

LEGAL MEMO

TO: CARY HEGREBERG, EXECUTIVE DIRECTOR, MONTANA
CONTRACTORS' ASSOCIATION (MCA)
FROM: MICHAEL S. KAKUK, ATTORNEY
RE: HB591 BILL MEMO - AS AMENDED IN HOUSE NATURAL
RESOURCES COMMITTEE
DATE: FEBRUARY 22, 2005

PURPOSE AND DISCLAIMER

You have asked me to briefly HB591 as amended in House Natural Resources. This is provided below.

Note. These comments are based on preliminary review only, therefore, additional research may be necessary before final decisions are made regarding this important issue. All comments are mine alone and should not be attributed to any other individual or organization.

As always, feel free to contact me with any questions, comments, or to further discuss this matter.

INTRODUCTION

HB591 was initially requested by Flathead County landowners as an attempt to clarify existing local government zoning authority over sand and gravel operations, including asphalt and concrete operations. As amended, HB591 received strong support from MCA members, county officials, as well as the area landowners.

SECTION ANALYSIS

SECTION 1, 76-2-209(1), PAGE 1, LINES 12 THROUGH 15:

This subsection clarifies that the long standing prohibition on local government regulation of the complete use, development, or recovery of sand and gravel is limited by subsection (2).

SECTION 1, 76-2-209(2), PAGE 1, LINES 16 THROUGH 20:

This subsection clarifies that sand and gravel operations, or asphalt or concrete operations, may be reasonably conditioned, or prohibited, in residential zones. HB591 also clarifies that it is the board of county commissioners that defines "residential" for their jurisdiction.

SECTION 1, 76-2-209(3), PAGE 1, LINES 21 THROUGH 24:

This subsection clarifies that sand and gravel operations, or asphalt or concrete operations, may be reasonably conditioned, but not prohibited, in any zone other than residential.

Note: A question was raised during executive action regarding whether or not HB591 would allow local governments to go back and impose new regulations on existing gravel operations. HB591 is in no way retroactive and local governments would not be able, under Montana zoning laws, to impose zoning regulations on existing operations. (See for example, §76-2-208, MCA) However, if a pre-zoning operation was changed in such a manner that triggered the state permit process, then the new zoning regulations would have to be met.

CONCLUSION

MCA believes, and I agree, that HB591 does not substantively change existing law, but merely serves to clarify local government zoning authority over sand and gravel operations.

I hope this brief recap of the initial research on the amended bill has been useful. If I can be of further service regarding these or other issues, please let me know.