17/82; AMD, 1994 MAR p. 2718, Eff. 10/14/94.)

**8.104.208A FILING OF OBJECTIONS DURING EXTENSION PERIOD**

(1) Only those affected local government units which have requested a 30-day extension of the initial review period pursuant to [90-6-307](#) (6) , MCA, may file objections to the plan during this extension. However, if an objection filed during this extension relates to the interests of a local government unit which did not request an extension, that unit will be allowed to comment on the objection, and any such comment may be considered by the board in subsequent proceedings concerning the objection. (History: Sec. [90-6-305](#), MCA; [IMP](#), Sec. [90-6-307](#), MCA; [NEW](#), 1984 MAR p. 1843, Eff. 12/28/84; AMD, 1994 MAR p. 2718, Eff. 10/14/94.)

**8.104.209 NOTIFICATION OF BOARD CONCERNING NEGOTIATIONS ON PLAN** (1) By the end of the 30-day negotiation period described in [90-6-307](#) (6) , MCA, all affected parties shall notify the board in writing of the outcome of their negotiation efforts, specifying which objections have been resolved and how and which objections remain in contention. The developer shall provide the board with any mutually agreed upon amendments to the plan. The official copy of the amendments must bear the signatures of the developer's authorized representative, the chairman of the elected governing body of each affected unit of local government, and the chairman of the elected governing body of the county verifying the concurrence of their units of local government with the negotiated amendments. (History: Sec. [90-6-305](#), MCA; [IMP](#), Sec. [90-6-307](#), MCA; [NEW](#), 1982 MAR p. 2140, Eff. 12/31/82; AMD, 1994 MAR p. 2718, Eff. 10/14/94.)

**8.104.210 EX PARTE COMMUNICATIONS WITH BOARD MEMBERS**

(1) No representative of any party to the plan may communicate with any board member outside the context of a public meeting on any issue related to the plan until the plan has received final approval.

(2) During the 90-day review period and the 30-day negotiation period the board's staff may not communicate with any party concerning the substance of a plan. However, the staff may at any time, either on its own initiative or in response to a request, provide information concerning the technical compliance of a plan with statutes and board rules and the plan review process provided that the information does not relate to the substance or merits of a particular plan. The staff will maintain a log of any such contact. (History: Sec. [90-6-305](#), MCA; [IMP](#), Sec. [90-6-307](#), MCA; [NEW](#), 1982 MAR p. 2140, Eff. 12/17/82; AMD, 1984 MAR p. 1843, Eff. 12/28/84; AMD, 1994 MAR p. 2718, Eff. 10/14/94.)

#### 8.104.211 IMPLEMENTATION OF APPROVED IMPACT PLAN

(1) The hard-rock mining impact account may receive direct industry monies, in accordance with the commitments made by the developer in an approved impact plan, and may receive money from the developer's financial guarantee to ensure payments consistent with the developer's commitments. If an approved plan provides that impact payments are to be made through the board, or if the board receives monies through the financial guarantee, the board will deposit these monies into the account, and will distribute the monies as provided by the impact plan to the county treasurer in the affected county to be credited to the impact fund of the affected local government unit. If the entire sum is not requested by, or under the plan committed to, the affected local government units, the board will revert the remainder, if any, to the developer.

(2) In implementing an approved impact plan, the affected local government units and the mineral developer shall establish procedures acceptable to the board for transmitting payments and providing information required by statute or rule. The procedures and information must include the following:

(a) Each local government unit entitled to receive grants or tax prepayments from a mineral developer as provided by an approved impact plan must establish an impact fund within its budget. The fund must be established and maintained in a manner consistent with accepted budgeting and accounting practices. The impact fund budget must reflect tax prepayments, grants or other impact revenues to be received from the developer and the expenditures contemplated by the approved impact plan. Within the fund, tax prepayments must be distinguished from grants or contributions by a separate account, for purposes of identifying future tax crediting obligations.

(b) The governing body shall provide the board with a copy of that portion of the adopted budget or budget amendment that is related to the impact plan and includes the impact fund, a copy of the resolution by which the governing body adopted the budget or budget amendment, and, upon request, the year-end budget report.

(c) The affected local governing body may request that the developer make the payments provided for in the approved impact plan and in the budget or budget amendment of the local government unit. The governing body shall send to the board a copy of each payment request. Each request must identify the name of the local government unit making the request; the date of the request; the name of the mineral developer responsible for making the payment; the amount of the requested payment; whether the request is for a tax prepayment, grant, or other funds; the purpose of the payment as specified in the approved impact plan; and the sub-account within the impact fund for which the payment is intended. The request must refer to the item on the payment schedule or to the page or pages in the approved impact plan on which the financial commitment and the purpose of the expenditure are specified. The request must bear the signatures of the governing body of the affected local government unit.

(d) The board will transmit payments made through the board upon written request from the governing body of the affected local government unit and upon receipt of that documentation specified in (c) above and in ARM [8.104.211B](#).

(e) If the plan provides that payment is to be made by the developer directly to the county treasurer to be credited to the affected local government unit, the developer shall notify the board when the payment is made and the county treasurer shall notify the board when the payment is received. Each notice must contain or reference the information required in (c) of this rule. Forms for requesting, making or acknowledging receipt of payment are available from the board.

(f) The mineral developer and the governing body of the affected local government unit shall provide the board with a copy of any facility impact bond agreement and guarantee entered into as a result of an approved impact plan within 15 days of their executing the agreement and guarantee. The agreement and guarantee become part of the approved impact plan.

(3) As required by [90-6-307](#) (11) and (15) , MCA, the board will notify the department of environmental quality if the mineral developer fails to comply, or resumes compliance, with the terms of the approved impact plan or with the requirements of Title 90, chapter 6, parts 3 and 4 of the Montana Code Annotated. (History: Sec. [90-6-305](#) , MCA; [IMP](#) , Sec. [90-6-307](#) , [90-6-310](#) , MCA; [NEW](#) , 1982 MAR p. 2140, Eff. 12/17/82; AMD, 1986 MAR p. 1826, Eff. 10/31/86; AMD, 1994 MAR p. 3010, Eff. 10/14/94.)

[8.104.211A](#) WAIVER OF IMPACT PLAN REQUIREMENT is hereby repealed. (History: Sec. [90-6-305](#) , [90-6-307](#) , MCA; [IMP](#) , Sec. [90-6-307](#) , MCA; [NEW](#) , 1986 MAR p. 1826, Eff. 10/31/86; REP, 1994 MAR p. 2718, Eff. 10/14/94.)

[8.104.211B](#) EVIDENCE OF THE PROVISION OF SERVICE OR FACILITY (1) For purposes of [90-6-307](#) (12) , MCA, the board will accept as evidence that an affected local government unit is providing or is preparing to provide an additional service or facility provided for in an approved plan a letter from the governing body certifying that it is providing or preparing to provide the service or facility and specifying the date on which it is anticipated that the service or facility will be made available. A copy of the local government unit's impact fund budget or budget amendment, reflecting the proposed expenditure for the service or facility, and a copy of the resolution by which the governing body adopts the impact fund budget or budget amendment must accompany or precede the letter. (History: Sec. [90-6-305](#) , MCA; [IMP](#) , Sec. [90-6-307](#) , MCA; [NEW](#) , 1994 MAR p. 2718, Eff. 10/14/94.)

[8.104.212](#) ADOPTION OF POLICIES OR GUIDELINES (1) From time to time, the board may adopt policies or guidelines relating to its internal operations; to the preparation, content, review and implementation of impact plans; to the relationship between developers and local government units; or to other matters over which the board has administrative or quasi-judicial authority. These policies or guidelines, which will not have the force or effect of administrative rules, will be compiled and made available for public inspection at the board's office. (History: Sec. [90-6-305](#) , MCA; [IMP](#) , Sec. [90-6-307](#) , MCA; [NEW](#) , 1982 MAR p. 2140, Eff. 12/17/82; AMD, 1994 MAR p. 2718, Eff. 10/14/94.)

[8.104.213](#) MODIFICATION OF PLAN (1) An impact plan or a proposed amendment to an approved plan may be modified during the review period, the negotiation period, or an extension of either, by mutual consent of the developer and the local government units affected by the modification. Modifications must meet the following requirements:

(a) Modifications must be submitted in writing to the board and to all local government units that are party to the plan.

(b) The copy filed with the board must bear the signatures of the authorized representatives of the developer and of the governing body of each local government unit that is a party to the modification.

(c) If there is a need to modify the format of the plan and if the modification does not affect the substantive provisions of the plan, the governing body of the county may act on behalf of all local government units within the county when it concurs with the modification of format.

(d) Any modification submitted less than 30 days prior to the end of the review period must carry with it a request from the local governing body for an extension which allows 30-day review of the modification.

(e) All modifications must be incorporated into the plan before the board will approve it. The modified plan must comply with the form and content requirements for an impact plan as provided by parts 3 and 4 of Title 90, chapter 6 of the Montana Code Annotated and by the administrative rules adopted by the board. In the modified plan the table of contents, summary, schedule of payment, and, if a part of the plan, the developer's written guarantee, must accurately contain and reflect the modifications. Obsolete material must be deleted from the plan through the use of replacement pages that contain and reflect the modifications or, if the use of replacement pages is not feasible, obsolete material must be deleted by specific reference.

(f) The board may allow revisions to format following the review or negotiation period, or an extension of either, to the extent that such revisions are necessary to incorporate the modifications into the plan in order to comply with ARM [8.104.203](#). (History: Sec. [90-6-305](#), MCA; IMP, Sec. [90-6-307](#), MCA; NEW, 1986 MAR p. 1826, Eff. 10/31/86; AMD, 1994 MAR p. 2718, Eff. 10/14/94.)

#### [8.104.214](#) FINANCIAL GUARANTEE OF TAX PREPAYMENTS

(1) The financial guarantee required of a developer by [90-6-309](#) (3), MCA, to assure that property tax prepayments will be paid as needed by local government units must, at a minimum, meet the following requirements:

(a) The guarantee must cover the total amount of money the developer has committed to prepay with adequate provisions for any conditional payments provided for in the impact plan. Both the total amount covered by the guarantee and the specific purpose of each prepayment must be specified with sufficient clarity that it can be determined that the guarantee corresponds with and is sufficient to meet all prepayment commitments in the approved impact plan;

(b) The guarantee must make the money accessible to the board in the event of a default on the part of the developer or the need for the board to resolve a dispute between the developer and an affected local government unit; and

(c) The funds contained in the guarantee mechanism must be protected from all uses not specified in or provided for by an approved impact plan or an approved amendment to the plan.

(d) The guarantee must be provided through a financially sound third-party financial institution that is acceptable to the board and in which the developer does not have a significant financial interest.

(2) The financial guarantee must be submitted to the board in sufficient time that it may be approved by the board and be in place before mining activities under an operating permit issued by the department of environmental quality commence or prior to the time an affected local government unit must incur a financial obligation in implementation of the approved impact plan and in anticipation of revenues protected by the financial guarantee, whichever occurs first.

(History: Sec. [90-6-305](#), MCA; IMP, Sec. [90-6-309](#), MCA; NEW, 1986 MAR p. 1826, Eff. 10/31/86; AMD, 1994 MAR p. 2718, Eff. 10/14/94.)

**8.104.215 PROVISION OF TAX CREDITS** (1) As required by [90-6-309](#), MCA, each year after the start of production, the local government unit must provide for tax crediting as specified in the approved impact plan. A tax credit must be made from the local government fund that corresponds to the service for which the tax prepayment was made. A tax credit may not have the effect of shifting the impact cost over time to the non-developer local taxpayer. The credit may not exceed the tax obligation of the developer for that year. Tax crediting is limited to the productive life of the mine. (History: Sec. [90-6-305](#), MCA; IMP, Sec. [90-6-309](#), MCA; NEW, 1994 MAR p. 2718, Eff. 10/14/94.)

**8.104.216 EVIDENCE OF THE PROVISION OF SERVICE OR FACILITY** is hereby repealed. (History: Sec. [90-6-305](#), MCA; IMP, Sec. [90-6-307](#), MCA; NEW, 1984 MAR p. 1826, Eff. 10/31/86; REP, 1994 MAR p. 2718, Eff. 10/14/94.)

#### **8.104.217 CONTENTS OF PETITION FOR PLAN AMENDMENT**

(1) Under certain circumstances the mineral developer or the governing body of an affected county (on its own behalf or on behalf of another affected government unit within the county) may petition the board to amend an approved impact plan. The requirements and procedures for petitioning to amend a plan are provided in [90-6-311](#), MCA, and a petition for an amendment must include or identify the following:

(a) when applicable, a copy of a resolution, dated and signed by the governing body of each local government unit that is requesting the amendment, authorizing the county to submit the petition for the amendment of the impact plan;

(b) date of the petition;

(c) the name of the mineral developer;

(d) county in which mineral development is located;

(e) name, address, phone number and signature(s) of each petitioner (county and/or mineral developer) ;

(f) all local government units believed by the petitioner to be affected by the proposed amendment;

(g) as required by [90-6-311](#) (2), MCA, an explanation of the need for an amendment, a statement of the facts and circumstances underlying the need for an amendment, and a description of the corrective measures proposed by the petitioner;

(h) the costs and commitments identified in the approved plan which will be changed as a result of the proposed amendment, with the relevant pages in the plan cited;

(i) other provisions of the approved plan which may be changed by the proposed amendment, with the relevant pages cited and substitute language proposed that will make the plan consistent throughout;

(j) a statement as to which of the following is the legal basis for the petition:

(i) that the plan itself provides for amendment under certain conditions and that those conditions have been met with the conditions specified and the pages on which they are established cited. The petitioner must establish that the conditions have been met;

(ii) that employment at the large-scale mineral development is forecast to increase or decrease by at least 75 persons, as determined under [90-6-302](#) (4), MCA, over or under the employment levels contemplated by the approved impact plan;

(iii) that the approved impact plan is materially inaccurate because of errors in assessment and that two years have not elapsed since the date the facility began commercial production with the date the facility began commercial production indicated; or

(iv) that the governing body of an affected county and the mineral developer are joining in the petition to amend the impact plan. (History: Sec. [90-6-305](#), MCA; [IMP](#), Sec. [90-6-311](#), MCA; [NEW](#), 1986 MAR p. 1826, Eff. 10/31/86; AMD 1994 MAR p. 2718, Eff. 10/14/94.)

**8.104.218 WAIVER OF IMPACT PLAN REQUIREMENT** (1) The board will grant a waiver or a conditional waiver of the impact plan requirement to a large-scale mineral development permittee, as authorized by [90-6-307](#) (14) , MCA, if:

(a) The permittee and the governing bodies of all potentially affected local government units, as identified by the board and the affected county or counties, notify the board in writing that:

(i) they do not anticipate a need to increase local government services and facilities as a result of the increase in employment identified in the permittee's annual report to the department of state lands; or

(ii) the anticipated increase in need for services and facilities is not expected to result in an increase in local government costs to the non-developer taxpayer, or that such costs will be paid by the developer under the terms of the conditional waiver;

(b) No potentially affected local government unit requests the board to deny the waiver or to require an impact plan; or

© Following a public hearing on the proposed waiver, or notice and opportunity for hearing, the board considers it unlikely that adverse fiscal impacts will affect any local government unit, either as a result of the increase in employment identified in the permittee's annual report, as required by [82-4-339](#) , MCA, or as a result of the associated changes in the mining operation.

(2) Following its decision, the board will provide a copy of the waiver, conditional waiver or denial of waiver to the department of environmental quality, the permittee and the potentially affected local government units identified by the board and the affected county or counties for purposes of [90-6-307](#) (14) , MCA. (History: Sec. [90-6-305](#) , [90-6-307](#) , MCA; [IMP](#) , Sec. [90-6-307](#) , MCA; [NEW](#) , 1994 MAR p. 2718, Eff. 10/14/94.)

## **HARD-ROCK MINING IMPACT BOARD FORMAL STATEMENT OF POLICIES AND GUIDELINES**

The Hard-Rock Mining Impact Board has adopted the following policies and guidelines to facilitate implementation of the Hard-Rock Mining Impact Act and the companion Property Tax Base Sharing Act. Policies and guidelines are formulated for clarification and guidance only and are not intended to have the force or effect of administrative rule.

Policies and guidelines are adopted, amended, or deleted in the course of the Board's public meetings and are compiled and made available for public inspection in the Board's office in the Community Development Division, Montana Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana, 59620-0523. To ensure the public's continued awareness of its intention to adopt policies and guidelines as well as rules, the Board has included the following statement in the *Administrative Rules of Montana*.

**Adoption of Policies or Guidelines: (1) From time to time the Board may adopt policies or guidelines relating to its internal operations; to the preparation, content, review and implementation of impact plans; to the relationship between developers and local government units; or to other matters over which the Board has administrative or quasi-judicial authority. These policies and guidelines, which will not have the force or effect of administrative rules, will be compiled and made available for public inspection at the board's office. [ARM 8.104.212]**

In addition to its policies, the *Guide*, and its administrative rules, the Board maintains a full set of all material presented to the Board by its staff at each meeting, including the minutes of previous meetings. This material is available for public inspection at the Board's office.

For ease of reading, Board policies and guidelines are presented here in three categories:

- A. General Policies
- B. Policies Related to the Preparation, Review, Implementation and Amendment of an Impact Plan.
- C. Policies Related to the Operations of the Board.

## **A. GENERAL POLICIES**

1. The major responsibilities of the Board are:
  - a. to encourage and facilitate cooperation among mineral developers and local government units in the preparation, review, implementation, and amendment of their hard-rock mining impact plans;
  - b. to clarify provisions of the Hard-Rock Mining Impact Act and companion legislation;
  - c. to adjudicate formal objections to proposed impact plans or plan amendments;
  - d. to issue, deny or revoke impact plan waivers or conditional waivers to large-scale hard-rock mine permittees subject to the Impact Act;
  - e. to determine, as needed, whether a mineral developer is complying with its commitments in an approved impact plan and with the requirements of the Impact and Tax Base Sharing Acts; and
  - f. to administer the Impact Act and carry out responsibilities contemplated by the Property Tax Base Sharing Act, in a manner consistent with the purpose and language of each Act and its accompanying Statements of Intent.
2. In order to resolve differing interpretations of the Impact and Tax Base Sharing Acts and to facilitate implementation of the two Acts, the Board recognizes a need to adopt policies and guidelines through which it intends to establish interpretations and procedures that are clear, consistent with the language and purposes of the Impact and Tax Base Sharing Acts, and, to the extent possible, mutually acceptable to the affected parties.
3. The Board invites interested persons to attend Board meetings and to participate as appropriate in discussions of issues before the Board.
4. The Board will work cooperatively with mineral developers, local government units, citizen groups, legislative committees and other State and federal agencies concerned with the implementation of the Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act.

5. While by no means indifferent to the substance, quality or effect of the Hard-Rock Mining Impact Act, the Board recognizes its quasi-judicial role and at this time does not wish to take any official position on disputed substantive issues related to the Act.
6. In recognition of the cooperative effort necessary to mitigate the potential adverse impacts of hard-rock mineral development and in order to carry out its statutory responsibilities, the Board intends to develop and to encourage a better understanding of hard-rock mineral development and of the process of assessing, planning for and mitigating adverse social and economic impacts to local communities.

**B. POLICIES RELATED TO THE PREPARATION, REVIEW, IMPLEMENTATION AND AMENDMENT OF A HARD-ROCK MINING IMPACT PLAN**

1. The Board encourages mineral developers and affected local government units to cooperate in the preparation and implementation of their impact plan.
2. The Board encourages the developer to consider inviting affected local government units to review a draft of the proposed impact plan before submitting the plan for formal review in order to identify potential concerns, ensure clarity, and refine details of the proposed plan.
3. As an appendix to its *Guide*, the Board has adopted a model outline of an impact plan. The purpose of the outline is to assist mineral developers and local government units in the preparation, review, and implementation of their impact plans. In adopting the outline, the Board recognizes that each plan represents a unique set of circumstances and that each plan will, of necessity, reflect those circumstances as appropriate, while meeting the purposes and requirements of statute and administrative rule. The Board considers the information suggested in the outline to be appropriate to the review and implementation of the plan and potentially helpful to the Board if called upon to adjudicate disputes.
4. As noted above and in ARM 8.104.203, the plan must include a list of potentially affected local government units. The Board encourages the county, other local governmental units, and the developer to prepare, as early in the process as possible, a list of the names and addresses of potentially affected local government units, their representatives, and others to whom the plan is to be

specifically provided for review and implementation. When the list is ready, the developer is to file it with the Hard-Rock Mining Impact Board.

5. The county is required to publish notice of its receipt of the plan [90-6-307(1), MCA]. The Board requests that the county publish the notice in a large, readable format as soon as possible after receiving the plan and that it specify when the review period began and will end, the fact that the county will hold a public hearing on the plan, and where the plan will be made available for public review. As required, the county will also publish notice in advance of its public hearing. The Board asks that the county provide it with copies of the newspaper notices.
6. In the plan, as provided by 90-6-307, MCA, the developer and affected local government units are to define the term "persons coming into the impacted area as a result of the mineral development" and to specify the estimated number of such persons. The plan will need to include such demographic and anticipated place of residence information as may be needed in order for the plan to identify and provide for all increased local government service and facility needs and costs resulting from the mineral development.
7. Large-scale mineral developers and affected local government units are to ensure that the impact plan complies with all statutory and regulatory requirements. If they wish to do so, preferably prior to the formal review, they may provide drafts of their proposed impact plan to the Board's staff for an informal review of the plan's technical completeness, that is, its compliance with the requirements of the Impact and Tax Base Sharing Acts and the Board's rules. Staff will carry out the requested review as expeditiously as possible. And, because the Board needs to be able to understand the plan, staff may request clarification of ambiguities in the plan.
8. The Board recognizes that there may sometimes be a time-lag of several years between when the impact plan is approved and construction of the mine begins. If a substantial time-lag has occurred, the Board requests that the parties to the plan meet informally, before beginning to implement the plan, to review its provisions. In particular they should confirm the continued applicability of its assumptions and projections and verify their mutual understanding of its commitments and procedures and its criteria for adjustment or amendment.
9. Before an approved plan is implemented, particularly if the persons who will be primarily charged with implementing the plan differ from those who prepared it, the Board recommends that the parties to the plan meet with the Board's staff to

ensure that the implementation requirements of the Impact and Tax Base Sharing Act are clearly understood. Persons implementing an impact plan are invited to confer with the Board and its staff at any time to ensure that the plan is implemented in a manner consistent with the Impact and Tax Base Sharing Acts.

10. The Board has prepared these policies, the *Guide* and related materials to assist mineral developers, affected local government units, other agencies, and interested persons to understand and implement the Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act. Through its rules, policies and publications, the Board is attempting to facilitate the legally consistent and workable implementation of the State's hard-rock mining impact mitigation legislation. At the same time, the Board recognizes that as new questions and situations arise and as statutes are amended, the Board may need to add to or revise its interpretations, policies and procedures.

The Board also intends that these policies, rules and publications will afford guidance to the Board itself, helping to ensure consistent and equitable interpretations over time when the Board is called upon to adjudicate disputes.

### **C. POLICIES RELATED TO THE OPERATIONS OF THE BOARD**

1. Board members will elect from among themselves their Chairman and Vice-Chairman for terms of office to be determined by the Board.
2. Travel by Board members for purposes other than Board meetings should be approved in advance by the Chairman in order for the Board member to be reimbursed his or her authorized expenses.
3. The Board will refer unresolved internal legal questions to its legal staff for review and recommendation prior to deciding upon a further course of action.
4. Recognizing the Board's unique authority to hire its own professional and administrative staff and recognizing the Board's attachment to the Department of Commerce for administrative purposes only, the Board authorizes its professional staff to serve as a resource for the Department at staff's discretion, provided always that staff's first priority is to meet the needs of the Board and those most directly affected by the Impact and Tax Base Sharing Acts.
5. Upon receiving a formally submitted impact plan, the Board will notify the county of its responsibility to publish notice promptly of its receipt of the plan, to publish

notice and hold a public hearing on the plan during the review period, and to provide the Board with a copy of each notice to the Board. The Board will also inform the affected local government units and the developer of the procedures and requirements for filing objections or jointly making modifications to the plan after it has been submitted for review.

6. As required by 90-6-307(1), MCA and ARM 8.104.205, the developer must provide the Board with proof that the impact plan has been submitted to the affected local government units. Consistent with ARM 8.104.205, the Board will determine what constitutes adequate proof of submission on a case-by-case basis.
7. At the end of the 90-day plan review period, the Board will determine whether objections have been filed. If no objections have been filed, or if all objections have been resolved during the review period, the plan stands approved. Similarly, if all objections are resolved during the negotiation period, the plan stands approved. The Board will provide the parties to the plan with confirmation of its approval.
8. Upon receipt of the developer's written guarantee of compliance with its commitments within the time schedule contained in the approved plan, the Board will notify the Department of Environmental Quality that the plan has been approved and that the process will be complete upon the Board's receipt and approval of the financial guarantee, if one is required.
9. If unresolved objections remain at the end of the negotiating period, the Board will
  - a. notify all parties to the plan;
  - b. direct its legal counsel to initiate appropriate pre-hearing activities and procedures;
  - c. publish notice that a contested case hearing on the disputed matters will be held in the most affected county;
  - d. hold the public hearing;
  - e. make its determinations as to findings of fact and conclusions of law within 60 days of the closure of the hearing;

- f. serve its findings, conclusions and order on the affected parties;
  - g. amend the plan as necessary to reflect and implement its order;
  - h. approve the plan, as amended or as submitted;
  - i. notify all parties to the plan that it has been approved, as submitted or as amended, and serve them with the amendments, if any. The Board will serve the amended plan in its entirety, rather than just the amendments themselves, only if it considers the amendments to be so extensive as to warrant service of the entire, amended plan.
10. The Board will submit its findings and the amendments, if any, by registered mail with return receipt requested.
11. After the plan has been approved, the Board and its staff will work with the parties to the plan, as appropriate, to facilitate the implementation of the plan in keeping with the language and intent of the plan and the purpose and requirements of the Impact and Tax Base Sharing Acts. If disputes should arise between affected parties and a complaint is filed with the Board, the Board will encourage the parties to solicit the assistance of a mediator prior to requiring adjudication by the Board. If both parties to a dispute wish to do so, they may request mediation assistance from the Board's staff and, with the approval of the chair; the staff may provide such assistance. If mediation assistance is provided, staff will prepare a written report on the outcome for the Board. The parties to the dispute are requested to review the report to verify that it provides an accurate reflection of the situation and of the outcome of the mediation.

Over time the Board will, in all likelihood, develop policies and procedures in addition to those found in this statement, the Board's rules and its *Guide*. If the Board, explicitly or as a matter of habitual practice or tacit concurrence, appears to have arrived at a de facto policy or procedure that warrants a more formal articulation, any interested person may request that the Board clarify its position through this policy statement, a declaratory ruling, or an administrative rule.