

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Senator Thomas F. Keating, on February 1, 1989, at 1 pm in Room 405 of the State Capitol.

ROLL CALL

Members Present: Senators: Thomas F. Keating, Larry Tveit, Fred VanValkenburg, Loren Jenkins, Darryl Meyer, Lawrence Stimatz, Bill Yellowtail, Elmer Severson, Dorothy Eck, and Jerry Noble.

Members Excused: None

Members Absent: Senators Pete Story and Cecil Weeding

Staff Present: Bob Thompson and Helen McDonald

HEARING ON SB 226

Presentation and Opening Statement by Sponsor: Senator Matt Himsl, District #3, sponsored this bill that deals with cabin sites situated on the lakes and streams in western Montana. The Forest Division, Department of State Lands, has the responsibility for these cabin sites. They are usually located in mountainous terrain in areas that are forest land. (Exhibit 3)

The Department of State Lands submitted written testimony. (Exhibit 1)

Announcement:

Dennis Casey, Commissioner designee of the State Department of Lands, introduced himself and offered to help the committee in any way he can.

List of Testifying Proponents and What Group They Represent:

John North, Chief Legal Counsel, Department of State Lands. (Exhibit 2)

List of Testifying Opponents and What Group They Represent:

None

Questions from the Committee:

Senator Jenkins mentioned that the wording on lines 21 and 22 was not correct.

Senator Keating stated the wording should read "The board shall set the value.."

Senator Jenkins wanted to know if the cabins owned by the people are only leasing the bare ground from DSL.

Mr. North answered that was correct.

Senator Eck assumed the evaluations were based on the market value of the lots. If a lessee had money invested in the cabin is the value of the cabin included with the value of the land.

John North stated the the lessee can request the lease be assigned when he sells.

Senator Eck asked if the lessee can recoup his investment?

John North answered that he could.

Senator Eck stated that a couple of years ago there was a lot of talk about states whose lease policies were challenged in court and were forced to increase the receipts. She wondered if Montana ever had a bill to address this issue.

Mr. North stated not in recent years. An attorney general's opinion in the last 5 years interpreted some of those cases from the other states. Mr. North indicated that even though the legislature sets the minimum grazing rental, it is the duty of the Board of Land Commissioners to get full market value and raise the minimum rental. There was a Supreme Court decision out of the State of Arizona last year regarding mineral leasing where the legislature set a maximum rate the State Land Board could charge for its royalties for certain minerals. The Arizona Supreme Court struck that down as violating the full market value concept.

Senator Eck recalled that some of these states increased their receipts from state lands by several hundred percent. She wondered if Montana was getting full value from the leases.

John North stated the State Land Board commissioned a study on its grazing lands to determine if the department was attaining full market value. The results indicated

that the state was attaining full market value. There has not been any comprehensive study on agriculture and other sites recently.

Senator Keating asked if these sites are raw land that are leased out, and if the lessee then builds a cabin on them?

Mr. North stated a cabin or home is built on some of these sites in eastern Montana. The eastern Montana lands were acquired by the state in the 1930's.

Senator Keating wondered if the state has any overhead on these lands for maintenance, or does the lessee pay for the improvements.

Mr. North answered that the lessee pays for improvements.

Senator Keating asked if the state received any intangible value from the improvements by the lessee in increasing the value of the land.

Mr. North answered none.

Senator Keating wondered if the rental fee could only be changed at the end of the 5 to 10 year term or could it be changed within the term of the contract.

Mr. North stated the department has been appraising those contracts as they expire.

Senator Keating wondered if the new lease had the new value in it.

Kelly Blake, DSL, stated there was a difference between the tracts in western Montana and eastern Montana. The leases in eastern Montana have a 5-year provision that the values would be adjusted to reflect current market value. When the department combined the Forest Division with the DSL, two different and separate methods of doing business were combined. The department is trying to connect all these leases when they come up for renewal to one special lease. Some leases are for 15 years in eastern Montana.

Senator Severson asked about the criteria used to arrive at the value.

John North answered that the 150 home sites in eastern Montana have not been appraised. The DSL has appraised the tracts in western Montana that were on classified forest lands. The department has been

contacting the county assessors in eastern Montana to get an evaluation based on rural subdivision-type property.

Senator Severson asked if the department compares them with a subdivision.

Senator Keating stated that this is rural farmstead-homestead type property, not a city subdivision evaluation.

Senator Jenkins asked what DSL got from other cabins.

Mr. North answered there are two situations, classified forest lands where the majority of cabin sites are located and subject to timber sales, and the eastern Montana sites.

Senator Jenkins asked how many lots make up an acre and how much does the department receive.

Mr. North answered he didn't have that figure today.

Senator Jenkins asked if the department would estimate less than \$100 an acre.

Mr. North stated he really didn't know. The state has roughly a half million acres of timber land. Mr. North does not handle the timber area but thought it would be quite a bit more than \$100 an acre depending on the type of timber.

Senator Jenkins wanted to know what ground identical to the ground rented for cabin sites would produce over a 20-year period.

Mr. North stated that would have to be projected depending on the area over a 80 to 110 year basis because of timber growth cycle.

Senator Severson asked if the lots were half-acre lots.

Mr. North answered that size of the lots on the lakes is half-acre. The ones in eastern Montana are five to six acres.

Senator Story indicated the state was sells about 30 million board feet a year of timber. The legislature has given the DSL means to implement sales of about 50 million board feet per year. There is a half million acres involved. The state gets about \$40 per thousand board feet, so a lot would yield about \$5.00 a year for

timber.

Senator Keating asked about legislation to give the DSL opportunity to sell.

Mr. North answered that Senator Manning has a bill that would allow the DSL to sell cabin sites on timber land and navigable streams over a 10-year period.

Senator Keating asked if the department could dispose of lake lots.

Mr. North answered that if the bill passes, the department will be able to sell lake lots.

Senator Keating asked about the department's option to auction or negotiate sales.

John North answered the bill provides that DSL could sell only if the existing lessee makes application to the board to purchase the property.

Senator Eck asked what the department's policy was for leasing additional lands.

Mr. North answered that the the number of cabin and home sites has remained pretty much stable.

Closing by Sponsor

Senator Hims1 stated that this bill allows an appraisal subject to the 5-year reappraisal that the rest of the lands go through. If there is a judgment that the appraisal has been too low or high, the lessees are subject to the same adjustments as their neighbors. The 1.5% figure is arbitrary but the state will find that the total tax runs between 1.4 and 1.8 of the market value. This bill is reasonable and the rates have been low.

HEARING ON SB 211

Presentation and Opening Statement by Sponsor: Senator Dick Pinsoneault, District #21, sponsored this bill. Senator Pinsoneault handed out letters from people who support this bill. (Exhibit 4)

Senator Pinsoneault gave a description of what happened to the folks on Mullan Road. Realtors said the property on Mullan Road was residential. The homeowners invested a substantial amount of savings in

their homes, which are located in a beautiful area in Missoula County along the Clark Fork River. A sand and gravel operation then appeared at their back door. They are excavating sand and gravel.

Senator Pinsoneault said he has tried to find some middle ground between the property owners and the person who runs the business. This sand and gravel business is important, hires people, and makes revenue for the state.

The homeowners felt they could tolerate the sand and gravel operation. Then a year later there was a concrete mix operation being erected on the site of the excavation. Six months later there was an asphalt batching operation constructed on the site.

Senator Pinsoneault submitted part of a brief (Exhibit 6) taken from Missoula County that challenged this operation as being a violation of the zoning authority. Missoula has a city-county planning board. American Asphalt, Inc. has been conducting this sand and gravel operation. In 1982 when his operation began, the city of Missoula challenged it because the operation did not have a flood-plain permit. This was initially a challenge to American Asphalt because they were excavating sand and gravel within a designated flood-plain along the Clark Fork River. American Asphalt then obtained a permit to excavate in a designated flood-plain area.

The present planning and zoning controversy came before Judge Harkin in Missoula County. Judge Harkin issued an injunction and required that American Asphalt secure the appropriate permit. The Mullan Road property is zoned for single-family residential use at a density of one dwelling per unit an acre and is designated in the Missoula Comprehensive urban-areas plan for rural and low density residential, parks and open space uses. Gravel extraction, processing asphalt and concrete production are not allowed under the terms of the zoning resolution. Any use not listed as permitting additions or special exceptions is prohibited.

The planning office received a complaint concerning this gravel operation. The judge declared in favor of American Asphalt, finding that American Asphalt cannot be restricted by local planning and zoning laws. The Supreme Court said in interpreting 76-1-113 and 76-1-209 that a reasonable construction depends on the circumstances in which they are applied. The county must allow the activities necessary to develop the

resource so it can be effectively utilized.
Transporting the gravel to another site would be economically unfeasible.

The homeowners want to make American Asphalt subject to local planning and zoning ordinances as described on page 4, lines 21 through 25.

List of Testifying Proponents and What Group they Represent:

Alice Tulley, Mullan Road Resident, Missoula
Jim Carlson, Missoula City-County Health Department

List of Testifying Opponents and What Group They Represent:

Lloyd Lockrem, Montana Construction Assn.
Senator Harding, District 23.
Gary Langley, Montana Mining Assn.
Ted Newman, Dracht Jet Cattle Co.

Testimony:

Alice Tulley testified as a resident of the neighborhood that has been affected. The neighborhood has a rural setting and is close to town. Zoning has been in place since 1970. In March of 1982 the first public hearing was held on the proposed gravel pit. The only person that spoke in favor of it was the gravel pit person himself. The original application was for 14 acres and then the operation expanded to 24 acres. As the company continues to expand, they will have 72 acres of gravel pit.

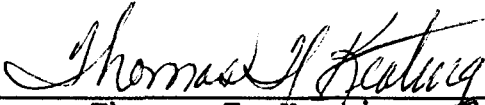
In 1987 they were granted permission to run asphalt that is a by-product of mining. The residents have spoken out against the expansion. A second gravel pit is now next to the original gravel pit. This has adversely affected the neighborhood. There has been a decrease in property values. The resident should be able to protect their property rights and values. The residents realize that sand and gravel is an important business and their contribution to Montana's economy in providing jobs. Ms. Tulley strongly urged this committee to support SB 211.

Jim Carlson, Environmental Health Division of the Missoula City-County Health Department, submitted a letter supporting SB 211. (Exhibit 5)

Due to taping difficulties questions from committee members and closing by Senator Pinsoneault are not recorded in these minutes.

ADJOURNMENT

Adjournment At: 2:40 pm



Thomas F. Keating, Chairman

TFK/hmc

senmin.201

ROLL CALL

NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2-1-87

NAME	PRESENT	ABSENT	EXCUSED
Chairman Tom Keating	✓		
Vice-Chairman Larry Tveit	✓	✗	
Senator Fred VanValkenburg	✓		
Senator Loren Jenkins	✓		
Senator Darryl Meyer	✓		
Senator Lawrence Stimatz	✓		
Senator Pete Story		✓	
Senator Bill Yellowtail	✓		
Senator Elmer Severson	✓		
Senator Cecil Weeding		✓	
Senator Dorothy Eck	✓		
Senator Jerry Noble	✓		

Each day attach to minutes.

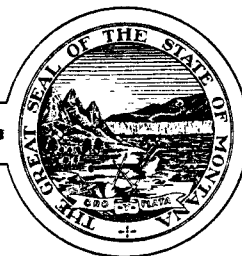
DEPARTMENT OF STATE LANDS

FIELD OPERATIONS DIVISION

EXHIBIT NO. 1

DATE 2-1-87

BILL NO. SB 226



TED SCHWINDEN, GOVERNOR

STATE OF MONTANA

Central Land Office: Helena, MT (406) 444-3633
 Eastern Land Office: Miles City, MT (406) 232-2034
 Northeastern Land Office: Lewistown, MT (406) 538-5989

Northwestern Land Office: Kalispell, MT (406) 755-6575
 Southern Land Office: Billings, MT (406) 259-3264
 Southwestern Land Office: Missoula, MT (406) 728-4300
 P. O. Box 490
 Kalispell, Montana 59901

December 13, 1988

Further information as requested on state leases at Echo Lake Summer Home Lots, located in Section 5, T27N, R19W. There have been some additional adjustments since the last report dated November 14, 1988.

LEASEHOLDER	LOT NO.	1987 RATE	1988 APPRAISED LAND VALUE	ADJUSTED LAND VALUE	ADJUSTED LEASE VALUE	ADJUSTED 1988 RENT
Martens, W.L.	7	\$150.00	\$24,000	-	16,800	840-
Barnes, B.	11	150.00	26,000	\$25,000	\$17,500	\$875.00
Crohn, L.	18	150.00	28,000	-	19,600	980-
Collier, G.	21	150.00	29,500	-	20,450	1030.00
Barnum, I.	40	150.00	28,000	26,000	18,200 + 1/2	910.00

The adjustments as shown above were the result of findings of hearings officer and upheld by Commissioner Dennis Hemmer.

	County Appraisal (fee simple)	Deduct for corridor (net)	Rental
Martin # 7 (Neighbor)	\$31920	21920 .015 21920 .285 mills	\$328.80 241.14)
Barnes # 11 (Neighbor)	27520	17520 .015 17520 .285 mills	262.80 192.73)
Crohn # 18 (Neighbor)	NA (state app)	28000 .015 28000 .285 mills	420.00 308.02)
Collier # 40 (Neighbor)	36300	26300 .015 26300 .285 mills	394.50 289.32)
Barnum # 40 (Neighbor)	34475	24475 .015 24475 .285	367.12 269.24)

EXHIBIT NO. 2DATE 2-1-89BILL NO. SB 236

TESTIMONY OF JOHN F. NORTH
DEPARTMENT OF STATE LANDS
SENATE BILL 226

When Montana became a state, the federal government gave the state approximately 5½ million acres of land to be held in trust by the state for the support of the commons schools. In section 11 of the Montana Enabling Act, the United States requires Montana to obtain full market value for any interest, including a leasehold interest, disposed of by the state. This full market value requirement is also in both our 1889 and 1972 constitutions.

The duty of properly managing these school trust lands has been placed in the Board of Land Commissioners and the Legislature. This duty to care for and preserve the trust is the same duty that a private trustee owes to the beneficiaries of a private trust. And, as with a private trust, the beneficiaries are entitled to have the courts review the trustee's performance and order the trustee to perform its responsibility faithfully.

It is with the duty of care of a trustee that the Legislature must review this legislation. Under its fiduciary responsibility, the Legislature must determine whether a 1.5% return on investment constitutes full market value for the leasing of real property.

If determining what constitutes full market value, the Legislature should consider several factors. State agricultural and grazing leases are subject to competitive bidding at the end of each lease term. For these leases, the opportunity to bid helps set up full market value. Even though many of these leases are let at the legislatively set minimum, the opportunity to bid always exists. Cabinsite leases, on the other hand, are not subjected to competitive bidding so that the lessee's investment in the cabins or homes and other improvements they have placed on the site are protected. This exemption from the competitive bidding process is certainly justified for cabinsites and homesites. However, it places on the Legislature and even greater responsibility to assure that its rental formula achieves full market value. And it probably also assures that the courts would review the formula with even greater scrutiny.

Another consideration is that, even though the cabin or home built on the site is taxed, the cabinsite lessee pays no property tax on the ground he or she leases from the state.

Given its duty to secure full market value for those cabinsite leases, the Legislature must make the initial determination as to whether this bill is consistent with its trust responsibility. It appears that the bill may contradict the legal provisions cited above.

Perhaps the Legislature should consider another factor on its deliberations. Rentals from school trust lands are paid into the Foundation Program. Every dollar paid into that program reduces the burden on the taxpayers of this state. Every day the Legislature and the Executive try to find more ways to stretch the tax dollar to lessen the burden on the taxpaying public. The \$192,000 reduction in revenue that would result from passage of this bill over the next biennium will simply have to be made up by taxpayers across the state. While it is understandable that cabinsites lessees want to have the best rate possible on their state cabinsites, it could be that the state simply cannot afford to provide cabinsites at this price.

RENTAL RETURNS ON CABIN SITES
ON STATE LANDS

The Forestry Division - Department of State Lands is charged with the responsibility of administering the cabin sites. They are usually located in mountainous terrain in areas considered to be forest-type, on or with access to a lake or a stream and with certain other amenities such as seclusion, remoteness, scenic viewing and wildlife proximity.

According to the Forestry Division, 633 cabin sites have been identified on state lands. Almost all of these sites are in areas west of the Continental Divide, although a few (less than a dozen) are in the Bozeman area.

All of the identified state land cabin sites were under lease under the old law.

The 1983 Legislature passed HB 391 which instructed the Board of Land Commissioners to change the method of valuing cabin site licenses and leases after October 1, 1983 to:

(a) each cabin site license or lease in effect on October 1, 1983, for each licensee or lessee who at any times wishes to continue or assign his license or lease, which method must be 5% of the appraisal of the license or lease value of the property...

The problem surfaced when the department began to implement the 1983 law in 1987 and began issuing notices that the rental fees would be 5% of the appraised value of the land, interpreting lease value to be market value. That judgment shot the leases which had been \$150 a year up to \$2,300 a year, in some cases. A storm of protests from the lessees got the department to reconsider and the

2-1-89

Board determined that the "lease value" would be 70% of the appraised market value, then applied the 5%. The method still drove the leases sky high and brought into play the appraisal values which the lessees protested. The department appraisers then re-visited the sites and began making adjustments, some of the re-appraisals dropped as much as \$10,000. There seems to have been no standard judgment.

As an example a lease, which about five years ago was \$50, went up to \$150 and then went up to \$2,300, then dropped \$910 a year. This explains why people are upset.

Senate Bill 226 would be a simple and uniform procedure: The County appraiser, who already goes on the property to appraise the improvements, would appraise the land, just as he does the neighbor. Since the lessee does not have the rights of the fee-simple landowner, and since the state reserves a "public corridor" on the beach, the lessee does not have a private beach and adjustments in value would be made accordingly.

Then if the rental fee would be 1.5% of the appraised value, the lessee would be paying about the same as his neighbor pays in taxes to support the government. However, in this case of state lands, it would go to the state elementary and secondary school funds.

If the lessee didn't like the appraisal value, he would have the same appeal structure as any other landowner and the system would be uniform.

According to a researcher, the state's annual income from cabin site rentals was about \$69,000, or an average of about \$109. The initial appraisal of the 150 sites for 1988 was reported to be \$1,537,750 for an average of \$9,857, but this figure has been adjusted by the appraisers.

We don't have good figures on the appraisal value of the sites, but it is certain that the provisions of SB 226 will generate more money for schools and will have the lessee paying something comparable to what his neighbor is paying in taxes for local government.

This bill would remove a problem for the land board, allow for a reduction of appraiser staff, eliminate a duplication of appraisals, generate more money for the schools, and establish a fair cost relationship with neighbors of cabin sites.

Senate Natural Resources Committee
Thomas Keating, Chairman

Members:

I am Mary Flynn from Missoula, Montana. My husband, Elmer, and I own land and live across Mullan Road from a 14 acre gravel pit opened in 1982 that is operating under the mining statutes of the state of Montana. Our land is zoned by Missoula County as high density residential - six houses per acre. I am wondering who, if anyone, would build a house next to a gravel pit and batch plant with heavy trucks operating from 8 to 24 hours per day, depending on the jobs the owner has.

Elmer's family have owned this property for over 100 years and in our life time we have seen many changes in our valley. Many we do not condone. Especially offensive is the gravel pit that creates air pollution, noise pollution, HEAVY truck traffic and degrades the value of our property.

In 1985 the pit owner requested and was granted a permit for a batch plant from the Department of State Lands. This plant increased the air pollution and intensifies the traffic on the already crowded Mullan Road.

In 1988 the pit owner requested and was granted a permit to develop another pit, 20 acres in size, which moves this operation closer to our property. This enlargement will further increase the pollution, both noise and air, and the heavy truck traffic.

We have objected to this pit owner's operation from his first intent through all his permit requests, but were shot down each time by existing mining statutes.

Directly west of this pit is another one started in 1987, as a small operation and is now as large or larger than the first one. Sometimes in busy seasons, these crushers run all night which is very annoying and in the morning a pall of dirt hangs in the air. I believe passage of Senate Bill 211 would change the Montana statute that allows the developing of gravel pits anywhere anyone desires, and might help our situation. This pit owner still has 40 acres which could be developed in the future as a gravel pit.

For these reasons and for the benefit of our neighbors, I would urge your support of Senate Bill 211 and thank the committee members for allowing me to voice my opinion on this matter.

Respectfully submitted,

Mary Flynn
Mary Flynn

2-1-89

Missoula Mt.
Jan 30 1989

P52

Senator Thomas Keating
Capitol Station
Helena Mt. 59601

Dear Senator Keating,

This letter is to urge you to support Senate Bill 211. Gravel mining operations definitely should be made to abide by local planning and zoning laws. A case in point is 1 mile west of Missoula where we have a crusher and asphalt plant 850 feet from our house in an area zoned residential.

Please support Senate Bill 211.

Sincerely
Harry and Mitzi Cloer
4405 Mullaw Road
Missoula Mt 59802

Ex. #4

2-1-89

798

Robert Edwards
4100 Mullan Rd.
Msla., Mt. 59802
Jan. 30, 1989

National Resources Committee
Senator Thomas Keating

Committee Members:

As life time residents of the Mullan Road area of Missoula, we add our support to Senate Bill 211. Our home is directly north of two gravel pits by less than one half mile. Needless to say, the noise, dust and heavy truck traffic is a concern to us. The truck traffic causes a serious safety risk to all the residents who use Mullan Road. The road is basically the same as it was 50 years ago and surely was not built to handle 50 ton loads.

We were lulled into a sense of false security by the County Comprehensive Plan and Zoning enacted in the 1970s. It was a plan all the people in the area could live with. We were amazed to find out the zoning did not apply to gravel pits as they are a mining industry. The gravel pits have devalued our homes in the area, and further expansion of the pits would further deplete our property values. Again we urge all to support Senate Bill 211.

Sincerely,

Nancy E. Edwards
Robert E. Edwards

JANUARY 29, 1989

TO WHOM IT MAY CONCERN:

We are writing to urge that SB211 (regarding sand and gravel operations) be passed.

We built our home in 1966 and were surrounded by other homes on 1-5 acres and farms. This area was zoned CRR1 in the 1970's and was a quiet and pleasant area to live in.

Several years ago, not one but two, side-by-side gravel pits were opened about 1/4 mile from our home. The entire neighborhood protested but could not stop them from operating in our backyards.

There has been 24-hour a day operation making it impossible to sleep with the roar of dredging equipment and the beeping of other equipment. They often start working even before we get up at 6:00 a.m. and work until midnight when they aren't working 24-hour days.

Many days when the wind blows, huge plumes of fine dust rise off the gravel piles (and are blown toward the city of Missoula when the winds are out of the west.) The hayfields surrounding the pits are covered with dust making the hay undesirable for livestock feed thus reducing the income of the farmers.

When the asphalt plant is in operation the stench is terrible. I am very sensitive to fumes of this type and feel sick and dizzy when exposed to them.

We, also, worry that the water level in our wells will be affected as the pits are dug deeper and made larger. At one point the pit operators were attempting to pump the water out of their pit and the water table was adversely affected. They were stopped by the state.

Please vote to put these kinds of operations under the control of the local authorities to enable them to protect the local environment. Our local authorities are fighting very hard to control pollution in the City and County of Missoula and 2 gravel pits this close to populated areas thwarts their efforts. The County Commissioners even went to the State Supreme Court in their efforts to stop these gravel pits but under current state laws were unable to do so!

Under current state laws a gravel pit can go in anywhere—even beside your house!

Thank you for your time and consideration!

Respectfully,
R. H. Houseman

Bud Lake

ROUTE 2
MISSOULA, MONTANA 59801

Ex. #4 2-1-87
pg 5

Senator Thomas Keating
State Capital
Helena Montana

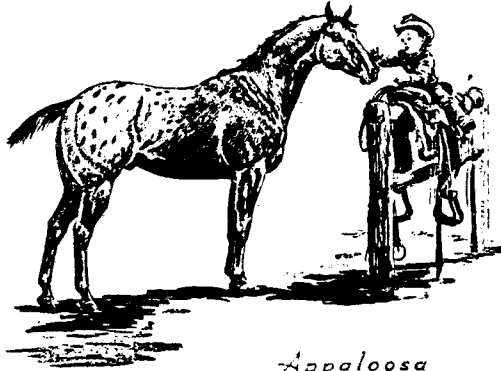
Dear Sir

I live at 3800 Mullan Road
and would like to go on Record
against the Sand & Gravel Pits
and the Asphalt Plant.

90% of the Materials are hauled
by our House all hour day & night

Thank you very much

Bud Lake



Appaloosa

Dear Senator Keating,

I am writing to show support for Senate Bill 211.

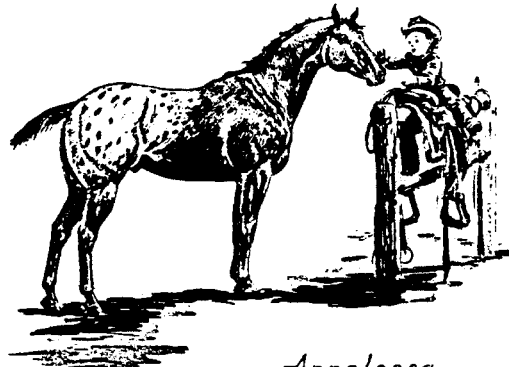
I live within 1/2 mile of two gravel pits and believe they have many adverse effects on a residential community.

The Open-Pit Mining Laws are so vague that we have very little recourse.

We have the support of our local Health Dept., County Commissioners and groups in other Montana cities that are in the same position we are.

I appreciate all that Senator Pincoseau has done

Ex. #4
2-1-89
pg 6b



Appaloosa

and hope we can count
on you to support him.

Sincerely,
Jo Warner
2120 Tipperary Way
Mesa, MT
59802

Ex. #4

2-1-89

PS7

Tom Heating

Helena Mt.

Res. Lic SB 211

I am a resident on
Mullan Road West of Helena
near the American Asphalt Co. &
Gravel pit & also Harry Clark
Gravel pit.

I would like some help
to clear the noise, dust and
unpleasantness of big trucks going
by our home, also the smell
of asphalt in the air, from
early morning to late evening.

Please do what you can

Ray J. Mullan

3800 Mullan Rd

Helena Mt 59502

P.O. Box 4506

Missoula, Mont. 59807

Jan, 30 - '89

Senator Keating:

Dear Sir:

Just a note, hoping you will be able to put some pressure on the right people, on enforcing our problem with the Gravel Pit meadow on Mullan Rd.

I understand the owners plan to expand their operations, which we feel enough is enough.

The fine dust that flies over our area is something.

The Health Dept. doesn't feel there is any regard our elements in the dust.

I don't ever see our route dusted & think of what we have to inhale.

So the best you can do is take them down.

Thank you sincerely
Mrs. Doreen Chiswick

1515 Marie Drive
Missoula, Mt. 59802
January 28, 1989

Senator Thomas Keating, Chairman
Senate Natural Resources Committee
State Capitol
Helena, Mt. 59601

Dear Senator Keating:

We are writing to ask you to support Sen. Bill No. 211, which would regulate sand and gravel operations to comply with local zoning regulations.

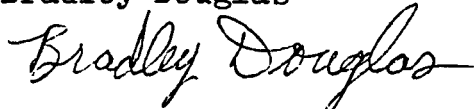
We live in a lovely residential area where two gravel pits have begun operating, in spite of great local opposition (90% of the residents voiced their opposition to these pits getting started).

The zoning regulations are C-RR-1 (one house per acre). The Missoula County Commissioners are behind this bill also.

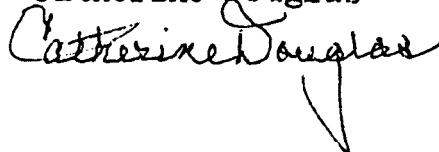
Thank you for your support of Sen. Bill No. 211.

Sincerely

Bradley Douglas



Catherine Douglas



2315 Mullan Road
Missoula, Montana 59802

Senator Thomas Keating, Chairman
Natural Resources Committee
Capitol Station
Helena, Montana 59601

Attention: Senator Keating and Members of the Committee

I am a resident of Mullan Road west of Missoula, and want to stress the importance of Senate Bill 211.

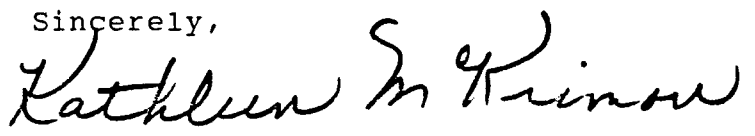
Our area is zoned C-RR1 (residential, one house per acre), but in spite of that zoning, and in spite of petitions from more than 90% of the local residents, and in spite of protests and hearings, two gravel pits, a hot mix plant and a drag line are operating in this area! The dust pollution, noise pollution, water problems and traffic problems - violations by the owners of the gravel pits - are all documented by the State Land office.

We feel that this situation is a travesty of justice and that passage of Senate Bill 211 by Senator Pinsoneault will prevent further abuses in this area and other areas in the state.

What happened here has happened in Bozeman and could happen anywhere in Montana - unless action is taken and local zoning takes precedence over sand and gravel operations.

Thank you for your consideration.

Sincerely,



Mrs. Kathleen McKinnon

Ex. # 4 2-1-89
PS "

6610 Mullan Road
Missoula, Montana 59802

Senator Thomas Keating
Chairman of the Committee of Natural Resources
Capitol Station
Helena, Montana 59601

Dear Senator Keating:

We are writing in support of Senate Bill 211. We are long-time residents of Mullan Road and have been concerned about the effects of the gravel pit operations in our residentially-zoned area.

We own bottom land along the river and are particularly concerned about the diversion of water used by the gravel pit operations. Because many of the neighboring residents feel this same concern, particularly in this period of drought conditions, we feel special attention should be paid to the rights of all the people, not just the gravel pit owners, as now happens under the current mining act.

We are not in favor of stopping all mining operations. We just want sand and gravel operations subject to the same zoning restrictions as the rest of us.

We would appreciate your objective and thorough consideration of the issues presented by this bill.

Thank you.

Sincerely,

Mr + Mrs H.O. Edwards

Mr. and Mrs. W.O. Edwards

Ex. # 4
2-1-89
Pg 12

MAUREEN EDWARDS, 2305 FLYNN LANE, MISSOULA, MONTANA
(401)549-9741 59802

January 29, 1989

Mr. Thomas Keating, Chairman
Senate Committee on Natural Resources
Capitol Station
Helena, Montana 59601

Dear Mr. Keating:


I am writing in support of Senate Bill 211, which allows some local control in the advisability of sand and gravel operations in zoned residential areas.

The residents of Mullan Road in Missoula joined together some years ago to fight the development of a sand and gravel operation in the middle of our zoned residential area. Because of the state of the existing law, the gravel operation was allowed despite opposition of 97% of the people living in the area. Since that time, we have seen an additional gravel pit operation, an expansion of the first operation, a batch plant and a dredge operation allowed into the same area, all despite continuing opposition to these operations.

Thankfully our constitutional legacy allows the people a right to involve themselves in the process to determine fair and just laws that represent the will of the people. For this reason we join again to urge you to support a law which puts the rights of the majority of the people in balance with those rights of special interest groups.

We thank you for your support.

Sincerely,


Maureen Edwards

Ex. # 4

2-1-89

pg 13

Missoula, Mt.
January 27, 1989

Mr. Thomas Keating, Chm.
Natural Resource Committee
State Capitol Building
Helena, Mt. 59601

Dear Mr. Keating:

With regards to Senate Bill No. 211, I would urge you to approve this bill, so that sand and gravel mines be required to comply with local planning and zoning.

We live in a residential area on Mullan Rd. just outside of Missoula, and two gravel pits have been put in not too far from us, and now they are wanting to expand, which we certainly do not want. Not only do they contribute to dust and noise problems, their trucks have beat our road to death.

Thank you for your consideration,

Mrs. Arlene C. Parks

Mrs. Arlene C. Parks
3770 Mullan Rd.
Missoula, Mt. 59802

Ex. #4
2-1-89
PS 14

1/28/89

Natural Resource Committee
Helena, Montana

Mr. Thomas Keating,

Mr. Keating, I am writing in support of Senate bill 211 that will lend some controll to the spread of commercial and industrial projects in what is zoned residential areas. We moved here with the confidence of that, only to find two gravel pits developing and expanding large areas of land across the road from us. Not only does it detract from the beauty of our neighborhood, it also has a major determent to our air quality (raising lots od dust, and truck pollution), it also has an effect on the water table. I have noticed unexplained changes in my water system. With future droughts this could become a serious situation.

These companies keep coming closer and closer to the main Mullan Road, and intend to keep asking for the right to develop more and more of their many acres if they are not curtailed. I don't think this is right or fair to the rest of us who have no other choice now that we already bought property here and have had it lose value beause of this condition that exists.

Any help will be apreciated.

Sincerly;

C. Herndon

Ex. #4
2-1-89
PS15

2300 Flynn Lane
Missoula, Montana 59802
January 30, 1989

Senator Tom Keating, Chairman
Natural Resources Committee
Helena, Montana

Dear Senator Keating,

It is my understanding that Senate Bill 211 is scheduled for a committee hearing February 1, 1989. Most individuals who live in my particular residential area are in favor of SB 211. We presently have two companies that are actively digging, crushing, and hauling from two pits approximately one-half mile from each other just off Mullan Road. The area was zoned residential before the permits were given to the companies. An obvious problem occurring is increased traffic of the heavy gravel-laden vehicles on a road already busy with residents and school buses taking children to and from the Hellgate Elementary School on Flynn Lane. I am also concerned about the negative impact these gravel companies will have on our residential environment. Neighbors have publically complained about air pollution occurring from a crusher and mix plant used by one of the outfits. It is believed by some that water, too, is being affected as these companies dig for their gravel.

Most of us bought, and built our homes in this area because of the rural, and somewhat pristine setting offered by surrounding farmlands and the river. I am sure that if it had been known that, by using the current mining law, two individuals would be opening up gravel pits in our neighborhood, a number of people would have not been so eager to settle here. I suspect, too, if these folks decide to sell and move out, they are going to find their property has a lower market value than before. I cannot imagine very many people wanting to voluntarily become neighbors with an active gravel operation.

Gravel is a necessary and valuable material. It goes without saying that the demand for such results in jobs, and economic boosts for communities. However, gravel companies should not be allowed to indiscriminately open in areas zoned residential simply because their product is classified as a mineral. Other considerations should be used before permission is granted for such activities. If Senate Bill 211 is passed, gravel will be taken out of the mining law. This, I believe, will allow communities to develop controls which best meet the needs of the majority of those being affected, and, problems such as we have experienced on Mullan Road will be alleviated.

Ex # 4 PS 16
2-1-89

Senator Tom Keating

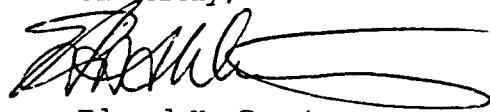
-2-

January 30, 1989

It was suggested I write a short, succinct letter. Please forgive me if I have gone overboard. My main point is that SB 211 is good and deserves to be passed. Your support in its passage will be greatly appreciated by me, and many others who are either now, or will be experiencing the negative effects of a gravel pit in their neighborhoods.

Thank you for your help.

Sincerely,



Edward K. Courtney

26 January 1989

Thomas Keating
Chairman, Senate Natural Resource Committee
Capitol Station
Helena, Montana 59601

Dear Mr. Keating:

We are writing in support of SENATE BILL 211.

As long-time residents of Mullan Road, we are very concerned about the open-cut mining law that permits gravel pit operations in zoned residential areas.

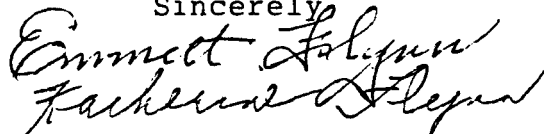
At the present time we have two gravel pits operating within a quarter mile of each other and of us.

Over 97% of the property owners in this area have signed a petition protesting these operations. We not only have the gravel pits, but also a hot mix plant and a drag line operating.

We have the support of the Missoula County Commissioners and of Dick Pinsoneault, the State Senator from our district, for the proposed amendment which eliminates sand and gravel operations from the present open-cut mining law.

Thank you for your consideration.

Sincerely



Emmett and Katherine Flynn
5000 Mullan Road
Missoula, Montana 59802

4000 Mullan Road
Missoula, Montana
59802

January 30th, 1989

Thomas Keating
Chairman of the Senate Natural Resource Committee
Capitol Station
Helena, Montana 59601

Dear Mr. Keating:

When American Asphalt applied for a permit to operate a gravel pit a public meeting was held. We attended that meeting, and there was so much opposition that we were all assured that no gravel pit would be allowed in our residential area. Shortly afterwards, much to everyones surprise, a permit was issued to them. At the time it was said no batch plant would be put there, but now there is a batch plant.

Later, a permit was issued to H. C. Allen, Co. for another gravel pit. This second one is situated right alongside the first one. So, now, in the middle of this nice residential neighbourhood, we have not one, but two gravel pits, a batch plant and a dredge operating.

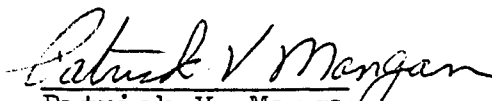
Numerous problems have resulted from these two plants. Crops have been ruined, property values lowered, water tables affected, and we now have noise and air pollution at all hours.


We strongly urge and recommend this bill be passed to have some control over this situation. Certainly the ones now operating should not be allowed to expand.

As taxpayers in this area, we would appreciate your help and consideration.

Thank you.

Sincerely,


Patrick V. Mangan


Elsie M. Mangan

2-1-89

6455 Mullan Road,
Missoula, Mont. 59802
Jan. 28. 1989.

Senator Thomas Keating
Chairman of the Senate Natural Resource Committee
Helena, Mont.

Dear Sir:

We live in a residential area on Mullan Road where two gravel and sand pits have been operating less than a half mile to the east.

Now they have put in the second permit to add another twenty acres to expand.

This should never have been allowed. The Hot Mix Plant puts out a terrible odor as well as noise, dust and the big trucks have ruined our road. It is a complete eye sore for our lovely Community as well as all residential areas in the whole State.

As we understand this is Bill 211 and we are asking you to please help us in not allowing this plant to be expanded. Rightfully it all should be put back into its natural state as it was stated in the first permit.

Please help us and Thanking you kindly,
Sincerely,

Ralph & Conis Hillstrom

1510 Marie Dr.
Missoula, Mt. 59802
Jan. 28, 1989

Dear Senator Keating:

I am writing about the upcoming Sen. Bill #211.

This bill would directly affect the landowners and residents in the rural area of Missoula, Mt., where two gravel pits have been operating, in spite of great local opposition and also in spite of the fact that the area is zoned C-RR-1 (one house per acre).

The Missoula County Commissioners are also in favor of Sen. Bill #211.

Please support this bill--and thank you.

Sincerely


Sara Whaley

1510 Marie Drive
Missoula, Mt. 59802

Jan. 28, 1989

Sen. Thomas Keating
Chairman, Senate Natural Resource Committee
State Capitol
Helena, Mt. 59601

Dear Senator Keating:

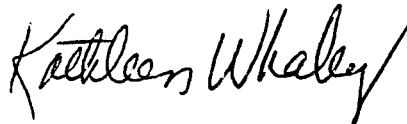
Please support Senate Bill No. 211, which is coming up for consideration this week.

The two gravel pits in operation close by have lowered property values, caused dust, noise and odor pollution. They were put in despite 90% opposition from the surrounding property owners. (All of whom, I might add, have to comply with local zoning laws).

It is only fair that if one property owner has to comply with local zoning, all property owners should. The zoning was planned for the long-time benefit of everyone. For a few businessmen to thwart the hard work of the zoning board is unfair and has certainly destroyed confidence in government.

Please restore our faith that government is to protect all of us, not only a select few. Please support Senate Bill 211.

Thank you!



Kathleen Whaley
1510 Marie Dr.
Missoula, Mt. 59802

1510 Marie Drive
Missoula, Mt. 59802

January 28, 1989

Sen. Thomas Keating, Chairman
Senate Natural Resource Committee
State Capitol
Helena, Mt. 59601

Dear Sen. Keating:

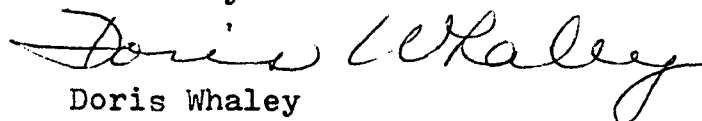
Please support Senate Bill No. 211 regarding sand and gravel operations--that they comply with local planning and zoning.

I live very close to two sand and gravel operations that were started in spite of great local opposition. All this, in spite of the fact that the residential area was zoned C-RR-1 (one house per acre). Stringent regulations were placed on landowners nearby who wanted to put up something as simple as a workshop, if their property was anywhere near the floodplain. (I know, because that is what happened to me).

However, the two sand and gravel companies had no problem getting started. There is also a batch plant and a dragline. The noise and smell in the summer has turned our lovely area into a polluted one, not to mention the dust that is not always controlled. That dust is kicked up by the gravel trucks that are also a menace to school-children who use Mullan Road to get to Hellgate Elementary School. That school is located within a mile of the gravel pits.

Please lend your efforts to supporting Senate Bill 211, and thank you.

Sincerely


Doris Whaley

Ex. #4
2-1-89

pg. 23

1600 Marie Drive
Missoula, Mt. 59802
January 28, 1989

Senator Thomas Keating, Chairman
Senate Natural Resource Committee
State Capitol
Helena, Mt. 59601

Dear Senator Keating:

We are writing about the upcoming Sen. Bill No. 211,
and hope we can depend on you for support of this bill.

This bill would help greatly to control problems
the residents of this area are now dealing with, in regard
to two gravel pits that have been installed in the middle
of a lovely residential/rural suburban area of Missoula,
Montana.

The Missoula County Commissioners are behind this
bill also, as they would like the local zoning laws to
be complied with. The zoning laws were totally dis-
regarded when the gravel pits started up.

Thank you for supporting Sen. Bill No. 211.

Sincerely

Patrice Schwenk

Patrice and Michael Schwenk

Michael S. Schwenk

Ex. #4
2-1-89

1/28/89

PS 24

Senator Thomas Keating
Chairman, Senate Natural Resource Committee
State Capitol
Helena, Mt. 59601

Dear Sen. Keating:

Thank you for giving your support to Sen. Bill No. 211, making sand and gravel companies comply with local zoning.

Two gravel pits in the area have turned this residential community into a semi-industrial area, causing lower property values.

In the summertime, we are dealing with odor, noise and dust pollution. Plus, there is always the ever-present danger of someone young being hurt, since the pits are so close to homes and within a mile of a grade school.

The trucks use the road that schoolchildren and buses use, further causing worry, especially about children on bikes or on foot.

This area was zoned C-RR-1, but the gravel operations were installed anyway, including a dragline and a batch plant.

The Missoula County Commissioners are behind this effort to have such operations comply with local zoning. I hope you will be too.

Thank you.

Sincerely

Florence A. Carr,

Florence A. Carr

1510 Marie Dr.
Missoula, Mt. 59802

4000 Mullan Road
Missoula, Montana
59802

January 30th, 1989

Thomas Keating
Chairman of the Senate Natural Resource Committee
Capitol Station
Helena, Montana 59601

Dear Mr. Keating:

When American Asphalt applied for a permit to operate a gravel pit a public meeting was held. We attended that meeting, and there was so much opposition that we were all assured that no gravel pit would be allowed in our residential area. Shortly afterwards, much to everyones surprise, a permit was issued to them. At the time it was said no batch plant would be put there, but now there is a batch plant.

Later, a permit was issued to H. C. Allen, Co. for another gravel pit. This second one is situated right alongside the first one. So now, in the middle of this nice residential neighbourhood, we have not one, but two gravel pits, a batch plant and a dredge operating.

Numerous problems have resulted from these two plants. Crops have been ruined, property values lowered, water tables affected, and we now have noise and air pollution at all hours.

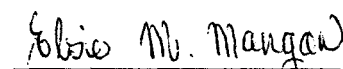
We strongly urge and recommend this bill be passed to have some control over this situation. Certainly the ones now operating should not be allowed to expand.

As taxpayers in this area, we would appreciate your help and consideration.

Thank you.

Sincerely,


Patrick V. Mangan


Elsie M. Mangan

Ex. #4
2-1-89
pg 24

Missoula Mt.
Jan 30 1989

Senator Thomas Keating
Capitol Station
Helena Mt. 59601

Dear Senator Keating,

This letter is to urge you to support Senate Bill 211. Gravel mining operations definitely should be made to abide by local planning and zoning laws. A case in point is 1 mile west of Missoula where we have a crusher and asphalt plant 850 feet from our house in an area zoned residential.

Please support Senate Bill 211.

Sincerely
Harry and Mitzi Clow
4405 Mullaw Road
Missoula Mt 59802

Robert Edwards
4100 Mullan Rd.
Msla., Mt. 59802
Jan. 30, 1989

National Resources Committee
Senator Thomas Keating

Committee Members:

As life time residents of the Mullan Road area of Missoula, we add our support to Senate Bill 211. Our home is directly north of two gravel pits by less than one half mile. Needless to say, the noise, dust and heavy truck traffic is a concern to us. The truck traffic causes a serious safety risk to all the residents who use Mullan Road. The road is basically the same as it was 50 years ago and surely was not built to handle 50 ton loads.

We were lulled into a sense of false security by the County Comprehensive Plan and Zoning enacted in the 1970s. It was a plan all the people in the area could live with. We were amazed to find out the zoning did not apply to gravel pits as they are a mining industry. The gravel pits have devalued our homes in the area, and further expansion of the pits would further deplete our property values. Again we urge all to support Senate Bill 211.

Sincerely,

Nancy E. Edwards
Robert E. Edwards

Ex. #4
2-1-89

Pg. 28

January 27, 1989

Senate Natural Resources Committee
Thomas Keating, Chairman

Members:

I am Mary Flynn from Missoula, Montana. My husband, Elmer, and I own land and live across Mullan Road from a 14 acre gravel pit opened in 1982 that is operating under the mining statutes of the state of Montana. Our land is zoned by Missoula County as high density residential - six houses per acre. I am wondering who, if anyone, would build a house next to a gravel pit and batch plant with heavy trucks operating from 8 to 24 hours per day, depending on the jobs the owner has.

Elmer's family have owned this property for over 100 years and in our life time we have seen many changes in our valley. Many we do not condone. Especially offensive is the gravel pit that creates air pollution, noise pollution, HEAVY truck traffic and degrades the value of our property.

In 1985 the pit owner requested and was granted a permit for a batch plant from the Department of State Lands. This plant increased the air pollution and intensifies the traffic on the already crowded Mullan Road.

In 1988 the pit owner requested and was granted a permit to develop another pit, 20 acres in size, which moves this operation closer to our property. This enlargement will further increase the pollution, both noise and air, and the heavy truck traffic.

We have objected to this pit owner's operation from his first intent through all his permit requests, but were shot down each time by existing mining statutes.

Directly west of this pit is another one started in 1987, as a small operation and is now as large or larger than the first one. Sometimes in busy seasons, these crushers run all night which is very annoying and in the morning a pall of dirt hangs in the air. I believe passage of Senate Bill 211 would change the Montana statute that allows the developing of gravel pits anywhere anyone desires, and might help our situation. This pit owner still has 40 acres which could be developed in the future as a gravel pit.

For these reasons and for the benefit of our neighbors, I would urge your support of Senate Bill 211 and thank the committee members for allowing me to voice my opinion on this matter.

Respectfully submitted,
Mary F Flynn
Mary Flynn

Ex #4

2-1-89

Pg 29

1510 Marie Drive
Missoula, Mt. 59802

January 28, 1989

Sen. Thomas Keating, Chairman
Senate Natural Resource Committee
State Capitol
Helena, Mt. 59601

Dear Sen. Keating:

Please support Senate Bill No. 211 regarding sand and gravel operations--that they comply with local planning and zoning.

I live very close to two sand and gravel operations that were started in spite of great local opposition. All this, in spite of the fact that the residential area was zoned C-RR-1 (one house per acre). Stringent regulations were placed on landowners nearby who wanted to put up something as simple as a workshop, if their property was anywhere near the floodplain. (I know, because that is what happened to me).

However, the two sand and gravel companies had no problem getting started. There is also a batch plant and a dragline. The noise and smell in the summer has turned our lovely area into a polluted one, not to mention the dust that is not always controlled. That dust is kicked up by the gravel trucks that are also a menace to school-children who use Mullan Road to get to Hellgate Elementary School. That school is located within a mile of the gravel pits.

Please lend your efforts to supporting Senate Bill 211, and thank you.

Sincerely


Doris Whaley

Ex. #4
2-1-89
pg 30 a

2300 Flynn Lane
Missoula, Montana 59802
January 30, 1989

Senator Tom Keating, Chairman
Natural Resources Committee
Helena, Montana

Dear Senator Keating,

It is my understanding that Senate Bill 211 is scheduled for a committee hearing February 1, 1989. Most individuals who live in my particular residential area are in favor of SB 211. We presently have two companies that are actively digging, crushing, and hauling from two pits approximately one-half mile from each other just off Mullan Road. The area was zoned residential before the permits were given to the companies. An obvious problem occurring is increased traffic of the heavy gravel-laden vehicles on a road already busy with residents and school buses taking children to and from the Hellgate Elementary School on Flynn Lane. I am also concerned about the negative impact these gravel companies will have on our residential environment. Neighbors have publically complained about air pollution occurring from a crusher and mix plant used by one of the outfits. It is believed by some that water, too, is being affected as these companies dig for their gravel.

Most of us bought, and built our homes in this area because of the rural, and somewhat pristine setting offered by surrounding farmlands and the river. I am sure that if it had been known that, by using the current mining law, two individuals would be opening up gravel pits in our neighborhood, a number of people would have not been so eager to settle here. I suspect, too, if these folks decide to sell and move out, they are going to find their property has a lower market value than before. I cannot imagine very many people wanting to voluntarily become neighbors with an active gravel operation.

Gravel is a necessary and valuable material. It goes without saying that the demand for such results in jobs, and economic boosts for communities. However, gravel companies should not be allowed to indiscriminately open in areas zoned residential simply because their product is classified as a mineral. Other considerations should be used before permission is granted for such activities. If Senate Bill 211 is passed, gravel will be taken out of the mining law. This, I believe, will allow communities to develop controls which best meet the needs of the majority of those being affected, and, problems such as we have experienced on Mullan Road will be alleviated.

Senator Tom Keating

-2-

January 30, 1989

It was suggested I write a short, succinct letter. Please forgive me if I have gone overboard. My main point is that SB 211 is good and deserves to be passed. Your support in its passage will be greatly appreciated by me, and many others who are either now, or will be experiencing the negative effects of a gravel pit in their neighborhoods.

Thank you for your help.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Courtney', with a long horizontal flourish extending to the right.

Edward K. Courtney

Ex. #4
2-1-89
PS 31

January 27, 1989

Senate Natural Resources Committee
Thomas Keating, Chairman

Members:

I am Mary Flynn from Missoula, Montana. My husband, Elmer, and I own land and live across Mullan Road from a 14 acre gravel pit opened in 1982 that is operating under the mining statutes of the state of Montana. Our land is zoned by Missoula County as high density residential - six houses per acre. I am wondering who, if anyone, would build a house next to a gravel pit and batch plant with heavy trucks operating from 8 to 24 hours per day, depending on the jobs the owner has.

Elmer's family have owned this property for over 100 years and in our life time we have seen many changes in our valley. Many we do not condone. Especially offensive is the gravel pit that creates air pollution, noise pollution, HEAVY truck traffic and degrades the value of our property.

In 1985 the pit owner requested and was granted a permit for a batch plant from the Department of State Lands. This plant increased the air pollution and intensifies the traffic on the already crowded Mullan Road.

In 1988 the pit owner requested and was granted a permit to develop another pit, 20 acres in size, which moves this operation closer to our property. This enlargement will further increase the pollution, both noise and air, and the heavy truck traffic.

We have objected to this pit owner's operation from his first intent through all his permit requests, but were shot down each time by existing mining statutes.

Directly west of this pit is another one started in 1987, as a small operation and is now as large or larger than the first one. Sometimes in busy seasons, these crushers run all night which is very annoying and in the morning a pall of dirt hangs in the air. I believe passage of Senate Bill 211 would change the Montana statute that allows the developing of gravel pits anywhere anyone desires, and might help our situation. This pit owner still has 40 acres which could be developed in the future as a gravel pit.

For these reasons and for the benefit of our neighbors, I would urge your support of Senate Bill 211 and thank the committee members for allowing me to voice my opinion on this matter.

Respectfully submitted,

Mary Flynn
Mary Flynn

Ex. #4
2-1-89
pg 32

2205 Flynn Lane
Missoula, Montana 59802
January 30, 1989.

Senator Thomas Keating,
Chairman Senate Natural Resources Committee,
State Capitol,
Helena, Montana.

Dear Sir:

We would like to take this opportunity to let you know we are in favor of Senate Bill # 211, in regard to open cut mines.

We live at 2205 Flynn Lane, which is our last

Bud Lake

ROUTE 2
MISSOULA, MONTANA 59801

Ex. #4

2-1-89

PG 33

Senator Thomas Keating
State Capital
Helena Montana

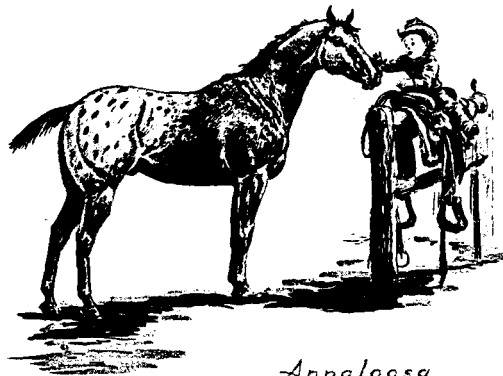
Dear Sir

I live at 3800 Mullan Road
and would like to go on Record
against the Sand & Gravel Pits
and the Asphalt Plant.

90% of the Materials are hauled
by our House all hour day & night

Thank you very much

Bud Lake



Appaloosa

Ex. #4
2-1-89
PS 339

Dear Senator Keating,

I am writing to show support for Senate Bill 211.

I live within 1/2 mile of two gravel pits and believe they have many adverse effects on a residential community.

The Open-Pit Mining Laws are so vague that we have very little recourse.

We have the support of our local Health Dept., County Commissioners and groups in other Montana cities that are in the same position we are.

I appreciate all that Senator Pincoseault has done

Ex. #4

2-1-87

pg 33b



Appaloosa

and hope we can count
on you to support him.

Sincerely,
Jo Warner
2120 Tipperary Way
Mpsla., MT
59802

Ex #4

2-1-89

PS 34

Tom Heating
Helena Mt.

Dear Sir SB 211

I am a resident on
Mullan Road West of Missoula
near the American asphalt Co. &
Gravel pit & also Harry Allens
Gravel pit.

I sure would like some help
to clear the noise, dust and
unpleasantness of big trucks going
by our home, also the smell
of asphalt in the air, from
early morning to late evening.
Please do what you can

Ray J. Marston
3800 Mullan Rd
Miss. Mt. 59802

P.O. Box 8506
 Missoula, Mont. 59807

Pg. 35

June 30 - '89

Senator Keating
 Dear Sir:

Just a note, hoping you will be able to put some pressure on the right people on enforcing our ~~provisions~~ with the Grand Pit meadow and Mill on Rd.

We understand the owners don't help and their operation, which we feel enough is enough.

The line cut that goes over our area is something.

The Grand Pit doesn't help and there is a big sign on our side in the dust.

The back over our route and to think of what we have to inhale.

To the best you can, take them down.

Thank you sincerely
 Mrs. Muriel [unclear]

Ex. #4 2-1-89

pg 36

1515 Marie Drive
Missoula, Mt. 59802

January 28, 1989

Senator Thomas Keating, Chairman
Senate Natural Resources Committee
State Capitol
Helena, Mt. 59601

Dear Senator Keating:

We are writing to ask you to support Sen. Bill No. 211, which would regulate sand and gravel operations to comply with local zoning regulations.

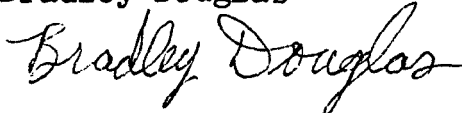
We live in a lovely residential area where two gravel pits have begun operating, in spite of great local opposition (90% of the residents voiced their opposition to these pits getting started).

The zoning regulations are C-RR-1 (one house per acre). The Missoula County Commissioners are behind this bill also.

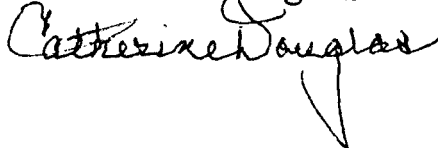
Thank you for your support of Sen. Bill No. 211.

Sincerely

Bradley Douglas



Catherine Douglas



2315 Mullan Road
Missoula, Montana 59802

Senator Thomas Keating, Chairman
Natural Resources Committee
Capitol Station
Helena, Montana 59601

Attention: Senator Keating and Members of the Committee

I am a resident of Mullan Road west of Missoula, and want to stress the importance of Senate Bill 211.

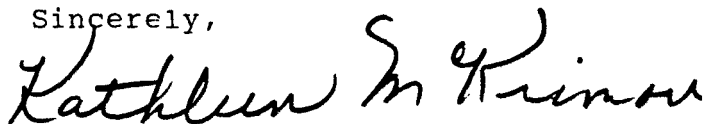
Our area is zoned C-RR1 (residential, one house per acre), but in spite of that zoning, and in spite of petitions from more than 90% of the local residents, and in spite of protests and hearings, two gravel pits, a hot mix plant and a drag line are operating in this area! The dust pollution, noise pollution, water problems and traffic problems - violations by the owners of the gravel pits - are all documented by the State Land office.

We feel that this situation is a travesty of justice and that passage of Senate Bill 211 by Senator Pinsoneault will prevent further abuses in this area and other areas in the state.

What happened here has happened in Bozeman and could happen anywhere in Montana - unless action is taken and local zoning takes precedence over sand and gravel operations.

Thank you for your consideration.

Sincerely,



Mrs. Kathleen McKinnon

MAUREEN EDWARDS, 2305 FLYNN LANE, MISSOULA, MONTANA
(401)549-9741 59802

January 29, 1989

Mr. Thomas Keating, Chairman
Senate Committee on Natural Resources
Capitol Station
Helena, Montana 59601


Dear Mr. Keating:

I am writing in support of Senate Bill 211, which allows some local control in the advisability of sand and gravel operations in zoned residential areas.

The residents of Mullan Road in Missoula joined together some years ago to fight the development of a sand and gravel operation in the middle of our zoned residential area. Because of the state of the existing law, the gravel operation was allowed despite opposition of 97% of the people living in the area. Since that time, we have seen an additional gravel pit operation, an expansion of the first operation, a batch plant and a dredge operation allowed into the same area, all despite continuing opposition to these operations.

Thankfully our constitutional legacy allows the people a right to involve themselves in the process to determine fair and just laws that represent the will of the people. For this reason we join again to urge you to support a law which puts the rights of the majority of the people in balance with those rights of special interest groups.

We thank you for your support.

Sincerely,

Maureen Edwards

Missoula, Mt.
January 27, 1989

Mr. Thomas Keating, Chm.
Natural Resource Committee
State Capitol Building
Helena, Mt. 59601

Dear Mr. Keating:

With regards to Senate Bill No. 211, I would urge you to approve this bill, so that sand and gravel mines be required to comply with local planning and zoning.

We live in a residential area on Mullan Rd. just outside of Missoula, and two gravel pits have been put in not too far from us, and now they are wanting to expand, which we certainly do not want. Not only do they contribute to dust and noise problems, their trucks have beat our road to death.

Thank you for your consideration,

Mrs. Arlene C. Parks
Mrs. Arlene C. Parks
3770 Mullan Rd.
Missoula, Mt. 59802

Ex.#4

2-1-89

pg 40

6610 Mullan Road
Missoula, Montana 59802

Senator Thomas Keating
Chairman of the Committee of Natural Resources
Capitol Station
Helena, Montana 59601

Dear Senator Keating:

We are writing in support of Senate Bill 211. We are long-time residents of Mullan Road and have been concerned about the effects of the gravel pit operations in our residentially-zoned area.

We own bottom land along the river and are particularly concerned about the diversion of water used by the gravel pit operations. Because many of the neighboring residents feel this same concern, particularly in this period of drought conditions, we feel special attention should be paid to the rights of all the people, not just the gravel pit owners, as now happens under the current mining act.

We are not in favor of stopping all mining operations. We just want sand and gravel operations subject to the same zoning restrictions as the rest of us.

We would appreciate your objective and thorough consideration of the issues presented by this bill.

Thank you.

Sincerely,

Mr + Mrs W.O. Edwards

Mr. and Mrs. W.O. Edwards

Ex. #4
2-1-89

1/28/89

PS 41

Natural Resource Committee
Helena, Montana

Mr. Thomas Keating,

Mr. Keating, I am writing in support of Senate bill 211 that will lend some control to the spread of commercial and industrial projects in what is zoned residential areas. We moved here with the confidence of that, only to find two gravel pits developing and expanding large areas of land across the road from us. Not only does it detract from the beauty of our neighborhood, it also has a major deterrent to our air quality (raising lots of dust, and truck pollution), it also has an effect on the water table. I have noticed unexplained changes in my water system. With future droughts this could become a serious situation.

These companies keep coming closer and closer to the main Mullan Road, and intend to keep asking for the right to develop more and more of their many acres if they are not curtailed. I don't think this is right or fair to the rest of us who have no other choice now that we already bought property here and have had it lose value because of this condition that exists.

Any help will be appreciated.

Sincerely;

A. Herndon

Ex #4
2-1-89
Pg 42

26 January 1989

Thomas Keating
Chairman, Senate Natural Resource Committee
Capitol Station
Helena, Montana 59601

Dear Mr. Keating:

We are writing in support of SENATE BILL 211.

As long-time residents of Mullan Road, we are very concerned about the open-cut mining law that permits gravel pit operations in zoned residential areas.

At the present time we have two gravel pits operating within a quarter mile of each other and of us.

Over 97% of the property owners in this area have signed a petition protesting these operations. We not only have the gravel pits, but also a hot mix plant and a drag line operating.

We have the support of the Missoula County Commissioners and of Dick Pinsoneault, the State Senator from our district, for the proposed amendment which eliminates sand and gravel operations from the present open-cut mining law.

Thank you for your consideration.

Sincerely
Emmett Flynn
Katherine Flynn

Emmett and Katherine Flynn
5000 Mullan Road
Missoula, Montana 59802

2-1-89

Pg. 43

6455 Mullan Road
Missoula, Mont. 59802

Jan. 28. 1989.

Senator Thomas Keating
Chairman of the Senate Natural Resource Committee
Helena, Mont.

Dear Sir:

We live in a residential area on Mullan Road where two gravel and sand pits have been operating less than a half mile to the east.

Now they have put in the second permit to add another twenty acres to expand.

This should never have been allowed. The Hot Mix Plant puts out a terrible odor as well as noise, dust and the big trucks have ruined our road. It is a complete eye sore for our lovely community as well as all residential areas in the whole State.

As we understand this is Bill 211 and we are asking you to please help us in not allowing this plant to be expanded. Rightfully it all should be put back into its natural state as it was stated in the first permit.

Please help us and Thanking you kindly,

Sincerely
Rajesh & Pous Dikaton

Ex. #4
2-1-89
PS 44

Jan. 28, 1989

Sen. Thomas Keating
Chairman, Senate Natural Resource Committee
State Capitol
Helena, Mt. 59601

Dear Senator Keating:

Please support Senate Bill No. 211, which is coming up for consideration this week.

The two gravel pits in operation close by have lowered property values, caused dust, noise and odor pollution. They were put in despite 90% opposition from the surrounding property owners. (All of whom, I might add, have to comply with local zoning laws).

It is only fair that if one property owner has to comply with local zoning, all property owners should. The zoning was planned for the long-time benefit of everyone. For a few businessmen to thwart the hard work of the zoning board is unfair and has certainly destroyed confidence in government.

Please restore our faith that government is to protect all of us, not only a select few. Please support Senate Bill 211.

Thank you!



Kathleen Whaley
1510 Marie Dr.
Missoula, Mt. 59802

1510 Marie Dr.
Missoula, Mt. 59802
Jan. 28, 1989

Dear Senator Keating:

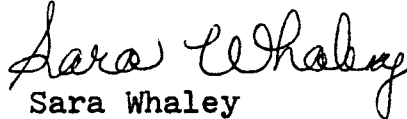
I am writing about the upcoming Sen. Bill #211.

This bill would directly affect the landowners and residents in the rural area of Missoula, Mt., where two gravel pits have been operating, in spite of great local opposition and also in spite of the fact that the area is zoned C-RR-1 (one house per acre).

The Missoula County Commissioners are also in favor of Sen. Bill #211.

Please support this bill--and thank you.

Sincerely


Sara Whaley

1510 Marie Drive
Missoula, Mt. 59802

Ex. #4
2-1-89

1/28/89

pg. 46

Senator Thomas Keating
Chairman, Senate Natural Resource Committee
State Capitol
Helena, Mt. 59601

Dear Sen. Keating:

Thank you for giving your support to Sen. Bill No. 211, making sand and gravel companies comply with local zoning.

Two gravel pits in the area have turned this residential community into a semi-industrial area, causing lower property values.

In the summertime, we are dealing with odor, noise and dust pollution. Plus, there is always the ever-present danger of someone young being hurt, since the pits are so close to homes and within a mile of a grade school.

The trucks use the road that schoolchildren and buses use, further causing worry, especially about children on bikes or on foot.

This area was zoned C-RR-1, but the gravel operations were installed anyway, including a dragline and a batch plant.

The Missoula County Commissioners are behind this effort to have such operations comply with local zoning. I hope you will be too.

Thank you.

Sincerely

Florence A. Carr,

Florence A. Carr

1510 Marie Dr.
Missoula, Mt. 59802

Ex. #4
2-1-89
4547

1600 Marie Drive
Missoula, Mt. 59802
January 28, 1989

Senator Thomas Keating, Chairman
Senate Natural Resource Committee
State Capitol
Helena, Mt. 59601

Dear Senator Keating:

We are writing about the upcoming Sen. Bill No. 211,
and hope we can depend on you for support of this bill.

This bill would help greatly to control problems
the residents of this area are now dealing with, in regard
to two gravel pits that have been installed in the middle
of a lovely residential/rural suburban area of Missoula,
Montana.

The Missoula County Commissioners are behind this
bill also, as they would like the local zoning laws to
be complied with. The zoning laws were totally dis-
regarded when the gravel pits started up.

Thank you for supporting Sen. Bill No. 211.

Sincerely

Patrice Schwenk

Patrice and Michael Schwenk

Michael S. Schwenk

JANUARY 29, 1989

SENATE NATURAL RESOURCES
EXHIBIT NO. 74
DATE 2-1-89
BILL NO. SB211
PS 48

TO WHOM IT MAY CONCERN:

We are writing to urge that SB211 (regarding sand and gravel operations) be passed.

We built our home in 1966 and were surrounded by other homes on 1-5 acres and farms. This area was zoned CRR1 in the 1970's and was a quiet and pleasant area to live in.

Several years ago, not one but two, side-by-side gravel pits were opened about 1/4 mile from our home. The entire neighborhood protested but could not stop them from operating in our back-yards.

There has been 24-hour a day operation making it impossible to sleep with the roar of dredging equipment and the beeping of other equipment. They often start working even before we get up at 6:00 a.m. and work until midnight when they aren't working 24-hour days.

Many days when the wind blows, huge plumes of fine dust rise off the gravel piles (and are blown toward the city of Missoula when the winds are out of the west.) The hayfields surrounding the pits are covered with dust making the hay undesirable for livestock feed thus reducing the income of the farmers.

When the asphalt plant is in operation the stench is terrible. I am very sensitive to fumes of this type and feel sick and dizzy when exposed to them.

We, also, worry that the water level in our wells will be affected as the pits are dug deeper and made larger. At one point the pit operators were attempting to pump the water out of their pit and the water table was adversely affected. They were stopped by the state.

Please vote to put these kinds of operations under the control of the local authorities to enable them to protect the local environment. Our local authorities are fighting very hard to control pollution in the City and County of Missoula and 2 gravel pits this close to populated areas thwarts their efforts. The County Commissioners even went to the State Supreme Court in their efforts to stop these gravel pits but under current state laws were unable to do so!

Under current state laws a gravel pit can go in anywhere—even beside your house!

Thank you for your time and consideration!

Respectfully,

Ellis R. Houseman

Missoula, Montana 59802

January 30, 1989

Senator Thomas Keating,
Chairman Senate Natural Resources Committee,
State Capitol,
Helena, Montana.

Dear Sir:

We would like to take this opportunity to let you know we are in favor of Senate Bill # 211, in regard to open cut mines.

Our line is at 2205 Flynn Lane, which is one half mile north of American Asphalt mine and Harry Allen mine on Mullon Road, in Missoula, Montana.

We do not believe this type of operation belongs in a residential neighborhood.

Yours Truly,
H. Adeline Jacobsen
Peter A. Jacobsen

Ex #4a
2-1-89
Pg 1 of 4

5 February 1988

Steve Welch
Department of State Lands
Capitol Station
Helena, Montana 59620

Dear Mr. Welch:

The following residents of the Mullan Road area live near the site of the American Asphalt Gravel operation and at this time we strongly protest the expansion of the operation. We do so for the following reasons:

1. American Asphalt has not lived up to the standards agreed upon when the original pit was started.
 - The dust has been a consistent and bad problem affecting not only the homes (some cannot open doors or windows in summer heat) but hay crops as well - the dust on neighboring hay crops has made them unsalable.
 - American Asphalt has not provided the trees that were to have surrounded the pit to absorb dust and noise.
 - American Asphalt trucks are a continual hazard on an already crowded Mullan Road - speeding has been a problem, and failure to stop at the stop sign before entering Mullan Road (report filed with Sheriff's Department).
2. A second major concern is the effect the gravel operation is having on our underground water level. We are concerned. The gravel pit is situated on a stretch of river bottom land which has numerous sloughs providing water for irrigation. At this time some of these sloughs are drying up. In the summer of 1986 the level of the ground water dropped 3 feet.

One neighbor's well, which has averaged 30 feet of water since the early 1940's now measures 5 feet! Some wells to the north have dried up. We realize that some of this might be due to the dry seasons. However, many of us have lived here from 50-75 years and have had many dry seasons - none of which has every had these drastic effects.

In addition to this concern, at the original hearing held about the gravel pit, a hydrologist testified that ground water could become contaminated by this operation, which would affect many wells to the west of the location.

3. We would like to emphasize that this operation was started over the objections of 97% of the area residents, and in an area that was strictly zoned for residential and agricultural purposes.

We earnestly ask you to give this your utmost consideration because it so deeply affects our lives and livelihood.

THANK YOU.

549-2896
Ernest Ashenbrenner

88-0041
Ronald L. Pearson

543-3918
Gene Lynn
Ernie Lynn

549-9440
Alfred Kelly

728-8920
Gary Cordis
7 Mike Carter

Danell Barkwith

88-3079
Walter Smith

5565 Mullan Rd

5450 Mullan Rd

8450 Mullan Rd.

5355 Mullan Rd

2185 Tipperary Way

3185 Tipperary Way

2200 TIPPERARY WAY

2200 Tipperary Way

2140 Tipperary Way

Ex. #4a

2-1-89

PS 3 of 4

5 February 1988

Steve Welch
Department of State Lands
Capitol Station
Helena, Montana 59620

Dear Mr. Welch:

The following residents of the Mullan Road area live near the site of the American Asphalt Gravel operation and at this time we strongly protest the expansion of the operation. We do so for the following reasons:

1. American Asphalt has not lived up to the standards agreed upon when the original pit was started.
 - The dust has been a consistent and bad problem affecting not only the homes (some cannot open doors or windows in summer heat) but hay crops as well - the dust on neighboring hay crops has made them unsalable.
 - American Asphalt has not provided the trees that were to have surrounded the pit to absorb dust and noise.
 - American Asphalt trucks are a continual hazard on an already crowded Mullan Road - speeding has been a problem, and failure to stop at the stop sign before entering Mullan Road (report filed with Sheriff's Department).
2. A second major concern is the effect the gravel operation is having on our underground water level. We are concerned. The gravel pit is situated on a stretch of river bottom land which has numerous sloughs providing water for irrigation. At this time some of these sloughs are drying up. In the summer of 1986 the level of the ground water dropped 3 feet.

One neighbor's well, which has averaged 30 feet of water since the early 1940's now measures 5 feet! Some wells to the north have dried up. We realize that some of this might be due to the dry seasons. However, many of us have lived here from 50-75 years and have had many dry seasons - none of which has every had these drastic effects.

In addition to this concern, at the original hearing held about the gravel pit, a hydrologist testified that ground water could become contaminated by this operation, which would affect many wells to the west of the location.

3. We would like to emphasize that this operation was started over the objections of 97% of the area residents, and in an area that was strictly zoned for residential and agricultural purposes.

We earnestly ask you to give this your utmost consideration because it so deeply affects our lives and livelihood.

THANK YOU.

549-2896

Ernest Ashenbrenner

5815 Mullan Rd
8450 Mullan Rd
1897

9-0641

Donald R. Pearson

5565 Mullan Rd

513-3912

Ernie Flynn

5450 Mullan Rd
8450 Mullan Rd

49-9440

Alfred Kelly

5355 Mullan Rd

728-8922

Bong Cordis

2185 Tipperary Way

7 Mullan Rd

3185 Tipperary Way

Danell Babinich

2200 Tipperary Way

9-3679

Walter Smith

2200 Tipperary Way



CITY-COUNTY HEALTH DEPARTMENT

January 30, 1989

SENATE NATURAL RESOURCES

EXHIBIT NO. 5

DATE 2-1-89

BILL NO. SB 211

~~COMMITTEE~~ PS 2 of 2

TESTIMONY BEFORE THE MONTANA SENATE NATURAL RESOURCES
CONCERNING SENATE BILL 211.

My name is Jim Carlson, I am representing the Environmental Health Division of the Missoula City-County Health Department. Our agency's responsibilities include the enforcement of air pollution regulations in Missoula County and response to complaints from citizens concerning noise and water pollution.

The intent of Senate Bill 211 is to eliminate the provision in current State Law which allows open cut sand and gravel mines to extract and process material regardless of the status and nature of the surrounding property use. Currently these mines can be opened and operated within or immediately adjacent to a developed and zoned residential neighborhood.

When a company opens a new gravel mine with an associated rock crusher or asphalt plant, State and local regulations require certain air pollution abatement practices and pollution control equipment to be used. However, such requirements do not provide for no impact on immediately adjacent property owners.

Open cut sand and gravel mines are often operated sixteen to twenty-four hours a day. The extraction process utilizes large diesel earth moving equipment followed by material transport processes, screening and sorting machinery, and large rock crushing equipment which can turn thousands of tons of rock into gravel each day. This process is often followed by an asphalt batch plant to produce paving material.

Although reasonable controls are placed on open cut mines and processing equipment, they still have substantial emissions of dust from hauling, digging, screening, and crushing operations. The diesel engines and asphalt plants emit odorous smoke and the large engines, rock crushers and screening operations produce extremely high levels of noise. There is also a substantial visual impact from an operating open cut mine. If residential properties happen to be nearby, the impact upon them is significant and in my opinion unreasonable. Heavy industrial use of this type is not compatible with residential use if it is the intent of government to provide for the health and welfare of nearby adjacent residents.

I have been a public servant for Missoula County for fourteen years. During this time I have experienced no other citizen complaints that are as frustrating to deal with as an open cut

Ex. #5

2-1-89

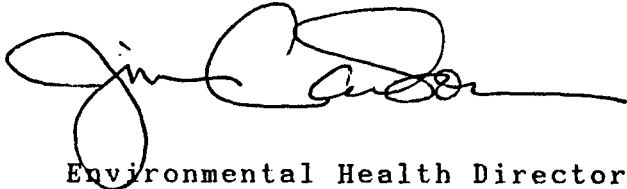
PS 24

mine in a residential area. In the instances where this situation has occurred, the businesses involved have been in compliance with applicable regulations and yet the open cut mine and processing equipment still have an inordinate impact on the adjacent residential properties. The result is a group of people who are bitter and cynical about the ability and desire of State and local government to protect them and their property values from unreasonable adverse impacts.

For these reasons, we strongly recommend that State Legislature provide for the integrity of local zoning districts by protecting them from open cut mines operated for sand and gravel. We urge you to pass Senate Bill 211.

Respectfully Submitted,

Jim Carlson



Environmental Health Director

THE DISTRICT COURT IMPROPERLY APPLIED RULES OF STATUTORY CONSTRUCTION IN CONSTRUING THE MEANING OF M.C.A. 76-1-113 AND M.C.A. 76-2-209.

A. Rules of construction.

The question before this court may be narrowed down to an interpretation of two statutes: M.C.A. 76-1-113 concerning master planning and M.C.A. 76-2-209 concerning zoning. M.C.A. 76-1-113 reads:

Nothing in this chapter shall be deemed to authorize an ordinance, resolution, or rule which would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

M.C.A. 76-2-209 reads:

No resolution or rule adopted pursuant to the provisions of this part, except 76-2-206, shall prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

It is Missoula County's interpretation that M.C.A. 76-2-209 and 76-1-113 do not prohibit the regulation of the location and manner of performance of gravel extraction and associated processing activities. American Asphalt contends that no zoning law may condition a mining activity by virtue of the plain meaning of M.C.A. 76-2-209.

Missoula County does not seek to prevent the "complete use, development, and recovery" of mined resources, as is proscribed by M.C.A. 76-2-209; rather, it seeks to regulate the time, place and manner of mineral recovery by requiring the former to be conducted in industrial zones. Missoula County concedes that

because of the unique characteristics of the natural resources 2 of 3
named in the statutes, harvesting and extraction of these
resources must occur where they are found. We cannot concede,
however, that the Legislature intended to prohibit counties from
exercising any form of planning and zoning over certain natural
resources or that the term "complete use, development, or
recovery" includes the full range of activities proposed by
American Asphalt. For a resolution to the difference in
interpretation, the parties must call upon the assistance of the
Court.

The basic rule in interpreting a statute is that the
intention of the Legislature must be ascertained if possible.
M.C.A. 1-2-102. The intention of the Legislature must first be
determined from the plain meaning of the words used. Haker v.
Southwestern Ry Co., 176 Mont. 364, 369, 578 P.2d 724, 727
(1978).

Where the intention of the Legislature can be determined
from the plain meaning of the words used, the courts may not go
further and apply any other means of interpretation. Oldenburg
v. County of Flathead, 41 St. Rep. 217, 218, ___ P.2d ___ (1984);
State v. Hubbard, 39 St. Rep. 1608, 1611, 649 P.2d 1331, 1333
(1982); Tongue River Electric Co-op Inc. v. Montana Power Co.,
38 St. Rep. 2032, ___ Mont. ___, 636 P.2d 862, 864 (1981).
Intention must be gathered from the language employed by the
lawmakers and not from street rumors or other similar sources.
Mills v. State Bd. of Equalization, 97 Mont. 13, 33 P.2d 563,
569 (1934).

Ex. # 6
2-1-89
303

If the intention of the Legislature cannot be ascertained from the plain meaning of the words employed, then the court may resort to other rules of statutory construction.

The District Court in its Findings of Fact and Conclusions of Law (Appendix A, No. 5) concluded that the statutes in question were not of doubtful meaning. Missoula County asserts that if indeed the words of M.C.A. 76-1-113 and 76-2-209 are not doubtful, then the District Court misconstrued their meaning. However, when read in context of the legislation in which they are found, both statutes have a doubtful meaning. Proper application of rules of construction necessitate consideration of the public purpose behind the planning and zoning enabling legislation and application of the liberal rule of construction.

B. Assuming the meaning of M.C.A. 76-1-113 and M.C.A. 76-2-209 is not doubtful, the District Court misconstrued the plain meaning of the statutes.

The District Court in its Findings of Fact and Conclusions of Law (Appendix A, No. 5) concluded that the words of M.C.A. 76-1-113 and 76-2-209 are not of doubtful meaning and that the statutes exempt all mining operations from zoning and comprehensive plan regulation of Missoula county.

It is difficult to understand how the court reached this broad conclusion upon reading the statutes. Neither M.C.A. 76-1-113 or M.C.A. 76-2-209 expressly prohibit counties from regulating mineral extraction or processing. The statutes simply say that such regulation cannot prevent the complete use, development, and recovery of certain natural resources. A wide

SENATE NATURAL RESOURCES

EXHIBIT NO. 7

DATE 2-1-89

BILL NO. SB-211

1062

Bozeman
↓

1/24/84 - Sourdough Fire Hall 7:00 p.m.

Robert June
1509 Wildflower Way

Max Hager
1705 Rainbow Road

Gary Harkin
1702 Rainbow Road

Gayle Watts
1305 Rainbow Road

Marge Wester
1704 Rainbow Road

Andrea Terhaar
1500 driftwood

Linda Pelton
1307 Parkview Place

Marian Turner
1302 Driftwood Drive

Charlie Gehring
Rainbow Road

Mathilda Gehring
1508 Rainbow Raod

Cindy Lindskog
1509 Driftwood

Masy Lon Jones
1311 Wildflower

Alan Williams
1704 Wildflower

Mary Lou Bartram
1507 Wildflower Way

Donald R. Bartam
1507 Wildflower Way

Melvin K. Hipch
1506 Parkview Place

Ann Ellen Twomey
1300 Wildflower Way

Ex #7

2-1-89

2012

Mike Coil *Attny*
1303 Driftwood Way
(8) 536-8849
Paul Johnson
1301 Rainbow Road

Dianna Johnson
1301 Rainbow Road

Bob Converse
1301 Driftwood *3rd element*

Dave Converse
1301 Driftwood

Vicki Bradford
1304 Driftwood

Carol Mosby
1308 Parkview Place

Earl Shaper
1309 Rainbow Road

Keith Collison
8050 Leverich Road

Curtis Smith
1306 parkview Place

HP Goan
1502 Driftwood

Bill & Vicki Schmit
1715 Driftwood

Milton DeWitt
1704 Driftwood Drive

Mel McFetridge
1709 Rainbow Road

Kathy Surbrugg

F. J. Lutzgrass
2113 Walter Road

A.W. Leckie
2125 Walter Road

Hilda Wallace
1748 Mary Street

Bozeman
↑
↓
Bullerage

MISSOULA COUNTY

BOARD OF COUNTY COMMISSIONERS

• Missoula County Courthouse • Missoula, Montana 59802
(406) 721-5700

Exhibit 8

2-1-89

SB 211

BCC-89-076
January 30, 1989

Thomas Keating, Chairman
Natural Resources Committee
Montana State Senate
Capitol Station
Helena, MT 59624

Dear Senator Keating and Committee Members:

We are writing in support of SB-211, which would allow zoning and planning restrictions on opencut mining. While we don't want to undermine the Hard Rock Mining Act, we have to acknowledge that gravel pits have enormous impacts in essentially residential areas.


In Missoula County, we have had examples of gravel pit miners exhibiting callous disregard to the needs and concerns of the residents of the residential areas surrounding their mining operations, and we believe that the zoning and planning restrictions proposed in SB-211 would help to alleviate some of the problems that people in these particular residential areas have experienced.

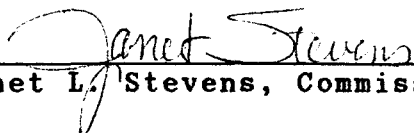
Thank you for your consideration of these remarks.

Sincerely,

MISSOULA BOARD OF COUNTY COMMISSIONERS


Barbara Evans, Chairman


Ann Mary Dussault, Commissioner


Janet L. Stevens, Commissioner

BCC/lm

cc: Missoula Legislative Delegation
Gordon Morris, Executive Director
MACo

Exhibit 9
2-1-89
SB211 1 of 2

SNAVELY & PHILLIPS, A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

SUITE 101, CENTRAL SQUARE
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MISSOULA, MONTANA 59802

(406) 721-7880

ROBERT J. PHILLIPS
ROBERT S. MARCOTT
LAURENCE J. GINNINGS
DIRK A. WILLIAMS
DONALD V. SNAVELY, OF COUNSEL

February 1, 1989

Senator Fred VanValkenburg
Montana State Legislature
Helena, Montana 59601

Re: Senate Bill 211

Dear Fred:

I appreciate your efforts to get back to me for the last few days. I know how many calls you must be getting. Because of our telephone tag, I decided I would put my thoughts in writing and have it telecopied over to you.

I have been monitoring the progress of Senate Bill 211 with some interest. I understand that this afternoon, February 1, there is a hearing before the Natural Resources Committee of the Senate on this bill. As I am sure you recall, I was the attorney representing American Asphalt when Missoula County sued us to obtain an injunction against the gravel pit on Mullan Road west of Missoula. The basis of that suit was that we were not complying with the planning and zoning regulations of Missoula County. The District Court ruled in our favor as did the Montana Supreme Court. Your Senate Bill 211 is an effort to reverse the specific holding of the Montana Supreme Court on that point and to change the statutes upon which we relied.

It is bad public policy to change the statutes exempting mineral, timber and agriculture development from planning and zoning regulations. It is also bad policy for the Legislature to carve out one specific industry from a statute that has been in effect for many years.

The reason this statute talks only about sand and gravel operators is because of constituents of Senator Pinsoneault who have complained. There is no wisdom at all in making this statute apply only to sand and gravel. The extraction and development of other minerals can have a far greater impact on the environment and on surrounding landowners than sand and gravel.

A little bit of research will disclose that we established to the Department of State Lands' satisfaction that our gravel pit west of Missoula could be opened, developed and reclaimed with no effect on the water quality or hydrology of the area,

EX 9

SNAVELY & PHILLIPS, A PROFESSIONAL CORPORATION

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Senator Fred VanValkenburg
February 1, 1989
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with no adverse impact on the taxable values, and with due regard to safety and health concerns. These items are already looked at by the Department of State Lands in deciding whether or not to grant a reclamation contract to a sand and gravel operator or any other open cut miner. There is no reason to overlay an additional set of regulations and another bureaucratic determination.

Both statutes amended by Senate Bill 211 exempt the complete use, development and recovery of mineral, timber and agricultural resources by the owner. An effort to chip away at any one portion of this because a small group of people wrongly believe they are harmed will open the door to restriction on the development of the three basic industries in Montana - mining, logging and agriculture. In two years time I guarantee that there will be someone who wants to log in a planned area of Flathead County, and you will have another bill on your desk to prohibit that industry because it is in violation of the plan. These statutes have already been used to keep the local planning and zoning authorities from prohibiting certain agricultural activities in Missoula County. That should continue.

I am told that this bill has little chance of passing. Because I am unable to be in Helena today, I ask that you represent my views to the Natural Resources Committee. I also ask that you speak and vote against Senate Bill 211 as it represents poor public policy.

Sincerely,

SNAVELY & PHILLIPS, P.C.

Bob.
Robert J. Phillips

RJP/elv

0201.1

WITNESS STATEMENT

SB 211

NAME: ~~Julie Hacker~~ DATE: 2/4/89

ADDRESS: Banner

PHONE: _____

REPRESENTING WHOM? Emma Mary Flynn

APPEARING ON WHICH PROPOSAL: SB 211

DO YOU: SUPPORT? AMEND? _____ OPPOSE? _____

COMMENTS: _____

Letter in packet.

1. Family has lived on this property 100 yrs.

2. Zoning & Power / A - High density

3. Gravel pit created pollution issue - affects property values

4. Passage SB 211 would constrain development of pit in higher density zoned areas

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

