

LEGAL MEMO

TO: BYRON ROBERTS, EXECUTIVE DIRECTOR, MONTANA BUILDING  
INDUSTRY ASSOCIATION (MBIA)  
FROM: MICHAEL S. KAKUK, ATTORNEY  
RE: HB720  
DATE: MARCH 14, 2005

PURPOSE AND DISCLAIMER

You have asked me to review and briefly respond some of the Montana Association of Planners' (MAP) concerns regarding HB720. This is provided below.

ISSUES

MAP wants some assurance that nothing in HB720 is intended to, nor can be construed to, limit local governments' existing authority regarding the acceptance, review, or decision making process as it relates to a particular development application. Therefore, after reviewing HB720, and after discussing this issue with MBIA, the Sponsor, and MAP, it is my legal opinion that nothing in HB720 is intended to, or does, limit or restrict in any way the ability of a local government to accept, process, or make a decision regarding a particular application.

Specifically:

1. Under HB720, can a local government develop its own application submittal, review, approval, and utilization timelines? Yes. For example, HB720 does not impact in any way a local government's authority to require that a particular application be diligently prosecuted or that a particular approval be implemented within a certain period of time.
2. Under HB720, can a local government revoke a particular application approval for good cause? Yes. HB720 simply governs certain limited aspects of the "review process" by saying that, with certain exceptions, the regulations in effect at the time a development application is deemed complete are the regulations under which that

application is reviewed. HB720 does not concern itself with, nor does it impact in any way, the "approval process" or any post-approval action by the local government. If a local government feels that it currently has the authority to revoke an application for good cause, for example, the discovery of a hitherto unknown public health or safety threat, HB720 would not restrict that local government from revoking or otherwise amending that particular approval to mitigate the threat.

3. Under HB720, does the local government still have authority to adequately protect public health and safety? Yes. Using the above example, if a local government approves a development application and then discovers a threat to public health or safety, the local government would still have the authority, even if it did not "revoke" the approval, to mitigate or prevent the threat. This issue arose during the debates on the subdivision process bill, SB116, as well. SB116 clearly prohibits the governing body from considering any new information after three public hearings on the subdivision application and the concern was raised - What happens if the governing body finds discovers a threat to public health or safety after the hearing process is closed? Testimony from local governments indicated that at least two other avenues were available should, as unlikely as it may be, the developer still insist on proceeding even after the threat is discovered. These options included getting the local Board of Health to take action as authorized under Title 50, and some entity seeking a court injunction.

### CONCLUSION

Again, HB720 simply states that, with certain exceptions, the regulations in effect at the time a development application is deemed complete are the regulations under which that application is reviewed. HB720 is neither intended to, nor does, restrict, limit, or impact in any way, any other local government authority.

I hope that this brief response to MAP's concerns has been helpful. Please let me know if there is anything else I can do for you on this important issue.