Guide of the Implementation

of

The Hard-Rock Mining Impact Act

and

The Property Tax-Base Sharing Act

Title 90, Chapter 6, Parts 3 and 4
Montana Code Annotated

The Hard-Rock Mining Impact Board

Revised May 2008

GUIDE TO THE IMPLEMENTATION OF THE HARD-ROCK MINING IMPACT ACT AND THE PROPERTY TAX-BASE SHARING ACT

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PREFACE

The Hard-Rock Mining Impact Board has prepared this *Guide to the Implementation of the Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act* to assist persons affected by the Hard-Rock Mining Impact Act (1981) and Hard-Rock Mining Property Tax Base Sharing Act (1983). The two Acts are found in Title 90, Chapter 6, Parts 3 and 4, *Montana Code Annotated*. The statutes and the *Guide* are the result of many years of experience, discussion and effort by interested legislators, local government personnel, mineral developers, the Montana Environmental Quality Council, the Montana Mining Association, the Northern Plains Resource Council, the Montana Association of Planners, the Hard-Rock Mining Impact Board, interested consultants and citizens, and the Montana Departments of Commerce, Environmental Quality and Revenue. This revision of the *Guide* reflects amendments enacted by the Montana Legislature and policies and procedures adopted by the Board through 2005.

The Hard-Rock Mining Impact Board is a five-member, quasi-judicial board appointed by the Governor. The Board is attached to the Montana Department of Commerce for administrative purposes only. As required by statute, the Board includes an elected county commissioner, an elected school district trustee, and representatives of a major financial institution, the mining industry, and the public-at-large. At least three members must reside in current or potential impact areas. At least one member must reside in each of the four multi-county districts provided for in section 5-1-102, MCA.

- The Board administers the Hard-Rock Mining Impact Act
- adjudicates disputes about the local government impact plans required for new large-scale mines
- rules on impact plan waivers or conditional waivers for certain permittees
- determines whether a mineral developer is complying with the requirements of the impact and tax base sharing statutes and with the approved impact plan and notifies the Department of Environmental Quality (DEQ) as necessary; determines when a jurisdictional revenue disparity among affected local government units exists, as identified in an approved plan, or ceases to exist, and notifies the Department of Revenue to initiate or terminate tax base sharing; and makes such other determinations as may be necessary for the performance of its duties and the implementation of the Impact Act.

Effective in 1990, the Legislature transferred to counties and school districts both the funding and authority to mitigate the fiscal and economic impacts that result from a hard-rock mine closure or a reduction in workforce of more than 50 percent. This mine-closure, workforce-reduction program applies only to counties with mines that have paid metal mines license taxes since 1985. This program is a part of the State's overall impact assistance legislation for local government units affected by hard-rock mining

and may affect the impact plan. The *Guide* contains a brief discussion of the statutes that allocate metal mines license tax revenue to counties and prescribe its distribution and use by local government units. This allocation of metal mines license tax revenue to counties and its subsequent distribution and use by local government units is, however, not an administrative or quasi-judicial responsibility of the Board.

Meetings of the Hard-Rock Mining Impact Board are open to the public. Agendas are mailed upon request about two weeks before each meeting.

Please contact the Board if you have questions or concerns about the revised *Guide*, the Hard-Rock Mining Impact Act, or the Property Tax Base Sharing Act.

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INTRODUCTION

The **Guide *to the Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act*** (Guide) is designed to help mineral developers, local government officials and staff, and others affected by the social, economic and local government impacts of large-scale hard-rock mines.

The Hard-Rock Mining Impact Board administers the Impact Act and adjudicates certain disputes that may arise under the Act. (In the Guide, the Hard-Rock Mining Impact Board will be referred to as simply "the Board".) In clarifying the Board's responsibilities, the Legislature has instructed the Board that it:

> **Must ensure that implementation of the act is consistent with the purpose of mitigating local government impacts that may result from the commencement of large-scale hard-rock mineral developments in the state.** *[Statement of Intent, HB 472, 1983]*

Under the Impact Act, the developer of each proposed new large-scale hard-rock mine in Montana is required to prepare an impact plan that identifies the local government services and facilities that will be needed as a result of the mineral development. In the impact plan, the developer must identify and commit to pay all increased local government capital and net operating costs that will result from the development. Payment may be through grants or contributions, property tax prepayments, facility impact bonds, or other financing mechanisms. The developer may also provide non-financial assistance to the affected local government units.

Affected local government units assist with the preparation of the impact plan and, along with the developer, share the legal responsibility for ensuring that the plan contains all required information, projections, and commitments. Affected local government units may include counties, incorporated cities and towns, school districts, and the following independent special purpose districts: rural fire, public hospital, refuse disposal (solid waste), county water and/or sewer, and county park districts. When the proposed plan is complete, the developer submits it to the Hard-Rock Mining Impact Board and the affected local government units for formal review by the latter. During the 90-day review period, the county must hold a public hearing on the proposed plan. If an affected local government unit disagrees with any part of the plan, its governing body may file an objection with the Board. If the mineral developer and local government unit cannot resolve the objection through negotiation, the Board holds a contested case hearing, adjudicates the dispute, and amends the plan as needed.

If the increased costs identified by the plan will occur in taxing jurisdictions in which the mine is *not* located, or in which an insufficient portion of the mine's valuation is located, the impact plan may trigger property tax base sharing. Property tax base sharing apportions the taxable valuation of the mineral development among counties and municipalities, high school districts, and elementary school districts affected by the new mineral development. Each recipient local government unit applies its own mill levy to its share of the mineral development valuation.

A mineral development is considered "large-scale" if in the construction or operation of the mine and associated milling facility, the developer, and its contractors and sub-contractors at the site will employ more than 75 persons during any consecutive six-month period. New mineral developments that become "large-scale" after receiving their operating permits may apply to the Board for a waiver or conditional waiver to the impact plan requirement. As a condition of the statutes under which the operating permit is issued by the Montana Department of Environmental Quality (DEQ), the large-scale mineral developer must comply with the requirements of the Impact Act and the Tax Base Sharing Act and with its commitments in an approved impact plan or in a conditional waiver.

The statutory requirements for hard-rock mining impact plans, impact plan waivers and property tax base sharing are found in the *Hard-Rock Mining Impact Act and the companion Property Tax Base Sharing Act, Parts 3 and 4 of Title 90, Chapter 6 of the Montana Code Annotated (MCA). Regulatory requirements are contained in the Administrative Rules of Montana (ARM), beginning with Section 8.104.101.*

Under a separate funding program, the State allocates 25 percent of its annual metal mines license tax collections to the counties in which the taxpaying mines are located or, in certain circumstances, to the counties that, according to an impact plan, will experience increased costs or increased employment as a result of the mine. *[15-37-117(1)(e), MCA]* The monies are to be used, primarily, to enhance community planning efforts and help communities diversify and strengthen their local economies while the mine is in operation and to mitigate the fiscal and economic effects of mine closures and major reductions in workforce. The Guide contains a brief discussion of the statutes governing this allocation of revenue, because it is part of the State's overall hard-rock mining impact mitigation legislation. However, the allocation of metal mines license tax revenue to counties and its distribution and use by local government units is not an administrative or quasi-judicial responsibility of the Board.

In some cases, the advent of a new hard-rock mine may result in little or no increased cost for local government units. In other cases, the increase in service and facility needs and costs may be substantial. In either situation, the construction and operation of the mine

will bring increased employment to the impact area and, eventually, increased tax base and tax revenue to the affected local government units. The impact plan addresses those increased local government costs resulting from the mineral development that precede or exceed the increase in tax base or that would otherwise burden local residents and taxpayers.

Questions about the Hard-Rock Mining Impact Act and Property Tax Base Sharing Act may be addressed to the administrative staff of the Hard-Rock Mining Impact Board:

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CHAPTER I

PROCEDURES FOR THE PREPARATION, REVIEW AND IMPLEMENTATION OF AN IMPACT PLAN AND FOR APPLYING FOR AN IMPACT PLAN WAIVER

Chapter I outlines the basic procedural requirements for preparing, reviewing and implementing a hard-rock mining impact plan and for applying for an impact plan waiver. The purpose of the outline is to help the reader "walk through" the procedures required by the Impact Act and the Tax Base Sharing Act.

Reviewing the Chapter 1 outline can not replace a careful reading of statutes, rules and the remainder of the Guide. Subsequent chapters discuss the purpose, substance and function of impact plans and plan waivers in the context of the Impact and Tax Base Sharing Acts and the mine permitting process. The appendices address specific issues and procedures in greater detail.

Procedural requirements are listed in roughly chronological order, specifying what action is to be taken and by whom. Some procedures are uniformly applicable to every impact plan process, while others depend on circumstances or on specific features of a plan. Brief discussions of substantive matters are included, as necessary, to clarify the context in which procedures occur.

For the most part, this chapter does not address the internal procedures of the Board, the Board's interaction with the DEQ and the DOR, or the internal procedures of local governments, except as specified by the Impact and Tax Base Sharing Acts.

In each section, related portions of the Guide are identified in a general way. The Table of Contents and the Index provide additional, more specific cross-references.

1. BEFORE THE PLAN IS SUBMITTED/PREPARATION OF THE PLAN

a. The DEQ determines that a potential applicant for a hard-rock mine operating permit is a "large-scale" mineral developer, as defined by 90-6-302(4), MCA. DEQ notifies the developer and the Hard-Rock Mining Impact Board.

Authority: 90-6-302, MCA; 82-4-335, MCA; 90-6-307, MCA.

b. The developer informs the affected county (or counties) and the Board of its intention to submit an impact plan and of the approximate date of submission.

Authority: by request of the Board.

c. The developer and the governing body of the most affected county identify and prepare a list of all potentially affected local government units, giving, if possible, the name and address of the appropriate contact person for each governmental unit. The developer provides a copy of the list to the Board.

The plan must identify as an "affected" local government unit each unit that is expected to experience an increased need to provide services and facilities as a result of the mineral development and each unit within which the mineral development is located. (A county that meets neither of the above criteria but experiences an increase in employment as a result of the mineral development may be an affected local government unit for purposes of section 15-37-117, MCA.)

Authority: 90-6-302, MCA; 90-6-402, MCA; 15-37-117, MCA; ARM 8.104.203; Board policy.

d. The developer and affected local government units identify the statutory, regulatory and functional requirements for the format, content, review, approval and implementation of an impact plan.

The impact plan:

- projects the schedule of development;
- defines and identifies the number of persons expected to come into the impacted area as a result of the mineral development;
- projects the increased need for local government services and facilities;
- projects the increased local government capital, operating and net operating costs; and
- projects the increased local government revenues that will result from the development.

In the plan, the mineral developer:

- must commit to pay all increased capital and net operating costs resulting from the mineral development, as identified in the approved plan; and
- identifies the financial or other assistance it will provide to affected local government units, specifying the method and schedule of impact payments and whether the payments will be made directly to local governments (through the county treasurer) or through the Board.

For the most part, neither the Impact Act nor the Guide addresses local government procedures involved in the preparation and delivery of the services and facilities required by the plan, although these procedures, and the time they may require, need to be taken into account in formulating the plan and establishing the payment schedule.

If the plan requires the developer to prepay property taxes, it must also provide for the recipient local government units to credit prepaid taxes to the developer, within the requirements and limitations of *Sections 90-6-301, 90-6-307 and 90-6-309, MCA, and ARM 8.104.215.*

The plan may provide for its own amendment under definite conditions specified in the plan itself, in addition to the conditions set forth in *90-6-311, MCA*. The plan may also provide for its own monitoring and for adjustments within the limitations and criteria established by the Board.

Working with the local government units, the developer prepares the fiscal impact plan as required by the Hard-Rock Mining Impact Act, *the Tax Base Sharing Act, Section 15-37-117, MCA*, if applicable, and the Board's administrative rules.

Authority: Title 90, Chapter 6, Part 3, especially 90-6-307, 90-6-309, 90-6-310, and 90-6-311, MCA; and Title 90, Chapter 6, Part 4, especially 90-6-403(1), 90-6-404(5) and 90-6-405, MCA; section 15-37-117(1)(d), MCA; ARM 8.104.203 and 203A, 8.104.211, and 8.104.215; Board policies.

e. The governing body of any affected local government unit may request financial or other assistance from the developer to prepare for and evaluate the impact plan. The governing body of the county enters into a contract with the developer for the requested financial assistance. The developer provides

the requested assistance. Such assistance constitutes a tax prepayment which the local government unit must credit against the developer's future tax liabilities, if any.
Authority: 90-6-307(3), MCA, and 90-6-309, MCA; ARM 8.104.203 and 8.104.215.

f. The developer and affected local government units prepare a list that specifies the number of copies each local government unit will need for internal and public review of the proposed plan and, later, for implementation of the approved plan. The developer provides a copy of the list to the Board.

Authority: by request of the Board.

g. The county and the developer decide how copies of the proposed plan will be distributed to the affected local government units so that, if possible, all affected local government units and the Board will receive the plan on the same day.

Authority: 90-6-307, MCA, and by request of the Board

The Board encourages the developer and local government units to review the completed draft plan informally before the developer submits the proposed plan for formal review. This informal review gives the parties to the plan an opportunity to clarify ambiguities, concur in minor changes, and, possibly, identify and resolve potentially major problems outside the constraints of the formal 90-day review period. By providing this additional opportunity for clarifying the plan and resolving potential problems, an informal review may forestall the necessity for filing objections and for subsequent adjudication by the Board.

2. WHEN THE PLAN IS FORMALLY SUBMITTED (by developer) AND RECEIVED (by the affected local government units and the Hard-Rock Mining Impact Board) FOR REVIEW (by the affected local government units and the public).

a. Sometime after having applied for its operating permit from the DEQ, the developer submits 12 copies of the proposed plan to the Board and sufficient copies to the county and affected local government units to meet their review and implementation needs, as identified in the list provided to the Board. (See 1f. and 1. g above)

Authority: 90-6-307, MCA; 90-6-308, MCA; 82-4-335, MCA; ARM 8.104.204; Board policy.

b. Each affected local government unit acknowledges its receipt of the plan in writing to the developer. The developer files proof of submission of the plan with the Board.

Authority: 90-6-307, MCA; ARM 8.104.204.

c. Receipt of the proposed plan by all affected local government units and the Board initiates the formal 90-day review period. The review period begins the day after the latest day the plan is received and ends on the 90th day thereafter that is also a working day (i.e., not a weekend nor holiday).

Authority: 90-6-307, MCA; ARM 8.104.206.

d. The governing body of each affected county publishes notice that it has received the plan and that the plan is available for public review. The notice is to appear in a large, readable format in a local newspaper of general circulation.

The county provides the Board with a copy of the published notice, attesting to its date of publication.

Authority: 90-6-307, MCA; ARM 8.104.205, Board Policy.

3. REVIEW AND APPROVAL OF THE PLAN (and, if necessary, extension of review period).

a. Affected local government units and the public review the plan during the 90-day review period. They evaluate the plan for:

- its completeness;
- the accuracy, adequacy and appropriateness of its definitions, assumptions, data, projections, and impact mitigation provisions and commitments;
- the specified methods, timing and amounts of impact payments;
- the criteria and method for calculating tax credits;
- the provisions for monitoring, adjusting and amending the plan; and
- the projected effects of tax base sharing.

Reviewers try to ensure that the plan is workable, can be adapted to changing circumstances, and is consistent with the purposes and requirements of the Impact Act and, if applicable, the Tax Base Sharing Act.

Local governing bodies and the developer are responsible for ensuring that the plan complies with all statutory and regulatory requirements for the form and content of the impact plan.

Authority: Hard-Rock Mining Impact Act and Property Tax Base Sharing Act, especially 90-6-307, MCA; ARM 8.104.203.

b. The governing body of any affected local government unit may request financial or other assistance from the developer to help it evaluate the proposed impact plan. When such a request is made, the county contracts with the developer, who provides the requested assistance. Such financial assistance constitutes a tax prepayment and must be credited against the developer's future tax liabilities, if any.

Authority: 90-6-307(3), MCA; ARM 8.104.203 and 8.104.215.

c. During the 90-day review period, the county publishes notice and holds a public hearing on the proposed impact plan. The county provides a copy of the notice to the Board. The public participates in the impact plan review process through the public hearing and through meetings of the governing bodies of the affected local government units.

Authority: 90-6-307(4), MCA; by request of the Board.

d. During the 90-day review period, if an affected local government unit disagrees with what the plan contains, proposes or omits, the governing body may notify the Board in writing of its objections to the plan. The governing body must specify the reasons for its objection, propose a solution for the disputed issue and provide other information required by statute and rule. The governing body files the signed, dated original and 15 copies of the objection with the Board and provides a copy to each other affected local government unit. Only the local governing body may file an objection on behalf of the local government unit and the residents and taxpayers within its jurisdiction.

Authority: 90-6-307, MCA; and ARM 8.104.207 and 8.104.208.

e. An affected local governing body may petition the Board for one 30-day extension of the formal review period. Provided there is a reasonable basis for the request, the Board will grant the extension. The extension applies only to the local government unit or units that request it. During the 30-day extension, only the governing body of the requesting local government unit may file objections to the proposed plan. Other affected local government units are notified of and may respond to any objections filed during the extension.

Authority: 90-6-307, MCA; and ARM 8.104.208A.

f. During the 90-day review period, the subsequent negotiation period (if any), or an extension of either. One or more affected local governing bodies and the mineral developer may, by mutual consent, modify the form or content of the submitted plan. The proposed modification must be submitted in writing to the Board and to all affected local government units identified in the plan. The original is filed with the Board and must bear the signatures of the designated representative of the developer and the governing body of each local government unit affected by the modification. If a modification affects only the form and not the substance of the plan, it may be signed by the developer and the governing body of the county, acting on behalf of all affected local government units within the county.

A substantive modification submitted after the 60th day of the review period must carry with it a request from the local governing bodies affected by the modification for an extension that will allow all affected local government units 30 days to review the proposed modification. If any affected local government unit opposes a proposed modification, the Board may refuse to accept it *as a modification* for lack of consensus. In that case, a local governing body that supports the modification may request the same change by filing an objection to the plan. Each modification and the complete plan as modified must comply with the statutory and regulatory requirements for the form and content of an impact plan.

Authority: 90-6-307, MCA; ARM 8.104.203 and 8.104.213.

g. During the review period, the governing body of a local government unit that the plan does *not* identify as an *affected* local government unit may file an objection to the proposed plan, if the local government unit clearly demonstrates that it is likely to experience increased capital and operating costs from the mineral development. By statute, the *de facto* affected local government units are those that are expected to experience an increased need to provide services and facilities as a result of the mineral development and those within which the mineral development is located. The plan cannot exclude local government units in either group. (For purposes of section 15-37-117, MCA, a county that meets neither of the above criteria but that experiences an increase in employment as a result of the mineral development may also be an affected local government unit.)

Authority: 90-6-307 and 90-6-402, MCA.

h. At the end of the 90-day review period or its 30-day extension, if no objections have been filed, or if all objections have been resolved by negotiation, the plan is approved.

Authority: 90-6-307, MCA.

i. Within 10 days of the receipt of objections from an affected local government unit, the Board notifies the developer and forwards copies of the objections to it. The affected local government unit and the mineral developer try to negotiate an agreement on the disputed elements of the impact plan.

Authority: 90-6-307, MCA.

j. At the end of the 90-day review period, or its 30-day extension, if any objections remain unresolved, a formal 30-day negotiation period begins.

Authority: 90-6-307, MCA.

k. The mineral developer and an affected local governing body may jointly petition the Board to extend the negotiation period for the period of time specified in their request. The Board grants the extension as requested.

Authority: 90-6-307, MCA.

l. By the end of the negotiation period, or its extension, the developer and the governing bodies of the local government units that filed objections notify the Board in writing of the outcome of their negotiations, identifying which issues have been resolved and which remain in contention.

Authority: 90-6-307, MCA; and ARM 8.104.209.

m. The developer provides the Board with a copy of the mutually agreed upon amendments to the plan. The official copy of the amendments certifies that the signatories concur with the negotiated amendments and bears the signatures of the designated representative of the developer, the chairperson of the governing body of each local government unit that is a party to the amendment, and the chairperson of the governing body of the county.

Authority: 90-6-307, MCA; and ARM 8.104.209.

n. If all objections are resolved during the negotiation period, the plan is automatically approved.

Authority: 90-6-307, MCA.

o. If any objections remain unresolved, the Board holds a contested case hearing on the unresolved issues. Prior to the hearing, the parties to the dispute, or their legal representatives, meet with the Board's staff and legal counsel to clarify and narrow the disputed issues; establish procedures and schedules for exchanging briefs and evidence; clarify the procedures to be followed at the hearing; and stipulate to uncontested facts, matters of law and evidence to be submitted at the hearing. All parties to the dispute sign a pre-hearing memorandum prepared by the Board's legal counsel, outlining the procedures and stipulations applicable to the hearing. The Board publishes notice of the time, place, and subject matter of the hearing and holds the hearing in the most affected county.

Authority: 90-6-307, MCA; ARM 8.104.202; Montana Administrative Procedures Act; Board policy.

p. Within 60 days after the closure of the hearing, the Board adopts its findings of fact and conclusions of law. Based on these determinations, the Board

issues its order, resolving the disputed issues. The Board serves its findings, conclusions and order on all parties to plan.

Authority: 90-6-307, MCA.

q. The Board amends the plan, if necessary, to reflect its determinations and carry out its order.

Authority: 90-6-307, MCA.

r. The Board approves the plan as amended or, if no amendments were necessary, as submitted. The Board notifies the developer and affected local government units when the plan has been approved and serves the parties to the plan with the amendments, if any.

Authority: 90-6-307, MCA; Board policy.

s. An affected local government unit or the developer may request judicial review of the Board's decision in the judicial district in which the hearing was held.

Authority: 90-6-307, MCA.

t. If an objection or judicial appeal is found to be valid and results in a remedial order, the Board or court must order and the developer must pay reasonable costs and attorney fees incurred by the local government unit in filing and defending its objection or appeal.

Authority: 90-6-307, MCA.

4. FOLLOWING APPROVAL OF THE IMPACT PLAN

a. Within 30 days of receiving the approved plan or notice that the plan has been approved, the developer provides the Board and the DEQ with a written guarantee that it will meet the increased costs of public services and facilities as specified in the approved impact plan and according to the schedule in the plan.

Authority: 82-4-335(5) and 90-6-307(9), MCA.

. Upon receipt of the developer's written guarantee, the Board notifies the DEQ that the plan has been approved and the guarantee received.

Authority: 90-6-307, MCA; ARM 8.104.211; Board policy.

c. If the plan requires the developer to prepay taxes, the developer must guarantee to the Board, through a third-party financial institution, that the required prepayments will be made as needed. The financial guarantee must be acceptable to the Board.

The developer submits the proposed financial guarantee to the Board for review and approval. The financial guarantee must be reviewed, approved and fully executed before activities under an operating permit issued by the DEQ commence, or prior to the time the affected local government unit incurs financial obligations in the implementation of the approved impact plan, whichever occurs first.

When the financial guarantee has been approved and executed, the Board notifies the DEQ that the developer has met the requirements of the Impact Act and that the approved plan is ready to be implemented. The developer is then in compliance with the requirements of 82-4-335(5), MCA.

Authority: 82-4-335(5) and 90-6-309(3), MCA; ARM 8.104.214.

d. When the Board identifies a jurisdictional revenue disparity in an approved impact plan, the Board notifies the developer, the affected local government units, and the DOR. The developer, local government units and DOR implement the Tax Base Sharing Act as described in Appendix XIII.

Authority: 90-6-403, MCA.

5. IMPLEMENTATION OF AN APPROVED IMPACT PLAN: IMPACT FUND AND IMPACT PAYMENTS

Most of the procedures necessary to implement an impact plan will depend on the plan itself. The plan may impose significant expectations and requirements on the affected local government units that are to prepare for and provide the services and facilities

identified in the plan, as well as significant financial or other obligations on the developer. The plan may anticipate ongoing monitoring by both the developer and affected local government units and may require occasional adjustment or amendment. Before beginning to implement the plan, the affected local government units and the mineral developer may wish to review their respective responsibilities and the sequence and timing of actions necessary to the implementation of their impact plan.

Neither the Impact Act nor the Guide focuses on local government procedures involved in the preparation and delivery of the services and facilities required by the plan. However, the developer and local government units should have taken these procedures and the time they may require into account in formulating the plan and its payment schedule. With respect to implementing a plan, the Guide focuses on the budgeting, payment and tax crediting requirements of the Act. These requirements are summarized here and are discussed more thoroughly in Appendices XI and XII. (Implementation of tax base sharing is discussed in section 6 below and in Chapter II, Chapter IV and Appendix XIII.)

a. The governing body of each local government unit entitled to receive impact payments under the approved plan:

- Establishes an impact fund; and
- Budgets, or amends its budget, to provide for the receipt and expenditure of impact monies through the impact fund.

Authority: 90-6-307 and 90-6-323, MCA; ARM 8.104.211.

b. If impact payments are to be transmitted through the Board, the governing body provides the Board with a copy of the impact fund portion of its budget (or budget amendment) and the resolution by which the impact fund budget was adopted.
Authority: 90-6-307, MCA; ARM 8.104.211B.

c. After the DEQ grants permission to the developer to commence operation, the governing body of the county, on behalf of all local government units in the county, requests the developer to prepay property taxes as specified in the impact plan.

Authority: 90-6-309, MCA; ARM 8.104.211.

d. In addition, the governing body of each local government unit requests its individual tax prepayments from the developer, according to the schedule provided in the impact plan. Unless the plan provides otherwise, the local government unit also requests the non-tax impact payments and non-financial assistance provided for in the impact plan.

Authority: 90-6-307 and 90-6-309, MCA; ARM 8.104.211.

e. The developer makes all impact payments directly to the county treasurer, as provided by the plan.

Authority: 90-6-304, MCA; 90-6-305, MCA; 90-6-307, MCA; ARM 8.104.211.

f. The county treasurer credits each payment to the impact fund of the recipient local government unit. For purposes of tax crediting the treasurer distinguishes tax prepayments from grants or contributions.

Authority: 90-6-307, MCA; 90-6-309, MCA; ARM 8.104.211.

g. When payment is made directly to the county treasurer, the developer and the local government unit each issue to the Board written verification of each payment requested, made, and received, specifying the amount and method of payment and its intended use in compliance with the impact plan. Forms for providing this information are found in Appendix XI.

Authority: 90-6-307, MCA; ARM 8.104.211.

h. The developer notifies the Board and the affected local government units within 30 days of the start of production and within 30 days of the commencement of commercial production, as these terms are defined in the plan. If the plan identifies other key events or trigger conditions, the responsible entity, as identified in the plan, notifies the other affected parties to the plan and the Board when a key event or trigger condition occurs.

Authority: 90-6-309(4), MCA; 90-6-311(1)(b), MCA; ARM 8.104.203.

i. Each fiscal year after the mine starts production, the local government unit calculates the portion of prepaid tax that is to be credited to the developer,

according to the criteria and method established in the approved plan, provided that tax credits:

- Do not extend beyond the productive life of the mine,
- Do not exceed the developer's tax obligation in any given year, and
- Do not shift the increased capital and net operating costs resulting from the development over time to other local taxpayers.

Plans submitted prior to July 1, 1985, are subject to the requirements of the tax crediting formula established in the 1981 Act, including the 10 year limitation on provision of tax credits. Plans submitted after July 1, 1985, are to specify the method for providing tax credits. Chapter II and Appendix XII discuss tax prepayment and tax crediting in greater detail.

Within the limitations and requirements of sections *90-6-301, 90-6-307 and 90-6-309, MCA, ARM 8.104.215,* and as specified by the plan itself, each local government unit credits the appropriate amount of prepaid tax to the developer each year, until the full amount of the prepayment has been credited or the statutory time for providing credits has expired.

Authority: 90-6-301, 90-6-307 and 90-6-309, MCA; ARM 2.104.215.

j. When an approved plan identifies that the construction, renovation, improvement or acquisition of local government facilities will be needed as a result of the mineral development, the local governing body may enter into a written agreement with the owners of the development, under which the developer assumes financial responsibility for a facility impact bond to finance the facilities. The bond agreement must provide for a guarantee of payment of the principal and interest of the bond. The developer and the governing body of the affected local government unit must provide the Board with a copy of the facility impact bond agreement and the payment guarantee. The bond becomes a financial liability against the taxable valuation of the developer, not against the tax base of the local government unit as a whole. A facility impact bond does not affect the indebtedness or debt limits of the local government unit.

Authority: 90-6-307(2) and 90-6-310, MCA; ARM 8.104.211

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k. Local government units may enter into an interlocal agreement for the issue of impact bonds in a combined offering.

Authority: 90-6-310(7), MCA.

l. The principal and interest of the bond are paid by the local government unit from an annual special levy against the property of the large-scale mineral development in amounts sufficient to retire the bond.

Authority: 90-6-310(2), MCA

6. TAX BASE SHARING

When the Board notifies the DOR that an approved plan has identified a jurisdictional revenue disparity, the developer, the DOR through the county assessor, and the affected local government units implement the tax base sharing provisions of Part 4, Chapter 6, Title 90, MCA. Chapters II, III and IV discuss tax base sharing and Appendix XIII provides a detailed explanation and outline of tax base sharing procedures, which are summarized briefly below.

a. On or before May 1 of each year, the developer conducts an employee survey to determine the number and place of residence of all employees of the mineral development and the number and place of residence of their school age children. The employee survey encompasses all persons, both inmigrants and local residents, who are employed by the developer, its contractors and subcontractors, in the construction or operation of the mine and associated milling facility. The developer reports the results of its employee survey to the DOR through the county assessor.

The Board recommends that the developer provide copies of its draft findings to the affected local government units for their review before submitting the final report to the DOR, in order to identify and correct any discrepancies. Local governments need to conduct a timely review of the draft employee reports in order not to delay the assessment process.
Authority: 90-6-401 to 90-6-405, MCA; Board policy.

b. If the impact plan assumes the use of the allocation formula provided by the Tax Base Sharing Act, the county assessor distributes the allocable portion of the taxable valuation of the mineral development among affected counties, municipalities, and school districts based on the number and place of residence of employees and their school age children.

However, the impact plan itself may modify the allocation formula in order to provide a more reasonable correspondence between increased costs and increased revenues resulting from the mineral development, in which case the assessor follows the modified formula provided by the approved plan.

Authority: 90-6-403 and 404, MCA.

c. If requested to do so by a party to the impact plan, the Board determines whether a jurisdictional revenue disparity has ceased to exist. If so, the Board notifies the DOR to terminate tax base sharing for the affected category of local government units.

7. AMENDING AN APPROVED IMPACT PLAN

Authority: 90-6-403(3); Board policy.

A petition to amend an approved plan must contain an explanation of the need for the amendment, a statement of the facts and circumstances underlying the need for the amendment, a description of the corrective action proposed by the petitioner, and the information required by ARM 8.104.217. Appendix XIV provides a format for the petition.

a. Under conditions specified in the approved plan itself or under conditions specified by statute, the developer or the governing body of the county may petition the Board to amend the plan.

Authority: 90-6-311, MCA; ARM 8.104.217.

b. At any time, the developer and the governing body of the county may join in a petition for amendment.

Authority: 90-6-311, MCA; ARM 8.104.217.

c. The governing body of the county may submit a petition on behalf of the county or on behalf of any affected local government unit within the county, at its request. If the petition is filed on behalf of a local government unit other than the county, the petition must also bear the signatures of the governing body of the local government unit requesting the amendment.

Authority: 90-6-311, MCA; ARM 8.104.217; Board policy.

d. The Board publishes notice of the petition in a newspaper of general circulation in the affected county within 10 days of receiving the petition.

Authority: 90-6-311, MCA.

e. Within 60 days after publication of the notice, the local government unit or the developer notifies the Board in writing if it objects to the petition and specifies the reasons why the plan should not be amended as proposed.

Authority: 90-6-311, MCA.

f. If no objections are received within the 60-day review period, the Board amends the plan as proposed by the petitioner.

Authority: 90-6-311, MCA.

g. Within 10 days of receiving an objection, the Board provides the petitioner with a copy of the objection.

Authority: 90-6-311, MCA.

h. After the end of the 60-day review period, the petitioner and the objector have 30 days in which to try to resolve the objections. If all objections are resolved within the review or negotiation period, the affected parties submit their signed, written agreement to the Board, and the Board amends the plan as concurred in by the affected parties.

Authority: 90-6-311, MCA; ARM 8.104.209; Board policy.

i. If objections are not resolved by the petitioner and the objector by the end of the 30-day negotiation period, the Board provides notice and conducts a contested case hearing in the most affected county within 30 days. The hearing must be conducted in accordance with Montana Administrative Procedure Act.

Authority: 90-6-311, MCA.

j. Following the hearing, the Board issues its findings of fact, conclusion of law, and order. Based on its determinations, the Board then approves, rejects, or amends the proposed amendment.

The Board serves its findings and the approved amendment, if any, on all parties to the plan.

Authority: 90-6-311, MCA.

k. Either a local government unit or the developer may request judicial review of the Board's determination in the district court of the judicial district in which the hearing was held.

Authority: 90-6-311, MCA.

l. If a local government unit's objection or judicial appeal is held to be valid and results in a remedial action being taken by the Board or court, the Board or court must award and the developer must pay to the local government the reasonable costs and attorney fees associated with the hearing or judicial appeal process.

Authority: 90-6-307, MCA.

8. ENFORCING THE DEVELOPER'S COMMITMENTS

a. If a permittee fails to comply with its commitments in an approved impact plan, the affected local government unit notifies the Board.

Authority: 82-4-335, MCA; 90-6-307, MCA; Board policy

b. If the matter is not resolved between the parties, the Board provides notice and holds a contested case hearing to determine whether the developer has failed to comply with its commitments in an impact plan or with the review and implementation requirements of the Impact and Tax Base Sharing Acts. Although the Board may initiate an inquiry into the parties' compliance with the requirements of the two Acts, it will adjudicate the question of the developer's compliance with its commitments in an

approved impact plan only if requested to do so by an affected local government unit.

Authority: 82-4-335, MCA; 90-6-307, MCA; Board policy.

c. If the Board determines that the developer has failed to comply with its commitments in the approved plan or with the review and implementation requirements of the Impact and Tax Base Sharing Acts, the Board must notify the DEQ.

Authority: 82-4-335, MCA; 90-6-307, MCA; ARM 8.104.211.

d. If notified by the Board that a permittee is not complying with its written guarantee, its commitments including the payment schedule provided in the approved plan, or with the review and implementation requirements in Title 90, Parts 3 and 4, the DEQ must suspend the developer's operating permit.

Authority: 82-4-335, MCA; 90-6-307, MCA.

e. The permit remains suspended until the Board provides the DEQ with written notice that the permittee is again in compliance, at which time the DEQ reinstates the developer's operating permit.

Authority: 82-4-335, MCA; 90-6-307, MCA; ARM 8.104.211.

f. If the developer fails to prepay taxes or make other payments encompassed by the financial guarantee in a timely manner, the Board may draw upon the financial guarantee to make the required payments.

Authority: 90-6-309, MCA; ARM 8.104.211 and 8.104.214.

9. IMPACT PLAN WAIVERS FOR LARGE-SCALE PERMITTEES

a. Each mineral developer that applies for and receives a hard-rock mine operating permit on or after May 18, 1981, must send periodic employee reports to the DEQ, as required by the Department.

In the report, the developer certifies to the number of persons employed by the developer and its contractors in the construction and operation of the mineral development during the preceding year and the number they expect to employ in the coming year.

Authority: 82-4-339, MCA; 90-6-302, MCA; and 90-6-307, MCA.

b. Whenever the DEQ determines that a permittee has become or will become a large-scale mineral development as defined by 90-6-302, MCA, the DEQ immediately notifies the permittee, the Board, and the county or counties in which the mining operation is located. The permittee is then subject to the requirements of the Impact Act.

The applicable definition of "large-scale" mineral development is the definition that was in effect when the DEQ issued the permit. The original definition, effective May 18, 1981, was amended effective July 1, 1985.

Authority: 82-4-339, MCA; 90-6-302, MCA.

c. Upon being notified of DEQ's identification of a large-scale permittee, the Board and the affected county or counties determine which local government units may be affected by the increase in employment or by associated changes in the mining operation.

Authority: 90-6-307, MCA.

d. The large-scale permittee may petition the Board for a waiver of the impact plan requirement.

Authority: 90-6-307, MCA.

e. Within 6 months of when the permittee receives notice from the DEQ that it has, or is expected to, become a large-scale mineral developer, the permittee must file proof with the DEQ that it has been granted a waiver by the Board or has filed an impact plan with the Board, as required by 90-6-307, MCA.

Authority: 82-4-335, MCA; 90-6-307, MCA; ARM 8.104.218.

f. If the developer requests a waiver, the Board provides notice and an opportunity for a hearing to the permittee and all potentially affected local government units.

Authority: 90-6-307, MCA; ARM 8.104.218; Board policy

g. If local government units and the permittee do *not* expect the increase in employment or changes in the mining operation to result in a need to increase local government services or facilities or if they do *not* expect the increased need for services or facilities to result in increased costs to the non-developer taxpayer, they may notify the Board in writing to this effect. If the increase in employment or changes in the mining operation have resulted or are expected to result in an increased need for services or facilities, the affected local government may request a hearing at which it may present testimony and evidence to this effect.

Authority: 90-6-307, MCA; ARM 8.104.218.

h. The Board will hold a hearing only if requested by the permittee or an affected local government unit. The hearing, if requested, will address the matter of granting a waiver or conditional waiver or requiring an impact plan and may address the potential provisions of a conditional waiver.

Authority: 90-6-307, MCA; Board policy.

i. Following the hearing or the receipt of written testimony, the Board determines whether to grant or deny a waiver or conditional waiver and what, if any, conditions to impose on a waiver.

The Board will grant a waiver or a conditional waiver:

(a) if the permittee and the governing bodies of the affected local government units certify in writing that they do not anticipate a need to increase local government services and facilities as a result of the increase in employment, or that the anticipated increase in need for services and facilities will not result in an increase in local government costs to the non-developer taxpayer;

(b) If no local government unit requests that the Board deny the waiver or require an impact plan; or

(c) If, after giving notice and holding a public hearing, if one has been requested, the Board deems it unlikely that any affected local government unit will experience adverse fiscal impacts as a result of the increase in employment or associated changes in the mining operation.

The Board may grant a conditional waiver, rather than a full waiver, if it appears that the development will result in isolated, easily identifiable impacts and costs which can be readily addressed through a conditional waiver, or if, for other reasons, the need for a conditional waiver is demonstrated to the satisfaction of the Board, as might occur, for example, if an affected service or facility was near capacity and could be adversely affected by even a small additional increase in employment or inmigration resulting from the mineral development. The Board may grant a waiver without a hearing if no hearing is requested.

Authority: 90-6-307, MCA; ARM 8.104.218.

j. Within 6 months of receiving notice from the DEQ that the permittee has become or is expected to become a large-scale mineral developer, the Board must certify to the DEQ whether the Board has granted a waiver or the permittee has filed an impact plan, as provided by 90-6-307, MCA. Following its determination, the Board provides a copy of the waiver, conditional waiver or denial of waiver to the permittee, the affected local government units and the DEQ.

Authority: 82-4-335, MCA; 90-6-307, MCA; ARM 8.104.218.

k. If a permittee fails to comply with the terms of a conditional waiver or with the impact plan review and implementation requirements of the Impact Act, the affected local government unit notifies the Board. If matters are not resolved by the parties, the Board holds a contested case hearing to determine the accuracy of the allegation of noncompliance. If the Board determines that a permittee has failed to comply with its commitments in a conditional waiver or with the impact plan review and implementation requirements of Title 90, Chapter 6, Parts 3 and 4, the Board must notify the DEQ.

Authority: 82-4-335, MCA; 90-6-307, MCA; ARM 8.104.211; Board policy.

l. The DEQ must suspend the operating permit of a permittee that fails to file the required proof of having obtained a waiver, to file an impact plan, if one is required, or to comply with the review and implementation requirements of Title 90, Chapter 6, Parts 3 and 4, including the requirements of a conditional waiver.

Authority: 82-4-335, MCA.

m. The Board certifies to the DEQ when it determines that a previously non-complying permittee is again complying with requirements of the Impact and Tax Base Sharing Acts, including the requirements of an impact plan or a conditional waiver.

Authority: 82-4-335, MCA; 90-6-307, MCA; ARM 8.104.211.

n. Following the Board's certification that the permittee is again in compliance with the requirements of Title 90, Chapter 6, Parts 3 and 4, the DEQ reinstates the operating permit.

Authority: 82-4-335, MCA.

o. Under the circumstances specified by statute or as provided in a conditional waiver, an affected local government unit may request that the Board revoke a waiver or conditional waiver.

When such a request is made, the Board may revoke the waiver or conditional waiver:

(i) If the permittee and contractors at the mineral development increase their payrolls from the date of the waiver by 75 or more persons,

(ii) As provided in a conditional waiver, or

(iii) If the developer fails to comply with a conditional waiver.

Authority: 90-6-307, MCA.

p. The Board notifies the permittee and affected local government units of the request to revoke a waiver or conditional waiver and provides an opportunity for a hearing on the request. Following the hearing, if one has been requested, or at the expiration of the time during which a hearing might have been requested, the Board determines whether to revoke the waiver or conditional waiver. The Board notifies the permittee, the affected local government units and the DEQ, in writing, of its revocation of any waiver.

Authority: 90-6-307, MCA; ARM 8.104.211.

q. If the Board denies or revokes a waiver, the permittee must comply with the impact plan requirements of Title 90, Chapter 6, Parts 3 and 4.

Authority: 82-4-335, MCA; 90-6-307, MCA; ARM 8.104.218.

CHAPTER II

PREPARATION OF A LOCAL GOVERNMENT IMPACT PLAN

A. OVERVIEW

The Purpose of the Impact Plan

A mineral developer that applies to the DEQ for a permit to construct and operate a new, large-scale hard-rock mine in Montana must also prepare a local government impact plan, as required by the Hard-Rock Mining Impact Act. [82-4-335, 90-6-307, MCA] The purpose of the impact plan is two-fold:

1. to enable affected local government units to provide services and facilities when and where they are needed as a result of the proposed mineral development and, at the same time,
2. to spare local taxpayers and residents the burden of having to pay the increased costs of these services and facilities. *[90-6-301, 90-6-307, MCA]*

The impact plan focuses primarily on the early or "front-end" local government service and facility needs and fiscal impacts resulting from the mineral development. However, the plan may also address ongoing monitoring, amendment, cost and revenue issues, including tax base sharing and tax crediting. [90-6-301, 90-6-307, 90-6-309, 90-6-311, 90-6-403, 90-6-404, 15-37-117, MCA] In some circumstances, the advent of a new hard-rock mine may result in little or no increased cost for local government units. In others, the increase in service and facility needs and costs may be substantial. In either case, the construction and operation of the mine ordinarily brings increased employment to the impact area and, eventually, increased tax base and tax revenue to the affected local government units.

Preparing the Impact Plan

Affected local government units should cooperate with the developer in preparing the draft plan. Acting through the governing body of the county, the governing body of any affected local government unit may request the developer to provide "financial or other assistance" as necessary to help the local government unit "prepare for and evaluate the impact plan." The developer must provide the requested assistance. *[90-6-307(3), MCA]* If the

assistance is financial, it is treated as a tax prepayment from the developer. *[90-6-307(3), 90-6-309, MCA;*

ARM 8.104.203(4)(b) and (c), 8.104.215] Typically, when assistance is needed, the county arranges for it to be provided to all affected local government units within its boundaries. The county also helps to coordinate local government efforts to prepare for and review the impact plan. *[90-6-307(3) and (4), MCA]*

The plan provides a timetable for the construction and operation of the mine and its associated facilities, and it projects the number of people expected to move into the area as a result of the development. *[90-6-307(1)(a) and (b), MCA; ARM 8.104.203(4)(a)]* The plan then identifies the additional local government services and facilities that will be needed and the increased capital, operating and net operating costs of providing these services and facilities. *[90-6-307(1)(c) and (2), MCA; ARM 8.104.203(4)(a) and (b)]* In the plan, the developer must commit to pay all identified, increased local government capital and net operating costs resulting from the development. *[90-6-307(1)(d) and (2), MCA; ARM 8.104.203(4)(b)]*

The plan specifies whether the developer will meet these financial obligations through property tax prepayments, facility impact bonds, grants or other financing mechanisms that do not shift the burden of increased costs to other local taxpayers. *[90-6-301, 90-6-307(1) (d) and (2), 90-6-309, 90-6-310, MCA; ARM 8.104.203(4)(b), 8.104.215]* The plan also identifies any non-financial assistance the developer will provide that will forestall or reduce local government costs or ensure other benefits. [*90-6-307(1)(d), MCA; ARM 8.104.203(4)(a)]* The plan must include a schedule of the developer's impact payments. *[90-6-307(2), MCA; ARM 8.104.203(3)(b)]*

If the plan calls for the developer to prepay property taxes, it must also provide for the local government's future calculation and provision of tax credits to the developer*. [90-6-307(2), 90-6-309(4) and (5), MCA; ARM 8.104.203(4)(c), 8.104.215]* Certain constraints apply to tax crediting*. [90-6-301, 90-6-307(2), 90-6-309(4) and (5), MCA; ARM 8.104.203(4)(c), 8.104.215]* Impact costs should be met through tax prepayments only when the subsequent provision of tax credits appears both feasible and appropriate.

To ensure that the plan functions effectively, the plan may need to include definitions, criteria, and procedures consistent with, but supplementary to, the provisions of statute or rule. *[90-6-307, 90-6-309, 90-6-310, 90-6-311, and 90-6-404(5), MCA; ARM 8.104.203, 8.104.211, 8.104.215]*

The Plan and Tax Base Sharing

An impact plan triggers property tax base sharing if it projects that a mining development will create a "jurisdictional revenue disparity." *[90-6-307, 90-6-402, 90-6-403, MCA]* Such a disparity exists when, as a result of the mine, increased local government costs will exceed increased revenues in a county, municipality or school district in which the mine is not located, or in which an insufficient portion of the mine's valuation is located. Tax base sharing requires that the post-permit increase in taxable valuation of the mineral development be apportioned among the affected counties and incorporated cities or towns; high school districts; and elementary school districts. *[90-6-403, 90-6-404, MCA]* The allocation to these three tiers of governmental entities may be made according to:

1. a statutory formula,
2. based on where local and in-migrating mine employees and mine-related students reside, or
3. the plan itself may modify the formula in order "to ensure a more reasonable correspondence between the allocation of taxable valuation and the occurrence of increased costs resulting from the development." *[90-6-401, 90-6-404, MCA]*

Tax base sharing:

- benefits the developer by allowing it to pay more of the impact costs through tax prepayments, which, unlike outright grants, may be reimbursed by future tax credits. *[90-6-307(2), 90-6-309(5), MCA]*
- benefits the recipient local government units by providing an ongoing revenue source that, at a minimum, should eventually equal or exceed the increase in costs resulting from the mineral development. *[90-6-401, 90-6-404, MCA]*
- does not affect the taxable valuation of the mineral development, but because of differences in jurisdictions' individual mill levies, tax base sharing may affect the total amount of property tax paid by the developer.
- not affect capital and operating costs, but by increasing or decreasing potential mine-related revenue, it may affect net operating costs, tax prepayments, and tax credits.

Tax base sharing and tax crediting occur during the implementation of the plan. The plan itself needs to anticipate and provide for the procedures, requirements and effects of its implementation, including, if applicable, tax base sharing and tax crediting. The plan also

may need to provide for the amendment of its tax base sharing and tax crediting provisions.

Commitment and Flexibility in the Impact Plan

In order to enable local governments to meet actual impact needs under changing circumstances, a plan needs to strike an appropriate balance between commitment and flexibility. In anticipating the implementation of the plan, the developer and affected local government units should assume that actual events or circumstances will inevitably differ in some regard from what the plan projects. To deal with this likelihood, the plan should articulate the definitions, data and assumptions on which it is based and should set out criteria and procedures for monitoring what actually occurs and for initiating changes in the plan, if changes are needed.

The Impact Act identifies circumstances under which an approved impact plan may be amended and establishes the procedure for making amendments. *[90-6-311, MCA]* Critically, the Act also provides that the impact plan itself may specify additional conditions under which the plan may be amended. *[90-6-311(1), MCA, first sentence]* This allows the developer and local government units to tailor amendment criteria to their local situation. The amendment process may be initiated by either or both parties, depending on the circumstances. *[90-6-311, MCA; ARM 8.104.217]*

In addition, the developer and local government units may decide that they would like to be able to make limited changes to the plan without resorting to the formal and time-consuming amendment process. The Board has concluded that, under certain circumstances and within limits that protect the interests of the affected parties, the developer and affected local government units may make adjustments contemplated by the plan itself by means of a written agreement submitted to the Board. That is, the developer and local government units may describe in the plan the specific conditions, criteria and procedures under which they might adjust the plan in specific ways. When implementing the plan, they notify the Board of any such adjustments through a written, signed statement signed by the affected parties. To the extent possible, the parties to the plan should try to anticipate the potential need for adjustments.

The Plan and the Regulation and Operation of Local Governments

Except as otherwise provided in the Impact and Tax Base Sharing Acts, the content and implementation of an impact plan must be consistent with the laws and regulations which apply generally to local government units in the exercise of their powers and duties. These

requirements pertain to such matters as procedures, service levels and standards, facility design standards, staffing criteria and personnel qualifications, revenue sources and limitations, and state or federal agency review or approvals. Although perhaps less immediately visible than direct service needs and costs, procedural requirements are important in calculating the lead-time required in order for a local government unit to make additional facilities and services available when they are needed as a result of the mineral development. An evaluation of procedural requirements may also indicate the level of management capability the local government unit will need in order to implement the plan.

Mineral Development Revenue, and Local Government Budget Amendments

A local government unit must formally budget to expend money received from a mineral developer under an impact plan or under provisions of the Impact and Tax Base Sharing Acts. [ARM 8.104.211(2)] If the budget has already been adopted for the fiscal year in which the developer is to make a payment, the governing body may amend its budget by a majority vote to provide for the receipt and expenditure of the developer's payment. *[90-6-323, MCA]* This authority to amend a budget applies to the financial assistance provided by the developer to help local governments prepare for and evaluate an impact plan, as well as to payments under the plan itself. *[90-6-307(3), 90-6-323, MCA]*

Responsibility for the Plan

Both the developer and the affected local government units are responsible for ensuring that the impact plan contains the information, functional provisions and commitments required or contemplated by the Impact Act. *[90-6-307, 90-6-309, 90-6-310, 90-6-311, MCA; ARM 8.104.203]* Both must also ensure that, if applicable, the plan contains the information required or contemplated by the Property Tax Base Sharing Act and by section 15-37-117, MCA, which allocates a portion of the State's metal mines license tax revenues to certain counties and school districts. *[90-6-404, MCA; 15-37-117(1)(d) and (2), MCA; ARM 8.104.203(4)(g)]*

Review of the Proposed Plan

When the developer completes the proposed impact plan, it submits the plan to the Board and to the affected local government units, with sufficient copies for public review. [90-6-307(1) and (4), MCA; ARM 8.108.204] This action initiates a 90-day review period during which affected local governments review the entire proposed plan to be sure that it meets the requirements and expectations of statute and that it will enable them to meet their actual impact needs and costs, even if, over time, those needs and costs should differ from

what is being projected in the plan. *[90-6-301, 90-6-307, 90-6-311, MCA; ARM 8.104.203; ARM 8.104.204.]*

During the review period, the county is required to provide notice of and to hold at least one public hearing on the proposed plan, for the benefit of all interested persons and affected local government units. *[90-6-307(4), MCA]* During this review period, if the governing body of an affected local government unit disagrees with any part of the proposed plan or if it finds that something has been omitted from the plan, the governing body may file a formal objection with the Board. *[90-6-307(5) and (6), MCA; ARM 8.104.208]* Only the governing body of an affected local government unit may file an objection. If the developer and local governing body are unable to resolve their differences through negotiation, the Board adjudicates the dispute. *[90-6-307(7), MCA]* The Board holds a hearing on the disputed issues and makes its determination within 60 days following the hearing. The Board then amends the plan, if needed, to implement its findings and order. [90-6-307(8), MCA]

Enforcement of the Plan

The approved impact plan is a requirement of the statutes under which the DEQ issues an operating permit to the mineral developer. *[82-4-335(5), MCA]* If a large-scale mineral developer fails to comply with the Impact Act, the Tax Base Sharing Act, or commitments made in an approved impact plan, the Board must notify the DEQ, and the Department must suspend the developer's operating permit. *[82-4-335(5) and (6), MCA; 90-6-307(11), (14) and (15), MCA; ARM 8.104.211(3)]* When the developer resumes compliance, the Board notifies the Department and the Department reinstates the operating permit. *[82-4-335(5) and (6), MCA; 90-6-307(15), MCA]*

The Beneficiaries of an Impact Plan

In effect, the hard-rock mining impact plan is more than the sum of its individual parts. The plan combines social and economic impact assessment, local government fiscal impact analysis, growth management strategies, and impact mitigation planning. The plan contains impact mitigation and monitoring commitments by the developer and affected local government units, along with provisions for its adjustment, amendment and implementation. *[90-6-307, 90-6-309, 90-6-310, 90-6-311, 90-6-404, MCA; ARM 8.104.203, 8.104.211, 8.104.21*5] Although the mineral developer and the affected local government units prepare and implement the impact plan, and benefit from it, the primary beneficiaries of the impact plan are the existing and new residents and taxpayers of the communities affected by the mineral development. *[90-6-301, 90-6-307, MCA]*

The Context in Which the Plan Functions

If it is to serve its purposes, the impact plan must be readily understandable to those who prepare, review, implement or adjudicate it. Almost by definition, an impact plan will be implemented under the stress of change, including changes of personnel, as well as changes in circumstances. Despite the desirability of continuity of personnel, the persons who prepare and review the impact plan may not be the same as those who ultimately must implement it. Local government staff and elected officials, company personnel and corporate owners change, as does the membership of the Hard-Rock Mining Impact Board. If called upon to adjudicate disputes about the approved plan, the Board, in general, must rely largely on the language of the plan, interpreted in the context of the Impact Act, to determine what the plan intends. It is important for all concerned that the plan be clearly worded and complete, that it completely articulates all the assumptions and definitions on which it is based, and that it set out all "understandings" about how it is intended to function. *[ARM 8.104.203]*

The developer and local government officials both benefit from the process of evaluating potential impacts and providing appropriate mitigation measures and needed assistance. Their need for a good working relationship does not end with the preparation of the impact plan, but extends throughout the implementation of the plan and the life of the mining project. If, as knowledgeable people working together in a responsible, cooperative and responsive manner, they achieve mutual credibility and establish and maintain a good working relationship, they will be better able to avoid, minimize or correct unanticipated problems before those problems assume major proportions.

B. CHARACTERISTICS OF AN IMPACT PLAN

The substance and format of an impact plan and the qualities that help it to function well are discussed in more detail below. An impact plan consists of definitions, assumptions, data, analyses, projections, proposed actions, criteria, procedures and commitments, all of which need to be clearly articulated.

1. Clarity and flexibility are among the potentially most important characteristics of a workable impact plan, which should incorporate:

    a. clear statements of the definitions, assumptions, data, analyses and projections upon which the plan is based;

b. a clear statement of each proposed action and commitment by the developer or by a local government unit, including when or under what circumstances the action is to occur;

c. clear and adequate provisions for monitoring employment levels, population in-migration and distribution, and the effect of the in-migration and the development itself on local government facilities, services, costs and revenues; and

d. clear and adequate criteria and procedures for adjusting and amending the plan.

2. The data, information, assumptions, projections and commitments in the plan should include:

a. the anticipated schedule of the mineral development;

b. the number and skills of employees needed at each phase of the construction and operation of the mine and associated facilities;

c. the number of employees potentially available from the local workforce, given the skills of both unemployed and underemployed persons in the area, the training to be offered by the mineral developer, comparative job opportunities and wages, and preferred working conditions;

d. the number of non-mining jobs that may be created as a result of the mineral development, the number of jobs that may be vacated as a result of new job opportunities and job shifting, and from the newly created or vacated jobs, the number that are likely to be filled from the local workforce and the number likely to be filled by in-migrating workers;

e. the number and demographic characteristics of people expected to move into the area because of the mineral development, including the anticipated number and ages of in-migrating students;

f. the timing and rate of in-migration, including how long temporary employees are likely to remain in the area;

g. the probable housing needs and preferences of the in-migrating population;

h. the location and availability within reasonable commuting distance of the mining project of existing housing, subdivided lots with services available, and lots and sub dividable land potentially accessible by services and considered appropriate for housing;

i. the probable distribution of in-migrants by local government jurisdiction (which may be influenced by community amenities, the availability of housing and lots, housing preferences, and commuting distances, conditions and travel time);

j. a list of the local government units potentially affected by the mineral development (including those within which the development will be located, those within which mineral development employees are expected to reside, and those that are expected to experience an increase in demand for local government services and facilities as a result of the mineral development);

k. by jurisdiction, the type and level of local government services and the type and capacity of local government facilities that will be needed by the mineral development, the in-migrating population, and the local population as a result of the mine;

l. the current capacity and condition of potentially affected local government services and facilities and their operating, maintenance and capital needs and costs;

m. a schedule of when additional facilities and services will be needed as a result of the mine;

n. a description of how and by whom the needed facilities and services will be provided;

o. a schedule showing how much lead-time local governments will require in order to make facilities and services available when and where they are needed; and how much time communities will need to meet increased housing needs;

p. the increased capital and operating costs of preparing and providing the governmental services and facilities that will be needed;

q. a schedule showing when these costs will occur, by fiscal or impact year;

r. a schedule showing, by revenue source, when and by how much local government revenues will increase as a result of the mine (without increasing mill levies or fees);

s. the net operating costs resulting from the mineral development, by service and by fiscal or impact year;

t. the schedule of when and by what method the developer will pay to local government units all increased capital and net operating costs resulting from the mineral development;

u. the non-financial assistance the developer will provide and when it will be provided;

v. a description of how each local government unit will calculate and provide tax credits for prepaid taxes, including any prepayment made to help the local government unit prepare for and evaluate the proposed impact plan;

w. a description of the proposed monitoring agreement, including which aspects of the impact plan or circumstances related to the plan will be monitored, how often, and by whom; to whom the monitoring results will be provided; and how and by whom the results will be evaluated and recommendations made for changes;

x. the circumstances, criteria and procedures under which the plan may be adjusted or amended;

y. other provisions or conditions that will facilitate the review, implementation, monitoring, adjustment or amendment of the plan; and

z. such additional information as may be needed to meet the requirements and expectations of the Property Tax Base Sharing Act and the statutes allocating metal mines license tax revenue. *[See 15-37-117, 90-6-302, 90-6-307, 90-6-309, 90-6-310, 90-6-311, 90-6-402, 90-6-403, 90-6-404 and 90-6-405, MCA; ARM 8.104.203 and 203A, 8.104.211 and 8.104.215]*

As a freestanding document, an impact plan must contain all of the applicable information and provisions required or contemplated by statute and rule, as well as such other information as will be needed for the review, implementation, and amendment of the plan. *[ARM 8.104.203, 8.104.211, and 8.104.215]*

Some affected local government units may need to strengthen their community planning, management, and administrative capabilities in order to prepare for, evaluate, dispute or implement an impact plan. In recognition of this need, the Impact Act authorizes the affected local government units to request financial and other assistance to help them "prepare for and evaluate" the proposed impact plan. *[90-6-307(3), MCA]* The Act provides for reimbursement of reasonable costs incurred by a local government unit in filing and defending a successful objection to a proposed plan or plan amendment. *[90-6-307(13), MCA]* The plan itself can provide for the planning, management and administrative needs and costs incurred by local government units in implementing an approved plan. *[90-6-307(1) and (2), MCA]*

C. STATUTORY AND REGULATORY REQUIREMENTS FOR THE CONTENT OF AN IMPACT PLAN

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 format and substance of the plan must allow for a ready review and analysis of the plan, its several parts, and how the parts relate to one another. At a minimum, 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 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. *[See 90-6-307, 90-6-309, 90-6-310, and 90-6-311, MCA; 90-6-403 and 90-6-404, MCA; 15-37-117, MCA; ARM 8.104.203, 8.104.211 and 8.104.215]*

The basic statutory and regulatory requirements for the content of an impact plan are discussed below.

1. List of Affected Local Government Units [*90-6-302(4); ARM 8.104.203(2)(c)]*

The plan is to contain:

a list of the local government units the developer believes might be affected by the development. *[ARM 8.104.203(2)(c)]*

For impact plan purposes, "local government unit" means a county, incorporated city or town, school district, or any of the following independent special purpose districts: rural fire districts, public hospital districts, refuse disposal districts, county water and/or sewer districts, and county park districts. *[90-6-302(5), MCA]* Impacts to other types of districts or taxing areas, such as weed control districts and rural special improvement districts, are to be addressed by the governing body of the county or municipality in which the subordinate district or taxing area is located.

The Tax Base Sharing Act excludes all special districts from its definition of local government units that participate in tax base sharing. *[90-6-402(5), MCA]*

By definition and usage in the Impact and Tax Base Sharing Acts, a local government unit is "affected" if the mineral development is located within its jurisdictional boundaries or if it is expected to experience an increased need to provide services or facilities as a result of the mineral development. *[90-6-302, MCA; 90-6-402, MCA]* Under certain circumstances, a county that meets neither of the above criteria but experiences an increase in employment as a result of the mineral development may also be an affected local government unit for purposes of metal mines license tax distribution. *[15-37-117, MCA]* The definitions of "local government unit" and "affected" local government unit are discussed in greater detail in Appendix II.

The governing body of the affected county is to help the mineral developer identify those local government units that appear likely to be affected by the mineral development. The developer prepares the plan with their cooperation. As early in the process as possible, the developer is to provide the Board with a list of the names and addresses of the local government units it considers potentially affected by the mineral development.

2. Timetable for Development [*90-6-307(1)(a), MCA; ARM 8.104.203(4)]*

The plan must contain the following information:

a timetable for development, including the opening date of the development and the estimated closing date. *[90-6-307(1)(a), MCA]*

Based on developer's plans and expectations, the timetable identifies when construction will begin, how long the construction period will last, when the mine and mill will begin

operation, when they will reach full production, and the anticipated closing date of the mine. The timetable typically outlines the employment schedule for the construction and operating workforce, identifying the number of workers needed by skill on a monthly basis from the beginning of construction to full operation of the mine and mill.

Because of statutory provisions for tax crediting and for amending a plan, the plan needs to define "start of production" and "commercial production." The timetable should identify the approximate dates when the developer expects "production" and "commercial production" to begin. *[90-6-307, 90-6-309, 90-6-311, MCA; ARM 8-104-203(4)]*

While the plan is being prepared and reviewed, it is sometimes difficult, if not impossible, for the developer to identify even the approximate date on which construction will begin. If that is the case, the plan may, instead, specify that the developer will provide advance notice to the affected local government units and the Board within not less than a specified length of time prior to the beginning of construction. The length of time should be sufficient to allow for preparation of the services, facilities and housing that need to be in place when construction begins, as identified in the plan. At the same time, the plan should specify that the construction schedule to be provided by the developer will constitute an adjustment to the plan. The plan may also provide that if commencement of construction begins a significant length of time after the plan is approved, the lapse of time constitutes a condition under which the plan may be amended as provided by *section 90-6-311(1), MCA.*

When and how other activities are scheduled may also be important to the affected local governments and communities, such as when large or heavy equipment is to be moved that could impede traffic, disrupt school transportation, or affect county roads or bridges. Even though the plan may not be able to specify just when these activities will occur, the plan might include a commitment by the developer to notify any affected local government units sufficiently in advance to enable them to work with the developer and, if need be, with adjacent landowners to identify and forestall potential problems.

The timetable of the development may change while the plan is under review or after the plan has been approved. The entire project may be delayed, the construction schedule may be accelerated, or other significant changes may occur. When this happens, the developer should notify the affected local government units and the Board.

3. Estimated Number of Persons Coming into the Impact Area *[90-6-301, 90-6-307(1)(b), MCA; ARM 8.104.203(4)]*

The impact plan must identify:

> **the estimated number of persons coming into the impacted area as a result of the development.** *[90-6-301, 90-6-307(1)(b), MCA]*

Before estimating the number of in-migrants, the mineral developer and affected local government units need to define what they mean by "persons coming into the impacted area as a result of the mineral development." *[90-6-301, 90-6-307(1)(b), MCA; ARM 8.104.203(4)]* The definition may include persons moving into the area who seek or obtain employment in the construction or operation of the mine and mill, their accompanying families and household members, and other persons who move into the area because of job shift or derivative employment opportunities resulting from the mineral development, including local public sector employment.

The Impact Act defines a large-scale mineral development in terms of the number of persons employed in the construction and operation of the mine and associated milling facility, whether they are employed by the developer or by contractors or subcontractors at the site. Although the Impact Act does not define "mineral development employee" or "mineral development student," the Tax Base Sharing Act defines both terms for its purposes. *[90-6-402(6) and (7), MCA]* In addition to persons who are already employed by the mineral development when they move into the impact area, an impact plan often defines in-migrating mineral development employees also in terms of the length of time the person has lived in the area prior to seeking or obtaining employment at the mineral development.

Not all of the people who move into the area as a result of the mineral development come at once and not all stay for the duration of the project. Because of the requirements of the mining project, there is likely to be more fluctuation in numbers and more turnover in employees (and students) during the construction phase of the development than during its operation. For mineral development employees and their families, actual numbers, ages of students, and rate of turnover can be ascertained as part of the developer's commitment to monitoring. It may be more difficult to project and monitor other mine-related in-migrants and the timing of their in-migration.

For the most part, persons moving into the area because of job shift or derivative employment opportunities tend to come somewhat later than the development's construction employees. Early in-migrants might include persons who come in search of employment at, or resulting from, the mineral development, persons involved in the construction of housing and local government facilities needed as a result of the mineral

development, and public employees, such as teachers, needed as a result of the development. Some in-migrants may be in the area only for a short time, while others may become permanent residents.

The number of people moving into the area as a result of the mineral development will be influenced by the general economic condition of the area and by the potential number of employees available from the local workforce, given the skills of both employed and unemployed persons in the area, the training to be offered by the mineral developer, comparative job opportunities and wages, and preferred working conditions. In addition to persons listed as unemployed with Job Service offices, others who do not appear in unemployment statistics may enter, or re-enter, the workforce, such as spouses who were not previously employed outside the home and current local high school and college graduates. Spouses and other family members of in-migrating workers may also fill some of the newly available jobs at the mine or in the community, which would reduce the level of potential in-migration.

In preparing the plan, the developer and local government units should work together to arrive at mutually acceptable definitions, data, and assumptions about the available workforce and about the number and demographic characteristics of the people who are expected to move into the area as a result of the development, where they are likely to reside, when they will arrive, and how long they are expected to remain in the area. All of these factors will affect local government services and costs. Sample definitions are provided in Appendix II.

4. Increased Capital and Operating Cost to Local Government Units *[90-6-307(1)(c), MCA; ARM 8.104.203(4)]*

The impact plan must identify:

> **the increased capital and operating cost to local government units for providing services which can be expected as a result of the development.** *[90-6-307(1)(c), MCA]*

In the process of projecting the increased capital and operating costs resulting from the development, the developer may ask affected local government units to provide a considerable amount of data and information about the availability of housing, subdivided lots and sub dividable land; the capacity, condition, current needs and financing of services and facilities; alternative methods of providing or financing services and facilities; and applicable local, state or federal policies, plans, criteria or standards affecting the provision

of services and facilities. Local governments may also need to provide information about the procedures they are required to follow in matters such as hiring and training employees; soliciting bids; acquiring rights-of-way, easements and sites; obtaining State or federal permits; and issuing bonds. Some local governments may need to consider whether the mineral development might result in an increase in taxable valuation or population that would change their classification or cause them to become subject to different statutory or regulatory requirements, and, if so, to identify the fiscal implications of the change, such as requirements for additional staff or elected officials, increased pay, or reduced mill levy limits.

In some cases, existing local government documents may contain useful data or information, including annual budgets, community needs assessments, comprehensive plans or growth policies, zoning requirements, housing studies, capital improvements plans, facility studies, and school policy statements. In other cases, updated or new information may need to be generated.

While the provision of housing for mineral development employees is not a local government responsibility, the plan must address where mineral development employees and in-migrants will likely reside, for purposes of both impact planning and tax base sharing. Where in-migrants reside is a major factor in determining where local government services will be needed and where costs will be incurred. How long in-migrants stay, or expect to stay, in the area may influence the local government services they need, as well as the type of housing they seek. Some construction workers may need housing only for a few weeks, others for several years. Operating employees and other in-migrants may need housing for the life of the mine, and perhaps longer. Short term housing needs may be met by recreational vehicle sites, motels, room rentals, or construction work camps. Mid-range and long-term needs may be met by mobile home parks, modular homes, or conventional single or multi-family housing units.

Where people live depends partly on local conditions, including the availability of housing, public services, and developed lots, comparative community amenities, and the commuting distance, time, and conditions to the mine. Workers' perceptions of the probable stability and life of the mining project may affect their housing preferences. The developer may influence where people live by deciding to provide, or not to provide, recreational vehicle and mobile home sites, construction worker housing, developed housing sites, or assistance in financing housing development and acquisition. The developer may also influence where people live by its employee transportation policies and practices.

Cities, towns and counties may influence where people live through their planning and growth management strategies, including zoning. Lack of planning and growth management strategies may result in uncontrolled growth, which is ultimately more disruptive of the community and more expensive and time-consuming for both the local government units and the developer.

Unless care is taken, the increased demand for housing may reduce housing availability and affordability for existing fixed-income or low-income residents and for in-migrating public sector service providers, who are often paid less than in-migrating mineral development employees. In some cases, local government units may be involved in providing low-income housing or, in special circumstances, in providing housing for teachers. By working together, the developer, local government units and community may be able to avoid displacing existing residents, while ensuring affordable housing for incoming service providers and mine employees.

If the development will result in a relatively large in-migration in comparison with the size of the affected communities, the developer and local government officials may wish to confer with local financial institutions and others to be sure that timely financing will be available for in-migrants in need of housing. Because the provision of housing in general is not a local

government service, the impact plan cannot require the developer to provide or assist with housing for its employees. However, a developer may choose to help meet employees' housing needs in order to ensure a stable workforce. Also, the DEQ may require the developer to assure housing availability for its workforce as a condition of its operating permit, if the need for such assistance is identified in the agency's environmental review. Housing availability and location are critical from the perspective of the impact plan. The developer and the affected local government units cannot project local government facility and service needs and costs, as required by the Impact Act, until they determine where people are likely to live and when housing will be needed and available.

In addition to services provided to the in-migrating population, services may be needed by the mining project itself, or, in some cases, by the existing population, as a consequence of the development. The level of service needed may vary from one phase of the development to another. For instance, schools may require more professional and support staff per student during the construction phase of the mine than when the mine begins operation and the workforce and student population stabilize. Even when the development employs a predominately local workforce and very little in-migration occurs, the mining project itself may increase the need for certain services, such as road and bridge

construction and maintenance, solid waste collection and disposal, and law enforcement and other emergency services.

As noted, the primary purpose of the impact plan is to enable local governments to provide services and facilities when and where needed as a result of the development without imposing the increased costs on local residents and taxpayers. The developer is responsible for paying all increased capital and net operating costs of the services and facilities, and, in general, the local government units are responsible for actually providing the additional services and facilities. If facilities and services are already inadequate for the existing population or if they fail to meet required standards, the developer and affected local government unit may have to determine their respective fair-share financial responsibilities.

In order to provide needed facilities and services, local governments may have to:

- Undertake an array of preparatory tasks and to follow procedures or meet standards that are set out in statute or regulation or that are consistent with existing local policies, plans, or service criteria.
- Local governments also may need to explore other funding possibilities for their share of a jointly funded project
- finalize a comprehensive plan or growth policy
- revise subdivision regulations
- review proposed subdivisions
- approve a zoning district or zoning regulations
- obtain detailed information and make decisions about specific equipment, facilities or services
- obtain options, easements and rights-of-way
- hold elections to approve proposed site acquisitions or bond issues
- issue and review bids to procure materials and equipment
- oversee design, engineering and construction
- prepare job descriptions and hire and train personnel
- And provide notice and hold public meetings and public hearings, as required.

Some of these activities will happen before and some after the plan is approved. Each may affect when the local government is able to make a needed service or facility available to the mineral developer, the in-migrating population, and others affected by the mineral development.

Both in the planning process and in the plan itself, the developer and affected local governments should consider the lead-time local governments may require in order to make additional facilities and services available when they are needed. For example, the local government may need to apply for state or federal grants or loans to upgrade community facilities or services. They may also wish to consider whether, in some instances, temporary measures would provide an acceptable transition to the permanent provision of additional facilities or services, without diminishing the existing or needed level or quality of service.

In summary, the severity and cost of potential impacts depends largely on the relative size, the number and the needs of the in-migrating population; the rate and duration of in-migration; where in-migrants reside; and the existing ability of affected communities to meet the increased demand for housing, services and facilities. The severity and cost of actual impacts also depends on the willingness and ability of the developer, the affected local government units, and the communities to work together in preparing and implementing appropriate growth management and impact mitigation strategies, including the impact plan.

5. Financial or Other Assistance from the Developer *[90-6-307(1)(d), MCA; ARM 8.104.203(4)]*

The impact plan must identify:

> **the financial or other assistance the developer will give to local government units to meet the increased need for services.** *[90-6-307(1)(d), MCA]*

In preparing the plan, the developer and affected local government units identify the increased capital and operating costs of needed services and facilities, specifying the "project year" or "impact year" in which the cost is expected to occur. They also estimate, by year and by local government fund, the revenues that are expected to result from the mineral development without any increase in property taxes or service fees. The difference between the increased mine-generated operating revenue and the mine-generated operating cost is the net operating cost. In the plan, the developer must commit to pay all increased capital and net operating costs resulting from the mineral development. *[90-6-307(1) and (2), MCA; ARM 8.104.203(4)]*

The developer and local governments may have to evaluate alternatives for providing and financing the needed facilities and services. If the capacity or condition of a facility or the level of a service is inadequate to meet existing needs, or to meet needs as projected

without the mine, the developer and affected local government unit may have to apportion fiscal responsibilities between them.

The plan identifies any non-financial assistance the developer will provide. For example, the developer might assume full or partial responsibility for upgrading and maintaining the county access road to the mine, conforming to applicable standards and requirements. Or, the developer might provide additional communications equipment and joint training opportunities for county emergency services personnel. Or, in order to contain costs by encouraging concentrated rather than sprawl development or to ensure the timely availability of employee housing or developed housing sites, the developer might develop a new subdivision in a location compatible with the local growth policy and planning and zoning requirements.

In some cases, developers have chosen to assist nonprofit organizations that provide quasi-governmental services, such as rural fire protection and emergency medical services. These are services which a local government unit could provide but which are, instead, provided by volunteer entities, often with some financial assistance from a local government unit. Assistance to quasi-governmental, nonprofit organizations has included shared emergency medical training opportunities, donation of equipment, grants, and mutual aid agreements. Whether provided directly or through an affected local government unit, such assistance helps the non-profit entity to upgrade its training and equipment, while preparing and compensating it for emergency services rendered on behalf of the developer or the in-migrating population. Impact payments to a nonprofit service provider are voluntary, but the developer may commit to them in the plan. Impact payments to the local government unit that assists a nonprofit entity financially may be required by the plan, if the local government unit expects to incur increased costs to enable the non-profit entity to provide additional services needed as a result of the mineral development.

6. Developer's Commitment to Pay All Increased Capital and Net Operating Costs and the Schedule of Payment [*90-6-307(2), MCA; ARM 8.104.203(4)]*

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 impact plan, either from tax prepayments, as provided in 90-6-309, special 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. *[90-6-307(2), MCA; emphasis added.]*

After identifying all capital, operating and net operating costs that will be incurred by local government units as a result of the development, the developer must commit in the plan to pay all capital and net operating costs. The plan must identify the purpose, amount, form, and timing of each impact payment. *[90-6-307(1) and (2), MCA; ARM 8.104.203]*

a. **Purpose of Payment**. The plan must identify the purpose for which each payment is to be made. The plan identifies both the service needed and the proposed method of providing the service. In doing this, the plan should allow some flexibility. For instance, the plan might identify the need to provide more frequent, year-round road maintenance, describing the level of maintenance expected. At the same time, the plan might project the increased cost of the additional road maintenance based on the acquisition and operation of one new piece of road equipment and on the increased operation, accelerated depreciation, and partial replacement cost of another piece of equipment. The plan will be more flexible and will intrude less on the authority and responsibility of the local governing body, if it specifies that the *purpose* of the impact payment is to enable the local government unit to provide the *needed level of road maintenance at the identified cost* and that, within that cost, the local government may achieve the identified level of maintenance by whatever method it finds appropriate.

Flexibility in the method of providing a service might allow a school to respond better to actual, as opposed to projected, needs, while fulfilling the purpose for which the impact payment is made. For example, given the projected number of in-migrating students and their anticipated distribution by grade, the plan might propose that the school meet its instructional needs by hiring three additional teachers and two teacher's aides. Later, given revised projections, the actual number or distribution of incoming students among the grades, or the specific needs of individual students or classrooms, the school board might conclude that students' instructional needs would be better met by hiring two teachers and four aides or four teachers and no aides (assuming available classrooms). Even though the school board might select a different method of ensuring adequate classroom instructional services, it must remain committed to the quality or level of service to students anticipated in the plan, without exceeding the identified operating cost unless the plan is adjusted or amended. The amount of an impact payment can be changed

by a plan adjustment only if the plan provides for such adjustments and by an amendment only under the conditions specified by statute or in the plan itself.

The approach described above allows the local governing body to change the method by which it provides a service, but not to increase the payment to which the developer is committed or to decrease the level of service to which the local government is committed, except by means of an impact plan adjustment or amendment. Alternatively, the parties to the plan could provide that any substantial change in the method of providing a service would require either notification of the developer or an adjustment concurred in by the developer and the affected local governing body to confirm that the governing body is providing the level of service to which the plan is committed and for which the developer is paying.

As a matter of general policy, unless the plan indicates otherwise, the Board will usually assume that the basic *purpose* of the commitment between the developer and the local government is to enable the local government unit to provide the needed level or quality of service at the identified cost and that the local government unit has some reasonable latitude in revising the method by which it provides the agreed-upon level of service.

b. Amount of Payment. The plan must identify the amount of each impact payment. The amount must correspond to the increased capital or net operating cost that will be incurred during the fiscal year for which the payment is made. There are several ways of identifying costs and amounts of payment in the plan, including contingent payments, as discussed below.

The plan may specify a fixed cost and amount of payment; may provide for a conditional payment or payment of a conditional amount, contingent on circumstances that will trigger the payment or the amount; or, may specify a procedure for calculating the cost and amount of payment in response to actual circumstances. The following examples illustrate these alternatives:

(1) The developer might commit to pay a fixed amount in prepaid property taxes to an affected elementary school district for net operating costs in the academic year when the mine begins construction; and/or

(2) The plan might provide for a conditional payment, that is, a payment that will be made only if specific circumstances occur, such as: the developer will prepay a specified amount in property taxes to the

school district for additional net operating costs if more than 9 but fewer than 20 additional mine-related students enroll beyond the number that has been projected and provided for in the plan; and/or

(3) In a small rural district significantly affected by fluctuations in student population, in addition to the identified, projected costs attributable to the maximum number of in-migrating students expected to be enrolled at any one time, the developer might also commit to pay, through tax prepayment or grant, actual operational costs arising from mine-related students transferring into or out of the district; and/or

(4) The plan might specify the criteria and procedure by which the amount of payment will be calculated, such as that for the first year of enrollment for each mine-related student in excess of the number enrolled during the previous year, the developer will make a grant payment for each in-migrating student equal to the State's per student share of the district's revenue and, if requested, a property tax prepayment for each in-migrating student in an amount equal to the district's per student revenue from its mill levy.

In its payment schedule, the plan must identify the purpose, amount, form and timing of all specified payments. *[90-6-307(2), MCA; ARM 8.104.203(3) and (4)]* The schedule may also take note of potential contingent payments. An estimate of contingent tax prepayments is necessary for the financial guarantee. After the plan is approved the developer must provide a financial guarantee covering all of its tax prepayments. *[90-6-309(3), MCA*] For purposes of the financial guarantee, the plan must provide an estimated total of all contingent and specific tax prepayments. *[90-6-307(1) and (2), 90-6-309(3), MCA; ARM 8.104.214]* The financial guarantee is discussed below and in Chapters I, III and IV and in Appendix IX.

c. <u>Form of Payment</u>. The plan must specify the method or form of each impact payment. The developer may make impact payments to local government units in the form of property tax prepayments, facility impact bonds, grants and contributions, or other financing mechanisms; provided that the developer provides the necessary guarantees and that the increased capital and net operating costs are not shifted to the local taxpayer, either at present or over time. *[90-6-301, 90-6-307, 90-6-309, 90-6-310, MCA; ARM 8.104.203(4), 8.104.211, 8.104.214, 8.104.215*]

The form of payment needs to be appropriate to the way in which the service or facility is normally financed, consistent with the purposes and requirements of the Impact Act and other statutes governing local government finance, and, if possible, acceptable to both the developer and the affected local government unit.

Local governments raise property tax revenue by levying a certain number of mills against the taxable valuation of property within their taxing jurisdictions. Property tax revenue is typically used by counties, municipalities, school districts, and some special districts for general operating costs and for jurisdiction-wide services such as law enforcement, fire protection, library services, and road and bridge maintenance. When authorized by statute, additional property tax revenue may be raised from special assessments against taxable valuation to pay for capital costs. Special assessment revenue often is used to retire bonds.

By contrast, some local government services or facilities, such as water, sewer and solid waste disposal, may be financed from enterprise fees (user charges). In some cases, particularly within special improvement districts, certain services or facilities may be financed through special assessments that are based on factors other than taxable valuation. Some services and facilities may be financed in part from non-local revenues, such as the school foundation program, state shared revenues, or state or federal grants or loans.

The three forms of impact payment specifically authorized by the Hard-Rock Mining Impact Act are discussed in more detail below.

(1) **Tax Prepayments**. *[90-6-307(2), 90-6-309, MCA*] Through the impact plan, the mineral developer may prepay property taxes to meet the increased capital and net operating costs of services and facilities that are normally financed, at least in large part, from property tax revenues, provided that the amount prepaid can be credited back to the developer during the productive life of the mine without shifting the effect of the impact cost over time onto the non-developer taxpayer. *[90-6-307(2), 90-6-309(5), MCA, ARM 8.104.203(4), 8.104.211, 8.104.215]*

To shift the cost over time would be contrary to the purpose and requirements of the Impact Act. The Act requires the mineral developer to identify and pay *all* increased capital and net operating costs resulting from the development so that services and facilities needed as a result of the development will be provided and so that the non-developer local taxpayer

will not have to bear the burden of these increased costs, whether in the year the costs are incurred or at a later date*. [90-6-301, 90-6-307(1) and (2), MCA]*

Each year after the mine begins production, a local government unit that has received a tax prepayment is required to calculate and, if appropriate, provide a tax credit to the developer, according to the method of calculation, criteria or schedule specified in the impact plan. *[90-6-309(4) and (5), MCA; ARM 8.104.203, 8.104.211, 8.104.215]* Because of budgeting, accounting and auditing requirements and distinctions between taxing jurisdictions within a local government unit, tax credits must be calculated and provided separately for each affected fund of the local government unit. The affected fund is the local government fund which would ordinarily be used for the type of service or facility for which the prepayment was made, such as the general fund, road fund, or library fund.

Property tax credits reduce potential property tax revenue from the developer for the affected fund. Each fund may be subject to its own mill levy limit, just as the local government unit as a whole may be subject to an overall mill levy limit. (If the classification of the local government unit changes as a result of the increase in population or taxable valuation, some of its mill levy limits may be reduced, while some of its service requirements and expenses may increase.) The tax credit in any given year may not exceed the developer's tax obligation for that year*. [90-6-307(1) and (2), 90-6-309(5), MCA; ARM 8.104.215*]

In deciding whether to meet an impact cost through a tax prepayment, rather than a grant or facility impact bond, the developer and local government unit should ascertain how the service or facility is normally financed. If the service is usually financed, at least in large part, from property tax revenue, they should, using their proposed criteria and method for calculating tax credits, evaluate the feasibility of crediting the full amount during the productive life of the mine without shifting the impact cost over time to the non-developer taxpayer. If tax prepayments are relatively small, they may also want to evaluate the cost effectiveness of tax prepayment and crediting, taking into account what the tax crediting process entails for both, and to consider the cost to the developer and the benefit to the local government units of the required financial guarantee.

The Impact Act requires the developer to provide the Board with a financial guarantee covering all of its tax prepayment obligations. The guarantee must be through a third party financial institution and is typically accomplished through a letter of credit for the specified total. For purposes of the financial guarantee only, the plan must include an estimate of its conditional prepayment commitments*. [90-6-309(3), MCA; ARM 8.104.214]*

Financial guarantees are discussed further in Chapters I, III, and IV and Appendix IX.

In summary, tax prepayments should be used to meet impact costs only when tax credits can feasibly be given during the productive life of the mine without shifting the effect of the impact cost over time to the non-developer taxpayer. *[90-6-301, 90-6-307(1) and (2), 90-6-309(5), MCA; ARM 8.104.215]* Tax prepayments should also be used only when the tax crediting process is cost-effective for both the developer and the affected local government unit. The impact plan is to specify the criteria and method and, if applicable, the projected schedule by which affected local government units will calculate and provide tax credits. *[90-6-309(4) and (5), MCA; ARM 8.104.203, 8.104.215]* Tax credits are calculated and provided separately for each affected fund. A tax credit reduces the potential property tax revenue from the developer for the affected fund. In any given year a tax credit may not exceed the tax obligation of the developer. *[90-6-309(5), MCA]*

Tax crediting is discussed in Section 7 below. Tax prepayment and tax crediting procedures and criteria are also discussed in Chapters I and IV and in Appendix XII.

(2) <u>Facility Impact Bonds</u>. *[90-6-307(2) and 90-6-310, MCA]* An impact plan may provide for a facility impact bond to meet the cost of constructing, renovating, improving or acquiring a new local government facility needed as a result of the development. *[90-6-310(1), MCA]* "Facility" means a facility that is owned, operated, or maintained by a local government unit*. [90-6-302(3), MCA]*

If the impact plan provides for a facility impact bond, the governing body of the affected local government unit and the owners of the mineral development may enter into an agreement for the issuance of the bond. *[90-6-310(1), MCA]* Annually, the governing body of the local government unit must levy a special tax on the property of the mineral development to retire

the principal and interest of the bond. *[90-6-310(2), MCA]* The bond agreement must provide for a guarantee of payment from the owners of the mineral development to the local government unit. *[90-6-310(2), MCA]*

Through an interlocal agreement, two or more local government units may enter into a facility impact bond agreement with the developer. *[90-6-310(7), MCA]* This may make issuance of bonds more economical and allow bonding for relatively small capital expenditures for which separate issues would not otherwise be cost effective.

A facility impact bond is a debt against the taxable valuation of the mineral development and is not a liability of the local government jurisdiction as a whole. *[90-6-310(2), MCA]* The bond does not affect the debt limit of the local government unit. *[90-6-310(3), MCA]* Interest earned by the bondholders is not taxable by the State. *[90-6-310(3), MCA]*

If the governing body and the developer decide that the payment guarantee required for the facility impact bond should be executed through a third-party financial institution, they may wish to refer to Appendix IX, which includes samples of the financial guarantee a developer must provide the Board to ensure that its tax prepayment obligations are met. *[90-6-309(3), 90-6-310(2), MCA; ARM 8.104.214]*

(3) Other funds from the developer, i.e. grants or contributions. *[90-6-307(1) and (2), MCA]* Some services and facilities are financed through user or enterprise fees, rather than through property tax revenue, and some are financed through special assessments or other revenue sources. Grants may be the most appropriate means of meeting impact costs for services not typically financed from property tax revenues. Even for services financed through property taxes, grants may be preferable to tax prepayments if the net operating cost is so small that either the financial guarantee or the tax crediting process would be uneconomical. Similarly, grants may be preferable for relatively small capital costs for which tax prepayments or tax credits are not feasible and impact bonds would be uneconomical.

Grants may also be used to assist quasi-governmental, non-profit service entities, such as volunteer fire departments and emergency medical teams that provide services which might have been provided by local government units.

(4) <u>Alternative financing mechanisms</u>. *[90-6-307(2), MCA]* In evaluating the purpose, amount, form and timing of impact payments, the developer and local governing body may consider alternative ways of meeting increased capital and net operating costs, provided that the alternative mechanism ensures that the cost will be met in a timely manner and not shifted, at present or over time, to the non-developer taxpayer.

For example, in one instance, a developer and an affected local government unit negotiated an exchange of equivalent value between the capital and net operating costs of an enterprise service, that is, a service paid for by user fees rather than by taxes. The facility in question was already inadequate to meet the needs of the existing population and was in violation of state standards. With or without the mine, the facility needed to be upgraded and expanded. The projected increase in the system's capital costs to meet existing needs without the mine approximated the projected increase in net operating costs with the mine. Both the developer and the affected governing body were confident that when the new housing for in-migrants was in place, the additional residents would generate sufficient fee revenue to allow the system to meet its operating expenses without any increase in fees beyond what the local residents would have had to pay without the mine. In exchange for being absolved of responsibility for net operating costs in the interim, the developer paid the entire capital cost of upgrading and expanding the facility. Local residents paid no more than they would have without the mineral development and were spared the expense of the bond they would have had to issue, and the governing body and developer were spared the annual calculation and payment of net operating costs.

In summary, the use of tax prepayments, rather than grants or facility impact bonds, for increased capital costs would depend on the type of revenue ordinarily used for financing the capital costs, the magnitude of the capital costs, and the feasibility of crediting the full amount back to the developer from the affected fund during the productive life of the mine, without shifting the cost to the non-developer taxpayer. Property tax prepayments might be appropriate for the net operating costs of services that are usually financed from property tax revenue, but perhaps not for those local government services or facilities that are financed primarily or entirely from revenue sources other than property taxes. Net operating costs of enterprise services, such as water or sewer services, for example, would more appropriately be paid by grants. Grants would be particularly appropriate if the local government

could use the funds to leverage additional grant funds through state or federal programs. Even for services financed through property taxes, grants may be preferable to tax prepayments, if the net operating cost is so small that either the financial guarantee or the tax crediting process would be uneconomical.

d. Schedule of Payment. *[90-6-307(1) and (2), MCA; ARM 8.104.203(3)]* The plan must contain a schedule that specifies when the developer will make each impact payment. Each payment must enable the local government unit to meet its impact costs in a timely way. In establishing the payment schedule, the developer and affected local governments need to consider when a service or facility will be needed, what steps the local government must take in order to have the service or facility in place when needed, when each step should be initiated, how long it will take to complete, and what costs will be incurred along the way.

The timing of impact payments under an approved impact plan is determined by the plan itself and is not legally dependent on when the operating permit is issued, when the mine begins construction, or when production begins, except insofar as the approved plan or the Impact Act specifically ties these events to the timing of the payments. *[90-6-301; 90-6-307(1), (2), (10), and (12); and 90-6-309(1), MCA]* For example, the plan might conclude that certain local government services or facilities will need to be in place by the time the mine begins construction. Construction may begin any time after the permit is issued. *[82-4-335(5), MCA]* In order to have services or facilities available when they are needed, the local government unit may incur costs before the mine begins construction. Depending on the mine's schedule, this may mean incurring costs before the permit is issued. The plan may require the developer to pay impact costs necessary to the timely provision of services needed as a result of the mineral development, even though they are incurred before the permit is issued.

Although the plan may require the developer to make impact payments before the permit is issued, the plan may not require tax prepayments. Because of the tax prepayment language in *Section 90-6-309, MCA*, tax prepayments may not be required until the permit has been issued. However, the local government and the developer might choose to meet necessary pre-permit impact costs through another form of payment that could be converted to tax prepayments when the permit has been issued. For example, the developer could provide a no-interest loan for which no repayment is due until the permit is issued, at which time the loan would be converted to a tax prepayment.

The impact plan typically schedules payments in terms of "project years" or "impact years," as defined in the plan. To bring "project years" or "impact years" in line with local government fiscal years for budgeting purposes, the first "impact year" may exceed 12 months; that is, it may combine part of one fiscal year and all of the next.

Budgeting for impact payments should not pose a problem for local governments. The Impact Act authorizes the governing body to amend its budget by a majority vote to permit the receipt and expenditure of revenues received under an impact plan, the Impact Act or the Tax Base Sharing Act after the budget has been adopted. *[90-6-323, MCA]* Each local government unit establishes an impact fund for the receipt and expenditure of impact payments. *[90-6-307(10), MCA; ARM 8.104.211(2)]*

Some impact payments may depend on specified triggering events or circumstances. The payment schedule may identify conditional impact payment commitments separate from the identified payment commitments, noting that both the occurrence and the timing of these payments depends on the conditions specified in the plan. To ensure timeliness, the plan may provide that a conditional impact payment will be made within a specified time after the affected local government unit and developer confirm the triggering event or within a specified time after the affected local government unit requests the payment.

The impact payment schedule must include all identified capital and net operating costs resulting from the development and must specify an appropriate form of payment for each cost*. [90-6-307(1) and (2), MCA; ARM 8.104.203]* The timing of each payment must precede the expenditure by the local government unit, unless otherwise agreed upon.

Appendix IV contains two sample payment schedules.

In identifying potential impacts and calculating and providing for increased costs, the parties to the plan should consider the degree of certainty attributed to projections of timing, employment, in-migration, and increased service needs, costs and revenues. For instance, they should consider how delays in the project might affect the plan's assumptions, projections and commitments, including the cost, capacity and condition of services or facilities and the availability of projected non-development revenues, both local and non-local. If significant delays are possible and could adversely affect the accuracy or implementation of the plan, the plan might specify that a delay of more than a given length of time after the plan is approved and before the mine begins construction, or begins

production, will constitute a condition that allows any party to the plan to petition for its amendment. *[90-6-311(1), MCA]*

7. Tax Crediting. *[90-6-309(4) and (5), MCA; ARM 8.10.215]*

Through the impact plan, the mineral developer may prepay property taxes to meet the increased capital and net operating costs of services and facilities needed as a result of the mineral development, provided that these services and facilities are normally financed, at least in large part, from property tax revenues and that, as specified in the Impact Act and impact plan, some or all of the amount prepaid can be credited back to the developer during the productive life of the mine without shifting the impact cost over time to the non-developer taxpayer. *[90-6-301, 90-6-307(1) and (2), 90-6-309(4) and (5), MCA; ARM 8.10.215]*

Each year during its budget process, the governing body of a local government unit that has received a tax prepayment is required to calculate and, if appropriate, provide a tax credit to the developer. *[90-6-309(4) and (5), MCA]* Plans submitted prior to July 1, 1985 follow a statutory formula for calculating and providing tax credits. For these earlier plans the local government unit's tax crediting obligation terminates 10 years after the prepayment was made. Plans submitted after July 1, 1985 specify in the plan the criteria and method by which affected local government units will calculate and provide tax credits and may include a projected tax crediting schedule. *[90-6-309(4) and (5), MCA]*

Basic Tax Crediting Requirements. The calculation and provision of tax credits begins the year after the mine starts production and, for the later plans, is limited to the productive life of the mine or until the credit has been paid in full, whichever occurs first. The tax credit in any given year may not exceed the developer's tax obligation for that year. *[90-6-307(1) and (2), 90-6-309(4) and (5), MCA; ARM 8.104.215]*

Tax credits may not have the effect of shifting the impact cost over time to the non-developer taxpayer. The Impact Act requires the mineral developer to pay *all* increased capital and net operating costs resulting from the development, as identified in the plan, so that services and facilities needed as a result of the development will be provided and so that the non-developer local taxpayer will not have to bear the burden of these increased costs, whether in the year the costs are incurred or at a later date. To shift the cost over time would be contrary to the purpose and requirements of the Impact Act. *[90-6-301, 90-6-307(1) and (2), MCA; ARM 8.104.215]*

Tax Crediting by Fund. Because of budgeting, accounting and auditing requirements, fund distinctions, and multiple taxing jurisdictions within a local government unit, tax credits must be calculated and provided separately for each affected fund of the local government unit. A property tax credit reduces potential property tax revenue from the developer for the affected fund in the year when the credit is allowed. The affected fund is the local government fund which would ordinarily be used for the type of service or facility for which the prepayment was made, such as the general fund, road fund, or library fund. Each fund may be subject to its own mill levy limit, just as the local government unit as a whole may be subject to an overall mill levy limit.

As a result of the mineral development, the population or the taxable valuation, or both, may increase in the affected local government units. If the classification of a local government unit changes as a result of an increase in population or taxable valuation, some of its mill levy limits may be reduced, while some of its service level requirements and expenses may increase. This may affect the tax crediting capacity of the local government unit.

Property Tax Credits from Property Tax Revenue. Property tax credits are allowed to the developer only from potential property tax revenue. Tax prepayments cannot be used as impact payments for those local government services or facilities that are financed primarily from sources other than property tax revenues, such as enterprise fees, special assessments based on factors other than taxable valuation, or revenue sources other than property taxes. Without property tax revenue as the normal funding source for a service or facility, no property tax credit can be given.

Before deciding whether to use a tax prepayment to meet impact costs for services normally financed from property tax revenues, the developer and affected local government unit should determine whether the anticipated property tax revenue from the developer for the affected fund appears sufficient to enable the recipient local government unit to credit the prepaid amount during the productive life of the mine without shifting the impact cost to the non-developer taxpayer. For very small or isolated prepayments, they should also evaluate whether the tax crediting process will be cost-effective for both the developer and the affected local government unit.

Form of Payment Versus Full or Partial Tax Credits. In evaluating the potential for tax crediting for services financed largely from property tax revenue, the developer and affected local government units will reach one of three conclusions, depending on their expectations of future service needs, costs, taxable valuation, mill levies, mill levy limits, and revenues for the affected funds. They will conclude that, during the productive life of

the mine, from the developer's projected property tax revenue for *the affected fund* the affected local government will be able allow a full credit, a partial credit or no credit of the prepaid tax.

If it does not appear likely that a tax credit can be given, it would serve no purpose to use a tax prepayment to meet an impact cost. If it appears probable that a full tax credit could be allowed without shifting the impact cost over time to the non-developer taxpayer, using a tax prepayment to meet an impact cost would probably be appropriate, provided that the tax crediting procedure would be cost effective for the developer and the affected local government unit.

If it appears that only a partial crediting would be feasible during the productive life of the mine without shifting the impact cost over time to the non-developer taxpayer, then the developer and affected local government unit appear to have two options. They may either select another form of payment for the impact cost or acknowledge in the impact plan that only a partial crediting of the prepaid tax is expected to result from the plan's criteria and method for calculating and providing tax credits.

The Impact Act appears to allow for partial crediting of prepaid taxes. *[90-6-309(4) and (5), MCA]* The Act requires a local government unit that received a tax prepayment to **"provide for repayment of the prepaid property taxes in accordance with subsection (5)"** of *90-6-309, MCA. [90-6-309(4), MCA, emphasis added.]* In turn, subsection (5) requires the local government unit that received a tax prepayment to **"provide for tax crediting *as specified in the impact plan*."** *[90-6-309(5), MCA, emphasis added*.] The subsections require the local government unit to "provide for" repayment or crediting of prepaid taxes "as specified in the impact plan." Neither subsection appears to require the local government unit to credit the full amount of the prepaid tax, unless that is what the plan specifies. In subsections (4) and (5) the language "provide for" and "as specified in the impact plan" seems to leave sufficient latitude that *in the plan* the developer and the affected local government unit might provide for *partial* crediting of prepaid taxes, if it appears that a full credit could not be given during the productive life of the mine without shifting the impact cost to the non-developer taxpayer.

If, in the plan, the developer and the affected local government unit identify prepaid taxes as the form of payment for an impact cost and provide for the calculation of tax credits according to criteria and methods which might not result in the full amount being credited to the developer during the life of the mine, this means that the local government unit will be fulfilling its tax crediting obligation if, annually throughout the productive life of the mine, it calculates and provides the credits *as specified in the impact plan,* whether or not the full

amount is eventually credited. At the end of the productive life of the mine, the uncredited balance of the prepayment will, in effect, convert to a grant. To avoid future misunderstanding, the plan should acknowledge this eventuality.

While partial tax crediting is not as desirable as full tax crediting for the developer, and should be used only when justified, it expands the possibilities for tax prepayments. Without the option of partial tax crediting, the parties to the plan limit their ability to use tax prepayments for impact costs to only those situations in which the local government unit's ability to provide a full tax credit from potential mineral development revenue for the affected fund appears assured.

The plan should identify the criteria and method for calculating tax credits; provide a projected tax crediting schedule, if possible; specify whether full or partial tax crediting is anticipated, if possible; and provide for the amendment of the criteria and method for calculating and providing tax credits, if appropriate. *[90-6-309(4) and (5), 90-6-311(1), MCA]*

Prepaid Taxes and Capital Costs As discussed, property tax prepayments are most frequently appropriate for *net operating* costs that are financed, at least in large part, from property tax revenue. By contrast, if an impact plan uses property tax prepayments to meet major *capital* costs, tax crediting may be difficult or impossible. Mill levy limits and the demands of operating budgets may restrict the ability of the local government unit to credit the prepaid tax. The operating fund from which the credit must be made may not generate sufficient revenue to offset large capital costs.

When a local government unit uses property tax revenue for major capital costs, it raises the revenue through a special assessment against the taxable valuation of property within its jurisdiction. Mills levied for a special assessment are separate from and in addition to the mills levied for normal operating expenses. The special assessment is not subject to the mill levy limit of the operating fund. However, a local governing body has no authority to impose a special assessment on the taxpaying property within its jurisdiction in order to provide a tax credit and it probably could not do so, in any case, without shifting the impact cost to the non-developer taxpayer.

For a fund that typically operates at or near its mill levy limit but still lacks sufficient revenue to meet service demands, the potential tax crediting problem is especially evident. The local government unit might be unable to credit taxes prepaid for a major expenditure from such a fund without seriously depleting its operating revenue and jeopardizing its ability to provide either its historic level of service or the level of service needed as a result

of the mineral development. For example, in some counties the road and bridge funds are near or at their legal mill levy limits, yet the county is unable to meet its road and bridge maintenance needs. The local governing body might have great difficulty in allowing a large tax credit from potential revenues for an already stressed fund. Even with the increase in taxable valuation resulting from the mineral development, if the plan required the developer to prepay a substantial amount of property tax for major road construction, the county, without seriously jeopardizing its provision of services, might never have the financial capacity from the road fund's limited operating revenues to provide a full tax credit for the capital expenditure.

For financing major capital projects, such as road or bridge construction, another form of impact payment, such as a facility impact bond, might be preferable to the prepayment of property taxes.

Tax Crediting Prior to July 1, 1985. An impact plan submitted prior to July 1, 1985 is subject to the provisions of statute that were in effect when the plan was submitted, unless the plan has been amended to provide otherwise*. [90-6-309, MCA]* The 1981 statute sets out a formula by which local government units calculate and provide tax credits. *[90-6-309(5), MCA, 1981]* The purpose of the formula is to identify the amount of tax credit, if any that can be allowed, given the total taxable valuation of the jurisdiction, after meeting current budget needs at a mill levy equal to the average mill levy for the three years preceding the development. *[90-6-309(5), MCA, 1981]* The principle embodied in the formula remains consistent with the purpose and impact payment requirements of the Impact Act, although the method of providing the tax credit has changed. *[90-6-301, 90-6-307(1) and (3), MCA]*

Under the original statute, tax crediting was accomplished by reducing the taxable valuation of the mineral development in the local government jurisdiction that was to provide the tax credit. The tax credit and consequent reduction in taxable valuation were calculated separately for each affected local government fund. When the amount of tax credit was determined, the developer's valuation would be reduced for the fund in question to allow the equivalent of a dollar for dollar tax credit. Recalculating taxable valuation by local government unit and by fund and applying mill levies to multiple valuations of the same property threatened to become excessively confusing and burdensome for the local governing bodies and the county assessor and treasurer. It was also confusing for the governing bodies trying to set their budgets and for the mineral developer trying to decipher its tax bill. Tax base sharing added to the number of local government units involved and to the potential complexity of the situation. Therefore, in 1985 the Legislature

amended the tax crediting statute to remove the requirement, and authority, for reducing taxable valuation to achieve tax crediting.

Tax Crediting After July 1, 1985. Beginning in 1985, a tax credit is provided only through a dollar for dollar reduction in the developer's tax bill. The reduction in the tax bill is calculated separately for each affected fund for which a credit is allowed.

The change in the method of providing tax credits did not change the basic purposes of the Impact Act or the principles underlying the calculation of appropriate tax credits. The Impact Act requires the developer to pay *all* increased capital and net operating costs resulting from the development so that these costs will not be borne by the non-developer local taxpayer. [*90-6-307(2), MCA]* Therefore, a plan would contradict both the purpose and the central requirement of the Act if it were to provide for tax crediting in a manner that would shift the tax burden, over time, from the developer to other local taxpayers. *[90-6-301, 90-6-307(2), MCA]*

To be consistent with the purposes and requirements of the Impact Act, a plan might apply principles and criteria such as the following to its provisions for tax crediting:

a. The plan must identify and the mineral developer must commit to pay *all* increased capital and net operating costs resulting from the mineral development. *[90-6-307(1) and (2), MCA]* A tax credit must neither create nor add to capital or net operating costs resulting from the mineral development.

b. A prepaid tax may be credited only from potential property tax revenues from the mineral developer to the affected fund, i.e., the fund that corresponds to the service for which the tax was prepaid. *[ARM 8.104.215]*

c. Tax crediting must not shift capital or net operating costs resulting from the development over time to the non-developer local taxpayer. *[90-6-301, 90-6-307(2), MCA; ARM 8.104.215]*d. A tax credit may not exceed the tax obligation of the developer in any given year. *[90-6-309(5), MCA; ARM 8.104.215]*

e. For plans submitted prior to July 1, 1985, tax crediting is limited to a period of 10 years after the tax was prepaid. For plans submitted on or after July 1, 1985, tax crediting is limited to the productive life of the mine*. [90-6-309(5), MCA; ARM 8.104.215]*

In summary, the Impact Act requires the mineral developer to commit to pay all increased capital and net operating costs resulting from the mineral development and identifies the prepayment of property taxes as one of several possible means by which impact costs might be met*. [Section 90-6-307(2), MCA] Section 90-6-309, MCA, adopted in 1981 and amended in 1985*, provides for the prepayment and crediting of property taxes. Property taxes that the developer prepays under an impact plan must later be credited to the developer by the recipient local government unit, subject to certain statutory and regulatory limitations. During its budget process each year following the start of production, the affected local governing body determines how much, if any, tax credit it is to allow the developer for each affected fund. Prior to July 1, 1985 tax credits are calculated and provided as specified by statute. As of July 1, 1985, the impact plan must specify the criteria and method for calculating and providing the tax credits. If appropriate, the plan may contain a projected schedule of tax credits. Appendix XII contains copies and discussions of both the original and the amended versions of the tax prepayment and tax crediting statutes*. [90-6-309, MCA]*

Tax base sharing and changes in mineral development taxable valuation may affect tax crediting. If either the taxable valuation of the mineral development or its allocation through tax base sharing differs significantly from what the impact plan projects, then mineral development revenues, net operating costs, needed tax prepayments and tax credits may also differ significantly from what the plan projects. [*90-6-404 and 405, MCA]* Tax base sharing is discussed below and in Chapters I and IV and Appendix XIII.

Under the statutory provision that allows an impact plan to specify conditions under which the plan may be amended, a plan may provide for the amendment of its tax prepayment and tax crediting provisions to ensure that tax credits do not shift impact costs over time to the non-developer taxpayer and that they remain consistent with the limitations and requirements of the Impact Act and with statutory and regulatory requirements affecting local government finance. *[90-6-311(1), MCA]*

Tax crediting is discussed further in Chapter IV and Appendix XII.

8. Tax Base Sharing *[90-6-401 through 90-6-405, MCA]*

A mine is always located in at least one county, one high school district, and one elementary school district, each of which applies its mill levy to the full taxable valuation of the mine. Ordinarily, only the local government units within which a mine is located can tax the property of the mineral development. However, a mineral development may cause an

increase in demand for services and an increase in costs in counties, municipalities and school districts in which the mine is not located. To enable these local government units to meet increased and ongoing costs resulting from the mine, the Legislature enacted the Property Tax Base Sharing Act in 1983, as companion legislation to the Hard-Rock Mining Impact Act.

Mineral Development Taxable Valuation. Tax base sharing involves only the increase in taxable valuation of the mineral development which occurs after the operating permit is issued. *[90-6-402(8), 90-6-403, 90-6-404, MCA]* By definition, the "mineral development" encompasses the construction and operation of the mine and associated milling facility by the developer, its contractors and subcontractors. *[90-6-302(4), 90-6-402(4), MCA]* The taxable valuation of the mineral development includes the gross proceeds of the mine and all taxable real and personal property at the mine and mill, whether owned by the developer or by contractors or subcontractors at the site. *[90-6-302(4), 90-6-402(4) and (8), MCA]*

Jurisdictional Revenue Disparity and Three Categories of Affected Local Government Units. Tax base sharing occurs only when an approved impact plan identifies a "jurisdictional revenue disparity," as discussed below. *[90-6-402(3) and 403, MCA]* Under tax base sharing the DOR allocates the increased taxable valuation of the mineral development separately within each of three categories of affected local government units: counties and municipalities, high school districts, and elementary school districts. Tax base sharing does not affect special districts or statewide mill levies. *[90-6-402(5), 90-6-403, 90-6-404, MCA]* Jurisdictions that are not subject to tax base sharing continue to tax the development as usual. *[90-6-403, MCA]*

If an approved impact plan indicates that property tax revenues resulting from the mineral development will be "inequitably distributed among affected local government units," this constitutes a "jurisdictional revenue disparity." *[90-6-402(3), 90-6-403, MCA]* If a plan identifies a jurisdictional revenue disparity in any of the three local government categories, tax base sharing must occur among all affected local government units within that category. Tax base sharing may apply to one local government category but not to the others. For example, tax base sharing may apply to elementary school districts but not to high school districts.

Typically, a jurisdictional revenue disparity exists when increased costs resulting from the development will occur in one or more local government units in which the mine is *not* located. A disparity could also exist if a mineral development overlapped two local government units within the same category, such as two high school districts, and if the

development would result in impact costs in excess of impact revenues in one of those units, while revenues would exceed costs in the other unit.

Statutory Allocation Formula or Allocation as Specified in the Plan. The Tax Base Sharing Act contains a statutory allocation formula, based on the place of residence of mineral development employees and their school-age children, as verified in an annual survey conducted by the developer. *[90-6-404(2), (3), (4) and 90-6-405, MCA]* If the initial allocation occurs before the survey is conducted, it is based on employees' place of residence and students' district of enrollment, as projected by the plan. *[90-6-405(2), MCA]* The formula includes all employees of the mineral development, both in-migrating and local. The formula allocates taxable valuation in proportion to the number of employees (for cities and counties) or students (for school districts) residing in each affected local government unit within the affected category. *[90-6-404(2), (3), (4) and 90-6-405, MCA*] The resulting allocation of taxable valuation may or may not correspond to the increased capital and operating costs resulting from the mineral development.

In 1991, the Legislature approved two significant amendments to the Tax Base Sharing Act. First, it reserved 20 percent of the mine's gross proceeds taxable valuation to the local government units in which the ore deposit is located. *[90-6-404(1), MCA]* Second, it authorized the impact plan to modify the statutory allocation 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]* This amendment allows a closer adherence to the purpose of the Act, which is "so that property tax revenues [resulting from the mineral development] will be equitably distributed among affected local government units." *[90-6-401, MCA]*

Plan to Consider Effects of Tax Base Sharing. Tax base sharing provides ongoing revenues for local governments with ongoing needs and costs resulting from the mine. In terms of front-end costs in local government units where the mine is not located, tax base sharing also creates the opportunity for the developer to meet some increased costs through property taxes or property tax prepayments, rather than grants. If the plan provides for tax prepayments as a result of anticipated tax base sharing, it must also provide for tax crediting. *[90-6-307(2), 90-6-309(5), MCA]*

Tax base sharing does not change the taxable valuation of the mineral development but will decrease the amount of mineral development taxable valuation available to jurisdictions where the mine *is* located, in order to provide additional valuation in jurisdictions where the mine *is not* located. Tax base sharing may affect the amount of

property tax actually paid by the mineral development, because of differences in mill levies among the jurisdictions.

Tax base sharing will not affect the capital or operating costs resulting from the development, but by affecting potential property tax revenues, tax base sharing may increase or decrease net operating costs, which the developer must, in the impact plan, identify and commit to pay. *[90-6-307(1) and (2), MCA*] Therefore, the plan must anticipate the effect of tax base sharing.

Because over time tax base sharing allocations may differ from what the plan projects, the plan might provide for the amendment of provisions that are dependent on its projections of the allocation of the mineral development taxable valuation and the resulting revenues, net operating costs, and tax credits. *[90-6-307(1) and (2), 90-6-309(4) and (5), 90-6-311, 90-6-404(5), and 90-6-405, MCA]*

Tax base sharing is also discussed in Chapters I and IV. The requirements and procedures for implementing tax base sharing are discussed in more detail in Appendix XIII.

9. Definitions and Key Events

The Impact Act and the Tax Base Sharing Act each defines many of the terms it employs. When the same term is used in both Acts, the same definition usually applies, but not always. In a few cases, definitions of terms under the Tax Base Sharing Act differ from definitions of similar terms for impact plan purposes, reflecting the different functions of the two Acts*. [90-6-302, 90-6-402, MCA]* At times, the plan may need to clarify its use of terms common to both Acts according to the context in which the term is used.

Several phrases used, but not defined, in the Impact Act need to be defined in the impact plan in a manner consistent with common usage, the Act, and the specific requirements and expectations of the individual plan:

a. **"the estimated number of persons coming into the impacted area as a result of the development"** *[90-6-307(1)(b), MCA]*

The developer and affected local government units need to define "the estimated number of persons coming into the impacted area as a result of the development" before they can project the expected number of in-migrants, where they might live, or what impacts they might cause.

The Board has defined "impacted area" as "the jurisdictional area or areas of the affected local government units identified in an impact plan or in an amendment to an impact plan." *[ARM 8.104.203A*]

Affected local government units provide services to those persons who currently reside within their jurisdictions and to the people who move into the area as a result of the mineral development. People may come into the area in expectation of work at the mine, because of other jobs created or vacated locally as a result of the mine, or because they are members of the household of an in-migrating job seeker or wage earner. Both the impact plan and the project's environmental impact statement will, in effect, define and project the in-migrating population. If their definitions differ significantly, then projections of in-migration and impacts resulting from in-migration may also differ significantly. While each document appropriately represents a separate process, it may be useful to those preparing an impact plan or an EIS to compare the definitions, assumptions, methodologies, and projections in the two documents.

Plans often define an "in-migrating mineral development employee," in part, in terms of the length of time the in-migrating person resides in the area before applying for or obtaining employment in the construction or operation of the mine or its associated facilities. The length of residency used in the definition usually reflects when people are expected to move into the area in search of mine-related employment and may extend back far enough, or be otherwise worded, so as to include in-migrating exploration personnel who stay on to work in the construction or operation of the mine.

Depending on the plan's definition of people moving into the area as a result of the mineral development, an "in-migrating mineral development student" may differ from an "in-migrating mine-related student." The former usually implies a student who is the son, daughter, or ward of a mineral development employee. *[90-6-402(7), MCA]* The latter might encompass sons, daughters, wards, or in-migrating members of the household of any person who has moved into the area as a result of the mine, including in-migrants who are mine employees, former employees who were let go but have remained in the area, persons filling other jobs created or vacated as a result of the mine, and, if the plan includes them in its definition, persons who have moved into the area in expectation of employment resulting from the mine. For purposes of identifying impacts to county social service programs, one plan limits the latter group to people who have actually, but unsuccessfully, applied for work at the mine.

Expectations of how in-migration should be defined, when in-migration will begin, and how many people will in-migrate, and where in-migrants might live may be influenced by factors such as:

- the timing and level of employment associated with the mine's exploration, construction and operation
- the number and skills of currently unemployed or underemployed persons living within daily or work-week commuting distance of the mine and mill
- the comparative cost-of-living and availability of housing within commuting distance
- where current residents obtain both governmental and non-governmental services and the current and anticipated demand for such services
- the status of the economy and of employment opportunities elsewhere in the region
- the efforts of the developer and local governments to discourage the premature, belated or excessive in-migration of people who are looking for jobs that are not available
- the efforts of the developer and local governments to prepare for anticipated in-migrants, including, if needed and appropriate, the developer's provision of, or assistance with, worker housing or housing sites.

Because construction workers, especially, may come into the impact area for the term of their particular contract at the mine or mill, the plan may want to clarify that for impact plan purposes, the word "resides" in contexts such as "resides in the impact area" or "resides in an affected local government unit" does not mean "establishes legal residence." This understanding of the word "resides" is consistent with the language in the statutory requirement that the plan identify "the estimated number of persons *coming into* the impacted area as a result of the mineral development*." [90-6-307(1)(b), MCA*; *emphasis added.]*

b. **"Start of Production" [***90-6-309(4), MCA]*

If the plan requires the prepayment of property taxes, it must define "start of production" for purposes of calculating and providing tax credits.

c. **"Commercial Production"** *[90-6-311(1)(b), MCA]*

Each plan must define the commencement of "commercial production" for purposes of establishing a timeframe within which an impact plan amendment may be initiated by a single party to the plan. One plan defines the beginning of commercial production as the date the developer first ships mineral concentrate from its mill for further processing. Another plan defines the beginning of commercial production in terms of a percentage of full production as projected in its operating plan.

The plan should also define terms that are critical to or may be used in a way unique to the plan itself, such as "impact year," "project year," or "impact period." For example, to facilitate implementation of the plan, "impact year one" may be defined as a period longer than twelve months, starting a specified number of months before the mine expects to begin construction and extending through the first full fiscal year after the mine begins construction.

Appendix II contains additional discussion and examples of both statutory and impact plan definitions.

10. Notification of Key Dates or Events *[ARM 8.104.203]*

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" for tax crediting purposes and within 30 days of the beginning of "commercial production" for impact plan amendment purposes. [*ARM 8.104.203]* The plan itself may identify other events or dates that will require notification. For example, in its monitoring and amendment provisions a plan might require that the developer or the affected local government unit notify the Board and other affected parties within a certain length of time after an event or circumstance occurs that allows the plan to be adjusted or amended, as provided by the plan or by statute.

If the parties to a plan know that the plan may be reviewed and approved considerably in advance of when the mine will begin construction, then in the plan they might require that the developer will notify the Board and the affected local government units by a specified length of time prior to the commencement of construction. The timing of the notice should be sufficient to allow the developer and the affected local government units to review the plan informally together before construction begins, to be sure that the plan's provisions are clear to those who will be implementing it (the persons implementing the plan may not be the same as those who originally prepared or reviewed it); to consider whether the provisions of the plan remain acceptable to all parties; and to amend the plan, if

necessary. The notice should allow sufficient time for local government units to be able to prepare the increased services and facilities they will need to provide when the mine begins construction.

11. Providing for Plan Adjustments and Amendments: Certainty and Flexibility in an Impact Plan

An impact plan may need to be changed after it has been approved. What the plan assumes, projects, or anticipates may or may not be what actually happens; its commitments may or may not be what is needed to address impacts resulting from the mineral development. Recognizing that an impact plan is based on data, assumptions, circumstances and projections that might change or prove to be inaccurate, the Legislature has provided a method for amending an approved impact plan under specific conditions, including conditions specified in the plan itself. [90-6-311, MCA] An approved impact plan is binding and may only be altered under the amendment provisions of the Impact Act. *[90-6-307(6), MCA*]

While the formal amendment procedure protects all parties to the plan, it also imposes constraints on their flexibility to respond in a timely manner to changing circumstances. A formal amendment, for example, requires a 60-day review period, which could delay implementation of needed changes to the plan. [90-6-311(3), MCA] The Board recognizes that an impact plan needs to achieve a balance between certainty and flexibility and that the parties to the approved plan need to be able to respond to changing circumstances in a timely manner. After reviewing the Act with this concern in mind, the Board has concluded that under the Impact Act the plan itself can create some latitude for change by building in provisions for limited adjustments under defined circumstances. Essentially, *an adjustment is a specific change contemplated by the plan itself*. An adjustment is an alternative that is built into the plan and that is, in effect, agreed to in advance by the parties to the approved plan, provided that the triggering event or circumstance contemplated by the plan occurs.

*An **adjustment** is an alternative action that occurs within the scope and provisions of the approved plan, while an **amendment** is an alteration to the approved plan.*

It is important for those who are preparing an impact plan to look ahead to possible circumstances that might result in a need to revise the approved plan.

- Development of the mining project may be delayed or accelerated.
- The number of mine employees, new mine-related students, or people moving into the area because of the mine may be greater or fewer than projected.

- In-migrants may settle into different residency patterns and may have different service needs than anticipated.
- At the time the impacts occur, service and facility capacities and impact costs may be higher or lower than anticipated.
- The taxable valuation of the mineral development may be higher or lower than anticipated.
- Under tax base sharing the amount of mineral development taxable valuation allocated to a given government unit may be greater or less than anticipated.
- Following an increase in population or taxable valuation resulting from the mineral development, the classification of an affected local government unit may change, resulting in different service requirements, elected official compensation, or mill levy limits.
- Changes in minerals prices or mine economics or the discovery of additional reserves may precipitate changes in the mining operation resulting in substantially fewer or more employees.
- State and federal service and facility standards, regulations, procedures or funding options for local governments may change in ways that affect the provision or cost of local government services and, consequently, affect the impact plan.

Those who are preparing and those who will be implementing an impact plan need to be prepared to deal with changing circumstances after the plan is approved. They need to understand the statutory criteria and requirements for amending the plan, the potential and limitations for adjusting an approved plan, and *the role the plan itself plays in future amendments or adjustments*.

Amendments. *[90-6-311, MCA]* Under specific conditions, the mineral developer or the governing body of the affected county, or both, may petition the Board to amend an approved impact plan.

a. Under the following circumstances the mineral developer *or* the governing body of the affected county may petition the Board to amend an approved impact plan if:

(1) *the impact plan provides for its own amendment under definite conditions specified in the plan itself [90-6-311(1), MCA*, first sentence]; or

(2) 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 *[90-6-311(1) (a), MCA*] ; or

(3) it becomes apparent that an approved impact plan is materially inaccurate because of errors in assessment and two years have not yet elapsed since the date the facility began commercial production *[90-6-311(1) (b), MCA];* and

b. The county *and* the mineral developer may join in a petition to amend the impact plan *at any time*. *[90-6-311(1)c), MCA]*

In the amendment process the governing body of the affected county serves as formal petitioner for all affected local government units within the county, acting at their request or on its own behalf. *[90-6-311(1), MCA; ARM 8.104.217]*

The specific conditions for amendment set out in *Subsections 90-6-311(1)(a) through (c), MCA*, may not be sufficient or appropriate to a particular service, facility, local government unit, mining project, or impact plan. Therefore, in its first sentence *Section 90-6-311(1), MCA*, also authorizes the plan to provide for its own amendment "under definite conditions specified in the plan." If the conditions specified in the plan occur, then either the developer or the governing body of the county may petition the Board to amend the plan. *This authority for the plan to provide for its own amendment may be one of the most critical provisions of the Impact Act.*

By identifying specific conditions under which an amendment may be needed, the plan is able to offer more opportunity for refocusing mitigation measures than would have been possible under the statutory amendment provisions alone. The ability of the plan to provide for its own amendment can help developers and local governments to deal with uncertainty and conflicting views about what might happen, to anticipate potential changes in needs or circumstances, and to be responsive both to services that are sensitive to minor population fluctuations and to services that can accommodate some increased demand. Through the plan's provisions for its own amendment, for instance, they could prepare for the possibility that, if the mine were to amend its operating permit in the future, specific services or facilities might be affected by increases or decreases in mine employment of fewer than the 75 persons that trigger the statutory amendment provisions. *[90-6-311(1), MCA]*

The plan may identify conditions under which the entire plan may be amended or conditions under which only certain provisions of the plan are subject to amendment. The

plan might provide for the potential amendment of the amounts, timing or form of impact payments; the circumstances under which payments will be made; the provisions for tax base sharing or tax crediting; or even the plan's own provisions for adjustment or amendment.

The plan may limit the scope or content of the amendments it allows under the conditions it specifies. For example, depending on its purpose and language, a plan might authorize amendment of all provisions pertaining to school facilities, services, costs, revenues and payments resulting from the mineral development, or it might limit the potential amendment to the incremental increase in operating costs resulting from a net increase in in-migrating students. In either case, the authorized amendment would address only impacts to the school and not impacts to other local government units or services.

Following are examples of provisions for limited amendments:

(1) If the number of in-migrating mine-related students enrolled in the elementary school district exceeds the number projected by more than 15 but fewer than 30, or if more than 8 in-migrating mine-related students enroll in any grade, then the plan may be amended to meet the additional increase in net operating costs.

(2) If the number of mine-related students enrolled in the elementary school district exceeds the number projected by more than 29 but fewer than 45, or if more than 10 enroll in a single grade, the plan may be amended to compensate the district for the resulting increase in capital costs and the additional increase in net operating costs.

(3) If the number of mine-related students enrolled in the elementary school district exceeds the number projected by 45 or more within five years after the mine begins construction or three years after the mine begins commercial production, the plan may be re-evaluated and amended as necessary to meet the increased service and facility needs and costs resulting to the school district from the mineral development.

(4) If the number of mine-related students enrolled in the elementary school district exceeds the number projected by 45 or more at any time after the mine begins construction and if the taxable valuation of the mineral development has not increased sufficiently to enable the district to meet the

educational needs of the additional mine-related students at the service level contemplated by the plan without increasing its mill levy, the plan may be re-evaluated and amended as necessary to meet the increased service and facility needs and costs resulting to the school district from the mineral development.

(5) If the dollar amount of mineral development taxable valuation available to the district varies by 15 percent or more from what is projected by the plan for any given year, the impact payment and tax crediting provisions of the plan may be amended.

A plan provides for its own amendment in order to supplement the statutory circumstances under which an amendment may occur. In each of the situations described above, the plan not only authorizes its own amendment under specified conditions, but to some extent the plan also defines the scope and content of the allowable amendment. A plan may limit the scope or content of an amendment *only* if the amendment is authorized solely under the conditions specified in the plan itself. The plan cannot impose any limitation on the scope or content of amendments authorized under conditions specified by statute.

Chapters I and IV discuss the procedural and substantive requirements for implementing and amending an approved plan. All petitions to amend a plan must explain the need for the amendment and must describe the proposed corrective action. Appendix XIV contains a sample format for a petition to amend an impact plan. Appendix V illustrates provisions for monitoring a plan and illustrates several specific conditions under which a plan might provide for its own amendment. Persons preparing plans should become familiar with the statutory and regulatory requirements for reviewing, implementing and amending plans. *[90-6-311, MCA; ARM 8.104.217]*

In addition to providing for their own amendment, impact plans may try to achieve a balance between certainty and flexibility by providing for specific adjustments.

Adjustments. The Impact Act allows an approved plan to be changed only under the amendment provisions of the Impact Act. *[90-6-307(6), MCA]* However, in anticipation of the need for flexibility, the impact plan may provide for specific adjustments that may be made under defined circumstances, as specified in the plan. Essentially, *an adjustment is a specific change contemplated by the plan itself*. An adjustment is *an alternative action that occurs within the scope and provisions of the approved plan.* By providing for adjustments, the plan creates its own flexibility within defined limits. The conditions and scope of the adjustment are built into the plan itself, which means they are agreed to in

advance by the parties to the approved plan, provided that the triggering event or circumstance contemplated by the plan occurs. An adjustment does not change the plan. Instead, it is the process of selecting and implementing specific provisions of the plan under the conditions set forth in the plan itself.

A typical approach to adjustments is through "if...then" provisions that are similar to, but more specific than, those used above to illustrate the plan's conditions for amendment. To authorize an adjustment, a plan might provide that if a specific circumstance occurs, then a specific commitment will take effect, a specific change will be authorized, or a specific method of calculating increased costs will be triggered. This approach allows the developer and local government units to provide for a wider range of possible circumstances. In ways that are contemplated by the plan itself, an adjustment changes the commitment or commitments that would otherwise be in effect, without the necessity for formal amendment.

By identifying the specific responsibility and commitment of the developer under alternative potential scenarios, a plan may provide for adjustments that will correspond to actual, rather than projected, circumstances. For example, the plan might contain alternative, but specific, provisions for each of several ranges of potential enrollment in the elementary school:

(1) if 1 to 20 in-migrating students enroll, then the *need and cost will be* (as specified)... and the developer's commitment will be (as specified)...;

(2) if 21 to 35 net in-migrating students enroll, then the *additional need and cost will be* (as specified)... and the developer's additional commitment will be (as specified);

(3) if 36 to 45 net in-migrating students enroll, then the *total need and cost will be calculated* (as specified)... and the developer's total commitment will be (as determined by the calculation)....

An adjustment, rather than a formal amendment, is sufficient to implement "if...then" provisions and commitments, provided that both the conditions and the resulting commitment are specified. Because the adjustment involves changing the plan in some way specifically provided for in the plan itself, the potential change is essentially agreed to in advance by the mineral developer and the affected local government unit. When a plan is adjusted in this manner, *the developer and the local government must confirm the adjustment in writing to the Board*. This written confirmation is necessary because both

the parties to the plan and the Board need to know at all times what commitments are in effect.

In a variation on the use of adjustments, one plan provides that the developer and the affected local governing body may adjust the plan by shifting tax prepayments from one year to another or by increasing, but not decreasing, the amount of tax prepayments. Both parties must concur in the change. Under that plan, the changes in tax prepayments can have only limited effect on future tax crediting, which is carried out according to the original statutory formula for calculating and providing tax credits and uses a procedure that protects the future budget needs of the local government unit. Under this procedure, the affected local government must allow the credit if, given the total taxable valuation of its taxing jurisdiction, it could otherwise meet its budget needs at less than its historic average levy for the three years prior to the commencement of mining. The tax crediting obligation is limited to the 10 years following the tax prepayment. The current tax crediting statute requires the plan to provide for tax crediting and extends tax crediting to the productive life of the mine. Under the current statute, if a potential adjustment will affect tax prepayments, the plan should also determine how the change will affect tax crediting.

The same impact plan also provides that if prepaid taxes are not fully expended or committed in the year the prepayment is received, the amount remaining in the impact fund at the end of the fiscal year, along with any interest earned on the impact fund, will be carried over to the next fiscal year and will reduce the developer's tax prepayment obligation for that fiscal year. This carryover provision is an automatic adjustment requiring only that the affected local government unit notify the developer and the Board.

Adjustments or Amendments. In some circumstances, a plan might provide that a change could be made by either an adjustment or an amendment, whichever is appropriate. For example, the plan could provide that if the taxable valuation of the mineral development varies by more than 15 percent from the amount projected in the plan for any fiscal year:

a. the plan may be *adjusted* so that the tax prepayments will meet actual increased net operating costs, based on the operating costs identified in the plan, or so that the tax crediting provisions reflect the change in valuation, or both; or

b. the plan may be *amended* to recalculate net operating costs, based on the increase in operating costs identified in the plan; to change the amount or form of impact payment; or to change the applicable tax crediting provisions.

In this way, the developer and the affected local government unit might adjust the plan to ensure that, based on the already identified operating costs, the net operating costs are paid and the tax crediting provisions are changed, as needed. However, if the fluctuation in taxable valuation is part of a more complex or extensive change in circumstances, either the developer and the affected local government unit, or both, could petition to amend the plan to change its impact payment and tax crediting provisions.

Changes in *procedures* required by an impact plan may be accomplished by an adjustment or may require an amendment, depending on the circumstances. A proposed procedural change will be reviewed by the Board, or by its chairman and staff, to evaluate the scope of the change and its potential for adversely affecting the interests of any party to, or beneficiary of, the plan. If a proposed procedural change would not have a potential adverse effect, it will probably be treated as an adjustment. If a procedural change might have an adverse effect, or might have broader policy implications, an amendment would probably be required.

A formal *amendment* is required to enable a local government *to use an impact payment for any purpose or category of service other than as provided in the plan*. An amendment is also required *to change a commitment by the developer*, whether the change represents an increase or decrease in assistance, unless the plan itself has provided for the specific change or type of change.

An amendment, rather than an adjustment, is usually required when the "if...then" provisions merely encompass the scope of a potential change, as illustrated in the discussion of plan amendments. Unless the plan specifically provides otherwise, a formal petition to amend the plan is necessary to define changes made under general commitments-in-principle, to change specific commitments by the developer, or to change the general purpose for which a local government will use an impact payment.

Amendments may be needed if tax base sharing does not result in the allocation of mineral development taxable valuation that is anticipated by the plan. Allocations made under the statutory tax base sharing formula are revised annually in response to the developer's annual employee survey. If the parties to the plan are concerned about the effects of significant unanticipated changes in the allocation of mineral development taxable valuation over time, the plan can provide for the adjustment or amendment of commitments that are affected by the allocation of taxable valuation. For example, the allocation of taxable valuation might affect calculations of net operating costs and the assumptions on which tax prepayment and tax crediting are based. *[90-6-307(2), 90-6-*

309(5), MCA; ARM 8.104.215] The plan may provide for the amendment of the tax base sharing formula, whether that would mean modifying the statutory formula or changing the formula contained in the plan itself. [*90-6-311(1), 90-6-404(5), MCA]*

Monitoring. The statutory conditions for amending an impact plan and the use of "if...then" provisions for amending or adjusting a plan both presuppose that the developer and the affected local government units will engage in some degree of monitoring of the development and its impacts on local government services, facilities, costs and revenues. For instance, if provisions of the plan are based on alternative ranges of enrollment of mine-related students, the plan should also provide that the developer and school district will devise and implement a procedure for monitoring the number of mine-related students.

Monitoring and flexibility appear to be of particular importance:

(1) when there is a high degree of uncertainty about the assumptions and projections on which the plan is based, such as projections of timing, in-migration, population distribution, costs and mineral development taxable valuation;

(2) when there is a reasonable likelihood that over time the developer may amend its operating plan or permit in ways that could affect local government services, facilities, costs, or revenues;

(3) when the affected local government unit is relatively small in size or the affected service or facility is near capacity and could be significantly impacted by small changes in the numbers or demographic characteristics projected by plan; and

(4) when the plan projects a high level of impact, a long impact period, or long-term commitments by the developer.

For whatever reason, the plan's original projections and commitments may not correspond to subsequent, revised projections, to actual needs for services and facilities resulting from the mineral development, or to the identifiable capital, operating and net operating costs. In order to serve its purpose, the plan must ensure that local governments are able to provide the services and facilities their communities need as a result of the mineral development. *[90-6-301, 90-6-307(1) and (2), MCA]* The developer and affected local government units need to be able to change the impact plan to respond to actual needs and circumstances. The developer and the affected local government units will be able to

address changing circumstances, if they provide adequately in the plan itself for monitoring, adjusting and amending the approved plan.

The plan must also ensure that the non-developer taxpayer is not burdened with increased costs resulting from the development. [90-6-301, 90-6-307(1) and (2), MCA] Both the community and the developer benefit when their respective resources are used appropriately and to good effect. Misallocation of their resources is costly in both financial and human terms.

Persons with experience in mitigating impacts from natural resource development advise that monitoring should be kept as simple as is consistent with the information needed to effect appropriate changes to the plan, or, conversely, to verify its adequacy. They find that existing reporting requirements, both for the developer and for local governments, are often sufficient to provide most of the needed data without having to duplicate efforts. The key, they suggest, is to identify in advance what information is necessary; who will provide, assemble, and analyze it; and how and by whom recommendations or decisions will be made based on the results. A commitment to monitoring should be included in the impact plan.

In the plan mineral developers and local government units seek a balance between certainty and flexibility. The certainty inherent in a developer's commitment to provide a specific amount or type of assistance for a specific local government service may be combined with the flexibility to adjust or amend the plan in response to defined circumstances or within defined limits, if the change is needed. Provisions for monitoring, amending and adjusting the plan help to ensure that the developer's assistance continues to correspond to the local government's legitimate mine-related needs, whether these needs increase, decrease, or change in character over time.

12. <u>Payment Route</u>. [*90-6-307(10), MCA; ARM 8.104.211]*

The plan is to indicate whether the developer will make impact payments through the Board's impact pass-through account or directly to the county treasurer. In either case, the parties must provide similar documentation to the Board, and the county treasurer must credit each payment to the impact fund of the appropriate jurisdiction for use as provided by the plan*. [90-6-307(10), MCA; ARM 8.104.211]* Payment through the Board's pass-through account involves an extra step and may take five to seven days longer, but the procedure has helped to identify and forestall potential problems, particularly those arising from a complex plan, a prolonged impact period, or a turnover among the local

government or mineral development personnel who are responsible for implementing the plan.

Because of the typically short turnaround time, interest does not usually accrue on impact payments made through the Board's pass-through account. However, if the parties to the plan anticipate leaving money in the account for any length of time, the plan should specify the disposition of any interest that might accrue. Unless the plan provides for allocation of the interest, State law requires that interest be credited to the State's general fund.

Similarly, if a local government unit may be holding payments in its impact fund for any length of time, the plan should specify what disposition is to be made of the accrued interest. The plan should also specify what becomes of any unexpended or uncommitted balance remaining at the end of a fiscal year. For example, the plan may provide that any unexpended balance may be carried forward to the next fiscal year, if it is to be used for the purpose for which the payment was made (same amount, same purpose, different year); or, the plan may provide that the interest and any unexpended and uncommitted balance will be used to reduce the developer's financial obligation in the next fiscal year. Grants should be carried forward only as grants and tax prepayments as tax prepayments, unless the plan specifically provides otherwise and the change is documented to the Board by the developer and the governing body.

Chapter IV discusses the implementation of an impact plan, including the alternative procedures for making impact payments.

D. FORMAT AND CONTENT OF AN IMPACT PLAN *[ARM 8.104.203]*

The Hard-Rock Mining Impact Board has adopted the following rule concerning the format and content 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.

2. The format of the plan must contain the following elements:

    a. the name, mailing address, email address, and telephone 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 the 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 impact plan.... *[ARM 8.104.203]*

The summary of the plan must contain the schedule of the developer's commitment to provide financial or other assistance. The schedule and summary must identify for each affected local government unit the proposed financial and other assistance, including the amount, purpose, method, and timing of each impact payment.

E. ASSISTANCE TO LOCAL GOVERNMENTS TO PREPARE FOR AND EVALUATE THE IMPACT PLAN *[90-6-307(3), MCA]*

Recognizing that local government units will incur additional costs and may need assistance to help them prepare for and evaluate an impact plan, the Legislature provided that:

> **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.** *[90-6-307(3), MCA]*

In preparing for an impact plan, for example, local governments may initiate or intensify their efforts to prepare or update a comprehensive plan or growth policies for the impact area; adopt a growth management component to a plan; adopt or revise subdivision regulations; adopt a zoning or interim zoning district and regulations for the impact area; conduct facility studies; update a capital improvements program; or engage in other land-use, facility or service planning activities that will enable the local government to participate more effectively in the preparation, review and implementation of the impact plan.

The county, on behalf of all affected local government units, may engage a consultant with experience in growth management, fiscal impact analysis, and impact mitigation planning to help the local governing bodies and their planning staff through the process of preparing for, preparing, and reviewing the impact plan. In preparing and implementing their impact plan, both the developer and the community benefit if the local government unit has a high level of local planning and growth management capability.

If the developer prepays taxes to help local government units "prepare for and evaluate the impact plan," the plan needs to provide for later crediting the prepaid tax. This may mean simply clarifying that the credit for this tax prepayment will be calculated and provided in the same manner as other tax credits as authorized by *Section 90-6-309, MCA,* and the approved plan.

Appendix I-C discusses local governments' request for assistance in more detail.

F. SUMMARY

The work of both the developer and the affected local government units begins prior to the actual preparation of the plan and extends through its implementation. Each begins by familiarizing itself with the Impact and Tax Base Sharing Acts and with its own and the other party's responsibilities. Each then assembles and analyzes data and information necessary to the plan. Using this data and their knowledge of the mining project and the local area, the parties work together to arrive at the reasonable and mutually acceptable definitions; assumptions; projections; impact mitigation provisions; monitoring, adjustment and amendment provisions; and financial and other commitments which comprise the impact plan.

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

The impact plan may be submitted for formal review any time after the developer has applied for its operating permit from the DEQ. It is assumed that the impact plan preparation, review and approval process will run roughly concurrently with the permit application process*. [90-6-307(1), MCA]*

The DEQ may prepare an environmental impact statement (EIS) in conjunction with other State and, sometimes, federal agencies. If an EIS is prepared, the DEQ is to cooperate with local government units to help them eliminate duplication of effort in data collection. *[90-6-307(1), MCA]* Baseline studies (prepared by the developer for DEQ) and impact assessments (prepared by DEQ and other approving and cooperating agencies) may be useful to the developer and the affected local governments in the preparation and review of the impact plan.

The EIS identifies and evaluates a broad array of impacts that may result from the mineral development, including social and economic impacts. EIS's vary in the level of detail with which they address social and economic impact issues, including housing, transportation, and local government services and finances. The EIS provides information about the larger context in which the impact plan is expected to operate, which can be very useful to those who are preparing and reviewing the impact plan. The plan itself focuses in greater detail on service, facility and fiscal impacts to local government units, identifying service and facility needs, service delivery methods, increased costs, mine-related revenues, and specific commitments for meeting increased needs and costs.

In some circumstances, the advent of a new hard-rock mine may result in little or no increased cost for local government units. In others, the increase in service and facility needs and costs may be substantial. A variety of factors influence the complexity of an impact plan and the level of financial commitment required of the developer, including the timing, size and location of the mineral development; the skills and number of direct and derivative employees needed, in relation to the available local workforce; the anticipated extent of job shifting; the number and demographic characteristics of the in-migrants and the rate of in-migration; where in-migrants are likely to reside or to attend school; the

number of affected local government units and communities, their size in comparison to the anticipated in-migration, and their planning, administrative and growth management capabilities; the availability of housing, housing sites, and housing financing; the capacity and condition of existing services and facilities; policies and proposed actions by the developer regarding hiring, employee training, transportation and housing; the anticipated nature, severity and duration of impacts; the anticipated disparity and time-lag between increased costs and increased revenues; the lead-time required by local governments to prepare for needed services and facilities; the degree of certainty or risk attributed by the developer, the local government units, or the community to the assumptions and projections on which the plan is based; and the commitment of the developer, local government units and community to growth management policies and practices.

The elements of an impact plan discussed in this chapter include both statutory and regulatory requirements and other features of a plan that make it functional and contribute to its review or implementation. *ARM 8.104.203* provides a checklist of basic statutory and regulatory requirements. In 1982, at the request of mineral developers and local governments, the Board adopted an outline of the type of information typically needed for a complete, functional impact plan. The outline has been updated and is included as Appendix I-B.

The appendices contain additional information and references concerning impact plans. The Board recognizes that, in practice, each plan will be unique in both organization and content, reflecting the characteristics and concerns of the proposed mining project and the communities it affects. A copy of each approved plan is available for public review at the Board's office in Helena. Persons preparing or reviewing impact plans may wish to refer to these plans for further examples of form and content. They may also find it helpful to discuss with other mineral developers and affected local government personnel what has worked well for them and what has not.

While the components of the proposed plan are being prepared, and again when the draft is substantially complete, the developer and affected local government units may wish to review the proposed plan informally, allowing sufficient time for revisions, before the plan is submitted for formal review. Informal reviews provide the opportunity, without the constraints or expenses associated with the formal review process, for the developer and affected local government units to refine the details of the plan and to identify and resolve potential problems, including possible omissions, ambiguities, or internal conflicts or discrepancies.

Because the individuals who prepare an impact plan may not be the same persons who review the plan or who implement it over time, the plan needs to be a clearly written, complete, freestanding document, encompassing to the extent possible all of the definitions, assumptions, provisions and commitments concurred in or "understood" by the affected parties. When the plan is approved, it becomes, essentially, a contractual agreement between the developer and the affected local government units.

When the plan is ready for formal review, the developer officially submits it to the Board and to the affected local government units. Local government review of the plan includes public input at meetings of the governing bodies and at the required public hearing. If the developer and the local governing bodies disagree about any part of the proposed plan, their disputes are resolved either by negotiation among the parties or by adjudication by the Board. After disputes are resolved, the plan is approved.

After the plan is approved and required guarantees are provided, affected local government units and the developer may begin to implement the plan. This may entail establishing impact funds and amending budgets; making impact payments; preparing for and providing needed services and facilities; allocating taxable valuation; monitoring population in-migration, distribution and resulting impacts; adjusting or amending the plan; and calculating and providing tax credits.

If, within two years from the date commercial production begins, an amendment is needed because of "material inaccuracies" in the assessment of impacts, either the developer or an affected local government unit may file a petition to amend the impact plan. Otherwise, either party, individually, may petition to amend the plan only if employment levels increase or decrease by at least 75 persons, or if the plan itself specifies conditions that will allow the plan to be amended. The parties to a plan may jointly petition the Board to amend the plan at any time.

The willingness and ability of the affected local government units and the developer to work together will determine, to a large extent, the success of the impact planning and mitigation process. The successful mitigation of local government impacts contributes to a more stable workforce for the developer and a less disrupted, better integrated, and perhaps enhanced, community for both old and new residents and taxpayers.

Chapter III discusses the formal local government review of an impact plan and the guarantees required of the developer after the plan is approved. Chapter IV discusses the implementation and amendment of an approved impact plan. To ensure that the proposed

impact plan is legally and functionally complete, and can be implemented as intended, the developer and affected local governing bodies should familiarize themselves with Chapters III and IV *while the plan is being prepared* and well before it is submitted for formal review.

CHAPTER III

REVIEW AND APPROVAL OF AN IMPACT PLAN

Formal evaluation of the proposed impact plan occurs during a 90-day review period and is the responsibility of the governing body of each affected local government unit. *[90-6-307(1) and (6), MCA]* Other local government personnel and the public help with the review, communicating their concerns and suggestions to the governing body of the affected local government unit, either directly or through the public hearing held by the county for the benefit of everyone potentially affected by the impact plan*. [90-6-307(4), MCA]* Local government officials and personnel who will be responsible for implementing any portion of the approved plan should assist with the review of the proposed plan.

A. SUBMITTING THE PLAN FOR REVIEW

Number of Copies. Before submitting the impact plan for formal review, the developer must confer with the affected local government units to determine the number of copies they will need. Each affected local government unit requires sufficient copies for its officials and personnel to be able to review and implement the plan. Local governments also need copies for public review, usually through the local library, the county cooperative extension office, the planning office, or the schools. The Board requires 12 copies, including several for other agencies and one for public review in its office in Helena*. [ARM 8.104.204]*

Distribution of Copies. The developer is to submit the proposed plan simultaneously to the Board and to all affected local government units identified in the plan. The developer may submit all local government copies of the plan to the county for the county to distribute; may mail or hand-deliver the appropriate number of copies to each affected local government unit; or may join with the county to distribute the plan among the affected local government units.

Proof of Submission and Receipt. When an affected local government unit receives the proposed plan, it is to provide the developer with a signed receipt, noting the date and the number of copies received. The developer must promptly file with the Board this proof of its submission of the plan. [ARM 8.104.204(2)]

Calculating Time: 90 Days. Affected local government units have 90 days within which to review the submitted plan. [90-6-307(6), MCA] The 90-day review period begins the day

after the plan is received by all affected parties and extends to the 90th day, or if the 90th day is a Saturday, Sunday or holiday, to the next day which is neither a weekend nor holiday. [ARM 8.104.206] Upon receipt of all proofs of submission from the developer, the Board will send a letter to all parties to the plan, confirming the final date of the review period.

County's Notice of Receipt of Plan. The county governing body must promptly publish notice of its receipt of the proposed plan in a newspaper of general circulation in the county. *[90-6-307(1), MCA]* The notice should identify the dates of the review period and where copies of the plan are available for public review. The Board requests that the notice appear in a large, readable format. *[ARM 8.104.205*] The county must provide a copy of the published, dated notice to the Board.

B. THE REVIEW PROCESS

Review of the submitted impact plan is entirely a local responsibility. Persons who prepare or review the proposed plan are to evaluate whether the plan contains what is required or contemplated legally and what will be needed functionally, so that the plan will accomplish its purpose. Overall, reviewers must evaluate whether, when implemented, the plan will enable local governments to carry out the activities necessary to meet the service and facility needs resulting from the new mineral development in a timely manner and without shifting the increased costs, at present or over time, to the non-developer local taxpayers.

Ex Parte Communications. During the review period, parties to the plan may confer with the Board's staff on matters pertaining to the review process and to the plan's compliance with statutory and regulatory requirements, but may not confer on the substance or merits of the plan. *[ARM 8.104.210(2)]* No party to the proposed plan may discuss the plan with Board members outside the context of a public meeting until the plan has been approved. *[ARM 8.104.210(1*)]

Notice and Hearing. During the 90-day review period, the governing body of the county must provide notice and hold a hearing on the proposed plan. *[90-6-307(4), MCA]* Citizens may address their concerns about the proposed plan at the required public hearing or at public meetings of the appropriate governing bodies. The county is to provide the Board with a copy of the published, dated notice of the hearing.

Modifications and Objections. Only the governing body of the affected local government unit may represent the interests of the governmental unit and its constituents

by initiating or concurring in changes to the proposed plan during the review period. *[90-6-307(3) and (6), MCA; ARM 8.104.207; ARM 8.104.213]*

Changes to a proposed plan may be initiated during the review period by either of two procedures. Acting together, the developer and the governing body of the affected local government unit may submit to the Board, in writing, a signed modification of the proposed plan*. [ARM 8.104.213]* Or, the governing body of an affected local government unit may file with the Board, in writing, a signed, formal objection to the proposed plan. [*ARM 8.104.207]* These procedures are discussed in more detail below.

30-Day Extension by Request. During the 90-day review period, any affected local government unit may request one 30-day extension. If there is a reasonable basis for the request, the Board must grant the extension. *[90-6-307(6), MCA]* The extension applies only to the local government unit, or units, that request it. That is, only the local government units that requested the extension may negotiate modifications or file objections to the proposed plan during the additional 30 days. However, if any other local government unit considers itself affected by a change proposed during the extension, that local government unit should immediately notify the Board, the developer and the other affected local government unit or units. *[ARM 8.104.208A]*

Objections and Negotiations. If an objection is filed during the 90-day review period or its extension, the review period will be followed by a 30-day negotiation period during which the parties may attempt to negotiate a resolution to their dispute. [*90-6-307(7), MCA]* During the negotiation period, they may, jointly and in writing, request that the Board extend the negotiation period by whatever length of time they specify in their request. *[90-6-307(7), MCA*] The Board will approve the extension as requested.

Approval or Adjudication. If no objections are filed during the 90-day review period or its extension, or if all objections are resolved by negotiation between the developer and the affected local government units during the negotiation period or its extension, the plan is automatically approved. [90-6-307(6), MCA] If any issues remain unresolved at the end of the negotiation period, the Board must adjudicate the remaining disputes. [90-6-307(7), MCA] The adjudication process is discussed below.

C. REVIEWING THE PLAN

Persons evaluating a proposed plan should refer to the Impact and Tax Base Sharing Acts, the Board's rules, Chapters II and IV of the *Guide*, and related appendices for information concerning the purpose, format, content, and implementation of an impact

plan. In preparing, reviewing and implementing an impact plan, large-scale mineral developers and affected local government units must comply with the requirements of the Impact Act. *Both the mineral developer and the affected local government units are legally responsible for ensuring that the plan contains the necessary and required information.* [90-6-307(1), MCA; ARM 8.104.203]

Required Content of Plan.

The format and substance of the impact plan must allow for a ready review and analysis of the plan, its several parts, and how they relate to one another. The impact plan is to contain, at a minimum:

- **that information specifically required or contemplated by statute and rule,**
- **that information necessary to the implementation of statute, and**
- **that information necessary to the review and implementation of the plan.** *[ARM 8.104.203]*

As discussed in Chapter II, the impact plan is to identify all increased capital, operating and net operating costs for local government services and facilities needed as a result of the mineral development. *[90-6-307(1)(c) and (2), MCA]* In the plan, the *developer must commit to pay all identified, increased capital and net operating costs* to affected local government units. *[90-6-307(2), MCA]* Impact payments may take the form of property tax prepayments, facility impact bonds, grants or contributions, or other acceptable financing mechanisms that *do not shift the increased costs to local taxpayers. [90-6-307(2), 90-6-309, 90-6-310, MCA]* The plan must specify whether the developer's impact payments are to be transmitted through the Board or made directly to the county treasurer. *[90-6-307(10), MCA]* In either case, payments will be deposited in the impact fund of the affected local government unit. [90-6-*307(10), MCA]* The plan must also identify any non-financial assistance the developer will provide. *[90-6-307(1)(d), MCA]* The plan must contain a schedule showing when the developer will make impact payments or provide other assistance. *[90-6-307(2), MCA]*

If the impact plan requires the developer to prepay property taxes to meet impact costs, the plan must also provide for tax crediting. [90-6-309(4) and (5), MCA] The plan should require a prepayment only when, during the productive life of the mine, the local government unit will be able to credit all or part of the prepaid taxes from the mineral

developer's potential property tax revenue for the affected fund without shifting the effect of the impact cost over time to the non-developer local taxpayer. *[90-6-301, 90-6-307(1) and (2), 90-6-309(4) and (5), MCA; ARM 8.104.211]*

If an approved impact plan identifies a jurisdictional revenue disparity, it will trigger tax base sharing among the affected category of local government units. [90-6-402, 90-6-403, 90-6-404, MCA] The impact plan should reflect the anticipated effects of tax base sharing, particularly with respect to projected revenues, net operating costs and tax credits. Tax base sharing may be carried out according to a statutory formula, or the plan may modify that formula to ensure a reasonable correspondence between the allocation of taxable valuation resulting from the mineral development and the occurrence of increased costs resulting from the development. *[90-6-404, MCA*]

The plan may also need to contain information contemplated by the statutes that allocate the State's metal mines license tax revenues. *[15-37-117(1)(d), MCA*; see Chapter VI of the *Guide*]

Functionally, the impact plan must enable local government units to provide services and facilities when and where they are needed as a result of a new large-scale mineral development, and must ensure that local residents and taxpayers will not have to pay the increased local government costs, at present or over time. *[90-6-301, 90-6-307(1) and (2), MCA]* Although circumstances affecting the provision of services, costs and revenues may change, an approved plan is binding and may be altered only under the amendment provisions *of Section 90-6-311, MCA. [90-6-307(6), MCA] Subsection 90-6-311(1), MCA*, however, allows the plan itself to specify additional conditions under which it may be amended. *[90-6-311(1), MCA; ARM 8.104.217]* The plan itself may also contemplate alternative courses of action by providing for specific adjustments under specified conditions. To ensure that the plan's provisions for amendment and adjustment can be implemented, the plan should also provide for its own monitoring.

In providing for its own amendment, an impact plan might consider the potential need to amend the criteria and methods by which capital, operating and net operating costs are calculated or verified; the amount, timing or form of impact payments; the criteria and methods by which tax credits are calculated and provided; the formula for tax base sharing; the non-financial assistance provided by the developer; or even the plan's provisions for its monitoring, adjustment and amendment.

Elements of the Review. Review of an impact plan may be approached in a variety of ways. Of necessity, each individual who reviews the proposed plan does so from his or her own perspective and knowledge. Overall, however, the review should reflect:

1. an understanding of the powers, structure, finances and policies of the affected local government units;
2. an understanding of how the new mineral development and the resulting growth in population, employment and tax base might affect local government services, facilities, and revenues and expenditures, including the potential need for additional administrative and management capability;

3. a knowledge of the capacity, condition, and financing of the affected local government services and facilities;

4. a knowledge and understanding of the statutory and regulatory requirements and options for an impact plan, including the requirements, limitations and potential significance of:

    a. the plan's assumptions and definitions;

    b. the criteria and methods by which the plan calculates:

        (i) increased capital and operating costs,

        (ii) increased revenues without tax base sharing,

        (iii) the appropriate tax base sharing formula, if any, and increased revenues with tax base sharing;

        (iv) net operating costs;

        (v) the appropriate form of payment, including, if tax prepayment is being considered, the feasibility of providing tax credits from potential mineral development revenue for the affected funds without shifting the effect of the cost over time to the non-developer taxpayer; and

        (vi) the timing of impact payments; and

5. an understanding of the functional features that allow a plan to be implemented in a manner consistent with its purpose and the purposes of the Impact and Tax Base Sharing Acts, including the plan's specific provisions for monitoring, adjustments, and amendments.

In reviewing their proposed plan, local government personnel and the affected public will evaluate:

1. the reasonableness of the plan's definitions, data, assumptions, and projections;

2. the adequacy and accuracy of its identification of service and facility needs and costs;

3. the adequacy and appropriateness of its provisions for meeting increased local government needs and costs in a timely manner;

4. the adequacy of its provisions for calculating and providing tax credits without shifting the burden of cost over time onto the non-developer taxpayer;

5. the reasonableness and equitableness of its provisions for tax base sharing;

6. the adequacy of its provisions for monitoring, implementing, adjusting and amending the plan; and

7. the legal and functional completeness of the plan, including its compliance with statutory and regulatory requirements and expectations.

In summary, those reviewing the plan consider:

1. how the mineral development might affect their community, the availability of housing, local transportation needs and patterns, and local government services, facilities, costs and revenues;

2. how the affected local government units might best ensure their ability to provide the additional governmental services and facilities when and where they are needed as a result of the mineral development;

3. when and how the mineral developer should meet increased costs to ensure adequate and timely payment and provision of services without shifting the burden of cost to the non-developer resident and taxpayer;

4. when and how the local government unit might provide credits for the developer's prepaid taxes without, in effect, shifting the impact cost over time to the non-developer local taxpayer; and

5. how to ensure that the plan will function smoothly while it is being implemented and that it will continue to meet the objectives of the Impact Act even if circumstances differ from what is projected in the plan.

Resources. Persons who are reviewing and evaluating an impact plan may also find it useful to look at other impact plans, to discuss their situation with local government personnel in other impact areas, to review relevant portions of the environmental impact statement for the proposed mine and other EIS's for similar projects, and to obtain assistance from experienced consultants. Use of these resources may help generate appropriate questions, identify possible concerns and options, and avoid potential problems in the substance and implementation of the plan.

Assistance. As noted, after the developer formally submits an impact plan to the affected local government units, review of the plan is entirely a local responsibility. [90-6-307(6), MCA; ARM 8.104.210] To help local governments to participate fully in the preparation and review of the impact plan, the Act provides that any affected local government unit may request financial or other assistance from the developer to help it "prepare for and evaluate the impact plan." [90-6-307(3), MCA] Affected local government units transmit their request for assistance through the county, which contracts with the developer on behalf of local government units within the county. Monetary assistance to prepare for and evaluate an impact plan constitutes a tax prepayment from the developer to the local government unit receiving the assistance. [90-6-307(3), 90-6-309, MCA] Typically, however, the county governing body obtains and coordinates the necessary assistance on behalf of all affected local government units within the county.

D. HOW TO CLARIFY OR CHANGE AN IMPACT PLAN AFTER IT HAS BEEN SUBMITTED FOR REVIEW: LETTERS OF CLARIFICATION, MODIFICATIONS, AND OBJECTIONS

1. Letters of Clarification.

During the review period or its extension, an affected local government unit or the Board's staff may ask the developer to clarify some aspect of the plan, if it appears in some regard to be ambiguous, incomplete, inconsistent or potentially misleading to any of the parties concerned. Clarification can be accomplished through a letter from the developer to the Board with copies to the affected local government units. If clarification is requested by an affected local governing body, the governing body may wish to co-sign the developer's letter of clarification, indicating whether it concurs in the developer's explanation or interpretation. A letter of clarification becomes an attachment to the impact plan.
The governing body should also notify the Board if it does not concur with the proffered clarification. It should also decide whether, because of the effect of the differing interpretations, it wishes to negotiate a modification or to file an objection to the proposed plan.

The clarity of the plan is critical to all concerned. Early attention to possible ambiguities, inconsistencies or omissions may not only forestall objections to the proposed plan but may also prevent conflicts or formal complaints of non-compliance during the implementation of the approved plan.

2. Modifications. [ARM 8.104.213]

Any Party May Initiate, All Must Concur. The mineral developer and the governing body of an affected local government unit may negotiate a mutually acceptable modification of the submitted plan. Either the mineral developer or the affected local governing body may initiate the modification. The governing bodies of all local government units potentially affected by a proposed modification must concur in the modification. If they do not concur, the issue may be addressed as an objection, but not as a modification.

The proposed modification must be submitted in writing to the Board and to all affected local government units identified in the plan. The official copy of the modification submitted to the Board must bear the signatures of the developer's authorized representative and of the governing body of each local government unit affected by the modification. [ARM 8.104.213]

Modification of Format Only. As an exception, if the modification involves only the format of the plan, the governing body of the county may act on behalf of all affected local government units in concurring in the modification. [ARM 8.104.213] However, the governing body of the county may not act on behalf of other local government units if the modification affects the substance of the plan.

Required Request for Extension. To protect the interests of all parties, a modification submitted less than 30 days before the end of the review period must carry with it a request from the signatory local governing body for an extension sufficient to allow all affected local government units identified in the plan 30 days to review the proposed modification. [90-6-307(6), MCA; ARM 8.104.213] Any local government unit that considers itself affected by a proposed modification to which it is not a signatory should notify the Board, the developer and the signatory local government units immediately.

Statutory and Regulatory Compliance. A modification must comply with all statutory and regulatory requirements concerning the format and content of an impact plan and the modification of a plan. [90-6-307, 90-6-309, 90-6-310, 90-6-311, MCA; ARM 8.104.203, 8.104.211, 8.104.213, and 8.104.215]

Board's Acceptance of Proposed Modification. A proposed modification will be incorporated into the plan only if all parties to the plan have an opportunity to review the proposed modification and if all affected parties concur in the modification. The Board may refuse to accept any modification that appears to affect any party that is not a signatory to the modification; any modification that is arrived at without regard for the open meeting, public information and public participation requirements of the State, the Impact Act, and the Board; or any modification that does not comply with the statutory or regulatory requirements of the Impact and Tax Base Sharing Acts. Any matter not accepted as a modification may be addressed by one or more local government units through the objection process.

Summary. A modification during the review period allows either the developer or an affected local government unit to initiate a minor change to the proposed plan, provided that both concur in the change. If any affected local government unit opposes a proposed modification or if the modification fails to comply with statutory and regulatory requirements, the Board may refuse to accept it. In that event, the local governing bodies that support the proposed modification may submit an objection to the plan, if they wish to do so, recommending the change contemplated by the proposed modification.

3. Objections [90-6-307(5), (6) and (7), MCA; ARM 8.104.207 through 8.104.209]

Governing Body Files Objection. During the review period, if an affected local government unit disagrees with something in the plan, or if the plan appears to omit something that should have been included, the governing body may file a formal objection with the Board. [90-6-307(6), MCA] *Only the governing body of the affected local government unit may file an objection.*

If Plan Fails to Identify an Affected Local Government Unit. A local government unit that was not identified as an "affected local government unit" in a plan submitted for review may file an objection to the plan during the review period, if the local government unit can clearly demonstrate that it is likely to experience increased costs as a result of the development. [90-6-307(5), MCA]

Objection: Mechanism for Resolution. An objection to some feature of the plan should not be regarded as an objection to the mining project itself. *An objection is the mechanism provided by law to ensure that issues of concern to affected local government units will be resolved, whether through negotiation with the developer or adjudication by the Board.* The filing of an objection should not disrupt the continuing efforts of the local government unit and the developer to resolve disputed issues by negotiation.

Filing an Objection. In filing an objection, the governing body must comply with all statutory and regulatory requirements. [90-6-307, MCA; ARM 8.104.203 and ARM 8.104.207 through 8.104.209] The basic format and content requirements for a formal objection to a proposed impact plan are as follows:

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, mailing address, email address, and telephone 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; and

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. [ARM 8.104.207]

Number of Copies. Fifteen copies of the objection are to be filed with the Board and one with each local government unit. [ARM 8.104.208] Within 10 days of receiving the objection, the Board is to provide a copy to the developer. [90-6-307(7), MCA]

Negotiations. If an objection is filed, negotiation on the disputed issues may continue for at least 30 days after the end of the formal 90-day review period. During this 30-day negotiation phase, the developer and the affected local government unit, acting jointly, may petition the Hard-Rock Mining Impact Board to extend the negotiation period for whatever length of time they specify in their petition. [90-6-307(7), MCA]

By the end of the 30-day negotiation period, or its extension, the developer and affected local government units must notify the Board in writing of the outcome of their negotiations, indicating which objections have been resolved and which remain in contention. The

developer must provide the Board with copies of any changes to the plan to which the parties have agreed. The official copy must bear the signature of the developer's designated representative, the chairman of the governing body of each local government unit affected by the change, and the chairman of the governing body of the county, verifying their concurrence in the change. [ARM 8.104.209]

4. Summary: Modifications and Objections.

Modifications, objections, or both, may be filed during the 90-day review period or its 30-day extension. Only the governing body that requested the extension may file an objection or concur in a modification during that period. A *modification* may be initiated by either the developer or the governing body of an affected local government unit and must be concurred in and signed by all affected parties. An *objection* may be filed only by the governing body of an affected local government unit. A formal "objection" differs from a "modification" in two important ways. A formal objection is the mechanism by which:

a. the developer and the local government unit may continue their negotiations on the disputed issue beyond the end of the review period; and

b. if, during the negotiation period, the developer and local government unit do not arrive at a mutually acceptable solution, the disputed issues will be adjudicated by the Board. [90-6-307(7) and (8), MCA]

A format outlining the information required in an objection, as noted above, is attached as Appendix VII.

E. ADJUDICATION [90-6-307(7) and (8), MCA]

Contested Case Hearing. At the end of the negotiation period, any remaining disputed issues come under the legal jurisdiction of the Board. [90-6-307(7) and (8), MCA] The Board will provide notice and hold a contested case hearing on the disputed issues. The hearing will be held in the most affected county. [90-6-307(7), MCA] The contested case hearing, whether formal or informal, will be conducted in accordance with the Montana Administrative Procedure Act. [90-6-307(7), MCA; ARM 8.104.202]

The hearing will address only the disputed issues, not the plan as a whole, except as it is relevant to those issues. At the hearing, neither the plan nor the objection will carry with it a presumption of correctness. [90-6-307(7), MCA] If, following the end of the negotiation period, the parties should arrive at agreement on a disputed issue; they may submit that agreement to the Board in the form of a stipulation, as part of the hearing process.

Pre-Hearing Conference and Memorandum. Before the hearing, the parties or their attorneys will meet with the Board's staff and attorney to clarify and narrow issues and to establish procedures and schedules for the exchange of briefs and evidence. They will clarify the procedures to be followed at the hearing and will stipulate to uncontested facts, matters of law, and evidence to be submitted at the hearing. The Board's attorney will prepare a pre-hearing memorandum, to be signed by all parties, outlining the procedures and stipulations applicable to the hearing.

Evidence and Testimony. At the hearing, each party to the dispute will have the opportunity to present testimony and evidence and to cross-question the opposing party. The Board will have the opportunity to raise questions and to request additional information pertinent to its decisions. If necessary, the Board may continue the hearing until a later date.

Amendment and Approval of Plan. Within 60 days after the hearing is closed, the Board will adopt its findings of fact and conclusions of law. Based on these determinations, the Board will issue an order, resolving the disputed issues. The findings, conclusion and order will be served on all parties. The Board will then amend the plan, if necessary, to reflect and carry out its order. After approving the plan, as submitted or as amended, the Board will notify all parties and will serve them with the amendments, if any. *[90-6-307(8), MCA]*

Appeal. The developer or an affected local government unit may appeal the decision of the Board to the district court in the judicial district in which the Board held the hearing. *[90-6-307(8), MCA]* The decision of the district court may be appealed to the Montana Supreme Court. Unless the court instructs otherwise, the fact that the plan has been approved, with or without amendment, is unaffected by the filing of an appeal, even though resolution of the appeal could change the substance of the plan.

Local Government Recovery of Costs. The preparation and prosecution of a formal objection may result in additional expenses to a local government unit. The Impact Act provides that if the Board or a court finds an objection to be valid and issues a remedial order, the developer must pay the "reasonable costs and attorneys fees" incurred by the local government in filing the administrative or judicial appeal. *[90-6-307(13), MCA]* Given the history and purpose of the Impact Act, the Board has concluded that "reasonable costs" include not just court costs, but also other relevant costs, such as the cost of consultants retained to help the local government unit prepare and present its case.

Appendix XVII outlines a model informal contested case hearing procedure.

F. AFTER THE PLAN IS APPROVED: WRITTEN AND FINANCIAL GUARANTEES AND ENFORCEMENT OF COMMITMENTS

1. Written Guarantees. *[82-4-335(5), 90-6-307(9) and (11), MCA]*

After the plan is approved, the developer must submit a written guarantee to the Board and to the DEQ, stating that the developer will comply with all commitments made in the approved plan. When the Board receives the written guarantee, it will notify the DEQ and, if applicable, will inform the DEQ that the impact plan approval process will be complete when the developer's financial guarantee has been executed as required.

2. Financial Guarantee. *[90-6-309(3), MCA; ARM 8.104.214]*

If the approved plan requires the developer to prepay property taxes, the developer must provide the Board with a financial guarantee to assure that tax prepayments will be made as required by the plan. The financial guarantee must be made through a *third-party financial institution*. The guarantee must meet the basic criteria contained in *ARM 8.104.214* and must be reviewed and approved by the Board. *[90-6-309(3), MCA; ARM 8.104.214]*

After approving the financial guarantee, the Board will notify the DEQ that the impact plan approval process is complete, provided that the developer executes the financial guarantee as required. The financial guarantee must be approved and fully executed before any activities under the mine's operating permit commence 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) and (6), 90-6-307(2), MCA; ARM 8.104.214(2)]*

The Board will determine on a case-by-case basis what constitutes an appropriate mechanism for the third-party financial guarantee. Appendix IX provides two sample financial guarantees, a letter of credit and an escrow agreement. The plans they serve range from a plan in which all identified impact costs were expected to occur within a fifteen month period to a complex and substantially amended plan with a number of contingency provisions and an implementation period in excess of ten years.

As a quirk of legislative evolution, the Act requires a financial guarantee only for the developer's tax prepayment commitments. *[90-6-309(3), MCA]* However, to ensure a consistent effect, financial guarantees have also encompassed grants and contributions

when they constitute a significant part of the developer's financial obligation. Facility impact bonds require a separate guarantee as part of the bonding process, which is entered into between the governing body and the developer during the plan implementation phase. [*90-6-310(2), MCA]*

3. Enforcement of Commitments. *[82-4-335(5) and (6), 90-6-307(14) and (15), MCA; ARM 8.104.211(3)]*

The developer's compliance with its commitments in the impact plan and with the requirements of the Impact and Tax Base Sharing Acts are requirements of the statutes under which the DEQ issues the developer's operating permit. [*82-4-335(5), MCA]* If the developer fails to meet its commitments in the approved plan or written guarantee, or to comply with the requirements of the Impact Act or Tax Base Sharing Act, the Board is required to notify the DEQ, and the DEQ must then suspend the developer's operating permit until notified by the Board that the developer is again complying with all commitments and statutory requirements.

G. SUMMARY

Large-scale mineral developers and affected local government units must comply with the applicable impact plan preparation, review and implementation requirements and expectations of the Impact Act and the Property Tax Base Sharing Act. Both the developer and the local governing bodies are legally responsible for the content and implementation of the plan. Evaluation of the proposed impact plan during the formal 90-day review period is the responsibility of the affected governing body with the assistance of local government personnel and the affected public.

The impact plan is to identify all increased capital, operating and net operating costs for local government services and facilities needed as a result of the mineral development. *[90-6-307(1)(c) and (2), MCA]* In the plan the developer must commit to pay all identified, increased capital and net operating costs to affected local government units*. [90-6-307(2), MCA]* If the plan calls for tax prepayments, including prepayments to prepare for or evaluate the plan, it must also provide for tax crediting. *[90-6-307(3), 90-6-309(4) and (5), MCA]* Tax crediting is limited to the productive life of the mine and must not have the effect of shifting the increased cost over time to the non-developer local taxpayer*. [90-6-301, 90-6-307(1) and (2), 90-6-309(4) and (5), MCA]*

If the plan will result in tax base sharing, it must either accept the statutory tax base sharing formula or set out a modification of that formula that will achieve a more reasonable and equitable allocation of taxable valuation. *[90-6-404, MCA]* The plan must reflect the anticipated fiscal effects of tax base sharing in its projections of revenue and net operating costs, in the financial commitments of the developer, and in its tax crediting provisions.

Functionally, the impact plan must enable local government units to provide services and facilities when and where they are needed as a result of a new large-scale mineral development, and must ensure that local taxpayers will not have to pay the increased local government costs at present or over time. *[90-6-301, 90-6-307(1) and (2), MCA]* The plan may be amended as authorized by statute, and it may provide for its own monitoring, adjustment and amendment under conditions specified in the plan itself. *[90-6-311, MCA]*

Any interested person may participate in the review of an impact plan and testify at the public hearing held by the county. *[90-6-307(4), MCA]* However, only the governing body has the authority to act on behalf of the local government unit during the review process. The governing body may request clarification of the plan, may request a 30-day extension to the review period, may initiate or concur in a plan modification, may file a formal objection, may concur in requesting a specified extension to the negotiation period, or may concur in the negotiated resolution of an objection. *[90-6-307, MCA; ARM 8.104.208, 8.104.208A, 8.104.213]*

If no objections are filed, or if all objections are resolved by negotiation, the plan is automatically approved at the end of the 90-day review period or its 30-day extension. *[90-6-307(6), MCA]* If objections are filed and cannot be resolved by negotiation, the Board holds a public hearing and adjudicates the dispute. *[90-6-307(7), MCA]* The Board makes its determination within 60 days after the hearing; adopts its findings, conclusions and order; amends the plan accordingly, if amendments are needed; approves the plan as amended or as submitted; and serves the amendments on all parties. *[90-6-307(8), MCA]*

After the plan is approved, the developer must submit to the Board and to the DEQ a written guarantee of compliance with its commitments in the approved plan. Compliance with an approved hard-rock mining impact plan is a requirement of the statutes under which the operating permit is issued by the Montana DEQ to any large-scale mineral developer that applies for an operating permit on or after May 18, 1981. *[82-4-335(5) and (6), MCA]* The developer must also submit to the Board a third-party financial guarantee to ensure that tax prepayments will be made as provided in the plan. *[82-4-335(5), 90-6-307(9) and (11), 90-6-309(3), MCA]*

Each impact plan will be unique, just as each mining project, each affected local government unit, and each set of circumstances is unique. Some large-scale mineral developments may have little or no impact on local government services and facilities, particularly if the project is located in an area with a sufficiently large, available, trained or trainable local workforce and with sufficient housing and service capacity to absorb a relatively small inmigration. Other mineral developments may have a considerable impact, resulting in demands on local government services and facilities that substantially exceed their existing capacity. Consequently, some impact plans will be fairly brief and simple documents, while others, of necessity, will be lengthy and complex.

Circumstances affecting any mining project, local government unit, or impact plan may change after the plan is approved. The plan should be written in a way that will enable mineral developers and affected local government units to adapt its provisions, as needed, to reflect these changes

CHAPTER IV

IMPLEMENTATION OF AN APPROVED IMPACT PLAN

A. INTRODUCTION

Successful implementation of an approved impact plan requires the cooperative efforts of the affected local government units, the mineral developer and the Board. It entails a thorough understanding of the purposes and requirements of the impact plan itself and of the Impact and Tax Base Sharing Acts, the Board's administrative rules, and the laws, regulations and procedures which apply generally to local governments in the exercise of their duties. To ascertain whether their plan is working as intended, affected local government units and the developer will need to monitor what is actually happening as they implement the plan. After determining how actual events and circumstances compare with what was anticipated by the impact plan, they can evaluate what changes, if any, are needed in their impact plan.

The approved impact plan identifies the increased need for local government services and facilities and the increase in local government capital and operating costs, revenues, and net operating costs that are anticipated as a result of the mineral development. *[90-6-307(1) and (2), MCA]* In the plan the developer commits to pay all identified capital and net operating costs resulting from the development. *[90-6-307(2), MCA]* The developer may also commit to provide non-financial assistance to forestall or mitigate potential impacts or provide other benefits. *[90-6-307(1), MCA]* The purpose of the impact plan is:

1. to ensure that local government services and facilities will be available when and where needed as a result of the mineral development and

2. to ensure that the non-developer local taxpayer will not be burdened with the increased local government costs resulting from the development. *[90-6-301, 90-6-307, MCA]*

The plan specifies whether the developer's impact payments will take the form of prepaid property taxes, grants or contributions, or facility impact bonds. *[90-6-307(2), 90-6-309, 90-6-310, MCA]* If the plan requires the developer to prepay property taxes, it will also specify how the recipient local government units will calculate and provide tax credits, within certain constraints. *[90-6-309(4) and (5), MCA; ARM 8.104.203]* As discussed in more detail later and in Chapter II and Appendix XII, tax crediting entails an annual calculation of potential tax credits by each affected local government for each affected fund. *[90-6-309(4) and (5), MCA; ARM 8.104.215]*

The approved plan includes a schedule of the impact payments and other assistance to be provided by the developer. *[90-6-307(2), MCA]* The payment schedule is derived from the developer's proposed timetable for constructing the mine and associated facilities and bringing them into production and from the projected timetable of local government costs incurred in preparing for and providing the services and facilities needed as a result of the mineral development. *[90-6-307(1) and (2), MCA]* Changes in the timing of these events may necessitate changes in the impact plan.

The developer's commitments to provide assistance reflect *projected* local government needs, costs and revenues. These projections are based on data and assumptions which may prove to be inaccurate, despite everyone's best efforts, or which may be rendered invalid by changing circumstances. Recognizing this, the Impact Act allows an approved plan to be amended under circumstances described in the Act or under circumstances described in the plan itself. *[90-6-307(6), 90-6-311, MCA]*

Within constraints established by the Board to reflect the requirements and protections of the Impact Act, the plan may also provide for specific adjustments, as described in the plan and contingent upon circumstances identified in the plan. In addition, certain procedural changes may be effected by means of plan adjustments, with the concurrence of the Board.

Some of the commitments the developer has made in the plan may be contingent upon the occurrence of specific "triggering" events or circumstances identified in the plan. In order to provide the basis for making adjustments or amendments and to implement provisions dependent on triggering events, the plan may require that certain data, assumptions, and impacts will be monitored by the affected local government units or the mineral developer. The plan may establish a procedure for evaluating the monitoring results and for making recommendations based on those results. If an approved plan does not contain criteria and procedures for monitoring, the mineral developer and affected local government units may wish to enter into a written monitoring agreement as an amendment or adjustment to the plan.

If an approved impact plan identifies a "jurisdictional revenue disparity," as defined by the Property Tax Base Sharing Act, the Board will notify the DOR to initiate tax base sharing. Tax base sharing involves the increase in mineral development taxable valuation that occurs after the operating permit is issued. *[90-6-403(1), MCA]* By definition, mineral development taxable valuation includes the taxable valuation of the gross proceeds of the mine and the taxable valuation of the real and personal property at the mine and mill site. *[90-6-302(4), 90-6-402(8), MCA]*

Tax base sharing operates separately for each of three categories of local government units: counties and incorporated cities and towns, high school districts, and elementary

school districts. [*90-6-404, MCA]* The DOR will allocate the increase in taxable valuation of the mineral development among the local government units in each category in which a revenue disparity is expected. The allocation will be made either according to the formula provided in

the Tax Base Sharing Act or according to a modification of that formula contained in the approved plan itself, whichever is applicable*. [90-6-404, MCA]* If, over time, the disparity ceases to exist, the Board may terminate tax base sharing upon request of an affected local government unit or the developer*. [90-6-403(3), MCA]*

The requirements and expectations of the Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act, the statutes and regulations which generally apply to local government units in the exercise of their powers and duties, and the provisions of the plan itself will guide the overall implementation of the plan. Its implementation and amendment may also be influenced by factors such as:

1. the unique features, adequacy and accuracy of the approved plan, including its provisions for monitoring, adjustment and amendment;

2. the actual timetable of the development;

3. the actual number, demographic characteristics, and settlement patterns of the inmigrating population;

4. the actual effect the mineral development has on services and facilities, capital and operating costs, and revenues;

5. circumstances affecting when increased services and facilities will be needed versus when they were anticipated by the plan;

6. changes in State or federal statutes, regulations, or procedures that affect the services or facilities provided by local government units or the revenues anticipated by the plan; and

7. the willingness and ability of the local government units and mineral developer to carry out their responsibilities, meet their commitments, and respond to changing circumstances in a cooperative, effective and timely manner. This last may be the most critical factor in ensuring that the plan achieves what the Act intends.

B. BEFORE THE PLAN IS IMPLEMENTED: WRITTEN AND FINANCIAL GUARANTEES *[82-4-335(5), 90-6-307, 90-6-309, MCA; ARM 8.104.214]*

After the plan is approved, but before it may be implemented, the developer must provide two guarantees. First, the developer must submit a *written guarantee* to both the Board and the DEQ *[82-4-335(5), 90-6-307(9) and (11), MCA].* As a result of modification, negotiation or
adjudication, the approved plan may differ from the plan the developer originally submitted for review. In the written guarantee, the developer reaffirms its commitment to fulfill its responsibilities under the approved plan and, in particular, to make impact payments within the time schedule specified in the plan. The DEQ may not release the mine's operating permit until the impact plan has been approved and both the Board and the DEQ have received the developer's written guarantee. *[82-4-335(5), MCA]* As a statutory condition of the operating permit, the developer must then comply with its commitments in the approved plan and with the requirements of the Impact and Tax Base Sharing Acts. [*82-4-335, MCA]*

In addition to the written guarantee, if the plan requires the developer to prepay property taxes, the developer must provide a *financial guarantee* to the Board to ensure that if the developer were to default on its commitment to prepay taxes as provided by the plan, the Board would be able to make the required payments in the developer's stead*. [90-6-309(3), MCA]* The financial guarantee must cover all tax prepayment commitments and may encompass grants and contributions*. [90-6-309(3), MCA; ARM 8.104.214*]

The developer enters into the financial guarantee through a third-party financial institution. [*90-6-309(3), MCA; ARM 8.104.214]* The Board evaluates and approves each proposed guarantee to ensure that it meets the basic criteria established by the Board in its administrative rules. *[90-6-309(3), MCA; ARM 8.104.214]* The approved guarantee must be in place before activities under the permit commence or before an affected local government unit needs to incur expenses in implementing the impact plan, whichever occurs first*. [ARM 8.104.214]* When the financial guarantee has been fully executed, the Board notifies the DEQ that the developer has met its pre-permit requirements under the Impact Act.

Appendices IX-A and IX-B provide examples of two types of financial guarantees, a letter of credit and an escrow agreement.

C. TIMING

Based on how long it will take local governments to have facilities and services in place when they are needed as a result of the development, the plan should identify the specific

events or circumstances that will constitute the starting date for the implementation of the plan.

Implementation of an impact plan encompasses activities such as

- impact budgeting and accounting
- requesting, making and receiving impact payments
- preparing for and providing needed services and facilities; monitoring, adjusting and amending the impact plan, as needed
- calculating and providing tax credits;
- and, perhaps, tax base sharing.

Depending on the plan and the circumstances, local government units may find preparing for and providing needed services to be relatively simple, or very complex and time-consuming. Preparing for and providing services may involve

- meetings or hearings of the planning board, zoning commission, or governing body
- issuing requests for proposals and letting bids
- working with architects, engineers, and bond counsel
- preparing job descriptions and instituting hiring and training processes
- working with landowners and attorneys on acquisition of easements or rights-of-way
- holding site or bond elections
- And negotiating with other governmental units, funding sources, regulatory agencies, private landowners, and the public.
- The governing body and the developer may also need to meet to ensure that the plan is being implemented as they intended and is achieving its purposes.

In the plan, timing usually depends on

- expectations of when particular events will occur or how long certain activities will take
- when impacts will begin
- when the operating permit will be issued
- when the developer will begin construction
- how long it will take local governments to prepare facilities and services in order to meet increased demands when they occur
- how long the construction phase will last
- when the mine will begin production
- when it will reach full production
- And how long it will remain in production.
- Events or circumstances may not occur as anticipated. For example, the mine might reach full production on schedule, but because of lower metals prices, its gross proceeds and, therefore, its taxable valuation might be less than had been

anticipated. Or, because of changes in other sectors of the local economy, the available local workforce may be larger or may possess more transferable skills than had been anticipated, which might mean less inmigration or a slower rate of inmigration than projected, and fewer impacts. If events or circumstances do not occur as anticipated by the plan, the plan may need to be amended or adjusted.

A long delay between when the plan is approved and when construction begins increases the likelihood that events or circumstances will not be exactly as anticipated by the plan. Such a delay usually indicates that the approved plan should be informally reviewed and discussed again by all affected parties before it is implemented, to be sure that its provisions are understood, remain applicable, and are concurred in by all parties to the plan. If they are not, the plan may need to be adjusted or amended.

D. THE IMPACT FUND: BUDGETING AND ACCOUNTING FOR IMPACT PAYMENTS *[90-6-307(10) and 90-6-323, MCA; ARM 8.104.211]*

Although property tax payments are normally allocated among all funds within the taxing jurisdiction, all impact payments, including property tax prepayments, are credited only to the impact fund and are expended only as specified in the impact plan. *[90-6-307, MCA; ARM 8.104.211]* Each local government unit that will be receiving impact payments pursuant to an approved impact plan must establish an impact fund in its budget. *[90-6-307(10) and 90-6-323, MCA; ARM 8.104.211]* The impact fund must be consistent both with the provisions of the approved plan and with the jurisdiction's budgeting and accounting system. For instance, the county's impact fund budget might contain a line item for maintenance of the county access road to the mine and another line item for additional communications equipment for the sheriff's department. The accounting numbers for these budgeted expenditures from the impact fund should be similar to accounting numbers for similar line items in the county's regular budget. Having a separate impact fund budget that corresponds, in accounting terms, to its regular budget enables the local government unit to identify both impact and non-impact revenues and expenditures by type of service and will facilitate the calculation and provision of tax credits by fund.

Local government units using the BARS system may wish to refer to Appendix X, which provides a sample impact fund budget prepared by Stillwater County in cooperation with the Local Government Services Bureau of the Department of Administration. If requested to do so, the Local Government Services Bureau, Administrative Financial Division, Montana Department of Administration, will provide assistance to local government units that are establishing procedures for budgeting and accounting for impact payments.

Accounting and Management Systems Section
Local Government Services Bureau

Department of Administration
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The developer and affected local government units may begin to implement an impact plan after local governments have formally adopted their budgets for the fiscal year. Recognizing this, the Act provides that:

> **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. [90-6-323, MCA]**

Tax prepayment, tax crediting and tax base sharing are discussed in more detail in Chapter II, later in this chapter and in the appendices.

E. IMPACT PAYMENT PROCEDURE *[90-6-307(10) and (12), MCA; ARM 8.104.211]*

The original Impact Act required the developer to make all impact payments through the Board. In 1985 the Act was amended to allow the plan itself to specify whether the developer will make payments directly to the affected local government units or through the Board*. [90-6-307(10), MCA]* Although essentially the same documentation is required either way, payment through the Board requires an extra step. *[90-6-307(10) and (12), MCA]* However, it also provides additional assurance to both the developer and the affected local government unit that payments will be made and expended as provided by the impact plan. Payment through the Board appears to be most useful in forestalling problems when the plan is complex or when it requires payments over an extended period of time.

When payments are transmitted through the Board, the Board establishes a pass-through sub account for each plan. Local government units usually request payments from the mineral developer and, if applicable, from the Board in a single letter. This means that the Board begins the process of disbursing the payment immediately upon receiving it. By statute, if any interest accrues on money in a pass-through account, it must be credited to the State general fund, unless the plan provides otherwise. Generally, however, the in-and-out turn-around time for payments minimizes or negates any potential interest earnings.

Although the Act speaks of making payments directly to local government units, this is somewhat misleading, because property tax prepayments, like normal property tax

payments, are paid to the *county treasurer*, who serves as tax collector for all local government units within the county. The treasurer credits each tax prepayment to the impact fund of the appropriate local government unit to be used as specified in the plan.
If the plan provides for direct payment, then grants or contributions may be paid either to the affected local government unit or to the county treasurer on its behalf. However, all payments must eventually be credited to the impact fund for the affected local government unit and, therefore, are usually sent directly to the county treasurer. *Within the impact fund, the treasurer must distinguish grants and contributions from tax prepayments, because of the tax crediting requirement.*

Some community services are considered quasi-governmental services, because they may be provided either by a local government unit or by a nonprofit organization, which may or may not receive financial assistance from a local government unit. Particularly in rural areas, quasi-governmental nonprofit service providers include volunteer fire departments, quick response units, volunteer emergency medical teams, and volunteer ambulance services. In the impact plan, a developer may commit, voluntarily, to provide financial or other assistance to a nonprofit entity that provides a quasi-governmental service. If no affected local government unit assists the nonprofit financially, the developer may make impact payments directly to the nonprofit organization. Because nonprofit entities have no taxing authority, they can receive only grants or contributions, not tax prepayments or facility impact bonds. However, if an affected local government unit does assist the nonprofit financially, the plan may require the developer to provide the needed assistance and, as provided in the plan, the impact payments may be transmitted through the affected local government unit. Payments made through a local government unit may take whatever form is appropriate (tax prepayment, grant, facility impact bond), as specified in the plan. Impact payments to a nonprofit service provider are voluntary, but the developer may commit to them in the plan. Impact payments to the local government unit that assists a nonprofit entity financially may be required by the plan, if the local government expects to incur increased costs to enable the nonprofit to provide additional services needed as a result of the mineral development. If an affected local government unit has entered into an agreement with another local government unit, a State or federal agency, or a private, for-profit entity to provide governmental services on its behalf, the developer must make impact payments only to the affected local governmental unit itself and not to the actual service provider. The payment must be credited only to the impact fund of the affected local government unit for which the service is provided.

The impact plan payment procedures and documentation requirements are outlined in more detail in Appendix XI. The procedure complies with the statutory documentation requirements and ensures that accurate records of impact payments are available to the affected local government units, the developer, and the Board. *[90-6-307(10) and (12), MCA; ARM 8.104.211 and 211B]* In some instances, at the request of the affected parties,

the Board may agree to modify the procedure to facilitate implementation of a plan, provided that it receives all documentation required by statute.

Adequate documentation of payments is important to the Board, the developer and the affected local government units. While implementing the plan, local government units must comply with all normal budgeting and accounting requirements, with the requirements of the Impact and Tax Base Sharing Acts, and with their commitments to provide the services and facilities for which they are receiving impact payments. They must maintain accurate records of all property taxes prepaid by the developer, because, subject to certain limitations, they are required, over time, to credit these prepayments against the developer's future property taxes. *[90-6-309, MCA; ARM 8.104.215*] The developer depends on adequate documentation to ensure the stability of the mineral development. The operating permit for the mine is conditioned on the developer's timely fulfillment of its obligations under the impact plan. *[82-4-335(5), MCA]* If the question arises, the Board is required to determine whether the developer is complying with its commitments in the impact plan and with the requirements of the Impact and Tax Base Sharing statutes. If the developer is not meeting these commitments and requirements, the Board must notify the DEQ, which must suspend the developer's operating permit until the developer again meets its commitments and the statutory requirements. *[82-4-335(5) and (6), MCA; 90-6-307(11) and (15), MCA; ARM 8.104.211(3)]]*

F. CONDITIONAL PAYMENTS

Plans may provide for conditional impact payments; that is, payments that will be made only under specified circumstances. The plan may identify the amount of each conditional payment or it may describe how the amount will be determined. Following are several examples of provisions for conditional impact payments:

1. The plan provides that the developer will reimburse a rural fire district for actual expenses incurred by the district in responding to a fire within or emanating from the permit boundaries or caused by a mining project vehicle.

2. The plan establishes a contingency account within the impact fund that may be expended through a plan adjustment for minor impact costs, not to exceed a specified amount, that were not identified in the plan. Contingency budget expenditures require amendment of the impact budget to identify the specific expenditures. (The plan may provide that contingency account expenditures may be made either at the discretion of the governing body with notice and documentation to the developer and the Board, or that contingency account expenditures require the written concurrence of the developer and notice and documentation to the Board.)

3. The plan provides that for the first year each net additional impact student is enrolled, beyond the number projected, the developer will contribute to the school district an amount equal to the State's per student school equalization program payment, or the district's actual increased costs, if they exceed the school equalization program payment.

4. Based on a series of potential enrollment figures, the plan provides that the developer will pay a specified amount to the school district within 90 days of being notified by the district that the school's total enrollment and impact student enrollment both exceed the first (or second, or third) set of enrollment numbers specified in the plan.

5. The plan provides that the developer will pay the actual costs incurred by a small rural school district for enrolling or transferring mineral development students in excess of the number of inmigrating students projected by the plan, regardless of the number actually enrolled at any given time. (That is, the plan may project an enrollment of 12 mineral development students in Impact Year 2, and at any given time actual enrollment may not exceed 11 mineral development students. However, during the year, a total of 23 mineral development students may enroll in or transfer from the district.)

The use of a "triggering" system for conditional payments presupposes a procedure whereby the responsible entity will notify the other affected party or parties to the plan and the Board when the triggering event or circumstance occurs. Ideally, the developer and affected local government units will have specified in the plan not only what impact payments the triggering event will generate, but also:

a. how and by whom the triggering event or circumstances will be determined or verified,

b. who is responsible for providing what information to whom, and

c. how and by whom decisions resulting from the triggering event are to be made.

If the approved plan does not outline the procedure and identify responsibility for notification of triggering events, the parties may wish to enter into a written monitoring agreement as an adjustment or amendment to the plan. To avoid confusion and delays, both the plan and persons implementing the plan should be as explicit as possible about who is responsible for what. (And both should be prepared to deal with the unexpected.)

The developer and affected local governing body should acknowledge each triggering event or circumstance in a letter, signed by both parties, to the Board. (In practice, the local government unit often sends the co-signed letter to the Board, along with a copy of its related request to the developer for the resulting impact payment.)

Conditional payments are subject to the same budgeting, accounting and payment procedures as other impact payments.

G. TAX CREDITING *[90-6-309(4) and (5), MCA; ARM 8.104.215]*

Section 90-6-309, MCA, adopted in 1981 and amended in 1985, provides for the prepayment and crediting of property taxes. Property taxes that the developer prepays under an impact plan must later be credited back, within the requirements and constraints of statute. Tax crediting depends on both the tax crediting provisions of the impact plan and the actual impact costs, mineral development revenues, and local government budget requirements for the services and funds in question. Each fiscal year following the start of production at the mineral development, the affected local governing body must determine how much, if any, tax credit it is to provide to the developer. The governing body should notify both the mineral developer and the Board when it has made this determination.

Several principles and criteria apply to tax crediting. Under the Impact Act, the increased capital and net operating costs attributable to the mining operation are the financial responsibility of the developer. *[90-6-307(1) and (2), MCA]* Therefore, tax credits should not have the effect of shifting these costs over time to the non-developer taxpayer. *[ARM 8.104.215]*

Local government units are required to finance specific services from specific funds, some through the county general fund and others through individual funds, such as the library fund, the weed district fund, and the county road and bridge funds. Each fund is subject to its own mill levy limit. The total county mill levy is a composite of the individual levies. Similarly, the total tax bill received by the taxpayer reflects the levies, annual fees and assessments of all local government taxing jurisdictions, in which the taxpayer's property is located, plus statewide school and university system levies.

Normally, property tax revenues are distributed among all budgeted funds in the taxing jurisdiction, in proportion to each fund's mill levy. However, taxes prepaid in compliance with an approved impact plan are credited only to the impact fund and are expended from the impact fund only for the purposes identified in the approved plan, as reflected in the adopted impact fund budget. *[90-6-307(10) and (12), MCA; ARM 8.104.211 and 211B]* For instance, a tax prepayment made for maintaining the county access road to the mine will be deposited into the county's impact fund and expended only for maintenance of that particular road. A tax prepayment to finance an additional law enforcement vehicle and

two deputies would be deposited into the county's impact fund and expended only for the law enforcement purposes specified in the plan. Both types of impact costs are paid from the impact fund. Ordinarily, however, county road maintenance and county law enforcement are financed from separate funds, the county road fund and the county general fund.

With regard to tax credits, the multiplicity of funds and mill levy limits raises the question of whether a tax prepaid to the county should be credited only from the specific fund that corresponds to the service for which the prepayment was made, such as the county road fund, or from the total tax revenue paid by the developer to the county, without regard to how the tax prepayment was used. The question is of particular significance with respect to county roads. Not only is the county road fund separate from the county general fund, but, in effect, the two funds represent different taxing jurisdictions. Property in an incorporated city or town is taxed for the county general fund, but is not taxed for the county road fund. Therefore, if a tax prepayment was made for the purpose of upgrading or maintaining a county road and the subsequent tax credit came from the county general fund, then the municipal taxpayer would be bearing part of the effect of the tax credit, contrary to the intent of the Impact Act and contrary to the statutory and accounting requirements that apply to counties and municipalities. Within a jurisdiction, a parallel might be found in the potential effect tax crediting could have on the recipients of services financed from different funds and to conflict with the statutory and accounting requirements applicable to those funds.

Prepaid property taxes should be credited only from the fund that corresponds to the service for which the prepayment was made. Within a given year, a tax credit may not be made from a fund for which a net operating cost is projected. Within a given year, a tax credit may not exceed the developer's tax obligation. *[90-6-309(5), MCA; ARM 8.104.215]* In practice, this means that within a given fiscal year a local government unit might provide credits from some funds but not from others.

Local government personnel and the developer may wish to discuss budgeting and accounting issues related to impact funds, tax prepayments, and tax crediting with the Local Government Services Bureau of the Department of Commerce. Given the requirements of the Impact Act and the advice of the Local Government Services Bureau, the Board suggests that in the impact plan the following criteria be applied to the provision of tax credits:

1. In any given fiscal year, a tax credit must not add to capital or net operating costs resulting from the mineral development. *[90-6-302, MCA*]

2. In any given fiscal year, tax crediting should not occur if it would cause the non-developer local taxpayer to bear the effect of current or prior year

capital, operating or net operating costs resulting from the development. *[90-6-302, MCA; ARM 8.104.215]*

3. A prepaid tax should be credited only from the fund which corresponds to the service for which the tax was prepaid.

Plans submitted prior to July 1, 1985, are subject to the tax crediting provisions of the 1981 Impact Act. In 1981 the Act defined the procedure by which, each fiscal year after the mine begins production, affected local government units must calculate the potential tax credit. The statutory formula uses the current budget, historic mill levies, increased taxable valuation from the mineral development and total valuation of the taxing jurisdiction to determine how much, if any, tax credit could be allowed without causing a reduction or increase in the historic average mill levies of the taxing jurisdiction. Under the 1981 Act, local governments provide tax credits by reducing the taxable valuation of the development. Under the 1981 Act, local governments' tax crediting obligation terminates after 10 years following the tax prepayment.

Effective July 1, 1985, the Impact Act requires the plan to specify how tax crediting will be accomplished. *[90-6-309(5), MCA]* Local government units follow the same principles and may use the same or a similar, process in calculating tax credits, but they may no longer provide the credits by reducing the taxable valuation of the mineral development. Instead, the 1985 amendment anticipates that, subject to certain limitations, the governing body will provide a *dollar for dollar credit* against the developer's tax bill. Under the 1985 amendment, the tax crediting obligation extends throughout the productive life of the mine.

Appendix XII contains both the original and the amended versions of the tax prepayment and tax crediting statute.

Tax base sharing also affects tax crediting.

H. TAX BASE SHARING *[90-6-401 through 405, MCA]*

In 1983 the Legislature enacted the Property Tax Base Sharing Act as companion legislation to the Hard-Rock Mining Impact Act. The Tax Base Sharing Act is found in *Title 90, Chapter 6, Part 4* of the Montana Code Annotated. The Act begins with the following 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. [90-6-401, MCA]

The Tax Base Sharing Act defines a "local government unit" as a county, municipality, or school district. *[90-6-402(5), MCA]* (Independent special districts are unaffected by tax base sharing. By contrast, for impact plan purposes the Impact Act includes specific special purpose districts in its definition of "local government unit.")

The Tax Base Sharing Act defines an "affected local government unit" as 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," as identified in an approved impact plan. *[90-6-402(1), MCA]*

If an approved impact plan projects that the property tax revenue resulting from the mineral development will be inequitably distributed among the affected local government units, this, by definition, constitutes a "jurisdictional revenue disparity." *[90-6-402(3), MCA]* When the plan identifies a jurisdictional revenue disparity, the increase in taxable valuation of the mineral development that occurs after the operating permit is issued must be allocated among the affected local government units. [*90-6-403; 90-6-404, MCA]* Mineral development taxable valuation is allocated separately within each of three categories: counties and incorporated cities or towns, high school districts, or elementary school districts. *[90-6-404, MCA]*

Typically, a jurisdictional revenue disparity exists when increased local government costs resulting from the mineral development occur in counties, municipalities or school districts in which the mine is not located. Because the mine is located outside their taxing jurisdictions, they cannot tax the mineral development to meet their increased costs. A jurisdictional revenue disparity might also exist when the mineral development overlaps two or more similar jurisdictions, such as two elementary school districts, and its taxable valuation in one district would be insufficient to meet increased costs, while its increased valuation in the other district would exceed what is needed to meet increased costs.

If a "jurisdictional revenue disparity" occurs only within one category of local government units, tax base sharing will be initiated only within that category. For instance, if a jurisdictional revenue disparity exists only among elementary school districts, tax base sharing will occur only among elementary districts, and not among high school districts, or

counties and municipalities. Tax base sharing does not apply to local government units in categories in which the plan does not identify a jurisdictional revenue disparity.

When an approved impact plan identifies a jurisdictional revenue disparity in one or more of the three categories of local government units, the Board must notify the Montana DOR, and the Department must allocate the post-permit increase in mineral development taxable valuation among all affected local government units in the affected category. *[90-6-403, 90-6-404, MCA]* The taxable valuation of the mineral development consists of all real and personal property of the mineral development (land, buildings, equipment) and the gross proceeds resulting from the ore body. *[90-6-402(8), MCA]*

Prior to 1991, the allocation of taxable valuation followed the employee and student-based formulae contained in the Tax Base Sharing Act. The formulae allocate taxable valuation based on the number and place of residence of mineral development employees (counties and towns) or their school-age children (school districts). In 1991 the Legislature amended the Tax Base Sharing Act to make it both more flexible and potentially more equitable. The amendments allow tax base sharing to follow the statutory formulae or to be carried out according to a modification of the formula provided by the plan itself:

> **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.** [90-6-404(5), MCA]

This additional provision also means that the tax crediting provisions of the impact plan are subject to amendment.

The 1991 amendments also reserve 20 percent of the taxable valuation of the gross proceeds to the jurisdiction in which the ore body is located.

On or before May 1 of each year, the mineral developer must conduct a survey of mineral development employees to determine where they and their school-age children reside. *[90-6-405, MCA]* The employee survey must include all persons, both local and inmigrant, who are employed by the developer or its contractors in the construction or operation of the mine, mill and associated facilities. *[90-6-402(6); 90-6-405, MCA]* The developer must report the employee survey findings to the DOR, that is, to the county assessor in the affected county, with a copy to the Hard-Rock Mining Impact Board. *[90-6-405, MCA]* Before filing the survey, it is helpful if the developer asks the principals or superintendents of affected schools to review and verify student enrollment data. If the allocation of taxable valuation is based on the statutory formula, the allocation for the next fiscal year will be adjusted to reflect the findings of the survey. *[90-6-404; 90-6-405, MCA]* If the allocation

formula is provided by the impact plan, it may or may not be affected by the survey, which remains relevant, nonetheless, for monitoring purposes.

When tax base sharing is in effect, the county assessor deals with mineral development taxable valuation in four segments, each of which is potentially subject to taxation by a different set of taxing jurisdictions:

1. The taxable valuation which existed prior to the mineral developer's receipt of the operating permit remains with the taxing jurisdictions in which the mineral development is located. *[90-6-403(1), MCA]* Typically, these jurisdictions include at least one county, one high school district, and one elementary school district.

2. Twenty percent of the taxable valuation of the gross proceeds is reserved to the jurisdiction in which the ore body is located*. [90-6-404(1), MCA*]

3. The increase in mineral development taxable valuation which occurs after the operating permit is issued, except for the reserved 20 percent of gross proceeds, is subject to allocation among the affected local government units in each of the three tax base sharing categories. *[90-6-404, MCA]* As noted above, the existence of a jurisdictional revenue disparity is determined separately for each tax base sharing category (counties and incorporated cities and towns; high school districts; and elementary school districts.) Tax base sharing occurs only within the category in which a jurisdictional revenue disparity is identified. If no jurisdictional revenue disparity is found within a category, tax base sharing does not occur for that category and the increase in mineral development taxable valuation remains with the taxing jurisdiction, or jurisdictions, in which taxable property is located.

   For each category within which a jurisdictional revenue disparity is found, the DOR (county assessor) must allocate the increase in mineral development valuation, except for the reserved 20 percent of gross proceeds, based on the number and place of residence of the mineral development employees or their school-age children or based on the alternative formulae provided by the impact plan itself*. [90-6-404, MCA]* An allocation according to the statutory formula will proceed as follows:

   a. Instead of being allocated entirely to the county in which the mineral development is located, the increase in mineral development taxable valuation, except the 20 percent of gross proceeds reserved to the county in which the ore body is located, will be apportioned among the affected counties and incorporated cities and towns in which mineral development employees reside.

The allocation is based on the number of mineral development employees, both local and inmigrating, residing in each affected county and incorporated city or town, with the limitation that not more than 20 percent of the increase may go to all municipalities combined. (Although the 20 percent gross proceeds reservation is, by statute, excluded from further allocation, the 20 percent municipal limitation is part of the statutory allocation formula and may be superseded by an allocation formula established by the impact plan.)

b. Instead of being allocated entirely to the high school district in which the mineral development is located, the increase in mineral development taxable valuation, except the 20 percent of gross proceeds reserved to the district in which the ore body is located, will be apportioned among all affected high school districts in which school-age children of the mineral development employees reside.

The allocation is based on the number of mineral development students residing in each affected high school district.

c. Instead of being allocated entirely to the elementary school district in which the mineral development is located, the increase in mineral development taxable valuation, except the 20 percent of gross proceeds reserved to the district in which the ore body is located, will be apportioned among all affected elementary school districts in which school-age children of the mineral development employees reside.

The allocation is based on the number of mineral development students residing in each affected elementary school district.

Each recipient county, incorporated city or town, and elementary or high school district applies its own mill levy to its share of the taxable valuation of the mineral development, whether that share is retained (pre-permit), reserved (20 percent gross proceeds), or allocated by statutory or impact plan formula.

4. The county applies countywide mill levies for the school foundation program and for the university system to the total taxable valuation of the mineral development without regard to tax base sharing. *[90-6-403, MCA]* Also, as noted, independent special purpose districts in which the mine is located are not affected by tax base sharing; they continue to apply their mill levies against the total taxable valuation of the mineral development.

The Tax Base Sharing Act provides that if the initial allocation of increased taxable valuation occurs prior to the first employee survey, it is to be based on the plan's projections of where employees will reside and where their school age children will be enrolled in school. *[90-6-404(5), MCA]* Subsequent allocations among school districts are made to the school district in which the student resides, as indicated in the developer's annual employee survey, regardless of where the student actually attends school. However, because of the sequence and timing of assessments (January), employee surveys (May), and local government fiscal years (beginning July 1), it appears that, in point of fact, all statutory formula allocations will be based on where mine employees and students reside.

Tax base sharing allows the developer, through the impact plan, to use facility impact bonds, property taxes, and tax prepayments to meet increased capital, operating and net operating costs in local government units where the mine is not located, as well as in those jurisdictions where it is. Without tax base sharing, the developer would have to finance all increased costs in the non-mine jurisdictions only through grants or contributions. Tax prepayments have the advantage that the recipient local government unit is obligated, within certain constraints, to provide future tax credits to the developer*. [90-6-309, MCA]* A facility impact bond has the advantage of using bondholders money, rather than the developer's, for the initial capital costs of new facilities*. [90-6-310, MCA*]

Tax base sharing does not affect the increase in capital and operating costs identified by the plan. However, tax base sharing will probably affect mineral development property tax revenues in each jurisdiction, and thereby may also affect the jurisdiction's net operating costs for services financed from property tax revenues. In local government units in which the mine is located, net operating costs may be higher or continue for somewhat longer than they would have without tax base sharing, because these local government units will receive less than 100 percent of the increase in taxable valuation of the development from which to generate revenue to meet increased operating costs or provide tax credits. In local government units in which the mine is *not* located and which receive a portion of the increase in taxable valuation of the development through tax base sharing, net operating costs will be less over time, because some or all of the increase in operating costs will be paid by property tax revenues from the development.

Tax base sharing does not affect the total taxable valuation of the mineral development, but may affect the amount of tax the developer actually pays, because each jurisdiction applies its own mill levy to its allocated share of the development's taxable valuation, and local government units that receive a portion of the taxable valuation through tax base sharing may have higher or lower mill levies than the jurisdictions in which the mine is located.

Whenever the amount of mineral development taxable valuation differs from what the plan projects, actual revenues and net operating costs may also differ from the plan's projections. If neither the statutory formula nor the plan's formula allocates sufficient taxable valuation to a jurisdiction to meet its impact costs, the developer or the affected local government unit (through the county), or both, may petition the Board to amend the impact plan, subject to the amendment criteria contained in the Impact Act or in the plan itself. They may seek either to modify the tax base sharing formula or to provide adequate impact payments without changing the formula.

After tax base sharing is initiated, it remains in effect "until the large-scale mineral development ceases operations or until the existence of the jurisdictional revenue disparity ceases, as determined by the [hard-rock mining impact] board." *[90-6-403(3), MCA]* As a matter of policy, the Board will determine whether the disparity has ceased to exist only upon request of the mineral developer or an affected local government unit. When the Board determines that a jurisdictional revenue disparity no longer exists, it will notify the DOR to terminate tax base sharing for the affected category, or categories, of local government units.

The tax base sharing procedure is discussed in more detail in Appendix XIII.

I. FACILITY IMPACT BONDS [90-6-310, MCA]

If a large-scale mineral development will result in the need to construct, renovate, improve or acquire a facility that is owned, operated or maintained by an affected local government unit, the approved impact plan may provide that the increased capital costs will be met through facility impact bonds. *[90-6-302, 90-6-307, and 90-6-310, MCA]* Facility impact bonds do not constitute a financial liability or indebtedness of the local government unit as a whole and do not affect its debt limits. *[90-6-310(2), MCA]* Interest earned on facility impact bonds is not subject to state taxes. *[90-6-310(3), MCA]*

The owners of the large-scale mineral development and the governing body of the affected local government unit enter into a written agreement for the issuance of the bonds. *[90-6-310(1) and (2), MCA]* Revenue for bond payments comes from an annual special levy on the property of the mineral development sufficient to retire the principal and interest on the bonds. *[90-6-310(2), MCA]* The written agreement must provide for a payment guarantee which ensures that, in addition to taxes paid to local government units by taxpayers generally, the owners of the mineral development will pay the principal and interest of the facility impact bonds. [90-6-310(2), MCA]

The bond payment guarantee is a financial guarantee, not merely a written promise to pay. A written guarantee would be redundant: the developer has already provided both the Board and the DEQ with its written guarantee that it will meet its commitments in the

impact plan. The developer's bond payment guarantee is a financial guarantee which may be provided through a third-party financial institution, as is the financial guarantee required of the developer when the plan provides for tax prepayments. In both situations, the purpose of the guarantee is to ensure that the plan's impact payment commitments will be met, regardless of the continued willingness or ability of the developer to make the payments. The difference is that the bond payment guarantee is made by the developer to the local government unit to protect both the bondholders and the financial good name of the local government unit, whereas the tax prepayment guarantee is made by the developer to the Board to protect local government units, local taxpayers, and service recipients. *[90-6-309(3); 90-6-310(2), MCA]*

In order to issue facility impact bonds, the governing body of the local government unit must adopt a resolution that identifies:

- the facility for which the bonds are issued
- the amount of the bonds
- the rate of interest the bonds bear
- the date of the bonds and the maturity date or dates of the bonds
- the dates interest is payable on the bonds
- the redemption options, if any, with respect to the bonds
- And the manner of execution of the bonds. *[90-6-310(4), MCA]*

The bonds must be in registered form as to principal and interest, payable in installments and at times not exceeding 30 years from their date of issuance, and 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. *[90-6-310(5), MCA*] In establishing the maturity date of the bonds, the affected local government units and the developer need to estimate, conservatively, the probable productive life of the mine. As intended, the bonds should be retired from the annual special levy on the taxable valuation of the operating mineral development.

Facility impact bonds may be sold at public or private sale 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. *[90-6-410(6), MCA]*

If two or more local government units adopt resolutions to issue impact bonds, they may enter into an inter-local agreement authorizing their bonds to be combined in a single offering, provided that the governing bodies determine that the pooling of the bonds is in the best interest of the local government units, will facilitate the sale of the bonds under

more advantageous terms, will lower the interest rate, or will lower the cost of issuance. [*90-6-310(7), MCA]* In addition to complying with the specific requirements of *Section 7-11-105, MCA*, the inter-local agreement must ensure that the bond titles will denote that impact bonds of different local government units have been pooled, referring to each local government unit executing the inter-local agreement. *[90-6-310(8), MCA]* The inter-local agreement must also provide for a single debt service fund, to be held by a qualified trust company, to which each local government unit is to pledge and pay the revenue from the annual special tax levied against the property of the mineral development. *[90-6-310(8), MCA]* The agreement must specify that the bonds are payable solely from and against the debt service funds under the inter-local agreement. *[90-6-310(8), MCA]*

In preparing to issue facility impact bonds, the local governing body and the mineral developer should work closely with a qualified bond counsel.

J. MONITORING THE IMPACT PLAN

Monitoring may be necessary both to implement specific provisions of the plan and to achieve the purposes for which the plan was prepared. For example, the developer and affected local government units need to monitor "if...then" provisions or specific conditions that might allow the plan to be adjusted or amended.

To ensure that the approved plan does what it is intended to do, affected local government units and the mineral developer should monitor critical features of the plan, including the assumptions, data or projections on which the plan is based, such as the timetable of the development, the number and place of residence of employees and their school-age children, the number and place of residence of other persons who are considered to have moved into the impact area as a result of the mineral development, and the actual impacts to local government services, facilities, costs and revenues. Comparing actual to projected taxable valuation is basic to a monitoring program. Taxable valuation and, in turn, revenues, net operating costs and tax credits may be affected by the timing, cost and level of production at the mine or by metals prices that differ from what the plan projects. If the place of residence of either local or inmigrating mineral development employees or students differs from what the plan projects, operating costs and net operating costs may be affected, as may be the allocation of taxable valuation under the statutory place-of-residence formula for tax base sharing.

A number of circumstances may accentuate the importance of monitoring and flexibility, including any of the following:

- if there is a time-lag between approval and implementation of the plan
- if the plan projects major impacts and requires a significant commitment by the developer
- if the plan is to be implemented over a period of several years

- if any affected services or costs may be significantly affected by small variances in the projected number of inmigrants, their needs or the projected revenues
- Or if the assumptions and projections on which the plan is based involve considerable uncertainty.

More detailed or more frequent monitoring may be required for those features of the plan that are considered to be particularly important or particularly sensitive to change.

Persons experienced in the mitigation of impacts from natural resource development advise that monitoring should be kept as simple as is consistent with the information needed to document "if...then" conditions and to verify the adequacy of the plan or to document the need for its adjustment or amendment. They also find that existing reporting requirements, both for the developer and for local governments, are often sufficient to provide most of the needed data without a duplication of effort. They recommend that the developer and affected local government units identify in advance who will assemble, transfer, and evaluate the needed information, and how and by whom decisions will be made based on the results of the monitoring. If the impact plan does not set out the terms of a monitoring agreement between the mineral developer and the affected local government units, they may wish to enter into a monitoring agreement as either an adjustment or an amendment to the plan.

K. KEY EVENTS AND DATES

The Impact Act refers to several key events or dates of which the Board and all parties to the plan need to be informed. *[90-6-309(4), 90-6-311(1), MCA; ARM 8.104.203(4)(e)]* The developer is to notify the Board and the governing body of each affected local government unit within 30 days of the occurrence of each "key event" identified as its responsibility in the Impact Act, the Board's administrative rules, or the impact plan. *[ARM 8.104.203(4)(f)]* The events identified by statute affect the prepayment and crediting of taxes and the implementation and amendment of the plan. For instance, the county governing body may request tax prepayments, on behalf of all local government units, *after the operating permit is issued*, which requires their notification by the developer that the permit has been issued. *[90-6-309(1), MCA]* Similarly, local government units must begin the tax crediting process as part of its budgeting process *after the mine starts production*, which requires their notification by the developer that the mine has started production. *[90-6-309(4), MCA*]

The developer is to define *commencement of commercial production* in the plan and is to notify the Board and the affected local government units when commercial production begins. *[ARM 8.104.203]* The beginning of commercial production initiates a two-year time period within which either the developer or the county, unilaterally, may file a petition to amend an approved plan owing to material inaccuracies in the plan based on errors in impact assessment. *[90-6-311(1), MCA]*

The plan may identify additional key events or circumstances related to when implementation of the plan, or specific features of the plan, is to begin, or in conjunction with "if...then" provisions or other conditions for impact plan adjustments or amendments. A monitoring agreement should provide that the entity with knowledge of the event or circumstance will notify the Board and affected parties to the plan when that event or circumstance occurs.

L. AMENDMENT OR ADJUSTMENT OF AN APPROVED IMPACT PLAN

The requirements and procedures for amending an approved impact plan are found in section *90-6-311, MCA, and ARM 8.104.217*. At any time, the governing body of an affected county and the mineral developer may join in a petition to amend the impact plan. Either the governing body of an affected county or the mineral developer may petition the Board to amend the plan under the following circumstances defined by statute:

I. if it is expected that employment at the mineral development will increase or decrease by at least 75 persons, as defined by *90-6-302(4), MCA*, over or under the employment levels contemplated in the approved impact plan; or

2. if within two years of when commercial production begins, it becomes apparent that an approved impact plan is "materially inaccurate" because of errors in impact assessment. *[90-6-311(1), MCA]*

In addition, *the impact plan itself may provide for its own amendment by specifying additional conditions under which the plan may be amended* upon petition by either party. *[90-6-311(1), MCA]*

When the existence of specific conditions is a prerequisite to filing a unilateral petition to amend the plan, the petitioner must certify that these conditions exist. For example, the plan might provide for its own amendment if the taxable valuation of the mineral development is less than the amount projected in the impact plan by at least 15 percent; if the number of students enrolled in the elementary school exceeds the number projected in the impact plan by more than 20 or by more than 6 in any single grade; if the number of direct mine-related inmigrants exceeds the number projected by 60 persons or by 15 percent; if the number of persons employed at the mineral development exceeds the number projected by more than 35 persons; if implementation of a specific feature of the plan is delayed for more than two years past the date projected in the plan; or if the lowest responsible bid for facility construction exceeds the amount projected in the plan by more than 5 percent. The plan will need to be monitored sufficiently to document the relevant data or circumstances.

Under the Impact Act, the governing body of the county serves as formal petitioner on behalf of any affected local government unit within the county that wants to amend the plan. *[90-6-311, MCA; ARM 8.104.217]* This is in keeping with the "lead agency" role the Act assigns to the county, under which the county coordinates some aspects of local government review, implementation and amendment of the impact plan. The Board regards the filing of a petition for amendment as a procedural responsibility of the county which does not indicate that the county governing body either supports or opposes the proposed amendment. In fact, the county governing body could act both as petitioner on behalf of another local government unit and, subsequently, as objector on its own behalf, if it considered the proposed amendment to be contrary to the best interests of the county.

The procedure for amending an impact plan is the same, regardless of the petitioner, the conditions authorizing the petition to be filed, or whether the petition is filed jointly or unilaterally. *[90-6-311, MCA; 8.104.217]* The petition is filed with the Board and a copy provided to each affected local government unit that is a party to the plan. The petition must include:

1. an explanation of the need for an amendment;

2. a statement of the facts and circumstances underlying the need for an amendment; and

3. a description of the corrective measures proposed by the petitioner. [*90-6-311, MCA]*

Additional requirements for the content of a petition are contained in the Board's administrative rules. *[ARM 8.104.217]* For example, if the petition is filed on behalf of another local government unit, it must include a dated and signed copy of the resolution, or resolutions, through which the governing body of that governmental unit has requested the amendment and authorized the county to submit the petition on its behalf.

Appendix XIV provides the format to be used for the petition. Petitioners should refer to both the Appendix and the administrative rule, *ARM 8.104.217.*

Within 10 days after receiving the petition, the Board will publish notice of the proposed amendment in a newspaper of general circulation in the most affected county. *[90-6-311(2), MCA]* The proposed amendment is subject to a 60-day review period which begins the day after the notice is published. *[90-6-311(3), MCA]* During the review period any affected party to the plan may file an objection to the proposed amendment. If no objection is filed with the Board within the review period, the plan is automatically amended as proposed by the petition.

Appendix XV provides the format for filing an objection to a petition for amendment. The objection must specify why the impact plan should not be amended as proposed by the petitioner. *[90-6-311(3), MCA]*

If the mineral developer and affected local government units are unable to resolve an objection to the petition within 30 days after the review period ends, the Board will hold a contested case hearing on the objection. [*90-6-311(4), MCA]* The hearing will be held in the most affected county within 30 days after the failure of the parties to resolve the objection. Following the hearing, the Board will make its determinations on the disputed issues; will amend the plan, if necessary, to be consistent with its determinations; and will serve its findings and the amendment, if any, on all parties to the plan. *[90-6-311(5), MCA]* Any affected party may seek judicial review of the Board's decision.

If the Board or the court finds that a local government unit's objection is valid, and if the objection results in some remedial order, the Board or the court must award the local government unit its "reasonable costs and attorneys fees associated with any administrative or judicial appeals." The developer must pay these costs. *[90-6-307(13), MCA*] The Board interprets "reasonable costs" as encompassing the expenses incurred by the local government unit in obtaining the assistance of a consultant to help formulate or defend its proposed amendment or objection.

Impact Plan Adjustments. An amendment is usually necessary when parties to the plan want to change either a commitment by the developer to provide specific financial or other assistance or a commitment by a local government unit to use an impact payment for a specified service or level of service. However, under certain circumstances changes may be made through impact plan adjustments, rather than amendments. An adjustment is a signed agreement between the developer and the affected governing body to make a change that is limited in scope and, usually, is specifically contemplated in the plan itself, as discussed below. Sometimes, with the concurrence of the Board, procedural changes not contemplated by the plan may also be made through plan adjustments.

When the developer and affected local government units determine that circumstances exist that will, or may, result in a plan adjustment, they should notify the Board in writing of the change in circumstances and the proposed change in commitments, citing the relevant portions of the impact plan. The letter outlining and agreeing to the adjustment must be signed by all parties to the adjustment. If the county is not a party to the adjustment, a copy should be provided to the county governing body or its designated representative, such as the county planning director. Because of its lead agency responsibilities, the county needs to know of any proposed or approved changes to the plan. The Board will either acknowledge the adjustment or will notify the parties that the matter cannot be dealt with as an adjustment, but must be handled as an impact plan amendment. Like an amendment, an adjustment becomes part of the approved impact plan.

Plan adjustments may occur under several types of circumstances. The plan itself may provide that the developer's commitments will change in specific ways under specified circumstances and that the changes will be acknowledged through "plan adjustments." For instance, the plan may set out exactly what the developer's commitment will be under each of several "if...then" scenarios. The parties will need to verify which scenario actually exists and to notify the Board which commitment is in effect.

An adjustment might also be used when the plan provides a specific method for determining the amount of financial assistance to be provided by the developer. For example, the plan may include a provision specifying that in the first year a mine-related student is enrolled, if the student represents a net increase in the total number of students from the previous year, the developer will contribute to the school district an amount equal to what the district would have received from the State foundation program had the student been enrolled the previous year. The adjustment would require the district and the developer to document the total number of students enrolled, the number of mine-related students, the net increase in students, and the amount corresponding to the State foundation program payments. For a small district concerned about a high anticipated turnover rate, the plan might also provide for adjustments based on an identified per capita cost for enrolling mineral development students, whether or not they represent a net increase in student population. In that case, the adjustment would need only to verify which new enrollees were mineral development students.

In the instances outlined above, the adjustments would be used to make changes that are specifically set forth in the plan itself. By contrast, an amendment, rather than an adjustment, would be needed to implement "if...then" provisions or alternative scenarios that neither specify nor provide a method of calculating the developer's financial responsibilities and commitments. As suggested in the discussion of monitoring, a plan may also use "if...then" provisions to describe the circumstances under which either party would be entitled to seek an amendment that would supplement or replace the commitments in the plan.

The local government unit must provide the agreed-upon type and level of service for which it is receiving an impact payment, but, within reason, its method of providing the service may change without the necessity for a formal amendment. The developer and affected local government units should decide in advance whether such changes would require the local government unit only to notify the developer or whether the developer would need to formally acknowledge or approve the change through an impact plan adjustment. For example, a local government unit may find that a different piece of equipment or a different staffing arrangement would be a preferable way of providing the needed service. If the method of providing the service can be changed without reducing

the needed level of service and without exceeding the financial commitment of the developer, the plan may be changed by adjustment rather than by amendment.

A plan might also provide that the developer may agree, through a plan adjustment, to make higher impact payments for services already identified in the plan, for related services necessary to meet the already identified need, or for service needs that were projected to occur or to be paid for in a different fiscal year. In each case, the letter of adjustment must:

1. cite the provision of the plan that authorizes the adjustment,

2. identify and attest to the circumstances that allow or require the adjustment, and

3. specify the changes that are to be made to the impact plan.

Amendments versus Adjustments. In terms of local government budgeting and accounting procedures, a plan may not be adjusted in a way that will result in using an impact payment intended for services ordinarily financed from one fund to pay for services ordinarily financed from a different fund, unless the plan has specifically provided for this change. The transfer of money from one budget category within the impact fund to another implies a change in the use of the impact payment from one service to another, which would ordinarily require a plan amendment. From another perspective, unless the plan provides for it, an adjustment may not diminish an agreed-upon level of service, increase a payment obligation, or cause an eventual tax crediting obligation to be shifted from one service or fund to another. This does not limit local governments from entering into inter-local agreements for the provision of services identified in the plan. For example, if a town and county decide to enter into an inter-local agreement through which the county will provide law enforcement services to the town, the town would still receive the impact payment, which it would use to reimburse the county under the terms of the agreement. Provided that the level and cost of service remained the same for the town, the inter-local agreement would constitute an adjustment to the method of providing service, not an amendment to the impact plan.

In general, an adjustment may be used for minor changes of the sort that could normally occur within a local government fund without a budget amendment, provided that the impact payment continues to be used as provided by the plan for services needed as a result of mineral development impacts. In determining whether a change might be accomplished by means of adjustment, the Board will interpret the commitments made in the plan as follows, unless the plan specifies otherwise:

1. The developer's commitment is to make a certain amount and type of payment, according to the schedule specified in the impact plan. The payment is made in order to ensure that the recipient local government will provide the type and level of service identified when and where the service is needed.

2. The local government unit's commitment is to provide the specified service or level of service when and where it is needed as a result of the development.

As discussed previously, the plan may also provide for its own adjustment through certain types of written agreements, such as memorandums of understanding between rural fire districts or between a fire district and the developer, which will be reviewed and revised periodically. Similarly, the plan might outline the terms of a monitoring agreement, while allowing the details of the agreement to be modified periodically by the parties through an impact plan adjustment.

In the course of time, the developer or an affected local government unit may identify additional concerns that the plan fails to address. These may include potential, rather than actual, problems. If this should occur, one way of forestalling or reducing apprehension is to amend the plan so that either party will be able to petition for an amendment if the worrisome event, circumstances or problem should arise. An amendment that establishes conditions for future amendments can define the general scope of those amendments at the same time that it offers reassurance about matters it would be premature to try to address in any greater detail.

M. ENFORCEMENT

If the developer fails to make payments or to comply with other commitments specified in the approved impact plan, the affected local government unit is responsible for notifying the Board. If the Board determines that the developer is not complying with its commitments in the impact plan or with the requirements of the Impact and Tax Base Sharing Acts, the Board must notify the DEQ *[90-6-307(11) and (15), MCA]* The DEQ is required to suspend the developer's operating permit until such time as the Hard-Rock Mining Impact Board notifies it that the developer is once again complying with its commitments in the impact plan and with the requirements of the Impact and Tax Base Sharing Acts. *[82-4-335(5) and (6); 90-6-307(11) and (15), MCA; ARM 8.104.211(3)].*

N. CONCLUSION

In addition to the enforcement provisions of the Impact and Metal Mines Reclamation Acts, the Impact Act offers assurance of payment to the affected local government units through the financial guarantee from the developer to the Board and the facility impact bond

guarantee from the developer to the affected local government unit. If these guarantees are appropriately articulated, executed and utilized, they provide substantial assurance that the financial commitments in the impact plan will be met to the extent necessary to meet the impacts of the development and the financial obligations of the affected local government units arising from the impact plan.

In implementing the plan, developers and local government units must comply not only with the specific provisions of the approved plan, but also with the purposes and requirements of the Impact and Tax Base Sharing Acts and with other laws and regulations which apply generally to local government units in the conduct of their business. While a plan is being implemented, something unexpected that will require the prompt, joint attention of the local governing body and the mineral developer is likely to occur. To ensure that, even in stressful circumstances, the plan achieves the goals for which it was prepared; the Board encourages the affected parties to continue communicating and working together cooperatively as they implement their plan.

Because each mining project, each set of local government units, and each impact situation differs, every impact plan raises new questions during its preparation, review, adjudication or implementation. Questions or concerns about the requirements and procedures for implementing an approved impact plan may be directed to the Board or its staff at any time.

CHAPTER V

IMPACT PLANS, WAIVERS, AND CONDITIONAL WAIVERS

Any hard-rock mineral developer that applies for an operating permit from the Montana DEQ on or after May 18, 1981, is potentially subject to the impact plan requirements of the Hard-Rock Mining Impact Act. *[82-4-335; 82-4-339; and 90-6-307, MCA]* If the proposed mineral development is "large-scale," at the time the developer applies for an operating permit, the developer must prepare an impact plan as a condition of the permit, as discussed in Chapter II. [*82-4-335(5); 90-6-307(1), MCA]* If the mineral development becomes "large-scale" after it has received its operating permit, the permittee must prepare an impact plan within six months of being notified of its large-scale status, unless it successfully petitions the Hard-Rock Mining Impact Board for a waiver from the impact plan requirement. *[82-4-335(6); 90-6-307(14), MCA]* In response to the permittee's petition, the Board may grant a waiver or a conditional waiver, or it may require an impact plan. *[90-6-307(14), MCA]*

The term "large-scale mineral development" encompasses all mine-related activities for which an operating permit is required, including the construction and operation of the mine and associated milling facility. *[82-4-335(1) and (5); 90-6-302(4), MCA]* A mineral development is considered "large-scale" if "the average number of persons on the payroll of the mineral developer and of contractors at the development exceeds or is projected to exceed 75 for any consecutive 6-month period." *[90-6-302(4), MCA*]

The DEQ determines whether a mine permittee will become, or has become, a "large-scale mineral development*." [82-4-335(6) and 82-4-339, MCA]* Each permittee must file periodic employee reports with the DEQ at intervals established by the Department. The permittee must identify the number of persons employed in the construction and operation of the mineral development during the preceding year and the number expected to be employed in the coming year. *[82-4-339(1)(d), MCA]* At a minimum, the permittee must include in its annual report the employment data required by statute, but the Department may require additional data or more frequent reporting.

If the employment level reaches, or is expected to reach, "large-scale" status, the DEQ must notify the permittee, the Hard-Rock Mining Impact Board, and the county in which the mine is located. [82-4-335(6), MCA]. Within six months of when the DEQ notifies the permittee of its "large-scale" status, the permittee must file with the DEQ either proof of having been granted a waiver by the Board or proof of having submitted the impact plan for formal review. [82-4-335(6), MCA]

Following notification from the DEQ, the Board and the governing body of the affected county identify the local government units that may be affected by the mining operation. To assist them with this, the developer may be asked to provide information about where current employees reside and where new employees are expected to reside.

If the developer petitions the Board for a waiver of the impact plan requirement, the Board will provide notice and opportunity for hearing to the permittee and all affected local government units. *[90-6-307(14), MCA]* The hearing will address whether an impact plan, waiver or conditional waiver is needed, and may encompass the potential terms of a conditional waiver. As a matter of policy, the Board will hold a hearing only if requested to do so. This means that the governing body of a potentially affected local government unit must notify the Board if it appears that an impact plan or a conditional waiver may be needed.

If a plan is required, the permittee must submit the proposed plan to the Board and to the affected local government units. *[82-4-335(6); 90-6-307, MCA]* As noted above, the permittee must submit either a proof of waiver or the impact plan within six months of when the DEQ notifies the permittee of its large-scale status*. [82-4-335(6), MCA*] This means that if the permittee intends to petition for a waiver, it should do so as soon as possible after being notified of its large-scale status, in order to leave itself sufficient time to prepare an impact plan, if a plan is required.

The Board will grant a waiver or conditional waiver following the opportunity for hearing if the Board considers it unlikely that the increase in employment or changes in the mining operation will result in adverse fiscal impacts to any potentially affected local government unit. [*ARM 8.104.218]* The Board will grant a waiver without a hearing if:

1. No potentially affected local government unit requests a hearing or requests that the Board deny the waiver, grant a conditional waiver, or require and impact plan; or

2. The permittee and the governing bodies of all potentially affected local government units notify the Board in writing that:

    a. they do *not* anticipate a need to increase local government services and facilities as a result of the mineral development; or

    b. they do *not* anticipate that the increased need for services and facilities resulting from the mineral development will result in increased costs for the non-developer taxpayer. *[ARM 8.104.218]*

Following the hearing, the Board will require a conditional waiver or an impact plan if it appears that, since becoming or expecting to become large-scale, the mineral development has resulted or will result in an increased need for local government services or facilities and increased capital or net operating costs to one or more affected local government units. [90-6-307(1) and (2), MCA] The Board may grant a conditional waiver only if the Board considers it an adequate alternative to an impact plan. The Board must require an impact plan if the need for tax base sharing is indicated*. [90-6-403, MCA*]

A conditional waiver might be acceptable instead of an impact plan if only a few, easily identifiable service and facility needs and costs are to be addressed. For example, a

conditional waiver might require that the permittee upgrade the county access road, and its bridges, to the mine and that it pay a specified amount annually to cover the county's net operating costs for maintaining the road and bridges.

A conditional waiver might also be used to ensure that the affected local government units and the developer will provide for any future demands on local government services that result from the mineral development, should circumstances change and the need arise. To do this, a conditional waiver might establish specific criteria for its own revocation that are more stringent than those provided by statute, or it might establish specific "if...then" requirements. For instance, if an affected school district is at or near capacity, the conditional waiver might provide that if the school experiences a net increase in mine-related student enrollment, the developer will make impact payments to the district in amounts calculated as specified in the waiver, or, if the student enrollment exceeds a specified number, the waiver will be revoked.

In requesting a waiver, the developer and local government units need to be sure that, as a result of the mineral development, there is no increase in costs or decrease in services to the non-developer local taxpayer or service recipient. In requesting a conditional waiver, the developer or affected local government unit needs to specify what must be done to ensure that all increased service and facility needs and costs resulting from the mineral development will be met without shifting the increased costs to the non-developer local taxpayer. *[90-6-301, 90-6-307(1) and (2), MCA]* The Board will consider this information in establishing the conditions, or terms, of the conditional waiver.

Revocation of a Waiver or Conditional Waiver. If the permittee or an affected local government unit finds cause for a waiver or conditional waiver to be revoked, it should notify the Board. The Board may revoke a waiver or conditional waiver only upon request of an affected local government unit and only under circumstances specified by statute or by the conditional waiver itself. *[90-6-307(14), MCA]* Under the statute, a waiver or conditional waiver may be revoked if the permittee and contractors at the mineral development increase their payrolls from the date of the waiver by 75 or more. *[90-6-307(14), MCA]* Before revoking a waiver or conditional waiver, the Board must provide notice and opportunity for hearing to the permittee and all affected local government units. *[90-6-307(14), MCA]*

After determining whether to grant, deny or revoke a waiver or conditional waiver, the Board notifies the permittee, the affected local government units, and the DEQ, providing each with a copy of the waiver, conditional waiver or denial of waiver. *[90-6-307(14), MCA]*

In summary, as a statutory condition of its operating permit, a large-scale mineral developer must comply with the requirements of the Hard-rock Mining Impact and Property Tax Base Sharing Acts and with the related requirements of the Metal Mines Reclamation Act. *[82-4-335(5) and (6); 90-6-307(15), MCA]* A large-scale mine permittee must obtain and file proof of an impact plan waiver, must obtain a conditional waiver and comply with its terms, or must submit an impact plan and comply with its commitments in the plan. *[82-*

4-335(6); 90-6-307(14) and (15), MCA] If the large-scale permittee fails to file the required proof of waiver with the DEQ or if it fails to comply with the applicable statutory requirements, as outlined above, the Board must notify the DEQ and the DEQ must suspend the mineral developer's operating permit. *[82-4-335(6); 90-6-307(14) and (15), MCA; ARM 8.104.211(3)]* The permit remains suspended until the permittee files the required proof of a waiver or until the Hard-Rock Mining Impact Board notifies the DEQ that the permittee has submitted the impact plan or that it is complying with the requirements of the conditional waiver or of the approved impact plan. *[82-4-335(6); 90-6-307(15), MCA; ARM 8.104.211(3)]*

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CHAPTER VI
METAL MINES LICENSE TAX ALLOCATION TO COUNTIES AND SCHOOL DISTRICTS

A. INTRODUCTION

From 1986 through 1988 the Legislature allocated 33 percent of the State's metal mines license tax revenue to the State's hard-rock mining impact trust account. After meeting its administrative and operating expenses, as required, the Hard-Rock Mining Impact Board allocated the balance, always by far the larger portion, among sub accounts established for the counties in which the taxpaying mines were located. Money that accrued in the sub accounts was to be used by the Board for grants and loans to local government units affected by the closure of a mine that paid metal mines license taxes or by a reduction of 50 percent or more in the mine's workforce. Local governments were authorized to use the grants or loans for economic development purposes, to stabilize mill levies and to retire local government debts.

In 1989, the Legislature initiated major changes in statutes related to the metal mines license tax. The Legislature redefined gross proceeds/gross value *[15-23-801, MCA];* revised metal mines license tax rates *[15-37-103, MCA];* exempted metal mines license taxpayers from the resource indemnity trust tax *[15-38-113, MCA];* revised the disposition of metal mines license tax revenues *[15-37-117, MCA];* transferred the authority and revenue for hard-rock trust reserve accounts to the affected counties *[7-6-2225, 15-37-117*, and *90-6-331, MCA];* and authorized the county and school district metal mines reserve accounts *[7-6-2226 and 20-9-231, MCA].* As a result of the 1989 metal mines license tax legislation and a 1991 amendment to the Impact Act, the State now allocates 25 percent of its annual metal mines license tax revenue to the county in which the taxpaying mine is located and 1.5 percent to the Board for its administrative and operating expenses and mandated reserve. If the mine will result in fiscal or economic impacts in more than one county, the 25 percent allocation is distributed between the counties in proportion to increased local government costs and increased employment*. [15-37-117(1)(d), MCA; see also 15-37-117(2), MCA]*

In July 1990, the Board transferred to the counties' hard-rock trust reserve accounts all money that it had held for them in the State's hard-rock mining impact trust account*. [90-6-331, MCA]* At the end of each fiscal year, the Board continues to apportion any uncommitted balance from its annual administrative and operation revenue and transfer it to the counties in which the taxpaying mines are located. The amounts, if any, are very small.

The Board has no administrative or quasi-judicial responsibility for the DOR's allocation of metal mines license tax money neither to the counties nor for the allocation or use of metal

mines license tax monies within the counties. However, the Board has included this discussion of the statutes governing the new metal mines license tax allocation in the *Guide*, because the allocation is part of the State's overall effort to help local governments mitigate the adverse fiscal and economic impacts that may occur as a result of hard-rock mines. In addition, if a proposed mine may cause increased costs and increased employment in more than one county, the statute that allocates metal mines license taxes imposes an additional expectation on the impact plan required by the Impact Act. *[15-37-117, MCA]*

B. METAL MINES LICENSE TAX ALLOCATION AND THE IMPACT PLAN

If more than one county will experience either increased costs or increased employment as a result of the mineral development, the impact plan should identify these counties, even though an increase in employment alone might not otherwise qualify a county to be considered an "affected local government unit" for impact plan purposes. In addition, the plan should identify the relative proportion of fiscal and economic impact each county is expected to experience. *[15-37-117(1)(d), MCA; ARM 8.104.203(4)(g)]* This may be difficult, because it requires comparing projections which may not correspond with actual impacts, unless the plan is later amended, and it requires a comparison of "apples" and "oranges." From the language in *Section 15-37-117, MCA,* it appears that the Legislature intended fiscal impact to be understood as adverse impact (costs) and economic impact as beneficial impact (employment). Beneficial fiscal impacts (property taxes) were excluded. Nonetheless, the statute requires that the DOR allocate metal mines license tax revenue:

> **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.** *[15-37-117(1)(d), MCA]*

The county's distribution of metal mines license tax revenue may also be affected by the impact plan, as it relates to tax base sharing. *[15-37-117(2), MCA]*

C. COUNTY AND SCHOOL DISTRICT RESERVE ACCOUNTS AND USES [*15-37-117(1)(d), MCA; 7-6-2225 and 2226, MCA; 20-9-231, MCA]*

The county governing body must reserve *at least* 40 percent of the metal mines license tax revenue it receives in its hard-rock mining impact trust reserve account. [*15-37-117(1)(d), MCA]* The principal and interest from the account may be used only after the mine closes or its workforce is reduced by 50 percent or more, based on the average number of

persons employed full-time in mining activities by the mining operation during the immediately preceding 5-year period. *[7-6-2225, MCA]*

When the mine closure or workforce reduction occurs, the county must allocate *at least* one-third of the principal and interest in the hard-rock trust reserve "proportionally" among the "affected" school districts within the county. *[7-6-2225, MCA]* The recipient school districts may spend their respective shares for any purpose provided by law. The balance of the trust reserve (two-thirds or less) the county may grant or loan to other local government units within the county "to assist with impacts caused by the changes in mining activity." [*7-6-2225, MCA*] And, the county itself may expend money from the non-school portion of the hard-rock trust reserve account to stabilize mill levies, retire local government debt, or for economic development purposes, such as retaining jobs or attracting new industry. *[7-6-2225, MCA]*

After the county governing body has reserved at least 40 percent of its annual metal mines license tax allocation from the State, the governing body must then distribute the balance as follows: one-third to the affected high school districts, one-third to the affected elementary school districts and one-third to the county. *[15-37-117(1)(d), MCA]* Each jurisdiction credits its share to its metal mines reserve account and may hold the principal and interest in the account for any period of time. *[7-6-2226, MCA; 20-9-231, MCA]* Money held in schools' metal mines reserve accounts cannot be considered as cash balance for purposes of reducing mill levies. *[20-9-231, MCA]* School districts may expend money from their metal mines reserve accounts for any purpose authorized by law. *[20-9-231, MCA]* A county, however, may expend money from its metal mines reserve account only for planning and economic development purposes, primarily to enable the county to strengthen and broaden the non-mining economic base of the impact area in order to reduce the adverse effect of the eventual mine closure. *[7-6-2226, MCA; 15-37-117(1)(d), MCA*]

Metal mines pay metal mines license taxes on that portion of their gross proceeds that exceeds $250,000 a year. *[15-37-103, MCA].* The 25 percent allocation is made to the counties, whether or not the taxpaying mine is subject to the Hard-Rock Mining Impact Act. Metal mines license tax revenue depends on factors such as production levels, metals prices, and excludable costs. Over time, the amounts accrued in hard-rock trust reserve and metal mines reserve accounts will also depend on interest rates and decisions made by future legislatures and county and school district governing bodies.

D. CONCLUSION

Originally, the State's purpose in allocating a portion of its metal mines license tax revenue was to help local government units to stabilize mill levies, retire local government debts, and stabilize and diversify impact area economies, following a hard rock mine's workforce

reduction or closure. The 1989 legislation requires that counties retain at least 40 percent of their metal mines license tax allocation for these purposes, but it also allows counties and school districts to decide for themselves how much, if any, of the balance to expend during the productive life of the mine. Counties, however, are limited to expenditures for planning and economic development purposes, primarily to enable them to strengthen and broaden the non-mining economic base of the impact area in order to reduce the adverse effect of the eventual mine closure.

The metal mines license tax allocation is complementary to, but does not overlap or replace, the purposes and functions of the Impact and Property Tax Base Sharing Acts:

1. The Impact Act addresses primarily the *initial* impacts of development by requiring that the developer prepare an impact plan in which it identifies and commits to pay all increased local government costs resulting from the construction and operation of the new mineral development.

2. The Tax Base Sharing Act helps those counties, municipalities and school districts that are expected to incur ongoing increased costs as a result of the mineral development. Tax base sharing distributes the increased taxable valuation of the mineral development among the jurisdictions with increased costs and those in which the development is located, ensuring the former a source of property tax revenue to help meet *ongoing* costs resulting from the mineral development.

3. The primary purpose of the metal mines license tax allocation to counties, and through counties to school districts and other local government units, is to assist them in preparing for and dealing with the fiscal and economic impacts of a *reduction in mine workforce or a mine closure*.

Through these three pieces of legislation, the Legislature has tried to help local government units address the "front-end," "ongoing" and "tail-end" fiscal and economic impacts of hard-rock mineral development.

A more detailed discussion of the metal mines license tax allocation and the hard-rock trust and metal mines reserve accounts appears in Appendix XVI.

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 inmigration 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 inmigration 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

g. projected increase in net operating costs resulting from the mineral development (by year, fund and service);

6. commitments, policies, criteria and procedures that will enable the mineral developer and affected local government units to implement the plan in a timely and effective manner and to achieve the purposes for which the plan was prepared, including items such as:

a. the developer's commitment to make impact payments according to the amount, method and schedule shown in the plan to be sufficient to meet, in a timely manner, all identified increased capital and net operating costs resulting from the mineral development;

b. policies, activities, or non-financial commitments of the developer that will help prevent or mitigate potential adverse impacts;

c. policies or activities of the affected local government units that will help prevent or mitigate potential adverse impacts;

d. criteria and procedures for monitoring, adjusting or amending the plan that will afford the parties adequate flexibility to meet actual needs resulting from the mineral development in a timely manner without shifting the increased costs to the non-developer resident and taxpayer;

e. criteria and procedures appropriate to the implementation of the plan, including specified payment procedures;

f. if property taxes are to be prepaid, the criteria and methods by which the recipient local government unit will calculate and provide property tax credits during the productive life of the mine to the extent that this can be accomplished without shifting the cost over time to the non-developer taxpayer;

g. if the plan identifies a jurisdictional revenue disparity, which will result in tax base sharing, a statement that either adopts the statutory formula for tax base sharing or specifies how and why the plan has modified the tax base sharing formula;

h. if tax base sharing is anticipated, addition, the plan should reflect, throughout, the fiscal effects of tax base sharing.

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 inmigrants; housing needs and availability; service and facility needs and costs; and the timing of inmigration, 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 inmigrant and may need to address certain types of impacts associated with this group separately from impacts associated with inmigrating employees and their families.

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

3. Students and Inmigrating 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. **"Inmigrating mineral development student"** means a student whose parent or guardian is an inmigrating mineral development employee.

c. **"Inmigrating mine-related student"** means a student whose parent or guardian is a mine-related inmigrant.

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 inmigrating 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, inmigrating 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.

APPENDIX III
IMPACT PLAN
SAMPLE TABLE OF CONTENTS AND INDEX

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							
STILLWATER COUNTY	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
WELFARE MEDICAL	TAX PREPAY		SPECIFIC CLAIMS UNDER SPECIFIC CONDITIONS							
TOW N OF COLUMBUS	TAX PREPAY									
	C(A)-1		2,300							
ABSAROKEE ELEM.	TAX PREPAY	STUDENTS								
	AE(A)	>55	30,000							
	AE(A)	>68	40,000							
	AE(A)	>80	20,000							
	AE(A)	>90	16,100							
			106,100							
FACILITY EXP	BOND	>68	800,000							
ABSAROKEE H.S.	TAX PREPAY	STUDENTS								
	AH(A)-1	>36	20,000							
	AH(A)-2	>46	20,000							
	AH(A)-3	>56	18,400							
			58,400							
	AH(A)-4			2,400						
FACILITY EXP.	BOND	46	800,000							
COLUMBUS ELEM	TAX PREPAY	STUDENTS								
	CE(A)-1	>10	16,800							
	CE(A)-2	>14	10,000							
	CE(A)-3	>18	10.000							
			36,800							
	CE(A)-4	>16		7,850						
	CE(A)-5	>18		7,850						
				15,700						
	CE(A)-6	>18			5,700					
FISHTAIL ELEM	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	8,100							
			58,300							
	FE(A)-5	>21		10,300						
	FE(A)-6				2,000					
FACILITY EXP	GRANT	>18	52,000							
NYE ELEMENTARY	TAX PREPAY	STUDENTS								
	NE(A)-1	>5	9,000							
	NE(A)-2	>8	4,500							
	NE(A)-3	>10	4,200							
			17,700							
	NE(A)-4	>10		3,800						
	NE(A)-5	>15			1,000					
	NE(A)-6					2,000				
REMODELING	GRANT		45,000							
ABSAROKEE FIRE DIST	GRANT		26,000							
TOTAL OBLIGATION BY YEAR			**2,081,840**	**57,131**	**53,438**	**65,481**	**0**	**675,186**	**135,186**	**395,186**
TOTAL OBLIGATION	**(3,463,448)**									

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

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

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 '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 inmigrating 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.

TIME	ACTIVITY
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 As Needed	Board ISSUES FINDINGS of Fact, Conclusions of Law and Order Based on its determinations, Board AMENDS THE PLAN, if 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

	its receipt of the written guarantee.
Before Local Governments Incur Impact Costs or Developer Begins Activities Requiring and Requiring an Operating Permit	If taxes are to be prepaid, developer provides an acceptable FINANCIAL GUARNATEE to the Board. Board notifies DEQ that developer has met all requirements for an approved impact plan.

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 units(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.

APPENDIX XI - A
IMPACT PLAN PAYMENTS: SAMPLE FORMS

A. LOCAL GOVERNMENT'S REQUEST FOR PAYMENT

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

Local Government:

Please provide the following information when requesting a payment provided for in an approved impact plan:

a. Date: _____

b. Name of local government unit requesting the payment:
_____

c. Name of mineral developer:
_____

d. Amount requested: $_____

e. Amount authorized by Plan: $_____

f. Form of payment (i.e. tax prepayment, grant, etc.): _____

g. Page or payment citation in Plan or in impact payment schedule:_____

h. Purpose of payment (as specified in the approved impact plan):
_____
_____

Please also send a copy of the following to the Board:

a. **Impact Fund Budget**
Enclosed: _____
Under separate cover: _____
Sent previously (DATE) _____

b. **Signed resolution** by which the governing body adopted the impact budget or budget amendment.
Enclosed: _____
Under separate cover: _____
Sent previously (DATE) _____

c. Impact Fund Account No.: _____

Signature of the governing body or its authorized signatory: _____

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) ☐ (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) x (8) = (9).

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

(9) = (4), and
(9) + (1) + (3) = (2)

(b) An additional tax prepayment may be needed if

(9) is less than (4), and
(9) + (1) + (3) is less than (2)

(c) A tax credit is due if:

(9) is greater than (4), and
(9) + (1) + (3) 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)] x __ %.

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) [illegible]
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 inmigrating 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 inmigrating, 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 *inmigrating mine-related students* ***attending*** school within the district. Tax base sharing is based on the total number of *local and inmigrating 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.

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

3. by Elementary District

Elem. District #3	13	11%
Elem. District #4	58	51%
Elem. District #5	19	17%
Elem. District #6	24	21%
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

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

Percentage Adjusted for 20% Maximum Allocation to Municipalities

Adjustment:

Municipality A-1	3030 ÷ 80 = 38% X 20% =	7.6%
Municipality A-2	5050 ÷ 80 = 62% X 20% =	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%
Municipality A-2	50	12.4%	
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:

School Districts	Mill Levy	Taxable Valuation
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 **Gross Proceeds** Taxable Valuation
x .20	**20% Reserved** to Local Government in Which Ore Body is Located
$ 200,000	**Reserved Increase** in Taxable Valuation
$1,700,000	**Increase** in Taxable Valuation

- 200,000	**Reserved Increase** in Taxable Valuation
$1,500,000	**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	10%
	100% of unreserved increase in taxable valuation

2. High School Districts

H.S. Dist. #1	15%
H.S. Dist. #2	85%
	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	21%
	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

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

   b. Divide:

   Allocated Taxable Valuation - Current Total Taxable Valuation = Percentage of Current Total Taxable Valuation
   $225,000 ÷ $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

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

   b. Add:

Allocated Taxable Valuation	$1,275,000
+ 20% Gross Proceeds Taxable Valuation	200,000
+ Base Taxable Valuation	+ 500,000
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 ÷ $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:	1,050,000	(including base + 20% GPTV)
	$2,200,000	
H.S. District #1:	$ 225,000	
H.S. District #2:	1,975,000	(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:	1,015,000	(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:

Market Value of Taxpayer's Property (by class and code)
X Percentage of Total Taxable Value Allocated
Amount of Market Value Allocated to the Local Government Unit (including base and 20% GPTV if appropriate)

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	=	15,095
TOTAL:			$16,200
H.S. District #1	$16,200 X .1023	=	1,657
H.S. District #2	16,200 X .8977	=	14,543
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	=	7,475
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, procedura,l 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 inmigrating 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:

Gross Value of Product	**Rate of Tax** (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:

Gross Value of Product	**Rate of Tax** (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

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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 it's *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.