

# City of East Helena's Role in Developing and Implementing Institutional Controls (ICs)

East Helena Superfund Site  
Institutional Controls Program



# Scope of Presentation

- Provide background on ICs
  - What are they, why are they used, how do they work?
- Discuss current status of work on the East Helena ICs Program (ICP)
  - Draft administrative area, goals, and ICP framework
- Describe the City of East Helena's role and potential responsibilities in the development of an ICP

# Background on Institutional Controls and IC Programs

What are they?

What purpose do they serve?

What types of ICs are commonly used?

Elements of IC Programs

# What are Institutional Controls?

- ***Institutional Controls (ICs)*** are administrative or legal controls, that help minimize the potential for human exposure to contamination and protect the integrity of a remedy by limiting land or resource use.
- Used when residual contamination is left in place after site cleanup activities
  - In East Helena area, arsenic and lead are residual soil contaminants of interest

# Purpose of Institutional Controls

- ICs are important elements of corrective measures at sites because they support the physical remedy that was/is being implemented.
- IC's can help to keep track of:
  - where contamination still remains in soil
  - what people can and cannot do with the soil
  - how the property can and cannot be used

# Types of ICs

- **Informational:** non-enforceable advisories
- **Proprietary:** legal tools based in real property laws that restrict or affect the use of property
- **Governmental:** restrictions imposed and enforced by state or local governments
- **Enforcement and permitting tools:** controls on the land owner implemented as part of the CERCLA enforcement and permitting processes

# Informational Devices

- Advise prospective buyers or users of land about contamination or expected use restrictions on specific properties.
- Not legally enforceable, so they are most effective when used with other ICs
- Examples:
  - Public Advisories/websites
  - Deed notices
  - Growth Policy information

# Proprietary Controls

- Legal tools based in real property laws that restrict or affect the use of property.
- Proprietary ICs “run with the land” and provide long-term protectiveness.
- Examples:
  - Easements
  - Covenants



# Governmental Controls

- Restrictions on activities or land uses that are generally within the traditional powers of state and local governments to impose and enforce.
- Examples:
  - Zoning ordinances, subdivision regulations
  - Building permits or excavation permits

# Enforcement and Permitting Tools

- **Controls on the land owner implemented as part of the CERCLA enforcement and permitting processes**
- **EPA would be responsible party for establishing these ICs.**

# How Do ICs Work?

- **ICs protect human health and the environment by restricting property activity, use, or access.**
  - **Restrict residential development in some locations**
  - **Restrict excavation of an engineered cap**
  - **Require an excavation permit for soil disturbances**
  - **May limit access in some cases**
- **ICs provide information to modify behavior.**
  - **They provide awareness of soil contamination concerns and restricted uses on properties**

# ICs Layering

- “***Layering***” means using multiple ICs at the same time
- Helps enhance the overall effectiveness of the ICP
- Brings others into the process so that each plays a role in helping to maintain the selected remedy and protect human health and the environment.

# Elements of ICs Programs

- An ICP is a ***set of regulations*** designed to ensure the integrity of clean soil and that other protective barriers to contaminants remain in place.
- ICPs include:
  - **Enabling ordinances** (program/local governments)
  - **Defined Administrative Area** for ICP
  - **Program Goals and Objectives**
  - **Appropriate ICs** – (from 4 categories)
  - **Activity tracking process**
  - **Monitoring procedures** to determine effectiveness of ICs
  - **Enforcement measures**

# Status of Work on the East Helena IC Program

Current Status Update

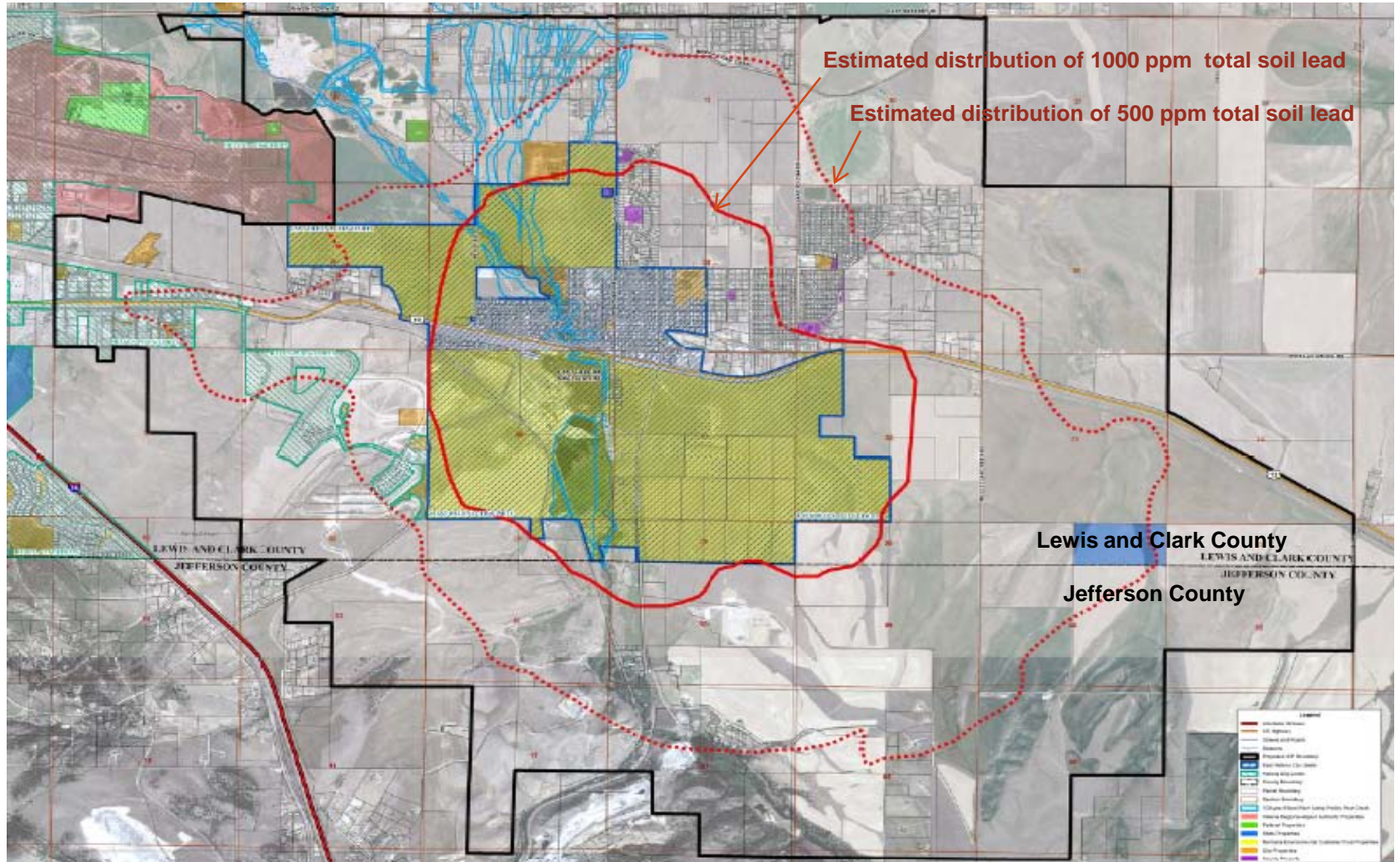
Draft Administrative Boundary/ICP Goals

Draft Regulatory and Operating Framework

# Status of Work for East Helena ICP

- Cooperative work on the ICP has occurred with the County's IC Consultant, regulatory agencies and other stakeholders since January
- IC Working Group meetings held monthly since March
- Draft administrative boundary and overall ICP program goals have been developed
- Draft regulatory and operating framework for ICP has been discussed and established
- Work is underway on a Draft ICP Implementation Plan due to be presented in August by the County's consultant

# Draft ICP Administrative Boundary





# Draft East Helena ICP Goals

- Protect public health and the cleanup actions;
- Accommodate various land uses, development, zoning, and property exchanges;
- Minimize inconvenience and cost to property owners and local governments;
- Utilize, to the maximum extent practicable, existing and applicable governmental processes, local expertise, and local agencies; and
- Gain assurance for long-term funding for IC program implementation.

# East Helena ICP Regulatory Framework

## Oversight Agencies

EPA and MDEQ

## Local Enabling Authority

**Lewis and Clark County Board of Health**  
Authorized by Montana Code Annotated 50-2-116

## Principal ICP Administrator

**East Helena Lead Education and Abatement Program**  
ICP Education, Oversight, and Regulatory Review

## Affected Jurisdictions

**Lewis and Clark County, Jefferson County,  
City of East Helena and City of Helena**

## ← Activities of Interest →

Projects Requiring Permits

Projects Not Requiring Permits

Property Exchanges

Infrastructure Projects

## Examples of Potentially Affected Parties

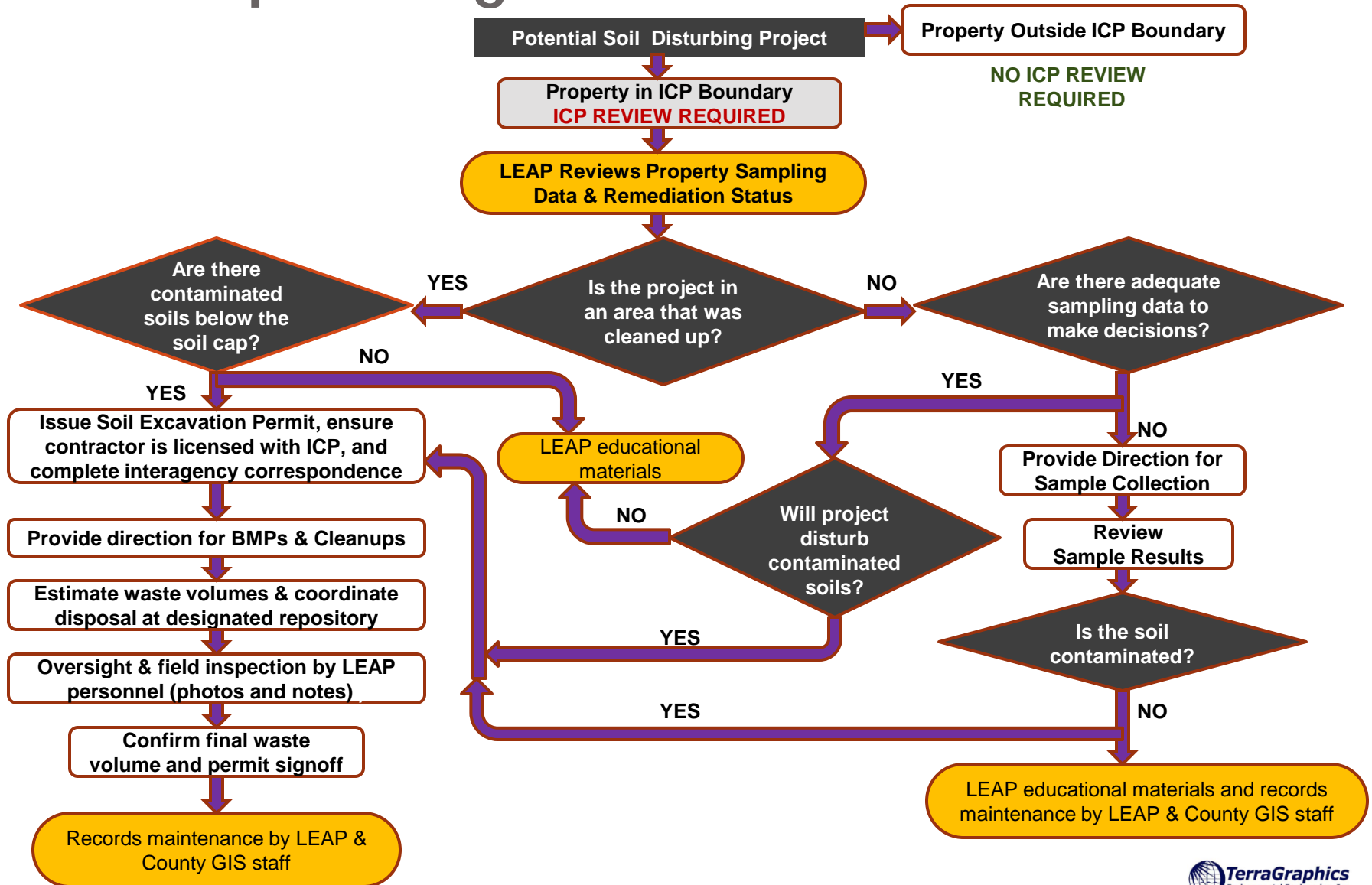
Private Property Owners  
Developers  
School District

Public Works  
Parks & Recreation  
School District

Public and Private  
Property Owners

MDT  
Montana Rail Link/BNSF  
NW Energy  
Qwest  
Bresnan  
Public Works

# Draft Operating Framework



# Phase I ICP Activities and Timeline

<b>TASK LIST</b>		<b>START DATE</b>	<b>PROJECTED END DATE</b>
<b>1.0 Phase I - Institutional Controls and Implementation</b>			
<b>1.1</b>	<b>Develop Draft Implementation Plan and Soil Ordinance</b>	<b>15-Jun-11</b>	<b>5-Aug-11</b>
1.1.1	Develop Draft Sampling Plan	15-Jun-11	15-Jul-11
1.1.2	Develop Draft Cleanup and Disposal Plan	15-Jun-11	5-Aug-11
1.1.3	Coordinate with One-call providing notification to LEAP	15-Jun-11	15-Jul-11
1.1.4	Draft Soil Excavation Permit	15-Jun-11	5-Aug-11
1.1.5	Draft L&C County BOH Soil Ordinance	15-Jun-11	5-Aug-11
1.1.6	Technical Working Group (EPA/DEQ) Coordination	15-Jun-11	5-Aug-11
1.1.7	Presentation of ICs Framework to BOH	28-Jul-11	28-Jul-11
1.1.8	GIS interface with DB and QC/Data Maintenance Plan	1-May-11	30-Jul-11
1.1.9	Concurrence to modify permits by Cities and County	15-Jun-11	5-Aug-11
1.1.10	Draft Implementation Plan submitted to EPA/DEQ and ICWG	5-Aug-11	5-Aug-11
<b>1.2</b>	<b>Develop Draft Final Implementation Plan and Soil Ordinance</b>	<b>8-Aug-11</b>	<b>19-Oct-11</b>
1.2.1	Presentation of Draft Implementation Plan to EPA/DEQ/ICWG	8-Aug-11	12-Aug-11
1.2.2	EPA/DEQ/ICWG Review and Comment	12-Aug-11	12-Sep-11
1.2.3	Presentations of Draft Implementation Plan to East Helena, Helena, and Jefferson County	8-Aug-11	12-Aug-11
1.2.4	Cities and County Review and Comment	12-Aug-11	12-Sep-11
1.2.5	Presentation of Draft Implementation Plan to L&C County BOH	8-Aug-11	12-Aug-11
1.2.6	L&C County BOH Review and Comments	12-Aug-11	12-Sep-11
1.2.7	Presentation of Draft Implementation Plan to Public	12-Sep-11	16-Sep-11
1.2.8	Public Review and Comment	16-Sep-11	17-Oct-11
1.2.9	Draft Interagency MOUs	8-Aug-11	19-Oct-11
1.2.10	Soil Disposal MOU EPA, DEQ and L&C County BOH	8-Aug-11	19-Oct-11
1.2.11	Draft Final Implementation Plan submitted to EPA/DEQ and L&C County BOH	20-Oct-11	20-Oct-11
<b>1.3</b>	<b>BOH Adopts Final Implementation Plan and Soil Ordinance</b>	<b>20-Oct-11</b>	<b>1-Dec-11</b>
1.3.1	Presentation of Draft Final Implementation Plan with All Comments and Responses to BOH	24-Oct-11	28-Oct-11
1.3.2	L&C County BOH Review and Comments	28-Oct-11	18-Nov-11
1.3.3	Final Implementation Plan and Soil Ordinance	18-Nov-11	30-Nov-11
1.3.4	BOH Adopts Final Implementation Plan and Soil Ordinance	1-Dec-11	1-Dec-11

# How Does the City of East Helena Fit Into the ICP?

The City's Role

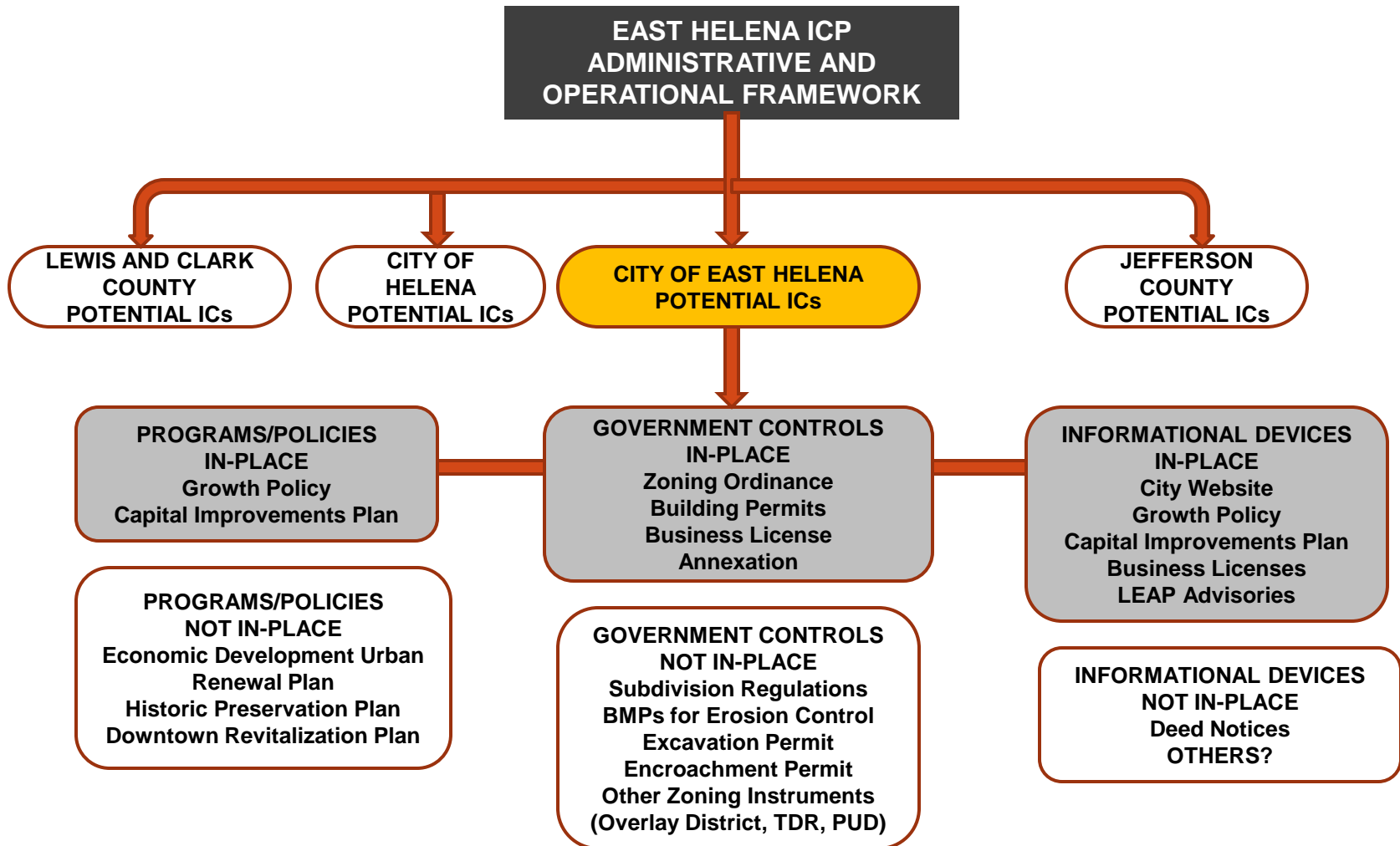
The City's Potential ICs

Suggested Actions by the City to help implement the ICP

# City of East Helena's Role in the ICP

- Will be one of the municipal and county governments implementing measures supporting the ICP
  - City of East Helena
  - Lewis and Clark County
  - City of Helena
  - Jefferson County
- City will be responsible for modifying its programs/plans/policies to reflect the adoption of IC Program and support its overall goals
- IC measures developed by City will apply only to lands within City (on Trust and non-Trust lands)
- Other types of IC measures may apply on lands in City

# City's Potential Institutional Controls



# Suggested Phase I ICP Actions by City

- **Modify Building Permit Process**
  - Modify Permit Form to include requirement to notify LEAP of pending project and potential for soil excavation
  - Modify Building Permit Form to require ICP Excavation Permit
- **Begin Work on Subdivision Regulations for City**
  - Who will write regulations? – County Planning/consultant
  - Develop and incorporate design and improvement standards into draft regulations
  - Include requirement for ICP Excavation Permit
  - Identify Best Management Practices (BMPs) for erosion control



# Suggested Phase II ICP Actions by City

- **Adopt Subdivision Regulations**
- **Update East Helena's Growth Policy**
  - Revisions needed to enable zoning ordinance changes and future ICP actions
  - Growth Policy Update needs to:
    - Acknowledge annexation of Trust lands
    - Provide guidance on future land uses for Trust lands
    - Reflect any changes in community conditions and goals
    - Include population and demographic information from 2010 Census and updated economic data
  - Define process/timeline for adoption of update

# Suggested Phase II ICP Actions by City

- **Modify East Helena's Zoning Ordinance**
  - Draft zoning ordinance changes to include requirement to notify LEAP of pending project and to require ICP Excavation Permit
  - Modify Zoning Permit forms to include requirement to notify LEAP of planned projects
  - Define process/timeline for adoption of amendments
  - Modify Zoning Ordinance to reflect potential reuse and redevelopment of Trust properties – zoning changes may facilitate redevelopment actions

# Other Suggested Future ICP Actions

- **Change City Business License process to require annual renewals and include handout of LEAP informational materials**
- **Complete Tax Increment Financing (TIF) Plan and establish TIF on Trust lands**
- **Consider Development of a Downtown Revitalization Plan and establish Urban Renewal District**

# Potential ICP Needs/Actions

- Request funding support from EPA for City's ICs administration requirements (relevant planning/zoning activities)?
- Ensure City staff are trained to implement and comply with ICP requirements and to make use of GIS Database
- Modify City website to provide links to LEAP educational materials and resources for ongoing cleanup and reuse/redevelopment efforts

# Future City Council Actions

- **Agree to be part of the ICP and review and approve Inter-local Agreement or Memorandum of Understanding establishing East Helena ICP**
- **Approve modifications to Building Permits**
- **Approve action to prepare Subdivision Regulations for the City by either County Planning staff or consultant**
- **Direct City's Engineer to work with City staff to prepare public works standards for Subdivision Regulations**
- **Direct consultant to prepare amendments to growth policy and process for adoption**
- **Direct consultant to prepare amendments to zoning ordinance and process for adoption**

# Future Planning Board Actions

- Provide input and review during development of draft Subdivision Regulations
- Hold public hearing on draft Subdivision Regulations and forward resolution with determination of accordancy with the adopted Growth Policy to City Council
- Provide input and review during update of Growth Policy
- Hold public hearing on amendments to Growth Policy and forward resolution of recommendation to City Council

# Future Zoning Board Actions

- Provide input and review during development of draft Zoning Ordinance changes
- Hold public hearing on amendment to Zoning Ordinance and forward resolution with recommendation (final report) to City Council

# Next Steps

- **Presentation of Draft ICP Implementation Plan in August by County's consultant**
- **Develop memo to City of East Helena with recommended actions for helping to implement the ICP**
- **Present recommended actions to City Council/staff**
- **Move forward with recommended actions**