



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust  
PO Box 1189, Helena, Montana 59624  
Telephone (1): (617) 448-9762

**By Electronic Mail**

October 1, 2024

Alan Tenenbaum  
National Bankruptcy Coordinator  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

Katherine Hausrath  
Assistant Attorney General  
Montana Natural Resource Damage Program

Amy Steinmetz  
Division Administrator  
Waste Management & Remediation  
Montana Department of Environmental Quality

Dear Alan, Katherine, and Amy,

The Montana Environmental Trust Group, LLC (METG), not individually but solely in its representative capacity as Trustee of the Montana Environmental Custodial Trust (Custodial Trust), respectfully submits the attached progress and status report (Report) pursuant to the September 30, 2020 Framework for Reappointment of METG as Trustee of the Montana Environmental Custodial Trust (Reappointment Framework) issued by the U.S. Department of Justice (DOJ), the Montana Natural Resource Damage Program (NRDP), and the Montana Department of Environmental Quality (MDEQ). The attached Report “emphasizes the project components” enumerated in the Reappointment Framework. The Custodial Trust has also included progress updates on groundwater quality and land redevelopment at the East Helena Designated Property.

Please do not hesitate to contact me with any questions regarding this submittal.

Sincerely,

Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust  
By: Greenfield Environmental Trust Group, Inc., Member

A handwritten signature in black ink that reads 'Cynthia Brooks'.

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By: Cynthia Brooks, President



Attachments

cc: Chris Amrhine—METG  
Carolina Balliew—USEPA  
Katherine Garcin-Forba—MDEQ  
Lauri Gorton—METG  
Max Greenblum—USEPA  
Craig Kaufman—METG  
Erica Menard—METG  
Steve Opp—USFS  
Babak Rastgoufard—USDA  
Jen Roberts—METG  
Sydney Stewart--NRDP  
Sonny Thornborrow—USFS  
Jessica Wilkerson—MDEQ  
Bridget Williams—USEPA



**Montana Environmental Trust Group, LLC**  
**Trustee of the Montana Environmental Custodial Trust**  
**Progress Report as of October 1, 2024**  
**Pursuant to the September 30, 2020 Framework for Reappointment**  
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September 30, 2020

Cynthia Brooks  
Montana Environmental Trust Group, LLC  
P.O. Box 1230  
East Helena, Montana 59635

Re: United States and State of Montana Joint Reappointment of Montana Environmental Trust Group, LLC, as Trustee of the Montana Environmental Custodial Trust

Dear Ms. Brooks:

The United States, acting through the United States Department of Justice, on behalf of the Environmental Protection Agency, the Department of Agriculture Forest Service, and the Department of Interior Fish and Wildlife Service, and the State of Montana acting through the Montana Department of Environmental Quality and the Montana Department of Justice, jointly agree to reappoint the Montana Environmental Trust Group, LLC, as Trustee of the Montana Environmental Custodial Trust pursuant to Section 4.1.1 of the Custodial Trust Agreement and in accordance with the attached terms and conditions (the "Framework"). As provided in the Framework, the reappointment is through June 1, 2025. As noted in the Framework, METG's initial term of appointment as trustee of the Montana Environmental Custodial Trust was through December 2014. By letter dated August 11, 2014, the United States indicated that it supported reappointment of METG as trustee of the Montana Environmental Custodial Trust. The letter indicated that the United States did not know the State's position on reappointment but that if consensus could not be reached with the State on reappointment the United States hoped that METG would consider continuing to serve as trustee as permitted by Section 4.1.1 of the Environmental Custodial Trust Agreement with the hope that the United States and the State would thereafter agree to reappointment of METG as trustee. A consensus was not at that time reached with the State on reappointment and METG has continued to serve as the trustee in accordance with Section 4.1.1, with the authority to exercise all powers provided to the trustee by the Environmental Custodial Trust Agreement. The United States and the State have now reached a consensus on reappointment of METG through June 1, 2025.

The United States and the State appreciate and would like to acknowledge the work the Trustee has accomplished since December 2009 and look forward to the future work of the Trustee. When it is prudent to do so, we also look forward to scheduling a meeting with a facilitator to address the items in the attached agenda.

Sincerely,

THOMAS MARIANI  
Digitally signed by THOMAS MARIANI  
Date: 2020.09.30 17:04:40 -0400

Thomas A. Mariani, Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

ALAN TENENBAUM  
Digitally signed by ALAN TENENBAUM  
Date: 2020.10.01 17:39:09 -0500

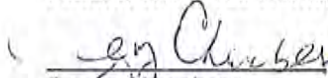
Alan S. Tenenbaum  
National Bankruptcy Coordinator



Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice



Harley Harris  
Supervising Assistant Attorney  
General  
Montana Department of Justice  
Natural Resource Damage Program

  
Jenny Chambers 10/2/2020  
Division Administrator  
Montana Department of  
Environmental Quality

cc: Patrick Holmes, MT  
Katherine Hausrath, NRDP  
Greg Mullen, NRDP  
Jessica Wilkerson, MDEQ  
Robert Roll, MDEQ  
Tom Stoops, MDEQ  
Carolina Balliew, MDEQ  
Daryl Reed, MDEQ  
Gregory Sopkin, USEPA  
Betsy Smidinger, US EPA  
Joe Vranka – USEPA  
Betsy Burns – USEPA  
Max Greenblum – USEPA  
Babak Rastgoufard – USDA  
Amy Horner – USDOJ  
Genette Gaffney -- USDOJ  
Jacob Martin – USFWS



**Framework for  
Reappointment of METG  
as Trustee of the Montana Environmental Custodial Trust**

1. *Reappointment Terms and Performance Expectations:*

- a. The Beneficiaries acknowledge as follows: METG's initial term of appointment as trustee of the Montana Environmental Custodial Trust was through December 2014. By letter dated August 11, 2014, the United States indicated that it supported reappointment of METG as trustee of the Montana Environmental Custodial Trust. The letter indicated that the United States did not know the State's position on reappointment but that if consensus could not be reached with the State on reappointment the United States hoped that METG would consider continuing to serve as trustee as permitted by Section 4.1.1 of the Environmental Custodial Trust Agreement with the hope that the United States and the State would thereafter agree to reappointment of METG as trustee. A consensus was not at that time reached with the State on reappointment and METG has continued to serve as the trustee in accordance with Section 4.1.1, with the authority to exercise all powers provided to the trustee by the Environmental Custodial Trust Agreement. The United States and the State have now reached a consensus on reappointment of METG as trustee as provided herein. The Trustee is reappointed through June 1, 2025.

On or before October 1, 2024, METG provides a progress/status report to the Beneficiaries with an emphasis on the following project components:

- i. Complete Slag Pile remediation (grade and cap) [target date to be determined in final design during Corrective Measures Implementation (CMI)]
- ii. Complete analysis of use of residential soils in the East Fields repository as a source of borrow for the slag pile cover system during the design of the Slag Pile cover, as well as an analysis that meets the applicable regulatory requirements of remediation and re-use of the East Fields property (target date to be determined in final design during CMI);
- iii. Complete all actions necessary to seek Beneficiary approval of transfer of Prickly Pear Creek corridor to PPLT (or similar entity) for Greenway Project and long-term operations and management (O&M) of the site remedy per Section 2.11 of Trust Agreement;
- iv. Complete PPC Realignment Project;
- v. Complete UBMC WTP optimization upgrades;
- vi. Complete UBMC land interchange including transfer of Cell 7 area which is currently National Forest System (NFS) land to METG ownership, and transfer of portions of lands in Paymaster Gulch currently owned by METG to United States Forest Service (USFS).
- vii. Establish reciprocating easements for USFS and METG access along Meadow Creek Road. METG will grant easements to USFS for portions of Meadow



Creek Road which cross METG lands; USFS will grant easements to METG for portions of Meadow Creek Road which cross NFS lands.

- viii. Complete City of East Helena Water Quality Projects, as proposed in the approved 2020 budget, or provide funding to the City of East Helena to complete same;
  - ix. Submit Corrective Measures Construction Completion Report(s) for all implemented remedy components, to also include framework for future analysis of Tier II or Tier III remedies (e.g., enhancement of implemented interim measures and performance monitoring of groundwater plume) (recognizing potential for delay, if slag pile remedy construction has not been completed with time to draft all reports);
  - x. Submit Quarterly Progress Reports and prepare for and complete any five-year reviews that become due;
  - xi. Complete a refined estimate for the scope and costs of future O&M for the East Helena site and UBMC WTP;
  - xii. Continue permit maintenance and site security activities for the Black Pine Mine; and
  - xiii. Support removal of existing buildings/structures at Black Pine Mine, if required for waste rock removal.
- b. The United States and the State of Montana will meet and/or confer in November of 2024, to discuss a two-year extension of METG's term, using the above considerations, as well as other relevant factors such as redevelopment efforts and performance as fiduciary, as metrics for METG's performance.
- c. In the event that the United States and the State fail to agree to grant an extension of METG's term by January 1, 2025, then no later than March 1, 2025, METG shall prepare and submit to the Beneficiaries a "plan of transition" for the purpose of providing the United States and the State with a basis to determine whether and, if so, the means to transition to a successor trustee. In the event that the Beneficiaries cannot agree on an extension of METG's term, or on whether to appoint a successor trustee (including the identity of a successor trustee), the Beneficiaries shall continue their best efforts to resolve the disagreement. Consistent with the Settlement Agreement and the Environmental Custodial Trust Agreement, the parties agree that either of them may seek guidance from the Court on any issue related to reappointment, including without limitation a successor trustee, the term(s) or length of the reappointment of METG, or the interpretation of the Consent Decree and Environmental Custodial Trust Agreement.

2. *Miscellaneous:*

- a. Continued status as trustee expressly contingent on adherence to fiduciary duties, and each Beneficiary reserves the independent right to expect and enforce the same. See Paragraph 8.e. of the Settlement Agreement and Section 4.8 of the Trust Agreement.



- b. If METG terminates, loses the services of, or in any other way functionally separates with “key employee” Cynthia Brooks at any time during a term, it shall immediately report the same to Beneficiaries. At such time, both Beneficiaries shall seek to make a decision as to whether to terminate the term of METG pursuant to the Settlement Agreement and Trust Agreement. If so terminated, METG shall remain for a six-month period or until a successor trustee is appointed and shall cooperate with Beneficiaries in selecting and transitioning to a new trustee.



## Chapter 1

### Slag Pile Corrective Measures Implementation

[Section 1.a.i of the Reappointment Framework: Complete Slag Pile remediation (grade and cap)  
[target date to be determined in final design during Corrective Measures Implementation (CMI)]

Consistent with the [Corrective Measures Implementation \(CMI\) Work Plan](#) approved by the U.S. Environmental Protection Agency (EPA) in July 2021, the Custodial Trust plans to grade and cap the slag pile after removal of the primary remaining source of selenium loading to groundwater—the upper lift of unfumed slag (UFS)—is complete or is no longer a viable source removal action. Since 2020, the Custodial Trust has actively pursued removal of UFS pursuant to an EPA- and State of Montana-approved<sup>1</sup> contract with MCC. The EPA-approved CMI Work Plan assumed that removal and recovery of UFS by MCC would take approximately 10 years.

#### I. Historic Interest in Unfumed Slag

The opportunity to recover valuable metals from UFS in East Helena has been recognized for decades. ASARCO pursued reprocessing UFS for years and (as set forth in § 5.B of the Settlement Agreement) reserved the right to enter the East Helena Designated Property after the Effective Date to remove UFS. Since the Custodial Trust’s creation in 2009, it has been approached by various companies<sup>2</sup> about purchasing and reprocessing UFS. In 2011, the Custodial Trust sold ±5,000 tons of UFS to a predecessor company of MCC that shipped UFS to the Teck Zinc Smelter in Trail, British Columbia (Teck). Of the many interested companies (including ASARCO), only MCC has significantly advanced the recovery of metals from UFS.

#### II. MCC Unfumed Slag Removal Project

MCC’s goal in pursuing the UFS Removal Project (UFSRP) has been to remove the ±2,000,000 tons of UFS that constitute the “upper lift” of the slag pile (see [Exhibit 1-1](#)) to extract zinc and reuse the remaining fumed slag for manufacturing cement. Metals extraction has largely taken place at the Korea Zinc (KZ) Smelter in Onsan, South Korea. Removing the upper lift of UFS has significant benefits because it: (i) permanently removes 75% of the remaining source of selenium loading to groundwater; (ii) reduces the ultimate cost to grade and cap the slag pile;<sup>3</sup> and (iii) generates sale proceeds that benefit the East Helena Cleanup Account.

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<sup>1</sup>EPA and the State separately approved the Slag Purchase Agreement (SPA) with Metallica Commodities Corporation (MCC) on October 14, 2020 (see [Table 1-2](#)).

<sup>2</sup> Companies that have pursued acquisition of East Helena UFS include: Blue Sky International, Metawise LTD, [Diazem Corporation](#), H&H Metals, Lucas International, [Hunter Dickinson Mining](#), [Teck Resources Limited \(Teck\)](#), Ruff Cut Recovery, and [Trafigura Limited](#).

<sup>3</sup> As stated in § 5.1 of the CMI Work Plan (Hydrometrics 2021): “The removal and recovery operation would also reduce the height of the pile and minimize the amount of grading needed for slope stabilization. This action would also reduce the cost to implement the grading and cover corrective measure. However, because unfumed slag removal activities would impact a significant area of the slag pile footprint, development of the final grading and cover plan would not start until the unfumed slag removal is complete. At this time, the removal and recovery operation is estimated to be approximately 10 years.”



- A. UFS Removal Project Scope. The overall plan for implementation of the UFSRP at the East Helena Facility (Facility) is depicted on Exhibit 1-2. The UFSRP process has entailed: (i) crushing UFS to < 2 inches (see Exhibit 1-3); (ii) transporting crushed UFS by conveyor to the stockpile area (see Exhibits 1-4 and 1-5); (iii) transporting crushed UFS by conveyor to a feed hopper at the base of the stockpile (see Exhibits 1-6 and 1-7); (iv) transporting crushed UFS in a ¼-mile-long overland conveyor to the rail loadout area (see Exhibits 1-8 and 1-9); (v) transporting crushed UFS from the overland conveyor to a 150-ton surge hopper using an apron feeder (see Exhibit 1-10); and (vi) loading crushed UFS into hopper railcars using a radial conveyor (see Exhibits 1-11 and 1-12). All MCC activities have been performed in compliance with an EPA-approved Work Plan, which includes permitting, health and safety, and remedy protection requirements.

Over 90% of the UFS has been shipped by rail to the Port of Vancouver in British Columbia (POV), where it has been loaded onto oceangoing vessels for transport and delivery to the KZ Smelter in South Korea (see Exhibit 1-13). Approximately 8,760 tons of UFS have been delivered by rail to Teck.

- B. UFS Removal Challenges. As summarized in Table 1-1, MCC shipped a total of 144,790 tons of UFS from East Helena, or an average of 5,363 tons/month, which is substantially less than the 20,000 tons/month minimum required in MCC's contract with KZ. From the outset, MCC encountered multiple challenges that resulted in extended project delays, increased costs, and insufficient deliveries of UFS to KZ.
1. Port for Transshipment (Rail to Ships). Between December 2020 and July 2021, MCC and its consultants worked with the Port of Longview in Washington (POL) to secure the permits needed to transfer UFS from railcars to ships for transport to South Korea. The project required air, waste discharge, stormwater management, shoreline development, and other permits from state (primarily the Washington Department of Ecology [DOE]) and other government agencies to comply with governing environmental regulations.<sup>4</sup> After 8 months of technical evaluations by MCC's consultants to support the POL's permit applications and meetings with the DOE, POL, and MCC (including several meetings attended by EPA-8 and the Custodial Trust), in July 2021, the POL notified MCC that it was withdrawing from the UFSRP due to the potential risk of litigation.<sup>5</sup> MCC was unable to identify another U.S. port that could transship UFS on KZ's schedule. Ultimately, MCC entered into an agreement with the Port of Vancouver in British Columbia (POV) because it was already permitted to

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<sup>4</sup> State regulations included compliance with the applicable requirements of the Washington State Environmental Policy Act (SEPA).

<sup>5</sup> As documented in a July 19, 2021 memo from the Custodial Trust to the Beneficiaries, the POL abruptly and without warning notified MCC that, on the advice of counsel, the POL could not further pursue the MCC UFSRP because of the risk of being sued: "While the permitting process was taking more time and resources than expected, there was no prior indication that POL was considering withdrawal from the project. Nor have any objections been raised by outside groups, including Columbia Riverkeeper, about the project."



transload materials similar to UFS and was willing to contract with MCC for shipping services.

2. Global Pandemic. Unfortunately, the UFSRP was launched during the COVID pandemic that created multiple supply chain issues and months of project delays, including: (i) fabrication and delivery of critical equipment, such as the custom-made, steel feed and surge hoppers (see Exhibits 1-6, 1-7, 1-10, and 1-11) and transloading equipment used to unload railcars at the POV; (ii) lack of available binder for dust control (see Exhibit 1-8); (iii) lack of available railcars (especially gondolas with covers); and (iv) lack of available railroad engineers that left multiple, loaded cars stranded on rail lines between East Helena and British Columbia. Supply chain issues and UFSWP delivery delays were compounded by significant cost increases (for materials, equipment, rail, shipping, and labor costs) due to worldwide shortages and the accompanying surge in inflation that began in 2021.
3. Union Labor Strike. In June 2023, the 7,400-person Canadian International Longshore and Warehouse Union (CILWU) voted to authorize a strike against the British Columbia Maritime Employers Association (BCMEA), which manages the POV—the largest port in Canada. On July 1, 2023, the CILWU went on a strike that lasted more than a month, required intervention by Canada’s Prime Minister and Labor Minister, and ultimately reduced Canada’s gross domestic product by \$980 million, according to a recent report issued by Parliament. The CILWU strike shut down UFS shipments from East Helena for nearly 3 months.
4. Railcar Issues. In December 2021, immediately before shipping UFS commenced in East Helena, the Burlington Northern Santa Fe (BNSF) railroad notified MCC that (contrary to earlier communications) all UFS had to be transported in covered railcars. Since gondola railcars (preferred by the POV) with covers were in short supply, in a very inefficient process, MCC had to manually place tarps over each loaded railcar in East Helena. MCC switched to top-loading, bottom-discharging “closed hopper cars” that were more available than covered gondolas and could be quickly loaded in East Helena (see Exhibit 1-12). However, because the POV was equipped to unload gondolas, it was unable to efficiently unload hopper cars.

In May 2022, to accelerate shipments to KZ, MCC began sending hopper cars to a facility in Sumas, Washington, where UFS was transferred to trucks that delivered UFS to the POV (see Exhibit 1-14). In October 2022, MCC terminated its contract with the Sumas operator after discovering previously undisclosed permitting issues.

In November 2022, to expedite unloading of railcars at the POV, MCC ordered 2 large transloading machines that were delivered to the POV in March 2023. For the remainder of 2023 (except during the CILWU strike), MCC and the POV operators worked to modify the transloading equipment to accelerate unloading hopper railcars. MCC was able to procure 45 gondolas with covers (compatible with POV’s



infrastructure) at the end of 2023, but repairs required by BNSF delayed delivery of the gondolas until 2024. Hoping to capitalize on arrival of the gondola railcars, MCC resumed crushing UFS in December 2023 (see Exhibit 1-15).

In April 2024, KZ began threatening to shut down the fuming trains it had dedicated to processing UFS from East Helena because MCC was unable to meet its UFS delivery obligations due to the cumulative impacts of the above-described project challenges. In June 2024, MCC notified the Custodial Trust that KZ had terminated its contact with MCC, notwithstanding MCC's \$17 million investment in the UFSRP.

C. MCC UFS Sale Agreement

After receiving EPA and State approval on October 14, 2020, the Custodial Trust entered into the SPA with MCC, which includes the following terms.

1. MCC Obligations Under SPA. The Custodial Trust granted MCC a non-exclusive, revocable license to access the slag pile to implement the UFSRP, subject to: (i) compliance with the EPA-approved Work Plan; (ii) posting a Letter of Credit in the amount of \$315,000 to guarantee post-removal restoration; (iii) taking ownership of UFS on an "as is" basis for \$2.00 per ton; (iv) providing documentation of all permits and contracts; (v) shipping at least 20,000 tons of UFS per month from East Helena; and (vi) liability protections for the Custodial Trust, EPA, and the State.
2. Custodial Trust Rights Under SPA. The SPA also allows the Custodial Trust to: (i) require MCC to stop work if it violates the Work Plan, conflicts with other Environmental Actions, or adversely impacts groundwater as a result of UFSRP activities; and (ii) terminate the SPA and require MCC to remove its personal property and vacate the Facility in the event MCC fails to cure a default within 30 days of written notice thereof.
3. Notice of Default. On June 27, 2024, MCC notified the Custodial Trust that KZ had formally terminated its purchase contract with MCC because MCC was unable to fulfill the required delivery of 20,000 tons/month of UFS to KZ, which constituted a default by MCC under the SPA. After consulting with EPA, on August 7, 2024, the Custodial Trust issued notice to MCC that: (i) MCC was in default under the SPA; and (ii) MCC had 30 days (until September 6, 2024) to cure the default or the Custodial Trust could terminate the SPA, requiring MCC to cease UFSRP activities and vacate the Facility at its sole cost. In its September 5, 2024 response, MCC reported that it was actively seeking an alternative destination for the 130,000-ton UFS stockpile, and asked the Custodial Trust to defer drawing on the \$315,000 Letter of Credit.

**III. Beneficiary Communications and Recommendations**

For the last 4 years, the Custodial Trust has endeavored to ensure that EPA and the State have been informed about and approved of MCC's UFSRP activities (and would be happy to provide additional information). Most recently, on September 8, 2024, the Custodial Trust advised EPA and the State of MCC's response to the Custodial Trust's default notice ( [REDACTED] ).



In a September 18, 2024 letter (see [Attachment 1-2](#)), the State recommended: (i) against further pursuit of source removal (through a sale of UFS to MCC or others); and (ii) immediately proceeding with grading and capping the slag pile (because, according to the State, capping need not be permanent and UFS can be removed after the cap has been constructed). The Custodial Trust respectfully submits that, after the upper lift is capped, the cost to remove, stockpile, and reconstruct the Slag Pile Cover System (SPCS) would make further source removal commercially<sup>6</sup> prohibitive (i.e., the UFS will be permanently entombed under the SPCS).

The Custodial Trust does not propose or support an extended delay in implementing the final Corrective Measure (CM) at the Facility (i.e., the SPCS). Instead, the Custodial Trust recommends: (i) establishing a deadline agreed to by EPA and the State by which any source removal through the sale of UFS must be accomplished; (ii) pursuing design of the SPCS when the final geometry of the slag pile is known (i.e., not a moving target); and (iii) consistent with the State's 2020 suggestion ([see Attachment 1-2](#)), transparently engaging the public, especially the residents of East Helena and key project stakeholders, to understand their views and concerns, if any, about delaying the SPCS to pursue further source removal.

The Custodial Trust believes there is currently a unique opportunity to remove a portion of the last remaining source of contamination to groundwater that should be considered by EPA and the State. That opportunity has been created by: (i) experience to date in advancing the removal of UFS, including the MCC's multimillion-dollar investment in the UFS processing infrastructure that now exists at the Facility (see [Exhibits 1-7 through 1-12](#)); and (ii) the significant improvements in groundwater quality that have resulted from CMs the Custodial Trust has implemented to date, as documented in Chapter 10 of this report.

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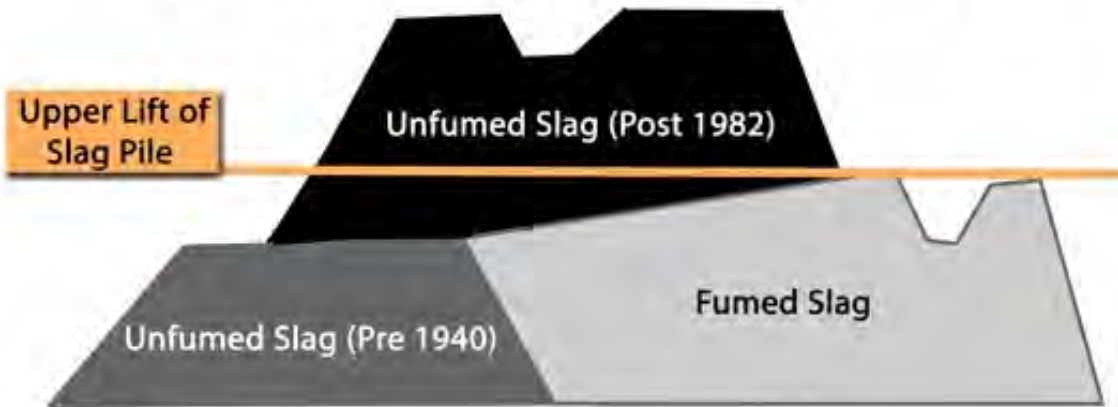
<sup>6</sup> The Custodial Trust assumes that any purchaser of UFS would fund the costs to remove and replace the SPCS, in addition to all other reprocessing and transportation costs.



# Exhibit 1-1

## Upper Lift of East Helena Slag Pile

Cross Section of East Helena Slag Pile



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 1-2

## MCC East Helena Site Plan for Unfumed Slag Removal Project



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Exhibit 1-3

### Crushing UFS to < 2 Inches



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Exhibit 1-4

### Transporting Crushed UFS to Stockpile



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Exhibit 1-5

### Placing Crushed UFS on Stockpile



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Exhibit 1-6

# Transferring Crushed UFS from Stockpile to Feed Hopper



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Exhibit 1-7

# Transferring Crushed UFS to Feed Hopper/Overland Conveyor



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Exhibit 1-8

# Overland Conveyor Transporting Crushed UFS From Stockpile



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Exhibit 1-9

# Overland Conveyor Transporting Crushed UFS From Stockpile



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Exhibit 1-10

# Transferring UFS From Overland Conveyor to Surge Hopper



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Exhibit 1-11

# Loading Crushed UFS From Surge Hopper to Radial Conveyor



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Exhibit 1-12

# Loading Crushed UFS into Hopper Railcars in East Helena



Radial Conveyor

Top-Loading Hopper Rail Cars



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Exhibit 1-13

# Transport of Crushed UFS From East Helena to South Korea

- ✓ Transport by rail from East Helena to Port of Vancouver, British Columbia
  - ✓ Load material on ships at Port of Vancouver
- ✓ Transport to South Korea by oceangoing vessels



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Exhibit 1-14

# Transport of Crushed UFS From East Helena to Port of Vancouver



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 1-15

## Crushed Stockpiles of UFS in East Helena





Table 1-1  
Unfumed Slag (UFS) Sales

	Tons of UFS Shipped to Port of Vancouver, BC	Tons of UFS Shipped to Teck, Trail BC	Total Tons of UFS Shipped From East Helena
2021	3,376	0	3,376
2022	52,912	2,032	54,944
2023	67,505	6,053	73,558
2024	12,238	674	12,912
Grand Total:			144,790





1225 Cedar Street, Helena, MT 59601



1720 9<sup>th</sup> Avenue, Helena, MT 59601

September 18, 2024

Dear US Beneficiary Representatives and METG:

The State of Montana (both DEQ and NRDP) appreciates and shares a desire to reduce the size of the slag pile and to reuse the slag material, if possible to accomplish in a manner that protects the environment. However, after fifteen years of METG attempting to find a viable buyer, the sale of any appreciable amount of slag has not come to fruition. This letter is to document our concerns with the proposal in METG's email dated September 8, 2024, and to request that EPA and METG move forward with development of a cover for the slag pile in accordance with the Corrective Measures Implementation Work Plan (CMI Work Plan) rather than continue to invest in attempting to sell the unfumed slag for reprocessing.

The State believes a well-defined and enforceable plan for capping, and if possible, slag removal should occur for source control. However, any unfumed slag removal considerations must be pursued in parallel with corrective measures work and an end-date for slag removals should be set in coordination with initiating capping of the slag pile. Design, regrading, and capping of the slag pile will likely be a multi-year project. Corrective measures work should begin now to ensure protection of the environment.

For the reasons outlined in this letter, we believe that: (a) allowing Metallica additional time to find new buyers will not change the fundamental transportation problems and just delay the needed capping of the slag; (b) Custodial Trust resources should not be used to facilitate permitting in the State of Washington; and (c) METG should not be attempting to find additional slag buyers.

Our primary concerns were outlined in the State's October 6, 2020, letter (attached), and many of these concerns have become amplified.

**1. Less than 10% of the Original Commitment of Slag Has Been Sold, with Little Financial Benefit:**

Although Metallica had committed to buy ~2 million tons of unfumed slag in 2019, only approximately 120,000 tons have been sold and removed (as of January 2024, the last update we can find on the slag sale rates). The fiscal statements for the East Helena Cleanup Account show that the Custodial Trust has received ~\$329,000 and spent ~\$218,000 on slag reprocessing from 2021 through the second quarter of 2024. This is a small amount of funds received for the amount of Custodial Trust resources being spent on the project.

We understand that many of the reasons for this slow pace are outside of Metallica's control (transportation, permitting, and other logistical issues), which we believe makes it even more imperative to recognize that sale of this slag is highly impracticable now and for the foreseeable





1225 Cedar Street, Helena, MT 59601



1720 9<sup>th</sup> Avenue, Helena, MT 59601

future. As was done with Anaconda's slag pile, capped by AR last year, the cap can be designed such that portions could be removed if it becomes more viable to sell and reprocess slag down the road. Capping does not have to be entirely permanent.

Korea Zinc is a sophisticated business in this field; it terminated the contract with Metallica because of the slow pace of the delivery of the slag; as far as the State is aware, the transportation and other issues that caused Korea Zinc to terminate have not changed. In other words, Korea Zinc wasn't the problem, transporting the slag from the slag pile in a way that makes economic sense has been identified as the problem. Accordingly, we see no reason to believe that the slag sale will actually occur even if Metallica were to find a new buyer and do not believe the capping of the slag pile should be further delayed.

2. **Continued and Potentially Increased Contamination to Groundwater:** Since 2020, most of the crushed UFS has been stockpiled on-site while transportation issues are addressed. Crushing the UFS increases the surface area and exposes new surfaces that may allow increased leaching to groundwater. Additionally, we know that the unfumed slag even prior to crushing was leaching to groundwater. The data provided to the State beneficiaries in the May 2024 groundwater technical advisory group meeting shows that the plant site plume has higher selenium concentrations than it did in 2020 and there are seasonal increases in selenium concentrations related to infiltration through the slag pile. While sale of the unfumed slag and removal of the source material would likely help to reduce loading to groundwater, the slow progress of the slag sale has resulted in additional contamination to groundwater as the capping the slag pile is continuously delayed.
3. **Unrelenting Logistical Challenges:** As noted in METG's September 8, 2024, email, Metallica acknowledges that "inland" transport of the slag is infeasible. METG/Metallica proposes revisiting the Port of Longview, although this was a failed avenue previously, and/or exploring use of the Port of Vancouver. Below is a snapshot from the update regarding the Port of Longview provided by METG to the beneficiaries in a memo dated July 19, 2021:





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## II. Port Facilities Update

### A. Port of Longview, WA.

MCC has encountered insurmountable challenges in its effort to secure permits to receive and store UFS delivered by rail to the Port of Longview (POL) and loaded on ships for South Korea. Notwithstanding the significant time and costs incurred by MCC to support POL's permitting requirements (including MCC's retention of Wood [f/k/a Amec Foster Wheeler] and Jacobs [f/k/a CH2MHill]), the POL CEO, Dan Stahl, abruptly and without warning notified MCC that, on the advice of counsel, POL could not further pursue the MCC UFS project. According to Mr. Stahl, POL's counsel believes that POL and MCC are at significant risk of being sued by the Columbia Riverkeeper and other environmental groups who might oppose the UFS Project. It appears that POL's decision to abandon the MCC project came on the heels of a recent decision by investors to abandon a \$2 billion methanol plant proposed for the Port of Kalama (near the POL).<sup>3</sup> Because the Ports of Kalama and Longview are located on the Columbia River, and the Columbia Riverkeeper has sued and/or threatened to sue POL<sup>4</sup> in the past, POL management made the decision that the risk of litigation was too high. While the permitting process was taking more time and resources than expected, there was no prior indication that POL was considering withdrawal from the project. Nor have any objections been raised by outside groups, including Columbia Riverkeeper, about the project. Nevertheless, MCC must now identify another port terminal to handle the UFS.

The State strongly recommends against spending Custodial Trust resources on permitting, even if Port of Longview were not a complete non-starter per the 2021 memo. We also are unclear as to why METG recommends pursuing the Port of Vancouver, since in 2021 "insurmountable challenges" were identified for the Port of Longview and presumably there would be similar litigation risks from Columbia Riverkeeper.

The same 2021 memo gave the following update regarding the Port of Vancouver, WA. Accordingly, we would assume that three years later, Metallica should know if the Port of Vancouver is a viable option. Notably, use of the Kinder Morgan permit was not raised as an option in the September 8 email.

### C. Other Port Options

In order to ensure that it has more than one port option, MCC is also in discussions with the following ports:

1. Vancouver, Washington: MCC has been in discussions with Kinder Morgan (KM) about use of their terminal in Vancouver, WA.<sup>8</sup> KM is permitted to handle copper concentrates, although KM's existing permit would have to be modified to accept East Helena UFS.

**For these reasons, the State advocates for terminating the slag reprocessing effort and moving forward with capping the slag pile.**





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1720 9<sup>th</sup> Avenue, Helena, MT 59601

It is our understanding that METG is currently working on the slag pile analysis outlined in the June 27, 2024, letter notifying the beneficiaries of a reallocation of funds. This letter stated that

East Helena Cleanup Account Funds were reallocated so that METG could “develop a conceptual plan for grading and capping the Slag Pile that i) evaluates the quality, quantity, and suitability of potential cover soil from all currently available sources, ii) samples and analyzes EPA Remediation Waste to determine whether soil characteristics are suitable for disposal at the Slag Pile and incorporating into the Slag Pile cover, iii) determines the minimum and maximum Slag Pile cover quantities, and iv) estimates the cost to implement, operate, and maintain the Final CM with and without the placement of EPA Remediation Waste.”

As noted above, we suggest that the evaluation of the capping include consideration of what would need to be done to allow the cover to be removed protectively and cost-effectively in the future.

**We request that EPA work closely with the State in developing the criteria and requirements for the cover system and implement a cover system that EPA and the State both agree upon. This work should occur as quickly as possible.**

**Need to Identify Residential Repository Location:** Related to these issues, EPA has variously indicated that there may be a need to dispose of up to 800,000 cubic yards of residential yard waste in the slag pile. We request that EPA provide an analysis of alternative repository locations considered, including within the Designated Restricted Area, and if placement in the slag pile is the best option, how the continuing groundwater contamination will be addressed in the meantime.



October 8, 2020

Betsy Burns  
Environmental Protection Agency  
[burns.betsy@epa.gov](mailto:burns.betsy@epa.gov) (sent via email)

Re: Montana Environmental Trust Group, LLC's September 29, 2020, Request for  
Approval and Consultation - East Helena Slag Removal Project

Dear Betsy,

First, we would like to note that the State sees the significant benefits to the community from a sale of the slag—creation of up to eight jobs and reduction of the slag pile size—and we are supportive of a sale of the slag if it can be done expeditiously and protectively, as outlined in this letter. We believe a sale of the slag has a potential to provide great advantages to the community of East Helena and the clean-up of the site, if done properly, and we are not, in any way, completely opposed to a sale of the slag. However, we do have concerns and questions, as outlined below.

**Summary of State Concerns:**

The State disagrees with EPA's and METG's assessment that the State does not have to approve the sale of the slag. Pursuant to Paragraph 11 of the Consent Decree and Settlement Agreement Regarding the Montana Sites and Section 2.11 of the Montana Environmental Custodial Trust Agreement, the sale of the slag must be approved by the State beneficiaries, as well as EPA. The State's interpretation is consistent with other determinations that METG has made; for example, on January 10, 2020, METG sought approval under these provisions from the beneficiaries for the donation of the Star of David Windows, which are personal property. (EPA has stated that the previous 2011 sale to Tech Cominco was an Environmental Action and we understand that this has led to the decision that the current proposal is also an Environmental Action. However, we are not familiar with the factors that led to EPA's previous characterization; that sale has been characterized by METG as a "5,000-ton test sample," and thus was a de minimis amount of slag that did not necessarily pose the same concerns noted in this letter.)

The State reserves its rights to challenge EPA and METG's determination that this or another sale of the slag is solely an Environmental Action. However, in the interest of moving forward with other activities at the Site, the State agrees to move forward by exercising our consultative



role. If the State beneficiaries succeeded in demonstrating that we have an approval role, we would only approve the sale under the following conditions.

1. The State has concerns that the sale of the slag could lead to future liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the equivalent Washington State Superfund law. We requested, through e-mail and conference calls, clarification that this is a true sale of a useful product and there is no intent to arrange for disposal of a waste. *See, e.g., Burlington Northern & Santa Fe Ry Co., et al. v. United States, et al*, 556 U.S. 599 (2009); *Team Enters., LLC v. Western Inv. Real Estate Trust*, 647 F.3d 901, (9th Cir. 2011); *Louisiana-Pacific Corp. v. ASARCO Inc.*, 24 F.3d 1565 (9th Cir. 1994). Accordingly, as we have previously requested, we request the following from EPA (in its role as lead agency) to ensure that the slag sale does not result in spreading contamination or future liability to the body of the Montana Environmental Custodial Trust Agreement:
  - a. Require a written analysis from METG of the potential for CERCLA arranger liability or liability under equivalent Washington state law;
  - b. Require copies of the permits issued by the State of Washington and/or relevant federal agencies, as well as letters from the relevant Washington regulatory agencies stating specifically that the management of the slag is covered under the general permit(s) or a reasonable explanation as to why that reassurance is unavailable;
  - c. Require within the sale documents and EPA-approved work plan(s) that the slag will be managed in compliance with all environmental requirements, criteria, and limitations, and in a manner that is protective of human health and the environment; and
  - d. To address this concern, the State beneficiary representatives asked METG to provide the price of other similar sources of zinc. (I.e., generally, where would MMC buy zinc and what would it pay for the zinc if the sale from East Helena were not to go through?) METG replied on September 9, 2020, via email, and did not provide the information requested.
2. As the State has expressed in email and via conference call, we have concerns that the sale of the full 2,000,000 tons of unfumed slag will not occur and that relying on this sale will delay the necessary Environmental Action of capping of the slag pile. The final remedy to address the slag pile and the groundwater contamination should occur as expeditiously as possible. METG informed the State beneficiaries in a call on August 17, 2020, that if the construction is delayed until 2021, the sale might not happen.
  - a. Accordingly, the State would require a deadline to begin construction of the rail line spur. The State had suggested October 1, 2020; as this has not occurred, the State would suggest that construction on the rail line must begin by October 15, 2020, as stated by METG in the September 30, 2020, call, and must be completed this year. The State also suggests triggers for moving forward with the capping of the slag pile if the volume of the slag sold and the timing for the disposition of the slag does not end up being commensurate with the information provided by METG to the beneficiaries.



3. As stated in the August 18, 2020, email, the State has concerns with the compatibility of this industrial use with the State's Greenway restoration action. On September 29, 2020, METG informed us that PPLT is not concerned with the slag sale but is concerned about other industrial uses of adjoining properties.
4. Changing the type of cap, the footprint of the cap, the price of the cap, and delaying the cap by eight years appears to be a significant change to the final remedy that has been presented to the public in the Corrective Measures Study Report and the Statement of Basis. Section 3008 of RCRA requires that public comment be provided on significant changes to the remedy. Even if not legally required, the State would recommend an opportunity for public comment on these changes.
  - a. In order to address this concern, please put this modification to the final remedy out for public comment.
  - b. We also request that EPA evaluate the impact on the groundwater contamination of leaving the slag pile, including any flue dust, uncapped for eight more years.
  - c. We request a determination from EPA as to effect on the groundwater cleanup of changing the type of cap proposed for the final corrective action.

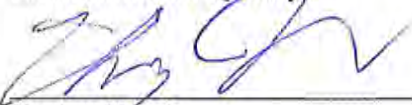
We appreciate your attention to these matters and look forward to a final project that addresses all of the concerns in this letter.

Sincerely,



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Jenny Chambers  
Division Administrator  
Montana Department of  
Environmental Quality



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Harley Harris  
Supervising Assistant Attorney  
General  
Montana Department of Justice  
Natural Resource Damage Program

cc: Cynthia Brooks, METG



## Chapter 2

### East Fields Soil Repository Soil

[Section 1.a.vi of the Reappointment Framework: Complete analysis of use of residential soils in the East Fields repository as a source of borrow for the slag pile cover system during the design of the Slag Pile cover, as well as an analysis that meets the applicable regulatory requirements of remediation and re-use of the East Fields property (target date to be determined in final design during CMI)]

#### I. East Fields Soil Repository

From 1993 until 2023,<sup>1</sup> ASARCO (and to a lesser extent, the U.S. Environmental Protection Agency [EPA] and private parties) excavated ±920,000 cubic yards (CY) of soil and other material from Unowned Properties within the East Helena Superfund Site. The excavated material was placed in the ±73-acre East Fields Soil Repository (EFSR) and the ±26-acre West Fields Soil Repository (see [Exhibit 2-1](#)). Soil was generally placed within a designated grid, mixed, tilled, and (occasionally) amended with lime to achieve a lead concentration of ±1,000 parts per million (ppm)<sup>2</sup> within the disposal grid (see [Exhibit 2-2](#)). Under the Operable Unit 2 Record of Decision (OU2 ROD), material excavated from the East Helena Superfund Site must be disposed of in an EPA-approved repository.

Prior to creation of the Custodial Trust, ASARCO managed and operated the EFSR. When the Custodial Trust was established, it took title to all former ASARCO lands, including the EFSR. Since that time, the Custodial Trust has continued operating and maintaining the EFSR using funds from the East Helena Cleanup Account. As described in ¶ III below, after securing EPA approval, the Custodial Trust closed the EFSR in April 2023.

#### II. Use of East Fields Soil Repository Material

In 2022, the Custodial Trust evaluated the merits, feasibility, and cost of using material from the EFSR as a source of borrow for the Slag Pile Cover System (SPCS). The Custodial Trust concluded that it would not be cost effective to use EFSR material for the SPCS due to the presence of extensive cobbles, construction debris, and sand in the soil that was excavated from Unowned Properties and disposed of in the EFSR for approximately 26 years. Using borrow from the EFSR would require: (i) excavating 200,000 CY of soil; (ii) screening the excavated soil to remove cobbles and construction debris; (iii) hauling the soil to a location near the slag pile or the Deed-Restricted Area (DRA) for future use in the SPCS; and (iv) purchasing and placing clean fill on the EFSR excavated areas. The estimated costs to use soil from the EFSR compared to other sources of borrow are summarized in the attached [Table 2-](#)

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<sup>1</sup> From 1997 to 1999, excavated material was exclusively placed in the West Fields Soil Repository (WFSR). The WFSR was permanently closed in 1999.

<sup>2</sup> The OU2 ROD indicates that the repositories were to be managed with the ultimate goal of returning the area to a functional grassland for grazing cattle.



1. Based on the estimated costs (which do not include costs to replace EFSR excavation areas with clean fill), the Custodial Trust did not recommend using EFSR material for the SPCS.

### **III. Closure of East Fields Soil Repository and Opening of New CERCLA Repository**

To support redevelopment of the ±776 acres of Custodial Trust property located east of Highway 518 (labeled Parcel 1 on [Exhibit 2-1](#)), which includes the EFSR, in April 2023, the Custodial Trust constructed a new soil repository for off Smelter Road in the DRA near the Corrective Action Management Units (CAMUs) (see [Exhibit 2-3](#)) to replace the EFSR. The new repository—designated the Smelter Road Soil Repository (SRSR)—was sited in the 68,000-CY borrow pit (adjacent to CAMU 2) where material was excavated for construction of the Evapotranspiration (ET) Cover System (see [Exhibit 2-4](#)). The SRSR was opened by the Custodial Trust on May 5, 2023. EPA, Lewis & Clark Public Health, and the Custodial Trust issued a fact sheet (and published notice in the *Independent Record*) announcing closure of the EFSR and opening of the SRSR (see [Exhibit 2-5](#)).

When the SRSR was selected as a final, permanent repository for soils excavated from properties within the East Helena Superfund Site, the total capacity of the SRSR was expected to meet future soil disposal requirements under the OU2 ROD. However, in January 2024, EPA issued an Explanation of Significant Differences (ESD) to the OU2 ROD that reduced the residential soil cleanup standard for lead from 500 ppm to 400 ppm. EPA estimates that ±900,000 CY of soil from Unowned Properties may require disposal in the future. At the time of this report, the Custodial Trust is evaluating options for disposal of EPA’s projected quantities of excavated material. Based on preliminary results of this evaluation, the DRA is not large enough to accommodate the anticipated disposal requirements. The Custodial Trust also consulted with the United States regarding its obligation and authority (under the Settlement Agreement) to fund, operate, and maintain the CERCLA repository needed to manage soil excavated from Unowned Properties. The Custodial Trust continues to operate and maintain the SRSR (see [Exhibit 2-6](#).)

### **IV. Sale of East Fields Soil Repository**

On September 11, 2023, the Custodial Trust sold the ±776 acres that represented all former ASARCO-owned lands east of Highway 518 (see [Parcel 1](#) on [Exhibit 2-1](#)) to Prickly Pear Estates (PPE) for a purchase price of \$4,000,000. As indicated on [Exhibit 2-1](#), Parcel 1 includes the EFSR. To ensure protective reuse of the EFSR, the Custodial Trust: (i) worked with EPA and PPE to draft a Notice of Environmental Conditions (EPA Notice) as the form of Institutional Control (IC) to govern reuse of the EFSR;<sup>3</sup> (ii) prepared the Certificate of Survey (COS) required to create the EFSR as a separate tract of record by relocating adjoining boundaries; (iii) on August 15, 2023, sought and secured approval of the EFSR COS from the East Helena City Council;

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<sup>3</sup> From August 2022 until April 2023, the Custodial Trust worked with EPA, Montana Department of Environmental Quality (MDEQ), and the Lewis and Clark County (County) Lead Education and Assistance Program (LEAP) on developing an IC for the East and West Fields Soil Repositories that was proposed to take the form of an Environmental Control Easement (ECE) (pursuant to MCA § 76-7-201) or a Restrictive Covenant (RC) (pursuant to MCA § 75-10-727). After MDEQ advised that it was unable to hold the ECE or approve an RC, EPA proposed that the IC take the form of a Notice of Environmental Conditions. The EPA Notice was reviewed by MDEQ.



and (iv) recorded the EFSR COS with the County Clerk and Recorder (Recorder) on August 28, 2023. After securing EPA's signature, the Custodial Trust recorded the EPA Notice with the Recorder on August 30, 2023, prior to the September 11, 2023 closing with PPE (see Attachment 2-1).

PPE plans to redevelop the EFSR for commercial uses, such as restaurants, a grocery store, a bank, a gas station, and other retail uses. Based on site investigations performed by PPE,  $\pm 3$  acres of the EFSR exceed the OU2 ROD action level for commercial use (see Exhibit 2-7). As of the time of this report, PPE has remediated all but one decision unit (DU) within the EFSR pursuant to an EPA-approved soil remediation work plan. Remediation of the remaining DU requires relocation of the Manlove Cabin.



**Table 2-1**  
**Estimated Costs for Sources of Borrow**

Sources of Borrow for Slag Pile Cover System (SPCS)	\$/CY to Haul Material from Deed-Restricted Area to Slag Pile	Total Cost (Assuming 200,000 CY Borrow Required for SPCS)	Comments
East Fields Soil Repository (EFSR)	\$28	\$5,600,000	<ul style="list-style-type: none"> <li>Not suitable for use as source of borrow because material is mixed with extensive cobbles, chunks of concrete, construction debris, and significant sandy material</li> <li>Cost per CY includes excavation and screening required to segregate useable soil</li> <li>Does not include cost to back fill ±200,000 CY with clean fill</li> <li>Because a significant quantity of the EFSR material is not fine-grained, it does not meet soil cover design criteria and is not useable for Slag Pile cover soil</li> </ul>
Deed-Restricted Area (DRA)	\$8	\$1,600,000	<ul style="list-style-type: none"> <li>Borrow from DRA was used to construct ET Cover</li> <li>Cost per CY includes excavating from new borrow pit, loading, and hauling from DRA to Slag Pile</li> </ul>
Excavated Soil from Unowned Properties (OU2 ESD)	\$6	\$1,200,000	<ul style="list-style-type: none"> <li>Custodial Trust is currently evaluating use of soil excavated by EPA under the OU2 ESD</li> <li>Assumes soil is suitable source of borrow and is delivered to and stockpiled at DRA by EPA contractors</li> <li>Cost per CY is limited to cost to load from stockpile and haul material from DRA to Slag Pile</li> </ul>



# Exhibit 2-1

## Custodial Trust Property South of Highway 12

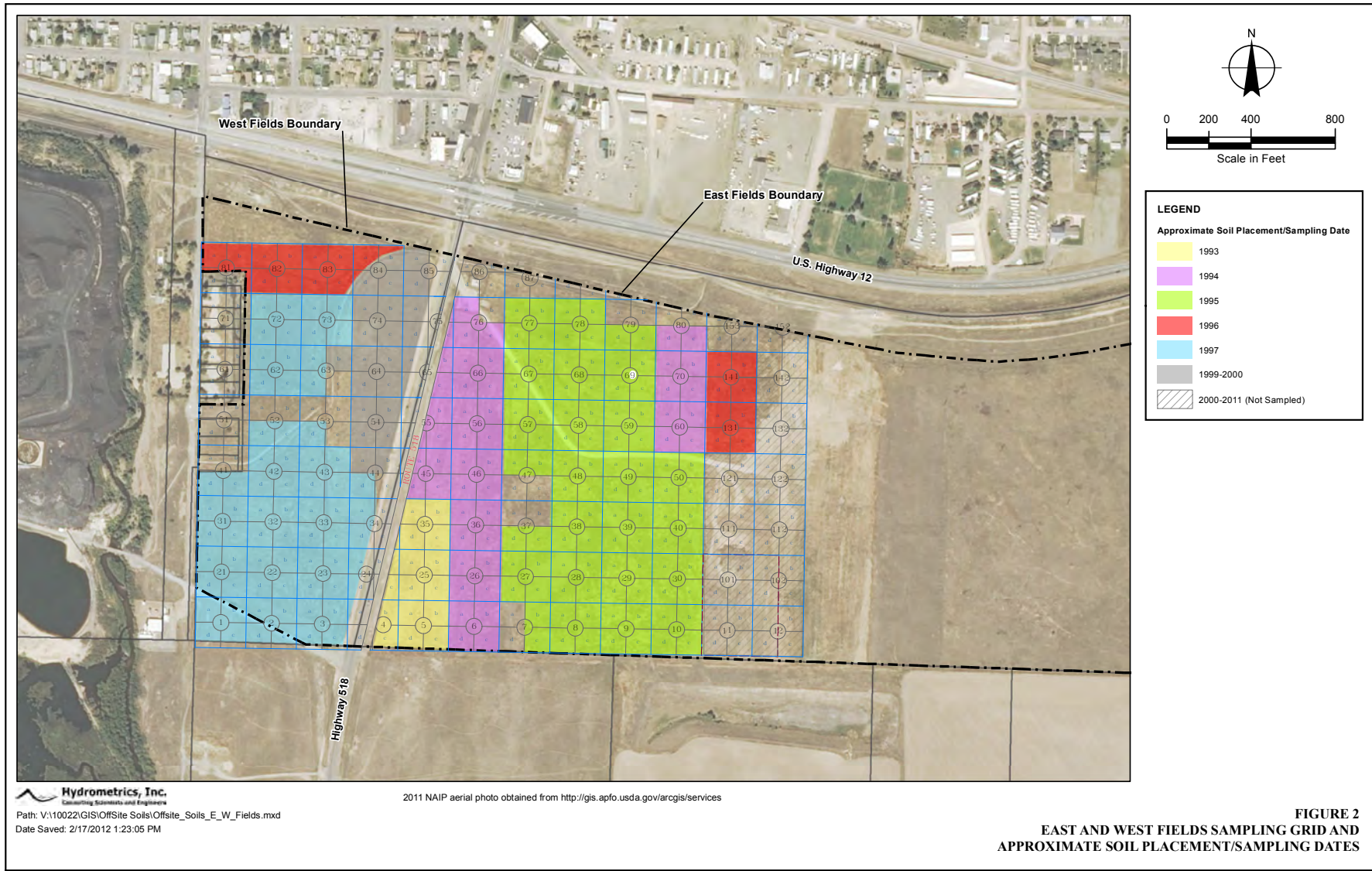


Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 2-2

## Soil Placed in East and West Fields Soil Repositories



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 2-3

## New Smelter Road Soil Repository



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 2-4

## New Smelter Road Soil Repository



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 2-5

## Smelter Road Soil Repository Fact Sheet



May 2023

### NOW OPEN: NEW SMELTER ROAD SOIL REPOSITORY IN EAST HELENA CLOSED: EAST FIELDS SOIL REPOSITORY

The U.S. Environmental Protection Agency (EPA) and the Montana Environmental Trust Group (METG) have closed the East Fields Soil Repository (at Highway 12 near Highway 518) and opened a new soil repository on the west side of Smelter Road. (See [Figure 1](#).) Residents, contractors, and businesses that wish to dispose of soil at the new Smelter Road Repository must call or text in advance **Stan Hohn at 406-227-5124 or Mark Rhodes at 406-431-1637** to arrange for the disposal of soil. See [Figure 2](#) for directions to the new Smelter Road Soil Repository.

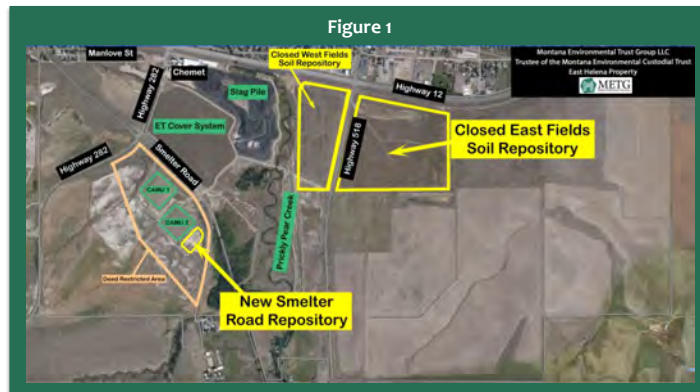


Figure 1

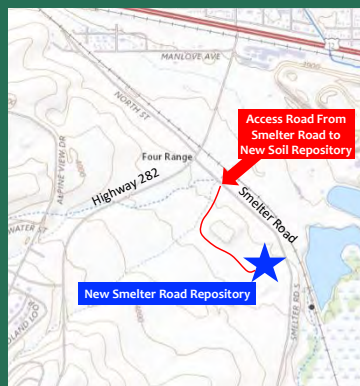


Figure 2  
Directions to Smelter Road Soil Repository

#### From Helena

Take Highway 12 (Highway 287) east toward East Helena. Turn right onto Highway 282 at traffic light. Proceed approximately 4/10 of a mile to Smelter Road. Turn left onto Smelter Road. Turn right onto the first driveway off Smelter Road.

#### From Townsend

Take Highway 287 (Highway 12) west toward East Helena. Turn left onto Highway 282 at the traffic light. Proceed approximately 4/10 of a mile to Smelter Road. Turn left onto Smelter Road. Turn right onto the first driveway off Smelter Road.

#### From Montana City

Take Highway 518 north toward East Helena until it ends at Highway 12. Make a left onto Highway 12 at the traffic light. Travel approximately 7/10 of a mile to the traffic light at Highway 282. Turn left onto Highway 282. Proceed approximately 4/10 of a mile to Smelter Road. Make a left turn onto Smelter Road. Turn right onto the first driveway off Smelter Road.

### IMPORTANT REMINDERS

#### Soil Displacement Permit Requirements

As a reminder to residents from East Helena and nearby communities, a soil displacement permit may be required if you plan to displace or relocate one or more cubic yards of soil (approximately one truckload). Soil displacement does not include tilling if no excess soil is removed from the area. This is required under the Lewis and Clark County [Soil Ordinance](#). See "Getting a Permit is Easy and Free of Charge" below.

#### Contractor Certification

Please remember that you or your contractor must be certified to displace soil. Like the soil displacement permit, certification is easy to obtain and FREE! Please contact Beth Norberg from the East Helena LEAP team at [bnorberg@lccountymt.gov](mailto:bnorberg@lccountymt.gov) or 406-447-8385 to get certified. Certification requires only a brief online tutorial and exam, or we will come to your jobsite to certify you in person.

### Getting a Permit is Easy and Free of Charge

1. Visit the East Helena Lead Education and Assistance Program (LEAP) [Website](#).
2. Complete a [Soil Displacement Permit Application](#).
3. LEAP will review your application to ensure that adequate protections are in place.
4. LEAP will issue you a permit that will provide specific conditions and precautions.
5. LEAP will conduct a brief site inspection once your excavation work is complete to confirm all permit requirements have been met.

### IMPORTANT CONTACTS

#### To dispose of soil at the new Smelter Road Repository Call, Text or Email

Stan Hohn at 406-227-5124 or [tsconsultingmt@yahoo.com](mailto:tsconsultingmt@yahoo.com)  
Mark Rhodes at 406-431-1637 or [MRHODES@hydrometrics.com](mailto:MRHODES@hydrometrics.com)

#### For questions about getting a permit and certification from LEAP Call or Email

Beth Norberg at 406-447-8385 or [bnorberg@lccountymt.gov](mailto:bnorberg@lccountymt.gov)

#### For information about cleanup at the former ASARCO smelter in East Helena Call or Email

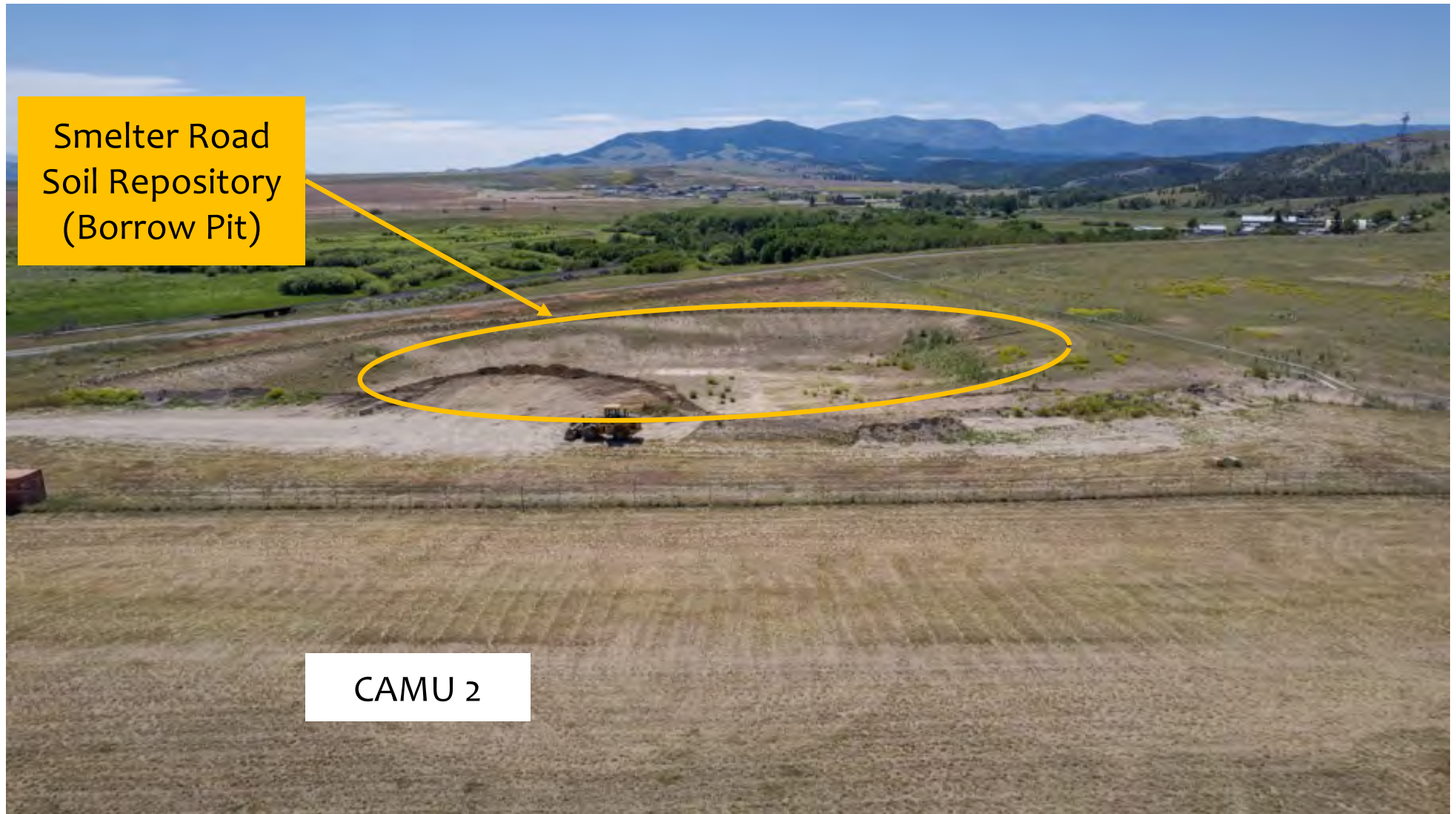
Bridget Williams (EPA) at 406-594-8792 or [Williams.Bridget@epa.gov](mailto:Williams.Bridget@epa.gov)  
Cindy Brooks (METG) at 617-448-9762 or [cb@g-etg.com](mailto:cb@g-etg.com)

May 2023



## Exhibit 2-6

# June 2024: Smelter Road Soil Repository

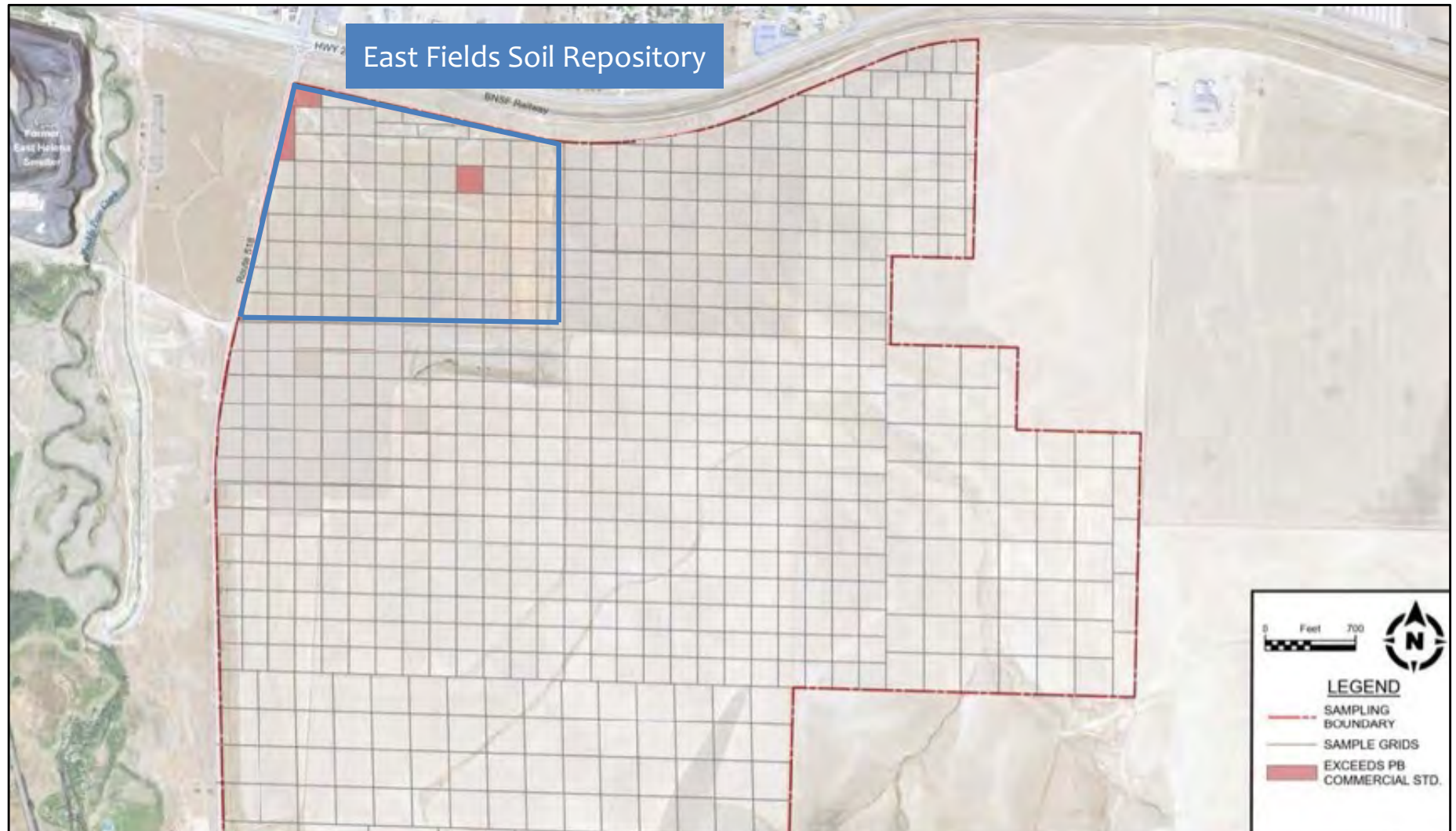


Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 2-7

## EFSR - Decision Units Exceeding Commercial Use Standard



East Fields Soil Repository – Areas of Exceedance for Commercial Use



After recording, return to:

Bridget Williams, Ph.D.

United States Environmental Protection Agency

Region 8, Montana Operations Office

Federal Building

10 West 15th St., Suite 3200

Helena, Montana 59626

**United States Environmental Protection Agency  
Region 8**

**NOTICE OF ENVIRONMENTAL CONDITIONS**

This Notice of Environmental Conditions (Notice) is made this 30 day of August, 2023, by the United States Environmental Protection Agency (EPA) to: (a) provide information concerning environmental conditions at certain portions of the real property described and depicted as Tract 1-A in the Certificate of Survey filed with the Lewis and Clark County Clerk and Recorder under Document Number 3415033 attached hereto as Exhibit A (the Property), located in the City of East Helena, Lewis and Clark County, State of Montana that comprises a portion of the East Helena Superfund Site (the Site); (b) identify the types of uses of the Property that may present an imminent and substantial endangerment to public health and welfare; and (c) describe guidelines that shall be followed for certain activities to protect against any such endangerment to public health, welfare, and/or the environment until such environmental conditions are mitigated.

**WHEREAS**, the Property was used by ASARCO beginning in 1993 as a repository for placing soil excavated from residential yards and other lands within the East Helena Superfund Site Administrative Boundary because the soil contained lead and arsenic at concentrations that exceed the applicable cleanup standards set forth in the 1991 Administrative Order on Consent (AOC) between EPA and ASARCO, EPA Docket No. CERCLA-VIII-91-17, and the EPA-issued East Helena Superfund Site, Operable Unit No. 2 Record of Decision dated September 2009 (OU2 ROD);

**WHEREAS**, the Property is subject to: (a) the Consent Decree entered April 6, 1998 in the United States v. Asarco, as amended by a First Modification entered on January 17, 2012 (the RCRA Decree), wherein the Montana Environmental Trust Group, LLC, not individually but solely in its representative capacity as Trustee of the Montana Environmental Custodial Trust (the Custodial Trust), succeeded to certain Asarco obligations set forth in the RCRA Decree; (b) the OU2 ROD; and (c) the Regulations Governing Soil Displacement and Disposal in the East Helena Superfund Area in Lewis and Clark County, Montana, as amended from time to time (the Soil Ordinance);

3415161 B: M62 P: 4768 NOTICE  
08/30/2023 10:22 AM Pages: 1 of 9 Fees: 72.00  
Amy Reeves Clerk & Recorder, Lewis & Clark MT





**WHEREAS**, future use of the Property requires this Notice to ensure that such use is protective of human health in compliance with the RCRA Decree, the OU2 ROD, the Soil Ordinance, and other applicable environmental regulations and laws, including but not limited to the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA);

**WHEREAS**, unless remediated pursuant to an EPA-approved remediation work plan or used consistent with the guidelines set forth in Exhibit B, the disturbance of areas of the Property containing soils with concentrations above the then applicable commercial use action levels set forth in the OU2 ROD (Commercial Use Cleanup Standard), could result in a risk of exposure to the public at levels that exceed EPA-established criteria and may therefore present an imminent and substantial endangerment to public health, welfare, or the environment; and

**WHEREAS**, this Notice does not and is not intended to create any right, title, or interest in real estate in favor of the EPA, create a lien against the Property, or restrict the use and enjoyment of the Property, but rather is intended to provide notice and information concerning the presence of, and guidelines for managing contaminated soil until such time, if any, as the areas that exceed the Commercial Use Cleanup Standard are fully remediated as hereinafter described, and to caution interested parties against using the Property in any manner that may risk of exposure to contamination above EPA-established criteria and result in an imminent and substantial endangerment to public health, welfare, or the environment;

**NOW, THEREFORE**, EPA provides notice that:

**FIRST**, EPA concluded that engaging in any of the activities listed below may increase the risk of exposure to contamination and present an imminent and substantial endangerment to public health, welfare, or the environment:

1. Excavating and/or disturbing soil that exceeds the Commercial Use Cleanup Standard unless such excavation is performed in a manner consistent with the Guidelines for Excavating and/or Disturbing Soil that Exceeds the Commercial Use Cleanup Standard set forth in Exhibit B (Guidelines), unless the Owner, prior to using or occupying or permitting any User to access, use or occupy such areas has:
  - (a) obtained EPA approval of Owner's proposed soil remediation work plan in advance of undertaking any soil remediation work; and
  - (b) remediated soil to the Commercial Use Cleanup Standard pursuant to an EPA-approved work plan (Work Plan); and
  - (c) provided EPA with a construction completion report documenting to EPA's satisfaction completion of all work described in the Work Plan; and
  - (d) received a Notice of Completion of Soil Remediation Work Plan from EPA in substantially the form attached hereto as Exhibit C (Completion Notice) and recorded the Completion Notice with the Lewis and Clark County Clerk and Recorder.



2. Use of the Property for free-standing (detached) residential building(s) as single-dwelling unit(s) (without shared walls) and/or uses that include buildings with crawl spaces or basements that do not have concrete floors.

EPA has compiled documentation that includes the documents selecting cleanup actions for the Site and the Property, including the documents supporting the need for this Notice, designed to prevent exposure after the cleanup has been finished. These documents are available electronically at: <https://cumulis.epa.gov/supercpad/cursites/csinfo.cfm?id=0800377>.

**SECOND**, EPA intends to use this Notice as an institutional control (IC) as part of the cleanup to help reduce future potential exposure to contamination. A person may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), if the person conducts activities at the Property which, among other things, cause the release of hazardous substances on the Property. In order to qualify for certain conditional liability protections, namely the innocent landowner, bona fide prospective purchaser, or continuous landowner protections under Section 101(35)(A), 101(40)(F), 107(q)(1)(A)(v) of the CERCLA, 42 U.S.C. §§ 9601(35)(A), 9601(40)(F), and 9607(q)(1)(A)(v), a person shall, among other things, (i) comply with any land use restrictions established or relied on in connection with the response action at a facility, including the OU2 ROD, and (ii) not impede the effectiveness or integrity of any IC employed at the facility in connection with a response action, including the OU2 ROD.

**THIRD**, EPA is available to consult with any owner of the Property or tenant, occupant, licensee, contractor, operator or other third party residing on or seeking to perform work that involves excavating and/or disturbing soil at the Property (User). A request for consultation may be available by contacting EPA's remedial project manager for the East Helena Superfund Site at the following address:

United States Environmental Protection Agency  
Region 8, Montana Operations Office  
Federal Building  
10 West 15th Street, Suite 3200  
Helena, MT 59626  
(406) 457-5000

As of the date of this Notice, EPA's remedial project manager for the East Helena Superfund Site is:

Bridget Williams, Ph.D.  
United States Environmental Protection Agency  
Region 8, Montana Operations Office  
Federal Building  
10 West 15th Street, Suite 3200  
Helena, MT 59626  
(406) 457-5013 (desk)  
(406) 594-8792 (cell)  
[williams.bridget@epa.gov](mailto:williams.bridget@epa.gov)



**FOURTH**, this Notice shall run with the land. The Guidelines will continue to apply to areas that exceed the Commercial Use Cleanup Standard until such time as EPA has issued a Completion Notice with respect to such areas. The restriction identified in § 2 of the FIRST paragraph above shall run with the land in perpetuity.

*[signature on following page]*



IN WITNESS WHEREOF, the undersigned, acting by and through the United States Environmental Protection Agency, has executed this Notice as of the date first above written.

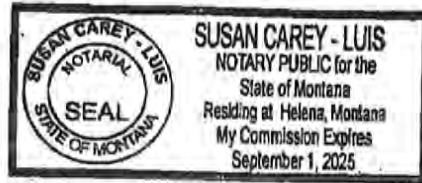
By: *DBridget Williams*  
Name: Bridget Williams, Ph.D.  
Title: Remedial Project Manager

STATE OF MONTANA )  
 ) SS.  
COUNTY OF LEWIS AND CLARK )

This instrument was signed and sworn to before me on August 30, 2023, by Bridget Williams, Ph.D., as Remedial Project Manager of the United States Environmental Protection Agency.

WITNESS my hand and official seal.

*Susan Carey Luis*  
Notary Public  
My commission expires: 09/01/2025









**EXHIBIT B****GUIDELINES FOR EXCAVATING AND/OR DISTURBING SOIL  
THAT EXCEEDS THE COMMERCIAL USE CLEANUP STANDARD**

1. **Compliance with Cap Protocols.** All Owners and Users shall comply with protocols for areas that exceed the Commercial Use Cleanup Standard (Cap Protocols), a copy of which may be obtained from EPA's remedial project manager for the East Helena Superfund Site and which are incorporated herein in full by this reference. The Cap Protocols, as amended from time to time by EPA, describe minimum requirements (Minimum Cap Requirements) for Building Caps, Hardscaped Caps, Landscaped Caps, and Pavement Caps (individually, Cap; collectively, Caps).
2. **Uncapped Areas.** Until Caps are constructed and/or repaired (if necessary) at the areas that exceed the Commercial Use Cleanup Standard, Owners and Users shall adhere to protocols for securing uncapped areas to prevent unauthorized access, dust suppression, and stormwater Best Management Practices, and other requirements set forth in the Cap Protocols.
3. **Cap Design and Construction Protocols.** Prior to commencing construction of any new Cap (New Cap Construction), the Owner shall submit design plans and engineered drawings for the New Cap Construction to EPA for approval (with a copy to the Health Department of Lewis and Clark County [County]). Contractors performing New Cap Construction shall complete the County's Certification Program as defined in § 3 of the Soil Ordinance (Certified Contractor). Provisions for County inspection, approval, and submittals for New Cap Construction are described in the Cap Protocols.
4. **Planned Disturbance of Caps and/or Cap Breaches.** As set forth in the Cap Protocols, an Owner or User wishing to disturb an existing Cap shall: (i) obtain a permit from the County or approval from EPA (depending on the extent of the disturbance), and (ii) follow all other submittal and implementation protocols.
5. **Unplanned Disturbance of Caps.** An Owner or User responding to an unplanned disturbance of a Cap (due to a natural or manmade emergency event) shall follow the Cap Protocols for notifying the County and repairing the Cap.
6. **Routine Maintenance.** Owners and Users shall properly maintain all Caps.



**EXHIBIT C**

**After recording, return to:**

**Bridget Williams, Ph.D.**

**United States Environmental Protection Agency**

**Region 8, Montana Operations Office**

**Federal Building**

**10 West 15th St., Suite 3200**

**Helena, Montana 59626**

**United States Environmental Protection Agency  
Region 8**

**NOTICE OF COMPLETION OF SOIL REMEDIATION WORK PLAN**

This Notice of Completion of Soil Remediation Work Plan (Completion Notice) is issued this \_\_\_\_ day of \_\_\_\_\_, 202\_ by the United States Environmental Protection Agency (EPA), with an address of EPA Region 8, Montana Operations Office, Federal Building, 10 West 15th St., Suite 3200, Helena, MT 59626, relative to the following-described real property (Property):

*[insert legal description of the Property]*

By this Completion Notice, the EPA confirms and provides notice of the following:

1. The EPA has reviewed and approved the (a) Soil Remediation Work Plan prepared by \_\_\_\_\_ dated \_\_\_\_\_, 202\_ (the Work Plan), and (b) Construction Completion Report prepared by \_\_\_\_\_ dated \_\_\_\_\_, 202\_ following completion of the work described in the Work Plan (the Completion Report).
2. All soil remediation work described in the Work Plan and documented in the Completion Report has been completed (a) to the Commercial Use Cleanup Standard set forth in the EPA-issued East Helena Superfund Site, Operable Unit No. 2 Record of Decision dated September 2009, and (b) consistent with the Regulations Governing Soil Displacement and Disposal in the East Helena Superfund Area in Lewis and Clark County, Montana, as amended from time to time.
3. The Property is suitable for unrestricted commercial uses authorized by the City of East Helena (COEH) in a Commercial Zoning District pursuant to the COEH Municipal Code Zoning Ordinance, as amended from time to time, provided that (a) the restrictions identified in § 2 of the FIRST paragraph of the EPA Notice of Environmental Conditions recorded with the Lewis and Clark County Clerk and Recorder on \_\_\_\_\_, 2023 at Book \_\_\_\_\_,







### Chapter 3 Greenway Project

[Section 1.a.iii of the Reappointment Framework: Complete all actions necessary to seek Beneficiary approval of transfer of Prickly Pear Creek corridor to PPLT (or similar entity) for Greenway Project and long-term operations and management (O&M) of the site remedy per Section 2.11 of Trust Agreement]

After 10 years of visioning, planning, multistakeholder collaboration, negotiations, and coordination, and with the **significant** support of the U.S. Environmental Protection Agency (EPA) and the State of Montana (State), on December 30, 2020, the Custodial Trust transferred ±322 acres of property in East Helena (Greenway Property) to the Prickly Pear Land Trust (PPLT) for the 8-mile Greenway Trail system (Greenway Project). The key components of the complex transfer of real property and funding, and related Environmental Actions, are described below.

#### **I. Greenway Project Transfer Agreement Negotiations and Beneficiary Approvals**

Pursuant to ¶ 11 of the Settlement Agreement and § 2.11 of the Trust Agreement, the Custodial Trust sought and secured approval of EPA, the State, and the U.S. Fish and Wildlife Service (USFWS), acting as natural resource trustee on behalf of the U.S. Department of the Interior (DOI) (collectively, the Beneficiaries), to transfer to PPLT (i) the Greenway Property and (ii) the covered costs funding amount (CCFA) to maintain the Greenway Property for 25 years. The terms of the transfer were set forth in a Real Property Transfer Agreement (Transfer Agreement) negotiated and entered into by PPLT and the Custodial Trust and approved by the Beneficiaries, as documented below.

- A. On March 19, 2020, at the request of the State, the Custodial Trust entered into a Legal Services Payment Agreement with PPLT, which provided for Custodial Trust reimbursement of up to \$35,000 in outside counsel legal fees incurred by PPLT in connection with negotiation of the Transfer Agreement.
- B. On August 16, 2020, the Custodial Trust submitted the draft Transfer Agreement to the Beneficiaries, seeking early comments on terms and conditions of the proposed transfer to PPLT.
- C. On September 1, 2020, the State provided preliminary comments on the Transfer Agreement, which the Multistate Trust responded to on September 2, 2020.
- D. On September 11, 2020, pursuant to ¶ 11 of the Settlement Agreement and § 2.11 of the Trust Agreement, the Custodial Trust sought the Beneficiaries' approval of the revised



Transfer Agreement,<sup>1</sup> which incorporated responses to the State's comments received on September 1, 2020.

- E. On September 22, 2020, the Custodial Trust submitted its analysis of the CCFA for review and comment by EPA, the U.S. Department of Justice (USDOJ), and the State. The Custodial Trust analyzed the CCFA for a 15-year, 20-year, and 25-year term of funding<sup>2</sup> the Greenway Project (and the projected funds remaining in the AA for each scenario).
- F. On October 2, 2020, DOI provided comments on the form of Quitclaim Deed attached to the Transfer Agreement, which the Custodial Trust responded to on October 2, 2020.
- G. On October 5, 2020, EPA approved the Transfer Agreement, subject to USDOJ approval of the CCFA.
- H. On November 16, 2020, the Custodial Trust requested USDOJ and State approval to fund the CCFA in the amount of \$1,275,777<sup>3</sup> from the Custodial Trust Administrative Account (AA), to be transferred to PPLT at the closing.
- I. On December 11, 2020, USDOJ approved the CCFA.
- J. On December 14, 2020, the State approved the CCFA.
- K. On December 15, 2020, DOI approved the Transfer Agreement.
- L. On December 17, 2020, the PPLT Board of Directors approved the Transfer Agreement.
- M. On December 22, 2020, the State confirmed its approval of the CCFA and conditionally approved the Transfer Agreement.

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<sup>1</sup> The Transfer Agreement included the following attachments: (i) Exhibit A—The Property; (ii) Exhibit B—East Helena ASARCO Smelter Final Restoration Plan and Environmental Assessment Checklist, State of Montana Natural Resource Damage Program (November 2019); (iii) Exhibit C—Final Restoration Plan and Environmental Assessment for East Helena Smelter Site, U.S. Department of the Interior and U.S. Fish and Wildlife Service (January 2020); (iv) Exhibit D—Quitclaim Deed; (v) Exhibit E—State Option Land Location and Use Agreement; and (vi) Exhibit F—Stewardship Costs Funding Agreement.

<sup>2</sup> The CCFA's were \$832K, \$1.063M and \$1.276M for the 15-, 20- and 25-year terms, respectively. The Custodial Trust estimated that the AA would be depleted between 2032 and 2034, depending on the Term selected for the CCFA.

<sup>3</sup>The CCFA included: \$155,495.70 for mowing and noxious weed control; \$358,612.00 for site security; \$154,264.00 for property taxes; \$218,665.90 for insurance; and \$388,739.40 for administrative costs (financial affairs, procurement, legal costs, etc.).<sup>4</sup> PPLT could terminate the Transfer Agreement if its title objections were not addressed.



- N. On December 23, 2020, the Custodial Trust provided EPA and the State with the final version of the Transfer Agreement (including the fully executed State Option Land Agreement).
- O. On December 24, 2020, EPA approved the final version of the Transfer Agreement.
- P. On December 28, 2020, the Custodial Trust restated its request for State approval of the Transfer Agreement.
- Q. On December 29, 2020, the State approved the final version of the Transfer Agreement.
- R. On December 30, 2020, the transfer to PPLT was consummated, as further explained in ¶ V below.

## **II. Conditions to PPLT's Obligations to Close (§ 5.1 of the Transfer Agreement)**

PPLT's obligations to consummate the transfer were subject to satisfaction of the following conditions (unless waived by PPLT):

- A. PPLT Approval of Title and Survey. PPLT reserved the right to object to matters of record title. Such objections could be addressed by the Custodial Trust or waived by PPLT.<sup>4</sup> On December 16, 2020, PPLT received a title commitment, and did not issue notice of any title objections to the Custodial Trust.
- B. Environmental Comfort. To mitigate potential liability for existing contamination, PPLT required receipt of "environmental comfort" letters from, or other actions taken by, EPA and the State indicating that they did not intend to take action against PPLT as a result of hazardous substances existing on or migrating from the Greenway Property as of the closing. On June 16, 2020, EPA issued a Reasonable Steps Letter to PPLT.<sup>5</sup> PPLT received a Comfort Letter from the Montana Department of Environmental Quality (MDEQ) dated October 20, 2020.
- C. Subdivision/Boundary Line Relocation. Three new parcels had to be created by relocation of adjoining boundaries to effect the transfer to PPLT. As explained in ¶ IV below, as part of the parcel creation process, the Custodial Trust had to secure City of East Helena (COEH) approval to amend the previously approved petition to abandon certain public roads as part of the Prickly Pear Creek Realignment Project.
- D. Contract with East Helena Public Schools (EHPS). As a condition to closing, PPLT and the EHPS had to enter into an agreement memorializing the willingness of PPLT to convey, and the willingness of EHPS to acquire, the Greenway Property no later than January 15, 2036.

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<sup>4</sup> PPLT could terminate the Transfer Agreement if its title objections were not addressed.

<sup>5</sup> The Custodial Trust has no record of whether the State issued a comfort letter to PPLT.



### III. Conditions to Custodial Trust's Obligations to Close (§ 5.2 of the Transfer Agreement)

The Custodial Trust's obligations to consummate the transfer were subject to satisfaction of the following conditions:

- A. State Option Land Agreement and Release of State Option. The State had to identify the location and future use of, and release its option to acquire, ±232 acres of East Helena property from the Custodial Trust (State Option Property) pursuant to ¶ 16 of the Settlement Agreement (see Exhibit 3-1).<sup>6</sup> On December 21, 2020, EPA and the State entered into a State Option Land Location and Use Agreement (State Option Land Agreement) providing that (i) future permitted uses of the State Option Land are those described in ¶ 16 of the Settlement Agreement as well as educational uses consistent with the foregoing, (ii) future permitted uses of the State Option Land are limited to those consistent with the final remedy and restoration actions on the State Option Land, and (iii) the requirements described above and in the Transfer Agreement meet the Settlement Agreement ¶ 16 requirement to identify the precise location and future uses of the State Option Land. On December 30, 2020, the State of Montana Natural Resource Damage Program (NRDP), MDEQ, the Custodial Trust, and PPLT entered into an agreement under which the State released its option to acquire the State Option Property on the condition that (i) the property be transferred to PPLT, and (ii) use of the State Option Property is restricted to "public recreation, wildlife habitat, open space, and/or wetlands."
- B. Beneficiary Authorizations. Prior to closing, the Beneficiaries had to have expressly approved the Stewardship Costs Agreement, authorized the transfer of the CCFA to PPLT, and approved the Transfer Agreement. As described in ¶ I above, the Custodial Trust secured all required Beneficiary approvals.

### IV. Petition to Abandon/Greenway Property Survey and Boundary Line Relocation

- A. Initial Petition to Abandon. As explained in ¶ I.A of Chapter 3 of the Reappointment Framework Report, the Custodial Trust petitioned the COEH<sup>7</sup> to abandon ±2.5 acres of Public Roads<sup>8</sup> that were impacted by the northern segment of the new creek channel (see Exhibit 3-2). On July 19, 2016, the COEH approved the petition conditioned on the Custodial Trust's: (i) donation of ±2.5 acres to the COEH for the alternate SMA Extension

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<sup>6</sup> Paragraph 16 of the Settlement Agreement provides: "As additional consideration for the settlement of this compensatory claim, the State shall have an option to acquire approximately two hundred and thirty two (232) acres of undeveloped land at the East Helena Designated Property, including approximately one hundred and ninety two (192) acres in the vicinity of Upper Lake, and forty (40) acres in the vicinity of Prickly Pear Creek in the northern part of East Helena, from the Custodial Trust without further consideration. The State avers that these undeveloped lands will be dedicated to public recreation, wildlife habitat, open space and/or wetlands. Prior to any such conveyance, the precise location and future uses of this land shall be agreed upon and approved in a written agreement between the State and US EPA, after consultation with DOI and the Custodial Trustee."

<sup>7</sup> The Custodial Trust submitted petitions to the COEH to abandon the Public Roads on January 31, 2016, June 16, 2016, and July 13, 2016.

<sup>8</sup> The Public Roads to be abandoned included portions of South Montana Avenue (SMA), Rickard Street, Sullivan Street, and several alleys.



to compensate the COEH for loss of the Public Roads; and (ii) construction of the SMA Extension to Minor Local Road (Gravel) standards (see [Exhibit 3-3](#)).

- B. Revised Petition to Abandon. When the Greenway Project received [restoration funding from NRDP](#), the Custodial Trust was required to seek COEH approval to revise the petition because: (i) the alignment of the SMA Extension was not compatible with the Greenway Trail plans; (ii) the Custodial Trust had separately committed to create a parcel along Prickly Pear Creek (PPC) to be withheld from transfer to PPLT for eventual sale and development by a private party (the Private Development Property [PDP]), as requested by the COEH on August 8, 2018;<sup>9</sup> and (iii) some of the Greenway Project parcels had to be created to be transferrable to PPLT.

Between 2019 and 2020, the Custodial Trust petitioned the COEH to revise the previously approved petition to: (i) create the PDP requested by the COEH; (ii) change the approved alignment of the SMA Extension to facilitate access to the PDP and the Greenway Trail; and (iii) relocate adjoining boundaries to create parcels that could be conveyed to PPLT. The complex process for securing the approvals required to achieve these goals is summarized in chronological order below.

1. In a June 4, 2019 letter to the COEH, the Custodial Trust resubmitted its July 13, 2016 petition with the caveats that (i) the alignment of the SMA Extension would likely change (due to the Greenway Trail and creation of the PDP) and could potentially include a parking area for trail users; and (ii) the Custodial Trust's costs to construct the SMA Extension to Minor Local Road (Gravel) standards could not exceed the Custodial Trust's committed costs associated with the July 13, 2016 COEH-approved petition.
2. In a July 2, 2019 letter, the COEH notified the Custodial Trust that it would defer its response to the Custodial Trust's June 4, 2019 revised petition because of uncertainty relating to the NRDP Restoration Plan and the potential creation of a Greenway Trail.
3. On November 4, 2019, the Montana Governor approved the East Helena ASARCO Smelter Final Restoration Plan and Environmental Assessment Checklist.
4. In a December 17, 2019 letter, the COEH asked the Custodial Trust to donate up to ±56.1 acres along PPC for future COEH services and future development.
5. In a February 3, 2020 letter to the COEH, the Custodial Trust (i) advised that it could not donate land to the COEH that would be sold for future development, (ii) committed to working with the COEH to identify land that could be donated to the COEH for future COEH services, (iii) confirmed its continued willingness to work with the COEH, PPLT, and the Beneficiaries to accomplish the request outlined in the COEH's August 8, 2018 letter, and (iv) asked the COEH to include the Custodial Trust's petition to abandon as part of the creation of the PDP and the parcels to be transferred to PPLT.

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<sup>9</sup> In a letter dated August 8, 2018, the COEH requested that the Custodial Trust, EPA, and NRDP preserve land adjacent to the Greenway Trail for future development.



6. On November 14, 2020, the Custodial Trust submitted a revised petition to abandon that proposed: (i) a new alignment for the SMA Extension connecting the remainder of SMA to Smelter Dam Road/Highway 518 (see [Exhibit 3-4](#)) and creation of a  $\pm 21.6$ -acre PDP as requested by the COEH on August 8, 2018; (ii) donation of the  $\pm 3.7$  acres for the new SMA Extension to the COEH; and (iii) construction of the revised SMA Extension to the Minor Local Road (Gravel) standards.
7. On December 1, 2020, the COEH Council passed a resolution approving the November 14, 2020 petition (see [Exhibit 3-5](#)) conditioned on the Custodial Trust: (i) creating by survey the  $\pm 3.9$ -acre alignment for the SMA Extension depicted on [Exhibit 3-5](#), which includes an approach from the SMA Extension to Highway 518, in addition to the Smelter Dam Road approach (Final SMA Extension); (ii) paving and donating the portion of the SMA Extension highlighted on [Exhibit 3-6](#) (Phase 1 SMA Extension); (iii) granting a new utility easement to the COEH for future sewer service. The COEH agreed to support the Custodial Trust's application to the Montana Department of Transportation (MDT) for an approach permit.
8. On December 8, 2020, the Custodial Trust submitted a revised petition that conformed to the conditions set forth in the COEH's December 1, 2020 resolution, and revised the sizes of the PDP and new SMA Extension to  $\pm 20$  acres and  $\pm 3.9$  acres, respectively.
9. On December 12, 2020, the Custodial Trust submitted preliminary Certificates of Survey (COSs) to create 3 of the PPLT parcels (PPLT #2, #3, and #4 on [Exhibit 3-7](#)) to the COEH.
10. At its December 15, 2020 Council Meeting, the COEH approved the Custodial Trust's December 8, 2020 petition and the preliminary COSs required to create 2 of the parcels to be transferred to PPLT (see PPLT #3 and #4 on [Exhibit 3-7](#)).
11. On December 16, 2020, the Custodial Trust submitted the preliminary COSs to Lewis and Clark County for review.
12. On December 21, 2020, the COEH approved the COSs for creation of PPLT #2 (see [Exhibit 3-7](#)).
13. On December 28, 2020, the COSs were approved by the County.
14. As described in ¶ I.B of Chapter 4 of the Reappointment Framework Report, between March and December 2022, the Custodial Trust satisfied all conditions required under the petition approved by the COEH on December 1, 2020.

## **V. Closing with PPLT**

As described in PPLT's Fact Sheet (see [Exhibit 3-8](#)), on December 30, 2020, the Custodial Trust transferred  $\pm 322$  acres of property to PPLT, comprised of 6 separate parcels (as depicted on [Exhibit 3-7](#)), and wired \$1,275,673.70 from the AA (representing the CCFA, less real estate taxes prepaid by the Custodial Trust through December 31, 2020) to a segregated account established by PPLT to hold the CCFA. Consistent with all Custodial Trust property sales, the Property was sold "as is, where is, with all faults," with no representations or warranties by the Custodial Trust. The Quitclaim Deeds (recorded in Lewis and Clark and Jefferson Counties) include PPLT's (i) covenant not to sue and release of the Custodial Trust and the Beneficiaries, (ii) grant of perpetual, post-closing Property access to the Custodial Trust and the



Beneficiaries, (iii) covenant to use the Property only for those uses allowed under the State Option Land Agreement, with title to the Property to revert to the Custodial Trust or its successor-in-interest in the event of any violation of the covenant, and (iv) covenant to comply with all long-term monitoring and invasive and noxious plant species control requirements set forth in the January 2020 Final Restoration Plan issued by the USFWS on behalf of the DOI (Restoration Plan). Pursuant to the Stewardship Costs Funding Agreement, PPLT covenanted to pay all costs associated with the CCFA and is required to submit annual affidavits to the Custodial Trust concerning such costs.

## **VI. Post Closing Remediation, Restoration, and Reuse**

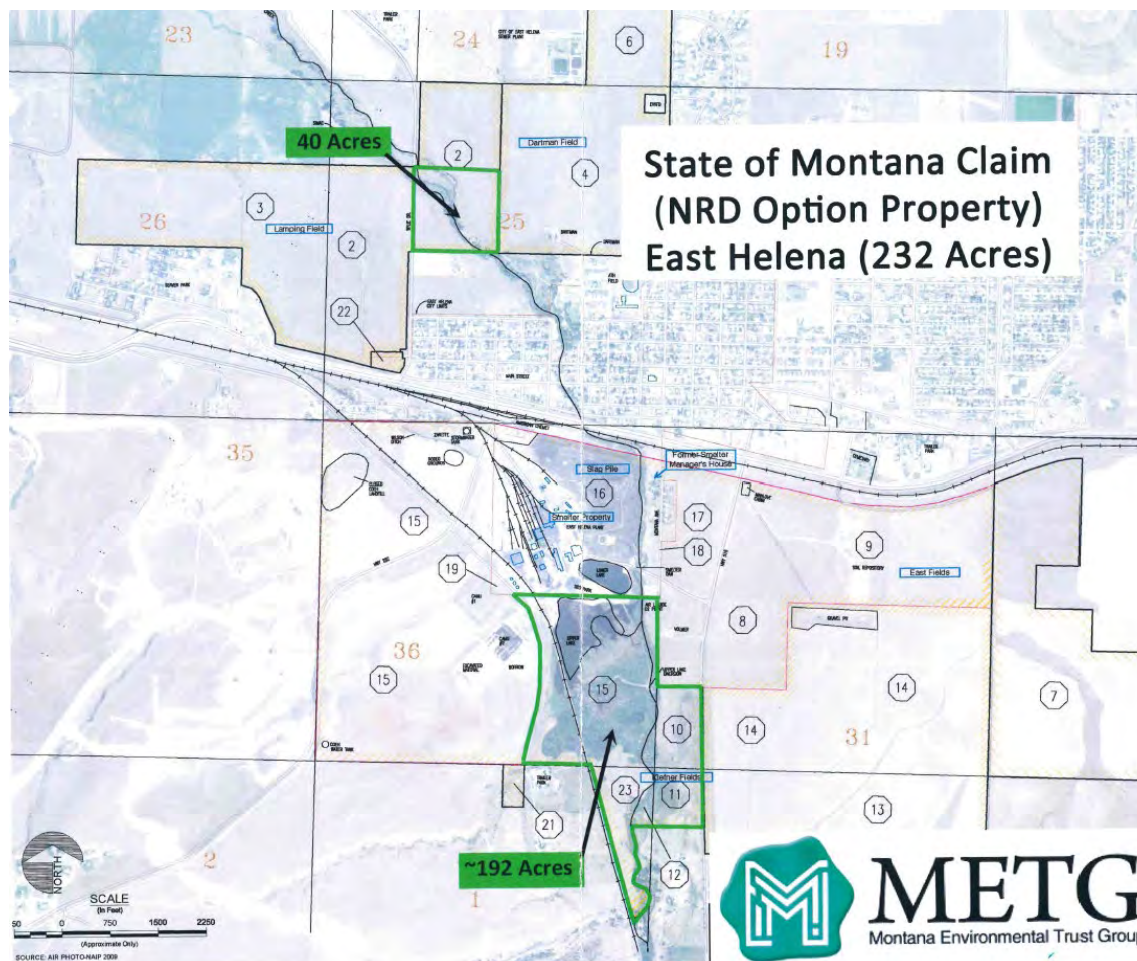
- A. Wylie Drive Parcel. The Custodial Trust transferred the 80-acre parcel on Wylie Drive to PPLT (Wylie Drive Parcel) on December 30, 2020.
  - 1. Remediation. In 2021 and 2022, the Custodial Trust remediated the Wylie Drive Parcel to the action level set forth in the final Corrective Measures Study (CMS) and the Statement of Basis for migratory birds (songbirds). The Construction Completion Report was submitted to EPA on August 17, 2023.
  - 2. Restoration. In 2022 and 2023, the Custodial Trust restored the Wylie Drive Parcel pursuant to the January 2020 Final Restoration Plan issued by DOI and the USFWS. Restoration included (i) reshaping and expanding floodplain areas along PPC to increase ephemeral wetlands, (ii) planting 300 willow cuttings along PPC, and (iii) vegetating uplands with native grass seeds (planted by hydroseeding and drill seeding) to support diverse grassland habitat for migratory birds. (See Exhibit 3-9.) The Custodial Trust is performing weed control of the restored area through the 2025 growing season. PPLT will be responsible for weed control after 2025.
  - 3. Greenway Trail. Construction of the 1-mile Greenway Trail on the Wylie Drive Parcel—named “The Grove” by PPLT—began in 2022. Trail construction was completed in 2023, and The Grove opened to the public in June 2023 (see Exhibits 3-10 and 3-11).
- B. Prickly Pear Creek Realignment Corridor (East Bench). The Custodial Trust transferred ±242 acres along the reconstructed Prickly Pear Creek to PPLT on December 30, 2020.
  - 1. Remediation. See Chapter 4 of the Reappointment Framework Report for information about the Prickly Pear Creek Realignment Project.
  - 2. Greenway Trail. Construction of the Greenway Trail on the East Bench—named “Prickly Pear Park” by PPLT—began in 2023. Prickly Pear Park is expected to be completed in October 2024 and open to the public shortly thereafter. (See Exhibits 3-12, 3-13, and 3-14.)



# Exhibit 3-1

## State of Montana Option Property

Figure 3: State-Option Land



Source: East Helena ASARCO Smelter Final Restoration Plan and Environmental Assessment Checklist (November 2019)

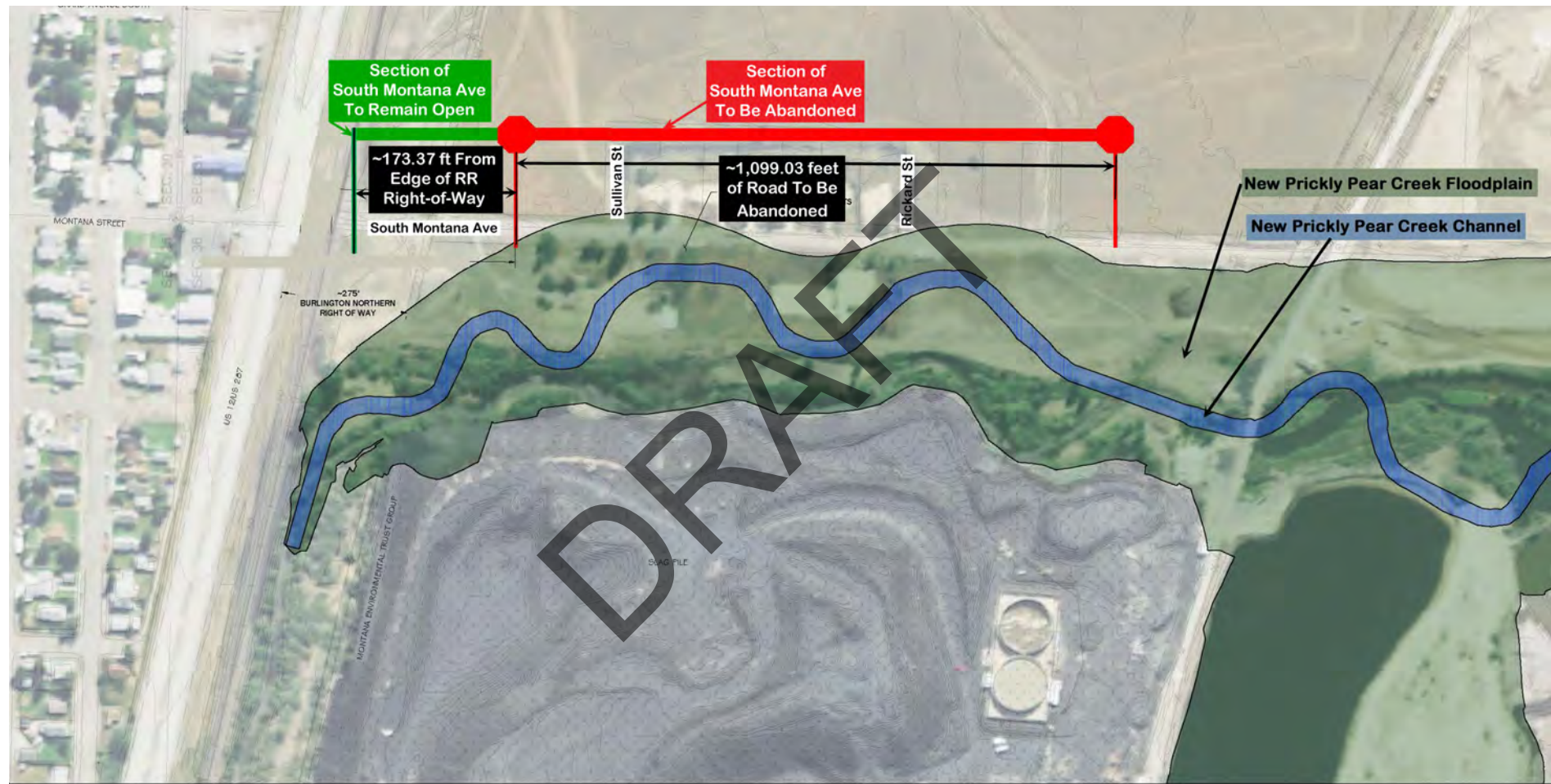


**Montana Environmental Trust Group, LLC**  
**Trustee of the Montana Environmental Custodial Trust**

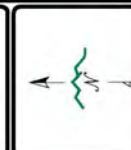


# Exhibit 3-2

## New PPC Channel Overlay on Existing Public Roads



**Prickly Pear Creek Realignment Project**  
**Northern Section of Project Area**  
**South Montana Ave Road Closure**



COORD SYS/ZONE	DISPLAYED AS
DATE/TIME	DATE/TIME
UNITS	UNITS
SOURCE	SOURCE

SCALE IN FEET

0 100 200



South Montana Ave  
Closure  
Prickly Pear Creek  
Realignment Project

DATE: 2/19/15



**Montana Environmental Trust Group, LLC**  
**Trustee of the Montana Environmental Custodial Trust**



# Exhibit 3-3

## Petition to Abandon

### Approved by COEH

on 7/19/2016

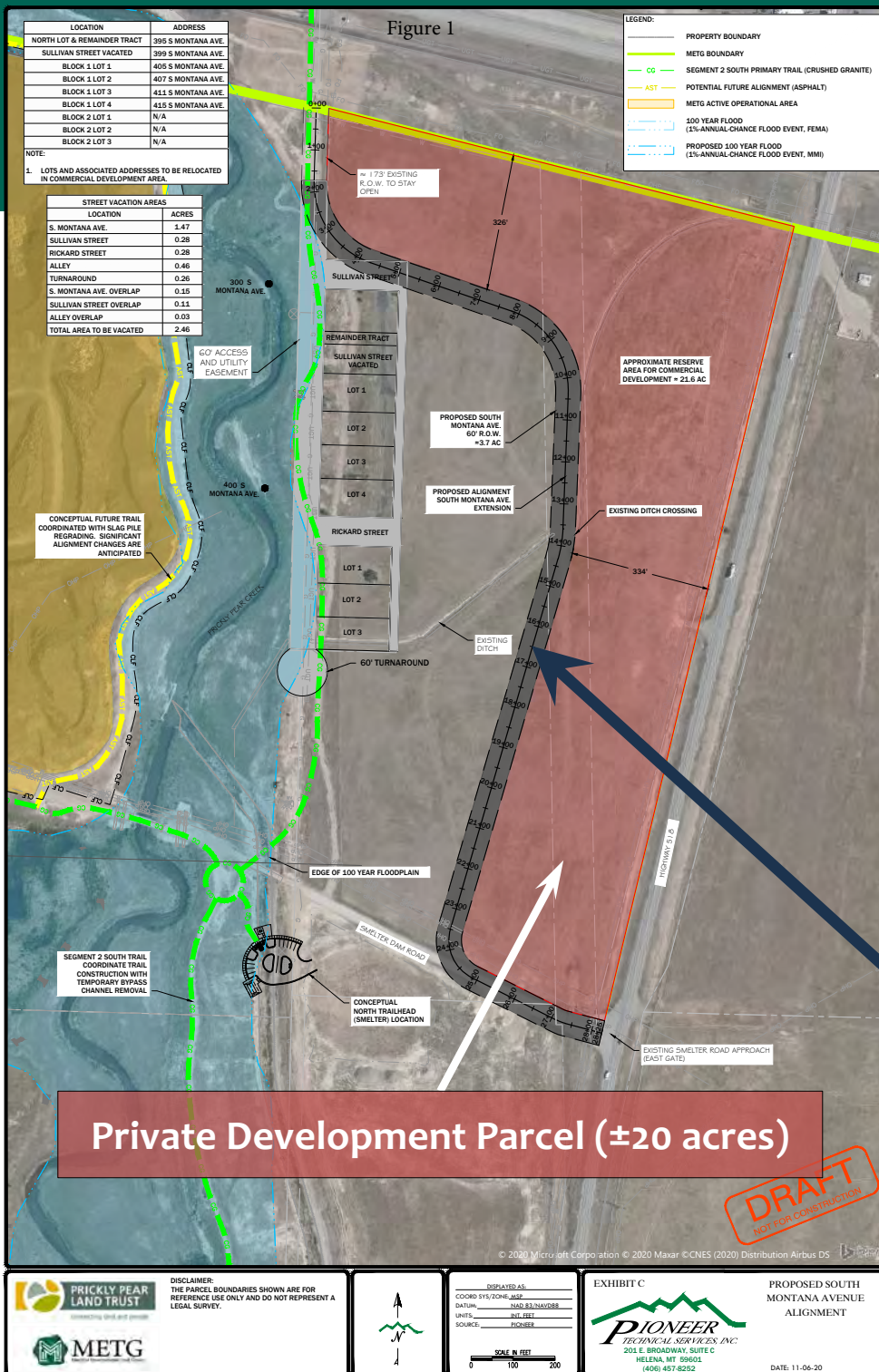


- ✓  $\pm 2.5$  acres to be donated to COEH to offset  $\pm 2.5$  acres of public roads to be abandoned
- ✓ New South Montana Avenue Extension to be constructed to Minor Local Road (Gravel) standards



# Exhibit 3-4

## Revised Petition to Abandon Proposed by Custodial Trust on 11/14/2020



- ✓ ±3.7 acres to be donated to COEH to offset ±2.5 acres of public roads to be abandoned
- ✓ Custodial Trust to create “private development parcel” requested by COEH and Greenway parcels
- ✓ Custodial Trust to construct New South Montana Avenue Extension to Minor Local Road (Gravel) standards



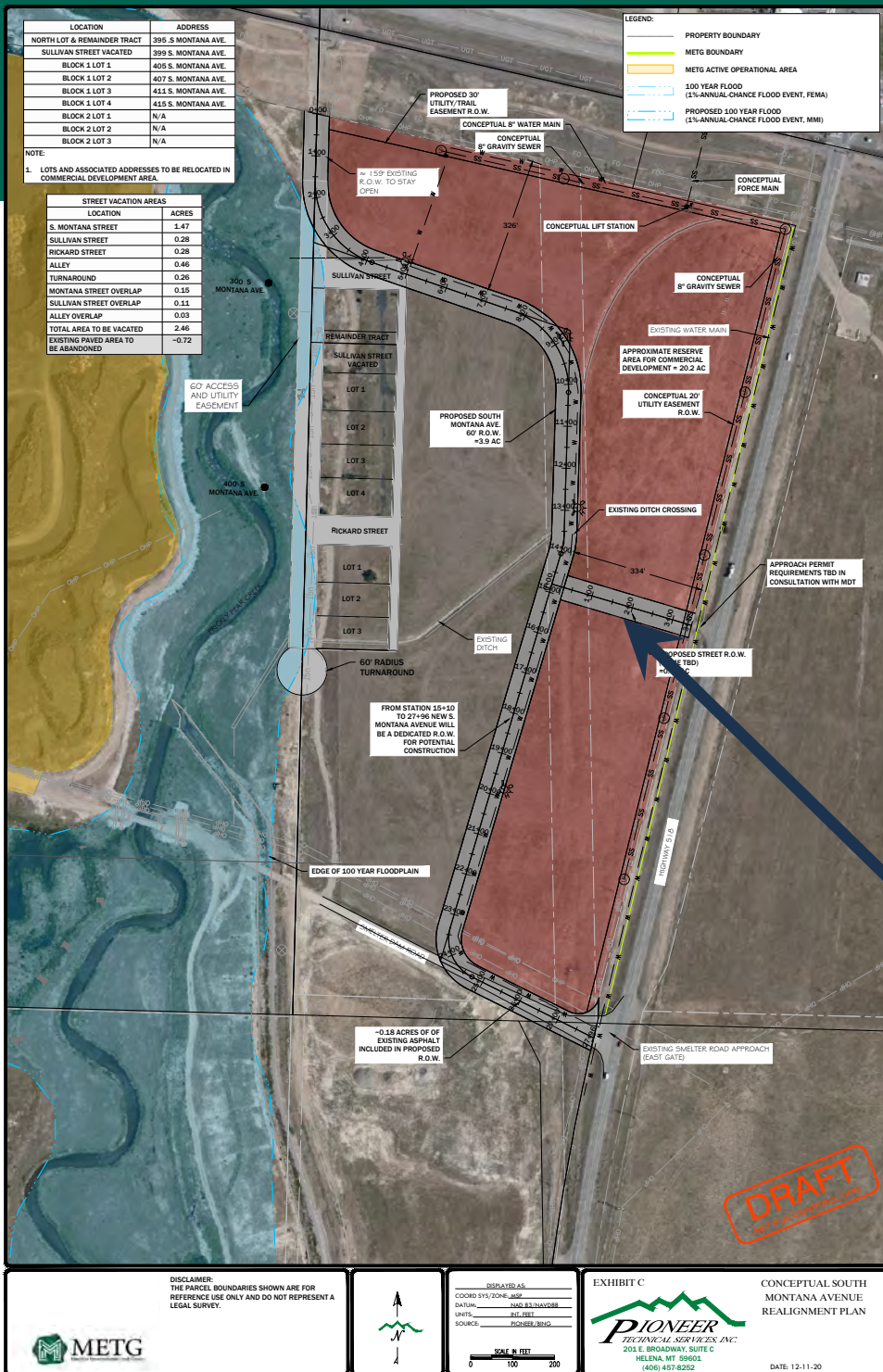
# Exhibit 3-5

## Petition to Abandon

## Approved by COEH

## on 12/1/2020

- ✓ ±3.9 acres to be donated to COEH to offset ±2.5 acres of public roads to be abandoned
- ✓ Custodial Trust to create “private development parcel” requested by COEH and Greenway parcels
- ✓ Custodial Trust to construct and pave portion of New South Montana Avenue Extension (see Exhibit 3-5)





## Exhibit B

LOCATION	ADDRESS
NORTH LOT 8 REMANENCE TRACT	395 S MONTANA AVE.
SULLIVAN STREET VACATED	395 S MONTANA AVE.
BLOCK 1 LOT 1	405 S MONTANA AVE.
BLOCK 1 LOT 2	407 S MONTANA AVE.
BLOCK 1 LOT 3	411 S MONTANA AVE.
BLOCK 1 LOT 4	415 S MONTANA AVE.
BLOCK 2 LOT 1	N/A
BLOCK 2 LOT 2	N/A
BLOCK 2 LOT 3	N/A

STREET VACATION AREAS	ACRES
S. MONTANA STREET	1.47
SULLIVAN STREET	0.28
RICKARD STREET	0.28
ALLEY	0.40
TURNAROUND	0.28
MONTANA STREET OVERLAP	0.25
SULLIVAN STREET OVERLAP	0.33
ALLEY OVERLAP	0.03
TOTAL AREA TO BE VACATED	2.48
EXISTING PAVED AREA TO BE ABANDONED	-0.72

NOTE:  
1. LOTS AND ASSOCIATED ADDRESSES TO BE RELOCATED IN COMMERCIAL DEVELOPMENT AREA.

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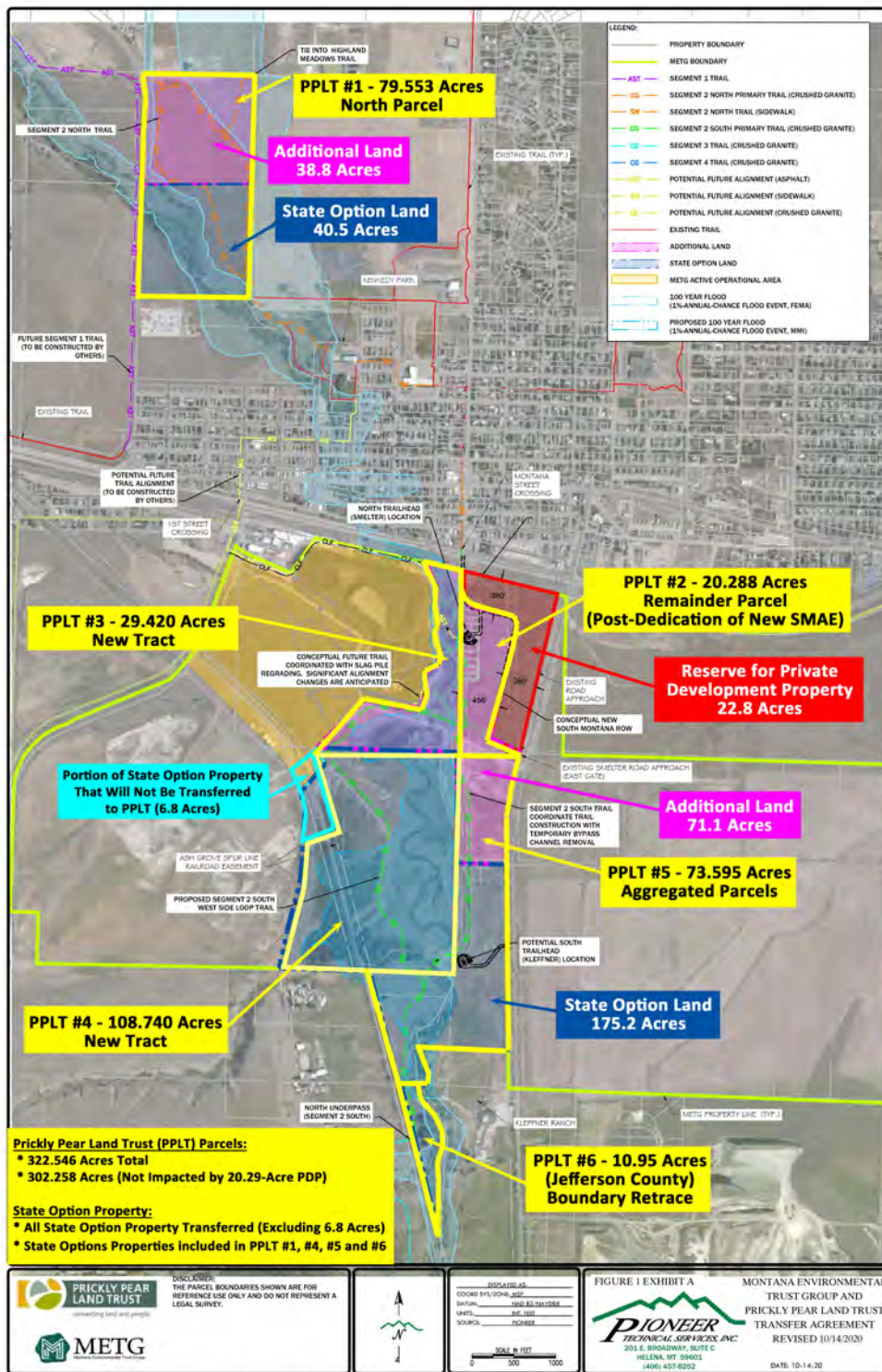
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# Exhibit 3-7

## Parcels Conveyed to PPLT



PPLT Parcel #	Acres	Method of Conveyance to PPLT	COEH Approvals
PPLT #1	79.55	Existing Parcel (Boundary Retracement)	None Required
PPLT #2	20.29	New Tract by Relocation of Multiple Adjoining Boundaries	Approved 12/21/2020
PPL T #3	29.42	New Tract by Relocation of Adjoining Boundary	Approved 12/15/2020
PPLT #4	108.74	New Tract by Relocation of Adjoining Boundary	Approved 12/15/2020
PPL T #5	73.60	Aggregated Existing Parcels (Boundary Retracement)	None Required
PPLT #6	11.0	Existing Parcel (Boundary Retracement)	None Required
<b>Total:</b>	<b>322.55</b>		



# Exhibit 3-8

## PPLT Fact Sheet: Acquisition of Greenway Property



### Prickly Pear Land Trust East Helena Greenway Project

The East Helena Greenway Project, which was first envisioned by the community 10 years ago, is now on the path to full-fledged reality as a result of the transfer of 322 acres of former ASARCO lands to Prickly Pear Land Trust (PPLT). On December 30, after years of multi-stakeholder coordination and collaboration, the Montana Environmental Trust Group, LLC (METG) conveyed title to 242 acres along the reconstructed Prickly Pear Creek (PPC) corridor south of Highway 12 and approximately 80 acres along PPC near Kennedy Park in East Helena to PPLT for development of an 8-mile trail system on remediated and revitalized former ASARCO lands. (See map on page 2.) PPLT will work with the State of Montana Natural Resource Damage Program (NDRP) on design, construction and maintenance of the Greenway recreational access and educational amenities, using the \$3.2 million allocated to the Greenway Project in the NRDP East Helena Natural Resource Restoration Plan that Governor Bullock approved in 2019. The trail system will provide land and water access for all, connecting East Helena to Montana City along Prickly Pear Creek. The land transfer to PPLT culminates a 10-year partnership between all three levels of government, the community and the private sector.

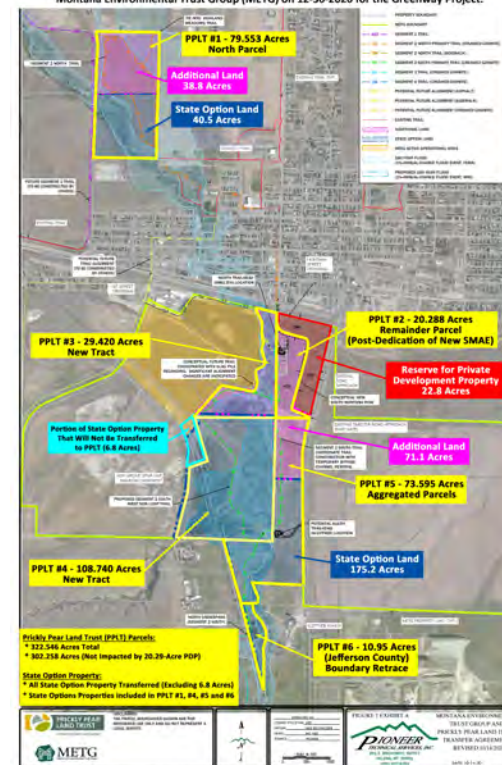


The Greenway Project offers a new beginning for lands and waters in East Helena and exemplifies how a community can honor its industrial past while positioning itself for economic opportunity, community health and quality of life. The former smelter lands near the newly constructed East Helena Public Schools (EHPS) elementary and high schools will be transformed into a trail system that will connect East Helena to Montana City. Once the Greenway trail and amenities are fully developed, PPLT will transfer the 322 acres to the East Helena Public Schools (EHPS) that has agreed to serve as the long-term steward of the Greenway land. Where possible, the trail will be Americans with Disabilities Act (ADA) accessible to encourage people of all ages and abilities to enjoy this community asset. The land remains closed to the public until public access has been established.

### Prickly Pear Land Trust Greenway Project Partners

City of East Helena  
East Helena Public Schools  
US Environmental Protection Agency  
US Fish & Wildlife Service  
Montana Natural Resource Damage Program  
Montana Department of Environmental Quality  
Lewis and Clark County  
Montana Environmental Trust Group

The parcels (outlined in yellow) were transferred to Prickly Pear Land Trust (PPLT) from Montana Environmental Trust Group (METG) on 12-30-2020 for the Greenway Project.



For more information about Prickly Pear Land Trust and the Greenway Project contact:

Mary Hollow (PPLT), 406-240-4907, [mary@pricklypearlt.org](mailto:mary@pricklypearlt.org)  
Mayor Jamie Schell (City of East Helena), 406-227-5321, [mayorschell@easthelenamt.us](mailto:mayorschell@easthelenamt.us)  
Ron Whitmoyer (East Helena Public Schools), 406-227-7700, [rwhitmoyer@ehps.k12.mt.us](mailto:rwhitmoyer@ehps.k12.mt.us)  
Cindy Brooks (METG), 617-448-9762, [cb@g-etg.com](mailto:cb@g-etg.com)  
Betsy Burns (EPA), 406-457-5013, [burns.betsy@epa.gov](mailto:burns.betsy@epa.gov)

Subscribe to PPLT's newsletter via [www.pricklypearlt.org](http://www.pricklypearlt.org) to stay apprised of the latest developments.



# Exhibit 3-9

## Restoration of 80-Acre Wylie Drive Parcel



Native Grass Seeding



Willows Planted Along Creek



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 3-10

## The Grove Trail (Off Wylie Drive)



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 3-11

## The Grove Trail (Off Wylie Drive)



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust

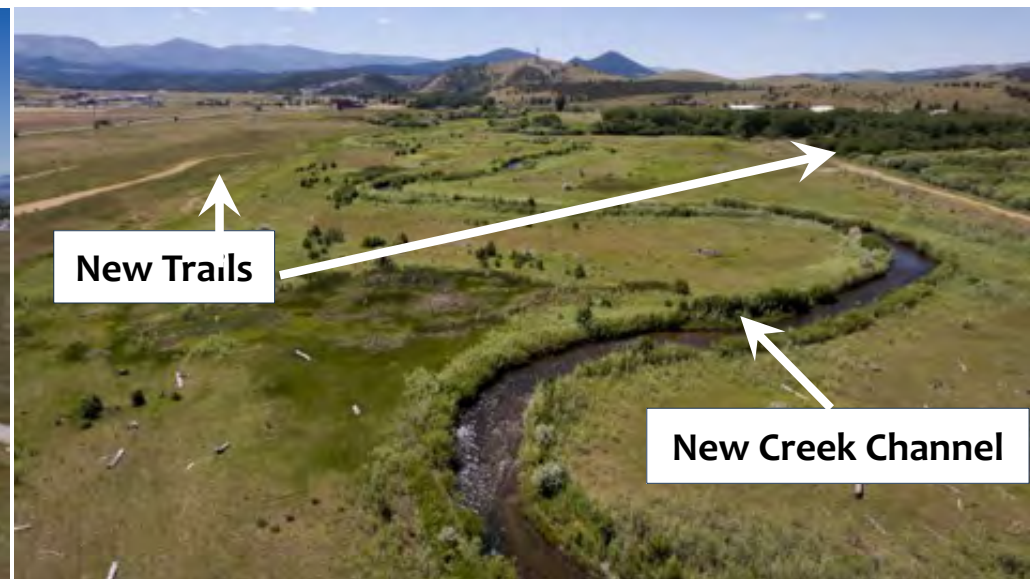


# Exhibit 3-12

## Prickly Pear Park/Greenway Trail (Off Highway 518)



Trailhead Parking Area  
(Smelter Dam Road)



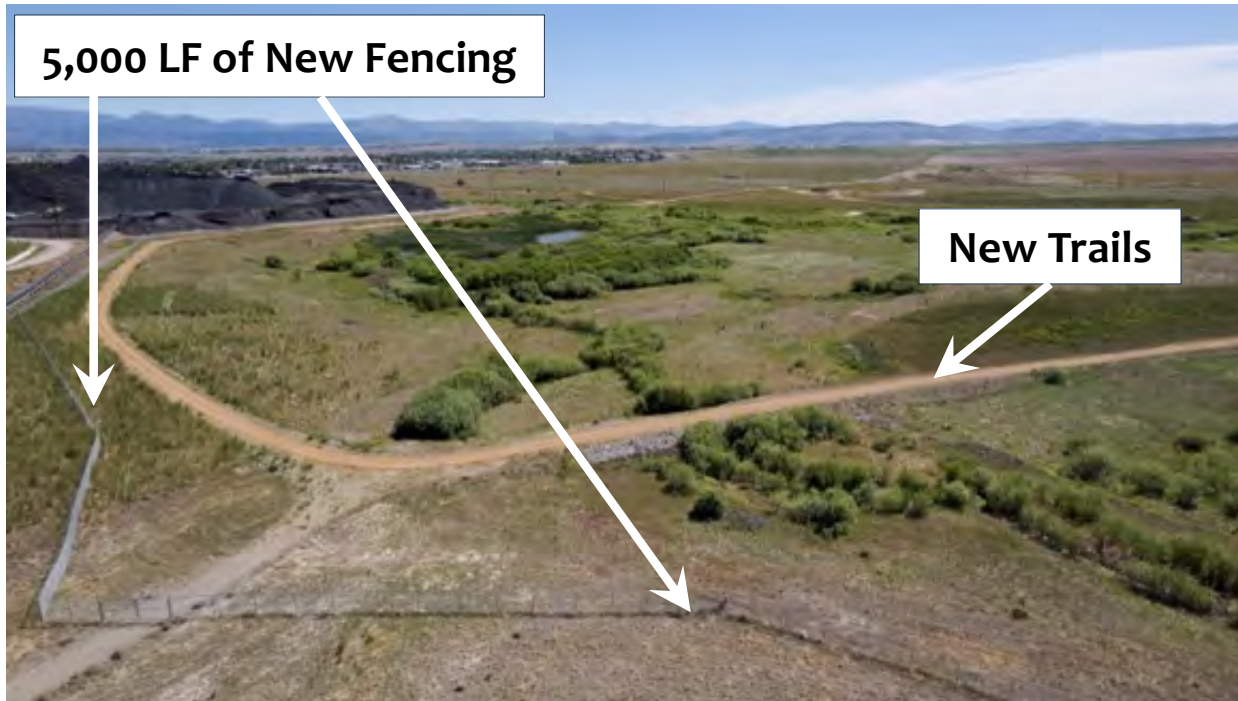
New Trails

New Creek Channel



# Exhibit 3-13

## Prickly Pear Park/Greenway Trail (Off Highway 518)





# Exhibit 3-14

## Prickly Pear Park/Greenway Trail (June 2024)



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Chapter 4

### Prickly Pear Creek Realignment Project

#### [Section 1.a.iv of the Reappointment Framework: Complete PPC Realignment]

In 2023, the Custodial Trust completed construction of the Prickly Pear Creek Realignment Project (PPCRP). There are two outstanding permits, as explained below. The Custodial Trust is currently performing Interim Operation, Maintenance, and Monitoring (IOMM) activities.

#### I. Permitting Activities for the Prickly Pear Creek Realignment Project (PPCRP)

In addition to obtaining U.S. Environmental Protection Agency (EPA) approval of 5 Interim Measures Work Plans, construction of the PPCRP<sup>1</sup> required securing more than 40 permits from 11 federal, state, and local agencies. The permits and permitting agencies for the PPCRP are summarized in Attachment 4-1.

A. PPCRP Permitting 2012 to 2020. The Custodial Trust had to secure permits from the Lewis and Clark Conservation District (LCCD), Lewis and Clark County (L&CC), the City of East Helena (COEH), the Montana Department of Natural Resources and Conservation (DNRC), the Montana Department of Environmental Quality (MDEQ), Montana Fish, Wildlife and Parks (FWP), the Federal Emergency Management Agency (FEMA), the U.S. Army Corps of Engineers (USACE), and the U.S. Fish and Wildlife Service (USFWS) to:

1. Dewater Lower Lake and construct the 3,420-linear-foot Temporary Bypass Channel (TBC);
2. Remove Smelter Dam;
3. Construct the new creek channel, 100 acres of new floodplain, and new wetlands;
4. Install a bridge across Prickly Pear Creek (PPC) and the TBC;
5. Construct a temporary road to haul material needed for the Evapotranspirative (ET) Cover System;
6. Construct ±1,000 LF of new channel and associated floodplain on ±2.5 acres of existing public roads;<sup>2</sup> and
7. Remove the TBC inlet culverts and construct the final segment of the PPC channel.

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<sup>1</sup> Separately, the Custodial Trust secured the approval of and/or consulted with EPA, MDEQ, the Montana Department of Justice Natural Resource Damage Program, USACE, COEH, L&CC, LCCD, DNRC, FEMA, FWP, and USFWS on design plans and specifications for the PPCRP.

<sup>2</sup> Approximately 1,000 LF of the new channel and floodplain were located on the public roads and alleyways that once serviced the former ASARCO housing (see Exhibit 4-1). The public roads included portions of South Montana Avenue (SMA), Rickard Street, Sullivan Street, and several alleys (collectively, the Public Roads). On January 31, 2016, June 16, 2016, and July 13, 2016, the Custodial Trust petitioned the COEH to abandon ±2.5 acres of Public Roads and proposed to donate ±2.5 acres that could be used for a new extension of SMA (SMA Extension), as depicted on Exhibit 4-2. On July 19, 2016, the COEH City Council approved the petition conditioned on the Custodial Trust's: (i) donation of ±2.5 acres to COEH for the alternate SMA Extension to compensate the COEH for loss of the Public Roads; and (ii) construction of the SMA Extension to Minor Local Road (Gravel) standards.



B. PPCRP Permitting 2020 to 2024.

1. Amended Petition to Abandon. To accommodate the Greenway Trail and create the 20-acre private development parcel,<sup>3</sup> the Custodial Trust asked the COEH to amend the previously approved petition to abandon Public Roads. On December 1, 2020, the COEH approved the amended petition, as depicted on Exhibit 4-3, conditioned on the Custodial Trust's (i) donation of ±3.9 acres for a new public road (Sullivan Street) needed to access the private development parcel and the Greenway Trail; (ii) securing an approach permit to access the Sullivan Street from Highway 518; and (iii) paving a portion of Sullivan Street. (See ¶ IV of Chapter 3 for additional details.) To satisfy the conditions of the COEH's approved petition, the Custodial Trust undertook the following tasks:
  - a. On March 23, 2022, the Custodial Trust submitted an application to the Montana Department of Transportation (MDT) for an approach permit to/from Highway 518 and Sullivan Street.<sup>4</sup> On November 28, 2022, following multiple submittals and meetings, MDT issued the Sullivan Street Approach permit to the Custodial Trust.
  - b. On December 27, 2022, the Custodial Trust and the COEH entered into a Funding Agreement and Release that fully satisfied and discharged all outstanding Custodial Trust obligations related to Sullivan Street and the COEH-approved petition in exchange for a payment of \$263,669, to be used by the COEH to construct and pave Sullivan Street or to reimburse a future purchaser of the Private Development Property (PDP) for such construction costs.
2. Joint Application #5. The Custodial Trust submitted Joint Application #5 (JA5) on May 27, 2022, to secure the required permits and approvals from LCCD, COEH, FWP, MDEQ, DNRC, USACE, and FEMA to remove the TBC,<sup>5</sup> which included: (i) a 310 (Stream) Permit; (ii) a Floodplain Development Permit; (iii) a permit under Section 404 of the Clean Water Act; (iv) a permit under Section 401 of the Clean Water Act; and (v) Montana Pollution Discharge Elimination System (MPDES) permits for Turbidity Related to Construction and Stormwater Discharges from Construction.
3. Current Permitting Status. Except for the Section 404 Permit, all PPCRP permits were closed out by the end of 2023. The Section 404 Permit will be closed after the Custodial Trust: (i) completes a wetlands assessment to confirm that it has satisfied the USACE mitigation requirements for the PPCRP, or (ii) purchases wetlands credits to accelerate closure of the Section 404 permit. The Custodial Trust expects to submit the

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<sup>3</sup> In an August 8, 2018 letter, the COEH asked the Custodial Trust to set aside land near the Greenway for private development.

<sup>4</sup> On May 3, 2022, the COEH issued a letter of support for the Sullivan Street Approach permit to MDT.

<sup>5</sup> Initially, the Custodial Trust planned to remove the TBC when the PPCRP was complete. However, in 2017, the Custodial Trust sought and received approval from the USACE to leave the TBC in place so that water could be diverted into the TBC during high-flow events to avoid inundating newly planted vegetation along the new PPC channel.



application for the final FEMA Letter of Map Revision (LOMR) for the PPCRP after the pedestrian bridge that is part of the Greenway Project has been installed.

## **II. Construction of Prickly Pear Creek Realignment Project (PPCRP)**

Prior to the PPCRP, PPC flowed in a straight, unnatural channel that undercut the toe of the slag pile, eroding slag into PPC (see [Exhibit 4-4](#)). With completion of the PPCRP, PPC flows in a newly constructed, 1.25-mile-long, natural, meandering channel within 100 acres of newly created floodplain (that provide significant flood storage capacity to mitigate flooding in the downstream, flood-prone areas within the COEH). New, enhanced wetlands have replaced the manmade Upper and Lower Lakes and provide significant additional riparian habitat. Removal of smelter dam has eliminated a major impediment to fish migration between the PPC headwaters and Lake Helena. The reduced hydraulic profile of PPC has contributed to lowering groundwater elevations beneath the Facility by more than 10 feet. Construction of the PPCRP was substantially completed between 2013 and 2017. Construction was fully completed in 2023 with removal of the TBC. (See [Exhibit 4-5](#).)

- A. [Construction of Temporary Bypass Channel \(TBC\)](#). In 2013, the Custodial Trust completed construction of the nearly 3/4-mile-long TBC and diverted PPC into the TBC (see [Exhibits 4-6, 4-7, and 4-8](#)) to allow safe removal of the failing Smelter Dam (see [Exhibit 4-9](#)).
- B. [Construction of New Creek Channel, Floodplain, and Wetlands](#). Between 2014 and 2017, the Custodial Trust removed Smelter Dam and constructed the mile-long new creek channel, 100 acres of new floodplain, and 40 acres of new wetlands (see [Exhibits 4-10, 4-11, 4-12, and 4-13](#)). PPC was fully diverted into its newly constructed channel in 2017 (see [Exhibits 4-14, 4-15, and 4-16](#)).
- C. [TBC Inlet Culvert Removal](#). In February 2020, the Custodial Trust completed removal of the 7 inlet control culverts designed to divert water into the TBC during high-flow events and completed the final section of the new creek channel. (See [Exhibits 4-17 and 4-18](#).)
- D. [Removal of the TBC](#). Between 2022 and 2023, the Custodial Trust removed the nearly 3/4-mile-long TBC, which included: excavation and off-site disposal of ±30 tons of solid waste from the TBC disturbance area; salvage of 95 cubic yards (CY) of riprap; salvage and replacement of 14,400 CY of topsoil; regrading and shaping 100,000 CY of soil; salvaging and planting 18 trees; removing and salvaging the TBC bridge; constructing grade-control structures and a haul road using 603 CY of salvaged riprap; planting more than 8,500 wetland plugs, 1,000 willow stakes, and 2,060 containerized woody plantings; installing two 40-foot-long, 12-inch-diameter culverts, and three 24-inch-diameter culverts. In 2023, the Custodial Trust prepared and submitted all construction completion reports and completed an interim wetlands assessment to determine progress relative to the USACE Section 404 permit mitigation requirements. (See [Exhibits 4-19, 4-20, 4-21, and 4-22](#).)



E. Other PPCRP Measures. The Custodial Trust also performed the following Environmental Actions related to the PPCRP:

1. Fumed slag was removed from alleyways in the former ASARCO residential area. Excavated areas were filled with ±1,500 CY of soil from the Upper Lake Marsh (ULM).
2. Three Decision Units (DUs) on the East Bench were remediated by deep soil tilling. Confirmation sampling documented that resulting surface soil concentrations of arsenic and lead were below the recreational cleanup standards specified in the Statement of Basis (see Exhibit 4-19).
3. A 5,000-LF (mile-long) chain-link fence was installed along the perimeter of both the Custodial Trust property and the property transferred to Prickly Pear Land Trust (PPLT) for the Greenway Project (see Exhibit 4-23).
4. The Custodial Trust removed and recycled 3,070 CY of stockpiled riprap.
5. The Custodial Trust continued IOMM activities for the PPCRP (see Exhibits 4-24 and 4-25).

### **III. Prickly Pear Creek Realignment Project (PPCRP) Closeout**

Remaining closeout activities include: (i) submittal of the application to FEMA for the final PPCRP LOMR; and (ii) completion of a wetlands assessment to satisfy the USACE Section 404 Permit mitigation requirements for the PPCRP (expected by year-end 2026).



Attachment 4-1 Prickly Pear Creek Realignment Project (PPCRP) Permits and Permitting Agencies			
Permit	Permitting Agency/Agencies	Applicable Project Component	Permit Status
1. Joint Application (JA) #1:			
▪ 310 (Stream) Permit	LCCD	Construction of TBC and Lower Lake Dewatering	Issued and closed
▪ Floodplain Development Permit	COEH, L&CC, DNRC, and FEMA		Issued and closed
▪ Section 404 Permit (CWA)	USACE		Mitigation deferred (JA2/5), closure pending final wetlands determination
▪ Section 401 Permit (Water Quality)	USACE		Deferred to JA2
▪ Section 318 Authorization (Stream Protection)	MDEQ		Issued and closed
▪ MPDES Individual Stormwater (HDS)	MDEQ		Issued and closed
▪ MPDES Individual Stormwater (Industrial)	MDEQ		Issued and closed
▪ MPDES General Dewatering (Construction)	MDEQ		Issued and closed
▪ MPDES General Stormwater (Construction)	MDEQ		Issued and closed
▪ Dam Safety Act Downstream Hazard Determination	DNRC		Issued and closed via JA2
▪ Dam Safety Act Downstream Construction Permit	DNRC		Issued and closed via JA2
2. Joint Application (JA) #2:			
▪ 310 (Stream) Permit	LCCD	PPC Realignment Project Channel Construction and Dam Removal	Issued and closed
▪ Floodplain Development Permit	COEH, L&CC, DNRC, and FEMA		Issued and closed
▪ Section 404 Permit (CWA)	USACE		Mitigation deferred (JA5), closure pending final wetlands determination
▪ Section 401 Permit (Water Quality)	USACE		Issued and closed
▪ Section 318 Authorization (Stream Protection)	MDEQ		Issued and closed
▪ MBTA Compliance	USFWS		Implemented Avian Protection Plan throughout Work
▪ Permanent Change in Point of Diversion	DNRC		Issued and closed
▪ MPDES Individual Stormwater (HDS)	MDEQ		Issued and closed
▪ MPDES Individual Stormwater (Industrial)	MDEQ		Issued and closed
▪ MPDES General Dewatering (Construction)	MDEQ		Issued and closed
▪ MPDES General Stormwater (Construction)	MDEQ		Issued and closed
▪ Dam Safety Act Downstream Hazard Determination	DNRC		Completed and closed
▪ Dam Safety Act Downstream Construction Permit	DNRC		Issued and closed
▪ Petition to Abandon Roads/Utilities	COEH		Issued and closed, but re-opened for PPLT Greenway
3. Joint Application (JA) #3:			
▪ Temporary PPC Haul Road Crossing (Using Culverts)	LCCD and USACE	Channel Construction	Issued and closed
4. Joint Application (JA) #4:			
▪ 310 (Stream) Permit	LCCD	Removal of TBC Inlet Culverts and Construct Final Segment of PPC Channel	Issued and closed
▪ Section 318 Authorization (Stream Protection)	MDEQ		Issued and closed
▪ Section 401 Permit (Water Quality)	USACE		Obtained via 310 Permit and FWP Concurrence
▪ MPDES General Dewatering (Construction)	MDEQ		Issued and closed

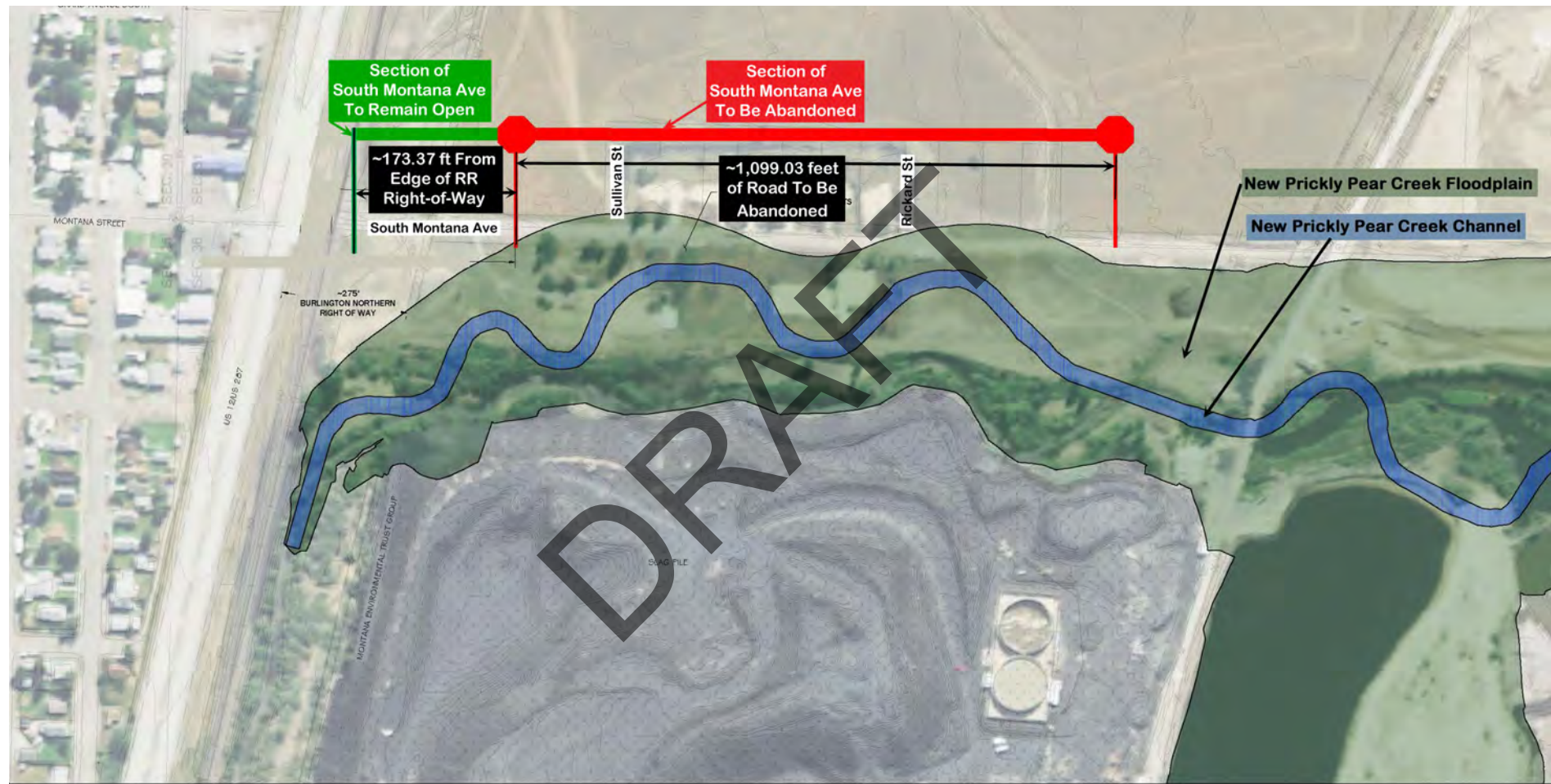


Attachment 4-1 Prickly Pear Creek Realignment Project (PPCRP) Permits and Permitting Agencies			
Permit	Permitting Agency/Agencies	Applicable Project Component	Permit Status
▪ MPDES General Stormwater (Construction)	MDEQ		Issued and closed
5. Joint Application (JA) #5:			
▪ 310 (Stream) Permit	LCCD, FWP, MDEQ, and USACE	TBC Removal	Issued and closed
▪ Floodplain Development Permit	COEH in consultation with DNRC		Issued and closed
▪ Section 404 Permit (CWA)	USACE		Closure pending final wetlands determination (1:1 wetlands mitigation)
▪ Section 401 Permit (Water Quality)	MDEQ in consultation with USACE		Issued and closed
▪ MPDES General Stormwater (Construction)	MDEQ		Issued and closed
▪ Section 318 Authorization (Stream Protection)	MDEQ with FWP concurrence		Issued and closed
▪ Petition to Abandon Roads/Utilities	COEH		Issued, closed, and fully discharged via Custodial Trust agreement with COEH
▪ Approach Permit (From Highway 518)	MDT		Issued
▪ LOMR	FEMA		
6. Interim Measures Work Plans			
▪ 2012 Interim Measures Work Plan	EPA (in consult with MDEQ/NRDP)	All Interim Measures	Approved following public review and comment
▪ 2013 Interim Measures Work Plan	EPA (in consult with MDEQ/NRDP)		Approved following public review and comment
▪ 2014 Interim Measures Work Plan	EPA (in consult with MDEQ/NRDP)		Approved following public review and comment
▪ 2015 – 2016 Interim Measures Work Plan	EPA (in consult with MDEQ/NRDP)		Approved following public review and comment
7. Corrective Measures Study (CMS)			
▪ Corrective Measures Study Work Plan	EPA (in consult with MDEQ/NRDP)	All Corrective Measures	Approved
▪ Corrective Measures Study	EPA (in consult with MDEQ/NRDP)		Approved following public review and comment
▪ Corrective Measures Study Addenda	EPA (in consult with MDEQ/NRDP)		Approved/EPA Issued Statement of Basis

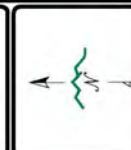


# Exhibit 4-1

## New PPC Channel Overlay on Existing Public Roads



**Prickly Pear Creek Realignment Project**  
**Northern Section of Project Area**  
**South Montana Ave Road Closure**



COORD SYS/ZONE	DISPLAYED AS
DATE/TIME	DATE/TIME
UNITS	UNITS
SOURCE	SOURCE

SCALE IN FEET

0 100 200



South Montana Ave  
Closure  
Prickly Pear Creek  
Realignment Project

DATE: 2/19/15



**Montana Environmental Trust Group, LLC**  
**Trustee of the Montana Environmental Custodial Trust**



## Exhibit 4-2

# Petition to Abandon Approved by COEH on 7/19/2016



- ✓  $\pm 2.5$  acres to be donated to COEH to offset  $\pm 2.5$  acres of public roads to be abandoned
- ✓ New South Montana Avenue Extension to be constructed to Minor Local Road (Gravel) standards





# Exhibit 4-3

## Petition to Abandon

## Approved by COEH

## on 12/1/2020

- ✓ ±3.9 acres to be donated to COEH to offset ±2.5 acres of public roads to be abandoned
- ✓ Custodial Trust to create “private development parcel” requested by COEH and Greenway parcels
- ✓ Custodial Trust to construct and pave portion of New South Montana Avenue Extension (see Exhibit 3-5)
- ✓ Portion of New South Montana Avenue Extension to be constructed and paved by Custodial Trust, transferred to COEH, and dedicated as public way



# Exhibit 4-4

## 2012: Prickly Pear Creek Conditions Before Realignment



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 4-5

## 2024: Prickly Pear Creek Current Conditions



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 4-6

## 2013: Construction of Temporary Bypass Channel



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Exhibit 4-7

# November 2013: PPC Diversion into Temporary Bypass Channel



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Exhibit 4-8

November 2013: PPC Diversion into Temporary Bypass Channel  
(Relocation of fish from PPC to TBC)



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 4-9

## November 2014: Failing Smelter Dam



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 4-10

## July 2015: New Floodplain Construction



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Exhibit 4-11

# January 2016: Fabric-Encapsulated Soil Lifts on New Creek Channel



Willow Cuttings on New Channel



Fabric-Encapsulated Soil Lifts

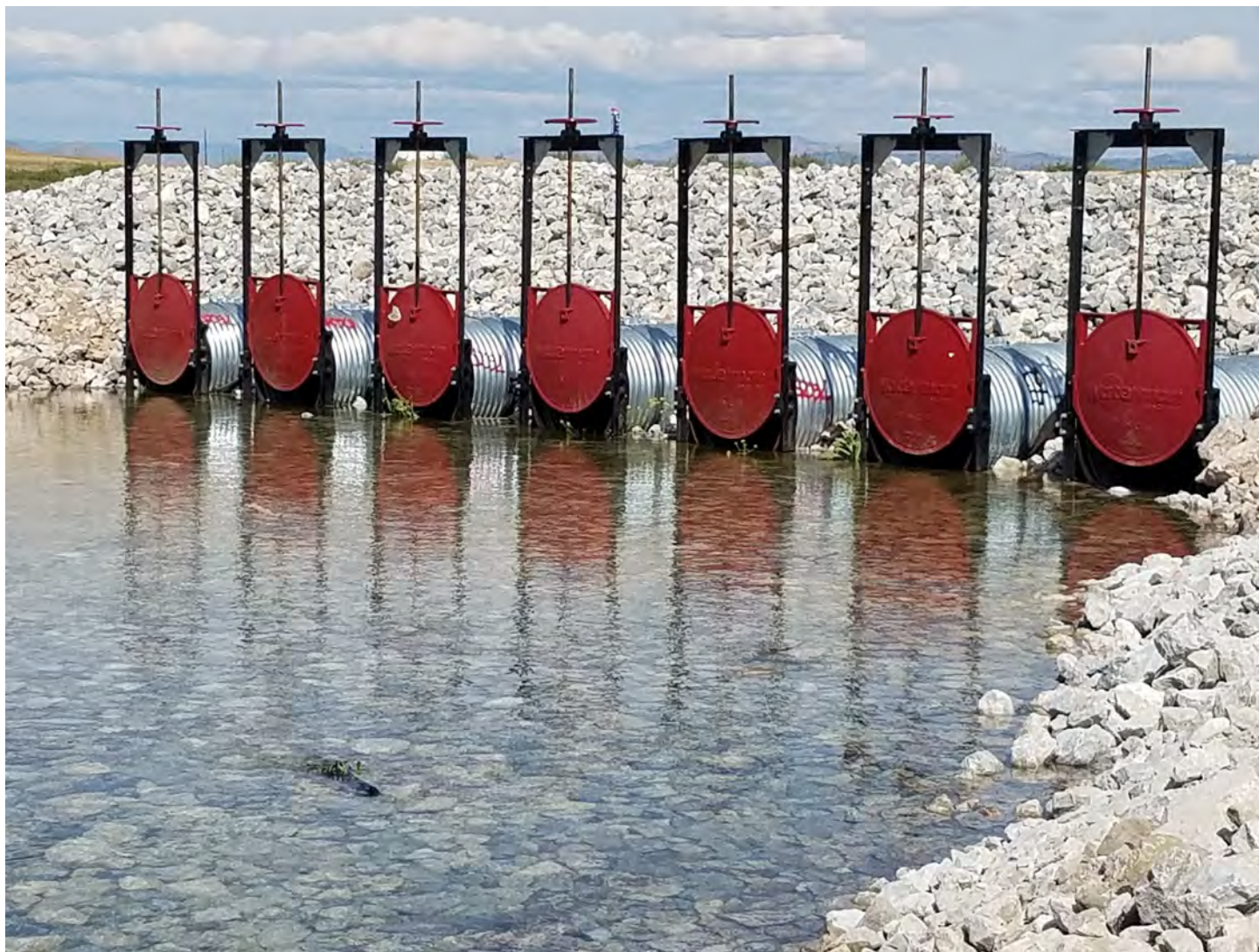


Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Exhibit 4-12

### August 2016: Diversion Structure



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Exhibit 4-13

# September 2016: New Creek Channel and Floodplain Construction



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 4-14

## July 2017: New Creek Channel and Floodplain



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 4-15

## September 2017: New Creek Channel



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 4-16

## July 2019: New Creek Channel



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 4-17

## June 2020: Prickly Pear Creek Realignment Project



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 4-18

## October 2020: Prickly Pear Creek Realignment Project



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 4-19

## May 2023: TBC Removal and East Bench Remediation

Remediated DUs



Temporary Bypass Channel Removal



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 4-20

## June 2023: Prickly Pear Creek Realignment Project



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 4-21

## October 2023: TBC Removal



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 4-22

## October 2023: Prickly Pear Creek Realignment Project



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 4-23

## 2024: East Bench



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 4-24

## June 2024: Prickly Pear Creek Realignment Project



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 4-25

## June 2024: Prickly Pear Creek Realignment Project



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Chapter 5 City of East Helena Water Projects

[Section 1.a.viii of the Reappointment Framework: Complete City of East Helena Water Quality Projects, as Proposed in the Approved 2020 Budget, or Provide Funding to the City of East Helena]

Since 2019, the Custodial Trust has been working closely with the City of East Helena (COEH) on several major water projects (City Water Projects) that were identified in the [April 2018 East Helena Water Master Plan \(2018 WMP\)](#) to address the COEH's aging water infrastructure and ensure long-term access to potable water.<sup>1</sup> The City Water Projects implemented or funded by the Custodial Trust have included: (i) installation of a new public water supply (PWS) well; (ii) improvements to the McClellan Creek Caissons; (iii) improvements to existing access to Radial Wells #1 and #2; and (iv) subject to available funds, upgrades to the Wylie Well #3 chlorination system. (See [Exhibit 5-1](#).) The City Water Projects have been implemented pursuant to a May 2022 Letter Agreement entered into by the COEH and the Custodial Trust, as further described below (see [Attachment 5-1](#)).

At the time of this report, improvements to the McClellan Creek Caissons and access to the Radial Wells have been completed. As further described below, the new PWS well has been installed, tested, and connected to utility and water delivery systems, with only minor ("punch list") work remaining. Once "punch list" work is complete, the COEH will submit the required as-built drawings and construction completion certifications to the Montana Department of Environmental Quality (MDEQ) for final project approval.<sup>2</sup> The new PWS well will be brought online after: (i) MDEQ approves the as-builts and completion certifications; and (ii) the Montana Department of Natural Resources and Conservation (DNRC) approves the required transfer of the COEH's water right reservation to the new PWS well. The requested water rights transfer has been issued for a 45-day public comment period by DNRC, with approval expected in October 2024. The Custodial Trust also worked with the COEH on upgrades to its orthophosphate system, and will support implementation of upgrades to the Wylie Well #3 chlorination system to the extent of available funds consistent with the EPA-approved budget for all City Water Projects.

### **I. New Public Water Supply Well**

The COEH's 2018 WMP recommended installation of a new production well to potentially replace Wylie Well #3 in the event it is impacted by the off-site selenium plume. As depicted in [Exhibit 5-2](#), the selenium plume has receded toward the former smelter since 2016. As of October 2023, the selenium plume is 0.5 miles from Wylie Well #3.

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<sup>1</sup> In consultation with State of Montana Natural Resource Damage Program (NRDP), the Custodial Trust sought U.S. Environmental Protection Agency (EPA) approval to fund the City Water Projects, in part, to support the NRDP Final Restoration Plan that selected Alternative 3 (Recreation Action Weighted), which allocated \$3.2M of available restoration funds of \$5.5M to the Greenway Project (and \$2.1M to City Water Projects).

<sup>2</sup> MDEQ will declare the project complete once the COEH Engineer submits the as-built drawings and a letter certifying that the project has been completed in accordance with approved plans and specifications.



- A. Public Water Supply (PWS) Well Site. In 2019, the Custodial Trust installed a PWS test well at a site selected by the COEH (on COEH-owned property near the Wastewater Treatment Plant [WWTP]). Although it was drilled to a depth of 400 feet, the test well's low yields of  $\pm 90$  gallons per minute (gpm) raised COEH concerns. In response to the COEH's concerns, the Custodial Trust presented two options to the COEH (as depicted on [Exhibit 5-3](#)): (i) install a new PWS well in one of 2 locations along Wylie Drive; or (ii) install 2 PWS wells (instead of 1 PWS well) on the COEH's WWTP property to meet the COEH's water yield goals. In response, the COEH asked the Custodial Trust to further evaluate both options. After reviewing the Custodial Trust's findings, in June 2020, the COEH selected the Wylie Drive options, which required that one of two private landowners grant an easement to the COEH to install and operate a PWS well (PWS Easement).
- B. New PWS Well Easement. Following extensive negotiations with the only landowner willing to consider a grant of easement to the COEH (Larry St. Clair), the Custodial Trust reached an agreement with Mr. St. Clair (Landowner Agreement) that set forth the terms under which Mr. St. Clair would grant a PWS Easement to the COEH (see [Exhibit 5-4](#)). In February 2021, the COEH's obligations under the Landowner Agreement were approved by the COEH Council. In March 2021, the Custodial Trust installed a test well on the St. Clair property, which yielded more than 370 gpm. Based on test well results, the Custodial Trust and the COEH agreed to proceed with design, permitting, and installation of a new PWS well (referred to as Wylie Well #4) on the St. Clair property. On November 3, 2021, the COEH recorded with Lewis and Clark County: (i) the PWS Easement granted by Mr. St. Clair to the COEH (see [Attachment 5-2](#)); and (ii) the COEH-approved final amended plat of minor subdivision for the St. Clair property required to create the PWS Easement (see [Exhibit 5-5](#)).
- C. Wylie Well #4 Permits. In November 2021, the Custodial Trust completed design of Wylie Well #4.<sup>3</sup> Based on the final well design, the Custodial Trust prepared, and the COEH submitted to MDEQ, the expedited review checklist application required to permit a [new community water supply well](#) on December 8, 2021. MDEQ approved the Wylie Well #4 expedited checklist application on February 7, 2022. On May 26, 2023, following completion and testing of the new well, the Custodial Trust submitted the Wylie Well #4 well construction log, water quality sampling results, aquifer testing results (Form 633), and a supplemental grout information form to MDEQ as requested in their February 7, 2022 checklist application approval letter. MDEQ acknowledged receipt of all required information and approval of the Wylie Well #4 completion on June 19, 2023, and noted that final project approval would be issued upon submittal by the COEH of final as-built drawings and construction certifications for all project components.
- D. Wyle Well #4 Water Rights. Beginning in 2021, the Custodial Trust provided technical support to assist the COEH with transferring its water reservation from Wylie Well #1 to

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<sup>3</sup> The COEH designed all waterline and other utility connections and appurtenances associated with operating Wylie Well #4.



Wylie Well #4. In September 2023, the Custodial Trust (on behalf of the COEH) submitted the application to DNRC to transfer the required water reservations to Wylie Well #4. In April 2024, DNRC notified the COEH and the Custodial Trust that the Wylie Well #4 permit application was deemed correct and complete. In August 2024, DNRC (i) completed an Environmental Assessment finding No Significant Impact from the proposed water reservation transfer; (ii) issued a Preliminary Determination recommending that the requested change in the point of diversion and place of use for the COEH's water reservation be granted; and (iii) issued a notice for public comment on August 27, 2024, that will run until October 11, 2024.

E. Construction of Wylie Well #4

1. Well Installation. In May and June 2022, the Custodial Trust installed Wyle Well #4, which included drilling, developing, logging, sampling, and completing the new well. A pump test produced yields of 427 gpm. On May 26, 2023, the Wylie Well #4 completion and testing information was submitted to MDEQ. MDEQ will declare the project complete once the COEH submits as-built drawings and a letter certifying that the well has been completed in accordance with approved plans and specifications.
2. Waterline Connections, Utilities and Appurtenances. Between 2022 and 2024, the COEH's contractor: (i) connected Wylie Well #4 to the Wylie Drive water main; (ii) installed hook-ups for all electric and gas utilities required to operate Wylie Well #4 (and satisfy the Landowner Agreement, including gas and electric service to the Landowner's future building site); (iii) constructed the well house; (iv) installed all mechanical and electrical equipment, SCADA telemetry and controls, the well pump, and fencing; (v) constructed the gravel access road from Wylie Drive; and (vi) graded and seeded the PWS Easement area post-construction. The Custodial Trust reimbursed the COEH's costs for this work (pursuant to the agreement described in ¶ VI below).

- F. Wylie Well Operations. Wylie Well #4 will be brought online once the water reservation permitting process is complete, the COEH submits final as-built drawings and construction certifications to MDEQ, and MDEQ grants final project approval. DNRC's water rights permitting process is expected to be complete in the fourth quarter of 2024.

II. **McClellan Creek Caissons New Public Water Supply Well**

In 2021, the Custodial Trust funded and completed design and permitting of the improvements to the McClellan Creek Caissons. In 2024, the COEH's contractor completed all improvements to the McClellan Creek Caissons, which included: (i) removing the existing subfloor in the caissons and constructing new floors, hatches, and buildings to protect the caissons; (ii) installing turbine pumps, level monitoring equipment, telemetry systems and controls (including HVAC, piping, and mechanical and electrical equipment and systems) to tie into the COEH's SCADA systems; and (iii) grading, seeding, and fertilizing impacted areas post-construction. The Custodial Trust reimbursed the COEH's costs for this work (pursuant to the agreement described in ¶ VI below).



### III. Radial Well Access Improvements

In 2021, the Custodial Trust funded and completed design and permitting of the Radial Well Access Improvements. In 2024, the COEH's contractor completed improvements to Radial Well access, including installation of a pedestrian bridge across McClellan Creek between Radial Wells #1 and #2 to allow COEH personnel to safely access the Radial Wells for routine well maintenance without having to drive or walk through McClellan Creek. In July 2024, the Custodial Trust agreed to include improvements to the access road to the Radial Wells. The Custodial Trust reimbursed the COEH's costs for this work (pursuant to the agreement described in ¶ VI below).

### IV. Wylie Well #3

- A. Abandonment of Wylie Well #3. Initially, the COEH and the Custodial Trust planned to install a new PWS well and abandon existing Wylie Well #3 due to its proximity to the selenium plume. However, because of shrinkage of the plume (which retracted 4,000 feet southward between 2016 and 2023, as depicted on Exhibit 5-2), current water quality trends, and significant yields from Wylie Well #3, the Custodial Trust agreed not to abandon Wylie Well #3 at the COEH's request.
- B. Chlorination Improvements to Wylie Well #3. In the 2018 WMP, the COEH proposed to abandon Wylie Well #3 and relocate the well's chlorination system to Wylie Well #2. However, the COEH's decision to preserve Wylie Well #3, raised concerns about chronic problems with the well's chlorination system (lack of access to chlorine injection and sample points). The Custodial Trust and the COEH agreed that the Wylie Well #3 chlorination system needs to be addressed. Therefore, subject to EPA approval and available funds within the total EPA-approved budget for COEH water projects after all other City Water Projects are complete, the Custodial Trust agreed to reimburse the COEH's reasonable costs to improve the Wylie Well #3 chlorination system. Having completed all other City Water Projects (and accounting for the costs to bring Wylie Well #4 online), as of July 2024, there is \$332,862 remaining in the EPA-approved budget for City Water Projects. The Custodial Trust plans to seek EPA approval to expend the approved funds to improve Wylie Well #3.

### V. Orthophosphate Systems

In September 2022, during construction of the new 1-million-gallon storage tank and upgrades to the McClellan Creek Caissons, the COEH stopped corrosion treatment (to prevent lead and copper in the COEH's water pipes from entering the water supply) at the McClellan Creek source. The COEH was subsequently notified by MDEQ that, pursuant to Montana Administrative Rule 17.38.208, the COEH was obligated to treat for corrosion. The COEH and MDEQ agreed to install new orthophosphate injection systems (to inhibit pipe corrosion) at the Wylie and McClellan Creek sources. Lacking the funds to implement the required system, the COEH sought Custodial Trust approval to utilize ±\$92,000 in funds earmarked for Wylie Well #3 chlorination upgrades to fund orthophosphate injection systems to inhibit lead and copper corrosion in the COEH's water lines (especially in lead pipes). After securing EPA approval, the Custodial Trust approved the requested change in funding allocation.



**VI. Agreement Between the COEH and the Custodial Trust Regarding City Water Projects**

In 2021, the Custodial Trust participated in a competitive bidding process with the COEH to evaluate the most cost-effective options for implementing the City Water Projects. After evaluating bid responses, the Custodial Trust concluded that the COEH's contractor could more cost-effectively construct improvements to the McClellan Creek Caissons, access to the Radial Wells, and Wylie Well #4 connections to utility systems.<sup>4</sup> In September 2022, after securing COEH Council approval, the COEH and the Custodial Trust memorialized the scope of work, funding responsibilities and commitments, and the roles of the parties relative to the City Water Projects. (See Attachment 5-1.)

**VII. Summary of Expenditures to Date**

Of the total EPA-approved budget of \$2,591,726, based on committed and invoiced costs, a total of \$2,187,398 has been expended on the City Water Projects, which leaves \$404,328 to bring Wylie Well #4 online and implement improvements to the Wylie Well #3 chlorination system.

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<sup>4</sup> The Custodial Trust's contractors and subcontractors specialize in waste site remediation and related activities, and do not have expertise in water utility and related system design and construction.





Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust  
PO Box 1189, Helena, Montana 59624  
Telephone (1): (617) 448-9762

May 9, 2022

The Honorable Kelly Harris  
Mayor  
City of East Helena  
306 E. Main Street  
East Helena, Montana 59635

Dear Mayor Harris:

This letter (Agreement) sets forth the agreements between the Montana Environmental Trust Group, LLC, not individually but solely in its representative capacity as Trustee of the Montana Environmental Custodial Trust (the Custodial Trust), and the City of East Helena (the City) in connection with the installation of a new public water supply (PWS) well and other water system improvements requested by the City.

## **I. Background**

In 2019, the State of Montana (through the Natural Resources Damage Program [NRDP]) asked the Custodial Trust and the U.S Environmental Protection Agency (EPA) if they would agree to fund and implement certain improvements to the City's water infrastructure systems (the City Water Projects) that might otherwise have been funded from the NRDP's East Helena Restoration Fund. The proposed City Water Projects were included in the City's April 2018 Water Master Plan (the Master Plan). Since then, the Custodial Trust has been working with the City to implement the City Water Projects described in this Agreement.

## **II. New Public Water Supply Well (PWS)**

1. New PWS Well Site. In 2020, the Custodial Trust installed a PWS test well at a site selected by the City (on City-owned property near the Wastewater Treatment Plant [WWTP]). Although it was drilled to a depth of  $\pm 400$  ft, the test well's low yields ( $\pm 90$  gpm) were a concern to the City. Based on the WWTP well results, the Custodial Trust presented two PWS well options to the City: 1) installing a new PWS well in one of two locations along Wylie Drive; or 2) installing two (2) PWS wells (instead of 1 PWS well) on the City's WWTP property to meet the City's water production goals. The Custodial Trust also documented its understanding of the Custodial Trust and City roles and responsibilities.<sup>1</sup> In response, the City asked the Custodial Trust to further evaluate both options and confirmed its concurrence with the Custodial Trust's understandings.<sup>2</sup> After reviewing the Custodial Trust's findings, the City selected the

<sup>1</sup> The Custodial Trust presented two PWS well options in an April 29, 2020 letter to the City (see [Attachment 1](#)).

<sup>2</sup> On May 6, 2020, the City responded to the Custodial Trust's April 29, 2020 letter from the Custodial Trust (see [Attachment 2](#)).



The Honorable Kelly Harris, Mayor  
April 26, 2022  
Page 2

Wylie Drive options,<sup>3</sup> which required one of two private landowners to grant an easement to the City for a future PWS well (the PWS Easement).

2. New PWS Well Easement. Following extensive negotiations with the landowner willing to consider a grant of easement to the City (Larry St. Clair) and the City, the Custodial Trust reached an agreement with Mr. St. Clair (the Landowner Agreement) that set forth the terms under which Mr. St. Clair might grant a PWS Easement to the City. In February of 2021, the City's obligations under the Landowner Agreement were approved by the City Council.<sup>4</sup> In March of 2021, the Custodial Trust installed a test well on Mr. St. Clair's property with yields of more than 370 gpm. Based on test well results, the Custodial Trust and the City agreed to proceed with design, permitting and installation of a new PWS well to be located on the St. Clair property, hereafter referred to as Wylie Well #4. The PWS Well Easement granted by Larry and Valerie St. Clair to the City was recorded by the Lewis and Clark County Clerk on November 3, 2021 (see Attachment 5). The City-approved final amended plat of minor subdivision for Mr. St. Clair's property was also recorded (see Attachment 6).
3. Wylie Well #4 Permits. The Custodial Trust has funded and completed the design and technical support for the City's permit applications from the Montana Department of Environmental Quality (MDEQ) required to site Wylie Well #4 on the PWS Easement and tie-in Wylie Well #4 to the City's water system. The City executed and submitted all applications, forms and reports and received all MDEQ permits required to install Wylie Well #4. Additionally, unless otherwise agreed to in writing by the City and the Custodial Trust,<sup>5</sup> the City will apply for and secure any other permissions, permits and approvals required to connect Wylie Well #4 to the City's water distribution system, provide utilities required to operate and maintain Wylie Well #4, startup and operate Wylie Well #4, and fulfill the City's obligations under the Landowner Agreement.
4. Wyle Well #4 (And Other City) Water Rights. The Custodial Trust will continue to provide technical support to assist the City (and the City's Public Works Director, Engineer and Attorney) with addressing discrepancies in the City's existing water rights, including: (i) participating in meetings with Department of Natural Resources and Conservation (DNRC); (ii) completing appropriate portions of DNRC Form 606 NIR

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<sup>3</sup> In a June 4, 2020 email, the City asked the Custodial Trust to pursue one of the two Wylie Drive options (see Attachment 3).

<sup>4</sup> The City Council approved the PWS Easement provisions required by Mr. St Clair at its regular meeting on February 16, 2021 (see Attachment 4), which allowed the Custodial Trust and Mr. St Clair to memorialize their agreement on February 19, 2021 (the Landowner Agreement).

<sup>5</sup> As described in ¶ 11.6.b, If portions of the Wylie Well #4 construction are performed by the City's contractor (with funding provided by the Custodial Trust), the City's contractor will be responsible for securing all permits and approvals associated with such construction work.



The Honorable Kelly Harris, Mayor  
 April 26, 2022  
 Page 3

– Application to Change an Existing Non-Irrigation Water Right to change the place of use and/or point of diversion for existing water rights 133655 (Wylie Well #1), 133656 (Wylie Well #2), 62231 (Wylie Well #3), 70576 (Radial Well #1), 70577 (Radial Well #2) and 71895 (water reservation); and (iii) transferring the City's existing water reservation from Wylie Well #1 to Wylie Well #4. The City agrees that it has primary responsibility for securing the required changes in its water rights and that the Custodial Trust's role will be limited to providing certain technical and logistical support.

5. Design of Wylie Well #4 and Appurtenances.

The Custodial Trust has funded and completed the design of Wylie Well #4 and all waterline and other utility connections and appurtenances associated with operating Wylie Well #4. The City has approved all final design documents and is responsible for securing agency approval of all required documents and applications.

6. Construction of Wylie Well #4

- a. Well Installation. The Custodial Trust will be responsible for funding, drilling, developing, logging, sampling, completing and testing the steel-cased Wylie Well #4. The City agrees to assume responsibility for final startup, permitting and operation of Wylie Well #4 after the Custodial Trust has: successfully performed and documented the pump test results; confirmed that water quality requirements have been met; and completed and submitted the well installation and completion report, including all as-built drawings and other documentation, to the City.
- b. Waterline Connections, Utilities and Appurtenances. The City will be responsible for: (i) connecting Wylie Well #4 to the water main in the Wylie Drive right-of-way; (ii) installing hook-ups for all electric and gas utilities required to operate Wylie Well #4 (as well as utilities and hook-ups required under the Landowner Agreement, including gas and electric service to Landowner's future building site); (iii) constructing the Wylie Well #4 well house and fencing;<sup>6</sup> (iv) procuring and installing all mechanical and electrical equipment;<sup>7</sup> (v) procuring and installing all SCADA, telemetry and controls; (vi) purchasing and installing the well pump; (vii) installing a gravel access road from Wylie Drive to Wylie Well #4; and (viii) grading and seeding the PWS Easement area post-construction (collectively, the Well Improvements). The City will be responsible for ensuring that construction of the Well Improvements will be performed in compliance with all DEQ and any other applicable permits and approvals, including, but not limited to: traffic control and

<sup>6</sup> The Wylie Well #4 well house is a ±16 ft by 24 ft pump control and mechanical building where all equipment and systems required to operate the well will be located.

<sup>7</sup> Mechanical and electrical equipment will include well pump and motor, valves, meters, generator, switchgear, conduit and piping.



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April 26, 2022  
Page 4

safety requirements during construction; and testing and commissioning, the Well Improvements. The Custodial Trust will be responsible for reimbursing the City's costs associated with the Well Improvements as described in Section ¶ IV. below.

- c. Wylie Well Operations. Once the Custodial Trust has fulfilled its obligations with respect to Wylie Well #4 (as set forth above), the City will be solely responsible for the ownership, operation, maintenance and use of the Wylie Well #4. The City agrees to provide written confirmation, in a form acceptable to the Custodial Trust and EPA, that it has assumed full responsibility for Wylie Well #4 and that no further action is required by the Custodial Trust.

7. Wylie Well #3.

- a. Abandonment of Wylie Well #3. Based on water quality data (which indicates that the selenium plume from the Site is shrinking and moving further from Wylie Well #3) and yields from Wylie Well #3, the City has advised the Custodial Trust of its decision not to abandon Wylie Well #3. Accordingly, the City and the Custodial Trust agree that the Custodial Trust will not abandon Wylie Well #3.
- b. Chlorination Improvements to Wylie Well #3. The City has requested that the Custodial Trust fund improvements to the chlorination system at Wylie Well #3. Subject to EPA approval, the Custodial Trust agrees that if there are sufficient funds remaining in the Total Budget (defined hereafter in ¶ V.2) after funding and implementing Wylie Well #4 and the McClellan Improvements (defined hereafter in ¶ III), it will reimburse the reasonable costs for the City to improve the chlorination system so long as such costs do not exceed the Total Budget.

**III. McClellan Tank Caissons and Radial Wells**

The Custodial Trust and the City agree to work together to implement certain improvements to the McClellan Tank Caissons and access to the Radial Wells, as described below.

1. McClellan Tank Caissons Scope. Consistent with Water Supply Alternative 4 in the Master Plan, the improvements to the McClellan Creek Caissons (the Caisson Improvements) will include: (i) removing the existing subfloor in the caissons and constructing new floors, hatches, and buildings to provide protection to the caissons; (ii) installing turbine pumps, level monitoring equipment, telemetry systems and controls (including HVAC, piping, mechanical and electrical equipment and systems) to tie into the City's SCADA systems; and (iii) following completion of construction activities, grading, seeding and fertilizing impacted areas.
2. Radial Well Access Scope. Consistent with McClellan Source Access Alternative 2 in the Master Plan, the Radial Well Access improvements will consist of installation of a



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April 26, 2022  
Page 5

pedestrian bridge across McClellan Creek between Radial Wells #1 and #2 so that City personnel can safely access the Radial Wells without having to drive or walk through McClellan Creek to perform routine well maintenance (the Radial Access Improvements).

3. Caisson Improvements Design. The City and the Custodial Trust agree that: (i) the Custodial Trust has funded and completed design and permitting of the Caisson Improvements, which has been approved by the City; and (ii) the Custodial Trust has no further obligations with respect to design or permitting of the Caisson Improvements.
4. Radial Access Design. The City and the Custodial Trust agree that: (i) the Custodial Trust has funded and completed design and permitting of the Radial Access Improvements, which has been approved by the City; and (ii) the Custodial Trust has no further obligations with respect to design or permitting of the Radial Access Improvements.
5. Construction of Caisson Improvements and Radial Access. The City and the Custodial Trust agree that: (i) the City will be responsible for construction of the Caisson Improvements and Radial Access Improvements which will be implemented by the City's contractor; (ii) the City will be solely responsible for the ownership, operation, maintenance and use of the Caisson Improvements and Radial Access Improvements; and (iii) the Custodial Trust will reimburse the City's costs as described in ¶ IV.

#### **IV. Reimbursement of City Costs**

The City and the Custodial Trust agree that: (i) the Custodial Trust will reimburse the actual costs incurred by the City's Contractor to construct and commission the Well Improvements, the Caisson Improvements and the Radial Access Improvements (collectively the Improvements); (ii) such reimbursement by the Custodial Trust will be paid directly to the City within 30 days following receipt of a complete invoice and appropriate documentation of progress to date; (iii) the City will notify the Custodial Trust of any changes or conditions that could result in an increase in the costs to be reimbursed to the City as set forth in the City's February 10, 2022 Certified Bid Tabulations for the City's Selected Bidder (the Bid Amounts) for each of the Improvements, which notice will be within three (3) business days after City first learns about the potential increase; and (iv) the City understands that the Custodial Trust has no obligation to pay more than total Bid Amounts for each Improvement unless such additional costs are approved in writing by the Custodial Trust consistent with the Asarco Bankruptcy Agreements (as defined in ¶ V.1 below).



The Honorable Kelly Harris, Mayor  
April 26, 2022  
Page 6

**V. City and Custodial Trust Acknowledgements and Agreements Relative to the City Water Projects**

1. The Custodial Trust's responsibilities to fund and implement the City Water Projects are subject to the terms and conditions of the Consent Decree and Environmental Settlement Agreement entered in the U.S. Bankruptcy Court for the Southern District of Texas, Corpus Christi Division in the matter of *In re: Asarco LLC, et al.*, Case No. 05-21207 and related Environmental Custodial Trust Agreement (the Asarco Bankruptcy Agreements).
2. EPA has approved a total budget of \$2,591,726 (the Total Budget) to fund the City Water Projects from the East Helena Cleanup Account. The City understands that the Custodial Trust cannot expend more than the Total Budget and any increase in the Total Budget may not be approved by EPA.
3. The City agrees to cooperate with and execute such forms and applications as may be reasonably requested by the Custodial Trust and its contractors in connection with implementation of the City Water Projects.
4. The City hereby confirms that it has secured the required approvals of the East Helena City Council to enter into this Agreement.
5. The City releases the Custodial Trust, Greenfield Environmental Trust Group, Inc. (and its contractors, and each of their respective officers, directors, shareholders, partners, employees, members, agents and representatives), the United States of America and the State of Montana (and their respective agencies and departments), and the respective officers, directors, shareholders, partners, employees, members, agents, representatives, successors, and assigns of each of them (collectively, the Releasees) from and against, and irrevocably and unconditionally waives and covenants not to sue the Releasees with respect to, any liability or claim arising out of or related to this Agreement and/or implementation of the City Water Projects.
6. The City and the Custodial Trust agree to cooperate with each other on all aspects of the City Water Projects.
7. The City and the Custodial Trust agree to comply with the terms of the Asarco Bankruptcy Agreements and all laws, requirements and regulations associated with the City Water Projects.
8. This Agreement shall not be effective until the Custodial Trust has received written approval of the Agreement from EPA.



The Honorable Kelly Harris, Mayor  
April 26, 2022  
Page 7

9. This Agreement contains the entire agreement between the City and the Custodial Trust.
10. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

If the City concurs with the foregoing, please sign where indicated below and return to the Custodial Trust.

The Custodial Trust looks forward to continuing to work with the City on the important City Water Projects.

Sincerely,


Montana Environmental Trust Group, LLC, not individually  
but solely in its representative capacity as Trustee of the  
Montana Environmental Custodial Trust  
By: Greenfield Environmental Trust Group, Inc., Member

By: **Cynthia Brooks**  
Cynthia Brooks, President

Digitally signed by  
Cynthia Brooks  
Date: 2022.05.09  
10:00:31 -04'00'

**AGREED TO AND ACCEPTED:**

City of East Helena, Montana

By:   
Name: Kelly Harris  
Title: Mayor, City of East Helena  
Date: 9/19/2022



The Honorable Kelly Harris, Mayor  
April 26, 2022  
Page 8

cc: Bob Anderson—Hydrometrics  
Bridget Williams—EPA  
Pete Elverum—City of East Helena  
Lauri Gorton—Custodial Trust  
Max Greenblum—EPA  
Erica Menard—Custodial Trust  
Mark Rhodes—Hydrometrics  
Jen Roberts—Custodial Trust  
Kevin Ore—City of East Helena

Attachments:

Attachment 1 – April 29, 2020 Letter to City from Custodial Trust

Attachment 2 – May 6, 2020 Letter to Custodial Trust from City

Attachment 3 – June 4, 2020 Email to Custodial Trust from City

Attachment 4 – February 16, 2021 City Council Meeting Minutes

Attachment 5 – November 3, 2021 Filed Grant of Easement by St. Clair to City

Attachment 6 – November 3, 2021 Filed Amended Plat of St. Clair Minor Subdivision



City of East Helena  
P.O. Box 1170  
East Helena, MT  
59635

3389029 B: M60 P: 1840 EMT  
11/03/2021 09:54 AM Pages: 1 of 5 Fees: 40.00  
Amy Reeves Clerk & Recorder, Lewis & Clark MT



RECEIVED  
NOV 08 2021  
CITY OF  
EAST HELENA, MT

### EASEMENT AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into this 21 day of Oct, 2021 by and between Larry St. Clair and Valerie L. St. Clair, of Helena, Montana in Lewis and Clark County, Montana (collectively, "Grantors"), and The City of East Helena, of East Helena, Montana 59635 ("Grantee").

### RECITALS

**WHEREAS**, the Grantors own real property generally located in Lewis and Clark County, Montana, more particularly described as follows:

*Tract A of St. Clair Minor Subdivision as shown and described on Document Number 585899, records of Lewis and Clark County, Montana.*

**WHEREAS**, the Grantee wishes to obtain a ***private access and utility easement*** across Grantors' Property, and the Grantors are willing to grant such easement to the Grantee pursuant to the terms and conditions defined below;

**NOW, THEREFORE**, in consideration of the mutual promises set forth in this Agreement, and other valuable consideration, the Grantors and Grantee (hereinafter collectively "Owners"), agree as follows:

**Section 1. Grant of Easement.** For value received, Grantors grant, assign, transfer, and convey to Grantee, and to its heirs, assigns, and invitees, forever, a perpetual Access and Utility easement over and across Grantors' Property, in the location, for the purposes, and on the terms and conditions set forth in this Agreement (hereinafter "Easement").

**Section 2. Purpose of Easement.** The Easement is for the purpose of ingress and egress to and from Grantee's Property, and all use, operation, maintenance, repair, and improvements arising therefrom.

**Section 3. Description and location of the Easement.** The Easement runs across Grantors' Property in the location shown on Exhibit "A." A copy of Exhibit "A" is attached to this Agreement and incorporated herein.

**Section 4. Shared Use of the Easement.** The Owners covenant and agree that their rights to



use the areas subject to the Easement will not interfere or impair the rights granted by this Agreement.

**Section 5. Easement to run with the land.** The benefits of the Easement are appurtenant to the Grantee' Property, and will run with the title to Grantee' Property whether or not the Easement is referred to in conveyances of the Grantee' Property, and the burdens of the Easement are appurtenant to the Grantors' Property, and will run with the title to the Grantors' Property whether or not the Easement is referred to in conveyances of the Grantors' Property.

**Section 6. Maintenance.** Grantee shall maintain and care for the Easement at no cost to the Grantors.

**Section 7. Entire Agreement.** This Agreement contains the entire understanding between and among the Owners and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement.

**Section 8. Expenses.** Grantee agree to pay reasonable attorney's fees associated with the drafting and review of this Agreement. Grantee agree to pay professional surveying fees associated with the drafting and creation of Exhibit "A." Grantee agree to pay all costs required for the recording of this Agreement with the Office of the Clerk and Recorder, Lewis and Clark County, Montana.

**Section 9. Time.** Time is of the essence in this Agreement.

**Section 10. Attorney's Fees.** In the event either party deems it necessary to employ an attorney or to commence a legal action to enforce the terms of this Agreement, the prevailing party in such matter or such actions shall be entitled to recover from the non-prevailing party reasonable attorney's fees and costs, in addition to all other costs allowed by statute, both at trial and on appeal, as those fees and costs may be approved by the court having jurisdiction over the proceeding.

**Section 11. Binding Effect.** Both the burdens and benefits of this Agreement shall be appurtenant to and run with the land and shall be binding upon and inure to the benefit and burden of the Owners hereto, their respective successors, assigns, heirs and legal representatives.

**Section 12. Savings Clause.** If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement shall not be affected thereby.

**Section 13. Remedies.** The Owners acknowledge that the uses provided by this Agreement are unique in that monetary damages alone for breach of this Agreement may be inadequate. Any Owner aggrieved by a breach of the provisions of this Agreement may bring an action at law or a suit in equity to obtain relief, including specific performance, injunctive relief, and any other available legal or equitable remedy.

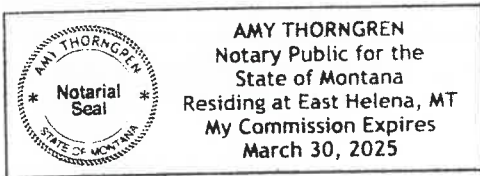
**Section 14. Recording.** The fully executed original of this Agreement shall be duly recorded in the Office of the County Clerk and Recorder, Lewis and Clark County, Montana.



STATE OF MONTANA )  
 ) :ss  
County of Lewis and Clark )

This instrument was acknowledged before me on Oct 21, 2021,  
by [Signature]  
Valerie L. St. Clair  
[Signature]  
Signature of Notary

(Montana notaries must complete the following if not part of stamp at left)

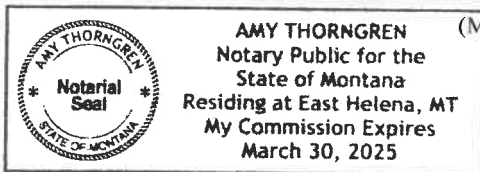


Amy Thorngren  
(Print Name of Notary)  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_, Montana  
My commission expires: \_\_\_\_\_

STATE OF MONTANA )  
 ) :ss  
County of Lewis and Clark )

This instrument was acknowledged before me on October 14, 2021, by  
[Signature]  
James Schell  
[Signature]  
Signature of Notary

(Montana notaries must complete the following if not part of stamp at left)



Amy Thorngren  
(Print Name of Notary)  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_, Montana  
My commission expires: \_\_\_\_\_



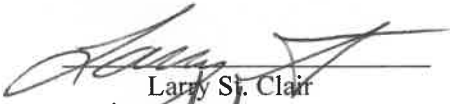
**Section 15. Execution/Counterparts.** This Agreement may be executed in two or more counterparts and all such counterparts shall be one and the same instrument and a facsimile copy or an electronically transmitted copy of this Agreement containing the signatures of the Owners may be used as the original.

**Section 16. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Montana.

**Section 17. Negotiation of the Agreement.** The Owners acknowledge that this Agreement is the result of substantial negotiations between the Owners and should be construed in accordance with the fair intent and meaning of the Agreement's language, considered in its entirety and not for or against any of the Owners, regardless of which Owner (or which Owner's attorney) prepared this Agreement. Each Owner acknowledges that they have consulted with, or has had an opportunity to consult with, its own attorney in connection with the negotiation and execution of this Agreement.

Signed this 21 day of Oct, 2021

Grantors:

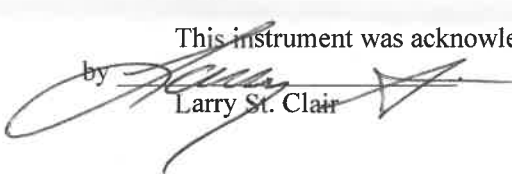
  
Larry St. Clair

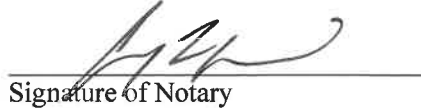
  
Valerie L. St. Clair

STATE OF MONTANA                     )  
  ):ss  
County of Lewis and Clark    )

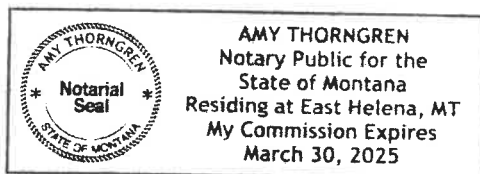
Grantee:  
  
James Schell, City of East Helena Mayor

Council approved on the 6<sup>TH</sup> day of JULY, 2021

This instrument was acknowledged before me on Oct 21, 2021  
by   
Larry St. Clair

  
Signature of Notary

(Montana notaries must complete the following if not part of stamp at left)



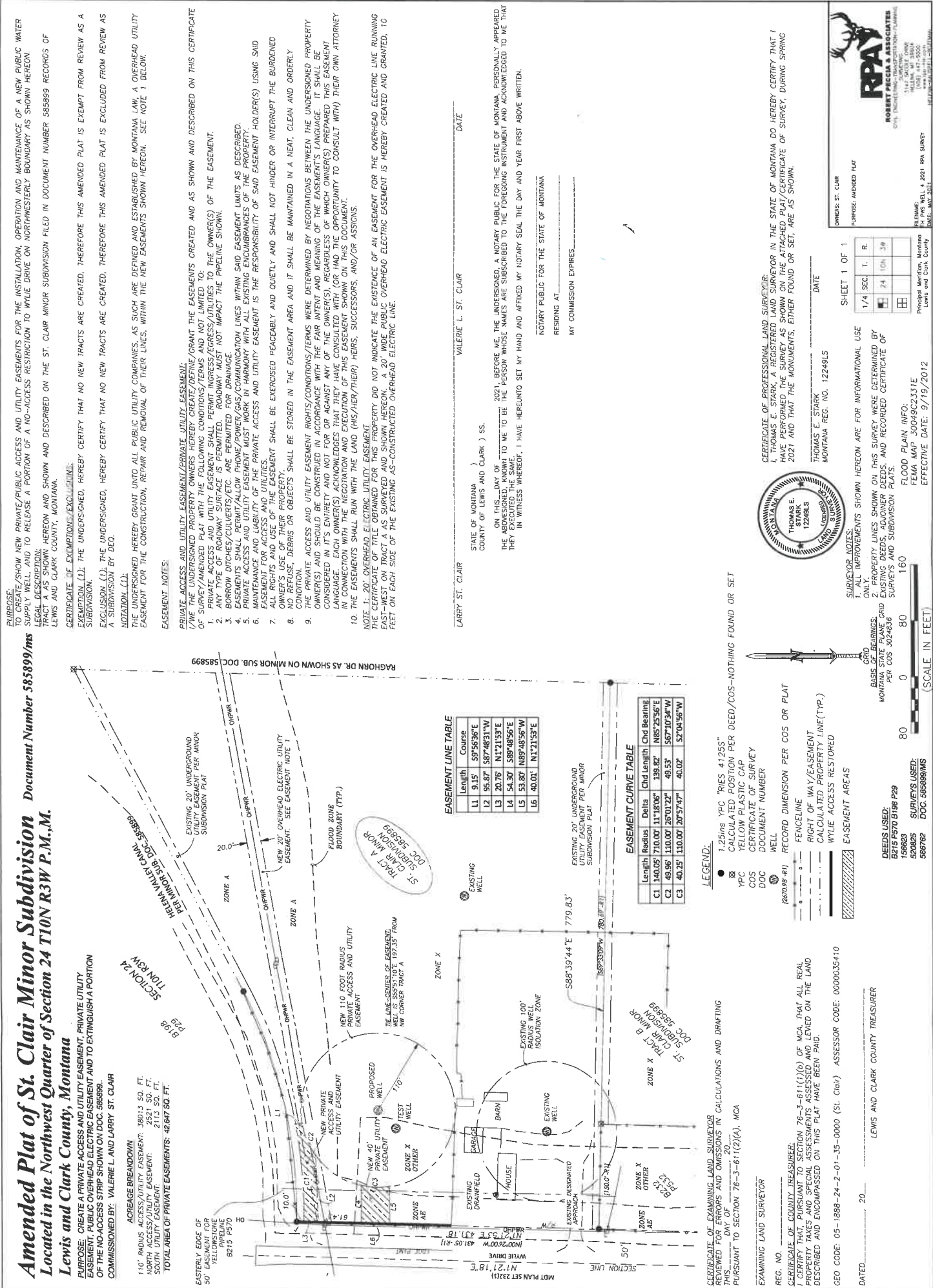
Amy Thorgren  
(Print Name of Notary)  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_, Montana  
My commission expires: \_\_\_\_\_



Exhibit A

That areas designated as the following as shown on the Amended Plat of St. Clair Minor Subdivision recorded under document number 3329028, records of Lewis and Clark County, Montana:

- New 20’ Private Access and Utility Easement
- New 40’ Private Utility Easement
- New 110 Foot Radius Private Access and Utility Easement

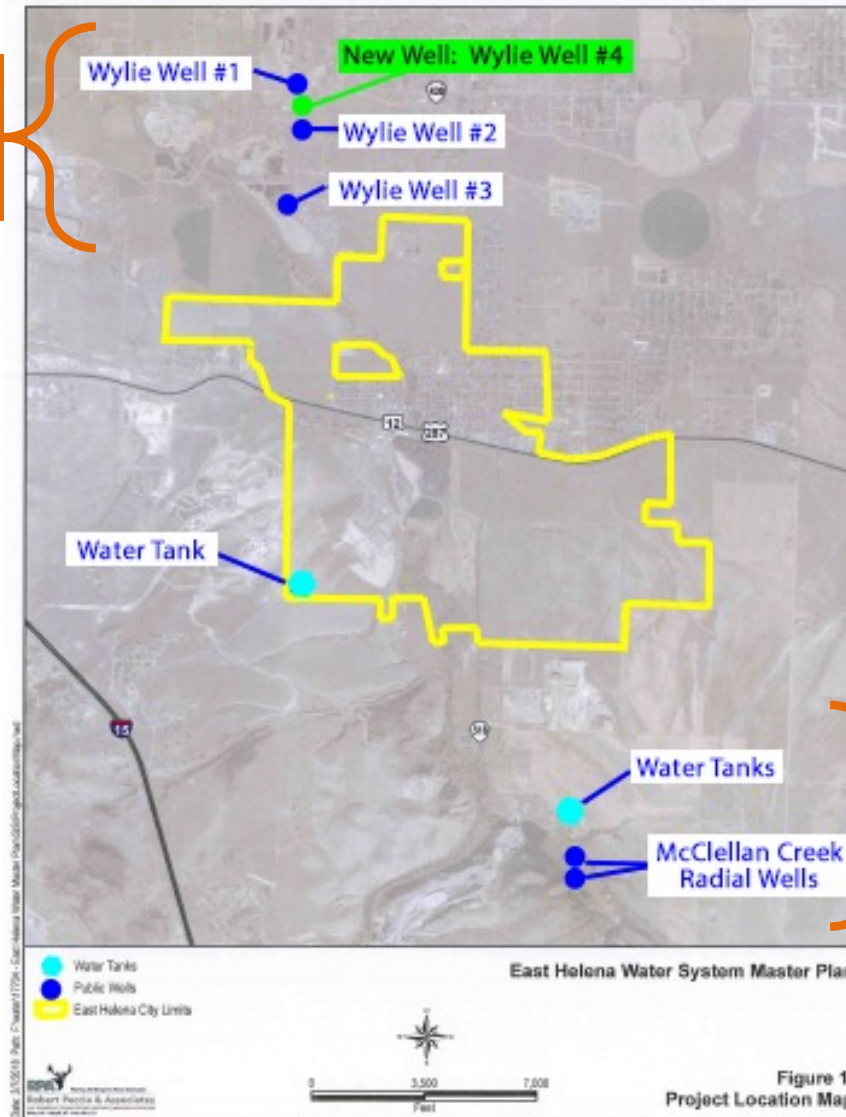




# Exhibit 5-1

## East Helena Public Water System

Wylie Source



McClellan Source

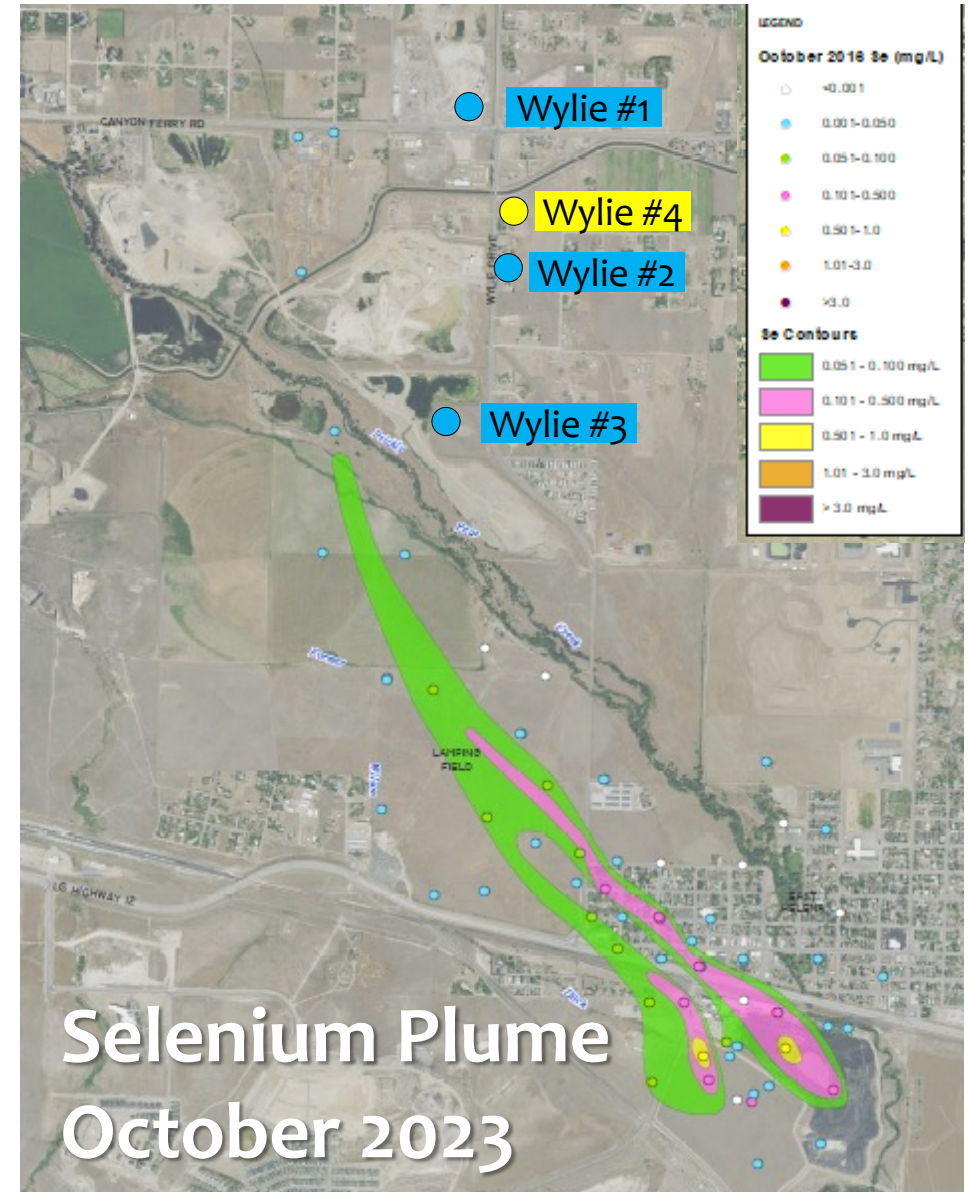
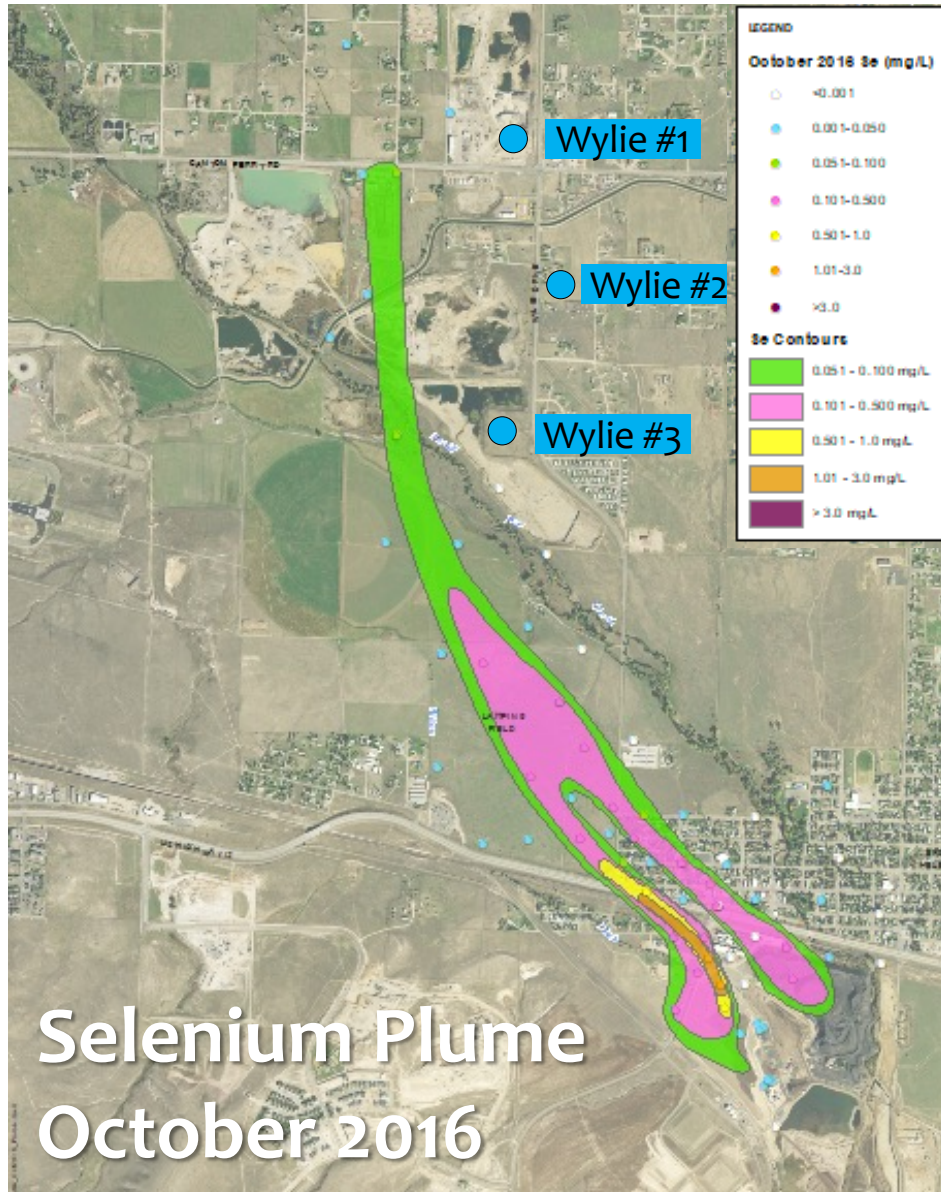


Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 5-2

## East Helena Public Water Supply Wells and Selenium Plume

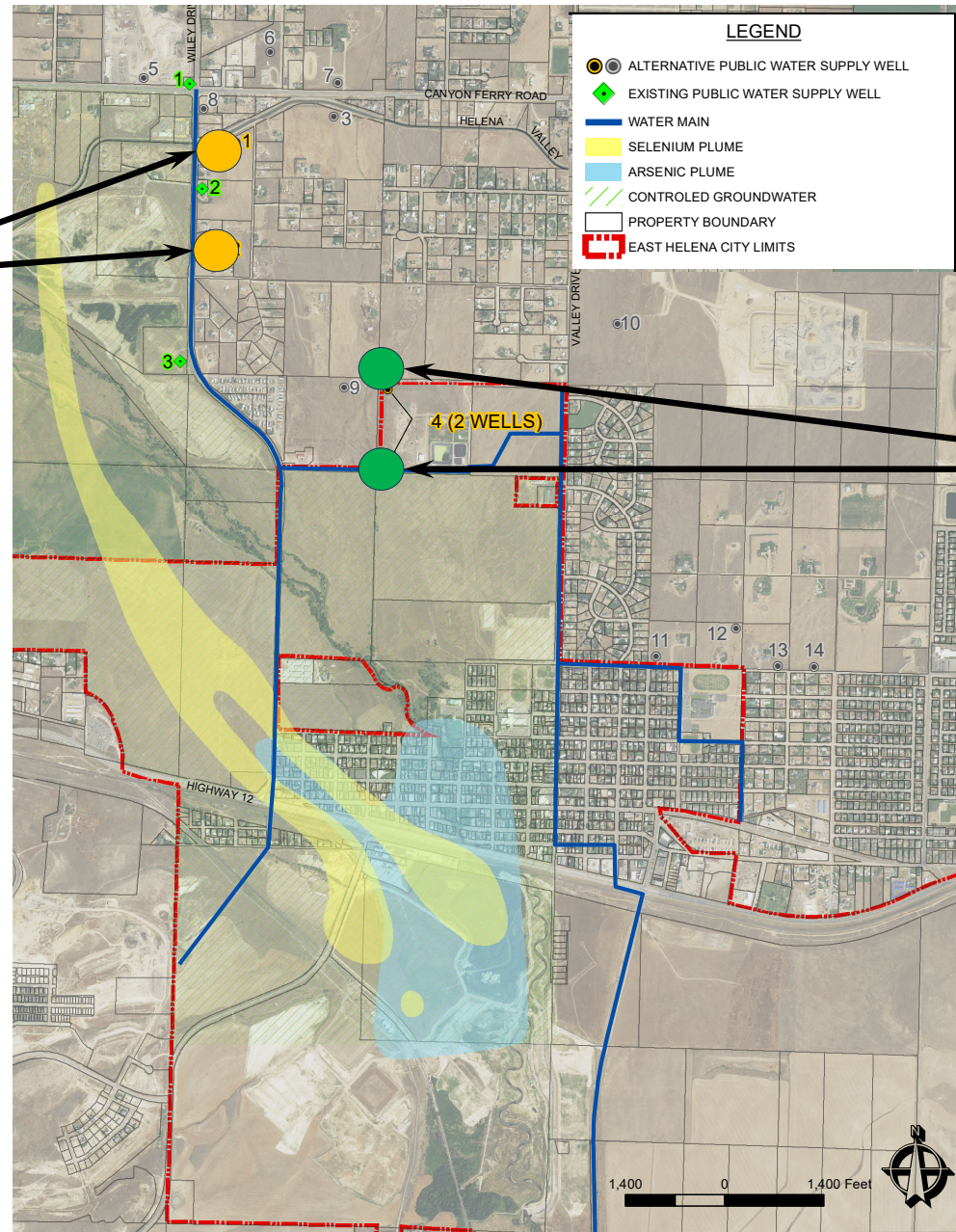




# Exhibit 5-3

## Public Water Supply Well Options Evaluated by Custodial Trust

Potential  
Wylie Drive  
PWS Well  
Locations

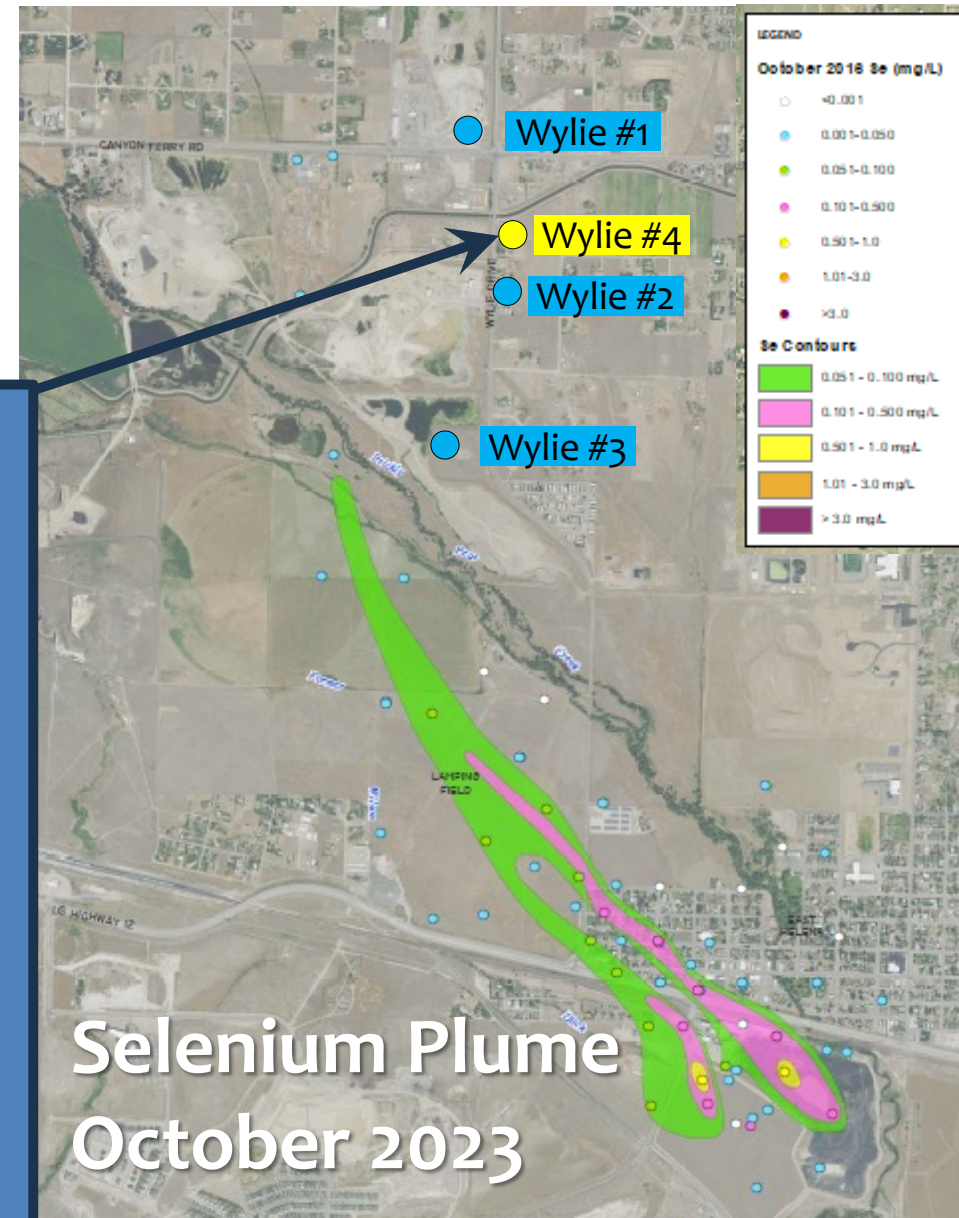
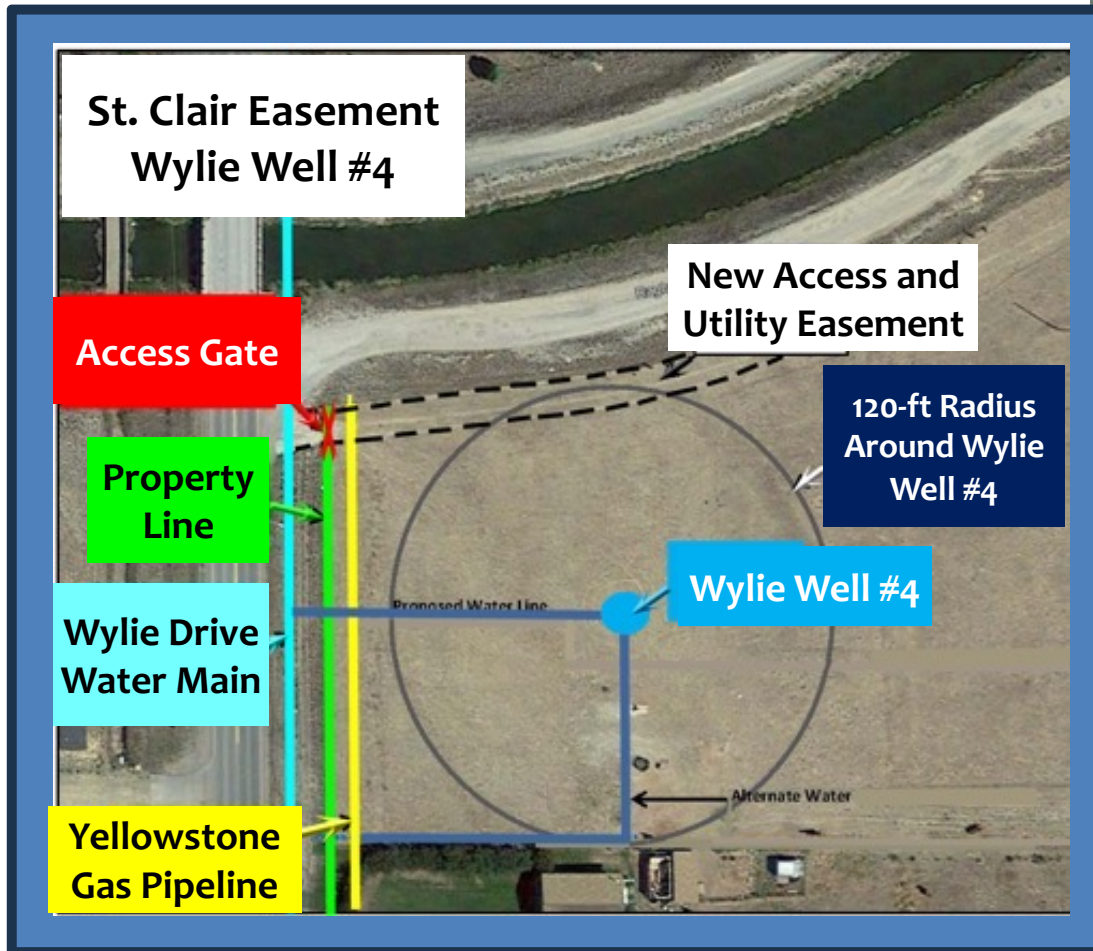


Potential  
Locations for  
Two PWS Wells  
on COEH WWTP  
Property



# Exhibit 5-4

## Wylie Well #4 and St. Clair Easement





# Exhibit 5-5

## Final Amended Plat of Minor Subdivision for St. Clair Property

### Amended Plat of St. Clair Minor Subdivision Document Number 585899/ms

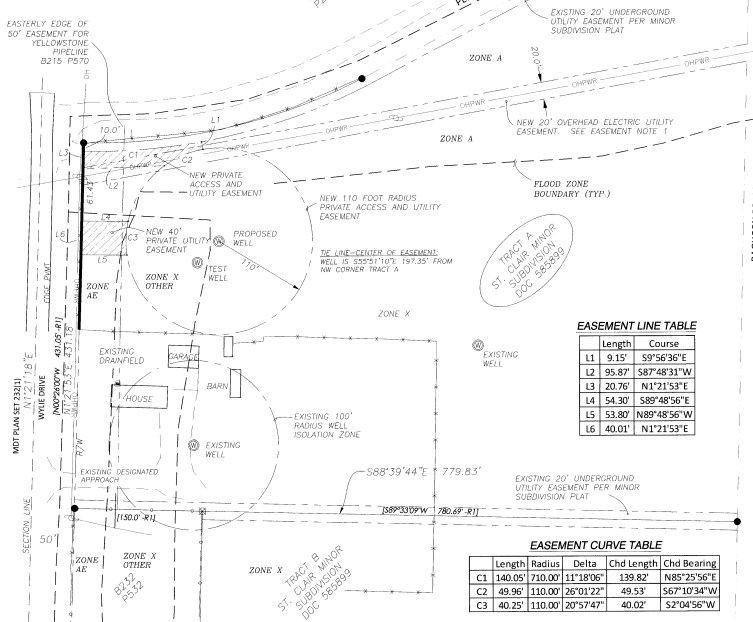
Located in the Northwest Quarter of Section 24 T10N R3W P.M., M.

Lewis and Clark County, Montana

PURPOSE: CREATE A PRIVATE ACCESS AND UTILITY EASEMENT, PRIVATE UTILITY EASEMENT, PUBLIC OVERHEAD ELECTRIC EASEMENT AND TO EXTINGUISH A PORTION OF THE NO-ACCESS STRIP SHOWN ON DOC. 585899.

COMMISSIONED BY: VALERIE L. AND LARRY ST. CLAIR

ACREAGE BREAKDOWN  
110' RADIUS ACCESS/UTILITY EASEMENT: 38013 SQ. FT.  
NORTH ACCESS/UTILITY EASEMENT: 2521 SQ. FT.  
SOUTH UTILITY EASEMENT: 2113 SQ. FT.  
TOTAL AREA OF PRIVATE EASEMENTS: 42,647 SQ. FT.



Length	Course
L1 9.15'	S9°56'36"E
L2 95.87'	S87°48'31"W
L3 20.76'	N1°21'53"E
L4 54.30'	S89°48'56"E
L5 53.80'	N89°48'56"W
L6 40.01'	N1°21'53"E

Length	Radius	Delta	Chd Length	Chd Bearing
C1 140.05'	710.00'	11°18'06"	139.82'	N85°25'56"E
C2 49.96'	110.00'	26°01'22"	49.53'	S67°10'34"W
C3 40.25'	110.00'	20°57'47"	40.02'	S2°04'56"W

#### LEGEND:

- 1.25ins YPC "RIES 41255"
- ⊗ CALCULATED POSITION PER DEED/COS=NOTHING FOUND OR SET
- YPC YELLOW PLASTIC CAP
- COS CERTIFICATE OF SURVEY
- DOC DOCUMENT NUMBER
- ⊙ WELL
- (2670.98'-#1) RECORD DIMENSION PER COS OR PLAT
- FENCE LINE
- RIGHT OF WAY/EASEMENT
- CALCULATED PROPERTY LINE(TYP.)
- WYLE ACCESS RESTORED
- ▨ EASEMENT AREAS

DEEDS USED:  
B215 P570 B198 P29  
156623  
520825 SURVEYS USED:  
586762 DOC. 585899/MS

PURPOSE: TO CREATE/SHOW NEW PRIVATE/PUBLIC ACCESS AND UTILITY EASEMENTS FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF A NEW PUBLIC WATER SUPPLY WELL, AND TO RELEASE A PORTION OF A NO-ACCESS RESTRICTION TO WYLE DRIVE ON NORTHWESTERLY BOUNDARY AS SHOWN HEREON.

LEGAL DESCRIPTION: TRACT A AS SHOWN HEREON AND SHOWN AND DESCRIBED ON THE ST. CLAIR MINOR SUBDIVISION FILED IN DOCUMENT NUMBER 585899 RECORDS OF LEWIS AND CLARK COUNTY, MONTANA.

#### CERTIFICATE OF EXEMPTIONS/EXCLUSIONS:

EXEMPTION (1): THE UNDERSIGNED, HEREBY CERTIFY THAT NO NEW TRACTS ARE CREATED, THEREFORE THIS AMENDED PLAT IS EXEMPT FROM REVIEW AS A SUBDIVISION.

EXCLUSION (1): THE UNDERSIGNED, HEREBY CERTIFY THAT NO NEW TRACTS ARE CREATED, THEREFORE THIS AMENDED PLAT IS EXCLUDED FROM REVIEW AS A SUBDIVISION BY DEQ.

#### NOTATION (1):

THE UNDERSIGNED HEREBY GRANT UNTO ALL PUBLIC UTILITY COMPANIES, AS SUCH ARE DEFINED AND ESTABLISHED BY MONTANA LAW, A OVERHEAD UTILITY EASEMENT FOR THE CONSTRUCTION, REPAIR AND REMOVAL OF THEIR LINES, WITHIN THE NEW EASEMENTS SHOWN HEREON. SEE NOTE 1 BELOW.

#### EASEMENT NOTES:

##### PRIVATE ACCESS AND UTILITY EASEMENT/PRIVATE UTILITY EASEMENT:

I/WE THE UNDERSIGNED PROPERTY OWNERS HEREBY CREATE/DEFINE/GRANT THE EASEMENTS CREATED AND AS SHOWN AND DESCRIBED ON THIS CERTIFICATE OF SURVEY/AMENDED PLAT WITH THE FOLLOWING CONDITIONS/TERMS AND NOT LIMITED TO:

1. PRIVATE ACCESS AND UTILITY EASEMENT SHALL PERMIT INGRESS/EGRESS/UTILITIES TO THE OWNER(S) OF THE EASEMENT.
2. ANY TYPE OF ROADWAY SURFACE IS PERMITTED. ROADWAY MUST NOT IMPACT THE PIPELINE SHOWN.
3. BORROW DITCHES/CULVERTS/ETC. ARE PERMITTED FOR DRAINAGE.
4. EASEMENTS SHALL PERMIT/ALLOW PHONE/POWER/GAS/COMMUNICATION LINES WITHIN SAID EASEMENT LIMITS AS DESCRIBED.
5. PRIVATE ACCESS AND UTILITY EASEMENT MUST WORK IN HARMONY WITH ALL EXISTING ENCUMBRANCES OF THE PROPERTY.
6. MAINTENANCE AND LIABILITY OF THE PRIVATE ACCESS AND UTILITY EASEMENT IS THE RESPONSIBILITY OF SAID EASEMENT HOLDER(S) USING SAID EASEMENT FOR ACCESS AND UTILITIES.
7. ALL RIGHTS AND USE OF THE EASEMENT SHALL BE EXERCISED PEACEABLY AND QUIETLY AND SHALL NOT HINDER OR INTERRUPT THE BURDENED OWNER'S USE OF THEIR PROPERTY.
8. NO REFUSE, DEBRIS OR OBJECTS SHALL BE STORED IN THE EASEMENT AREA AND IT SHALL BE MAINTAINED IN A NEAT, CLEAN AND ORDERLY CONDITION.
9. THE PRIVATE ACCESS AND UTILITY EASEMENT RIGHTS/CONDITIONS/TERMS WERE DETERMINED BY NEGOTIATIONS BETWEEN THE UNDERSIGNED PROPERTY OWNER(S) AND SHOULD BE CONSTRUED IN ACCORDANCE WITH THE FAIR INTENT AND MEANING OF THE EASEMENT'S LANGUAGE. IT SHALL BE CONSIDERED IN ITS ENTIRETY AND NOT FOR OR AGAINST ANY OF THE OWNER(S), REGARDLESS OF WHICH OWNER(S) PREPARED THIS EASEMENT (LANGUAGE). EACH OWNER(S) ACKNOWLEDGES THAT THEY HAVE CONSULTED WITH (OR HAD THE OPPORTUNITY TO CONSULT WITH) THEIR OWN ATTORNEY IN CONNECTION WITH THE NEGOTIATION AND EXECUTION OF THIS EASEMENT SHOWN ON THIS DOCUMENT.
10. THE EASEMENTS SHALL RUN WITH THE LAND (HIS/HER/THEIR) HEIRS, SUCCESSORS, AND/OR ASSIGNS.

##### NOTE 1: 20' OVERHEAD ELECTRIC UTILITY EASEMENT

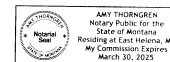
THE CERTIFICATE OF TITLE OBTAINED FOR THIS PROPERTY DID NOT INDICATE THE EXISTENCE OF AN EASEMENT FOR THE OVERHEAD ELECTRIC LINE RUNNING EAST-WEST ON TRACT A AS SURVEYED AND SHOWN HEREON. A 20' WIDE PUBLIC OVERHEAD ELECTRIC EASEMENT IS HEREBY CREATED AND GRANTED, 10 FEET ON EACH SIDE OF THE EXISTING AS-CONSTRUCTED OVERHEAD ELECTRIC LINE.

Valerie L. St. Clair 10-21-2021  
DATE

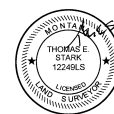
STATE OF MONTANA )  
COUNTY OF LEWIS AND CLARK ) SS.

ON THIS 21st DAY OF October, 2021, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC FOR THE STATE OF MONTANA, PERSONALLY APPEARED THE ABOVE-SIGNED, KNOWN TO ME TO BE THE PERSON WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIX MY NOTARY SEAL, THE DAY AND YEAR FIRST ABOVE WRITTEN.



NOTARY PUBLIC FOR THE STATE OF MONTANA  
Amy Thorngren  
Residing at East Helena, MT  
MY COMMISSION EXPIRES 3/30/25



CERTIFICATE OF PROFESSIONAL LAND SURVEYOR:  
I, THOMAS E. STARK, A REGISTERED LAND SURVEYOR IN THE STATE OF MONTANA DO HEREBY CERTIFY THAT I HAVE PERFORMED THE SURVEY AS SHOWN ON THE ATTACHED PLAT/CERTIFICATE OF SURVEY, DURING SPRING 2021 AND THAT THE MONUMENTS, EITHER FOUND OR SET, ARE AS SHOWN.

THOMAS E. STARK 11/15/21  
MONTANA REG. NO. 12249LS DATE

SURVEYOR NOTES:  
1. ALL IMPROVEMENTS SHOWN HEREON ARE FOR INFORMATIONAL USE ONLY.

2. PROPERTY LINES SHOWN ON THIS SURVEY WERE DETERMINED BY EXISTING DEEDS, ADJOINER DEEDS, AND RECORDED CERTIFICATE OF SURVEYS AND SUBDIVISION PLATS.

SHEET 1 OF 1			
1/4	SEC. 24	T. 10N	R. 3W
1	24	10N	3W

FLOOD PLAT INFO:  
FEMA MAP: 30049C2331E  
EFFECTIVE DATE: 9/19/2012

Principal Meridian, Montana  
Lewis and Clark County

OWNERS: ST. CLAIR  
PURPOSE: AMENDED PLAT  
FILENAME: B215 P570 WELL 4 2021 RPA SURVEY  
DATE: MAY 2021

RPA  
ROBERT PECK & ASSOCIATES  
CIVIL ENGINEERING/TRANSPORTATION/PLANNING  
3147 SANDLE DRIVE  
HELENA, MT 59604  
(406) 447-5000  
www.rpa-mt.com  
HELENA-36049PL-5802403



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Chapter 6

### Corrective Measures Completion and Tier II Framework

[Section 1.a.ix of the Reappointment Framework: Submit Corrective Measures Construction Completion Report(s) for all implemented remedy components, to also include framework for future analysis of Tier II remedies (e.g., enhancement of implemented interim measures and performance monitoring of groundwater plume) (recognizing potential for delay, if slag pile remedy construction has not been completed with time to draft all reports)]

#### I. Corrective Measures Completion

The Custodial Trust issued Construction Completion Reports (CCRs) for all Corrective Measures (CMs) implemented in East Helena between 2013 and 2018 (i.e., the Evapotranspiration [ET] Cover System,<sup>1</sup> South Plant Hydraulic Control [SPHC],<sup>2</sup> and Source Removal<sup>3</sup>) and closure of Corrective Action Management Unit (CAMU) 2.<sup>4,5</sup> Between 2020 and 2024, the Custodial Trust also prepared and submitted the following CCRs:

- A. Prickly Pear Creek (PPC) Realignment Temporary Bypass Channel Inlet Culvert Removal Project CCR (Pioneer Technical Services 2020);
- B. Parcel 2 Soil Remediation and Restoration CCR (Hydrometrics 2023); and
- C. PPC Realignment Temporary Bypass Channel Removal Project CCR (Pioneer Technical Services 2024).

#### II. Corrective Measures Performance Monitoring

- A. Objectives and Criteria. The objectives and criteria for monitoring CM performance at the East Helena Facility must comply with (i) the Remedy Performance Standards presented in Table 6-2 of the July 2020 Statement of Basis for Groundwater, Surface Water and Soil Corrective Measures (Remedy) Decision at Former ASARCO East Helena Facility (SOB), included here as Exhibit 6-1; and (ii) the Preliminary Summary of Performance Monitoring Requirements presented in Table 6-3 of the SOB, included here as Exhibit 6-2. The CMS and non-CMS parcels are identified on the map included here as Exhibit 6-3.
- B. Current Remedy Performance Monitoring. The Custodial Trust monitors the performance and effectiveness of the CMs selected by the U.S. Environmental Protection Agency (EPA)

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<sup>1</sup> Reference: Tito Park Area/Interim Cover System 1 Post-Construction Report (CH2M Hill 2015); and ET Cover System 2/Phase 3 Demolition Post-Construction Report (Ch2M Hill 2017).

<sup>2</sup> Reference: Construction Completion Report for Prickly Pear Creek Realignment (Pioneer Technical Services 2018).

<sup>3</sup> Reference: Tito Park Area/Interim Cover System 1 Post-Construction Report (CH2M Hill 2015).

<sup>4</sup> Reference: CAMU 2 Post-Construction Report (Hydrometrics 2015).

<sup>5</sup> The Custodial Trust also prepared and submitted the Dartman Parcel 4 Remediation Construction Completion Report (Hydrometrics 2019) pursuant to the OU2 ROD.



in the SOB that (i) have been implemented to date at the Facility relative to the SOB;<sup>6</sup> and (ii) are described in the [2024 Interim Corrective Action Performance Monitoring Plan \(CAPMP\)](#).<sup>7</sup> The current CAPMP is considered an “interim” plan because the Slag Pile Cover System (SPCS), selected by EPA as a Final CM, has not been implemented. The objectives and scope of the Final CAPMP, which will be implemented post-construction of the SPCS, will incorporate performance objectives specific to the SPCS.

### III. Framework for Evaluating Tier II Remedies

The Remedy Performance Standards and Performance Monitoring Requirements for CMs are described in Tables 6.2 and 6.3 of the SOB (see [Exhibits 6-1 and 6-2](#)). However, the SOB does not specify decision criteria for determining whether evaluation of a Tier II remedy is recommended or warranted.<sup>8</sup> Rather, § 7.2 of the SOB requires, “[continued] groundwater monitoring . . . to evaluate the performance of the proposed corrective measures over time.” The details of the proposed monitoring, evaluation, and reporting will be described in the Final CAPMP and will include the criteria for evaluating the need for and benefits of a Tier II remedy to improve performance of the Final CMs.

As stated in § 7.2 of the SOB, remedy performance monitoring will be performed (via the CAPMP) “until MCSs [Media Cleanup Standards<sup>9</sup>] are met at the point of compliance.” The point of compliance (depicted in Figure 1-1 of the SOB and included here as [Exhibit 6-3](#)) is along the northern boundary of Corrective Measures Study (CMS) Parcels 15 and 16. The MCSs are summarized in Table 2-1A of the SOB (CMS Parcels - Media Cleanup Standards for Primary Inorganic Constituents), included here as [Exhibit 6-4](#).

So long as the groundwater plumes are stable or shrinking (as documented in the CAPMP), and the East Valley Controlled Groundwater Area (EVCGWA) remains in place (see [Exhibit 6-5](#)), the CMs are protective. If Final CAPMP groundwater data indicates that protectiveness may be compromised, evaluation of the benefits, feasibility, cost, and appropriateness of a Tier II remedy should be considered. A conceptual framework for such a decision-making process is outlined in the flow chart attached here as [Exhibit 6-6](#).

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<sup>6</sup> As set forth in the SOB, the EPA-selected Final CMs include: the ET Cover System, consisting of building demolition, utility abandonment, subgrade fill, and the final ET Cover; the SPHC, consisting of Upper Lake and Lower Lake removal and replacement with enhanced wetlands, PPC Bypass, and PPC Realignment; focused Source Removal and CAMUs, consisting of excavation and removal of impacted media at the Tito Park Area, former Acid Plant, and Upper Lake Marsh; the Speiss-Dross Slurry Wall; and the Slag Pile Cover System (SPCS).

<sup>7</sup> The 2023 CAPMP Report summarizing 2023 performance monitoring results will be issued in October 2024.

<sup>8</sup> The SOB makes reference to potential Tier II remedies in: (i) Table 5-2. RCRA Balancing Criteria, Definitions, and Interpretation/Application to Remedy Evaluations; (ii) Table 5-3. Description of Remedial Alternatives Retained for Detailed Evaluation; (iii) Table 5-4. Combined Balancing Criteria Evaluation; and (iv) Table 5-5. Overview of Source Area Remedy Evaluation Results.

<sup>9</sup> Media Cleanup Standards (MCSs) are set forth in Table 2-1A of the SOB, which is included here as [Exhibit 6-4](#).



# Exhibit 6-1

## Table 6-2 from EPA Statement of Basis for East Helena Facility Remedy Performance Standards by CMS Parcel

**Table 6-2. Summary of Remedy Performance Standards by Parcel**  
*Corrective Measures Study Report, Former ASARCO East Helena Facility*

CMS Parcel	Proposed Remedy	Media with Potential Unacceptable Risk	Remedy Performance Standards			
			Protect HH and Environment	Achieve MCSs	Control Sources	Meets Current and Future Exposure/Use
2a	Operable Unit 2 Record of Decision, Undeveloped Lands	Soil	No unacceptable risk (Table 4-1)	To be evaluated upon transfer of property ownership	Windborne deposition mitigated by ET Cover	Currently land is undeveloped similar to Operable Unit 2 Record of Decision parcels
	South Plant Hydraulic Control and ET Cover	Groundwater		Yes	Interrelated IMs to reduce downgradient concentrations	
8W, 10, 11, 12, 17, 18	South Plant Hydraulic Control: Upper Lake and Lower Lake Removal, Prickly Pear Creek Bypass and Realignment, wetland construction	Soil	No unacceptable risk (Table 4-1); IMs are reducing contaminant mass loadings and remedy is protective in combination with CGWA and COEH restrictions	Yes - contaminated soil and sediments were removed and replaced with clean materials	N/A - sources removed	Constructed riparian corridor appropriate for industrial (future) or recreational use (current)
		Sediment				
		Surface water				
15	Operable Unit 2 Record of Decision	Soil	No unacceptable risk (Table 4-1)	To be evaluated upon transfer of property ownership	Windborne deposition mitigated by ET Cover	Meets industrial MCSs (future use); no risk to ecological receptors (current use)
	CGWA (supplemental institutional control implemented by others)	Groundwater	Reduce potential for contact with and ingestion of impacted groundwater	Contaminant concentrations are expected to decrease over time due to reductions in mass loading from remedy implementation	No source: plume in this area is attributed to naturally occurring arsenic	Protected by the CGWA
16, 19	ET Cover, Source Removal, Speiss Dross Slurry Wall, CGWA (supplemental institutional control implemented by others)	Soil	- Prevent contact with impacted media through removal or under protective ET Cover	Yes	Removed or under protective ET Cover	Meets industrial MCSs
		Groundwater	- Locally improve water quality through removal	Contaminant concentrations are expected to decrease over time due to reductions in mass loading from remedy implementation	Excavated where possible, reduce infiltration, prevent migration from slurry wall, lower water levels (South Plant Hydraulic Control IM)	Use prohibited by CGWA
		Unfumed Slag	- Improve downgradient water quality over time	Yes	Reduce potential for slag and stormwater runoff to discharge in Prickly Pear Creek	Fumed slag available for recovery and industrial use
	Grade and Cover					
23	Operable Unit 2 Record of Decision	Soil	No unacceptable risk (Table 4-1)	Yes	Windborne deposition mitigated by ET Cover	Currently land is undeveloped similar to Operable Unit 2 Record of Decision parcels
Undeveloped Land	Proposed Remedy	Exposure Media	Protect HH and Environment	Achieve MCSs	Control Sources	Meets Current and Future Exposure/Use
2, 3, 4, 6, 7, 9, 13, 14, 8E, 21, and 22	Operable Unit 2 Record of Decision, COEH Soil Ordinance, COEH Well Restrictions	Groundwater	Reduce potential for human contact with and ingestion of impacted groundwater	Contaminant concentrations are expected to decrease over time due to reductions in mass loading from remedy implementation	Reduced concentrations at Facility will eventually propagate downgradient	Ensures protection until groundwater meets MCSs
	Operable Unit 2 Record of Decision, COEH Soil Ordinance	Soil	Reduce potential for human contact with impacted soil	MCS will be achieved by adherence to COEH soil ordinance or a Trust institutional control if not within COEH	Windborne deposition mitigated by ET Cover	Ensures property use is appropriate to existing conditions
Non-Custodial-Trust-Owned Properties	Proposed Remedy	Exposure Media	Protect HH and Environment	Achieve MCSs	Control Sources	Meets Current and Future Exposure/Use
	Custodial Trust Well Abandonment Program; COEH Well Restrictions; CGWA (supplemental institutional control implemented by others)	Groundwater	Reduce potential for human contact with and ingestion of impacted groundwater	Contaminant concentrations are expected to decrease over time due to reductions in mass loading from remedy implementation	Reduced concentrations at Facility will eventually propagate downgradient	Ensures protection until groundwater meets MCSs
	Operable Unit 2 Record of Decision, COEH Soil Ordinance	Soil	Reduce potential for human contact with impacted soil	MCS will be achieved by adherence to COEH soil ordinance or a Trust institutional control if not within COEH	Windborne deposition mitigated by ET Cover	Ensures property use is appropriate to existing conditions

**Notes:**

8E = the portion of parcel 8 located east of Highway 518

8W = the portion of parcel 8 located west of Highway 518

CGWA = Controlled Groundwater Area (supplemental institutional control implemented by others)

COEH = City of East Helena

ET = evapotranspiration

IM = interim measure

MCS = media cleanup standard

NA = not applicable



**Montana Environmental Trust Group, LLC**  
**Trustee of the Montana Environmental Custodial Trust**



## Exhibit 6-2

# Table 6-3 from EPA Statement of Basis for East Helena Facility Preliminary Summary of Performance Monitoring Requirements CMS and Non-CMS Parcels

**Table 6-3. Preliminary Summary of Performance Monitoring Requirements**

*Corrective Measures Study Report, Former ASARCO East Helena Facility*

				Performance Monitoring Requirements	
Proposed Remedy Elements	Engineering/Activity Components	Applicable Media or Pathway	Remedial Objectives	Monitoring (Media)	Engineering Components Monitoring
ENGINEERING CONTROLS					
Slag Pile - Grade and Cover	ET Cover over unfumed slag to reduce infiltration	Groundwater	- Reduce infiltration through unfumed Slag and subsequent leaching of metals from unfumed Slag	CAMP Program (Groundwater)	Cover Inspections and Maintenance
	Slag pile regrading	Soil/Slag Sediment	- Maintain access to slag for sale - Reduce potential for slag discharge to Prickly Pear Creek	Slag pile slope grading plan	Slope inspections and comparison to design parameters
	Surface water/stormwater collection	Surface water	- Reduce potential for slag and stormwater runoff from discharging to Prickly Pear Creek	CAMP Program (Surface Water)	Cover Inspections and Maintenance
ET Cover System - Building Demolition, Utility Abandonment, Subgrade Fill, Final ET Cover	ET Cover to mitigate infiltration of precipitation, control wind erosion	Groundwater	- Reduce infiltration of precipitation through impacted soil to groundwater - Eliminate uncontrolled water collection and discharge to groundwater through buried utilities - Improve Site and down-gradient groundwater quality	CAMP Program (Groundwater)	Cover Inspections and Maintenance
		Soil Sediment	- Reduce potential for direct contact of impacted media with human and ecological receptors	Not Applicable	
	Surface water/stormwater collection	Surface water	- Reduce volume of stormwater and prevent stormwater contact with impacted media	CAMP Program (Surface Water)	
South Plant Hydraulic Controls: Upper Lake and Lower Lake Removal; PPC Bypass; PPC Realignment; wetland construction	Reduce surface water loading to groundwater by removing Upper Lake and Lower Lake	Groundwater	- Lower groundwater table to reduce groundwater contact with impacted subsurface soil - Reduce offsite flux	CAMP Program (Groundwater)	Not applicable
	Establish natural stream channel flow and geomorphic conditions within Smelter reach	Surface water	- Improve surface water quality of PPC by reducing loading from tributary sources	CAMP Program (Surface Water)	
	Establish natural wetland/riparian conditions	Sediment	- Reduce impacted sediment discharge to PPC within Smelter reach - Prevent flooding	Not Applicable	
Source removals - Excavation and Removal of Impacted Media at Tito Park Area, Acid Plant, Upper Lake Marsh, and Speiss Disposal Area	Remove through excavation impacted soil/sediment that could potentially leach to groundwater or surface water	Groundwater	- Improve localized groundwater conditions within removal areas - Improve down-gradient groundwater quality	CAMP Program (Groundwater)	Not applicable (see ET Cover System)
		Soil	- Reduce potential for human contact with impacted soil	Not Applicable	
	Protectively manage removed soil under ET cover system	Surface water	- Improve surface water quality of PPC by reduced loading from tributary sources	CAMP Program (Surface Water)	
		Sediment	- Reduce impacted sediment discharge to PPC within Smelter reach	Not Applicable	
Speiss Dross Slurry Wall	Isolate impacted soil and prevent impacts to groundwater	Groundwater	- Improve localized groundwater conditions outside of slurry wall area - Improve down-gradient groundwater quality	CAMP Program (Groundwater)	Not applicable
INSTITUTIONAL CONTROLS (ICs)					
Custodial Trust Well Abandonment Program	Contact all residents with existing supply wells; Abandon existing residential wells and/or provide alternative water supply	Groundwater	- Reduce potential for human contact with and ingestion of impacted groundwater	Verification of Alternative Water Supply or Treatment System	Formally confirm all residents with existing supply wells are notified
SUPPLEMENTAL ICs IMPLEMENTED BY OTHERS					
Controlled Groundwater Area (CGWA)	Implement and maintain program through CGWA process Apply groundwater use restriction areas	Groundwater	- Reduce potential for human contact with and ingestion of impacted groundwater	CAMP Program (Groundwater)	Maintain CGWA program until conditions are met
COEH Well Restrictions	Implement and maintain program through COEH process Apply groundwater use restriction areas	Groundwater	- Reduce potential for human contact with and ingestion of impacted groundwater	CAMP Program (Groundwater)	Monitored through COEH program
COEH Soil Ordinance	Implement and maintain program through COEH process Apply property use restrictions	Soil	- Reduce potential for human contact with impacted soil - Ensure that property use is appropriate to existing conditions	Not Applicable	Monitored through COEH LEAP program

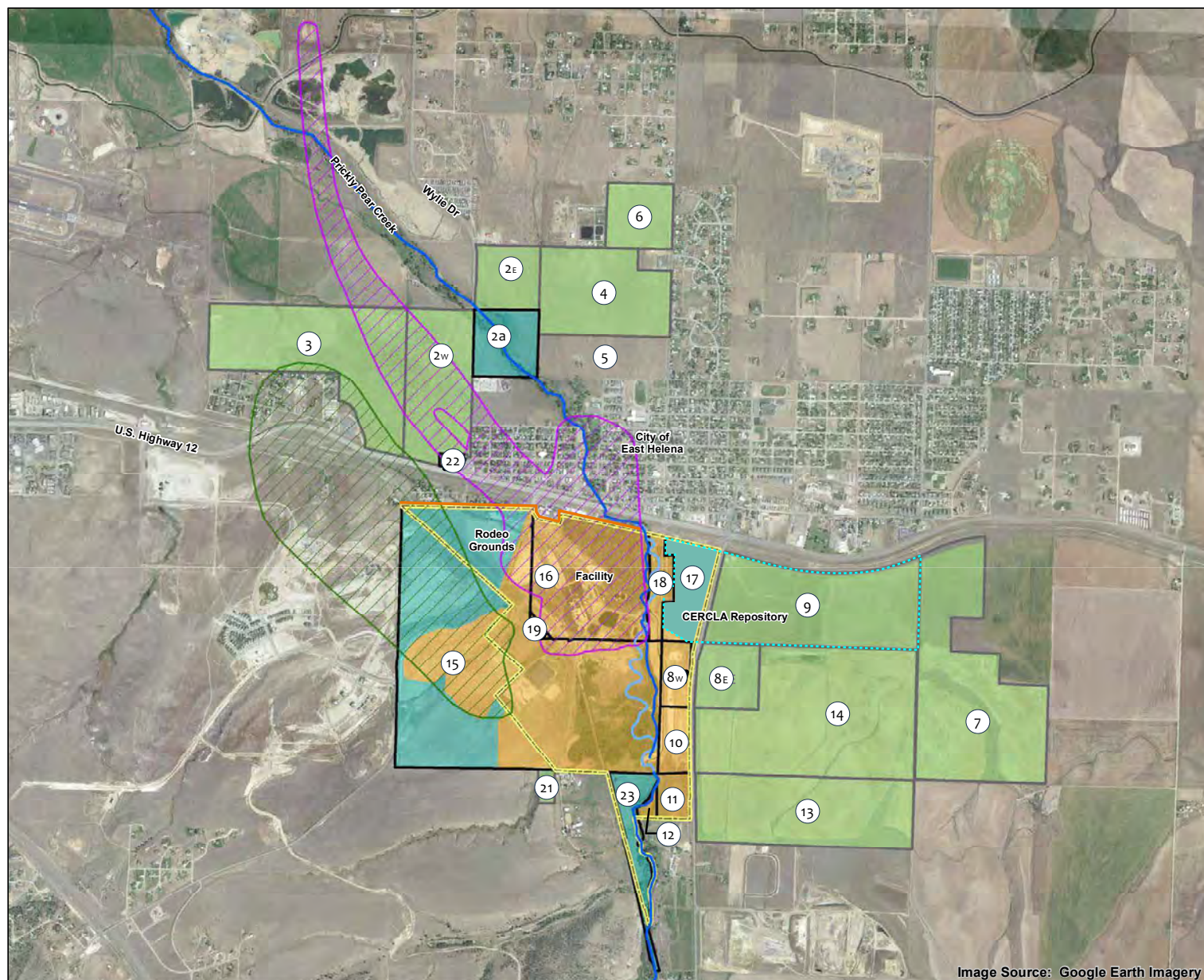


**Montana Environmental Trust Group, LLC**  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 6-3

## CMS Parcels and Non-CMS Parcels (EPA Statement of Basis)



### LEGEND

- Prickly Pear Creek
- Prickly Pear Creek Realignment
- CMS Parcel
- CMS Parcel Undergoing Corrective Action Parcel
- Boundary
- Area of Contamination Boundary Approximate
- Extent of Facility-related Groundwater Contamination (combined As and Se plumes)
- Residential Soil Disposal Area Boundary
- Point of Compliance

### Notes

1. CMS = Corrective Measures Study
2. OU2 = Operable Unit 2
3. ROD = Record of Decision
4. CERCLA = Comprehensive Environmental Response, Compensation and Liability Act

### LEGEND

- Undeveloped Land<sup>1</sup>

### Notes

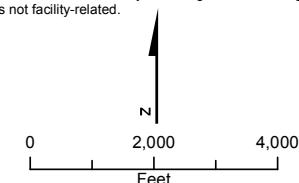
1. <sup>1</sup>Parcel owned by the Custodial Trust that are not part of the CMS, but have a corrective measure set forth in the OU2 ROD

### LEGEND

- West Arsenic Area

### Notes

1. The west arsenic area occurs primarily from groundwater interaction with naturally-occurring arsenic-bearing soil and is not facility-related.



**Figure 1-1**  
**Geographic Boundaries of the CMS**  
 Former ASARCO East Helena Facility  
 Corrective Measures Study Report  
 East Helena, Montana

Image Source: Google Earth Imagery



# Exhibit 6-4

## Table 2-1A: Media Cleanup Standards (EPA Statement of Basis)

**Table 2-1A CMS Parcels - Media Cleanup Standards for Primary Inorganic Constituents in Soil** *Corrective Measures Study Report, Former ASARCO East Helena Facility*

Media	Constituent of Potential Concern	Land Use	Cleanup Standard (µg/L groundwater, mg/kg soil) <sup>a</sup>	Basis of Standard	Applications for Standard
Groundwater	Arsenic	All	0.010	MCL	Exceedance of MCS indicates need for remedial action and will be considered in identification of areal extent of institutional controls (Controlled Groundwater Area)
	Cadmium		0.005		
	Selenium		0.05		
Surface Soil	Lead	Ecological	650	Concentration established to be protective of ecological receptors (passerines) at other MT remediation sites <sup>a</sup>	Will be applied as a design criterion for IM and final remedy construction (final surface site work associated with Prickly Pear Creek and Tito Park excavation, surface layer of ET Cover System, etc.)
		Residential	400	USEPA RSL <sup>b</sup>	Establishes concentration threshold for remedy implementation on undeveloped properties when land use changes
		Industrial - Commercial	800		
		Recreational	3,245	OU-2 ROD	
	Arsenic	Residential	35	Hegeler Zinc ROD <sup>c</sup>	
		Industrial - Commercial	572	OU-2 ROD	
		Recreational	794	OU-2 ROD	
Soil at Depth	Arsenic		22.5	MDEQ	Establishes extent of remedial action required to prevent groundwater contact with contaminated soil and to control infiltration
	Cadmium		0.38	USEPA MCL-based SSL <sup>b</sup> (concentration needed to achieve MCLs in groundwater)	
	Selenium		0.26	USEPA MCL-based SSL <sup>b</sup> (concentration needed to achieve MCLs in groundwater)	

<sup>a</sup> Recommended based on its consistency with action levels developed at other similar smelter/mining sites: OU2 Record of Decision (ROD) East Helena, MT; Anaconda Smelter Superfund Site, Anaconda, MT; Bunker Hill Superfund Site, Coeur d'Alene, ID; and Tri-State Mining District (Oklahoma, Kansas, and Missouri) Superfund Site.

<sup>b</sup> USEPA June 2015 RSL or MCL-based soil screening level (SSL) where indicated

<sup>c</sup> The arsenic cleanup level is recommended based on risk-based concentrations currently being approved by USEPA at former smelter sites and similar facilities across the country. The Hegeler Zinc ROD is cited as an example of current practice (USEPA, 2014).

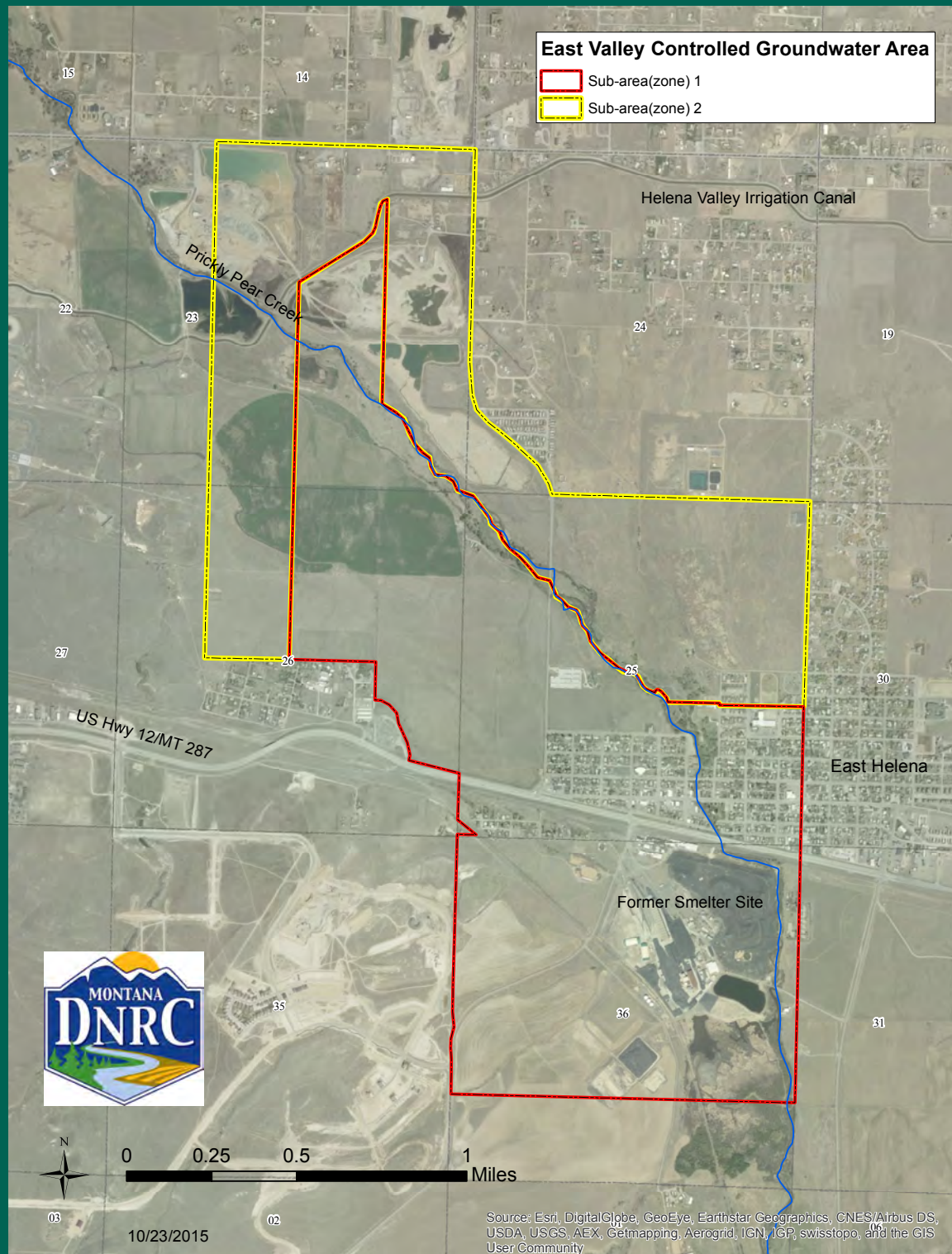
<sup>d</sup> Media cleanup standards for CMS Parcels as presented in the CMS Workplan (EPA Approval, October 22, 2015); OU-2 ROD standards will be applied to the Undeveloped Lands.

Abbreviations:

µg/L = micrograms per liter  
ET = evapotranspiration  
IM = interim measure  
MCL = maximum contaminant level  
MDEQ = Montana Department of Environmental Quality  
mg/kg = milligrams per kilogram  
OU2 ROD = Record of Decision for Operable Unit 2  
RSL = regional screening level



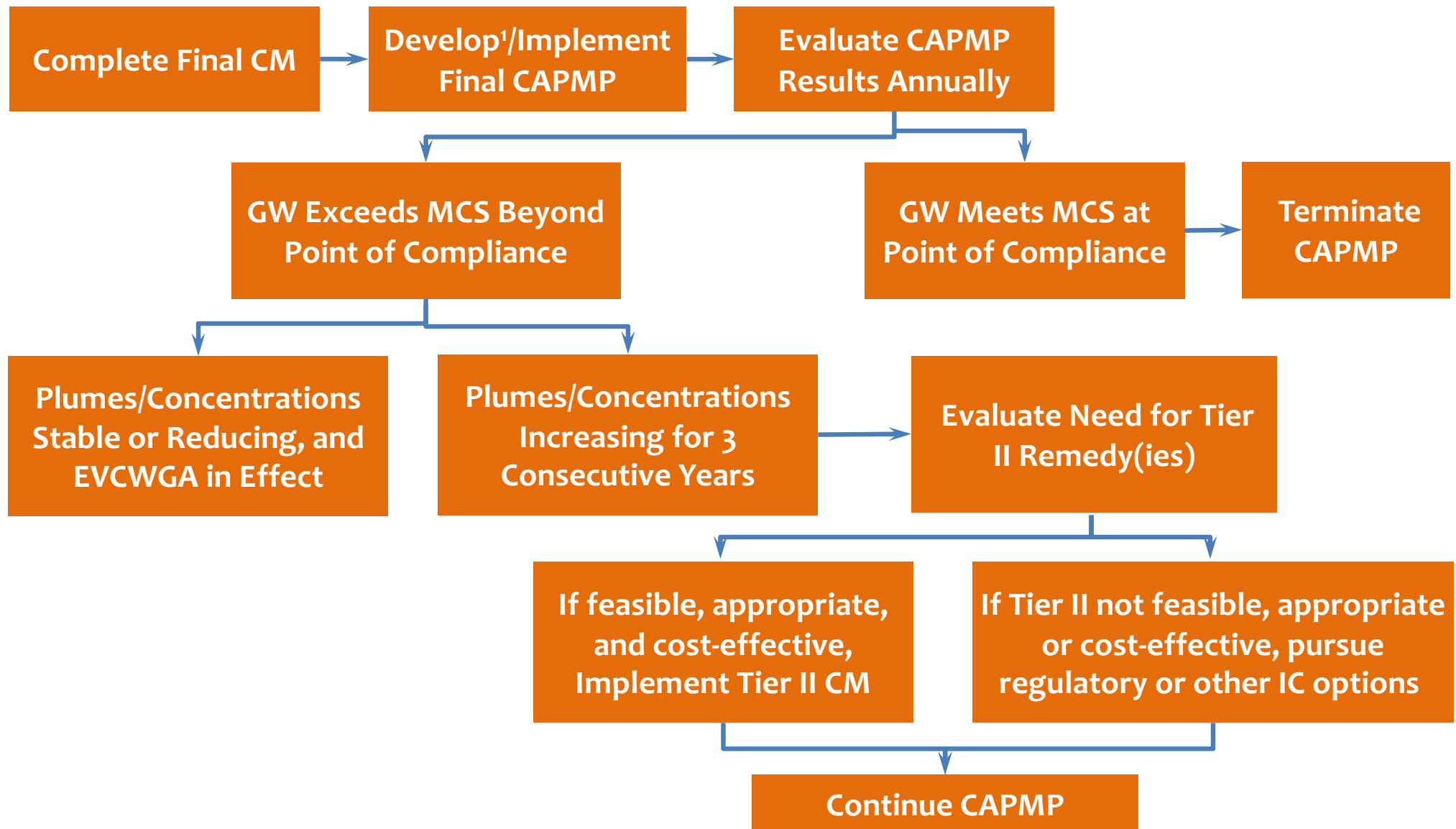
## Exhibit 6-5 East Valley Controlled Groundwater Area





## Exhibit 6-6

### Decision Framework for Tier II Remedy Evaluations



<sup>1</sup> Currently operating under Interim CAPMP to evaluate results of completed CMs. Final CAPMP will define remedy performance evaluation metrics and methods (expected to include graphical/statistical evaluations of plume geometry and concentration trends at individual wells, and consideration of natural variability from precipitation recharge and other external [non-CM] factors). Reevaluate performance metrics and methods during annual reporting and refine as warranted to ensure they are still applicable and appropriate.



## Chapter 7

### Quarterly Progress Reports

[Section 1.a.x of the Reappointment Framework: Submit Quarterly Progress Reports and prepare for and complete any five-year reviews that become due]

The Custodial Trust submitted the quarterly progress reports, listed in [Table 7-1](#) below, since the Reappointment Framework was issued by the Beneficiaries. The First Modification to the RCRA Consent Decree and the Statement of Basis do not require or refer to any five-year reviews or reports.

<b>Table 7-1</b> <b>Quarterly Reports Submitted by the Custodial Trust During Framework Period</b>	
<b>Quarterly Reporting Period</b>	<b>Date of Submittal to EPA</b>
Third Quarter 2020	October 18, 2020
Fourth Quarter 2020	January 20, 2021
First Quarter 2021	April 20, 2021
Second Quarter 2021	July 19, 2021
Third Quarter 2021	October 20, 2021
Fourth Quarter 2021	January 20, 2022
First Quarter 2022	April 20, 2022
Second Quarter 2022	July 20, 2022
Third Quarter 2022	October 20, 2022
Fourth Quarter 2022	January 20, 2023
First Quarter 2023	April 19, 2023
Second Quarter 2023	July 16, 2023
Third Quarter 2023	October 16, 2023
Fourth Quarter 2023	January 19, 2024
First Quarter 2024	April 19, 2024
Second Quarter 2024	July 26, 2024



## Chapter 8

### Updated Operation & Maintenance Forecast

[Section 1.a.xi of the Reappointment Framework: Complete a refined estimate for the scope and costs of future O&M for the East Helena site]

The updated the long-term funding forecast for the East Helena Cleanup (EHCU) Account is provided in Exhibit 8-1. The forecast was developed based on the following conservative assumptions.

- The Slag Pile Cover System (SPCS) will be implemented over the 4-year period between 2026 and 2029 for a total inflated (design and construction) cost of \$16.4 million. The forecast assumes no SPCS cost savings or revenue generated from additional unfumed slag (UFS) reprocessing.<sup>1</sup>
- Contingent Tier II Corrective Measures (CMs) (adjusted for inflation) will be implemented between 2037 and 2047, assuming a slurry wall enclosure for the West Selenium Source Area and a slurry wall enclosure with injections for the North Arsenic Source Area.<sup>2</sup> The long-term forecast earmarks \$11.5 million in 2030 to ensure available funds to implement Tier II CMs with estimated costs ranging from \$6.3 million to \$13.5 million.
- Funds for long-term (30-year) operation and maintenance costs (O&M) are set aside in 2030 assuming total annual operating costs are \$385,000 for the 30-year period from 2030 to 2060. Annual O&M costs include: Corrective Action Performance Monitoring Program (CAPMP) activities, ET Cover System O&M, SPCS O&M, Corrective Action Management Unit (CAMU) O&M, CERCLA Soil Repository Management, East Valley Controlled Groundwater Control Area (EVCGWA) activities, and limited Trustee management.
- The forecast for the period from 2024 to 2029 is based on historical average costs for all CM O&M activities, CAPMP activities, and other Custodial Trust costs.
- Payouts for private well owners to abandon their wells will be increased by more than 100% in 2025 to incentivize additional participation in the well abandonment program.
- The forecast includes no revenue from the sale of real property, slag (fumed or unfumed), or personal property.

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<sup>1</sup> If a purchaser of UFS is identified, the purchaser's proposal makes economic sense for the Custodial Trust, significant source material can be removed, and EPA approves of such a sale, this assumption would be modified.

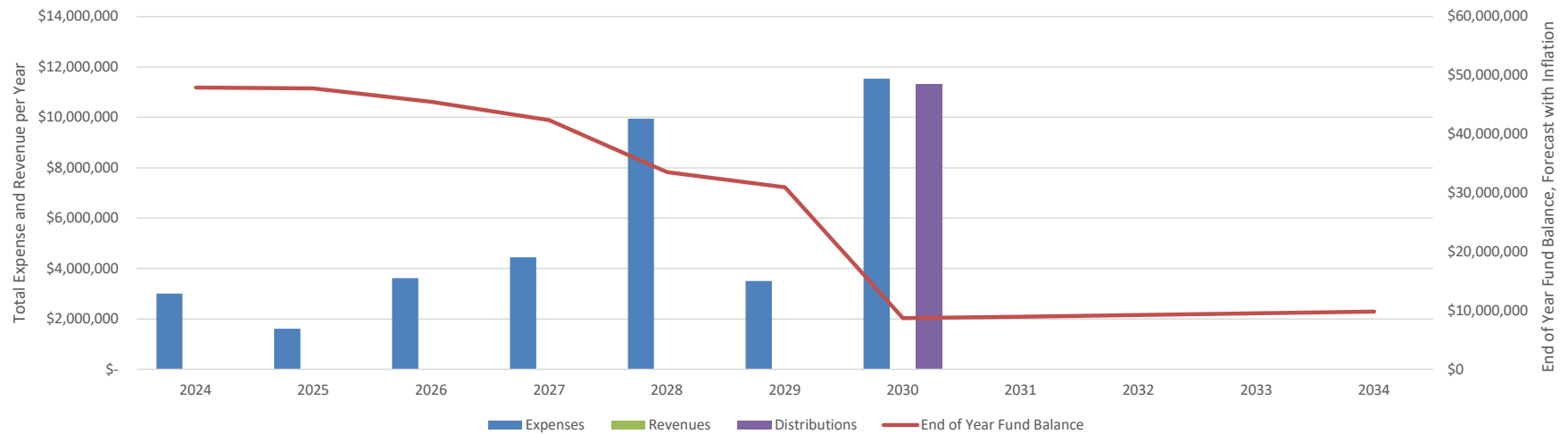
<sup>2</sup> Tier II remedies are based on combined balancing criteria scores set forth in Table 5-4 of the EPA Statement of Basis.



- East Helena water rights will be transferred to Montana Fish, Wildlife and Parks or the City of East Helena in 2024. Therefore, the forecast assumes that the Custodial Trust will incur no water rights costs after 2024.
- The long-term forecast assumes an annual inflation rate of 2% and an annual interest rate of 3%.



### East Helena Cleanup Account End of Year Fund Balance 10 Year Forecast with Inflation



Current Year & 10 Year Forecast											
	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
End of Year Fund Balance	\$47,957,000	\$47,758,000	\$45,514,000	\$42,360,000	\$33,533,000	\$30,978,000	\$8,715,000	\$8,976,000	\$9,245,000	\$9,522,000	\$9,808,000
Expenses	\$3,005,000	\$1,614,000	\$3,622,000	\$4,453,000	\$9,949,000	\$3,508,000	\$11,532,000	\$0	\$0	\$0	\$0
Revenues	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Investment Income	\$1,441,000	\$1,415,000	\$1,378,000	\$1,299,000	\$1,122,000	\$953,000	\$587,000	\$261,000	\$269,000	\$277,000	\$286,000
Distributions	\$0	\$0	\$0	\$0	\$0	\$0	\$11,318,000	\$0	\$0	\$0	\$0

Summary of Assumptions											
	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
Corrective Measures O&M <sup>1</sup>	\$427,000	\$315,000	\$325,000	\$315,000	\$322,000	\$328,000	\$0	\$0	\$0	\$0	\$0
GW Monitoring/Reporting	\$271,000	\$281,000	\$286,000	\$292,000	\$298,000	\$304,000	\$0	\$0	\$0	\$0	\$0
General Site/Office O&M	\$206,000	\$56,000	\$51,000	\$47,000	\$43,000	\$40,000	\$0	\$0	\$0	\$0	\$0
CERCLA ROD	\$18,000	\$51,000	\$52,000	\$53,000	\$54,000	\$55,000	\$0	\$0	\$0	\$0	\$0
Redevelopment	\$15,000	\$15,000	\$16,000	\$16,000	\$16,000	\$17,000	\$0	\$0	\$0	\$0	\$0
Project and Trust Management	\$325,000	\$346,000	\$345,000	\$353,000	\$361,000	\$368,000	\$0	\$0	\$0	\$0	\$0
Legal and Financial Affairs	\$141,000	\$138,000	\$152,000	\$139,000	\$142,000	\$134,000	\$0	\$0	\$0	\$0	\$0
Community Relations	\$23,000	\$40,000	\$36,000	\$37,000	\$38,000	\$39,000	\$0	\$0	\$0	\$0	\$0
Other	\$106,000	\$15,000	\$16,000	\$16,000	\$16,000	\$17,000	\$0	\$0	\$0	\$0	\$0
Special Projects:											
EH Water Projects	\$721,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Slag Pile (Grade and Cap)	\$400,000	\$0	\$2,343,000	\$3,186,000	\$8,659,000	\$2,208,000	\$0	\$0	\$0	\$0	\$0
Contingent Tier II CMs <sup>2</sup>	\$0	\$0	\$0	\$0	\$0	\$0	\$11,532,000	\$0	\$0	\$0	\$0
East Helena Water Rights	\$70,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Residential Well Abandonmen	\$282,000	\$357,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Distributions:											
30 Year O&M Funding <sup>3</sup>	\$0	\$0	\$0	\$0	\$0	\$0	\$11,318,000	\$0	\$0	\$0	\$0

Highlighted box represent  
forecast drivers

<sup>1</sup>Includes annual O&M costs for: EVCGWA, PPC, ET Cover, Slag Pile and CAMUs

<sup>2</sup>Contingent Tier II Corrective Measures (CMs), adjusted for inflation, will be implemented between 2037 and 2047. The long-term forecast earmarks \$11.5 million in 2030 to ensure available funds to implement Tier II CMs with estimated costs ranging from \$6.3M to \$13.5M.

<sup>3</sup>Funds for long-term (30-year) O&M costs are set aside in 2030 assuming total annual operating cost are \$385,000 for the 30-year period from 2030 to 2060. Annual O&M costs include: Corrective Action Performance Monitoring Plan (CAPMP) activities, ET Cover System O&M, Slag Pile Cover System O&M, CAMU O&M, CERCLA Soil Repository Management, East Valley Controlled Groundwater Control Area (EVCGWA) activities, and limited Trustee management.

**Disclaimer: Forecast does not include costs for responding to a catastrophic event and/or act of God (earthquake, fire, massive flooding, etc.)**



## Chapter 9

### East Helena Redevelopment

#### I. Redevelopment Overview

The Custodial Trust has accomplished unprecedented success in leading and facilitating the safe, productive, community-supported redevelopment of nearly 2,000 acres of contaminated land in East Helena, dubbed the [Miracle of East Helena](#) in late 2023. As of the time of this report, the Custodial Trust has sold more than 80% of its land holdings (totaling 1,663 acres of real property), which have been developed for: 2 public schools (an elementary school and a high school); a community health center; a 26,000-square-foot store; a 319-home residential subdivision; an 8-mile-long trail; an intermodal transportation center; an expanded manufacturing center; a new rodeo arena; and improved City of East Helena (COEH) infrastructure. The Custodial Trust has also sold land that is currently under development or proposed for development contingent on receipt of permits for uses that will bring private sector investments of almost \$2 billion to East Helena to support: 2 mixed-use residential developments that will add more than 3,257 new homes to East Helena (including affordable and low-income housing and assisted-living units); a new rail-serviced, light industrial center for manufacturing components for the residential construction market; a new office building and warehouse; a 70-acre commercial center expected to include restaurants, a full-service grocery store, banks, and other retail businesses; and parks and open space. Notwithstanding the barriers to redeveloping the East Helena lands, including a complete lack of infrastructure (water, sewer, and other utilities) and soil contamination that requires remediation to support virtually all implemented and planned uses, the Custodial Trust was able to generate land sale proceeds of \$8.5 million. Sale proceeds will increase to \$9.8 million when the sale of property under contract is consummated. As of the time of this report, the Custodial Trust has only 20 acres of property remaining to sell in East Helena. In 2019, the Custodial Trust and its project partners received the [U.S. Environmental Protection Agency \(EPA\) Region 8 Excellence in Site Reuse Award](#) for their shared accomplishments in East Helena.

#### II. Redevelopment Overview/Challenges

In December 2009, the Custodial Trust took title to 2,035 acres of land in East Helena (the Property) from ASARCO (see [Exhibit 9-1](#)). In 2012, the Custodial Trust commissioned a Redevelopment Planning Study (RPS) to evaluate the opportunities (see [Exhibit 9-2](#)) and constraints associated with Property reuse (see [Exhibit 9-3](#)) and engage community stakeholders on potential redevelopment scenarios (see [Exhibit 9-4](#) for one example). In addition to the challenge of redeveloping such vast, undeveloped tracts and overcoming the stigma that encumbered the former ASARCO lands, the RPS identified significant constraints and limitations on reuse (see [Exhibit 9-3](#)), including: (i) the lack of access to water, sewer, and other utilities for most of the Property; (ii) the lack of roads or other infrastructure; (iii) extensive surface soil contamination; (iv) the presence of 1 closed and 1 active soil repository, and a closed municipal landfill; (v) extensive wetlands and land within the floodplain; (vi) the slag pile; and (vii) the rodeo grounds. The Custodial Trust worked closely with the COEH to develop the first COEH comprehensive zoning ordinances and subdivision regulations, which were adopted in 2015. As a result, many Property purchasers were the first applicants for



subdivision approvals or zoning changes. Redevelopment required working closely with the COEH, other stakeholders, and the purchasers to overcome the many challenges to reuse, including the market stigma.

### III. Redevelopment Results (2009 to 2019)

Prior to the 2016 donation of 50 acres to the East Helena Public Schools (EHPS) (see ¶ III.C below), the Custodial Trust met with several prospective Lamping Field purchasers without viable offers. The EHPS's development of an elementary school helped catalyze redevelopment by validating that the former ASARCO lands could be safely reused.

- A. Sale to American Chemet (AC). In November 2012, the Custodial Trust sold 6 acres of property immediately abutting the existing, land-locked AC plant to AC to support critically needed facility expansion.<sup>1</sup> (See Exhibit 9-5.) The purchase price of [REDACTED] equated to [REDACTED].
- B. Land Donations to COEH. In 2014, the Custodial Trust transferred to the COEH the fee interest in, or an easement over, 7 parcels for public access and utility rights-of-way at no cost to the COEH (see Exhibit 9-6). The Custodial Trust also donated 3 acres abutting the existing East Valley Volunteer Fire Department to Lewis and Clark County (County) for a search and rescue facility (see Exhibit 9-7).
- C. Donation to EHPS (Elementary School). In 2016, the Custodial Trust donated<sup>2</sup> 50 acres (that were part of Dartman Field) to the HPS. In 2017, using grant funds from the Montana Department of Natural Resources and Conservation (DNRC), the EHPS remediated soil to the OU2 ROD residential standard<sup>3</sup> and began construction of a new school facility. In 2018, the Prickly Pear Elementary School (PPES) opened to 250 students (see Exhibit 9-8). A community health center and recreational facilities were later added to the EHPS development.
- D. Sale to Town Pump. Between 2012 and 2016, the Custodial Trust received several unfavorable purchase proposals for diverse uses (speculative residential, utility scale solar,

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<sup>1</sup> Issues that complicated the sale included the Custodial Trust's requirements that (i) AC's liquid oxygen supplier (Air Liquide) vacate its operating facility near Smelter Dam Road because it interfered with the footprint of the Prickly Pear Creek Temporary Bypass Channel, and (ii) AC consolidate and remove the equipment and materials stored on the smelter (under an ASARCO lease that was assigned to and assumed by the Custodial Trust) because of plans to demolish the buildings and equipment on the smelter.

<sup>2</sup> The [REDACTED] payment from the EHPS to the Custodial Trust at the closing represented a reimbursement of the Custodial Trust's administrative costs incurred in connection with the transfer, which included: extensive legal and technical support; multiple meetings with the EHPS, EPA, and the State regarding an acceptable approach to soil remediation; supporting the EHPS's applications for grant funds to perform pre-closing site investigations and post-closing soil remediation; and resolution of issues related to water and mineral rights. The process took 1 year and 8 months (i.e., the time between the Custodial Trust's receipt of a formal purchase proposal from the EHPS on November 21, 2014, and the closing on July 20, 2016).

<sup>3</sup> After issuing the OU2 ROD Explanation of Significant Differences (ESD), in August 2024, EPA remediated areas of the PPES where lead levels exceeded the 400 parts per million (ppm) action level.



and continued agricultural) of Lamping Field—the 254-acre property located on the west side of Wylie Drive (see top left insert on [Exhibit 9-9](#)). In 2017, to understand the property’s highest and best use, the Custodial Trust partnered with the Montana Business Assistance Connection ([MBAC](#)) on a market study and master plan<sup>4</sup> that identified commercial and light industrial as preferred uses (see [Exhibit 9-9](#)). In 2017, the Custodial Trust also engaged a broker who helped identify Town Pump as a viable purchaser. Pursuant to a May 18, 2018 Purchase and Sale Agreement (PSA), and after site investigations and due diligence, Town Pump acquired Lamping Field on October 22, 2018 for a purchase price of [REDACTED].<sup>5</sup> In 2021, Town Pump began construction of a 26,000-square-foot retail center (store, coffee shop, and 22 vehicle fueling stations) (see [Exhibit 9-9](#)).

- E. Sale to EHPS (High School). After denying 2 prior EHPS requests, in 2017, the Montana Legislature approved a bill allowing the East Helena voters to decide whether to build a new high school. On May 8, 2018, the East Helena voters approved a \$29.5 million bond to fund land acquisition, design, and construction of a new high school in East Helena. On May 21, 2018, the Custodial Trust and EHPS signed a PSA for the sale of 35 acres of Dartman Field for a new high school. Between May and October 2018, the Custodial Trust and EHPS sought COEH approval of a minor subdivision to create a conveyable parcel (the first minor subdivision undertaken by the COEH). After securing all required approvals, on November 8, 2018, the EHPS closed on the acquisition of 35 acres for a purchase price of [REDACTED]. In 2019 and 2020, the EHPS designed and constructed the East Helena High School (EHHS)—a 100,000-square-foot building with extensive sports facilities including a football stadium, track, baseball field, and gym (see [Exhibit 9-10](#))—which opened in 2020. There are currently 580 students enrolled in the EHHS.
- F. Sale to Oakland Companies (Oakland) (Highland Meadows). On December 11, 2018, the Custodial Trust sold the remaining 100 acres of Dartman Field to Oakland affiliate Highland Meadows (HM) for a purchase price of [REDACTED]. In 2019, the property was remediated to the OU2 residential standard, and HM secured COEH approval to develop a 319-unit single-family, residential subdivision. By 2021, HM had completed and sold out the first 2 phases (52 new homes) of a 5-phase development. Construction of the remaining phases of the subdivision are either complete or under construction (see [Exhibit 9-11](#)). Full build-out is expected within 1 to 2 years of this report.

#### **IV. Redevelopment Results (2020 to 2024)**

Between 2020 and the end of 2024, in 7 separate transactions that generated gross sale proceeds of [REDACTED], the Custodial Trust sold or donated 1,206 acres of property in East Helena.

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<sup>4</sup> The market study and master plan were funded using a grant awarded to MBAC from the [Big Sky Economic Development Trust Fund](#) with matching funds from the Custodial Trust.

<sup>5</sup> Town Pump and the Custodial Trust signed a non-binding Letter of Intent (LOI) on January 29, 2018, and a PSA on May 8, 2018.



- A. Greenway. As described in Chapter 3, in December 2020, the Custodial Trust transferred 322 acres to Prickly Pear Land Trust (PPLT) for development of the Greenway Trail.
- B. Sale to Montana Propane (MP). On October 19, 2021, the Custodial Trust sold a 3-acre parcel off Smelter Road along the Ashgrove Rail Line to MP for a purchase price of [REDACTED]. Since acquiring the property, MP has redeveloped the land for an intermodal propane distribution center (see Exhibit 9-12). As required under the PSA, MP removed the 3 ASARCO acid tanks along the Ashgrove Rail Line, which saved the Custodial Trust an estimated \$80,000 in demolition and disposal costs.
- C. Sale to AC. On April 27, 2022, the Custodial Trust entered into a PSA with AC for AC's acquisition of a 7-acre parcel on Manlove Avenue, identified as Parcel 3 on Exhibit 9-13. In a transaction that spanned 1 year and 3 months, the sale to AC involved: (i) 3 separate Phase II site investigations by AC; (ii) 8 amendments to the PSA; (iii) COEH approval of a minor subdivision to create a conveyable parcel; and (iv) agreements regarding the disposition of the ASARCO records stored in 7 shipping containers on the property and potential acquisition of the Custodial Trust's modular office in East Helena (located on Parcel 3).

The AC transaction was significantly complicated by the COEH's requirement that 3 prospective purchasers of Custodial Trust property—AC, Power Townsend (PT), and Habitat for Humanity (HFH)—commit to funding a \$3.4 million sewer lift station to provide sewer service to the 3 parcels that were under PSAs with the Custodial Trust. To proceed with all 3 sales, the Custodial Trust negotiated and secured the commitment of each buyer to fund the lift station (documented in the letter agreement signed by AC, PT, HFH, and the COEH and included here as Attachment 9-1) which was a condition to COEH's subdivision approval.

After the minor subdivision was approved, on August 8, 2023, the Custodial Trust sold the 7-acre parcel to AC for a purchase price [REDACTED]. AC's development plans include construction of a 10,000-square-foot office building, a 100-foot-by-400-foot warehouse, and employee parking (see Exhibit 9-14). AC has notified the Custodial Trust that it plans to exercise its option to acquire the modular office for [REDACTED].

- D. Sale to HFH and PT. After nearly 2 years of negotiations, following COEH approval of the AC minor subdivision, on August 15, 2023, the Custodial Trust sold 98 acres to PT and HFH (identified as Parcels 4 and 5 on Exhibit 9-15) for a combined purchase price of [REDACTED].
  - 1. PT. PT is working with the Burlington Northern Santa Fe (BNSF) railroad to construct a railroad spur off the Ashgrove Rail Line for rail access to a light manufacturing facility for prefabricated panels and trusses for sale to the residential construction market, a lumber warehouse, and a potential hardware store on the 26-acre Parcel 4 (see Exhibit 9-15). Prior to development, PT must investigate surface soil pursuant to an EPA-



- approved Soil Sampling and Analysis Plan (SSAP). Because the East Helena Valley Rodeo Association (EHVRA) arena was located on Parcel 4 (see [Exhibit 9-15](#)), the Custodial Trust was obligated to donate a ±45-acre parcel for a new EHVRA rodeo arena and COEH services as a condition of sale, which was included in the transaction described in ¶ IV.E below.
2. [HFH](#). HFH is planning a 257-home residential subdivision (including single-family homes, 4-unit apartments, and 4-unit townhouses) on the developable portion of Parcel 5 (see [Exhibit 9-16](#)). HFH expects to price ±1/3 of the homes at market rates, ±1/3 for homeowners earning 80% of the average median income (AMI), and ±1/3 for homeowners earning less than 80% of AMI (i.e., low-income housing). HFH performed 2 phases of site investigations pursuant to an EPA-approved soil sampling and analysis plan (SSAP) to delineate lead and arsenic in surface soil (see [Exhibit 9-17](#)). Based on the sampling results, HFH will have to remediate soils on 43 acres to the CMS standard for lead (400 ppm) and the OU2 ROD standard for arsenic (due to naturally occurring volcanic ash) in accordance with the January 2023 EPA-approved Soil Remediation Work Plan.
  3. [Utilities and COEH Services](#). In addition to meeting their funding commitments for the new sewer lift station (described in ¶ IV.C above), PT and HFH will be responsible for funding the design and installation of all water and sewer mains and laterals, access to other utilities, and roads. These costs are expected to exceed \$15 million for HFH.
- E. [Sale to Oakland \(Prickly Pear Estates\)](#). On September 11, 2023, the Custodial Trust sold its entire land holdings on the east side of Highway 518 (less the 45-acre tract donated to the COEH for the new EHVRA arena and other COEH services)—consisting of 731 acres—to Prickly Pear Estates (PPE), an Oakland affiliate, for a purchase price of [REDACTED]. Referred to as Parcel 1 on [Exhibit 9-18](#), PPE’s development plans include more than 3,000 diverse residential units (including single-family homes, townhomes, assisted-living facilities, workforce housing, and multi-family homes), a 70-acre commercial development (expected to include grocery stores, restaurants, banks, gas stations, retailers, and potential offices), light industrial uses, parks, and trails (see [Exhibit 9-19](#)). The sale to PPE required resolution of several issues described below.
1. [Soil Remediation](#). PPE collected ±800 soil samples (pursuant to an EPA-approved SSAP), dug multiple test pits, and investigated multiple strategies for remediating soil. The investigation results found that 85% of Parcel 1 exceeds the residential cleanup standard of 400 ppm (see [Exhibit 9-20](#)). PPE is currently remediating soil on Parcel 1 by: (i) scraping the top 10 inches from a 100-acre area along Highway 518 slated for development of more than 300 single-family homes, referred to as “Neighborhood A” (see [Exhibit 9-21](#)); (ii) remediating soil on 480 acres slated for residential development by deep tilling; and (iii) remediating the ±3 acres of the East Fields Soil Repository (EFSR) that exceed the OU2 ROD action level to support planned commercial uses (described in Chapter 2 of this report).
  2. [Access to Sewer Service](#). The Custodial Trust, PPE, and the COEH worked through options for providing sewer service to Parcel 1. The COEH estimates that PPE will spend ±\$18.5 million to install a sewer lift station and sewer mains to connect Parcel



1 to the COEH's wastewater system (which will require a jack-and-bore under the BNSF Rail Line and Highway 12). The costs to install sewer lines and laterals to connect developed areas and homes to the sewer system are not included in the COEH's estimates.

3. New EHVRA Arena. As described in ¶ IV.D.1 above, the Custodial Trust worked with the COEH, the EHVRA, and PPE to identify a 40-acre parcel that could be developed for a new rodeo arena and future COEH services. Ultimately, the COEH received ±45 acres, including road access from Highway 518, at the closing with PPE. The EHVRA was able to raise sufficient grant funds to construct the new arena, which opened for the 61st Annual Rodeo on July 12, 2024 (see Exhibit 9-22).

In August 2024, PPE secured COEH Council approval to amend the zoning map for Parcel 1 to create residential and commercial zoning districts and allow for a Planned Unit Development (see Exhibit 9-23).

- F. Planned Sale to Habitat for Humanity (HFH). On July 14, 2023, the Custodial Trust entered into a contract with HFH to acquire the 136 acres referred to as Parcels 6 and 6A on the attached Exhibit 9-24, for a purchase price of [REDACTED].

1. Redevelopment Plans. HFH hosted a multi-stakeholder design charrette to develop a vision and plan for the East Helena lands. Based on the results of the design charrette, HFH proposes to develop the 72-acre Parcel 5 and the 136 acres that comprise Parcels 6 and 6A as interconnected, walkable, mixed-use neighborhoods, that include: (i) ±1,712 new, diverse, high-density, mixed-income housing units that co-locate market-priced, low-income, and affordable homes; (ii) commercial uses; (iii) industrial (incubator) uses; (iv) a new EHPS elementary school; and (v) 40 acres of parks, trails, and open space. Some of the design charrette recommendations are included in Exhibits 9-25 to 9-27. HFH proposes to install traffic-calming features on Highway 282, which separates Parcel 5 from Parcel 6, to enhance the safety and walkability of these proposed neighborhoods.
2. Deed-Restricted Area (DRA). HFH will face significant challenges and costs to develop Parcels 6 and 6A, including steep slopes, large drainage features, and the presence of a high-pressure liquid petroleum pipeline. To help mitigate these challenges and to access the Greenway Trail via Smelter Road, HFH asked to acquire ±31 acres of the DRA around the Corrective Action Management Units (CAMUs), as generally depicted on Exhibit 9-28, for an additional [REDACTED] in gross sale proceeds. As documented in Chapter 2 of this report, the Custodial Trust is currently evaluating options for disposal of the ±900,000 cubic yards of soil to be excavated by EPA from Unowned Properties under the OU2 ROD ESD. Based on the preliminary results of this evaluation, the DRA is not large enough to accommodate EPA's anticipated disposal needs (and therefore another soil repository site will have to be identified). Generally, the Custodial Trust expects to recommend approving HFH's request because it will: (i) generate additional sale proceeds of [REDACTED]; (ii) reduce the total unsalable land from 211 to 180 acres; and (iii) facilitate productive, protective reuse of property that, according to HFH, will contribute an estimated \$775,000 in annual tax revenues to the COEH and County.



3. Additional Land Requested by COEH. The COEH has asked the Custodial Trust to donate a 5-acre parcel immediately adjacent to the COEH's existing water tank (to provide additional water service capacity required to support planned redevelopment of Custodial Trust lands). HFH has agreed that the 5-acre parcel (labeled Parcel 8 on Exhibit 9-24) will be removed from land to be transferred as part of sale of Parcels 6 and 6A HFH.
- G. Property Available for Purchase. The 20-acre parcel (referred to as Parcel 2 on Exhibit 9-29) immediately abutting the Greenway Trail (at the corner of Highway 12 and Highway 518) is the only portion of the Property that remains available for sale. Because of its proximity to the Greenway Trail, the Custodial Trust has required prospective purchasers to enter into an agreement with PPLT to ensure their planned use of Parcel 2 will be compatible with the Greenway Trail and Prickly Pear Park. The Custodial Trust worked extensively with 1 prospective purchaser, but because it was unable to reach a mutually acceptable agreement with PPLT, terms of a PSA were never finalized. Because Parcel 2 is located entirely within the closed West Fields Soil Repository, institutional controls will likely be required to protectively redevelop the land. The "as if clean" appraised value of Parcel 2 is [REDACTED].

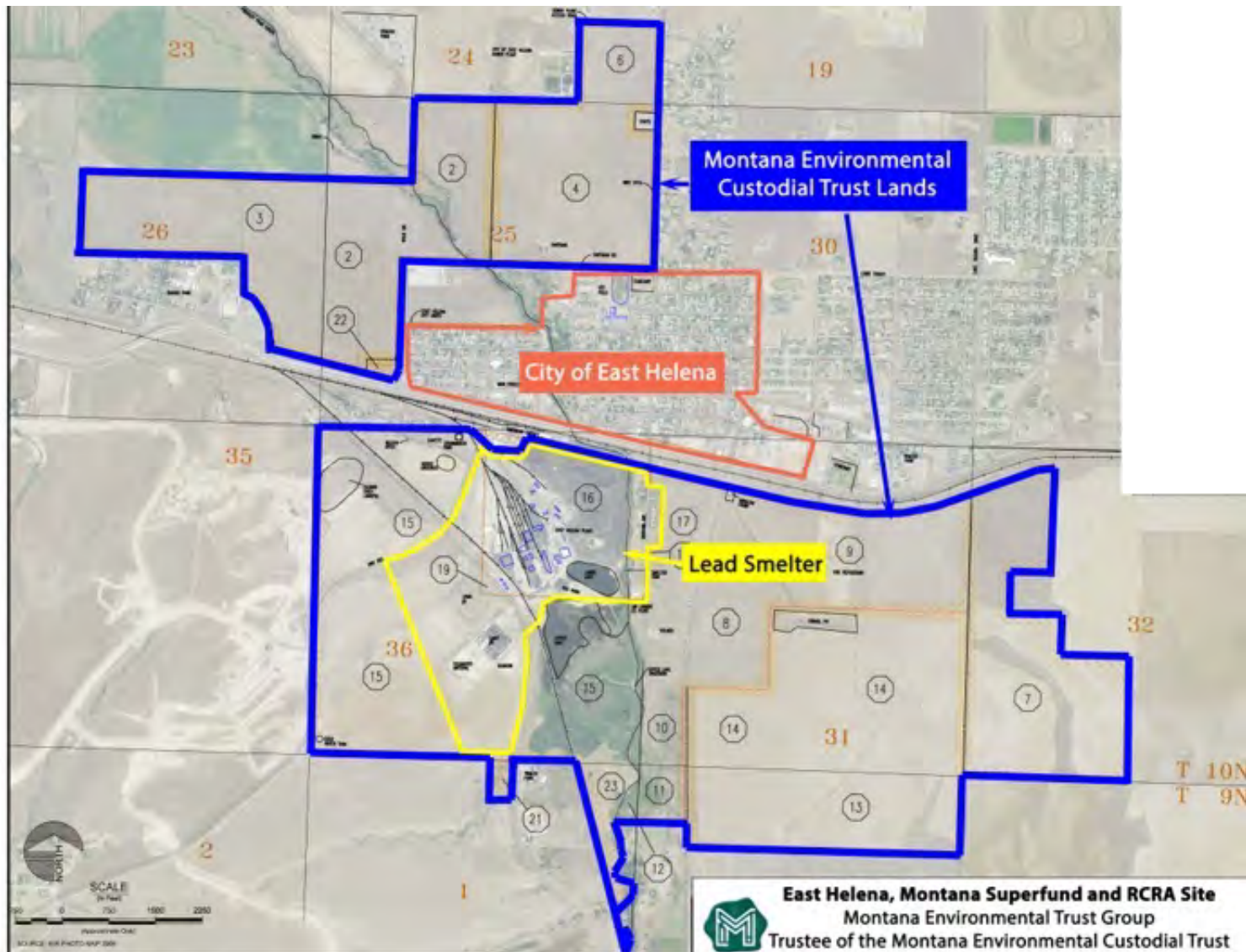
#### **V. East Helena Redevelopment Summary**

As indicated on Exhibit 9-30, the Custodial Trust has sold or donated 1,663 acres of property in East Helena, generating [REDACTED] in sale proceeds. The sale of property currently under contract with HFH will increase total sale proceeds to at least [REDACTED]. Ultimately, of the 2,035 acres deeded from ASARCO, the Custodial Trust expects to retain no more than 211 acres of unsalable land, which will include the slag pile, the ET Cover System, and the DRA (consisting of the 2 CAMUs and the SRSR). More significantly, the Custodial Trust's redevelopment efforts in East Helena have transformed – and will continue to transform – this former "company" town, bringing economic revitalization, beneficial public uses, and a very bright future.



# Exhibit 9-1

## Former ASARCO Lands in East Helena

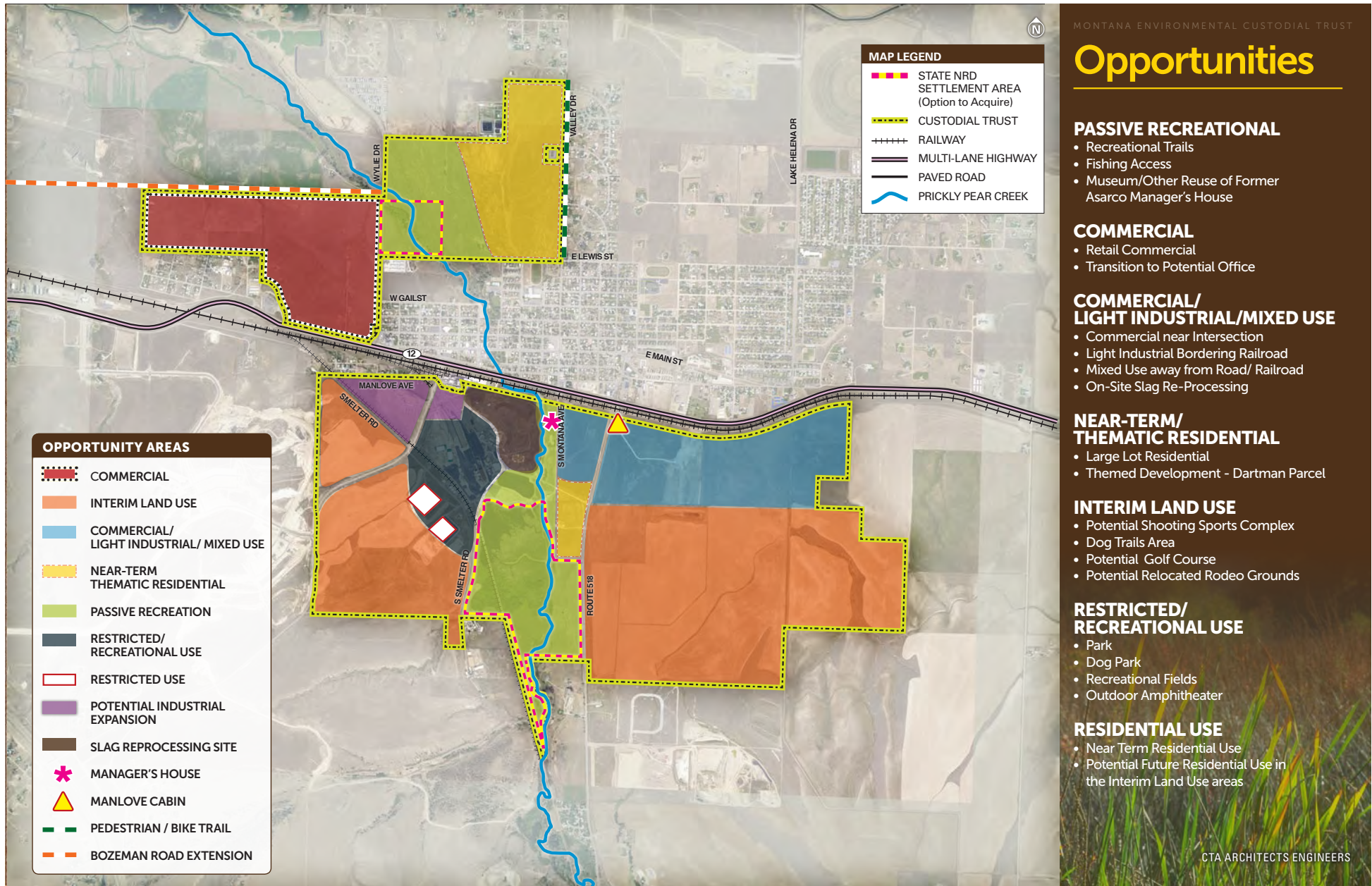


Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 9-2

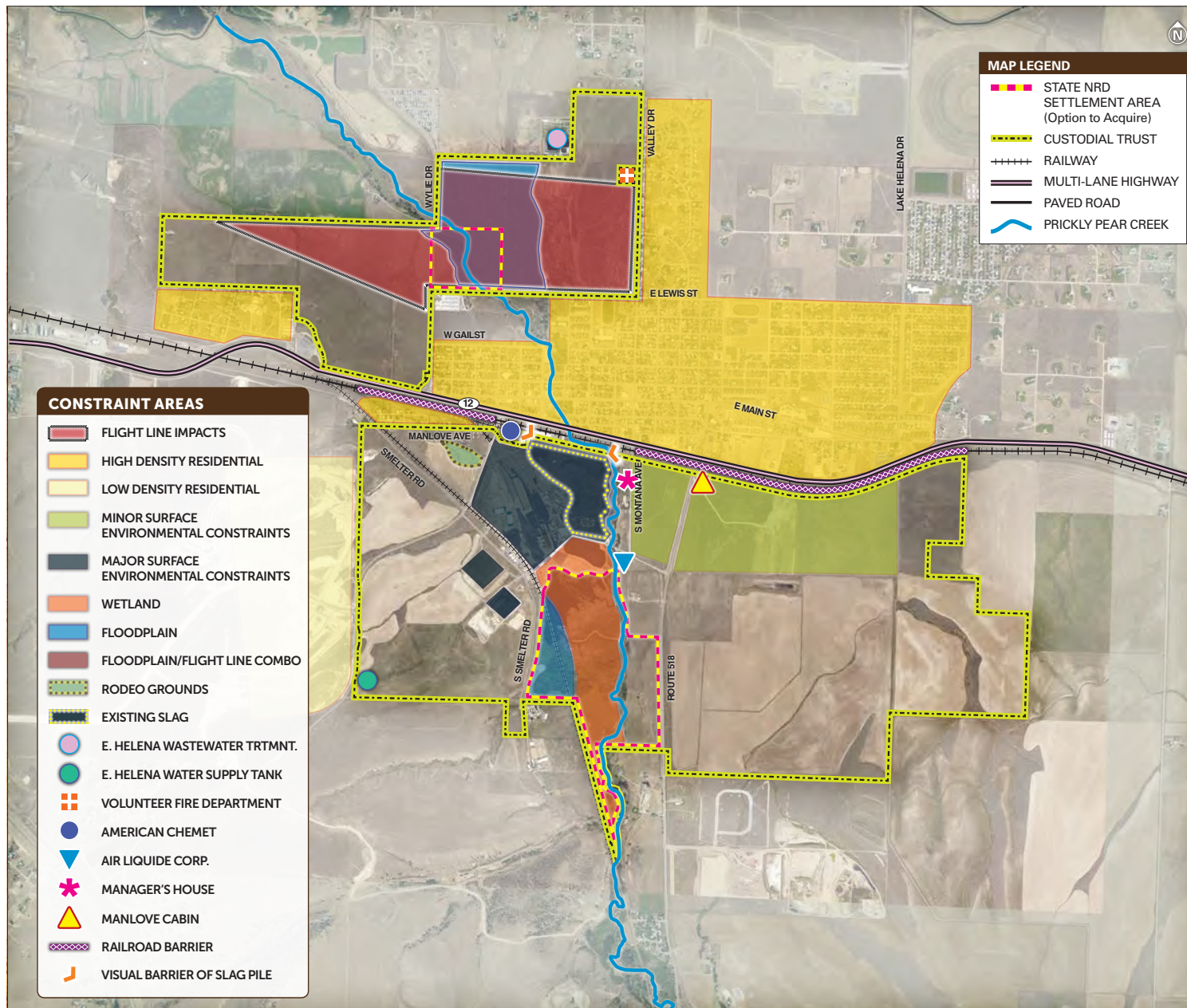
## Former ASARCO Lands - Redevelopment “Opportunities”





# Exhibit 9-3

## Former ASARCO Lands - Redevelopment “Constraints”



MONTANA ENVIRONMENTAL CUSTODIAL TRUST

## Constraints

### KEY FINDINGS:

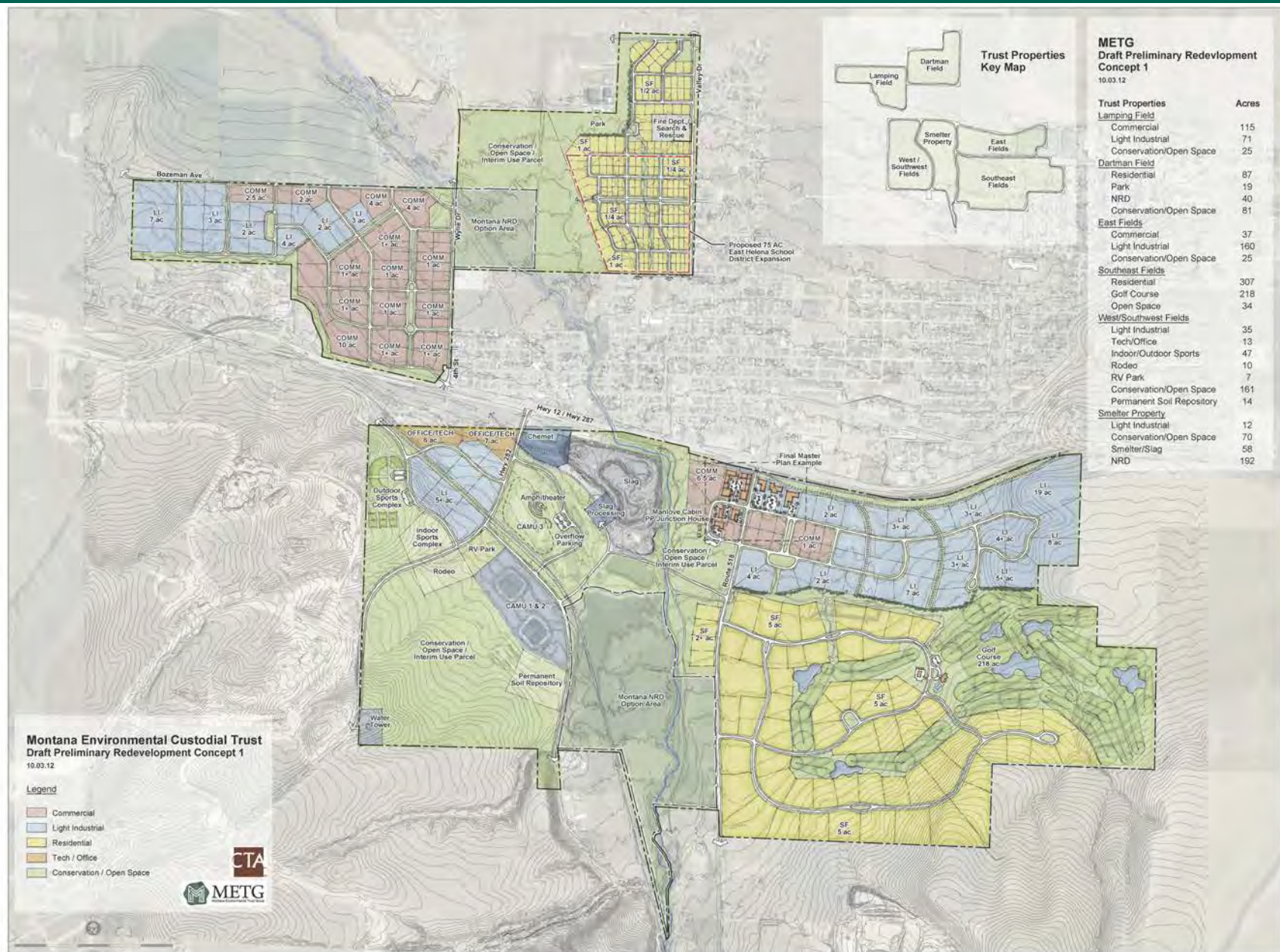
- Railroad:** barrier to access south of Highway 12 (although asset for industrial use)
- Floodplain:** large areas of Dartman Field undevelopable or marginally developable.
- Flight Line:** constrains development and potential value of Lamping and Dartman
- Lack of Infrastructure:** majority of property lacks utilities, roads, etc.
- Soil Contamination:**
  - Restricts East Field redevelopment/ reduces sale value (unless soils used for ET Cap)
  - Property subject to ICs
- Wetlands (including NRD property):** preclude redevelopment
- Slag Pile:** size/location creates visual and physical liability
- Former Asarco Manager's House:** maintenance and re-location costs (due to floodplain and re-alignment of PPC)
- Rodeo Grounds:** impede redevelopment (unless eliminated or re-located)
- ET Cap:** restricts use without cost premium
- American Chemet** facility is landlocked.

CTA ARCHITECTS ENGINEERS



# Exhibit 9-4

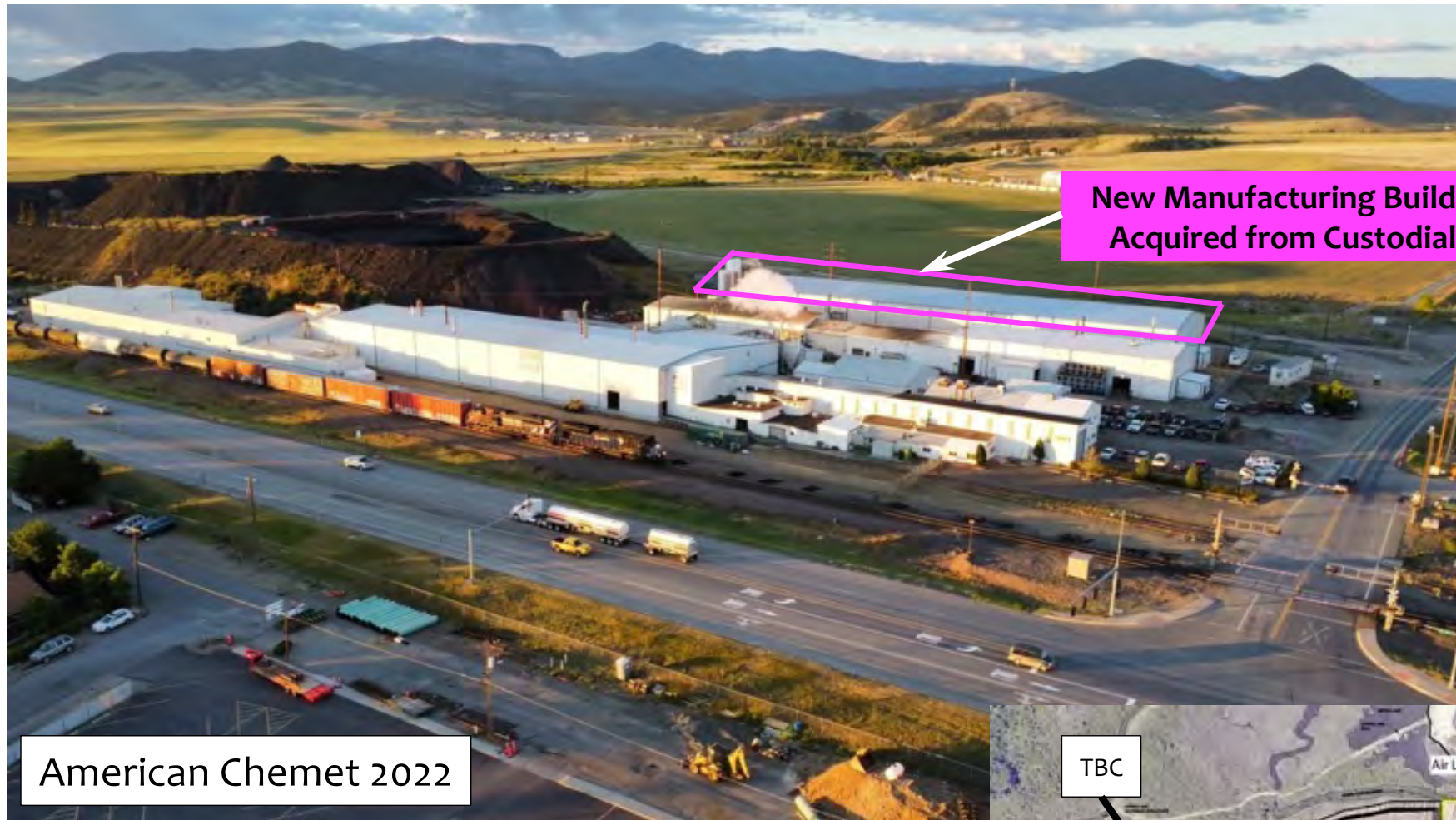
## Former ASARCO Lands – Conceptual Redevelopment Plan





# Exhibit 9-5

## 2012 Sale to American Chemet



Sale required Chemet Supplier (Air Liquide) to vacate property on East Bench (due to interference with TBC)

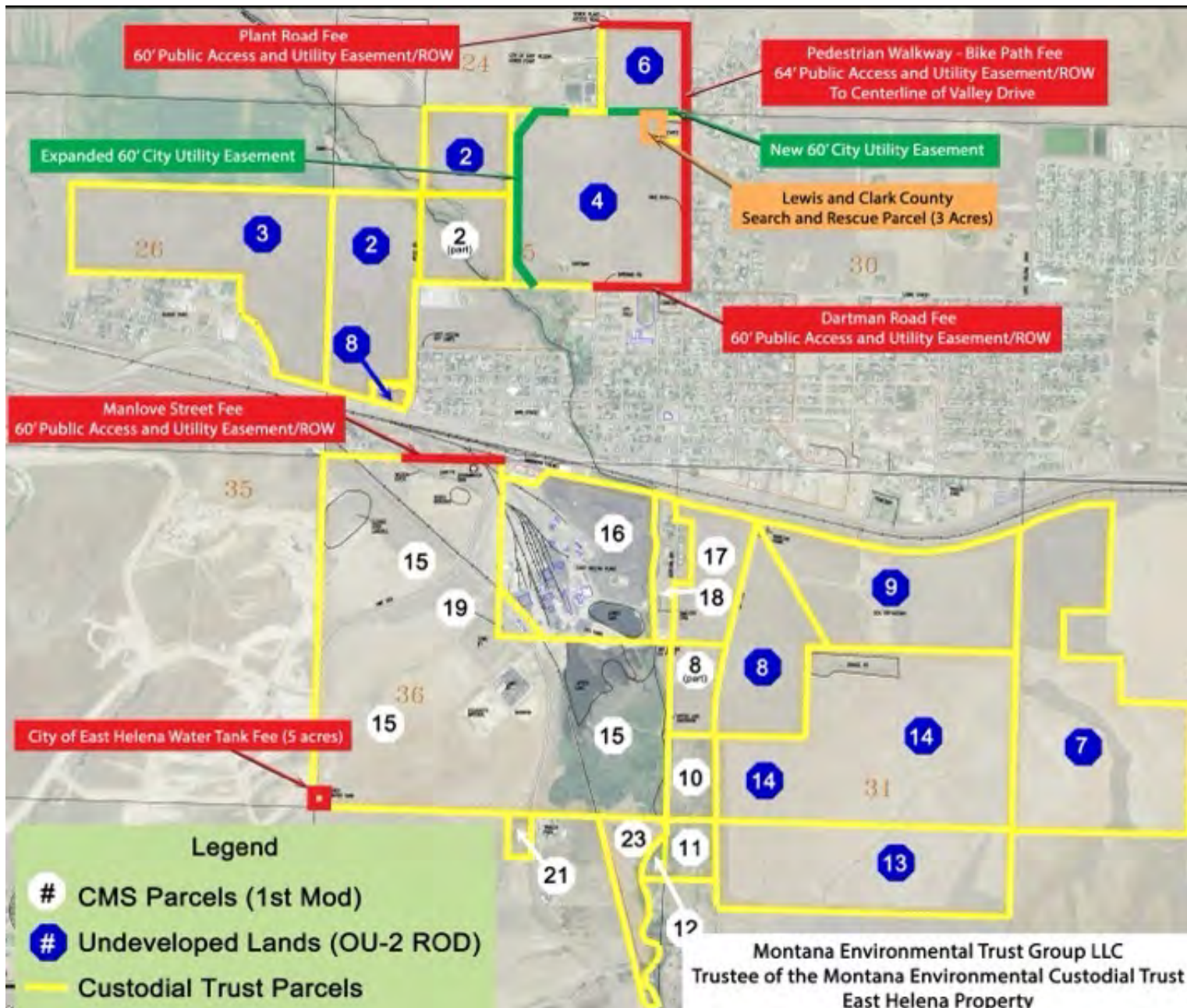


Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 9-6

## 2014 Land Donations to City of East Helena and County





# Exhibit 9-7

## 2014 Land Donation to Lewis and Clark County for Search and Rescue



Lewis and Clark County Search and Rescue  
2694 Valley Drive  
East Helena, Montana



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust





## Exhibit 9-8

### 2016 Donation to East Helena Public Schools Prickly Pear Elementary School and Community Health Center





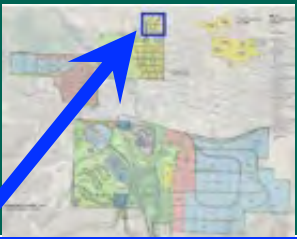


## Exhibit 9-9 2018 Sale to Town Pump Mixed Use Development/26,000-sf Store





**Exhibit 9-10**  
**2018 Sale to East Helena Public Schools**  
**East Helena High School**



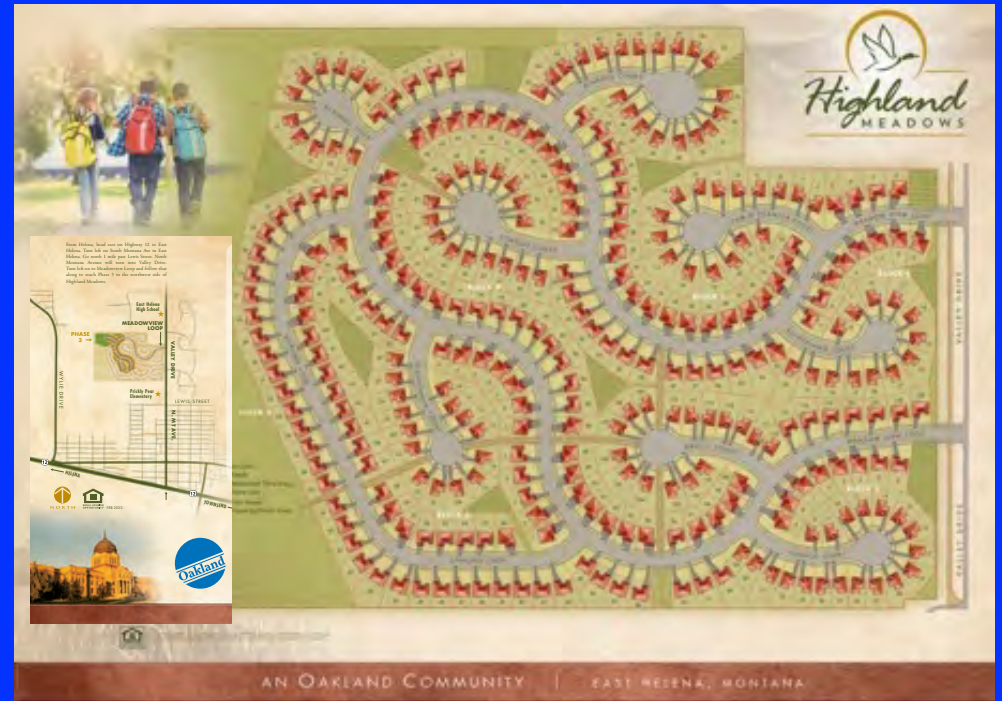




# Exhibit 9-11

## 2018 Sale to Oakland Companies

### Highland Meadows Residential Subdivision (319 Homes)





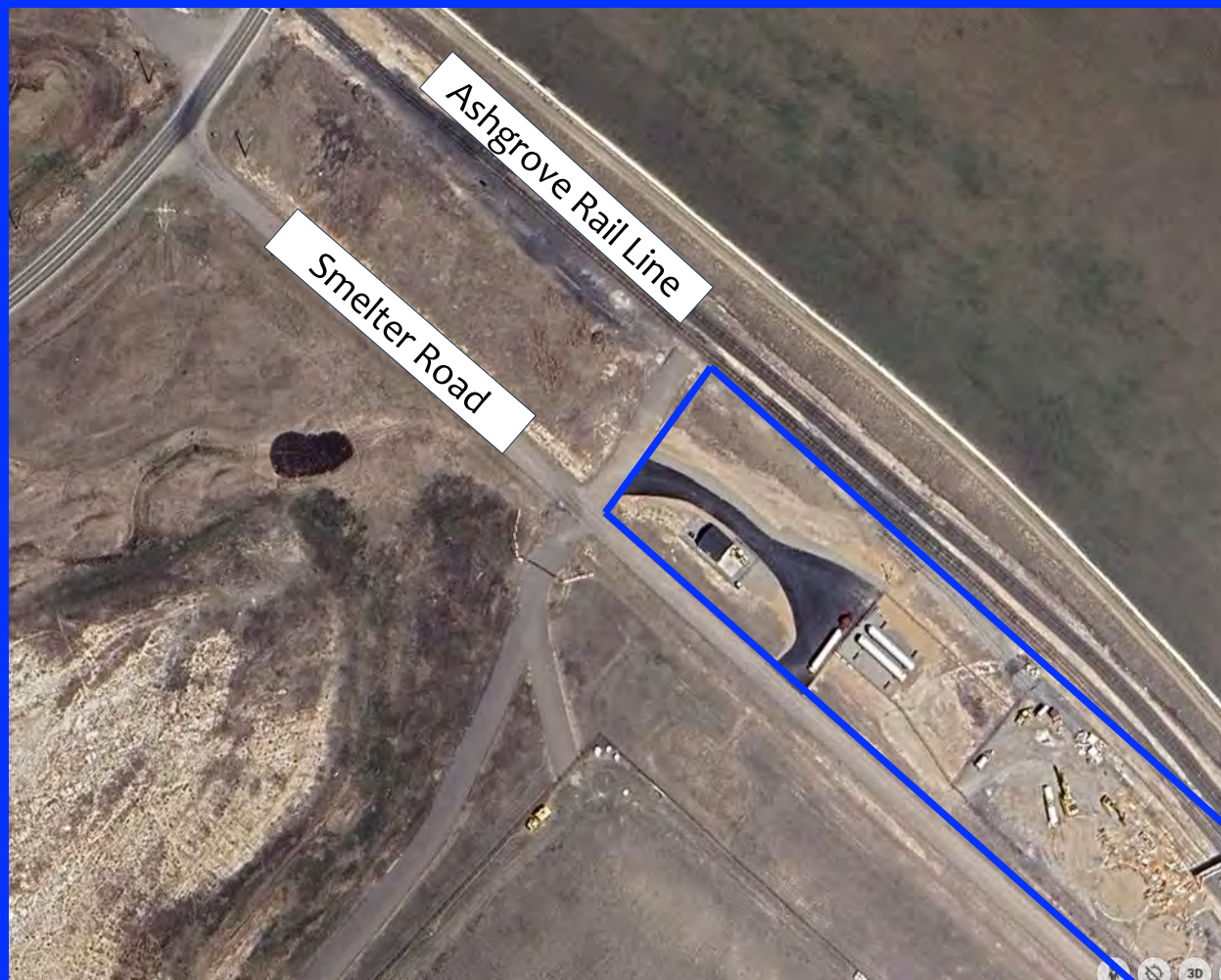


## Exhibit 9-12

### 2021 Sale of 3 Acres to Montana Propane

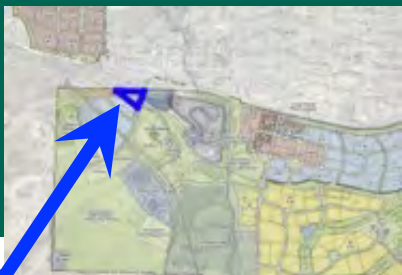


Acid Tanks



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust





# Exhibit 9-13

## 2023 Sale of 7 Acres to American Chemet

Parcel 3: Property Sold to American Chemet

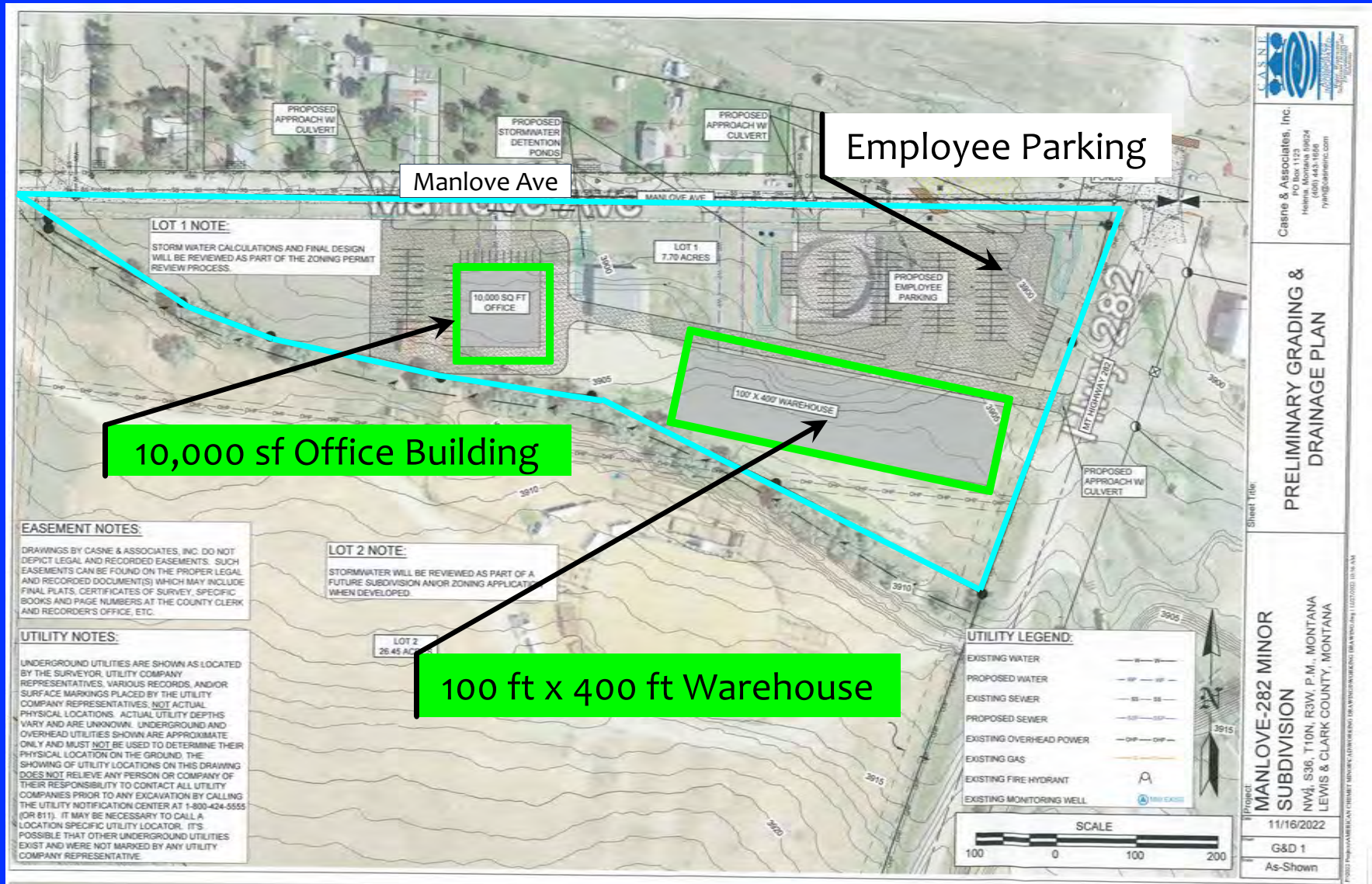


Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Exhibit 9-14

# 2023 Sale of 7 Acres to American Chemet for Office/Warehouse



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Exhibit 9-15

### 2023 Sale of 98 Acres to Power Townsend and Habitat for Humanity



Closed Municipal Landfill

Rodeo Arena

Parcel 4: Property Sold to Power Townsend

Parcel 5: Property Sold to Habitat for Humanity



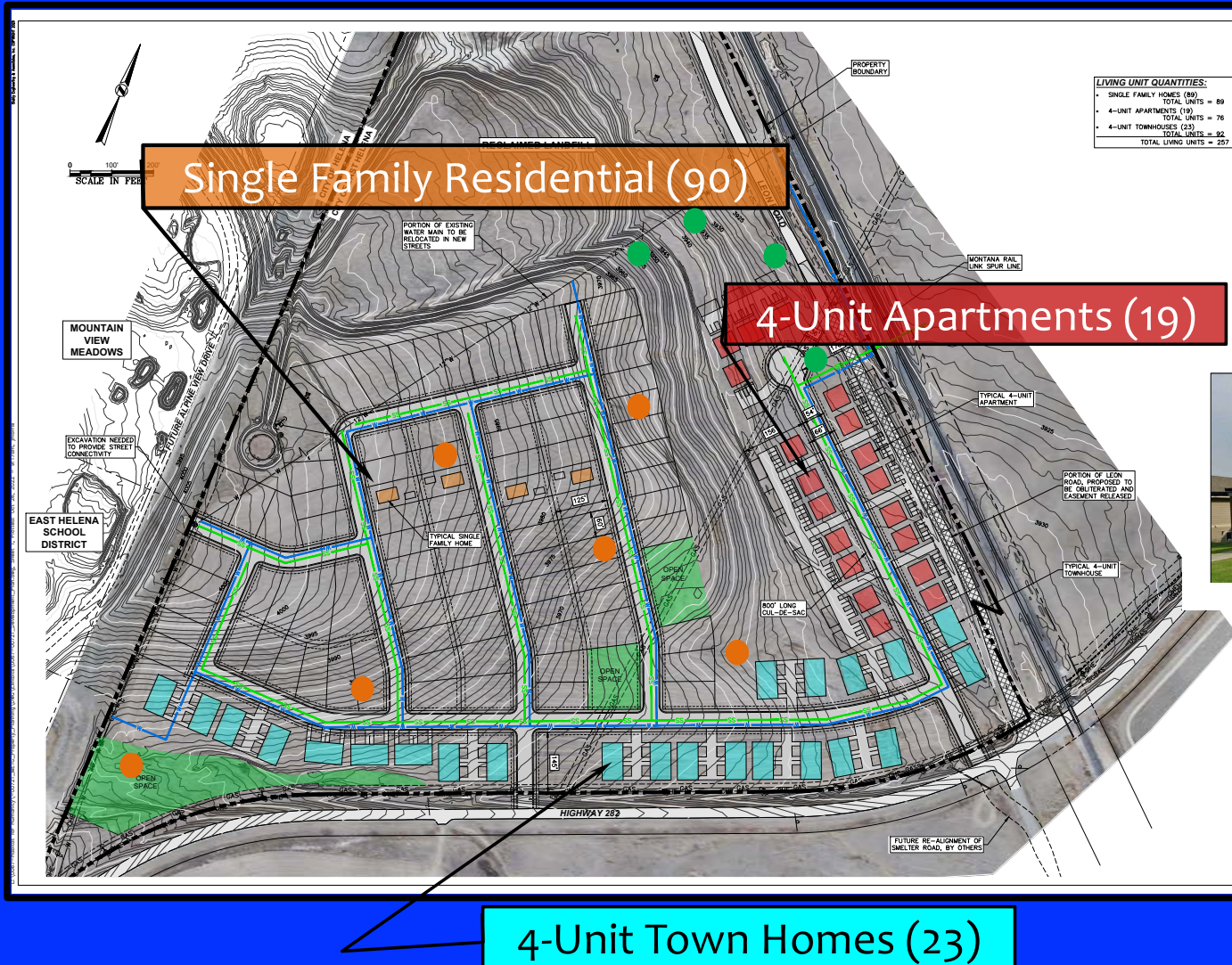
Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 9-16

## 2023 Sale of 72 Acres to Habitat for Humanity

### 257-Home Residential Subdivision



Sample Single Family Home



Sample Town Home



Sample Apartment



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Trustee of the Montana Environmental Custodial Trust

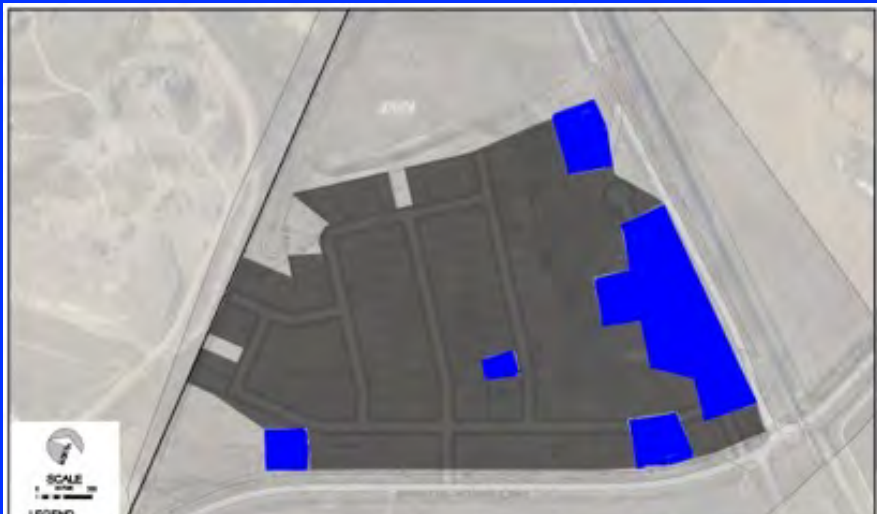




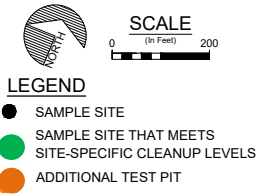
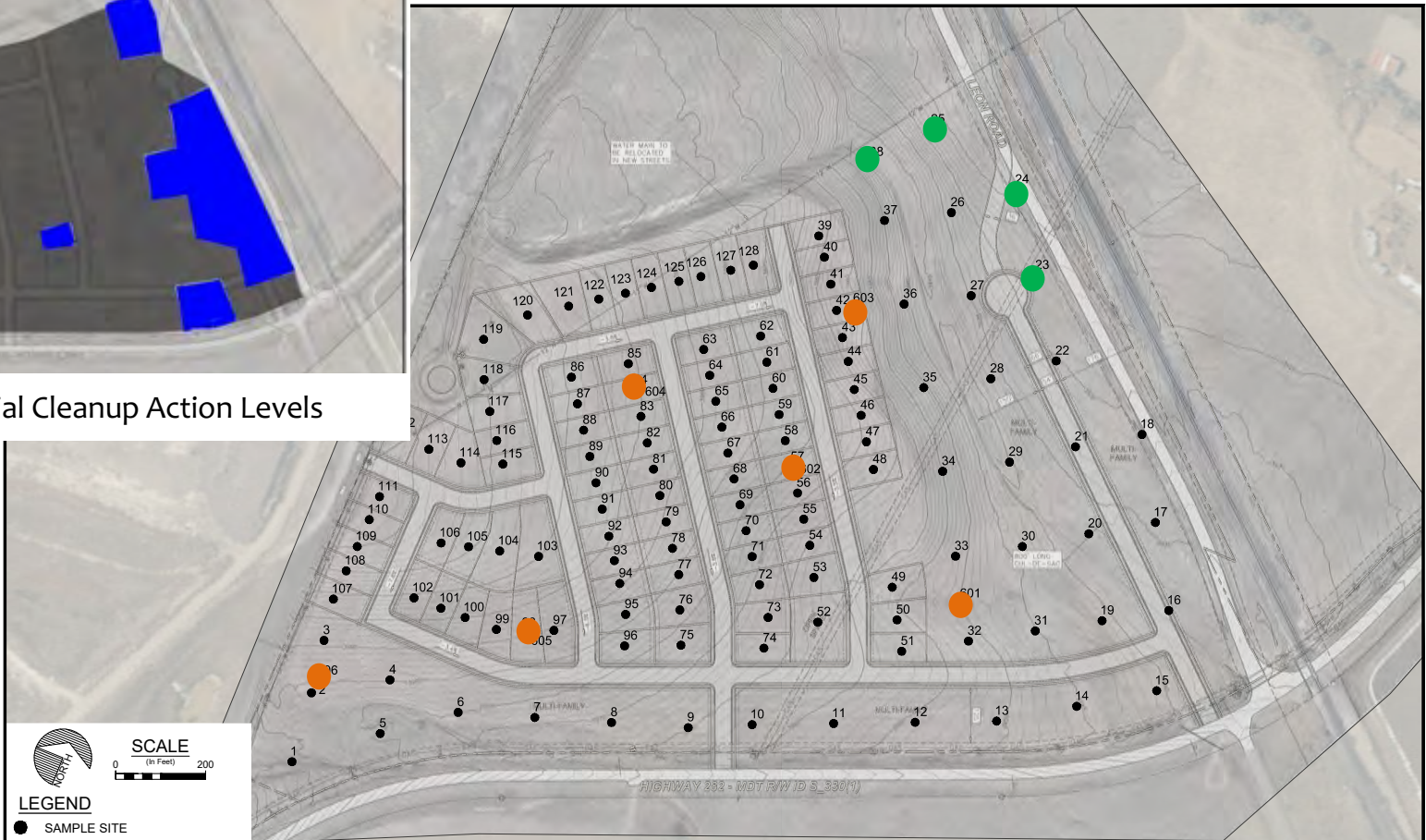
# Exhibit 9-17

## 2023 Sale of 72 Acres to Habitat for Humanity

### Site Soil Investigations



10 Acres Meet Residential Cleanup Action Levels

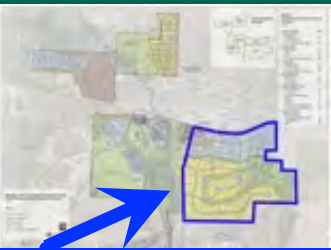


EPA-Approved Soil Sampling and Analysis Plan Sample Sites and Test Pits



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust





## Exhibit 9-18

# 2023 Sale of 731 Acres to Prickly Pear Estates And Donation of 45 Acres to City of East Helena

### Parcel 1: Property Sold to Prickly Pear Estates (an Oakland Company)



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust

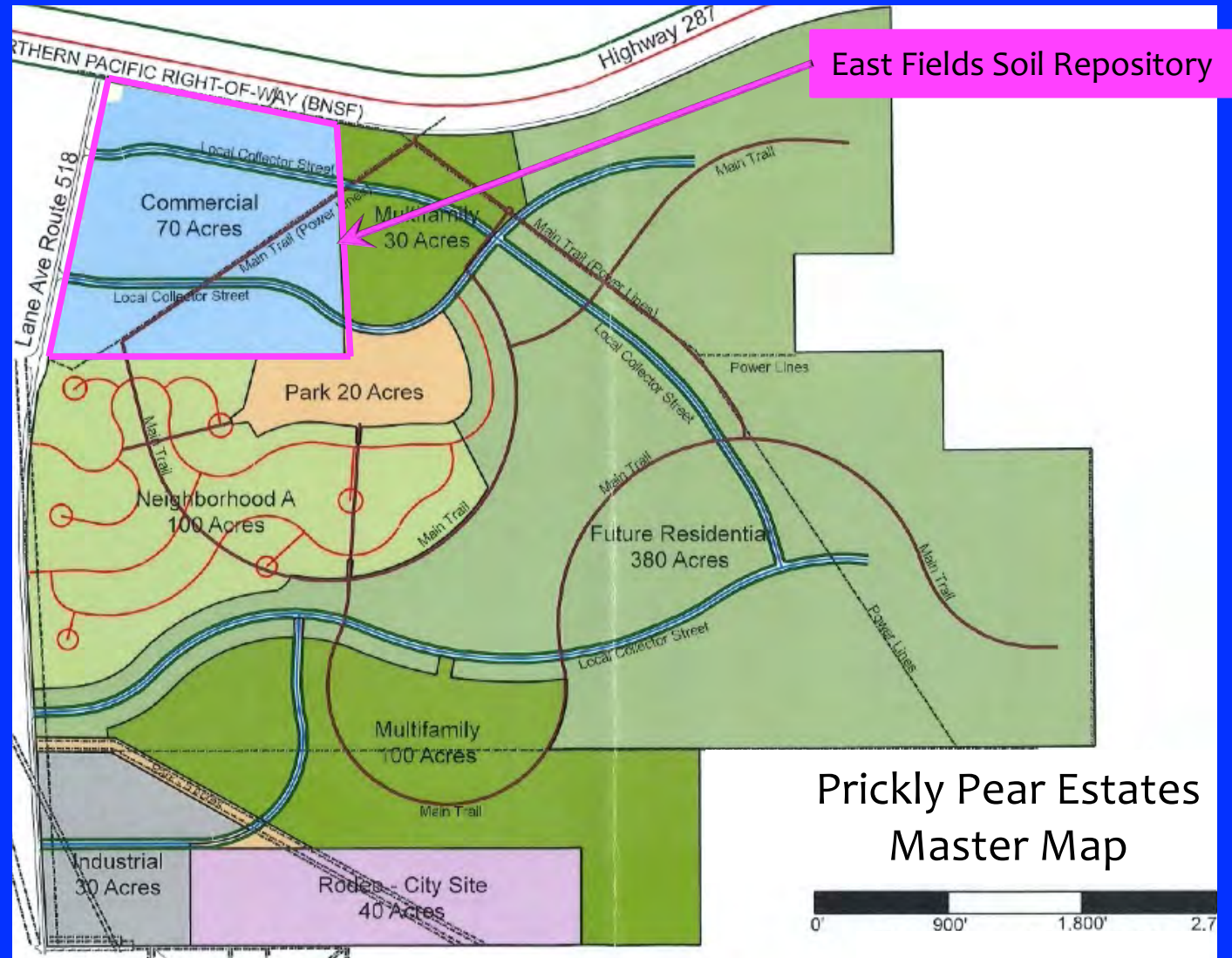




# Exhibit 9-19

## 2023 Sale of 731 Acres to Prickly Pear Estates (Oakland)

Land Use	Acres
Commercial	70
Single Family Residential	100
Multifamily Residential	130
Future Residential	380
Light Industrial	30
Park	20
City of East Helena	45
<b>Total:</b>	<b>775</b>

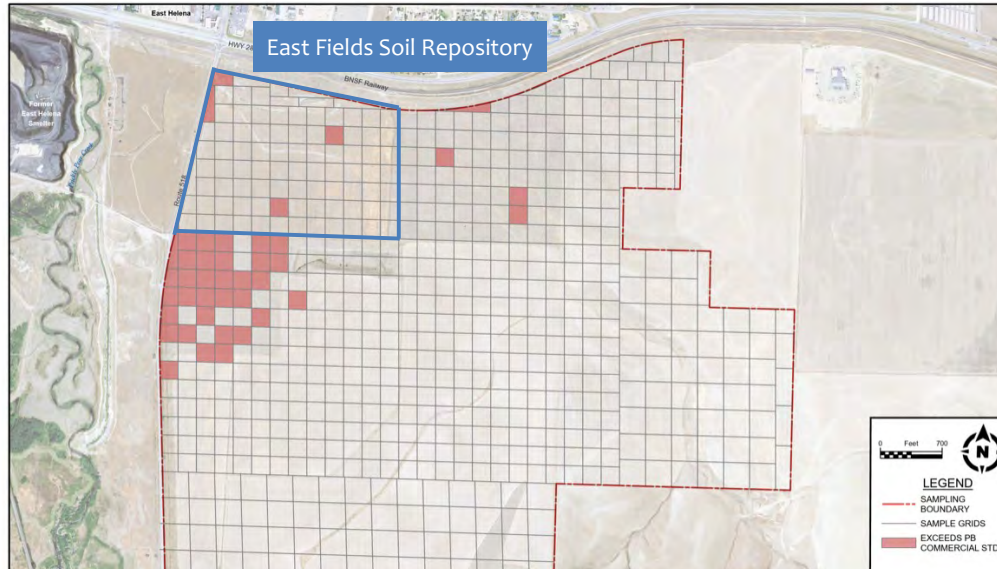


**Montana Environmental Trust Group, LLC**  
**Trustee of the Montana Environmental Custodial Trust**

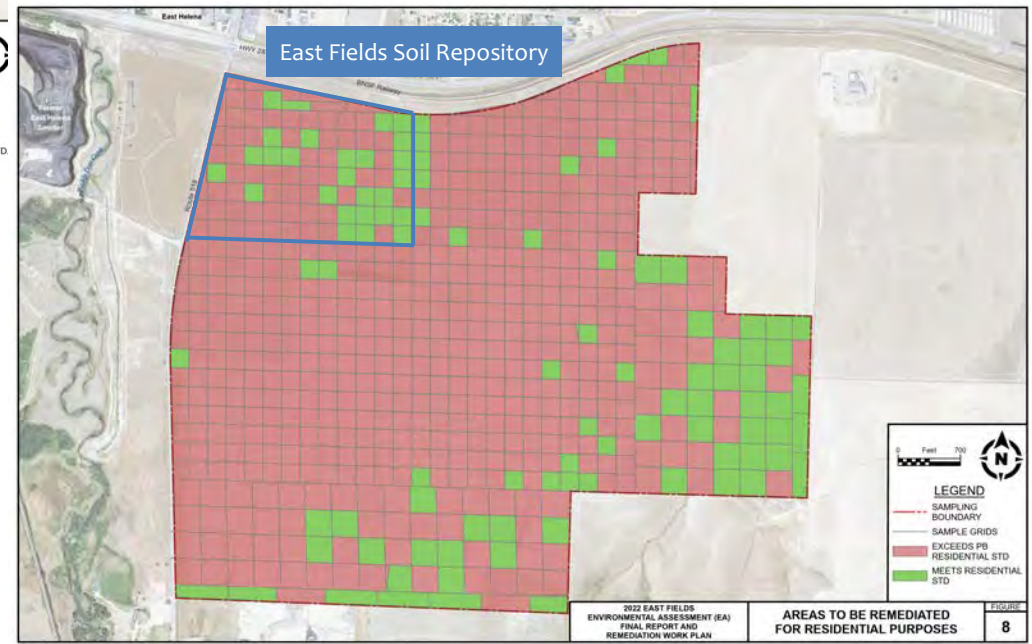


# Exhibit 9-20

## Prickly Pear Estates Soil Sampling Results



Decision Units > OU2 ROD Standard for Commercial Use



Decision Units > CMS Standard for Residential Use

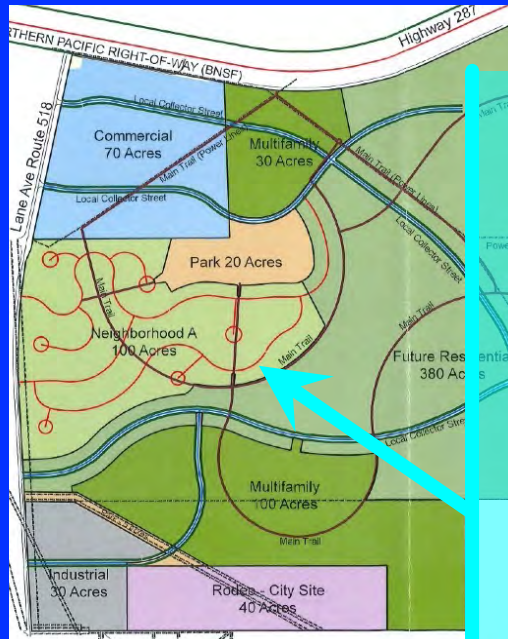
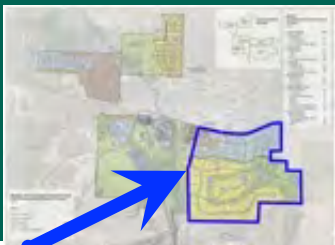


Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 9-21

## Prickly Pear Estates (Oakland) – Neighborhood A



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust





## Exhibit 9-22

# 2023 Donation of 45 Acres to City of East Helena for New Rodeo Arena and City Services

61<sup>st</sup> Annual East Helena Rodeo  
July 2024  
East Helena Valley Rodeo Association



New Arena Under Construction

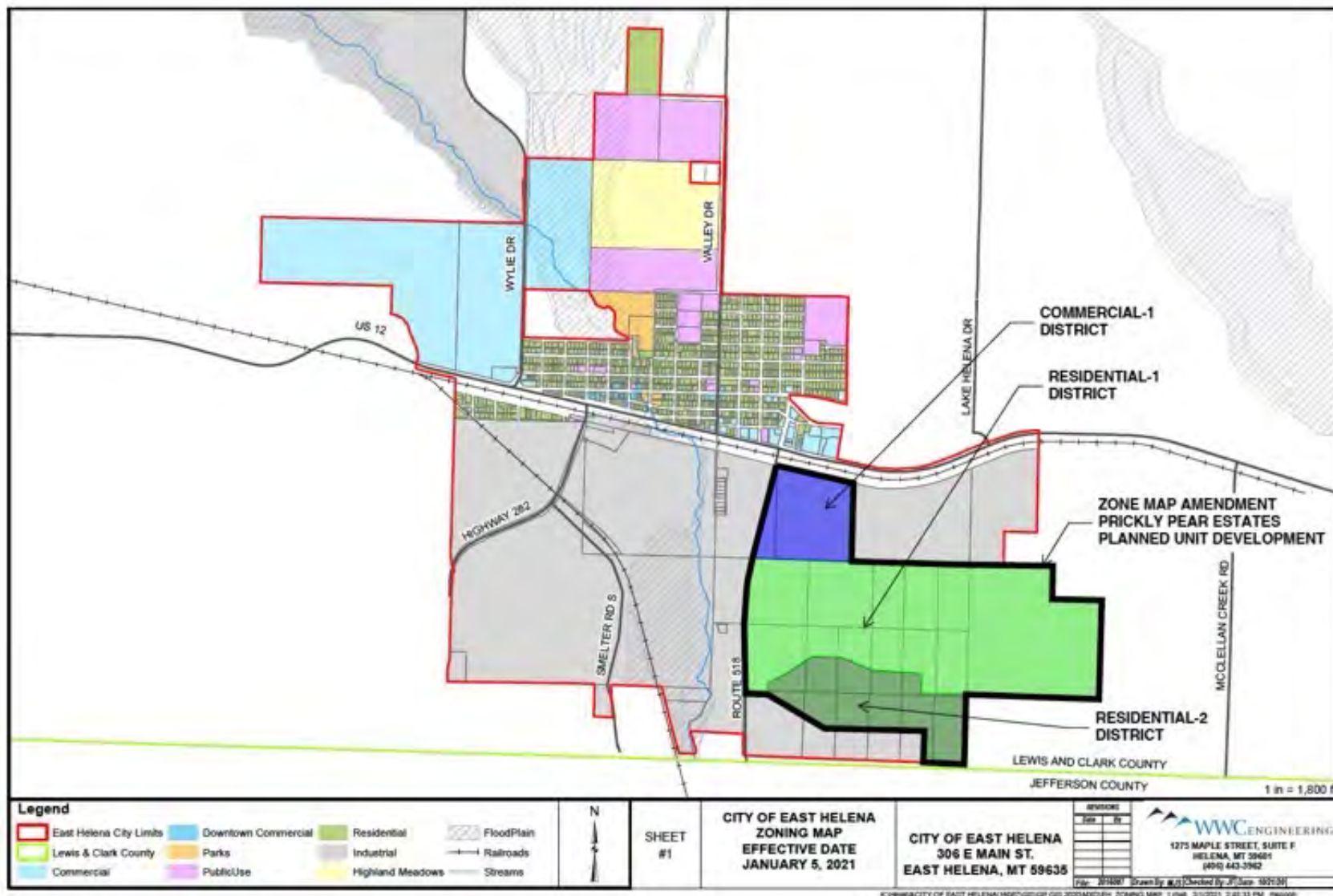


Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 9-23

## Prickly Pear Estates Zoning Map Amendment



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 9-24

## 136 Acres Under Contract for Sale to Habitat for Humanity

Parcels 6 and 6A : Property Under Contract for Sale to Habitat for Humanity



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 9-25

## 136 Acres Under Contract for Sale to Habitat for Humanity

### Design Charrette Rendering



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 9-26

## 136 Acres Under Contract for Sale to Habitat for Humanity Design Charrette Rendering



Rendering of Town Center Green



EAST HELENA CHARRETTE | East Helena, Montana | Habitat For Humanity  
February 2024

Print: 03/15/24



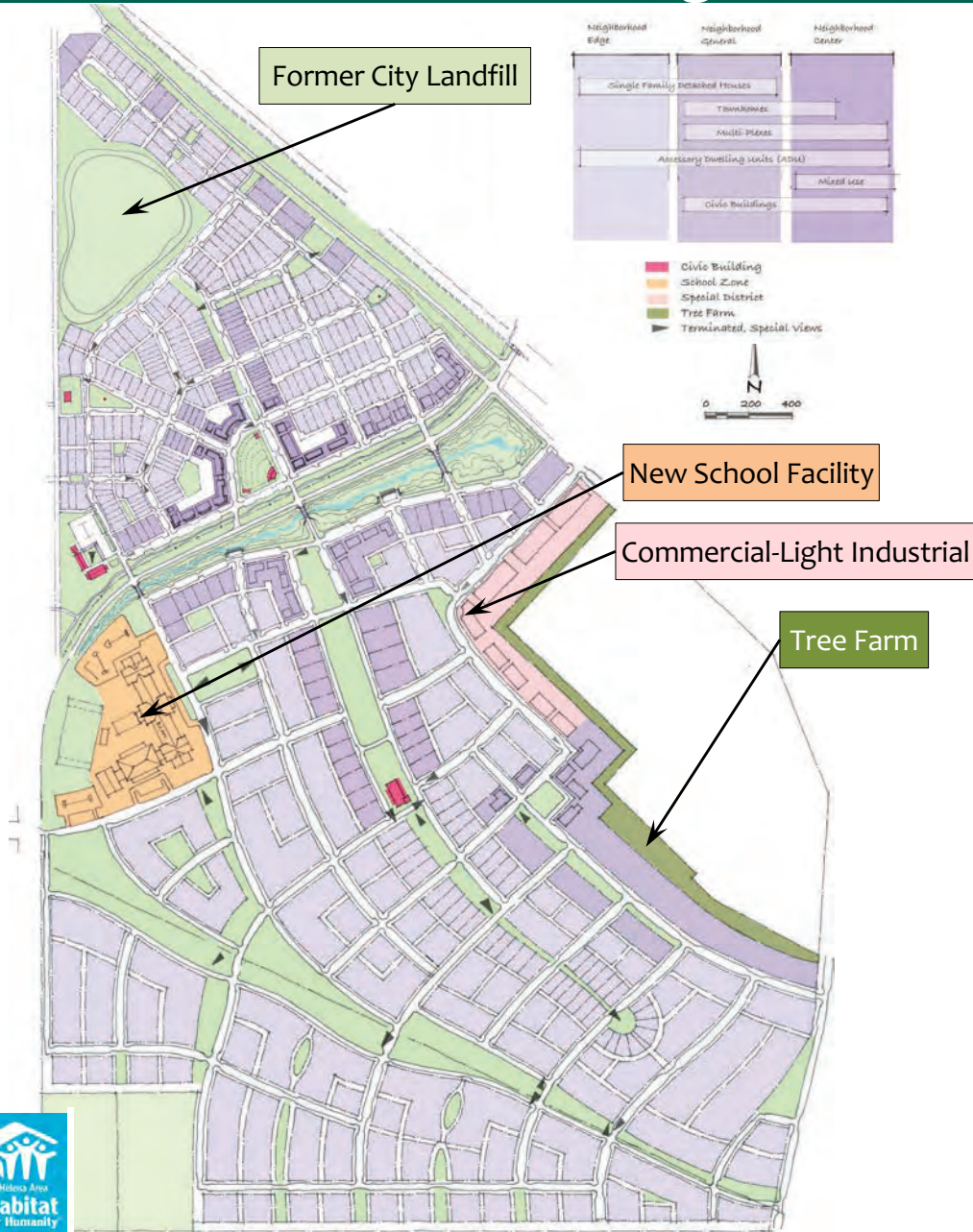
Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 9-27

## 136 Acres Under Contract for Sale to Habitat for Humanity

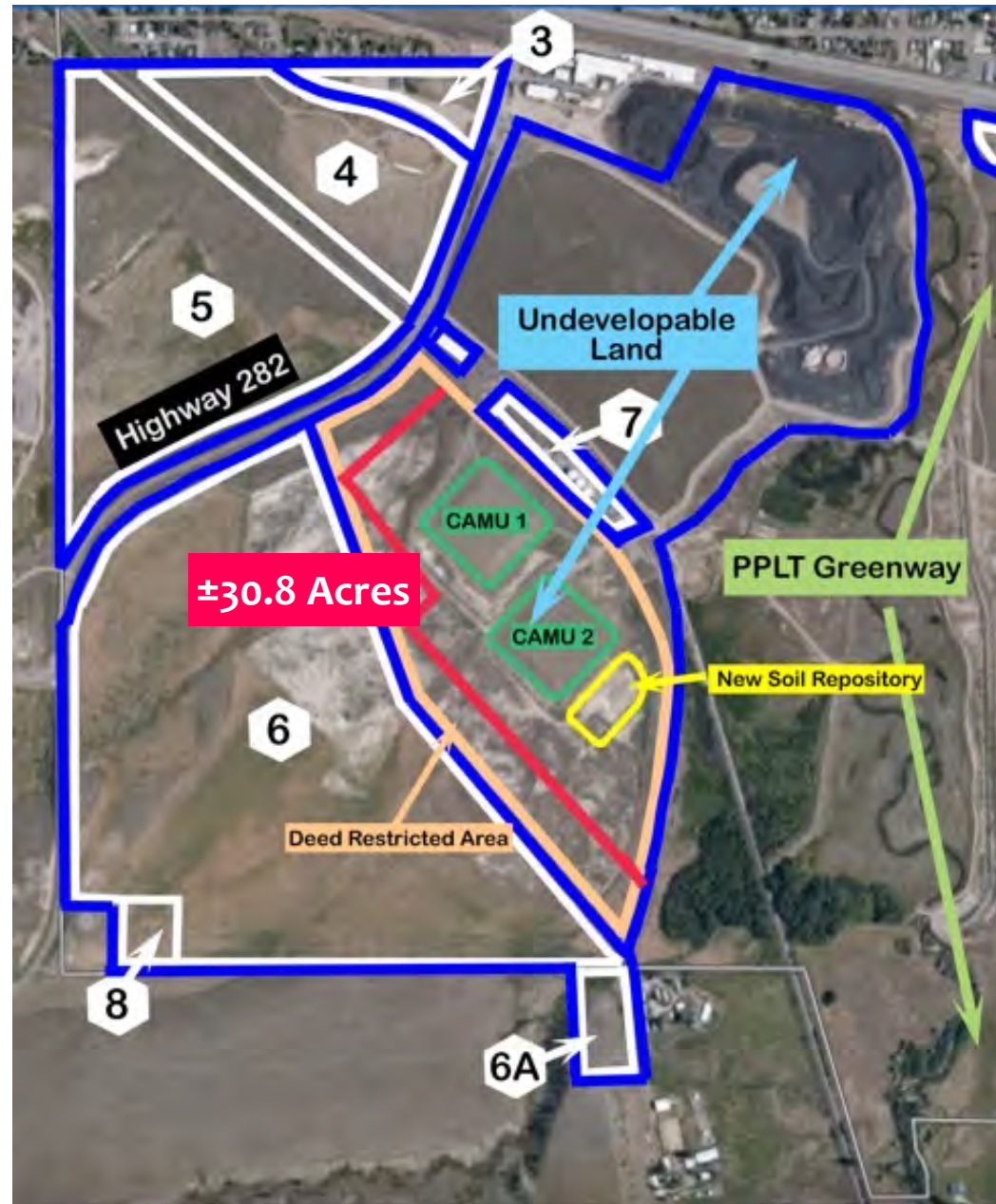
### Design Charrette Rendering





# Exhibit 9-28

## Portion of Deed-Restricted Area Requested for Development by Habitat for Humanity







# Exhibit 9-29

## 20 Acres Available for Purchase in East Helena

### Parcel 2: Property Available for Purchase



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



## Exhibit 9-30

### Summary of East Helena Land Sales and Transfers

Purchaser (or Grantee*)	New Use	Acres	Sale Price
American Chemet	Manufacturing Plant Expansion	6	
East Helena Public Schools	Prickly Pear Elementary School	50	
Town Pump	Mixed Use/Commercial Development	254	
Oakland Companies	319-Home Highland Meadows Subdivision	100	
East Helena Public Schools	East Helena High School	35	
American Chemet	Office and Warehouse	7	
Power Townsend	Light Manufacturing Center	26	
Habitat for Humanity	257-Home Residential Subdivision	72	
Oakland Companies	Commercial and 3,000+ Residential Homes	731	
Montana Propane	Intermodal Distribution Center	3	
Prickly Pear Land Trust*	Greenway Trail	322	\$0
City of East Helena*	Roads, Utilities, City Services, and Rodeo Arena	57	\$0
<b>Total East Helena Land Sales and Donations To Date:</b>		<b>1,663</b>	
Habitat for Humanity	Residential, Commercial, and School Uses**	136**	
TBD	Mixed Use (Compatible with Greenway)	20	
City of East Helena*	Second Water Tank Parcel	5	\$0
<b>Total Additional Land Sales and Donations</b>		<b>161</b>	
<b>Total Projected Land Sales and Donations</b>		<b>1,824</b>	
<b>Land Acquired from ASARCO:</b>		<b>2,035</b>	
<b>Undevelopable/Unsalable Land</b>		<b>211</b>	

\*\* Does not include additional [REDACTED] acres from DRA requested by Habitat for Humanity



The Honorable Kelly Harris  
Mayor  
City of East Helena  
306 E Main Street  
East Helena, Montana 59635

Dear Mayor Harris:

This letter agreement sets forth the commitments by American Chemet Corporation (AC), PTCO, LLC (PTCO), and Helena Area Habitat for Humanity (HFH; collectively with AC and PTCO, Purchasers) related to funding certain improvements required to provide City of East Helena (City) sewer services as described below.

## **I. BACKGROUND**

AC and the Montana Environmental Trust Group, LLC, Trustee of the Montana Environmental Custodial Trust (Custodial Trust), have entered into a Purchase and Sale Agreement (the AC PSA), pursuant to which AC proposes to purchase the property identified as Parcel 3 in Exhibit 1 attached hereto (consisting of  $\pm 7$  acres). Additionally, PTCO, HFH, and the Custodial Trust have entered into a Purchase and Sale Agreement (the HFH-PTCO PSA), pursuant to which PTCO proposes to purchase the property identified as Parcel 4 in Exhibit 1 (consisting of  $\pm 25$  acres) and HFH proposes to purchase the property identified as Parcel 5 in Exhibit 1 (consisting of  $\pm 72$  acres).

City sewer service south of Highway 12 currently serves the Manlove Avenue residential subdivision and the Custodial Trust modular.. Therefore, a sewer lift station and associated facilities (the Manlove Lift Station) are required to provide sewer service to Parcels 3, 4, and 5. The existing AC facility connects to the City's sewer system through a sewer line owned by AC (the Existing AC Sewer Line). Because the City and AC have identified obstructions in the Existing AC Sewer Line, AC is currently endeavoring to repair the Existing AC Sewer Line. If AC determines that the Existing AC Sewer Line cannot be cost-effectively repaired, AC understands that it will have to connect to the Manlove Lift Station to serve its existing facility.

The City's January 2023 draft Wastewater Collection System Master Plan Update includes the estimated costs for the Manlove Lift Station. Based on conceptual development plans provided by AC, PTCO, and HFH, the City Engineer prepared an estimate of sewer flow allocations and the associated costs to construct the Manlove Lift Station attached hereto as Exhibit 2 (Flow and Cost Allocations).

## **II. APPROVAL OF AC SUBDIVISION**

Conditions to closing under the AC PSA and HFH-PTCO PSA include City and Lewis and Clark County (County) minor subdivision and plat approval to establish Parcel 3 as a legally defined tract of record that can be conveyed by the Custodial Trust to AC. On February 7, 2023, the City Council approved the preliminary plat, subject to certain conditions, including the requirement for a Municipal Facilities Exemption (MFE) from the City and the Montana Department of Environmental Quality (MDEQ) for Parcel 3. Due to the condition of the Existing AC Sewer Line, the City informed AC on February 22, 2023, that the City was not able to confirm that Parcel 3 has access to sewer service (pursuant to the City's Subdivision Regulations). -To approve the MDEQ-required MFE application



and finalize the subdivision plat, the City requested a written commitment from AC, HFH, and PTCO to fund the Manlove Lift Station.

### III. COMMITMENTS BY THE PARTIES

#### A. Commitments by the City

The City will work with AC and HFH-PTCO to design and construct the Manlove Lift Station with sufficient capacity to serve the proposed developments for Parcels 3, 4, and 5 by year-end 2025 (the "Target Completion Date"). In the event that the City is unable to meet the Target Completion Date, it will promptly notify AC and HFH-PTCO as soon as the City~~it~~ is aware that it is unable to meet the Target Completion Date, in which case the City, AC, and HFH-PTCO will work together to reach agreement on a revised Target Completion Date. Costs associated with the Manlove Lift Station to serve the existing residential users on Manlove Street will be funded by the City; these costs are referred to in Exhibit 2 as those associated with the City's "existing customers." The total estimated cost for the Manlove Lift Station, excluding upsizing the station to account for future development of the property identified as Parcel 6 in Exhibit 1 (consisting of ±136 acres), is \$2,800,222 as described in Exhibit 2. The City agrees to increase the capacity of the Manlove Lift Station and enter into a latecomers agreement with the future purchaser of Parcel 6. -In no case are AC, PTCO, or HFH responsible for funding sewer services for Parcel 6 unless one of those parties purchases Parcel 6; nor are AC, PTCO, or HFH responsible for funding any costs associated with the City's existing residential users. The City also agrees to promptly notify AC, PTCO, and HFH in writing of any changes or conditions that could impact timing and cost for the Manlove Lift Station and/or a change in the costs that the Purchasers will reimburse to the City. The City further agrees that, if installation of the Manlove Lift Station is not operational in time to support opening PTCO's facility, it will allow PTCO to temporarily connect to the existing sewer line on Manlove Street until the Manlove Life Station is available.

#### B. Commitments by the Purchasers

Subject to their respective acquisitions of Parcels 3, 4 and 5 from the Custodial Trust, AC, PTCO, and HFH each hereby agree to reimburse the actual costs incurred by the City to design and construct the Manlove Lift Station in accordance with the estimated allocations set forth in Exhibit 2, which may be adjusted based on actual usage. -Reimbursement will be paid directly by AC, PTCO, and HFH to the City within thirty (30) days following receipt of a completed invoice and supporting documentation evidencing work performed and expenses incurred by the City to date on construction of the Manlove Lift Station. -All parties agree that the cost allocations in Exhibit 2 assume that AC will require use of the Manlove Lift Station to service its existing facility; however, if AC is able to successfully repair the Existing AC Sewer Line as described in Section I, then AC will only be responsible for the cost allocations from sewer flow from any structures placed on Parcel 3 and PTCO and HFH understand that their cost allocations for Parcels 4 and 5 will increase pro rata, as will the City's cost allocations for its existing residential customers on Manlove Street.

*[signatures on following page]*



**AGREED TO AND ACCEPTED BY:**

**AMERICAN CHEMET CORPORATION**

By: [Signature]  
Name: Bill H. Shropshire  
Title: President and CEO  
Date: 5/22/23

**PTCO, LLC**

By: [Signature]  
Name: Mike A. Wall  
Title: Member  
Date: 5-11-2023

**HELENA AREA HABITAT FOR HUMANITY**

By: [Signature]  
Name: Jacob Kuntz  
Title: Executive Director  
Date: 5-12-2023

**CITY OF EAST HELENA, MONTANA**

By: \_\_\_\_\_  
Name: The Honorable Kelly Harris  
Title: Mayor  
Date: \_\_\_\_\_

cc: Cindy Brooks—METG



Exhibit 1





Exhibit 2  
Flow and Cost Allocations

**Manlove Lift Station and Collection System Improvements - *Including* Existing American Chemet Facility**

Cost Breakout by Flow March 7, 2023			
<b>Total Project Cost:</b>		<b>\$2,800,221.00</b>	
<b>Total Estimated Peak Flow (gpd):</b>		<b>295,999</b>	
Contributor	Contributor Estimated Peak Flow (gpd)	Percentage of Total Peak Flow	Contribution Based on Flow
City of East Helena (Existing Customers)	28,980	10%	\$ 274,158.00
American Chemet (Existing Facilities)	35,000	12%	\$ 331,109.00
American Chemet (Proposed Office Facilities)	1,911	0.65%	\$ 18,079.00
Power Townsend	683	0.23%	\$ 6,457.00
Habitat for Humanity	229,425	78%	\$ 2,170,419.00
Totals:	295,999	100%	<b>\$ 2,800,222.00</b>
<i>Additional Cost to Include METG Parcel 6</i>			<i>\$547,646.00</i>
<b>Total Project Cost</b>			<b>\$ 3,347,868.00</b>





## Chapter 10

### East Helena Groundwater Quality

As documented in the annual Corrective Action Performance Monitoring Program Reports, the concentrations of contaminants in groundwater continue to decline in most monitoring wells (dramatically in the case of selenium) in response to the Corrective Measures (CMs) implemented to date at the former ASARCO Smelter Facility (Facility). As described below, the footprint of the downgradient selenium plume has shrunk by 70% and the average concentration of selenium has dropped by 40% since 2016. Arsenic concentrations on the Facility have dropped by almost 50% during that timeframe, and 70% since 2010 based on semiannual water quality sampling in  $\pm 83$  monitoring wells.

#### I. Groundwater Elevations

The Custodial Trust monitors groundwater levels in  $\pm 180$  on-site and off-site monitoring wells to document the effects of the South Plant Hydraulic Control (SPHC) CM. Lowering of groundwater levels through the SPHC CM have reduced groundwater contaminant levels on and downgradient of the Facility. Overall, groundwater levels in the southern area of the Facility have dropped more than 10 feet in response to CMs implemented to date (see [Exhibit 10-1](#)), which have reduced: (i) the saturated thickness of contaminated soil by 45% to 66% in the Acid Plant, West Selenium, and North Plant Arsenic source areas (see [Exhibit 10-2](#)); and (ii) the groundwater contaminant flux migrating off-site.

#### II. Selenium Concentrations in Groundwater

The leading edge of the selenium plume<sup>1</sup> has receded by  $\pm 4,000$  feet since 2016—2,300 feet alone between 2022 and 2023 (see [Exhibit 10-3](#))—and concentrations have dropped by more than 40% in off-site wells (see [Exhibit 10-3](#)). Selenium concentrations in groundwater downgradient of the Facility no longer exceed 1 milligram per liter (mg/L) (see [Exhibit 10-4](#)). Concentrations in source area wells (including the West Selenium Area and the Slag Pile) have dropped by up to 85% (see [Exhibit 10-5](#)). The selenium plume geometry and footprint have shrunk by 70% since 2016. Under the Facility area, the selenium plume footprint has shrunk by 31% and the average concentration of selenium has dropped by 61% since 2010 (see [Exhibit 10-3](#)).

#### III. Arsenic Concentrations in Groundwater

Arsenic concentrations in the Acid Plant, North Plant Arsenic, and Slag Pile source areas (see [Exhibit 10-2](#)) have continued to decline due to CMs implemented at the Facility, and are largely at or near the minimum concentrations observed since lead smelting operations ceased in 2001 (see [Exhibit 10-6](#)). Reductions in arsenic concentrations from the North Arsenic Source Area are evidenced by both an approximately 68% reduction in arsenic concentrations at well DH-17 and the reduced extent of the arsenic contour that exceeds 10 mg/L (see

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<sup>1</sup> The leading edge of the selenium plume is defined by the approximate location of the 0.050 milligrams/liter (mg/L) isocontour, which corresponds to the maximum concentration level (MCL) for selenium in groundwater.



Exhibits 10-6 and 10-7). As expected, the arsenic plume geometry and overall footprint downgradient of the Facility have not changed significantly due to arsenic's tendency to bind (adsorb) to soil and the resulting reservoir of historically transported and adsorbed arsenic present in downgradient soils that are available for desorption into groundwater (see Exhibit 10-8). The footprint of the arsenic plume under the Facility has shrunk by 16% and average concentrations have dropped by 70% since 2010.

Arsenic concentrations at two wells along the west margin of the arsenic plume were observed to increase from 2016 through 2021 and have subsequently stabilized, and remained above historically observed concentrations in 2023 (see Exhibit 10-9). This increase is attributed to a westward shift in the arsenic plume caused by the elimination of a large irrigation ditch to the west (Wilson Ditch), and associated loss of groundwater recharge in this area.

#### **IV. Residential and Public Water Supply Wells**

The Custodial Trust monitors water quality in 17 privately owned residential wells and 3 public water supply wells owned by the City of East Helena. Water quality monitoring in 2023 showed no exceedances of drinking water standards for selenium<sup>2</sup> in any residential and public water supply wells. Arsenic concentrations that exceeded the MCL<sup>3</sup> in 4 private residential wells are attributed to naturally occurring arsenic in groundwater. The 4 private wells are located upgradient (south) or west of the Facility. In 2024, responsibility for continued monitoring of the 4 residential wells impacted by naturally occurring arsenic was transferred from the Custodial Trust to the Lewis and Clark County Water Quality Protection District (WQPD).

To date the Custodial Trust has worked with 8 private well owners to abandon their wells and connect to City water.

#### **V. Surface Water Quality**

The Custodial Trust collects Prickly Pear Creek (PPC)<sup>4</sup> streamflow and water quality data at 11 sites. Streamflow rates were higher in 2023 compared to the prior 3 years due to increased precipitation. There were no net flow gains or losses along the Facility. Flow losses downstream indicate leakage and irrigation diversion. Trends in surface water quality are consistent with water quality monitoring results from the past 20 years.

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<sup>2</sup> The maximum concentration level (MCL) established by EPA for selenium is 0.050 mg/L.

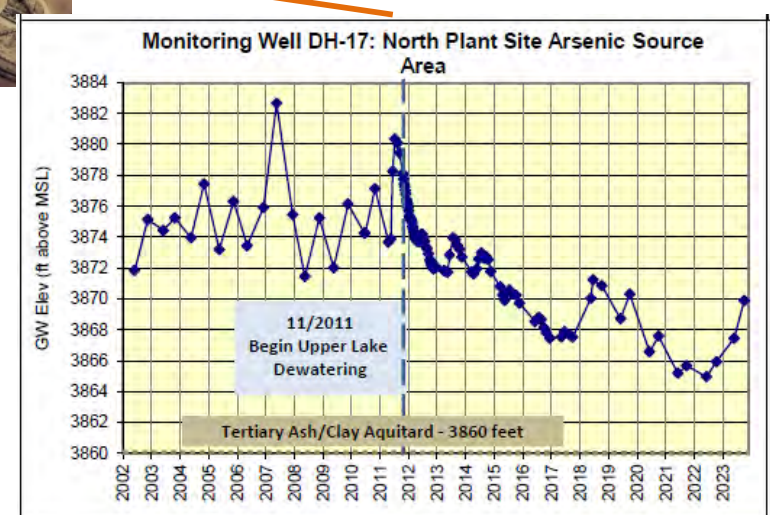
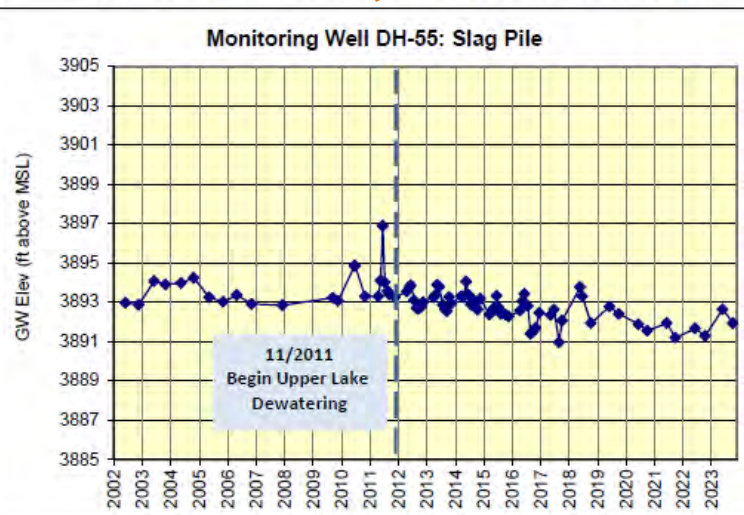
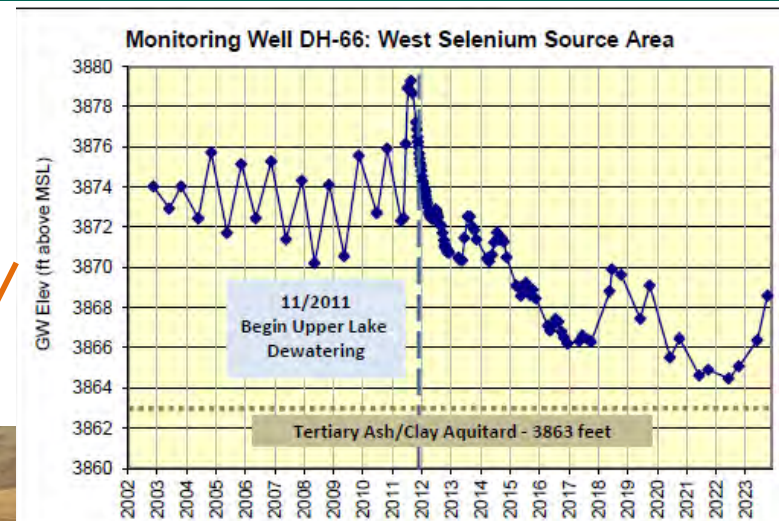
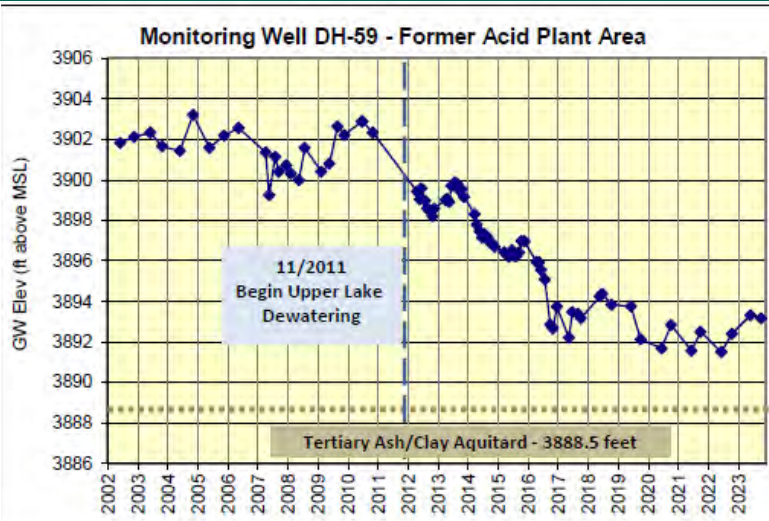
<sup>3</sup> The maximum concentration level (MCL) established by EPA for arsenic is 0.010 mg/L.

<sup>4</sup> PPC stream data includes a site located on a tributary to PPC.



# Exhibit 10-1

## Lower Groundwater Elevations – Response to CMs





# Exhibit 10-2

## Groundwater Contaminant Source Areas Addressed by CMs

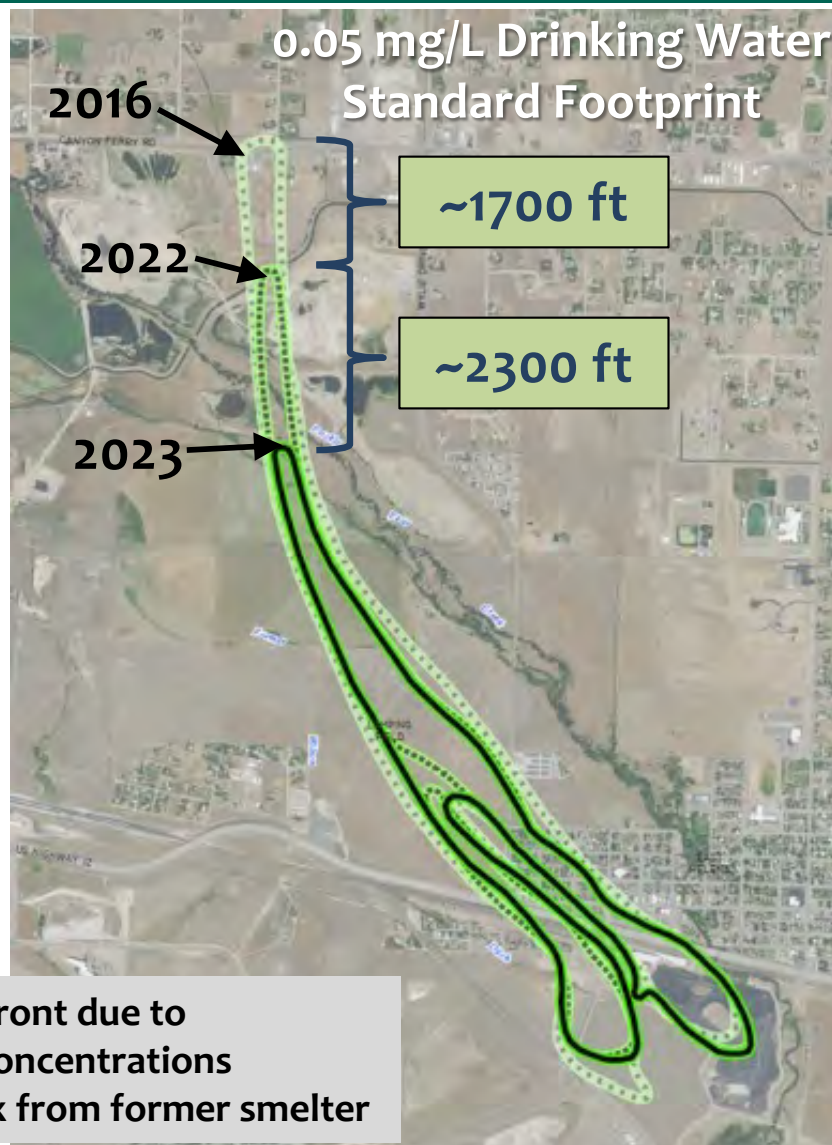


Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 10-3

## Selenium Plume Shrinkage, 2016–2023



Retraction of plume front due to  
(1) lower source area concentrations  
(2) decreased groundwater flux from former smelter

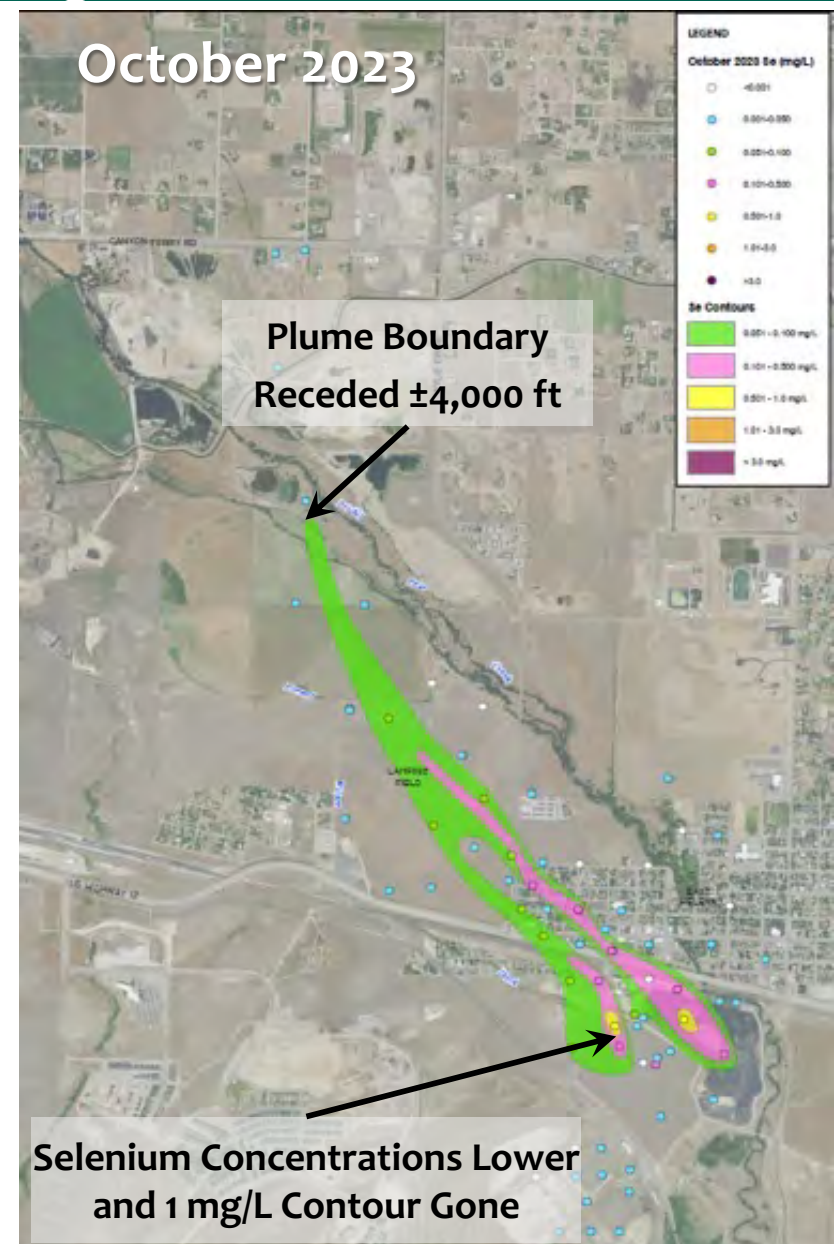
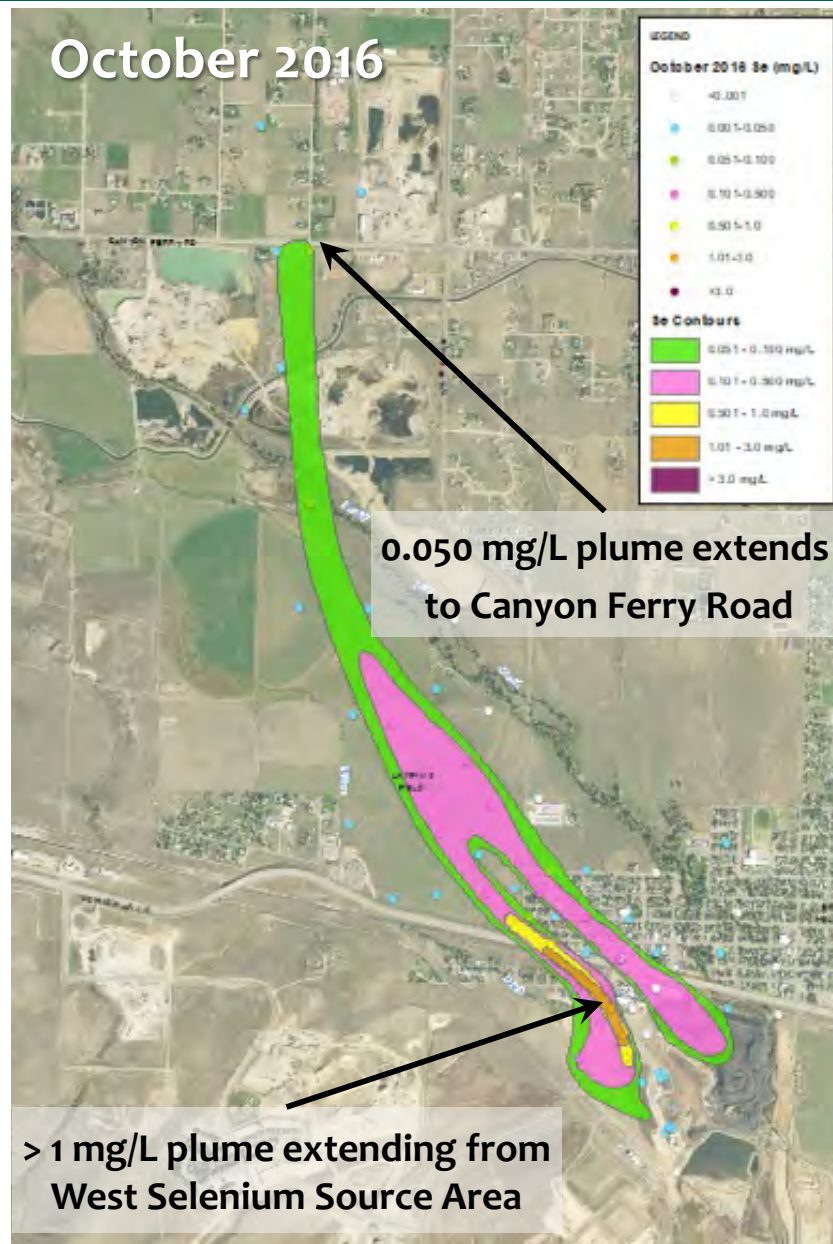


Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



# Exhibit 10-4

## Selenium Plume Shrinkage, 2016–2023

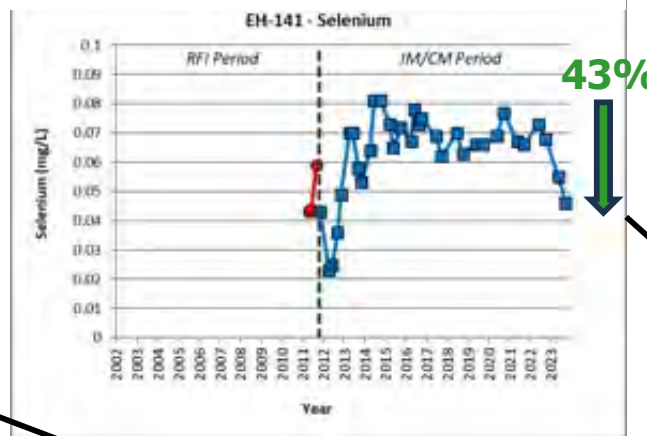


Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust

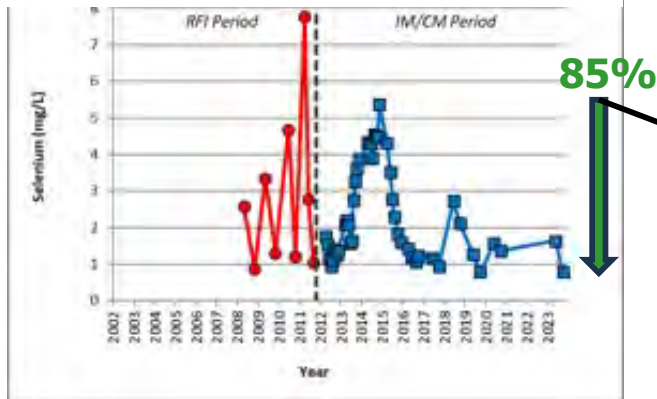


# Exhibit 10-5 Selenium Trends

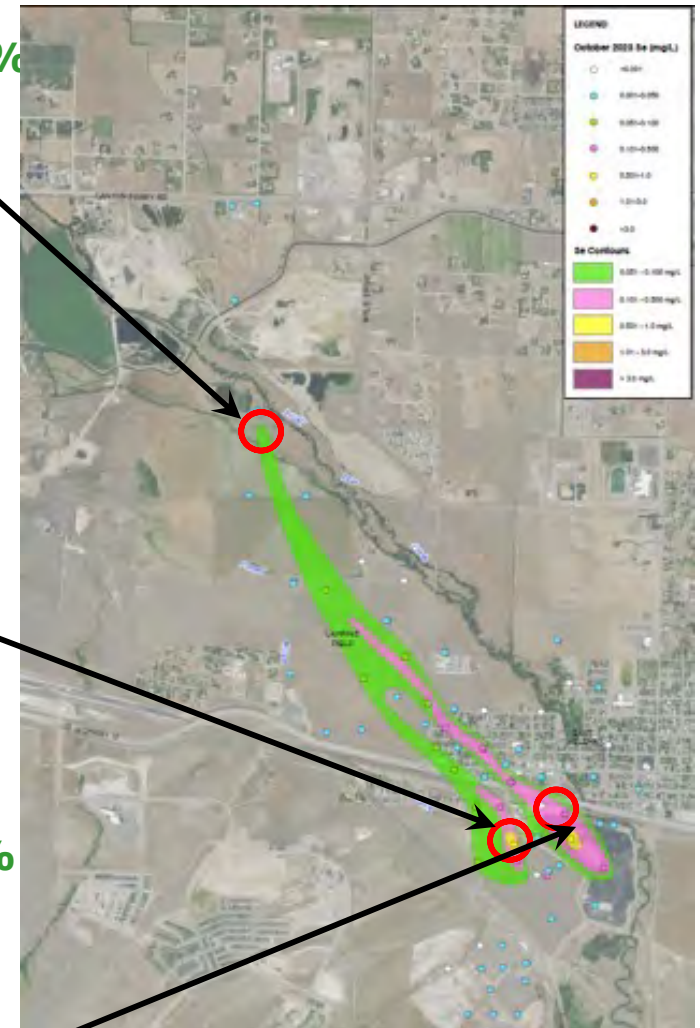
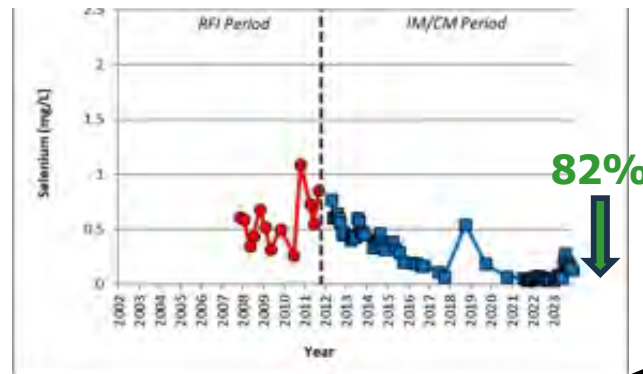
EH-141 Downgradient Plume



DH-66 Source Area



DH-6 Slag Pile

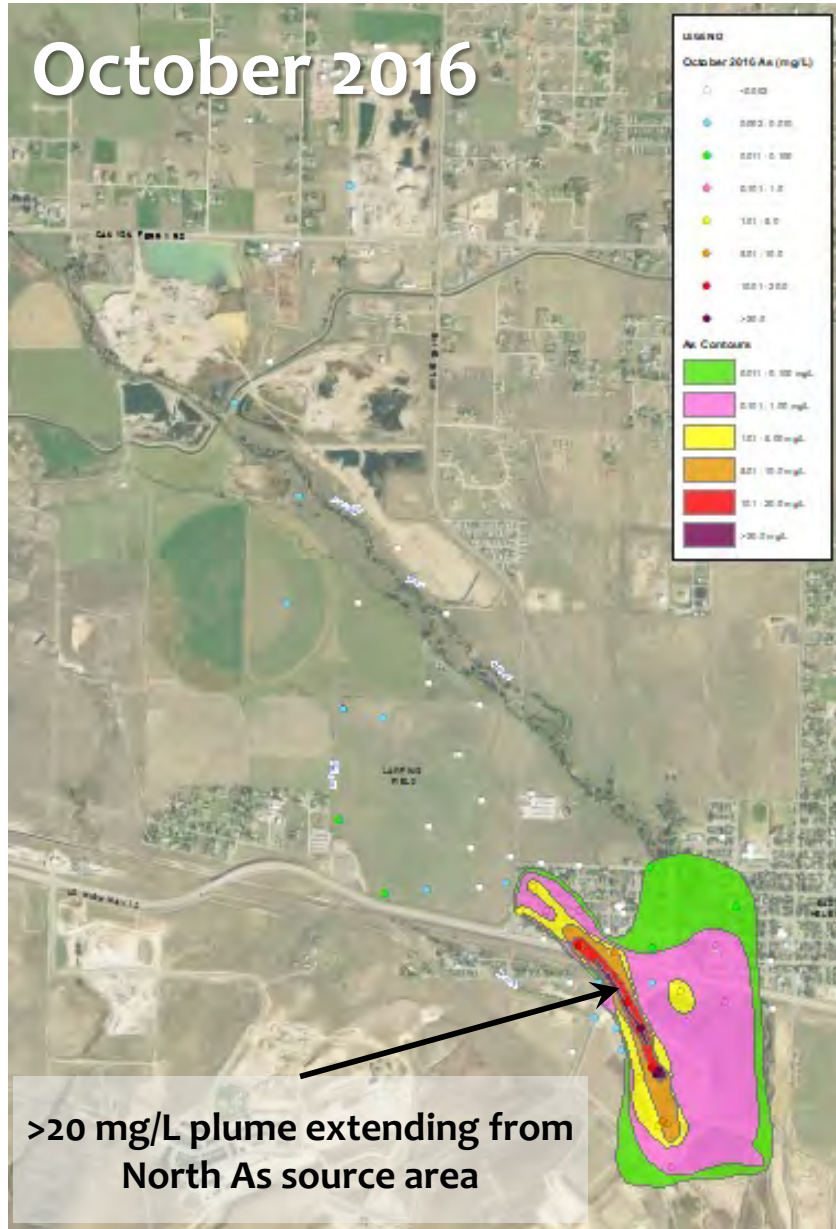


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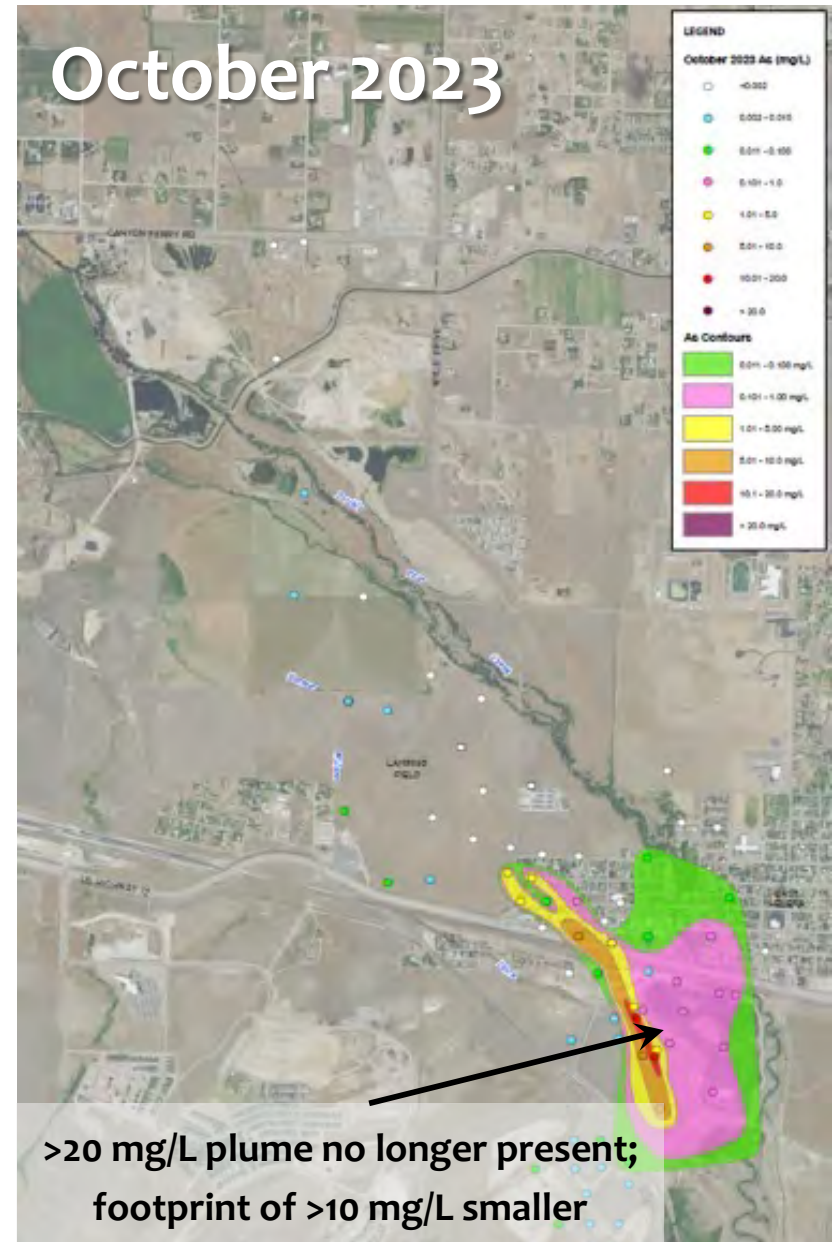


# Exhibit 10-6 Arsenic Plume, 2016–2023

October 2016



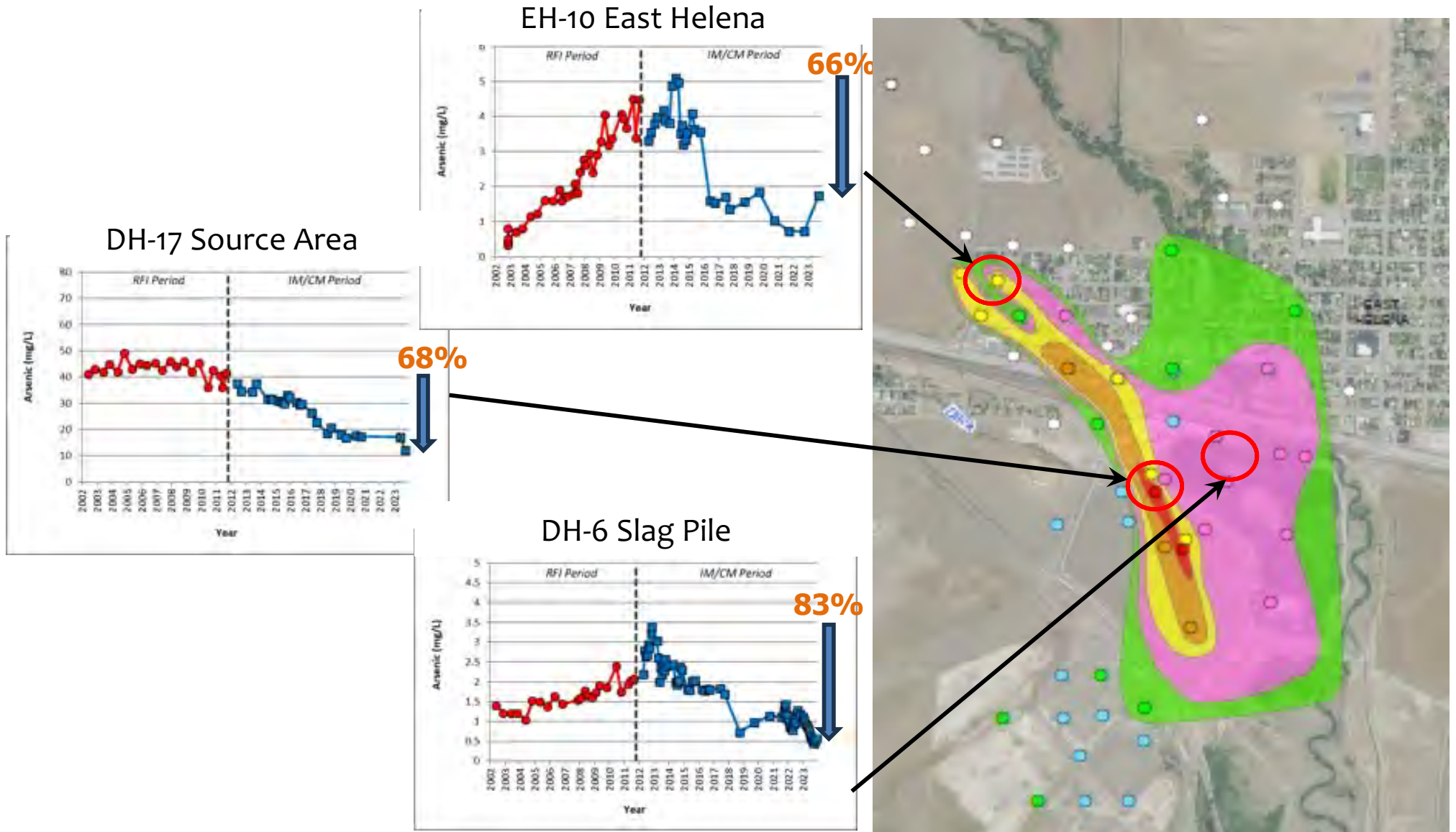
October 2023



Montana Environmental Trust Group, LLC  
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# Exhibit 10-7 Arsenic Trends



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# Exhibit 10-8

## Arsenic Plume Geometry, 2016–2023

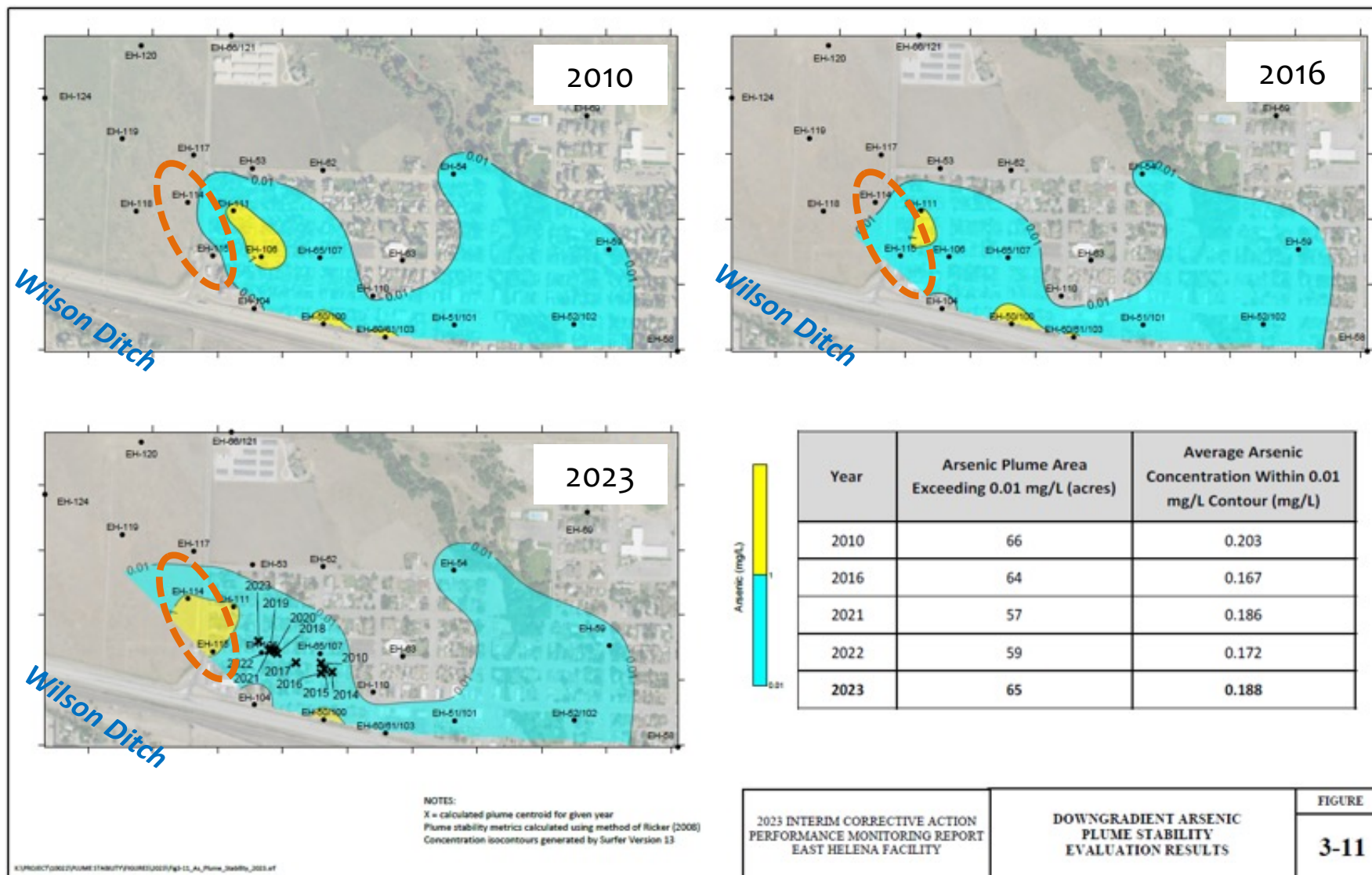


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# Exhibit 10-9

## EH-114 and EH-115



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## Chapter 11

### Mike Horse/Upper Blackfoot Mining Complex Water Treatment Plant Optimization

[Section 1.a.v of Reappointment Framework: Complete UBMC WTP optimization upgrades]  
[Section 1.a.vi of the Reappointment Framework: Complete a refined estimate for the scope and costs of future O&M for the UBMC WTP]

#### I. Introduction to Mike Horse Water Treatment Plant Optimization

In October 2020, pursuant to the September 30, 2020 Agreement Between the United States and the State of Montana (see [Attachment 11-1](#)), the Custodial Trust transferred \$3,751,025 from the East Helena Cleanup Account to a subaccount within the Mike Horse Cleanup Account (MH Subaccount). Thereafter, the Custodial Trust utilized funds from the MH Subaccount to implement the MDEQ-approved plan to implement optimization of the Mike Horse/Upper Blackfoot Mining Complex (UBMC) Water Treatment Plant (WTP) to improve Operation and Maintenance (O&M) of the WTP. Optimization and WTP commissioning were fully implemented by December 2023.

Prior to optimization, WTP operations were labor-intensive and costly due to frequent plugging of the Ceramic Microfiltration System (CMS) and manual processing of sludge from the settling tanks. Additionally, average WTP design flow rates of 63 gpm (and WTP peak design flow rates of 130 gpm) were strained in years with high spring runoff and major weather events.<sup>1</sup> The goals of WTP optimization were to: (i) reduce O&M costs; (ii) increase automation of the WTP to allow for increased remote control; (iii) simplify WTP operations by using more conventional, proven treatment technologies; and (iv) increase capacity of the WTP to better respond to runoff and weather events.

#### II. Optimization Implementation

Main features of the UBMC, including the WTP location, are shown on [Exhibit 11-1](#). WTP optimization consisted of the following major components.

- A 27,000-gallon clarifier and sludge thickener system were installed to settle solids from the neutralized mine water prior to filtering. An automated polymer feed system was also installed to help coagulate metals in the mine water while the clarifier provides residence time for the metals to settle. An automated sludge handling system then transfers the settled sludge directly to the sludge filter press, eliminating the previous manual sludge pumping stage. A new 25-foot by 25-foot building addition was constructed to house the clarifier and sludge thickener equipment and systems. (See [Exhibits 11-2 and 11-3](#).)
- The CMFs (and associated cleaning and neutralization systems) were removed and replaced with self-cleaning, multi-media (sand) filters and cartridge filters for polishing. (See [Exhibit 11-4](#).)

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<sup>1</sup> In July 2017, a 5.8-magnitude earthquake with its epicenter close to Lincoln resulted in the highest flows of adit and seep water requiring treatment the WTP.



- New feed pumps and six (6) new duplex pump skids (to allow remote changeover of pumps in the event of a pump failure) were installed. (See [Exhibit 11-5](#).)
- New and re-routed piping and new instrumentation controls (to support remote and automated operation of the WTP) were installed.

Following design and competitive bidding, all major equipment was ordered by February 2021. However, due to supply chain issues associated with the pandemic, there was a 10-month delay in equipment delivery to the site. The clarifier and new building housing the clarifier were constructed by July 2022. After all remaining equipment was delivered in August 2022, the WTP was shut down from September 26 to December 14, 2022. During the shutdown, (i) the CMFs and associated tanks were removed; (ii) piping, electrical equipment, and infrastructure were demolished; and (iii) multi-media sand and cartridge filters, pumps, and other new equipment and systems were installed. The WTP was brought online in December 2022. By December 2023, the optimized WTP was commissioned and fully operational. From December 2022 through July 2024, the WTP has processed 39,364,788 gallons. (For a detailed summary of optimization work performed at the UBMC site, see [Attachment 11-2](#).)

### **III. Other Cost-Savings and Safety Measures**

In addition to WTP optimization, the Custodial Trust implemented additional cost-saving measures, including: (i) seasonal shutdown of the WTP from mid-December to March (by mothballing plant), which has reduced labor and utility costs; (ii) training two new operators, which allowed the prior operator to retire and reduced labor rates by \$40 per hour; and (iii) proactively managing water levels in the adit, which has supported seasonal shutdown. In addition to the planned WTP upgrades, the Custodial Trust installed a sprinkler system for wildfire protection, and stabilized aging valves and plumbing in the Mike Horse Adit. (See [Exhibit 11-6](#).)

### **IV. O&M Cost Savings and Long-Term Forecast**

Year-to-date O&M cost savings have met or exceeded projected savings of ±\$190,000/year. An updated long-term O&M forecast is included here as in [Table 11-1](#). Based on reduced O&M costs, the Custodial Trust projects that Mike Horse cleanup account funds are sufficient to support continued WTP O&M until 2031, which is two years longer than previously projected<sup>2</sup> (when the Custodial Trust projected that the Mike Horse cleanup account funds would be depleted by 2029).

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<sup>2</sup> In 2020, the Custodial Trust projected that the Mike Horse Cleanup Account funds would be depleted by 2029.



# Exhibit 11-1

## Upper Blackfoot Mining Complex

### Mike Horse Mine



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## Exhibit 11-2 Pad for Clarifier Building

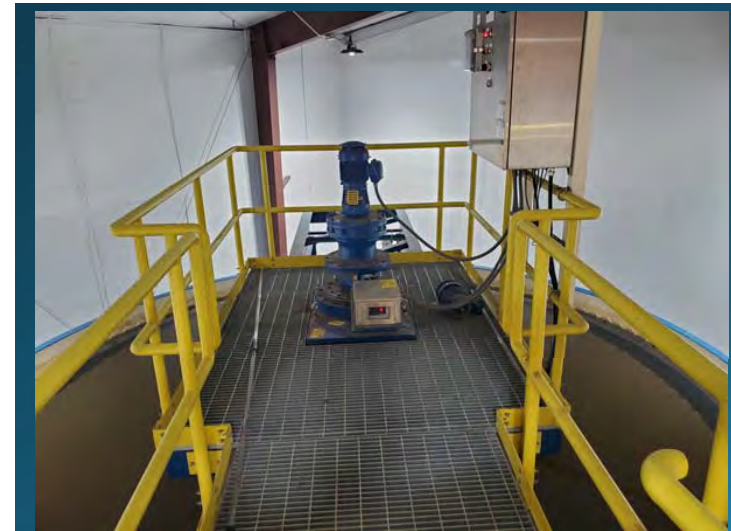


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# Exhibit 11-3

## Clarifier and Sludge Thickener



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# Exhibit 11-4

## Multimedia (Sand) Filtration System



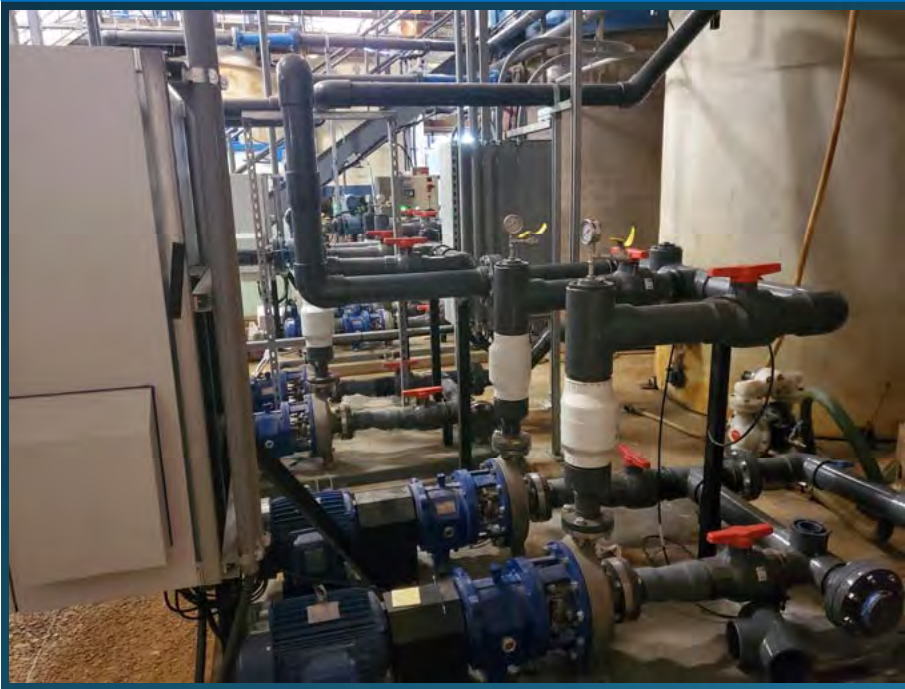
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# Exhibit 11-5

## Duplex Pump Skids

Clarifier Feed, MMF Feed and  
Backwash Pump Skids



Sludge Recycle and  
Filter Press Feed Pump Skids



- ✓ Allow for Remote pump changeout
- ✓ Handle increased WTP capacity of 190 to 225 gpm



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# Exhibit 11- 6

## Other Projects



Adit Valve Replacement



Fire Sprinkler System



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



**Agreement Between the United States and State of Montana  
Regarding the Montana Environmental Custodial Trust**

Whereas, the United States, acting through the United States Department of Justice, on behalf of the Environmental Protection Agency, the Department of Agriculture Forest Service, and the Department of Interior Fish and Wildlife Service, the State of Montana acting through the Montana Department of Environmental Quality and the Montana Department of Justice are parties to the Consent Decree and Settlement Agreement Regarding the Montana Sites entered by the United States Bankruptcy Court for the Southern District of Texas on March 13, 2009 in In re Asarco LLC, No. 05-21207 (Bankr. S.D. Tex.) (Docket No. 10539) (the "Consent Decree");

Whereas, the Consent Decree established the Montana Environmental Custodial Trust for four Asarco sites in Montana whose purpose was, inter alia, to provide funding for the cleanup of the Asarco Montana sites;

Whereas, EPA is the lead beneficiary for the East Helena Designated Property of the Montana Environmental Custodial Trust;

Whereas, the State of Montana is the lead beneficiary for the Mike Horse/Upper Blackfoot Designated Property of the Montana Environmental Custodial Trust;

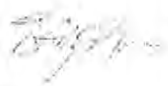
Whereas, Section 6.r of the Consent Decree provides that "USDOJ and the State . . . may jointly agree to transfer a portion of the funds remaining in a [cleanup account] to [another cleanup account] under [the] Settlement Agreement if USDOJ and the State determine that the [cleanup account] would, after such a transfer, maintain sufficient funding for future Environmental Actions . . . including necessary funding for operation and maintenance of Environmental Actions";

Whereas, pursuant to Section 6.r of the Consent Decree, the United States and the State of Montana hereby agree as follows:

1. After a transfer of \$3,751,025 from the East Helena Cleanup Account there would be sufficient remaining funding in the East Helena Cleanup Account for future Environmental Actions including funding for operation and maintenance of Environmental Actions.



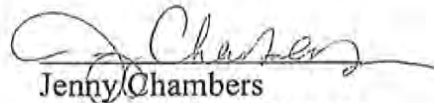
2. \$3,751,025 may be transferred from the East Helena Cleanup Account and placed into a segregated subaccount of the Mike Horse/Upper Blackfoot Cleanup account ("subaccount funds") to fund water treatment Environmental Action approved by the State as generally described in the State's April 23, 2020 letter to USDOJ attached hereto as well as any oversight costs of the State for such work.
3. The Montana Environmental Custodial Trust may submit budget requests for use of subaccount funds when it submits its budget requests for the Mike Horse/Upper Blackfoot Cleanup account.
4. The State of Montana, as lead beneficiary for the Mike Horse/Upper Blackfoot Designated Property, will approve otherwise appropriate budget requests submitted by the trustee for the trustee to implement Mike Horse water treatment plant optimization and ensuing operation and maintenance using subaccount funds through a term of four years following this transfer of funds; and
5. If at any time before completion of this term of four years, new circumstances or developments arise, the United States and the State of Montana will discuss and seek to reach agreement on any request by the State for an agreement to permit the use of remaining subaccount funds for State-lead performance of water treatment Environmental Actions under otherwise appropriate budget requests. Examples of new circumstances or developments include, but are not limited to, a demonstration of increased cost-effectiveness and savings of State-lead operation and maintenance of the water treatment plant or operational emergencies requiring State-lead intervention and case-by-case evaluations of specific scope and/or smaller work tasks that arise in the normal course of work better facilitated by the State.



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Harley Harris  
Date: 2020.09.16  
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Harley Harris  
Supervising Assistant Attorney  
General  
Montana Department of Justice  
Natural Resource Damage Program





Jenny Chambers  
Division Administrator  
Montana Department of  
Environmental Quality

THOMAS MARIANI

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MARIANI  
Date: 2020.09.30 17:06:44 -04'00'

Thomas A. Mariani, Jr.  
Chief  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice

ALAN TENENBAUM

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Date: 2020.09.30 18:42:22 -04'00'

Alan S. Tenenbaum  
National Bankruptcy Coordinator  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice





**Hydrometrics, Inc.**  
consulting scientists and engineers

**M E M O R A N D U M**

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DATE: August 15, 2024

TO: Jen Roberts/Cindy Brooks, Montana Environmental Trust Group,  
LLC

FROM: Jodi Bingham, Hydrometrics, Inc.

SUBJECT: UBMC Water Treatment Plant Long-Term Modification Status Summary

This document summarizes the work completed for the water treatment plant (WTP) upgrades project at the Upper Blackfoot Mining Complex (UBMC) near Lincoln, Montana. Project construction commenced in September 2022 and was substantially complete in December 2022. Project construction included modifications to the existing WTP tanks, pumps, piping, instrumentation, and controls, and addition of new treatment system components. In general the work consisted of the removal of the ceramic microfilter (CMF) and its associated cleaning and neutralization systems, installation of new automated polymer makedown and injection system, the installation of a new clarifier/sludge thickener and building addition, installation of a new multimedia filter (MMF) and polishing cartridge filter, the installation of new feed pumps as well as six new duplex pump skids with associated controls, rerouting the process water through the new clarifier and filters as well as MMF backwash waste, and the installation of a new pH Control Loop. WTP demolition and modified layout drawings are attached.

**DEMOLITION**

Demolition in the existing WTP building (attached Figure 1) included removal of the following:

- the Feed Pumps and associated basket strainers;
- the CMF skid and piping;
- the CMF Clean-in-Place (CIP) system;
- the CMF CIP Neutralization (CIPN) system;
- the hydrochloric acid tote, secondary containment, and associated vent piping;
- both sludge stabilization tanks;
- three sludge handling pumps;
- the Mix Tank platform stairs; and
- the Sludge Settling Tank platform stairs.

All salvageable items including valves, instrumentation, and controls were removed from the skids and placed in storage for future use. The remaining materials were, or will be, recycled or taken to the landfill.



### **FEED PUMPS**

The Feed Pumps as well as the feed and discharge piping were replaced to accommodate the new 180-gpm plant design feed rate. The piping was replaced with new 4-inch Sch. 80 PVC piping and cleanouts were added at regular intervals to facilitate pipe cleaning. The new Feed Pumps were installed in place of the original feed pumps as shown on the attached Figure 2 with the existing VFDs, air actuated valves, and Rosemount magnetic flowmeter retained for pump control. The new pumps are 3-hp Truflo 3x4-7 MTR stainless steel centrifugal pumps.



### **MIX TANK 1**

Mix Tank 1 (previously designated Neutralization Tank 1) was modified to accommodate the new treatment process. Caustic and sodium sulfide are added in this tank to promote metals precipitation, consistent with previous operations. However, a new 1.5-inch inlet was added into the top of the tank to accommodate recycled Mudwell waste and a new 2-inch inlet was added into the top of tank to accommodate the addition of recycled clarifier sludge to enhance metals removal. Treated water overflows from this tank into the next tank via an 8-inch gravity overflow pipe. After initial operation of the modified WTP, it was noted that flow was backing up in this tank at the increased WTP flow capacity due to a valve located in the overflow pipe. The valve was removed, and the pipe replaced with straight length of pipe to increase flow between the two tanks.

### **MIX TANK 2**

Mix Tank 2 (previously designated Neutralization Tank 2) was also modified to accommodate the new treatment process. The Operator still has the option to add additional caustic and potassium permanganate to this tank to facilitate metals precipitation, although potassium permanganate is no longer routinely required. A blind flange was placed in the outlet pipe which previously gravity drained to the former Concentration Tank (converted to use as the MMF feed tank). Instead, a new 4-inch



bulkhead fitting, isolation valve, and Sch. 80 PVC pipe was installed near the bottom of the tank and connected to the new Clarifier Feed Pumps (see attached Figure 2). An Endress+Hauser FMR50 level transducer was installed in the top of the tank and is used as part of the controls for the Clarifier Feed Pumps and tank mixer.

The Clarifier Feed Pumps supply water from Mix Tank 2 to the Clarifier center well. These pumps were supplied as a duplex skid package with local control panel including VFDs and these specific components:

- Two 5-hp Truflo 3x4-7 MTR stainless steel centrifugal pumps;
- 4-inch common suction header;
- 3-inch common discharge header;
- Isolation and check valves;
- Rosemount magnetic flowmeter with transmitter; and
- IFM Effector pressure transmitter.



A 4-inch Sch. 80 PVC line was installed to transport water from the Clarifier Feed Pumps to the clarifier center well.

### **POLYMER SYSTEM**

Polymer is added to the clarifier feed water to facilitate solids settling. A Pol-E-Duc dry polymer makedown system and 18-gph simplex metering skid were supplied by ProFlow, Inc. of New Haven, Connecticut and were installed to the west of Mix Tank 1 as shown on the attached Figure 2. The makedown system includes the following components:

- Charge pump assembly with centrifugal pump rated to 35 gpm at 100-feet of head and 1-inch solenoid valve;



- Volumetric dry polymer screw feeder with  $\frac{3}{4}$  hp motor rated to 12 lbs/min;
- 5.5 cubic foot stainless steel dry polymer hopper with low level sensor;
- Heated Pol-E-Duc vacuum dry polymer transfer unit with polymer sensor;
- Pol-E-Duc eductor mounted on top of the polymer tank and connected to the transfer unit with 1/2-inch hose; and
- Local control and electrical panel.



Plant water is supplied to the makedown system via a new 2-inch Sch. 80 PVC distribution line. The polymer is mixed and stored in a new 1,000-gallon polyethylene tank located west of the polymer skids. A 1.5-hp Cleavland tank mixer was mounted in the top of the tank on a custom steel frame. An Endress+Hauser FMR20 level transducer was installed in the top of the tank as part of the controls for the polymer makedown system.

A 2-inch Sch. 80 PVC pipe connects a bulkhead fitting located at the bottom of the polymer tank to the inlet of the polymer metering skid. The major components of the polymer metering skid include a 2,000-mL calibration column, a Grundfos DDA 120-7 metering pump, and local control and electrical panel. A 3/4-inch diameter by 2-inch injection quill was installed in the Clarifier Feed line near the polymer system and a 1-inch Sch. 80 PVC line was installed to connect the polymer metering pump outlet to the injection quill.

### **NEW BUILDING**

A new metal building was installed by Northside Welding and Fabrication of Helena to house the new clarifier to allow for cold weather operation of the WTP. Based on site investigations (test pits, geotechnical testing) and recommendations by the building supplier, a foundation design was then completed by engineer Derek Brown, a subcontractor for Northside Welding. The site was graded and



prepared prior to the foundation installation. After the clarifier tank was installed on the new foundation, the building was erected around the tank. Building specifics include:

- 30-foot by 30-foot interior dimensions;
- 30-foot eave height;
- 3-foot stem wall to provide secondary containment;
- Insulation;
- Building sump in the northwest corner with two 4-inch HDPE drainpipes to gravity drain to Cell 7;
- Double man doors on the east wall;
- Dutch man door with covered manway to the existing WTP building on the south wall;
- New access through the north wall of the existing WTP building (the Feed Tank aeration blower was shifted two feet to the east to accommodate the new access);
- Plant water connection;
- Gas heater with thermostat and ventilation system;
- Under tank lighting system; and
- Overhead lighting system.



### **CLARIFIER**

A new 20-foot diameter clarifier/thickener with 12-foot sidewalls was supplied by WesTech Engineering, LLC of Layton, Utah and installed in a new clarifier building located on the north side of the existing WTP building as shown on the attached Figure 2. This tank allows for an extended settling time to remove the majority of solids from the treated water prior to being processed through the MMF. A 1-hp sludge rake in the bottom of the clarifier thickens the sludge and allows the sludge to be processed through the filter press directly from the clarifier. Spiral stairs mounted on the perimeter of the tank allow for access to the tank platform as well as the rake motor and controls. The tank is elevated four feet above the floor to allow easy access to plumbing under the tank.





Water is fed into the Clarifier center well via the 4-inch Sch. 80 PVC line from the Clarifier Feed Pumps. Additionally, a 3-inch Sch. 80 PVC line was installed to connect the Filter Press filtrate line to the clarifier center well. Isolation valves installed on this line allow the Operator to discharge the Filter Press filtrate to either the WTP sump or the clarifier.

A 6-inch Sch. 80 PVC line was installed to gravity drain clarified overflow from the clarifier to the MMF Feed Tank. Inside the main WTP building, a 4-inch Sch. 80 PVC bypass line with control valve was connected to an existing 4-inch Cell 7 feed line to allow the Operator to bypass the MMF Feed Tank and instead send the clarifier overflow to Cell 7 if needed. The 4-inch drain located at the bottom of the clarifier cone was fitted with a 4-inch shutoff valve and a 4-inch pressure hose was supplied to allow the Operator to drain the clarifier to the building sump which gravity drains to Cell 7.

Two Sludge Recycle Pumps were installed beneath the clarifier as shown on the attached Figure 2 to pump 10-25 gpm (based on the plant feed rate) of clarifier sludge back to Mix Tank 1 to enhance metals precipitation. Two 4-inch sludge nozzles beneath the clarifier were outfitted with isolation valves and cleanouts and were connected to the Sludge Recycle Pump inlets via 4-inch rigid-wall pressure hoses with camlock fittings. A 2-inch Sch. 80 PVC line was installed from the Sludge Recycle Pumps skid outlet to the top of Mix Tank 1. These pumps were supplied as a duplex skid package with local control panel including VFDs and contain these specific components:

- Two 3-hp Netzsch NM038BY01L stainless steel positive displacement pumps;
- 2-inch suction headers;
- 2-inch common discharge header;
- Isolation and check valves;
- Rosemount magnetic flowmeter with transmitter; and
- IFM Effector pressure transmitter.





In the southwest corner of the new clarifier building, two Filter Press Feed Pumps were installed as shown on the attached Figure 2 to pump sludge from the bottom of the clarifier to the filter press where the sludge is dewatered to produce solid filter cake that can be landfilled. The remaining two 4-inch sludge nozzles beneath the clarifier are outfitted with isolation valves and cleanouts and connected to the Filter Press Feed Pump inlets via 4-inch rigid-wall pressure hoses with camlock fittings. A 3-inch Sch. 80 PVC line was installed from the Filter Press Feed Pumps skid outlet to the Filter Press inlet. A 3-inch KoFlo PVC static mixer with injection port was installed in the Filter Press feed line to allow for the addition of sodium sulfide to chemically stabilize the sludge so it passes TCLP (toxicity characteristic leaching procedure) testing. The Filter Press Feed pumps were supplied as a duplex skid package with local control panel including VFDs and contain these specific components:

- Two 7.5-hp ABEL EM50 electric operated diaphragm pumps;
- 2-inch suction headers;
- 2-inch common discharge header;
- Isolation and check valves;
- Rosemount magnetic flowmeter with transmitter;
- IFM Effector pressure transmitter; and
- Blacoh CT4040B Pulsation dampener.

Upon initial operation of the filter press feed pump skid, excessive shaking of the skid occurred which is not unusual for positive displacement pumps. To reduce the shaking, a pulsation dampener was installed on the skid outlet, and 90 degree ells replaced with 45 degree ells and an expansion joint added.





### **MMF FEED TANK**

The MMF Feed Tank (previously designated the Concentration Tank) was modified to accommodate the new treatment process. The tank was thoroughly cleaned to remove all solids from the tank. A new IXOM GridBee AP500 air-operated submersible mixer connected to the plant air system was suspended approximately 2-feet off the bottom of the tank to prevent solids from settling in the tank. A new 4-inch bulkhead fitting, isolation valve, and Sch. 80 PVC pipe were installed near the bottom of the tank and connected to the MMF Feed Pumps. A new Endress+Hauser FMR50 level transducer was installed in the top of the tank to control the MMF Feed Pumps.

To the west of the MMF Feed Tank (attached Figure 2), two MMF Feed Pumps were installed to supply water from the MMF Feed Tank to the MMF for filtering. A 4-inch Sch. 80 PVC line was installed to connect the MMF Feed Pump skid outlet to the MMF skid inlet. A 4-inch KoFlo PVC static mixer with injection port was installed in the discharge line to allow for the future addition of polymer to this line should it be deemed necessary to aid in solids removal. The MMF Feed Pumps were supplied as a duplex skid package with local control panel including VFDs and contain these specific components:

- Two 10-hp Truflo 2x3-10 MTR stainless steel centrifugal pumps;
- 3-inch common suction header;
- 2-inch common discharge header;
- Isolation and check valves; and
- Rosemount magnetic flowmeter with transmitter.





### **MULTIMEDIA FILTER**

A multimedia filter (MMF) skid was installed to the west of the MMF Feed Pumps as shown on the attached Figure 2 to remove additional solids from the clarified water. The MMF was supplied by Wigen Water Technologies of Chaska, Minnesota and consists of three 72-inch high, 54-inch diameter pressure tanks designed to operate in parallel. The tanks are filled with three layers of media including gravel, silica sand, and anthracite. A local control panel allows for control of the MMF using air-actuated butterfly valves. Water is pumped into the MMF from the MFF Feed Tank using the MMF Feed Pumps described previously. Rosemount magnetic flow meters monitor flow through the MMF as well as backwash flow. Hach 5300sc turbidimeters monitor the MMF feed and effluent turbidity and alarm the operator with high turbidity measurements. A 4-inch Sch. 80 PVC line was installed to connect the MMF outlet to the Cartridge Filter. An additional 4-inch Sch. 80 PVC line was installed to connect the MMF off-spec (high turbidity) effluent to an existing Cell 5 diversion line. A 4-inch Sch. 80 PVC drain line was installed to direct water from the MMF drain line to the WTP floor drain located to the north of the MMF skid.

IFM pressure transmitters installed on the MMF skid measure the pressure drop across the influent and effluent headers. When the differential pressure exceeds a specified value, a backwash of the system is automatically triggered, and the tanks are backwashed sequentially while leaving the remaining two tanks in operation. Backwash water is supplied from the pH Adjust Tank using the MMF Backwash Pumps and the backwash waste is sent to the Mudwells. Air for the air scour step of the MFF backwash cycle is supplied by two 5-hp, 32-scfm blowers located to the west of the MMF as shown on the attached Figure 2. Two-inch steel pipe was installed and insulated to connect the blower outlet line to the MMF air inlet line.





The MMF Backwash Pumps were installed to the west of the pH Adjust Tank as shown on the attached Figure 2, and feed backwash water to the MMF from the pH Adjust Tank at a rate of 190 gpm. Four-inch Sch. 80 PVC lines connect the lower pH Adjust Tank bulkhead fitting to the MMF Backwash Pump skid inlet, the MMF Backwash Pump skid outlet to the backwash inlet pipe on the MMF skid, and the MMF Backwash outlet pipe on the MMF skid to the top of Mudwell 1. The MMF Backwash Pumps were supplied as a duplex skid package with local control panel including VFDs and contain these specific components:

- Two 10-hp Truflo 2x3-10 MTR stainless steel centrifugal pumps;
- 3-inch common suction header;
- 2-inch common discharge header;
- Isolation and check valves; and
- IFM Effector pressure transmitter.





### **CARTRIDGE FILTER**

A Champion model CPHF01-0803-806-285CS-2-PB 8-inch carbon steel horizontal cartridge filter vessel was installed to the north of the MMF as shown on the attached Figure 2 to provide a polishing step to remove additional solids from the MMF effluent if needed to meet discharge limits. The filter vessel holds one 6-inch by 80-inch high-flow filter element, either 1-micron or 0.5 micron rated. Two IFM Effector pressure transmitters were installed on the inlet and outlet of the pressure vessel to monitor the pressure drop across the filter and alarm the Operator when the filter element needs to be replaced. A 4-inch Sch. 80 PVC bypass line with isolation valves allows the Operator to bypass the cartridge filter when sample results indicate additional filtration is not necessary. A 4-inch Sch. 80 PVC line connects the Cartridge Filter outlet to the inlet of the pH Adjust Tank.



### **PH CONTROL LOOP**

Sulfuric acid is added to the treated water before discharge to maintain a discharge pH of 6.0 to 9.0 as required by the facility MPDES permit. The sulfuric acid tank (or tote) and metering pump were relocated to west of the cartridge filter as shown on the attached Figure 2 and new secondary containment installed. A 3/4"-inch by 2-inch Kynar injection quill was installed into the pH Adjust Tank feed line just downstream of the cartridge filter. A 3/4-inch ball valve was installed on the injection quill and 1/4-inch tubing (placed inside two-inch schedule 80 PVC for secondary containment) installed to connect the ball valve to the outlet of the sulfuric acid pump. Additional 1/4-inch tubing was installed to connect the sulfuric acid tank outlet to the sulfuric acid pump. A 4-inch PVC KoFlo static mixer was installed in the pH Adjust Tank feed line downgradient of the acid injection port and a 1/2-inch sample port was installed downgradient of the static mixer.

A pH probe and analyzer removed from the CMF skid were installed in the pH Adjust Tank feed line downstream of the cartridge filter and a 2-inch standpipe was installed to hold the pH probe. Half-inch tubing was installed to connect the pH Adjust Tank feed line sample port to the pH probe standpipe with overflow water directed through 1/2 inch tubing to the WTP floor drain. A control loop adjusts the speed of the sulfuric acid pump to maintain the pH set point at the pH analyzer.





### **PH ADJUST TANK**

The pH Adjust Tank was modified to accommodate the new WTP process. A new 4-inch bulkhead fitting and valve were installed near the bottom of the tank to allow water to be gravity fed to the MMF Backwash Pumps as described previously. A new Endress+Hauser FMR50 level transducer was installed in the top of the tank and is used as part of the controls for the MMF Backwash Pumps and tank mixer. In addition, sulfuric acid is no longer added into the top of the pH Adjust Tank and this tubing and secondary containment piping were removed.

### **MUDWELLS**

The two Mudwells (previously designated as Sludge Settling Tanks A and B) were modified to store backwash water from the MMF skid. A new Endress+Hauser FMR50 level transducer was installed in the top of each Mudwell as part of the controls for the Mudwell Pumps.

The Mudwell Pump skid, installed to the south of Mudwell 1, transfers the MMF backwash water from the Mudwells back to Mix Tank 1 for reprocessing at a 10-15 gpm rate. A 1.5-inch Sch. 80 PVC valve and pipe connects the Mudwell drain nozzles to the Mudwell Pump skid inlet. An additional 1.5-inch Sch. 80 PVC line connects the pump skid outlet to the top of Mix Tank 1. These pumps were supplied as a duplex skid package with local control panel including VFDs and contain these specific components:

- Two 10-hp Truflo 1x1.5-6 STR stainless steel centrifugal pumps;
- 2-inch common suction header;
- 2-inch common discharge header;
- Isolation and check valves;
- Rosemount magnetic flowmeter with transmitter; and
- IFM Effector pressure transmitter.





### **STAIRS**

Four sets of stairs were designed, fabricated and installed by Northside Welding. These stairs were designed to meet OSHA standards, which some former stairways did not, and to make access to the various platforms safer and easier for the Operator. The stairs were installed in the following locations:

- From the WTP floor to the Mix Tank platform;
- From the WTP floor to the new Clarifier Building access manway;
- From the mezzanine stairs to the Mudwell platform; and
- From the Filter Press platform to the Mix Tank platform.





### **ELECTRICAL**

After installation of the equipment and instrumentation, Eagle Electric of Helena was commissioned with making all electrical connections and upgrades. Many of the existing electrical breakers in the electrical room were reused and new ones were added as needed to meet code. All connections were made per the manufacturer's recommendations and in accordance with current electrical codes. Tesla Engineering of Vaughn, Mt provided electrical engineering services.

### **PROGRAMMING AND CONTROLS**


After all electrical connections were completed to the new equipment, instrumentation, and controls, MET personnel completed all communications wiring necessary for connection to the existing PLC system. A new relay box was added on the northeast corner of the MMF Feed Pump Skid to facilitate communications. A new controls program was added to the facility computers and all new programming was completed to operate the WTP including operator inputs, control loops, interlocks, alarms, and automatic shutdown sequences.


In closing, as of the end of 2023, all long-term WTP modifications outlined in the March 10, 2021 Evaluation of Alternatives for Optimization of the Upper Blackfoot Mining Complex Water Treatment System Addendum prepared by Hydrometrics have been completed and commissioned. Some minor modifications or enhancements of the long-term modifications described above have or will be implemented in 2024, including the filter press feed pump skid modifications described above, and final connection of the sodium sulfide feed pump to the filter press feed line for automated chemical stabilization of the filter press cake.

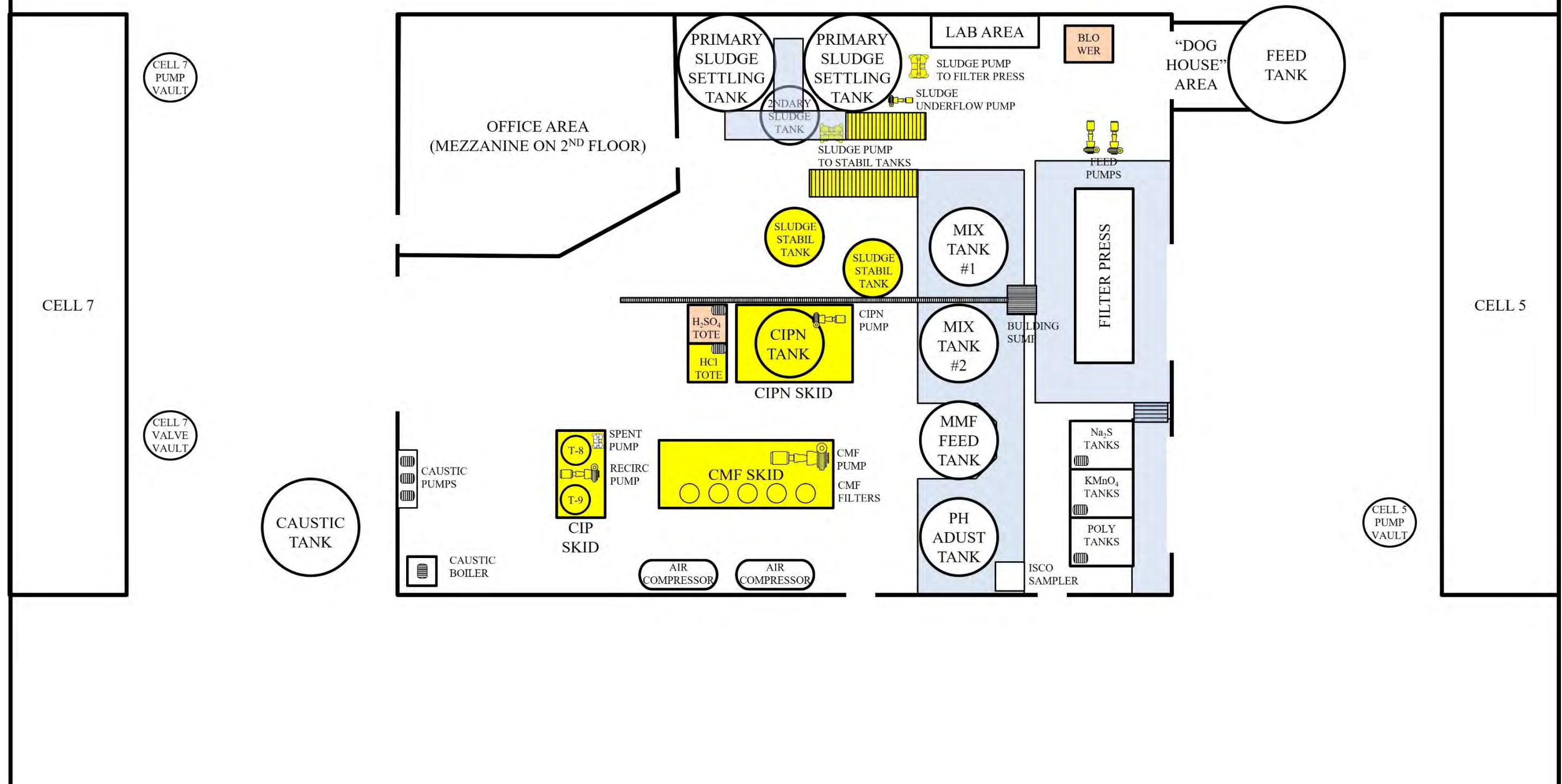


## **FIGURES**

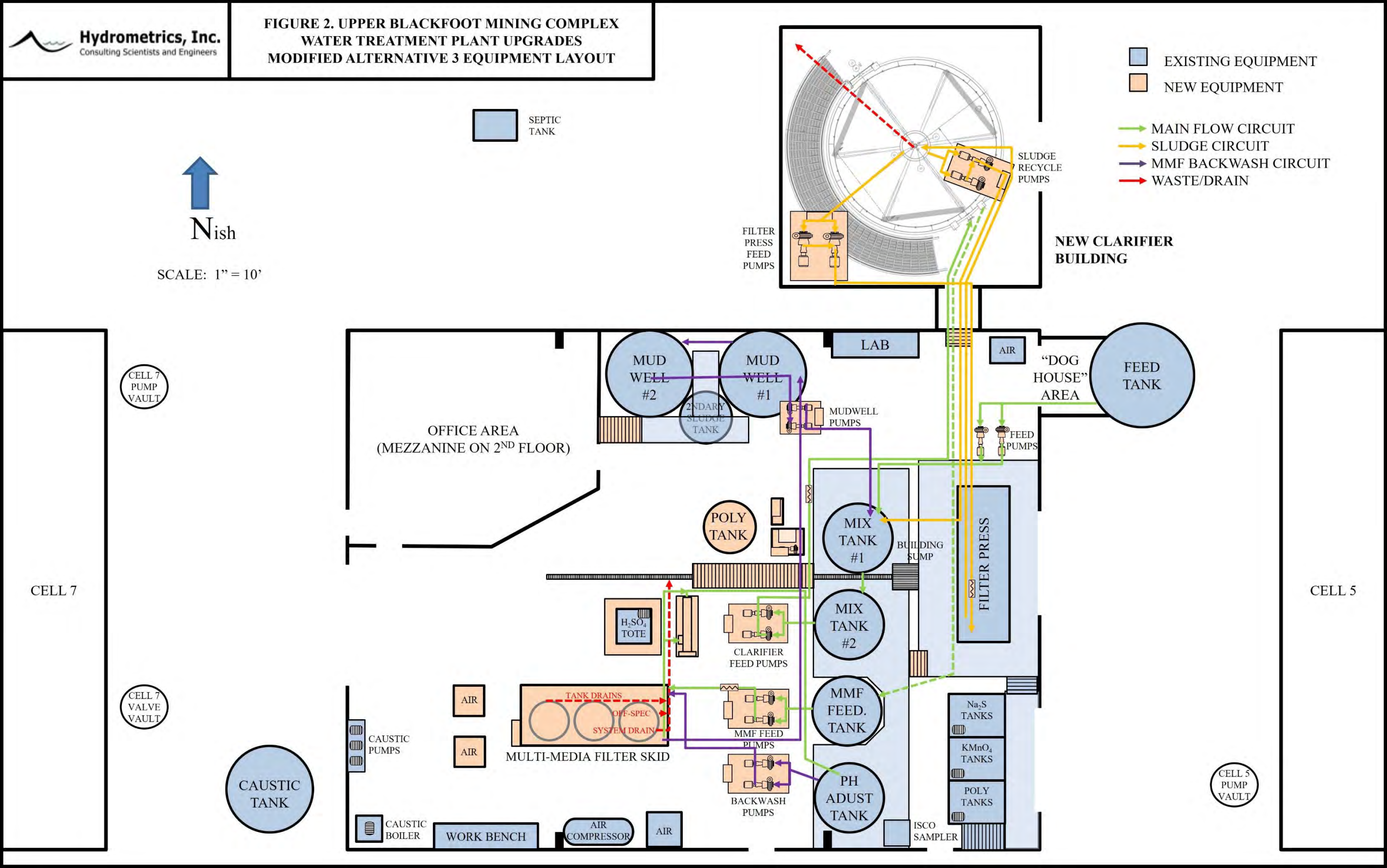


 EQUIPMENT TO BE RELOCATED

 EQUIPMENT TO BE REMOVED









**Table 11-1**  
**UBMC/Mike Horse Clean-up Account**  
**10-Year Forecast**  
**Prepared by the Montana Environmental Custodial Trust**  
**Updated August 2024**

UBMC/Mike Horse WTP 10-Year Forecast					
O&M Year	Year	Annual O&M Cost	Inflation (2.65%)	Interest (2.5%)	End of year balance
	12/31/2023 <sup>1</sup>	\$0		\$0	\$3,145,758
1	2024	-\$396,850	\$0	\$58,521	\$2,807,429
2	2025	-\$376,850	-\$20,238	\$51,690	\$2,462,031
3	2026	-\$376,850	-\$30,761	\$44,589	\$2,099,009
4	2027	-\$376,850	-\$41,562	\$37,128	\$1,717,725
5	2028	-\$376,850	-\$52,650	\$29,295	\$1,317,520
6	2029	-\$376,850	-\$64,032	\$21,077	\$897,715
7	2030	-\$376,850	-\$75,715	\$12,459	\$457,609
8	2031	-\$376,850	-\$87,708	\$3,428	-\$3,521
9	2032	-\$376,850	-\$100,019	-\$6,032	-\$486,422
10	2033	-\$376,850	-\$112,656	-\$15,935	-\$991,863
	Total	-\$3,788,500	-\$585,341	\$236,220	

<sup>1</sup>The Balance at 12/31/2023 includes \$1,255,421 from the Mike Horse Cleanup Account and \$1,890,337 from the Mike Horse Segregated Subaccount.

**Disclaimer: Forecast does not include costs for responding to a catastrophic event and/or act of God (earthquake, fire, massive flooding, etc.)**



## Chapter 12

### Land Interchange and Reciprocating Easements

[Section 1.a.vi of the Reappointment Framework: Complete UBMC land interchange including transfer of Cell 7 area which is currently National Forest System (NFS) land to METG ownership, and transfer of portions of lands in Paymaster Gulch currently owned by METG to United States Forest Service (USFS).]

[Section 1.a.vii of the Reappointment Framework: Establish reciprocating easements for USFS and METG access along Meadow Creek Road. METG will grant easements to USFS for portions of Meadow Creek Road which cross METG lands; USFS will grant easements to METG for portions of Meadow Creek Road which cross NFS lands.]

#### I. Background

In August 2016, the USFS issued a Special Use Permit (SUP) to MDEQ to allow a portion of Cell 7—a lined impoundment required to intermittently store untreated and partially treated adit and seep water during certain WTP operating conditions—to be constructed on USFS property (see [Exhibit 12-1](#)).<sup>1</sup> The SUP was viewed as a temporary measure to allow construction of Cell 7 to proceed with the understanding that the ±34-acre USFS-owned parcel (USFS Parcel) would be swapped for a similarly sized Custodial Trust-owned parcel (Custodial Trust Parcel). Both parcels are generally depicted on [Exhibit 12-2](#). As part of the land swap process (Land Interchange), the USFS also proposed that the Custodial Trust and the USFS grant reciprocal easements across portions of Custodial Trust- and USFS-owned land containing public and private roads (Reciprocal Easements) to ensure continued access to the parcels involved in the Land Interchange. The ±27,000 linear feet (LF) of Reciprocal Easement locations are also depicted on [Exhibit 12-2](#).<sup>2</sup> Since the SUP was issued to MDEQ, the Custodial Trust has been cooperating with the USFS on the Land Interchange and the Reciprocal Easements.

#### II. Progress to Date

In July 2020, the Custodial Trust, MDEQ, and the USFS entered into a non-binding expression of interest (EOI) to facilitate the Land Interchange and Reciprocal Easements that would ultimately require written approval of the United States (the USFS in consultation with the USDOJ) and the State of Montana of specific transaction terms and conditions. (See [Exhibit 12-3](#).) Under the EOI, the Custodial Trust and the USFS agreed that certain costs would be either shared or paid individually.<sup>3</sup>

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<sup>1</sup> Prior to construction of Cell 7, the Custodial Trust used Cell 5 (also depicted on [Exhibit 13-1](#)) to intermittently store untreated/partially treated acid mine water. However, the restoration plan for the Blackfoot River required locating new floodplain on Cell 5, which was eliminated and replaced with Cell 7.

<sup>2</sup> The Reciprocal Easement to be granted by the USFS to the Custodial Trust covers ±25 acres. The Reciprocal Easement to be granted by the Custodial Trust to the USFS covers ±12 acres.

<sup>3</sup> Under the EOI, the Custodial Trust and the USFS agreed that (i) all closing and escrow-related costs would be shared equally, (ii) the Custodial Trust would fund all survey-related and due diligence costs, and (iii) the USFS would fund the environmental site assessments (ESAs) and specialist reports associated with the parcels to be exchanged.



Between 2021 and 2024, Pioneer Technical Services, Inc. (Pioneer) completed all survey work for the Land Interchange parcels and Reciprocal Easements and prepared a boundary line relocation certificate of survey required to create the Custodial Trust-owned parcel as a separate tract of record. In 2024, the USFS substantially completed the ESA and prepared specialist reports for NEPA purposes related to the subject property. In 2024, the Custodial Trust and the USFS reached conceptual agreement on the terms of the Reciprocal Easements and the Custodial Trust-to-USFS deed, which remain subject to further review by the United States Department of Agriculture's Office of the General Counsel (OGC) and the USFS's Regional Office (RO) as described below.

In June 2024, the USFS informed the Custodial Trust that the USFS would require a CERCLA § 120(h) covenant deferral because the land to be conveyed by the USFS to the Custodial Trust has remote waste piles.<sup>4</sup> The covenant deferral process requires a deferral notice to be published in the local newspaper, a 30-day public comment period, and the Governor's concurrence.

Additionally, because the USFS is obligated to disclose unrecorded third-party uses on its property, the Custodial Trust also contacted NorthWestern Energy (NWE) and Lincoln Telephone Company (LT) about granting them easements for an existing underground electric power line and fiberoptic line, respectively, on the USFS Parcel. The Custodial Trust was able to secure an easement with LT. (See [Exhibit 12-2](#) for the approximate location of the LT easement.) However, NWE refused to agree to the Custodial Trust's standard easement terms.<sup>5</sup> The Custodial Trust does not intend to further pursue the NWE easement.

### III. Next Steps

As of August 30, 2024, the following actions must be taken:

- The OGC must approve (i) the CERCLA § 120(h) covenant deferral, (ii) the USFS-Custodial Trust deed, and (iii) the Reciprocal Easements. After securing OGC's approval, the USFS will forward the USFS-Custodial Trust deed to the Custodial Trust for review and publish the deferral notice in the local newspaper with a 30-day public comment period. Thereafter, the covenant deferral will be sent to the Governor (or Governor's designee) for approval. The USFS currently expects this process to be completed in October 2024.
- The certificate of survey creating the Custodial Trust parcel as a separate tract of record and all other closing, survey, due diligence, and title documents (Title Packages) must be approved by the USFS RO and OGC. The USFS estimates that securing RO review and approval will take three months. Therefore, if the Title Packages are submitted to the RO by November 2024, the USFS expects RO review to be completed by the end of January 2025, at which point the RO will forward the Title Packages to the OGC for review.

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<sup>4</sup> CERCLA § 120(h) imposes certain requirements on transfers of federally owned properties where hazardous substance activity impacted non-federal parties, including by allowing such transfers prior to remedy completion via deferral, until after the conveyance, of a covenant that "all remedial action necessary . . . has been taken."

<sup>5</sup> Notably, NWE agreed to such standard terms in connection with the 2017 amendment and restatement of a 1918 East Helena power line easement.



- The USFS expects the OGC review and approval process to take up to two months. Therefore, if the RO-approved Title Packages are submitted for OGC review and approval by the end of January 2025, the Title Packages will not be approved by the OGC until around the end of March 2025.
- Following receipt of OGC approval, pursuant to ¶ 10 of the Settlement Agreement, the Custodial Trust will seek USFS and State approval of the Land Interchange. Based on the above timeline, the Custodial Trust expects the closing to occur around April 2025.

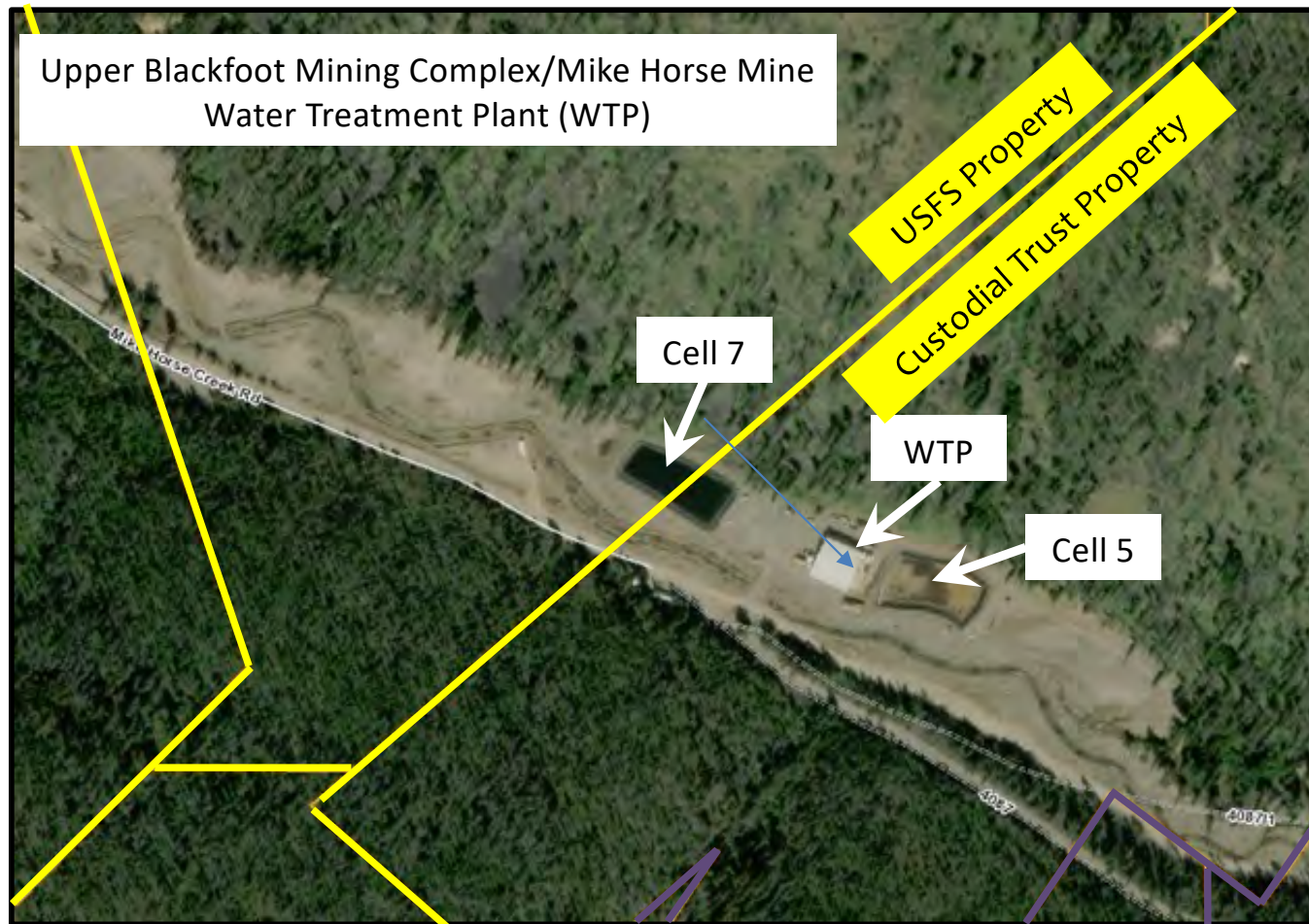
#### **IV. Expenditures to Date**

To date, the Custodial Trust has spent \$68,193 (including a reimbursement of \$21,265 to MT DEQ for survey costs) supporting the Land Interchange and Reciprocal Easements process.



# Exhibit 12-1

## Mike Horse Water Treatment Plant

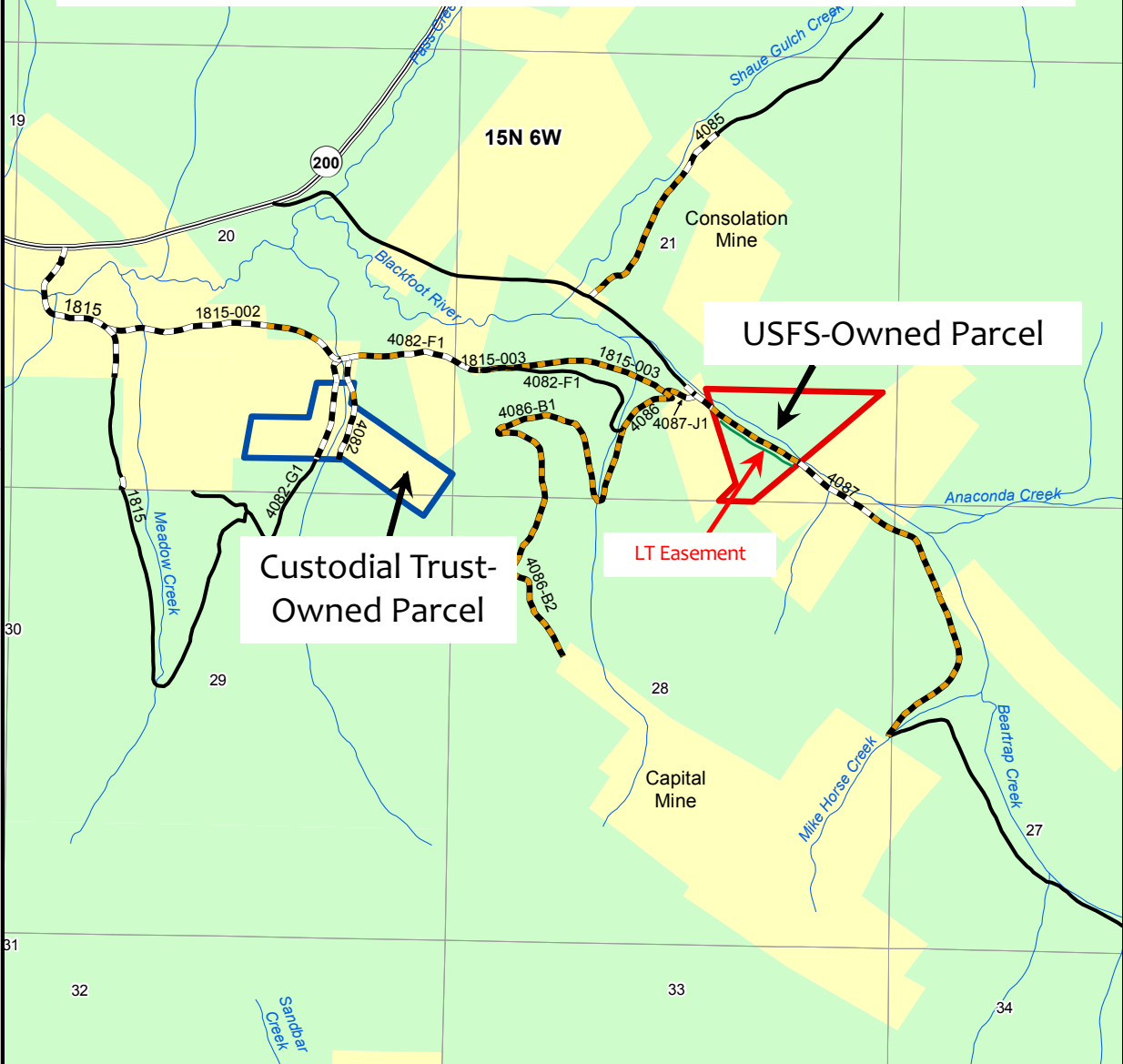


Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust



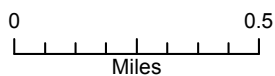
# Exhibit 12-2

## USFS-Custodial Trust Land Interchange Parcels and Reciprocal Easements



### USFS-Custodial Trust Land Interchange Parcels and Reciprocal Easements

Helena - Lewis and Clark National Forest



- National Forest System Land
- Non-National Forest System Land
- Roads
- FLPMA Easement (USDA FS to Trust)
- Road Easement (Trust to USDA FS)

07/07/2020



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**Between**  
**Montana Environmental Trust Group, LLC, Trustee**  
**of the Montana Environmental Custodial Trust,**  
**Montana Department of Environmental Quality,**  
**and**  
**The U.S. Forest Service**  
**Helena-Lewis & Clark National Forest**

THIS SMALL TRACTS ACT CONVEYANCE EXPRESSION OF INTENT (the EOI) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2020, by and between the Montana Environmental Trust Group, LLC, a Montana limited liability company, not individually but solely in its representative capacity as Trustee of the Montana Environmental Custodial Trust, hereinafter referred to as the Applicant; the Montana Department of Environmental Quality, holder of special use authorization permit HLC04, hereinafter referred to as the MDEQ; and the United States of America, acting by and through the U.S. Department of Agriculture, Forest Service, hereinafter referred to as the Forest Service.

WHEREAS, the Applicant was established in connection with a 2009 Consent Decree and Settlement Agreement Regarding the Montana Sites entered in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division (Case No. 05-21207) and the associated Environmental Custodial Trust Agreement (collectively, the ASARCO Bankruptcy Agreements). The United States and the State of Montana are the beneficiaries (Beneficiaries) of the Applicant under the ASARCO Bankruptcy Agreements;

WHEREAS, since 2011, at the request of the MDEQ and pursuant to the terms of the ASARCO Bankruptcy Agreements, the Applicant has been operating a water treatment plant (the WTP) at the Upper Blackfoot Mining Complex/Mike Horse Mine (the Site) for the treatment of historic acid mining drainage;

WHEREAS, the MDEQ accepted special use authorization permit HLC04 executed on August 2, 2016 (Special Use Permit) to construct, operate and maintain a settling pond impoundment and fence at the Site, and committed to acquire the lands encumbered by the WTP by a letter dated July 21, 2016 to the Forest Service;

WHEREAS, as an agency of the State of Montana, which is one of the Applicant's Beneficiaries, and as the lead agency with respect to the Site pursuant to the ASARCO Bankruptcy Agreements, the MDEQ has requested the Applicant to engage in this transaction with the Forest Service, subject to the Beneficiaries' issuance of formal written approval to the transaction as required by the ASARCO Bankruptcy Agreements;

WHEREAS, on October 30, 2019, subject to the prior approval of the United States and the State of Montana, at the request of the Forest Service and the MDEQ, the Applicant submitted to the Forest Service a request for an Interchange of National Forest System lands under the Small



- 
1. The Forest Service intends to convey to the Applicant the following-described land containing 34.25 acres, more or less, as depicted on the map attached hereto as Exhibit B (the Federal Land), in exchange for the Non-Federal Land (as hereinafter defined), contingent on the Forest Service's satisfaction with its due diligence:

Principal Meridian, Montana  
T. 15 N., R. 6 W., Sec. 21, lot 11.

2. Subject to the prior written approval of the Beneficiaries, the terms and conditions of the ASARCO Bankruptcy Agreements, and the Applicant's satisfaction with its due diligence, the Applicant intends to convey to the Forest Service the following-described land, as depicted on the map attached hereto as Exhibit C (the Non-Federal Land), in exchange for the Federal Land:

The Jumbo Lode and a portion of the Paymaster and Black  
Diamond Lodes, all "part" of Mineral Survey No. 9287, situated in  
Secs. 20 and 29 of T. 15 N., R. 6 W., P.M.M., Lewis and Clark  
County, Montana.

**A. Subject to the prior written approval of the Beneficiaries, the terms and conditions of the ASARCO Bankruptcy Agreements, and one or more funding budgets approved as required by the ASARCO Bankruptcy Agreements, the Applicant shall:**

1. Have the legal authority to enter into this EOI.



## MIKE HORSE MINE INTERCHANGE

2. Grant the Forest Service and its representatives and contractors (individually, a Contractor; collectively, the Contractors) permission to enter upon the Non-Federal Land to perform surveys, specialist reports and other administrative (i.e., non-intrusive) work as reasonably necessary to complete the conveyance, provided that the Forest Service shall require its Contractors to execute and deliver to the Applicant the Applicant's Standard Release and Waiver, a copy of which is attached hereto as Exhibit D.1 (the Entry Form), and a Certificate of Insurance that complies with the insurance coverage requirements and provisions set forth in Exhibit D.2 hereto, prior to entry onto the Non-Federal Land.
3. Share the costs of due diligence for the interchange of lands. Due diligence acquiring costs may include, but are not limited to: surveys, title matters, closing and escrow fees, and any other administrative items incidental to the conveyance. Specific due diligence costs identified to date include:
  - a. Contract (directly, through MDEQ or otherwise) and pay for a survey and plat of the Non-Federal Land proposed for conveyance to the Forest Service and, unless the Federal Land proposed for conveyance to the Applicant has already been surveyed, a survey of the Federal Land, and for a survey of associated road easements. Surveys must be reviewed and approved by the Forest Service. In the event that a boundary line adjustment (BLA) is required to establish the Non-Federal Land as a legally defined parcel that can be conveyed to the Forest Service, Applicant will pay all costs associated with the BLA.
  - b. Pay for one half (½) of the costs of recording, title commitment and title policy premiums, and all other closing and escrow related costs.
4. Acknowledge that the work and/or documents needed by the Forest Service for the Forest Service's consummation of the interchange must be performed or prepared in conformance with Federal standards for conveyance of Federal land and acquisition of private lands and that the Applicant's consummation must be performed and prepared in accordance with the ASARCO Bankruptcy Agreements.
5. Concur that the Forest Service will prepare at its sole cost a Statement of Approximate Equal Value (SOAEV). Provided that the SOAEV concludes that, based on certain physical and other attributes of the Federal Land and the Non-Federal Land, the properties are similar in nature and if an opinion of value was concluded they would be approximately equal, the SOAEV may be used for the lands to be interchanged. Subject to Beneficiary approval, the Applicant agrees that a formal appraisal report will not be prepared.
6. Execute a quitclaim deed conveying the Non-Federal Land to the United States of America (Forest Service), as more fully described in Section B.4 below, in its "as is, where is" condition and with all faults, and with no representations or warranties (express, implied or statutory) of any kind whatsoever. Environmental Conditions (RECs) or solid waste, physical hazard, or other non-scope issues identified during the



## MIKE HORSE MINE INTERCHANGE

Phase I ESA process will be addressed to the satisfaction of the Forest Service prior to deed execution. Unless the parties agree otherwise, cleanup requirements for RECs will be in conformance with MDEQ's March 2016 Record of Decisions.

7. Accept a quitclaim deed from the United States of America (Forest Service) to the Applicant for the Federal Land, as more fully described in Section B.3 below.
8. With respect to the Non-Federal Land, pay current year taxes and deposit into escrow sufficient funds to cover taxes not yet due or payable through the date of closing.

**B. The Forest Service shall:**

1. Perform all work in accordance with existing Federal and State standards.
2. Share the costs of due diligence for the interchange of lands. Due diligence acquiring costs may include, but are not limited to: SOAEV, title matters, specialists reports, ESAs, closing and escrow fees, and any other administrative items incidental to the conveyance. Specific due diligence costs identified to date include:
  - a. Request title commitment on the Non-Federal Lands, and work with the title company to clear any defects or encumbrances.
  - b. Prepare a SOAEV for the Federal Land and Non-Federal Land to be interchanged.
  - c. Contract and pay for a Phase I ESA on the Federal Land and Non-Federal Land. "Statements of Work" for the Phase I ESAs will be provided by the Forest Service, and the report will be reviewed and accepted by the Forest Service.
  - d. Prepare and pay for the Specialist Reports as required for both the Federal Land and Non-Federal Land; Wetlands, Flood Plain and Water Rights Report, Cultural, Federal Land Status Report, and an Inspection/Report of the Non-Federal Lands.
  - e. Remove boundary markers on the Federal Land and Non-Federal Land.
  - f. Pay for one half (½) of the costs of recording, title commitment and title policy premiums, and all other closing and escrow related costs.
3. Prepare and execute a quitclaim deed conveying the Federal Land to the Applicant, which deed shall not require the Applicant to indemnify, defend or hold harmless the Forest Service. The United States will provide a draft deed for Applicant to review.
4. Prepare a quitclaim deed from the Applicant to the United States of America (Forest Service) for the Non-Federal Land consistent with the provisions of Section A.6 above. The United States will provide a draft deed for Applicant to review.
5. Grant the Applicant permission to enter upon the Federal Land to perform such due diligence as the Applicant shall reasonably require. Applicant is granted permission by the Forest Supervisor by the signing of this EOI.



MIKE HORSE MINE INTERCHANGE

6. Upon recording of the deeds for the Federal Land and for the Non-Federal Land, terminate the Special Use Permit .

**C. Other terms and conditions:**

1. Closing Date. The Closing on the exchange of the Federal Land and the Non-Federal Land shall occur on a mutually acceptable date and time and at a mutually acceptable location to be agreed upon by the Parties in writing at least thirty (30) prior to such date. If the Closing has not occurred by December 31, 2022, this EOI, if not sooner terminated, shall automatically expire and be null and void.
2. Non-Binding. This EOI is non-binding and is not intended to create any enforceable legal obligations, including without limitation, any obligation to proceed with or consummate the contemplated transaction. Rather, it represents the Parties' intentions to endeavor to structure a mutually satisfactory interchange of lands subject to the availability of funds and the completion and acceptance of the due diligence requirements. Prior to the acceptance and recording of the deeds by the Parties on the closing date, no action taken shall create or establish any contractual or other obligations against the Applicant or the United States.
3. Modification. Modifications of this EOI may be made by the issuance of a written modification signed and dated by all Parties prior to any changes being performed.
4. Termination. Either party may terminate this EOI for any or no reason upon written notification to the other party. Each of the Parties will bear its own fees and costs incurred in connection with this EOI and the other party will not be liable for such fees or costs.
5. ASARCO Bankruptcy Agreements. This EOI is subject and subordinate to applicable terms and conditions of the ASARCO Bankruptcy Agreements, which among other things: (i) exculpate the Applicant of and from certain assertions of liability arising out of the ownership of the Non-Federal Land and adjacent land, and (ii) provide additional immunities and protections against personal liability. Nothing in this Agreement shall be interpreted as affecting or impairing in any way the exculpations, immunities and liability protections extended to the Applicant, its Trustee or any related person, representative or employee under the ASARCO Bankruptcy Agreements. In the event of any conflict or inconsistency between the terms of the ASARCO Bankruptcy Agreements and this EOI, the terms of the ASARCO Bankruptcy Agreements shall govern and control.
6. Approval of Beneficiaries. This EOI and the closing are subject to the prior approval of the Beneficiaries. In the event that the Beneficiaries do not approve, this EOI shall automatically become null and void and/or, with respect to the closing, terminate without recourse to the Parties hereto. The Applicant will provide the Forest Service with notice of the Beneficiaries' approvals or disapprovals.



**D. Principal Contacts:**

1. Individuals listed below are authorized to act in their respective areas for matters related to this EOI.

<b>Applicant</b>	<b>Applicant Other</b>
Name: Cynthia Brooks Title: Managing Principal Montana Environmental Trust Group, LLC Address: 11 Flagg Street, #1 City, State, Zip: Cambridge, MA 02138 Phone: 617-448-9762 Email: cb@g-etg.com	Name: Craig Kaufman Phone: 215-837-3702 Email: ck@g-etg.com  Name: Jennifer Roberts Phone: 406-457-2142 Email: jr@g-etg.com

<b>MDEQ</b>	<b>MDEQ Other</b>
Name: Jenny Chambers Title: Montana DEQ Administrator P.O. Box 200901 City, State, Zip: Helena, MT 59620 Phone: 406-444-6383 Email: JChambers@mt.gov	Name: Jessica Wilkerson Title: Legal Counsel  P.O. Box 200901 City, State, Zip: Helena, MT 59620 Phone: 406-444-6490 Email: Jessica.wilkerson@mt.gov

<b>Forest Service Program Contact</b>	<b>Forest Service Other</b>
Name: Gina Fleming Title: Program Manger Address: 1820 Meadowlark Lane City, State, Zip: Butte, MT 59701 Phone: 406-494-0219 office Cell: 406-498-3038 Email: gina.fleming@usda.gov	Bill Avey Forest Supervisor Helena-Lewis & Clark National Forest 2880 Skyway Drive Helena, MT 59602 Phone: 406-791-7720 Email: william.avey@usda.gov

IN WITNESS WHEREOF, the Parties hereto have executed this EOI by authorized individuals and it is effective upon the date of the last signature.

*[Signatures on following page]*



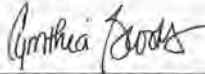
MIKE HORSE MINE INTERCHANGE

**Applicant:**

Montana Environmental Trust Group, LLC, not individually  
but solely in its representative capacity as Trustee of the  
Montana Environmental Custodial Trust  
By: Greenfield Environmental Trust Group, Inc., Member

7-8-2020

Date



Cynthia Brooks, President

7-8-2020

Date

Jenny Chambers

Digitally signed by Jenny  
Chambers  
Date: 2020.07.08 15:05:15 -06'00'

Jenny Chambers, Montana DEQ

WILLIAM AVEY

Digitally signed by WILLIAM  
AVEY  
Date: 2020.07.09 07:22:55 -06'00'

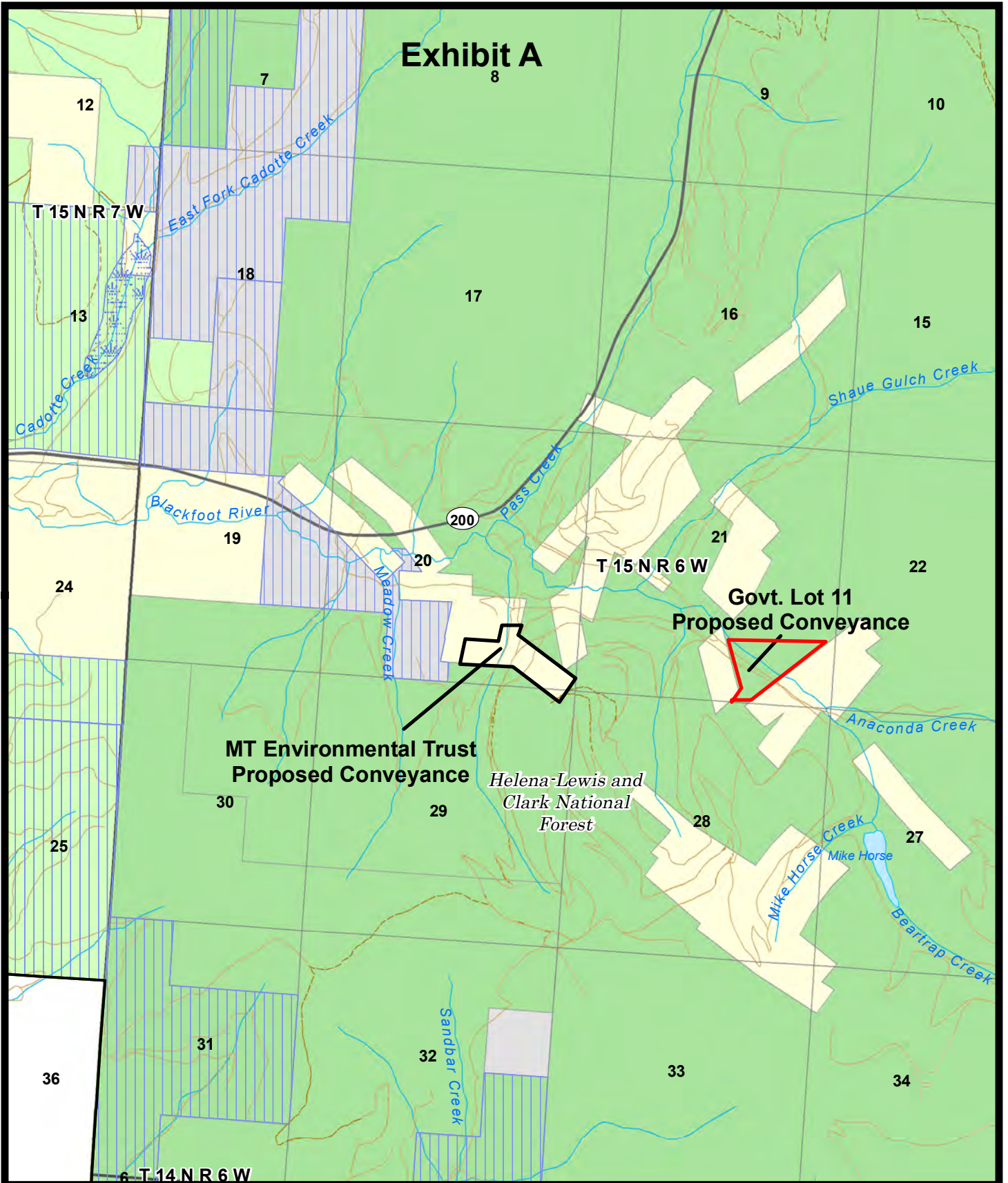
Date

William Avey, Helena-Lewis & Clark National Forest

**ENCLOSURES:**

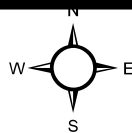
- Exhibit A - Map of Proposed Interchange
- Exhibit B - Map identifying the Federal Land
- Exhibit C - Map identifying the Non-Federal Land
- Exhibit D.1 - Entry Form
- Exhibit D.2 - Insurance Coverage Requirements and Provisions





# Mike Horse Mine Proposed Interchange

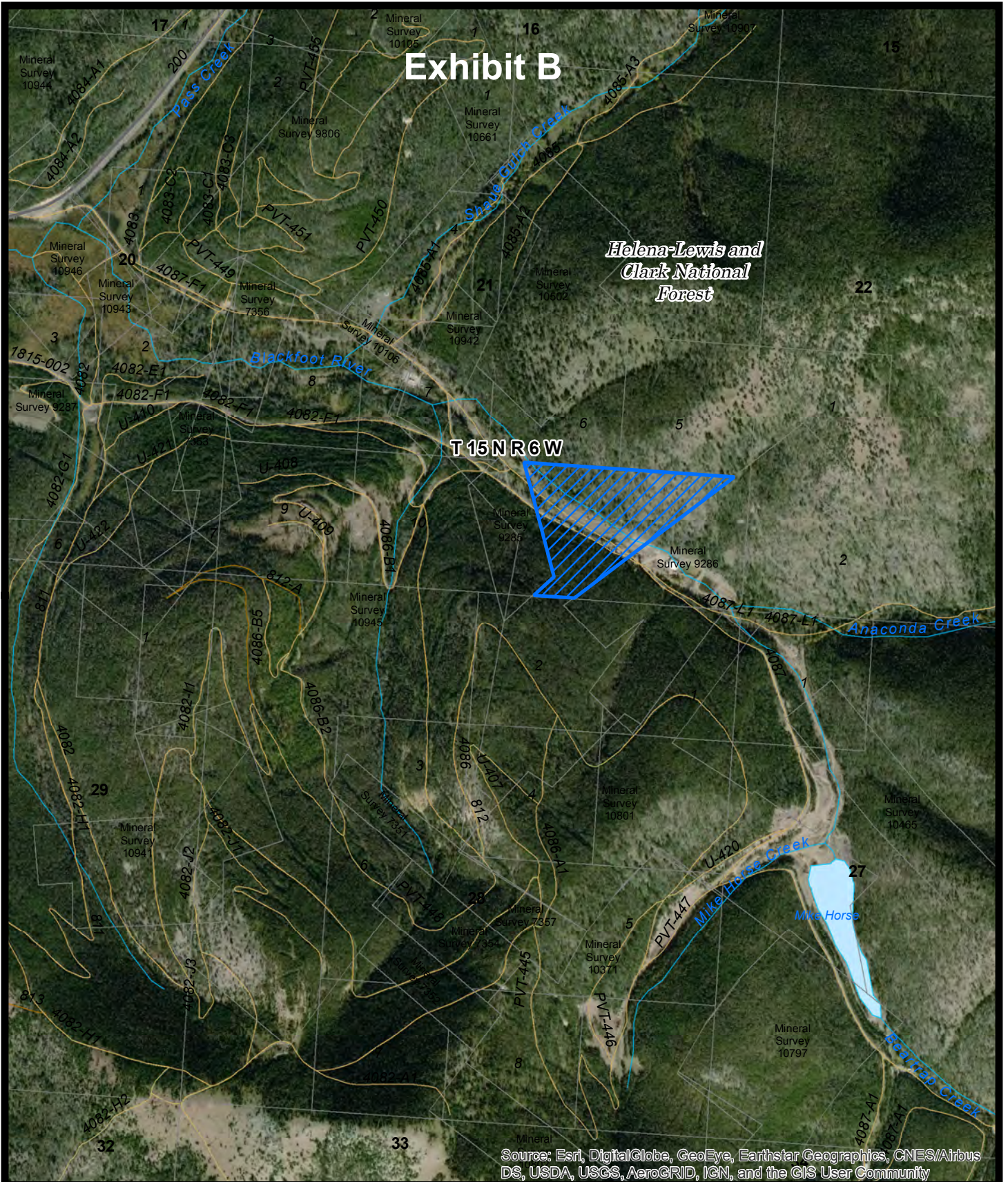
0 1.5 Miles



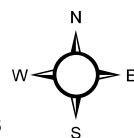
Legend		6/15/2020
Marked and Posted Boundary	Acquired	
Administrative Unit Boundary	Disposed	
Proclaimed Forest Boundary	Non-NFSL	
Ranger District Boundary	Reserved Public Domain	
Mineral Right	Unpartitioned Riparian Interest	
Developed Site		




# Exhibit B



# Mike Horse Mine STA Interchange Federal Land, Lot 11

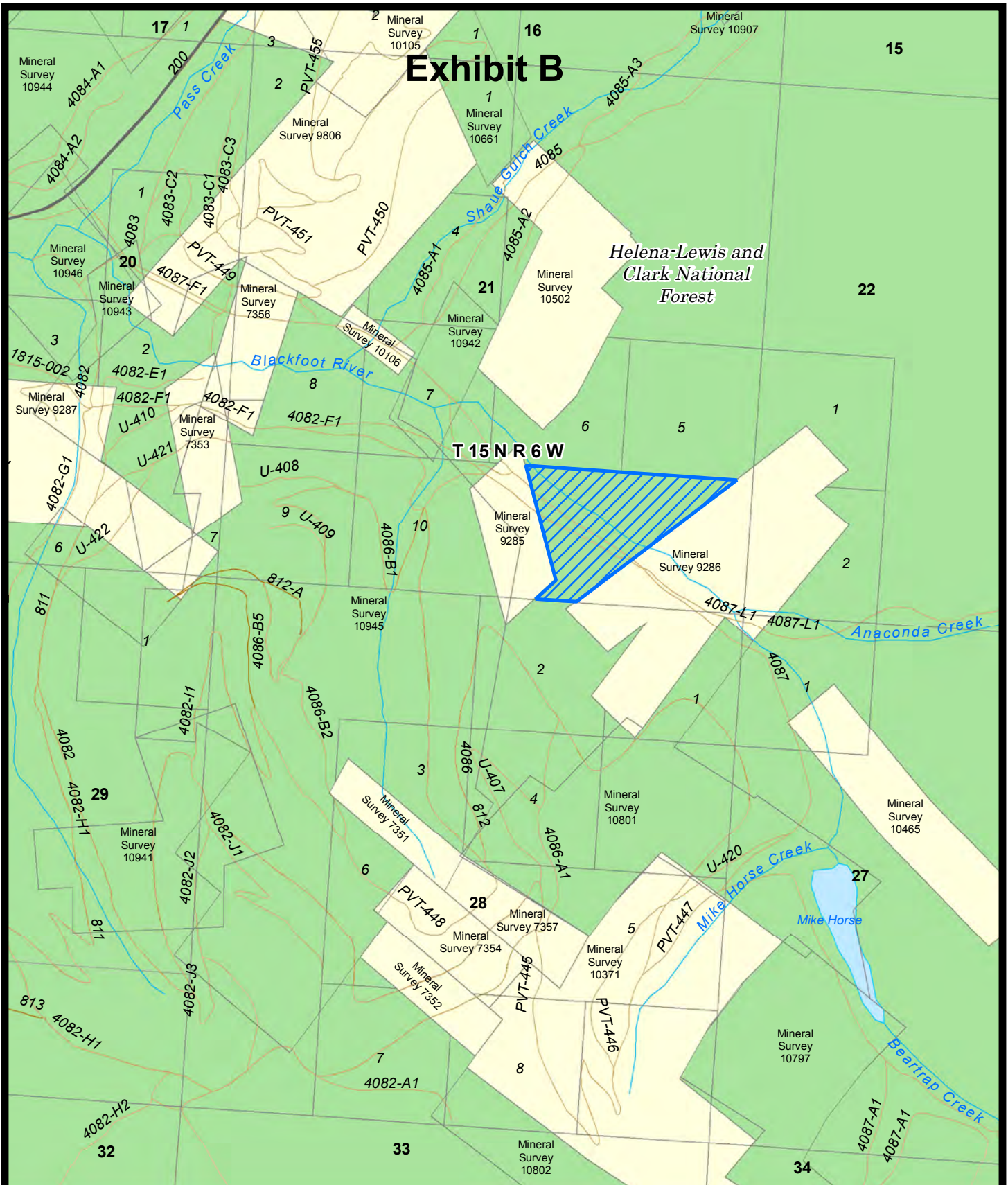


### Legend

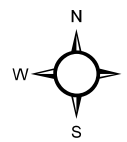
-  Lot 11
-  Existing Road Core (INFRA)
-  Trail
-  Rivers and Streams











## Exhibit B

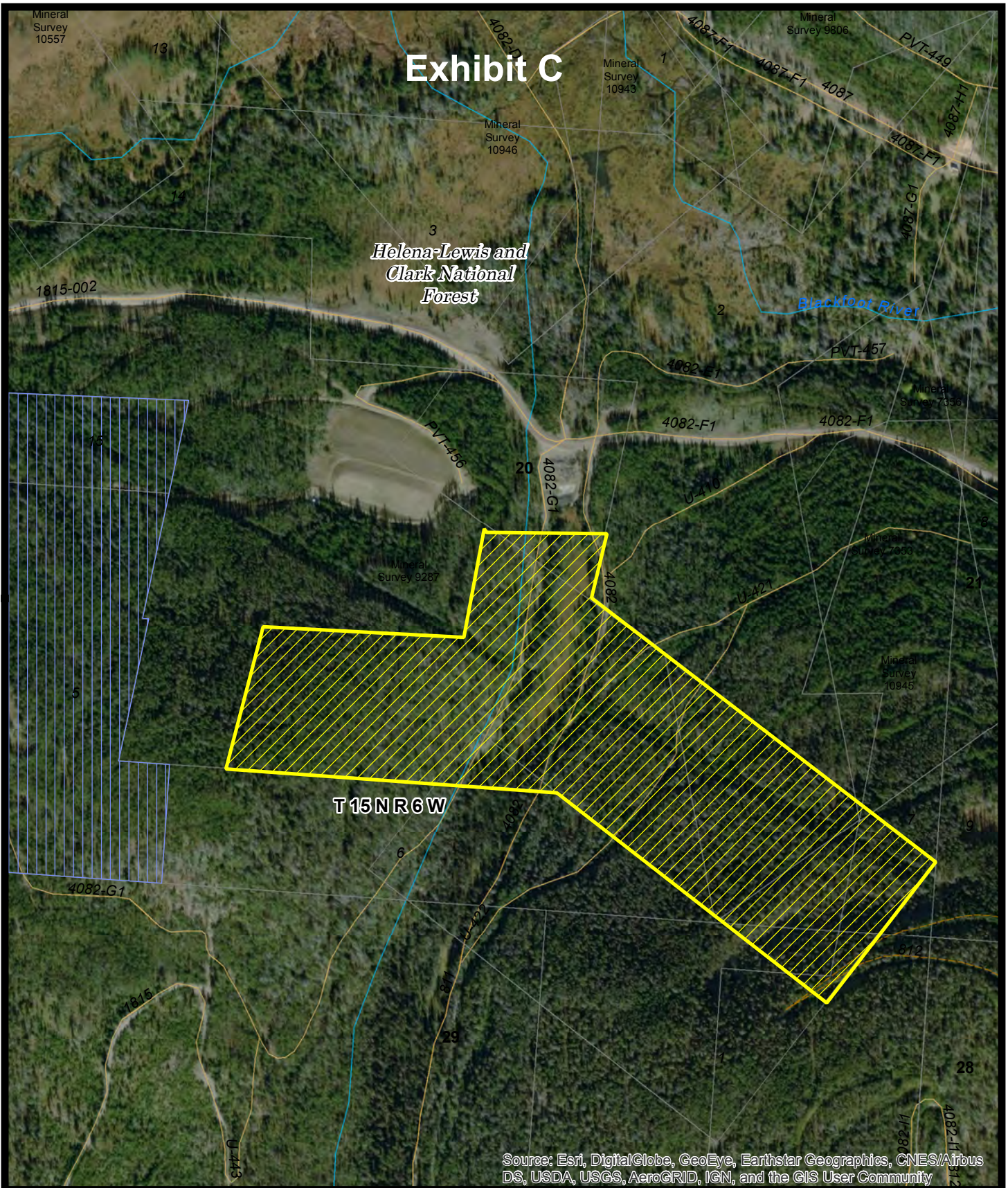


# Mike Horse Mine STA Interchange Federal Land, Lot 11



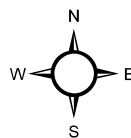
-  Lot 11
  Acquired
  Disposed
  Non-NFSL
  Reserved Public Domain
  Unpartitioned Riparian Interests
  Rivers and Streams
  Existing Road Core (INFRA)





# Mike Horse Mine STA Interchange Non-Federal Land, MS No. 9287

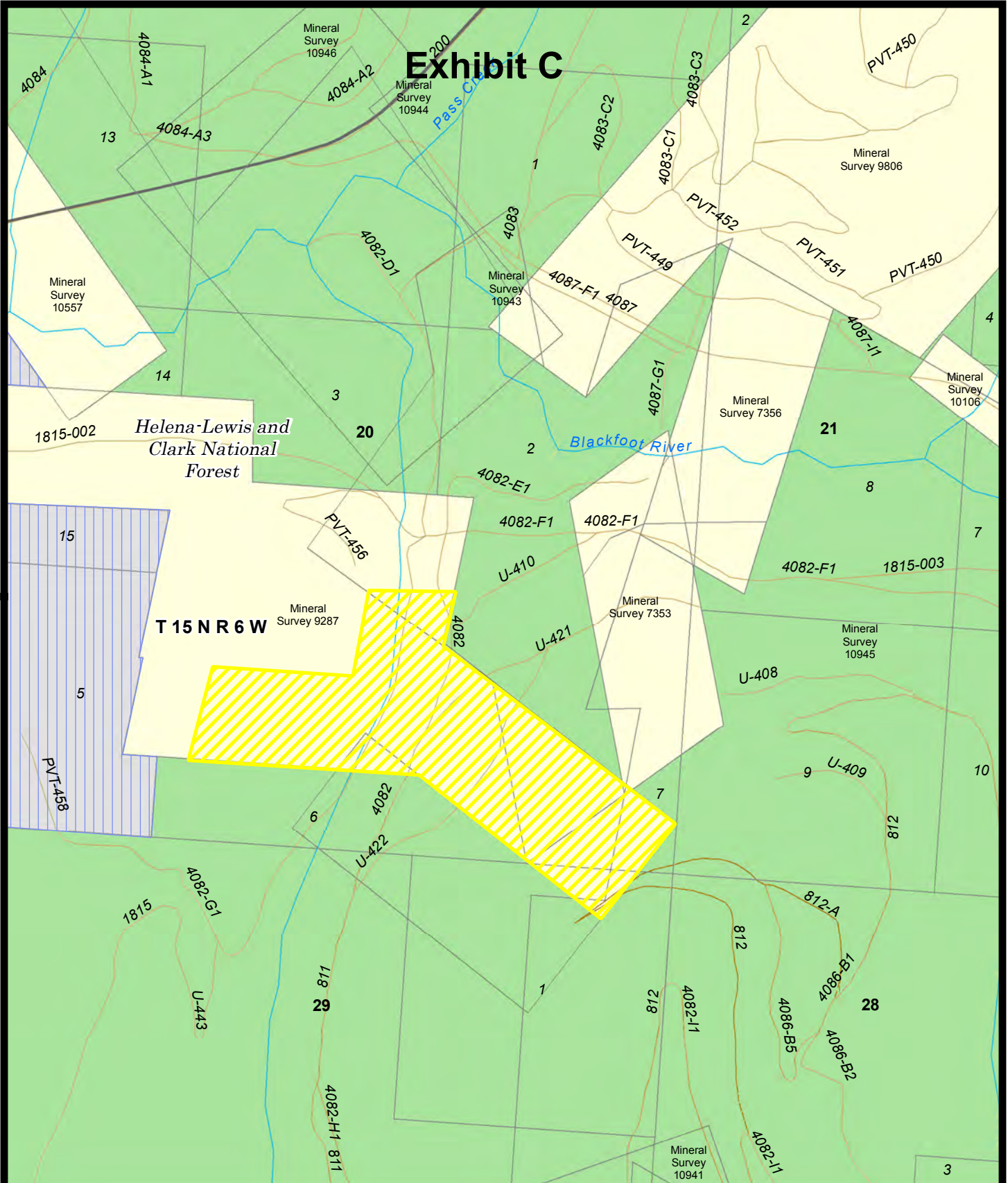
0 0.0425 0.085 0.17 Miles



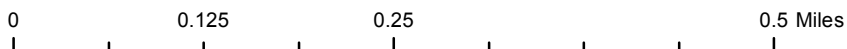
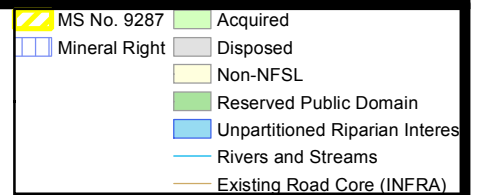
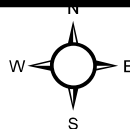
- MS No. 9287
- Mineral Right
- Rivers and Streams
- Existing Road Core (INFRA)



# Exhibit C



## Mike Horse Mine STA Interchange Non-Federal Land, MS No. 9287





**EXHIBIT D.1**  
**ENTRY FORM**

**RELEASE, WAIVER AND INDEMNITY**

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby RELEASES, WAIVES, DISCHARGES, FOREVER PROMISES AND COVENANTS NOT TO SUE, the Montana Environmental Custodial Trust (the "Custodial Trust"), Montana Environmental Trust Group, LLC (both in its individual capacity and in its representative capacity as Trustee of the Custodial Trust), Greenfield Environmental Trust Group, Inc. (and each of their respective officers, directors, shareholders, partners, employees, members, agents and representatives), the United States of America and the State of Montana (and their respective agencies and departments), and the respective officers, directors, shareholders, partners, employees, members, agents, representatives, successors, and assigns of each of them (hereinafter, collectively referred to as "RELEASEES") from and against any and all liabilities, claims, demands, actions and causes of action whatsoever arising out of or related to any loss, damage, or injury, including death, that may be sustained by the undersigned, or any of the property belonging to the undersigned, WHETHER CAUSED BY THE NEGLIGENCE OF THE RELEASEES or otherwise, while the undersigned is on or in any property (including, without limitation, vehicles, buildings and other improvements) owned or used by or for the benefit of the Custodial Trust (collectively, the "Property"), or while the undersigned is engaging in any activity or participating in any event on any portion of the Property.

The undersigned is fully aware that the Property may contain buildings, structures, vehicles and equipment, visible and latent defects, and hazardous waste and materials that may each present a serious risk of harm to the undersigned and others. The undersigned understands the unusual risks involved and hazards connected with the Property and activities related thereto or performed by the undersigned or others in connection therewith. The undersigned hereby elects to voluntarily perform said activities with full knowledge that said activities may be hazardous to the undersigned and the undersigned's property. THE UNDERSIGNED VOLUNTARILY ASSUMES FULL RESPONSIBILITY FOR ANY RISKS OF LOSS, PROPERTY DAMAGE OR PERSONAL INJURY, INCLUDING DEATH, that may be sustained by the undersigned, or any loss or damage of property owned by the undersigned, as a result of performing such activities and/or of being on or in the Property, WHETHER CAUSED BY THE NEGLIGENCE OF RELEASEES OR OTHERWISE.

The undersigned further hereby AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS the RELEASEES from and against any and all losses, liabilities, damages and costs, including court costs and reasonable attorneys' fees, that they may individually or collectively incur due to the undersigned's activities with respect to the Property, any person authorized to use all or some of the Property, the Custodial Trust, and/or any event on the Property, WHETHER CAUSED BY NEGLIGENCE OF RELEASEES, the undersigned's negligence, or otherwise. The undersigned understands and agrees that the undersigned will look solely to the insurance policy, if any, maintained by the undersigned (but not to RELEASEES or any policy maintained by them).

If this instrument is signed by an individual, it is my express intent that this Release, Waiver and Indemnity shall bind the members of my family and spouse, if I am alive, and my heirs, assigns and personal representative, if I am deceased, and shall be deemed as a RELEASE, WAIVER, DISCHARGE AND COVENANT NOT TO SUE of all and each of the above-named RELEASEES. The undersigned further agrees that this Release, Waiver and Indemnity shall be construed in accordance with the laws of the State of Montana and that the invalidity or unenforceability of any provision(s) of this Release, Waiver and Indemnity shall not affect the validity or enforceability of the other provisions hereof.

IN SIGNING THIS INSTRUMENT, THE UNDERSIGNED ACKNOWLEDGES AND REPRESENTS THAT the undersigned has read the foregoing Release, Waiver and Indemnity, understands it and signs it voluntarily as the undersigned's own free act and deed; no oral representations, statements, or inducements, apart from the foregoing written agreement, have been made; if an individual, I am at least eighteen (18) years of age and fully competent; and the undersigned executes this Release, Waiver and Indemnity for full, adequate and complete consideration, fully intending to be bound by same.

By: \_\_\_\_\_  
(Releasor's Signature)

Date: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
(Print Name)



**EXHIBIT D.2**  
**INSURANCE COVERAGE REQUIREMENTS AND PROVISIONS**

Each Contractor shall secure and maintain, at the applicable Contractor's sole cost and expense, the following policies of insurance: (i) commercial general liability insurance with per occurrence limits of \$1,000,000 and an aggregate of \$2,000,000; (ii) comprehensive automobile liability insurance with coverage of \$1,000,000 per person for bodily injury and death (\$2,000,000 aggregate) and \$2,000,000 aggregate property damage for each accident; and (iii) workers' compensation and employer's liability insurance in accordance with the provisions of the laws of the State of Montana. Such policies shall be issued by an insurer rated A or higher in Best's Insurance Manual or equivalent and qualified to do business in the State of Montana, shall name the Applicant, the United States of America and the State of Montana (and their respective agencies and departments) as additional insureds, and shall provide that the Applicant be given prior written notice of the termination or expiration of such policy or any material changes in coverage or terms under the policy. Prior to a Contractor's entry upon the Non-Federal Land as allowed herein, the Contractor shall deliver a copy of its insurance certificate to the Applicant evidencing that Contractor's insurance required hereunder is in full force and effect, in form and substance satisfactory to the Applicant.



## Chapter 13

### Black Pine Operating Permit and Site Security

[Section 1.a.xii of the Reappointment Framework: Continue permit maintenance and site security activities for the Black Pine Mine]

#### I. Background

As part of the resolution of ASARCO's bankruptcy proceeding, ASARCO transferred to the Custodial Trust, among other things, real property at the Black Pine Mine site (subject to the Montana Department of Environmental Quality [MDEQ] previously filed lien on the property, which served as ASARCO's reclamation bond)<sup>1</sup> and operating permit number 00063 (Permit) relating to the Black Pine Mine site pursuant to MCA § 82-4-340. Based on correspondence between MDEQ and the Custodial Trust around the time that the Custodial Trust was established, to date, the Custodial Trust's obligations relative to the Black Pine Mine site have been limited to: (i) funding DEQ's reclamation and remediation activities; (ii) maintaining the Permit (without posting bond under Montana's Metal Mine Reclamation Act [MMRA]);<sup>2</sup> and (iii) funding site security activities.

#### II. Progress to Date

Since its appointment, the Custodial Trust has performed site security activities, maintained the Permit consistent with the MDEQ/Custodial Trust's initial (no-bond) approach, and funded MDEQ's reclamation/activities. In July 2024, the Custodial Trust learned that MDEQ may require a bond for the prospective maintenance of the Permit. Since then, the Custodial Trust has been coordinating and communicating with MDEQ, Montana Natural Resource Damage Program (NRDP), U.S. Forest Service (FS), U.S. Department of Justice (DOJ), and U.S. Environmental Protection Agency (EPA) (collectively, the Beneficiaries) about the merits of maintaining the Permit. MDEQ and the FS recently determined that renewal of the OP would have limited value. As agreed to at the Black Pine Beneficiary meeting on September 16, 2024, the Custodial Trust provided the Beneficiaries with written confirmation that it does not intend to renew the Permit and requested approval or non-objection from MDEQ and FS to the extent that non-renewal of the Permit constitutes disposition of an (intangible) asset pursuant to ¶ 11 of the Settlement Agreement and § 2.11 of the Trust Agreement (see Attachment 13-1). At the time of this report, the Beneficiaries have not provided written approval or non-objection.

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<sup>1</sup> See Settlement Agreement ¶ 5(a) (stating that "The Black Pine Designated Property shall be transferred to the Custodial Trust subject to the lien held by the MDEQ under the Hardrock Reclamation Property Bond, DEQ # 002516-HR, filed for record on September 24, 2002, as Document # 045174 in the Records of Granite County, Montana, and the MDEQ will not be treated as a secured creditor under any plan of reorganization with respect to this lien, and the claim is satisfied and withdrawn by this Settlement Agreement").

<sup>2</sup> See Trust Agreement § 4.10 (stating that "Notwithstanding any state law to the contrary, the Custodial Trustee . . . shall be exempt from giving any bond or other security in any jurisdiction").



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**Subject:** Black Pine Mine Operating Permit  
**Date:** Friday, September 20, 2024 at 3:15:17 PM Eastern Daylight Time  
**From:** Cynthia Brooks  
**To:** Opp, James - FS, Max Greenblum, Steinmetz, Amy, Hausrath, Katherine, Wilkerson, Jessica, Katie Garcin-Forba, sonny.thornborrow@usda.gov, Craig Kaufman, Alan Tenebaum, Babak Rastgoufard (Babak.Rastgoufard@usda.gov), Williams, Bridget, Sydney Stewart  
**CC:** Dyer, Jorri, Schmechel, Amy, Craig Kaufman, Jennifer Roberts  
**Attachments:** image001.png

Custodial Trust Beneficiaries,

By this email, the Montana Environmental Trust Group LLC, Trustee of the Montana Environmental Custodial Trust (Custodial Trust), writes to follow up on the September 16, 2024 call with representatives of the United States (Department of Justice, Forest Service [FS], and Environmental Protection Agency) and the State of Montana (Department of Environmental Quality and Natural Resource Damage Program) (collectively, the Beneficiaries) regarding the Black Pine Mine Operating Permit No. 00063 (Permit). Based on the Beneficiaries' determination that renewal of the Permit would have limited value and therefore should not be renewed, the Custodial Trust hereby confirms that it intends to discontinue maintenance of the Permit. Furthermore, to the extent that Permit non-renewal constitutes the disposition of an (intangible) asset relative to the Black Pine Designated Property, the Custodial Trust seeks approval or non-objection of the State and the FS for relinquishment of the Permit pursuant to ¶ 11 of the Consent Decree and Settlement Agreement Regarding the Montana Sites and § 2.11 of the Montana Environmental Custodial Trust Agreement.

The Custodial Trust further documents that, notwithstanding the language in § 1.a.xii of the September 30, 2020 "Framework for Reappointment of METG as Trustee," which states in relevant part that the United States and State of Montana expect the Custodial Trust to "[c]ontinue [P]ermit maintenance . . . [at] the Black Pine Mine," the Beneficiaries no longer support renewal or maintenance of the Permit.

Thank you in advance for confirming that the Beneficiaries approve or have no objection to the Custodial Trust's plan outlined above.

Cindy

Cynthia Brooks  
President  
Greenfield Environmental Trust Group, Inc.  
<https://greenfieldenvironmental.com>

Greenfield Environmental Multistate Trust LLC, Trustee of the Multistate Environmental Response Trust  
Montana Environmental Trust Group LLC, Trustee of the Montana Environmental Custodial Trust  
Greenfield Penobscot Estuary Remediation Trust LLC, Trustee of the Penobscot Estuary Mercury Remediation Trust  
Greenfield Penobscot Estuary Projects Trust LLC, Trustee of the Penobscot Estuary Beneficial Environmental Projects Trust  
Greenfield Environmental Savannah Trust LLC, Trustee of the Savannah Environmental Response Trust





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**From:** [cb@g-etg.com](mailto:cb@g-etg.com)

**When:** 3:00 PM - 4:00 PM September 16, 2024

**Subject:** Black Pine Mine Operating Permit

**Location:** Microsoft Teams Meeting

Based on the doodle poll results, Monday 9/16 at 1 pm MT/3 pm EST works best for most.

---

## Microsoft Teams [Need help?](#)

### [Join the meeting now](#)

Meeting ID: 225 990 644 587

Passcode: na52DE

---

### Dial in by phone

[+1 339-666-3080](tel:+13396663080), [276949077#](tel:+1276949077) United States, Lynn

[Find a local number](#)

Phone conference ID: 276 949 077#

For organizers: [Meeting options](#) | [Reset dial-in PIN](#)

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## **Chapter 14**

### **Removal of Buildings/Structures at Black Pine Mine**

[Section 1.a.xii of Reappointment Framework: Support removal of existing buildings/structures at Black Pine Mine, if required for waste rock removal]

Since the Custodial Trust was established in 2009, it has transferred funds from the Black Pine Cleanup Account to the Montana Department of Environmental Quality (MDEQ) to fund MDEQ Oversight Costs and the performance of Environmental Actions at the Black Pine Mine (Site). Based on information provided by MDEQ, the Custodial Trust understands that Cleanup Account funds were used to remove several buildings/structures at the Site so that MDEQ's contractor could remove and dispose of waste rock in an on-site soil repository.