



May 9, 2023

RE: House Committee on Regulatory Reform Meeting, Tuesday, May 9, 2023
House Bills 4526, 4527, and 4528 - Regulations for Mining of Sand and Gravel Operations

Dear Chair Carter and Committee Members:

Tip of the Mitt Watershed Council, on behalf of its 2,300 plus members, wishes to extend our concern with regards to House Bills 4526 – 4528. House Bills 4526, 4527, and 4528 would transfer permitting and oversight of sand and gravel mines from local governments to the state and would specify that Part 639 would preempt an ordinance, regulation, resolution, policy, practice, or master plan of a governmental authority created by the state constitution or statute or of a city, village, township, or county that prohibits or regulates mining, including its location, development and trucking activities. .

Tip of the Mitt Watershed Council is a nonprofit organization founded in 1979. We speak on behalf of our members including full-time and seasonal residents, lake associations, and businesses. We work to maintain the environmental integrity and economic and aesthetic values of lakes, streams, wetlands, and groundwater in Northern Michigan, as well as statewide and throughout the Great Lakes Basin. As a lead organization for water resources protection in Antrim, Charlevoix, Cheboygan, and Emmet Counties, the Watershed Council is working to preserve the heritage of Northern Michigan – a tradition built around our magnificent waters.

We are greatly concerned about the impacts the enactment of these bills would have for local governments to protect resources above and beyond what the state allows. Proactive efforts by local governments to preserve the quality of life in their community are part of the rich history of home rule in Michigan. In Michigan, local government has traditionally assumed the responsibility for land use control through zoning and ordinances. The ability for local governments to protect their community's character while at the same time protecting the overall public and environmental health for the long term would be severely hindered though the enactment of these bill.

Currently, local units of government can regulate but seldom prohibit the extraction of natural resources. Local governments can reasonably regulate (MCL 125.3205(6)) hours of operation, blasting hours, noise levels, dust-control measures and traffic. However, such regulations must be "reasonable" in accommodating customary mining operations.

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Local zoning is intended to protect local residents, and local officials understand the importance of building strong communities, protecting public health and safety and improving quality of life. Zoning is designed to determine what areas within a local community are appropriate for which uses, thereby balancing out the needs of residents, businesses, and protection of natural resources. By preempting zoning requirements, mining operations could easily be approved in areas designated for other uses, such as sensitive natural areas or residential area.

Furthermore, a Master Plan is a document and policy guide designed to help communities create a vision of what they want to look like in the future. Master Plans help guide communities in their decisions on land use development and preservation. When it comes to mining operations, the goal is to ensure that the effect of interactions are regarded as positive by those affected locally as well as by the promoters of the project, and that communities develop in ways that are consistent with their own vision. The best way to achieve this is through local control and approval.

Tip of the Mitt Watershed Council has a long history of working collaboratively with local units of government and mining companies to identify ways in which companies can effectively mine for aggregates while protecting water resources and the local community.

For example, at the request of the Emmet County Planning Commission, the Watershed Council met with the Rieth-Riley Construction Company and its representatives to discuss a proposed gravel mining operation in Carp Lake Township. As a result of these discussions, a number of conditions were added to the permit to protect local water resources and community members including:

1. All required county and state-level permits must be granted prior to operation, including a soil erosion and sedimentation control permit and a wetland permit, if necessary.
2. A formal wetland delineation was conducted prior conducting any operations. In addition, the company will place signage/flags will be used to alert workers to the location of all wetlands. Furthermore, a berm will be placed between operations and the wetlands to protect the wetlands from runoff.
3. Equipment will be sourced locally and during the county's yearly site visit, the county will monitor for invasive species. Should invasive species be identified on the site, the company will be responsible for management and control in a proper and timely manner to avoid further spread.
4. The company has agreed to include a map of surface waters along with their application.
5. The company provided independent borehole data taken by Pearson Drilling and reviewed by Dean Geers of the Atwell Group.
6. The company agreed to not wash the aggregate onsite. The only water use on site will be for dust suppression. There will be no water wells on the site to be used for drawing groundwater for other uses. Trucks will be filled with water at a third-party location
7. The company is willing to provide for a third party to test the two residential wells that about the proposed project site. The third party will determine what contaminants the wells should be tested for based on the conditions on site and the drinking water standards per the Health Department of Northwest Michigan.
8. Setbacks were increased for the areas with neighboring buildings onsite.

The Watershed Council appreciates the collaborative nature of its discussions with the mining company and their willingness to take steps to ensure that groundwater, surface water, and drinking water resources are protected during and after operations. This is just one of many examples in which the Watershed Council has worked with a local government to improve the protections in place for mining activities.

Such dialogue and additional protections would not be put into place if local government authority is preempted. The bills would ultimately remove the authority for local governments to provide for the public interest and protect local resources and public health.

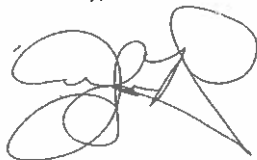
While the bills introduced prescribe a number of requirements that sand and gravel mining companies must meet, it fails to allow for local governments or the Michigan Department of Environment, Great Lakes, and Energy to address all of the concerns that come with mining operations, such as invasive species management. In addition, it fails to allow local community concerns to be adequately addressed, such as requiring the testing of nearby drinking water wells or increasing setbacks. Provisions are not included to allow for modifications and conditions to be made to permits based upon feedback provided during the public comment period. In the end, this is likely to result in an increase of contested cases and lawsuits.

Based on the Watershed Council's history and experience, it is far better to engage in productive, proactive dialogue with community members, mining operators, and local units of government to find a solution that serves not only the needs of the gravel or sand operation, but also protects the welfare, character, and environment of the local community.

Therefore, we urge you to oppose House Bills 4526, 4527, and 4528 to ensure that vital decision-making authority is not taken away from those in the best position to make them. We urge you to maintain the long-standing tradition of home rule in Michigan, and allow local governments to work collaboratively with mining operators to protect the welfare and safety of our citizens and ensure our environment is safeguarded.

Please feel free contact me with further questions or concerns at (231) 347-1181 or jenniferm@watershedcouncil.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jennifer McKay', with a stylized flourish at the end.

Jennifer McKay
Policy Director