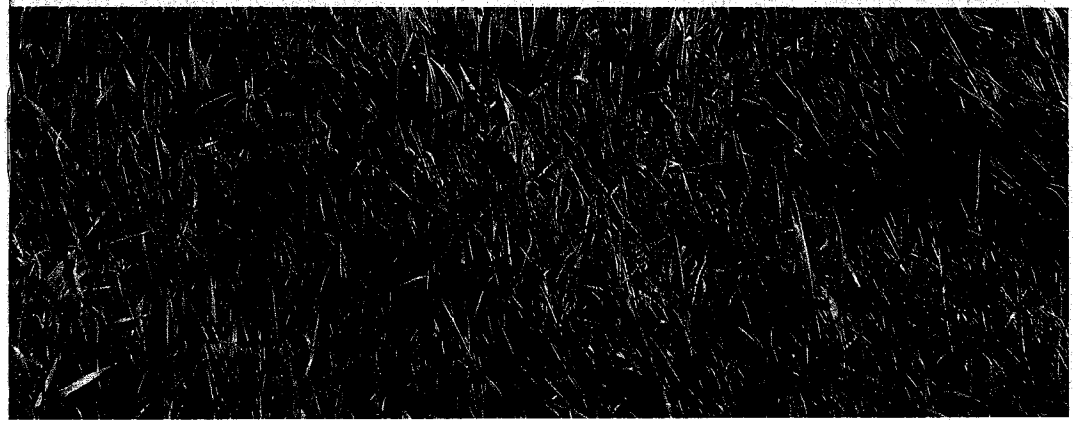
EXHIBIT 3
DATE 2/9/2009
HB 359

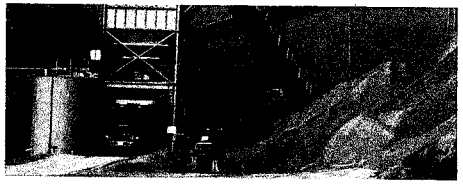
SAND & GRAVEL OPERATIONS IN MONTANA

The most critical building resource of our growing society.



SAND & GRAVEL 101

Communities throughout Montana are grappling with the emotional issue of where to site sand and gravel operations and the associated facilities that process asphalt and concrete. Until recently, gravel was simply a ubiquitous commodity that most people didn't give much thought. But many Montana communities have experienced significant, rapid growth, resulting in consumption of massive quantities of sand and gravel. And because they are finite resources, there is a pressing need for additional sources of these critical building materials.



Gravel is the foundation

Used for nearly every road and building in the world, aggregate –sand, gravel and crushed stone–is a critical component of our society and economy. With over 16 billion tons of aggregate produced worldwide every year, it represents a major component of mining today. Gravel is the foundation of growth and development, and a crucial resource in nearly all construction. Gravel is the base material under roads, buildings and parking lots and the main ingredient in asphalt and concrete. Sand and gravel operations provide the material for infrastructure construction. To build and sustain a society, we simply must have sand and gravel resources.

Everyday life in Montana depends on infrastructure constructed with gravel. It's in the roads, bridges and highways we drive on; sidewalks we walk on; houses and subdivisions where we live; and buildings where we work, shop and eat. The need for gravel is paramount to construction and growth. Building and sustaining growth without a cost-effective means of obtaining this resource is not possible.

Where's it found?

Gravel, as an extracted resource, is simply not found everywhere. In general, gravel is typically found in river valleys where the water table is high, and in alluvial floodplains along streams and in glacial deposits. Like any important resource it must be extracted where it is found, not "somewhere else" where people wish it was. Montana is no different.

THE ISSUES

There are obvious opponents and proponents to sand and gravel operations. The intricacies of the issues are vast. Everything from zoning regulations, private property rights, reclamation standards, environmental impact assessments, growth policies, good neighbor practices, rising costs, sustainable development programs and others add to the complexity of the issue.

Meeting construction needs while addressing concerns about human relations in the community is the goal. Proper reclamation of gravel sites for future use is also paramount. A delicate balancing act must occur. Regulation measures should be undertaken with a clear understanding of real impacts to public health and safety.

There, but not here

Given the choice, most people would like sand and gravel to come from somewhere other than near where they live. Understandably, they prefer to avoid the dust, noise, traffic and visual aspects associated with gravel operations. In various communities around the state, people have effectively mobilized opposition to proposed new gravel extraction sites, and they have taken their case to county planning boards, elected commissioners and to the Montana Department of Environmental Quality. Their message is consistent: "We're not against gravel operations, we just don't want one here."

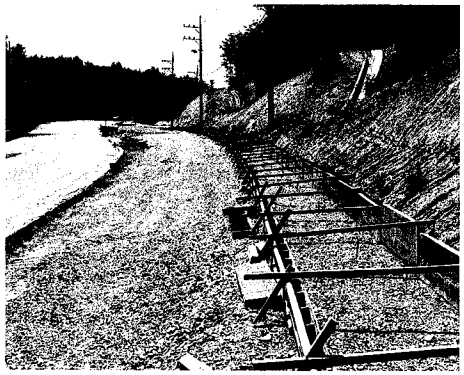
The need

However, people expect and demand better roads, streets and highways. They want new freeway interchanges and ample parking. They want bike paths, swimming pools and skateboard parks. They want attractive subdivisions and affordable homes. All require huge volumes of gravel. If public officials deny gravel operations anywhere they are unwanted by neighbors, it stands to reason that gravel sources will no longer be located close to where the gravel, concrete and asphalt are actually needed. Therein is the crux of the issue.

Proximity importance

It is important that sand and gravel sources be located close to where construction activity occurs. Longer haul distances to transport asphalt, concrete and base gravel would result in dramatically higher prices to consumers/taxpayers. It translates into additional heavy truck traffic that would burn thousand of gallons of additional fuel, creating additional air pollution. It also results in unnecessary wear and tear on taxpayer-funded roads and creates traffic disturbances in already congested communities.

Gravel must be extracted from where the gravel is—not simply where people can agree it should come from. The closer sand and gravel operations are located to construction projects, the lower the associated costs, environmental impacts and traffic and safety issues.



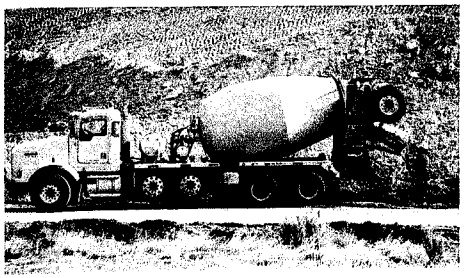
Financial impact

Affordable housing becomes more elusive, and tax-funded infrastructure becomes significantly more expensive the further gravel sources are from where construction occurs. The cost of local gravel in Montana is normally about $4 to $5 per cubic yard, while imported gravel in some parts of the U.S. can cost up to $75 a yard. At that increase, you don't have to be an accountant to see how important it is for gravel operations to be located near the sites of construction.

The cost of gravel, asphalt and concrete increases with every additional mile it must be transported. As more fuel is consumed and the price of diesel fuel continues to rise, substantial increases in costs can be expected if gravel operations are pushed further and further away from the communities they serve.

Environmental impact

While opponents often allege gravel operations in populated areas are an environmental threat, the actual environmental impacts are more pronounced when we don't use the natural resources where they are found.



The further hauling distances are, the more diesel fuel is consumed, and the more air pollution is created. Trucks and tires wear out faster, adding to the "carbon footprint" in the manufacture of replacements.

In addition, greater hauling distances lead to faster deterioration of taxpayer-funded public roads and bridges, which must be repaired/replaced more often, consuming even more resources. With the concerns over climate change, haul distance should be considered when weighing the politics, community impact and environmental impact of locating new gravel operations.

Opponents also cite water quality issues which, in fact, are rare. The Montana Department of Environmental Quality performs thorough environmental reviews prior to issuing permits for gravel operations, assuring citizens of both the quality and quantity of water.

BEING A GOOD NEIGHBOR

Balanced solutions are needed. The Montana Contractors' Association, which represents most of the larger gravel producers in the state, has developed a Good Neighbor Policy that addresses the concerns most often expressed by local residents. We intend to raise the bar of performance by encouraging gravel operators to implement these policies and incorporate them into their legal permits.

Our policy

We're proud that our member companies have been partners in building better communities throughout the state by adopting a Good Neighbor Policy that deals with:

- Dust
- Noise
- Visual impacts
- Traffic safety
- Hours of operation
- Weed management
- Notices to neighboring residents

To view MCA's entire Good Neighbor Policy, visit www.montanagravel.org

Permitting and enforcement

Contrary to popular belief, Montana provides tight permitting procedures and regulatory oversight for sand and gravel operations at both state and local levels.

- Montana open cut mining laws regulate sand and gravel operations (MCA Title 82-Ch 4) and require guidelines for reclamation procedures (ARM Title 17-Ch 24).
- Gravel operations are subject to the Montana Environmental Policy Act, which requires the Montana Department of Environmental Quality to conduct environmental assessments on every proposed operation. The MDEQ also issues permits for all gravel operations which specify "conditions" under which they operate. (www.deq.state.mt.us/opencut/index.asp)
- Local governments approve and oversee zoning and land use regulations that often result in additional "conditions" on gravel operations.

Reclaiming the land

Perhaps one of the most important aspects of sand and gravel operations is the reclamation of the land. While some sand and gravel operations are long-term commercial sites, others are more project-specific and of short duration. Having an appropriate reclamation plan for either type is essential.

Montana law requires operators to reclaim gravel mine sites within one year after mining activities have ceased. In addition, owners and operators are required to provide and maintain financial assurance in the form of a surety bond, to ensure that the reclamation activities will be accomplished after mining stops.

In Montana, sand and gravel operations are increasingly viewed as a temporary use to be followed by another land use that is compatible with the surrounding landscape. There are a variety of appropriate end uses for sand and gravel operations ranging from agricultural and forestry uses, fish and wildlife habitat, recreation areas, urban building sites to industrial development. In some cases, reclamation has been so successful that the sites are no longer recognizable as former gravel operations. Other sites can be found where unassisted, natural revegetation has successfully occurred. Most permit applicants provide a reclamation plan and some former gravel sites have been turned into community assets; Beavertail State Park on the Clark Fork River is one example.

Fisher Site near Sula, Montana before reclamation, 1996.

Fisher Site after reclamation, 2001.

Aerial photo of Stoner Site in Whitefish, Montana during operation, 2004.

Early phase of Stoner Site reclamation. Future site of a new Whitefish City Park.

OUR COMMITMENT

The Montana Contractors' Association was created 70 years ago to represent the collective interests of construction companies. As the construction profession has grown more diverse, more complex and more vulnerable to political decisions, the MCA has been stretched to meet the multitude of expectations and demands.

Because the availability and cost of sand and gravel resources in Montana is pivotal to all construction in the state, we are committed to finding reasonable, practical legislative and regulatory approaches to permitting gravel operations that protect public health, safety and the environment.

The Montana Contractors' Association stands ready to assist. As a state, Montana must find a realistic balance between economic growth and environmental protection. We cannot simply say "no" every time there is opposition to a legitimate project. We need to work together to meet the needs of our growing communities.

CALL TO ACTION

Construction projects around Montana consume about 18 million cubic yards of gravel annually (more than one large truckload for every resident!), which must be extracted and processed in communities throughout the state. Gravel is the foundation of growth and development, and a crucial resource in all construction. Building and sustaining growth without cost-effective means of obtaining this resource is extremely difficult.

The Montana Contractor's Association and its members understand that there are many public concerns about sand and gravel operations, the permitting process, how they are monitored and reclamation of sites. We embrace the need to "raise the bar" of performance. We stand ready, as an organization representing Montana's gravel producers and construction professionals, to make positive changes that move Montana in a better direction.

Knowledge is power. Understanding the issues surrounding sand and gravel operations in Montana is important to our cause and yours. We implore you to know the facts, understand the need and get involved.

To learn more, please visit our web site: www.montanagravel.org or call (406) 442-4162

WHAT WE PROPOSE

Complicated issues need thorough review. Steps in the legislature and policies at the local level to address the issues surrounding gravel operations in Montana are vital. The Montana Contractors' Association and represented members propose some solutions to this important concern:

Adequate Funding for the MDEQ

In order to meet the growing needs for permitting of sand and gravel operations, the Montana Department of Environmental Quality needs adequate funding to perform environmental analysis and enforcement of on-site inspections. MCA also supports time tables for processing permit applications that allow for adequate analysis and discussion.

Adequate Notice to the Public

Adequate notice of proposed sand and gravel operations will allow local government and the public to comment on proposed sites and discuss the issues. Our Good Neighbor policies promote this, and we support laws that require it.

Appropriate Regulation

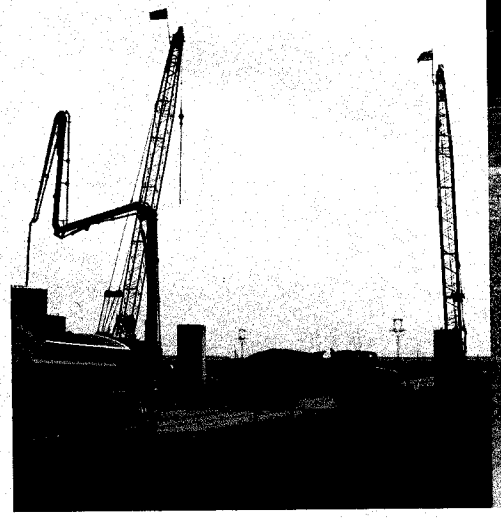
The State DEQ and local governments need clear lines of authority for regulation regarding land use. The rights and authority to impose conditions on and restrict gravel operations need to be clearly defined. Currently, the State DEQ has jurisdiction over environmental quality, permitting processes and compliance oversight. Local governments have jurisdiction over zoning and land use planning, and can place additional restrictions on operations. It is imperative that these roles be clear and not in conflict or duplicative.

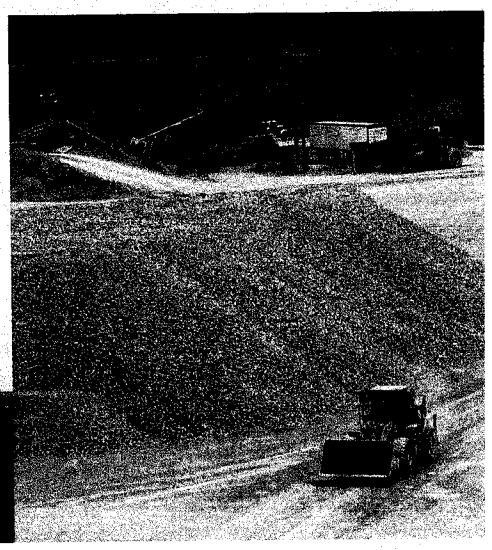
Future Zoning Authority

Local government should have the authority for land use zoning and should have the right to zone appropriate locations for sand and gravel operations, now and in the future. In addition, landowners should have reasonable rights to protect their future right to mine and process gravel. Full disclosure of zoning would alert neighbors, potential buyers and residents that the land is zoned to allow for sand and gravel operations. MCA urges local governments to assist landowners in protecting their land rights and take a proactive approach to land use planning.

Balance of Property Rights

Landowners have rights to extract the value of resources on their property. Adjacent landowners also have rights to the peaceful enjoyment of their property. Balancing property rights of both is a constant challenge and the MCA works diligently to assist decision makers in developing appropriate policies.





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"Good Neighbor" Policy for Montana Gravel Operations

The following guidelines and conditions are based on the "Good Neighbor Policy" for gravel operations originally prepared by the Gallatin County Planning Department. It is understood that not all of these conditions will be applicable at every operation and that certain additional accommodations will be developed based on site-specific situations. Companies that are members of the MCA have agreed to adopt this policy for their current and future operations, and they strongly encourage all Montana gravel operations—both private and public--to do likewise. It is understood that this document is a work in progress and will refined and modified as situations dictate.

1. When seeking permits for new/expanded open cut mines or processing facilities, operators should make reasonable efforts to notify adjoining or nearby property owners, beyond what may be required by law if these neighbors may have reasonable concerns about the operation.

2. Prior to operating the sand and gravel mining operation, an approved Weed Management Plan for the site shall be obtained from the appropriate County Weed Control District. Notwithstanding the above, stockpiled topsoil and overburden berms shall be revegetated in accordance with the plan approved by the County Weed District.

3. Prior to commencing operation, a Traffic Impact Analysis may be required to determine the nature and extent of impacts of the operation on all federal, state or local transportation facilities. If warranted, operators may be required prior to commencement of operations to improve roads and other transportation infrastructure to mitigate impacts caused by the operation. Therefore, after issuance of a permit under the Opencut Mining Act and prior to commencing operations and issuance of any required encroachment permit onto any federal, state or county road, the Operators must enter into an agreement with the County and/or the Montana Department of Transportation that details the nature and extent of road and transportation improvements the operator will complete and the timing of those improvements. Operators should complete all required improvements within six (6) months of commencing operations.

4. Where applicable, the operator shall restrict the hours of operation to 7:00 a.m. – 7:00 p.m. Monday thru Friday. When exceptions to these hours are necessary to provide materials for extraordinary circumstances such as large or time-sensitive projects, the operator may notify and request the consent of both the Montana Department of Environmental Quality and the County Commission.

5. Trucks should avoid traveling through any school zones during the hours of 7:45 a.m. to 9:00 a.m., and 3:00 p.m. to 4:00 p.m., unless other routes are not available.

6. The use of jake brakes on hauling trucks is discouraged and should be avoided. If jake brakes are necessary in certain circumstances for public safety, they must be properly muffled in accordance with industry standards.

7. Any light used for the operation shall be directed in such a way as to be contained within the boundaries of the property and shall be hooded, screened or directed in a manner that minimizes impacts to the adjoining property owners or the neighborhood. Lights shall be extinguished at the close of business each day, with the exception of limited security lighting.

8. Gravel storage piles shall generally not exceed 30 feet in height, as visible above adjacent ground level.
9. No overnight residential use, camping, or evidence thereof, shall take place on the site.

10. The operator shall enforce safety measures, including preventing overfilled trucks, covering loads when required by law, education of truck drivers, and monitoring driver performance.
11. Dust abatement shall be performed consistently and conscientiously to minimize impacts to the surrounding properties and general air quality. Dust control will be monitored by onsite personnel during all hours of operation, and will be accomplished by the use of a combination of tarps, water, and spray bards. Fugitive dust from stockpiles and the site itself will be controlled through the use of sprinklers, water trucks and/or a combination of water and tactifier as needed.

12. The operator shall ensure a visual barrier made of natural materials reasonably screens adjacent property owners from activities in the gravel pit. Operators should store/park equipment in an orderly fashion in the least obtrusive manner as is practicable. Abandoned equipment should be sold or salvaged to minimize the "junkyard" appearance of the operation.

13. Fuel containment measures shall be utilized as required by the application to DEQ.

14. Drainage plans for the gravel operations shall be submitted to DEQ for prior approval.

15. Any federal, state or locally adopted Best Management Practices relating to roads and construction sites shall be strictly adhered to.

16. Where appropriate, when mining will occur in the water table, operators will complete a thorough hydrologic study of the site and immediate surrounding area. Upon completion of the study the operator, in conjunction with the DEQ Opencut Division, shall place monitor wells as required around the perimeter of the site. These wells will

be monitored and depths measured periodically and recorded on a data base that will be shared with DEQ. Wells will also be sampled before mining begins, and every six months, or as required by DEQ. When possible, these wells and the data base will be in place at least six months prior to any mining activity. All data collected within the jurisdiction of a County Local Water Quality District shall also be provided to the District.

17. The applicant shall obtain a letter from the local fire district or fire service area having jurisdiction stating all access, parking, fire suppression, and emergency evacuation plans are acceptable.

18. Blasting operations may only occur upon 24 hour written notice to all landowners within 2500 feet of the site.

19. Sound-dampening measures shall be implemented on appropriate equipment on site to minimize noise impacts.

20. Signage, approved by the Gallatin County Road and Bridge Department and/or the Montana Department of Transportation, shall be erected to alert vehicular and pedestrian traffic to the presence of heavy truck travel along all main travel routes within an appropriate distance from the site.

21. All parking areas for employee vehicles and company vehicles shall be provided onsite.

22. The applicant shall store hazardous materials such as motor vehicle fuels in a manner mandated by MSHA and the DEQ.

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1. Page 1, line 27
Strike: "proposed"
Strike: "addresses"
Insert: "meets"

2. Page 1, line 28
Strike: "."
Insert: "; and

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

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

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

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

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

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

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

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

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

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

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

(6) A public meeting, if held, must occur within the period of time allotted pursuant to this section for processing a permit application."

3. Renumber sections

4. Page 2, Line 21
   Strike: "(4)"
   Insert: "(8)"

5. Page 2, line 21
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   Insert: "acceptable"

6. Page 2, line 24 through Page 4, line 8.
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