

SENATE BILL NO. 433

INTRODUCED BY K. GEBHARDT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE APPLICABILITY OF ZONING REGULATIONS TO
5 SAND AND GRAVEL OPERATIONS; PROVIDING THAT A PROPOSED OPENCUT OPERATION THAT HAS
6 PROVIDED PUBLIC NOTICE IS NOT SUBJECT TO ZONING REGULATIONS ADOPTED AFTER THE NOTICE;
7 REQUIRING PUBLIC NOTICE FOR OPENCUT OPERATIONS; PROVIDING FOR A PUBLIC MEETING;
8 REVISING REVIEW CRITERIA; PROVIDING FOR AN EXTENDED REVIEW PERIOD; AMENDING SECTIONS
9 76-2-109, 76-2-206, 76-2-208, 76-2-209, AND 82-4-432, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
10 DATE AND AN APPLICABILITY DATE."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 76-2-109, MCA, is amended to read:
15 **"76-2-109. Effect on natural resources.** (1) ~~No~~ A planning district or recommendations adopted under
16 this part ~~shall~~ may not regulate lands used for grazing, horticulture, agriculture, or the growing of timber.
17 (2) A planning district or recommendations adopted under this part may reasonably condition but may
18 not prohibit the complete use, development, or recovery of a mineral by an operation that mines sand and gravel
19 or an operation that mixes concrete or batches asphalt."

20
21 **Section 2.** Section 76-2-206, MCA, is amended to read:
22 **"76-2-206. Interim zoning map or regulation.** (1) The board of county commissioners may adopt an
23 interim zoning map or regulation as an emergency measure in order to promote the public health, safety, morals,
24 and general welfare if:
25 (a) the purpose of the interim zoning map or regulation is to classify and regulate those uses and related
26 matters that constitute the emergency; and
27 (b) the county:
28 (i) is conducting or in good faith intends to conduct studies within a reasonable time; or
29 (ii) has held or is holding a hearing for the purpose of considering any of the following:
30 (A) a growth policy;

1 (B) zoning regulations; or

2 (C) a revision to a growth policy, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2), or
3 to zoning regulations pursuant to this part.

4 (2) ~~An~~ Except as provided in subsection (3), an interim resolution must be limited to 1 year from the date
5 it becomes effective. The board of county commissioners may extend the interim resolution for 1 year, but not
6 more than one extension may be made.

7 (3) An interim resolution adopted under this section may not prohibit an opencut operation as defined
8 in 82-4-403. The resolution may delay the commencement of an opencut operation for 120 days and may then
9 impose reasonable conditions on an opencut operation for up to 8 months."

10

11 **Section 3.** Section 76-2-208, MCA, is amended to read:

12 **"76-2-208. Continuation of nonconforming uses.** Any lawful use ~~which that~~ is made of land or
13 buildings or any lawful use for which an application has been submitted pursuant to 82-4-432 at the time any
14 zoning resolution is adopted by the board of county commissioners may be continued although ~~such the~~ use does
15 not conform to the provisions of ~~such the~~ resolution."

16

17 **Section 4.** Section 76-2-209, MCA, is amended to read:

18 **"76-2-209. Effect on natural resources.** (1) Except as provided in 82-4-431, 82-4-432, and subsection
19 (2) of this section, a resolution or rule adopted pursuant to the provisions of this part, except 76-2-206, may not
20 prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner
21 of any mineral, forest, or agricultural resource.

22 (2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel
23 or an operation that mixes concrete or batches asphalt may be reasonably conditioned or prohibited on a site that
24 is located within a geographic area zoned as residential, as defined by the board of county commissioners.

25 (3) Zoning regulations adopted under this ~~chapter part~~ may reasonably condition, but not prohibit, the
26 complete use, development, or recovery of a mineral by an operation that mines sand and gravel and may
27 condition an operation that mixes concrete or batches asphalt in all zones other than residential."

28

29 **Section 5.** Section 82-4-432, MCA, is amended to read:

30 **"82-4-432. Application for permit -- contents -- issuance -- amendment.** (1) An application for a

1 permit must be made using forms furnished by the department and must contain the following:

2 (a) the name of the applicant and, if other than the owner of the land, the name and address of the
3 owner;

4 (b) the type of operation to be conducted;

5 (c) the estimated volume of overburden and materials to be removed;

6 (d) the location of the proposed opencut operation by legal description and county;

7 (e) the date when the opencut operation is proposed to commence; and

8 (f) a statement that the applicant has the legal right to mine the designated materials in the lands
9 described.

10 (2) The application must be accompanied by:

11 (a) a bond or security meeting the requirements as set out in this part;

12 (b) a statement from the local governing body having jurisdiction over the area to be mined certifying that
13 the proposed sand and gravel opencut operation complies with applicable local zoning regulations adopted under
14 Title 76, chapter 2;

15 (c) a plan of operation ~~that meets the requirements of 82-4-434; and~~

16 (d) written documentation that the landowner has been consulted about the proposed plan of operation;
17 and

18 (e) for initial applications, documentation that public notice was provided pursuant to subsection (3),
19 including a list of property owners given notice by mail.

20 (3) The public notice required by subsection (2) must include:

21 (a) the name, address, and telephone number of the applicant;

22 (b) a description of the acreage, facilities, duration of activities, and main access point of the proposed
23 opencut operation;

24 (c) a map showing the location of the proposed opencut operation and immediately surrounding property;
25 and

26 (d) information on how to request a public meeting pursuant to this section.

27 (4) To provide public notice required by subsection (2), the applicant shall:

28 (a) publish notice at least twice in a newspaper of general circulation in the locality of the proposed
29 opencut operation, except that a legal description of the opencut operation may be substituted for the map
30 required in subsection (3);

1 (b) mail the notice by first-class mail to the board of county commissioners of the county in which the
 2 proposed opencut operation is located and to property owners within one-half mile of the proposed opencut
 3 operation using the most current known property owners of record as shown in the records of the county clerk
 4 and recorder in the county where the proposed opencut operation is located; and

5 (c) post the notice in at least two prominent locations at the site of the proposed opencut operation,
 6 including near a public road if possible.

7 (5) The department may hold a public meeting either at the applicant's request or upon the request of
 8 30% of the property owners within one-half mile of the proposed opencut operation made within 15 days of the
 9 mailing of the public notice.

10 (6) The public notice and a public meeting, if held, must occur within the period of time allotted pursuant
 11 to this section for processing a permit application.

12 ~~(3)~~(7) If, prior to applying for a permit, a person notifies the department of the intention to submit an
 13 application and requests that the department examine the area to be mined, the department shall examine the
 14 area and make recommendations to the person regarding the proposed opencut operation. The person may
 15 request a meeting with the department. The department shall hold a meeting if requested.

16 ~~(4)~~(8) (a) (i) Except as provided in 75-1-208(4)(b), upon receipt of an application containing all items
 17 listed in subsections (1) and (2), the department shall, within ~~30~~ 5 business days, review the application; ~~inspect~~
 18 ~~the proposed site,~~ and notify the person as to whether or not ~~the department believes that~~ the application is
 19 acceptable complete. An application is acceptable complete if it ~~complies with all requirements of~~ contains all of
 20 the items listed in subsections (1) and (2). If the department determines that the application is not acceptable
 21 complete, the department shall ~~include in the notification~~ notify the applicant in writing and include a detailed
 22 identification of all deficiencies.

23 (ii) The time limits provided in subsection (8)(a)(i) apply to each submittal of the application until the
 24 department determines that the application is complete.

25 (iii) A determination that an application is complete does not ensure that the application will be approved
 26 by the department and does not limit the department's ability to request additional information during the review
 27 process within the timelines provided in subsection (8)(c).

28 (iv) The department may declare an application abandoned and void if the applicant fails to respond to
 29 the department's written request for more information within 1 year.

30 (b) The department shall determine if the application warrants an extended review pursuant to [section

1 6]. If an extended review is not warranted, the application must be processed in accordance with this section.

2 ~~(b)(c)~~ Within 30 days of receipt of the applicant's responses to the identified deficiencies a complete
 3 application, the department shall review the application, inspect the proposed site if the department determines
 4 an inspection is necessary, and notify the applicant if as to whether or not the application is acceptable or not.
 5 If the application is unacceptable, the notice must include a detailed explanation of the remaining deficiencies.
 6 An application is acceptable if it complies with the requirements of subsections (1) and (2). If the department
 7 determines that the application is not acceptable, the department shall notify the applicant in writing and include
 8 a detailed identification of all deficiencies.

9 (d) Within 30 days of receipt of the applicant's response to the identified deficiencies, the department
 10 shall review the responses and notify the applicant as to whether or not the application is acceptable. If the
 11 application is unacceptable, the department shall notify the applicant in writing and include a detailed identification
 12 of the deficiencies.

13 ~~(e)(e)~~ The department may for sufficient cause extend ~~either or both of the 30-day review periods in~~
 14 subsection (8)(c) or (8)(d) for an additional 30 days if it notifies the applicant of the extension prior to the end of
 15 the respective original 30-day period. The department shall include in the notification of extension the reason for
 16 the extension.

17 ~~(d)(f)~~ If the application is acceptable, the department shall issue a permit to the operator that entitles the
 18 operator to engage in the opencut operation on the land described in the application.

19 ~~(5)(9)~~ An operator may amend a permit by submitting an amendment application to the department.
 20 Upon receipt of the amendment application, the department shall review it in accordance with the requirements
 21 and procedures in subsection ~~(4)~~ (8). If the amendment application is acceptable, the department shall issue an
 22 amendment to the original permit."
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24 **NEW SECTION. Section 6. Extended review -- criteria -- timeframes.** (1) The department may
 25 subject an opencut application to an extended review if:

26 (a) the department determines that comments received at a public meeting held pursuant to 82-4-432
 27 reveal substantial issues not addressed in the plan of operation submitted with the application; and

28 (b) the duration of the proposed opencut operation is expected to exceed 5 years.

29 (2) (a) For a complete application subject to an extended review, the department shall within 90 days
 30 review the application, inspect the proposed site if the department determines an inspection is necessary, and

1 notify the applicant as to whether or not the application is acceptable. If the application is unacceptable, the notice
2 must include a detailed explanation of the deficiencies. An application is acceptable if it complies with the
3 requirements of 82-4-432(1) and (2).

4 (b) Within 30 days of receipt of the applicant's response to the identified deficiencies, the department
5 shall review the responses and notify the applicant as to whether or not the application is acceptable. If the
6 application is unacceptable, the department shall notify the applicant in writing and include a detailed identification
7 of the deficiencies.

8 (c) The department may for sufficient cause extend either or both of review periods in subsection (2)(a)
9 or (2)(b) for an additional 30 days if it notifies the applicant of the extension prior to the end of the respective
10 original period. The department shall include in the notification of extension the reason for the extension.

11 (d) If the application is acceptable, the department shall issue a permit to the operator that entitles the
12 operator to engage in the opencut operation on the land described in the application.

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14 **NEW SECTION. Section 7. Codification instruction.** [Section 6] is intended to be codified as an
15 integral part of Title 82, chapter 4, part 4, and the provisions of Title 82, chapter 4, part 4, apply to [section 6].

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17 **NEW SECTION. Section 8. Effective date.** [This act] is effective on passage and approval.

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19 **NEW SECTION. Section 9. Applicability.** [Sections 3, 5, and 6] apply to permit applications pursuant
20 to 82-4-432 submitted after [the effective date of this act].

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