

East Helena Institutional Controls Program (ICP)

*Implementation Recommendations for the
City of East Helena*

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BACKGROUND

In 1984, the US Environmental Protection Agency (EPA) listed ASARCO's East Helena Smelter and adjoining property, including the City of East Helena, on the National Priorities List (NPL) of federal superfund sites. The smelter, which began operations in 1888, left extensive metals contamination in the soils, sediments and groundwater on the plant property and surrounding lands. Pursuant to the EPA's authority under the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA), the agency required ASARCO to begin cleanup actions during 1991 on areas with elevated levels of lead, arsenic and other constituents on the smelter property and on residential yards and other lands in and around the City of East Helena.

The principal method of addressing the contamination within the City since 1991 has involved removing soils in yards of existing qualifying residences, parks and school playgrounds, unpaved streets and alleys, commercial areas, the railroad right-of-way and remaining irrigation channels and ditches adjacent to residences. The majority of the soil removal actions in the City and surrounding area were completed between 1991 and 1996. However, soil removals have annually been conducted and are now winding down in 2011. CERCLA will continue to be the governing authority for cleanup of residential and agricultural soils, as well as any surface water or surface water source that may require cleanup.

The EPA's September 2009 *East Helena Superfund Site Operable Unit (OU) 2 Residential and Undeveloped Lands Final Record of Decision (ROD)* recognizes that residual levels of lead and other contaminants will remain in place (sometimes at levels that pose health risks) beneath foundations, sidewalks and temporary structures, in unfinished basements or attics, and on undeveloped lands that surround the community. For this reason, the ROD concluded that Institutional Controls (ICs) are a necessary component of the final remedial action for the East Helena Superfund Site. Cleanup objectives are achieved by a more practical approach that combines permanent remedies with IC mechanisms that limit exposure to the hazardous substances that remain at a site. This approach is based on the notion that by limiting exposure to hazardous substances through land use restrictions, the same amount of protection of human health and the environment can be achieved without undertaking costly and time consuming cleanups.

ICs are often referred to as remedy protection measures and may be implemented by a governmental entity, by a private property owner, or by a combination of the two. They often are used in conjunction with, or as a supplement to, other corrective measures (such as treatment or containment) to help prevent or reduce exposure to contaminants.

The East Helena Lead Education and Abatement Program (LEAP), established in July 1995 administered by the Lewis and Clark City-County Health Department, is also recognized as an important part of the ICs component of the overall remedy in the EPA's ROD. The primary role of LEAP's staff is to continue to conduct the educational component within the community and supervise blood lead testing for children. However, the LEAP will also act as a liaison for other city, county or state governmental entities that administer or enforce ICs and will be responsible for collecting and managing data relevant to long-term planning and administration of ICs.

As part of the 2009 reorganization plan resulting from ASARCO's bankruptcy filing in 2005, ASARCO transferred all of its land holdings in Montana (including their lands in and around the City of East Helena) and funds for the cleanup and restoration of these properties to the Montana Environmental Custodial Trust. The Montana Environmental Trust Group (METG) acts as the Trustee for the Custodial Trust and is the entity responsible for investing and disbursing the trust funds and overseeing the clean-up and redevelopment of former ASARCO sites.

The cleanup of ground and surface water contamination, the slag pile, and the disposition of former ore processing facilities and storage areas at the East Helena smelter site are regulated under the Resource Conservation and Recovery Act (RCRA). The METG is currently conducting investigations to determine appropriate remediation measures for groundwater contamination as part of RCRA compliance activities. As work continues and a remedy is identified to address groundwater concerns, other ICs beyond those focused on soil contamination will likely be identified and implemented within the East Helena area.

TYPES OF 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. Generally, the mechanisms for creating ICs fall within the four categories listed below and discussed in the following paragraphs:

- Proprietary controls;
- Governmental controls;
- Enforcement and permitting tools; and
- Informational devices.

Proprietary Controls. This category of ICs is based on real property law and includes legal instruments placed in the chain of title to a property. Typically, proprietary controls involve the conveyance of a property interest to a second party with the intention of restricting land or resource use in the future. Proprietary ICs "run with the land" and provide long-term protectiveness because they establish binding and transferable agreements on following owners through the chain of title.

Examples of proprietary controls include covenants, which are written contracts that can prohibit specific types of development or construction on the land, and easements, which can grant property access or restrict the owner to land uses that are compatible with the intended use. An easement could provide access rights to a property so the Potentially Responsible Party (PRP), facility owner/operator, or regulatory agency may inspect and monitor treatment remedies or systems.

The City of East Helena does not have any programs, policies or regulations in place that fall within this IC category.

Governmental Controls. These ICs involve restrictions that generally fall within the traditional police powers of state and local governments. Governmental controls on the use of land are among the most common ICs and can be among the most effective. Examples include land use regulations such as zoning codes, ordinances, statutes,

building permits, and other provisions designed to restrict land or resource use on a property. To restrict land use and activities, local governments may enact a variety of measures ranging from simple property use restrictions to more sophisticated measures like overlay zones and planned unit development zoning.

EPA has little oversight responsibility over the design, implementation, modification, termination, or enforcement of land use controls since these powers are delegated only to state and local governments. These controls may require coordination and agreements among various governing bodies to establish how they will interact and communicate to manage ICs within each jurisdiction.

The City of East Helena has a variety of governmental controls in place that can be modified to help implement the ICP. These measures will be discussed later.

Enforcement and Permitting Tools. Enforcement and permit tools can be used to compel the land owner to limit certain site activities at both Federal and private sites. This category of ICs includes land use and activity restrictions authorized under CERCLA or RCRA and are established by the federal oversight agency (EPA in this case). They include administrative orders, consent decrees, and permits that limit certain activities or require landowners to meet a performance standard. Although they provide for federal enforcement options, these agreements are only binding on the parties named in the enforcement document and do not transfer to future property owners with subsequent property transactions.

The City of East Helena does not have the authority to implement these measures.

Informational Devices. These ICs provide information that residual contamination exists in some form on a property or that a remedy has been undertaken on a property. These ICs are not legally enforceable, so they are best used in conjunction with other ICs as a secondary means of notifying the public and interested parties of onsite contamination and existing land use controls or activity restrictions. Typical examples of these tools include state registries of contaminated properties, deed notices, and public advisories.

Deed notices are mechanisms for ensuring that parties to a real estate transaction (purchasers, tenants, and lenders) have an opportunity to become aware of the environmental status of the property prior to finalizing a transaction. Because they do not convey any real property interests, information devices have no effect on the property owner's legal rights regarding the use of the property.

The City of East Helena has several potential informational devices in place that can be modified for ICP purposes. These devices will be discussed later in this memo.

IMPLEMENTING ICs

Institutional controls are intended to help return a site to safe and productive uses by minimizing the potential for human exposure to contamination and protecting the integrity of the selected remedy. ICs protect human health and the environment by restricting property activity, use, or access. ICs also provide information to modify behavior by making the public aware of soil contamination concerns and restricted uses on properties.

All institutional controls have strengths and weaknesses and are often more effective if they are “layered” or implemented in series. Layering institutional controls means using more than one IC at the same time on a given property or properties. By using multiple controls, local governments can help to ensure that if one measure is ineffective or fails, backup controls are in place. An example of layering might be the use of environmental covenants coupled with zoning measures that restrict future uses of the property.

Implementing institutional controls can affect future development at a site and it is important that the community’s preferences for the desired types of land uses be taken into account. Institutional controls can identify possible uses for a site, and communicate use limitations to present and future users. For example, a site may be suitable for industrial use but not for residential development. East Helena should be (and has been) involved communicating with appropriate decision makers about the types of land use they think will be best for the community. Such input has been solicited through activities like development of the City’s first Growth Policy in 2009 and by the community redevelopment design workshop held by EPA in May 2011. The METG also recently started work on plans and studies related to the potential future sale, reuse and redevelopment of Trust properties in East Helena.

As mentioned earlier, the EPA identified ICs as a necessary component of the final remedial action for the East Helena Superfund Site because lead in the environment cannot be completely eliminated or contained. In Section 12.4 of the ROD, it conveys that as part of the selected remedy, local governments would, when applicable:

- adopt and administer local regulations designed to prevent or reduce recontamination of areas already cleaned up;
- adopt and administer regulations that require, or policies that encourage, coordination of planning and zoning efforts;
- adopt and administer local use and permitting requirements;
- continue to provide oversight of cleanup activities and monitor areas previously cleaned up; and
- administer restrictions and requirements at the EPA-approved soils repository.

The ROD indicates EPA is committed to funding additional sampling and maintenance of all institutional controls to the extent allowed by law or policy.

Work to establish an ICs Program (ICP) as called for in the ROD has been underway for several years and involved many stakeholders including the EPA, MDEQ, Lewis and Clark County, City of East Helena, City of Helena, Jefferson County, METG, and other interest groups. Based on input from these stakeholders, the following overall goals have been established for the East Helena ICP:

- 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 ICP implementation.

While the principal purposes of the ICP are to protect public health and the selected

remedy, stakeholders have emphasized that providing opportunities for continued community and economic development within Administrative Area established for the ICP.

Guidance from the stakeholders has emphasized the importance of using existing policies, plans, and programs to help implement ICs. Stakeholders have also clearly stated the desire to minimize inconvenience and cost to property owners and local governments and to ensure the ICP does not add excessive new regulations or administrative burdens to involved municipal and county governments. There has also been an expressed desire for cleanup standards and actions on contaminated lands to be consistent across jurisdictions. The ICP is necessary to ensure the integrity of the selected remedy at the site, while providing opportunities for continued community and economic development within the ICP Administrative Boundary.

CITY OF EAST HELENA'S ROLE IN THE ICP

Local governments are often the only entity that has legal authority to implement certain types of ICs (such as zoning restrictions) chosen as part of the selected site remedy. While EPA and the MDEQ may take the lead on response actions, local governments like the City of East Helena play an important role in determining the future use of land at the site and consequently need to play an active role in implementing, monitoring, and enforcing some ICs.

As currently envisioned, Lewis and Clark County will be the lead agency for oversight and administration of the East Helena ICP through the authority of Lewis and Clark County Board of Health. LEAP personnel, employed by Lewis and Clark County, will be charged with implementing and operating the daily activities of the ICP and will serve as the clearinghouse for all ICP information.

In coordination with LEAP, Lewis and Clark County and the City of East Helena will be the primary local governments implementing measures to support the ICP. As the program develops, it is anticipated that the City of Helena and Jefferson County will also develop ICs for lands under their jurisdiction to help support the goals of the ICP.

The City of East Helena and each local government stakeholder must formally agree to be part of the ICP and develop intergovernmental agreements that will outline responsibilities for items including administration, maintenance, funding, and enforcement required from each government and involved oversight agencies.

The City of East Helena (as well as other participating local governments) will be responsible for modifying existing programs, plans, policies, and regulations to reflect the adoption of the ICP and to support its overall program goals. Over time, it may also be necessary or desirable for involved governments to develop new administrative and legal tools to help support the ICP.

ICP ADMINISTRATIVE AREA

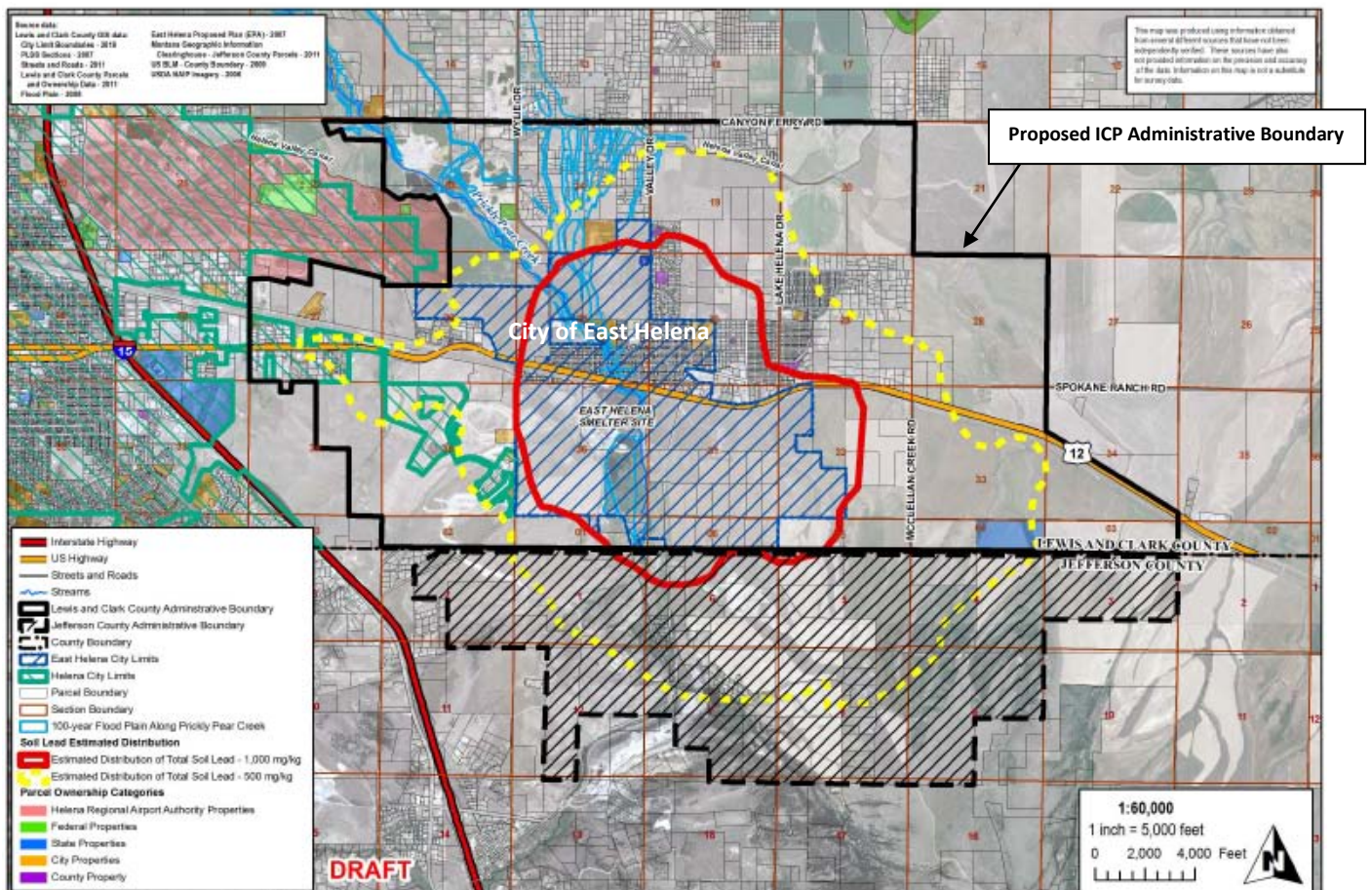
The proposed East Helena Superfund OU2 ICP Administrative Area includes lands within portions of Lewis and Clark County, Jefferson County, the City of Helena and all of the City of East Helena (see FIGURE 1). The corporate limits of the City of East

Helena are identified by the blue line. Former ASARCO lands that were recently annexed into the City of East Helena are highlighted in yellow. The proposed ICP Administrative Area includes all areas depicted in the ROD with an estimated distribution of total soil lead ranging from 500 milligrams per kilogram (mg/kg) and 1,000 mg/kg. For reference, mg/kg is the same as parts per million (ppm).

The boundary was refined based on previous lead sampling results, section lines and land ownerships, the potential inclusion of lands within parts of Jefferson County and the City of Helena; and a decision to exclude lands administered by the Helena Regional Airport Authority.

Since the City of East Helena’s jurisdictional powers do not extend to lands in other jurisdictions, IC measures implemented by the City will apply only to lands within the incorporated city limits (including lands administered by the METG). However, there may be other measures implemented as part of the ICP that would apply to lands in City. Examples of this would be requirements for coordination and reviews of proposed development activities in the City by the LEAP and the establishment of regulations is to control the displacement and disposal of soils contaminated with lead and arsenic that would apply to lands within the Administrative Area.

FIGURE 1: PROPOSED EAST HELENA SUPERFUND OU2 ICP ADMINISTRATIVE BOUNDARY



The administrative boundary shown above is preliminary and may change as the ICP

is implemented. When the ICP is established, the administrative boundary must be legally described and formally adopted by the Lewis and Clark County Board of Health. Jefferson County would need to follow the same procedure to establish an ICP administrative boundary.

THE CITY'S AVAILABLE IC TOOLS

The City's existing programs, plans, policies, and regulations were reviewed as a first step in determining administrative and legal tools that can be used to help support the East Helena ICP. The table below summarizes these available tools and identifies the types of IC control measures or purposes that may be possible through these measures.

TABLE 1: ADMINISTRATIVE OR LEGAL TOOLS AVAILABLE TO THE CITY

ADMINISTRATIVE OR LEGAL TOOLS <i>(IC Category)</i>	POSSIBLE CONTROLS OR ICP PURPOSE
CONSTRUCTION PERMITS <i>(Governmental Control and Informational Device)</i>	Help identify ground-disturbing activities; Provide applicant contact information to LEAP; Recommend applicants contact LEAP
FLOODPLAIN PERMITS <i>(Governmental Control and Informational Device)</i>	Require permit applicants to provide proof of coordination with LEAP as a permit approval condition
BUSINESS LICENSE <i>(Governmental Control and Informational Device)</i>	Provides opportunity to distribute ICP information to City business owners
GROWTH POLICY <i>(Governmental Control and Informational Device)</i>	Enables Zoning Ordinance; Informs Public Policies and Plans (Annexation Policy, Subdivision Regulations, Economic Development Plan, Tax Increment Financing Programs including urban renewal and industrial development, Historic Preservation Plan, etc.). Provides background on site contamination and implementation of ICP.
ZONING ORDINANCE <i>(Governmental Control)</i>	Zoning Permit for appropriate land use zoning classifications; Meet development standards for zones; Require ICP Coordination and ICP compliance measures to be met
SUBDIVISION REGULATIONS <i>(Governmental Control)</i>	Easements; Covenants; Public Infrastructure and property design requirements; Require Best Management Practices (BMPs) for erosion and sediment control; Require ICP coordination and ICP compliance measures to be met
ANNEXATION POLICY/PROCESS <i>(Governmental Control and Informational Device)</i>	Encourage developers/landowners to coordinate with LEAP; Ground Water Use Restrictions and Requirement to use city water; Require BMPs; Require ICP compliance measures be met
CAPITAL IMPROVEMENT PROGRAM <i>(Informational Device)</i>	Identifies and manages funding priorities for infrastructure, public facilities and community services.
CITY WEBSITE <i>(Informational Device)</i>	Provide information about East Helena ICP and its requirements, links to site cleanup information

The review showed that the City of East Helena currently has a limited number of administrative and legal tools in place. The identified tools are all considered to be Governmental Controls and/or Informational Devices based on the four identified IC types.

RECOMMENDATIONS FOR IC IMPLEMENTATION BY THE CITY

The East Helena ICP will be implemented in a phased approach by participating local governments. Consistent with one of the primary ICP goals, local governments have been asked to develop controls that build on existing administrative structures and processes to the extent possible rather than creating new layers of regulation. The implementation of the ICP is also meant to be flexible—if an implementing measure is not effective at helping to meet ICP goals, it will be dropped or modified to be more effective. With these considerations in mind, recommendations to help integrate the ICP into the City of East Helena’s existing administrative processes and structures were developed and are presented on the following pages.

The recommendations are focused on actions that can be implemented by the City in the near term (Phase I Actions) and actions that will require more time and effort to implement (Phase II Actions).

RECOMMENDED PHASE I ACTIONS

1. Agree to Participate in the East Helena ICP and Develop MOU with the Lewis and Clark County Board of Health outlining City’s roles and responsibilities.

As an initial step in implementing the ICP, it is recommended the City of East Helena develop a Memorandum of Understanding (MOU) with Lewis and Clark County Board of Health outlining how the parties will work together. The MOU should establish the overall roles and responsibilities for each party in implementing the ICP and how ICP regulations would be administered and enforced within the City. The MOU should acknowledge LEAP as the principal ICP administrator and endorse the use of regulations to control the displacement and disposal of soils and the 811 One-Call Utility Notification System within the City. The City Council would be required to take formal action to approve the MOU.

2. Modify the City’s Construction Permit Application Form and Process to help identify ground disturbing activities, provide project notifications to LEAP, and inform applicants about the ICP.

Recommended Modifications to Construction Permit Application Form:

- Add a YES/NO item to identify whether proposed project will involve ground disturbing activities. This determination will be the responsibility of the Applicant.
- Add a new informational notice explaining the City is located within the ICP Administrative Area and encouraging Applicants to contact LEAP to determine compliance needs (if any).
- Add a line item to verify LEAP notification has been completed.

A copy of the revised permit application form is provided below.

CONSTRUCTION PERMIT APPLICATION
City of East Helena, Montana – Department of Building & Safety

PROJECT INFORMATION (to be completed by Applicant)	
Building Address:	_____
Owner's Name:	_____
Owner's Mailing Address:	_____
Owner's Phone #:	_____
Architect/Engineer:	_____
Architect/Engineer's Address:	_____
Architect/Engineer's Phone #:	_____
Contractor:	_____
Contractor's Address:	_____
Contractor's Phone #:	_____
Description of Project:	_____
Will project require ground disturbing activities of any kind?: YES <input type="checkbox"/> NO <input type="checkbox"/>	

VALUATION OF PROJECT	
TYPE OF WORK	ESTIMATED VALUATION
Building	
Electrical	

OWNER-BUILDER & WORKER'S COMPENSATION DECLARATION:

- I, as Owner of the property, or my employees with wages as their sole compensation, will do the work.
- I, as Owner of the property, am exclusively contracting with a licensed contractor(s) to construct the project.
- I hereby affirm that I have a certificate of Worker's Compensation Insurance; if not, check _____.

Issuing Officer:	Applicant (Printed Name):
Date:	Applicant (Signature):

FOR OFFICIAL USE ONLY
 LEAP Notified of Application by: Phone Email Copy Date _____

APPLICANT NOTICES:

Separate permits are required for building, electrical, plumbing, and mechanical work.

This permit becomes null and void if work or construction authorized is not commenced within 180 days or if construction or work is suspended or abandoned for a period of 180 days after work is commenced. When the time between required inspections will exceed 180 days, a progress inspection must be requested within 180 days of the last inspection to assure keeping the permit active. When a permit has expired, work is not to recommence without first obtaining a new permit. When changes have been or will be made to the original plans or specifications or abandonment has exceeded one year, a new plan review and full fees are required.

Applicant does hereby covenant and agree that in consideration of said permission being granted, applicant will indemnify and save harmless the City of East Helena, Montana from all liability of every nature whatsoever which may arise from, or grow out of or accrue against it in any manner whatsoever, by reason of any work done or condition created or permitted under or connected with work done under such permit. Applicant agrees that such work will be done in strict conformity with the laws of the State of Montana and the ordinances of the City of East Helena even if the necessity for compliance is discovered after the issuance of the permit.

Applicant hereby certifies that he/she has read and examined this application and knows the information to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provision of any other State or local law regulating construction or the performance of construction.

By issuing the building permit, the City of East Helena makes no warranty or representation of any kind or in any manner as to the suitability of the Applicant's site for construction of the improvements authorized hereby. The builder, owner, or their agents are encouraged to investigate the suitability of the site to house the improvements authorized herein. Particularly, the owner and the builder are encouraged to investigate the availability of water and sewer services, and the freedom of the site from storm water runoff problems.

All work done shall comply with the ordinances of the City of East Helena and the State of Montana. Any building, electrical, plumbing, or mechanical installation may be inspected during normal working hours. When a check is tendered for payment of fees and the check is not honored when presented for payment, this permit will be revoked.

By submitting this application, Applicant is obligated to pay the plan review portion of the total permit fee within 30 days of being notified that plan review is complete, even if the Applicant elects not to initiate construction. In order to initiate construction, Applicant is required to pay 100% of the total permit fee prior to beginning any work.

The City of East Helena is located within the Administrative Area for the East Helena Superfund Site Institutional Control Program (ICP). Applicants are encouraged to coordinate their construction project with the East Helena Lead Education and Abatement Program (LEAP) staff to determine if ICP compliance measures are needed. The LEAP office is located in Room 201 of the East Helena City Hall and staff may be contacted at 406-457-8583.

SEE REVERSE SIDE FOR INSPECTION REQUIREMENTS

Recommended Changes to Processing of Construction Permit Applications:

- City staff (or the City's permit administrator) would need to provide LEAP with a copy of the Applicant's completed permit form or email the Applicant's contact information to LEAP and enter pertinent information into a new tracking system for the permits (see Recommendation 3 below). LEAP's location in the East Helena City Hall will facilitate this coordination.
- Require City staff (or the City's permit administrator) to verify LEAP notification by signing and dating the form.

Implementation Considerations/Costs:

The recommendations presented above can be implemented immediately at little or no extra cost to the City. The current permit application form has been revised to reflect the new changes. Craig Jenneskens of RPA, who oversees the processing of these permit applications for the City, implemented use of the revised permit application form and processing recommendations at the beginning of 2013.

3. Develop a database to identify Construction Permits issued by the City and to help track future permits.

The Work Plan associated with the City's Cooperative Agreement with EPA for the development and implementation of ICs identifies a database to track construction permits within the City so the information can be incorporated into the County's GIS

system as a desired element. This information will supplement the GIS and database system being developed by Lewis and Clark County which will enable LEAP staff and others to view records and data related to management of lead and arsenic in soils for parcels located within OU2.

This database is listed as a deliverable in the Work Plan and has been compiled by RPA. The database consists of an Excel format spreadsheet with the following information listed for each permit approved since mid-2002:

- Applicant
- Property Address
- Geocode Number
- Proposed Work
- Permit Approval Date
- Final Inspection Date

The summary of permit information covers the period from July 2002 through the end of 2012. RPA processed a total of 224 permit applications over this period. 2005 was most active year with 46 permits being processed and 2008 was the least active year with only 5 permits processed.

In addition, the database includes an item identifying whether or not the proposed work requires any ground disturbing activities. Applicants were not previously required to provide this information; however, the modifications to the application form discussed previously will allow this information to easily be collected and documented in the future.

Implementation Considerations/Costs:

Keeping the database of building permits up-to-date is essential and will require that information from Construction Permit applications be entered at regular intervals. We recommend this information be entered by the City (or its permit administrator) as applications are received and processed. It should be sufficient to provide information about approved Construction Permits on an annual basis since LEAP will be notified of permit applications as the City receives them.

Tracking new construction permits should not result in any significant new administrative costs for the City since this information can be quickly entered into the permits database by City administrative personnel or its permit administrator. Adding information about Construction Permits issued prior to July 2002 would likely require up to 5 days of City staff or consultant time to collect and review permit files and transfer necessary permit information to the permits database.

4. Provide LEAP Informational Notice to Applicants Seeking Permits for Re-roofing.

The City currently requires those seeking to re-roof their residences or buildings to obtain a \$25 permit from the City Clerk. Due to the potential for old roofing materials to carry contaminants, it is recommended that an informational sheet with suggestions about safe handling of old roofing materials be provided to applicants (or their contractors). LEAP has produced a short informational sheet titled "Lead: Construction and Remodeling Projects" that provides suggestions about the safe handling of shingles, siding and other exterior building components. Copies of this informational sheet should be kept on file at the City Clerk's office. Alternately, those seeking to re-roof can be referred to the LEAP office for precautionary suggestions.

5. Modify the City's Floodplain Permit Regulations to Require Applicants to Provide Proof of Coordination with LEAP.

Recommended Modification to City Floodplain Regulations:

- Add the following informational requirement to Paragraph B. of Section 10-4-2:
6. Verification that the applicant has coordinated the proposed activity within the floodplain with East Helena Lead Education and Abatement Program (LEAP) staff to determine compliance with the requirements of East Helena Institutional Controls Program (ICP). The LEAP office is located in Room 201 of the East Helena City Hall and staff may be contacted at 406-457-8583."

Implementation Considerations/Costs:

The City Council would need to take action to modify Section 10-4-2 of the City Code to include proof of LEAP coordination as a condition of receiving a Floodplain Permit. Proof of coordination could be accomplished by written correspondence (including email) between LEAP staff and the Applicant or through verbal communication between LEAP staff and the Floodplain Administrator. Since the Applicant must provide proof of LEAP coordination, this change would not result in additional administrative costs for the City.

6. Create a New "Institutional Controls" Link for the City's Website and Post ICs Recommendations for the City and Information about Soil Regulations.

It is recommended that a new item titled "Institutional Controls" be added to the City of East Helena homepage (<http://www.easthelenamt.us/>) to provide a location for sharing ICs information with the public. Adding an Institutional Controls link (navigation bar) to the left side of the homepage instead accessing ICs information from one of the "pull-down" tabs in the header at the top of the page is suggested. Making ICs a standalone item on the homepage would make it easier for webpage viewers to find information about the topic.



After the soil regulations are adopted by the County Board of Health, it is recommended that a link be added to the scrolling announcements shown on the

homepage reminding residents to use the 811 One Call service before to digging. It is assumed that IC educational information will be developed in the near future as part of a broader public outreach effort within the IC administrative area.

City of East Helena ICs Web Page

RPA has developed an initial ICs Web Page for the City which includes the following items:

East Helena ICs Home Page

- News/Program Updates
- East Helena IC Program
- Links of Interest
- ICP Contacts

The home screen for the ICs Web Page RPA created is shown below. We encourage you to access and review the website and its content using this link:

www.rpa-hln.com/EHICs_website/



For simplicity, it is recommended that the new ICs item on the City's website be linked to a site hosted and updated by RPA. This will just require that the link from the City's homepage be kept current.

Implementation Considerations/Costs:

The City's website developer (or knowledgeable City staff) would be required to make changes to the homepage and add appropriate links to ICs information. This recommendation can be implemented immediately and more information can be added to the ICs Web Page as it becomes available.

7. Develop a New ICs Work Plan and Cooperative Agreement with EPA.

EPA's claim regarding environmental cleanup during ASARCO's bankruptcy reorganization was resolved in December 2009 and two settlements were reached for the East Helena Superfund Site—one for CERCLA claims and one for RCRA claims. Approximately \$15 million was set aside in a special account for cleanup under CERCLA, including the development and implementation of the ICP. This fund is available in part for the continued administration and operation of LEAP and to help administer current and future IC programs and activities.

The City of East Helena applied for and received funding from the special account during 2010 through a Cooperative Agreement between the City and EPA. The City used the funds to pay for administrative costs and hire a consultant to begin the development of an IC program in the community. The 2010 Cooperative Agreement will be closed out by the end of March 2013 when the key elements of the Work Plan associated with the agreement are fulfilled.

It is recommended the City develop a new Work Plan identifying actions and funding needed to help implement and administer ICs within the City for the 2013-2014 period. This Work Plan would provide the basis for a new Cooperative Agreement between the City and EPA.

RECOMMENDED PHASE II ICP IMPLEMENTATION ACTIONS

1. Develop and Adopt Subdivision Regulations.

The Montana Subdivision and Platting Act requires the governing body of every county, city, and town to adopt and enforce subdivision regulations, and to review and decide on development proposals that would divide land into parcels of less than 160 acres, construct one or more condominiums, or provide multiple spaces for mobile homes or recreational camping vehicles. The use of subdivision regulations to guide development is an integral part of obtaining the goals and objectives in the Growth Policy. The Act requires that when a growth policy has been approved, the subdivision regulations adopted must be made in accordance with the growth policy.

The Montana Subdivision and Platting Act establishes minimum requirements for local subdivision regulations. Local subdivision regulations include both procedural and substantive requirements. Among other requirements, the regulations must include standards for design of lots, streets, and roads; grading and drainage; and for water supply, sewage and solid waste disposal at least as stringent as Montana Department of Environmental Quality rules. These standards are intended to help protect the health, safety, and general welfare of residents, conserve natural resources, and comply with applicable state statutes.

The City of East Helena does not currently have subdivision regulations. However, the East Helena City Planning Board, with assistance from Lewis and Clark County's Community Development and Planning Department, has begun work on a set of draft subdivision regulations. The Planning Board is currently in the process of working on a set of draft regulations and the City is currently seeking consultant services to finalize the regulations.

In addition to fulfilling statutory requirements for content, the City's Subdivision Regulations should acknowledge the establishment of the East Helena ICP and its associated requirements including notifying LEAP to determine the cleanup status of the subject property, necessary soil sampling, the need for a soil displacement and disposal permit, and performing cleanup activities if necessary.

The City's Subdivision Regulations should also provide guidance on Best Management Practices (BMPs) for grading and controlling erosion and sediment transport. These BMPs will help ensure runoff does not adversely affect past cleanup actions.

Implementation Considerations/Costs:

Developing and adopting Subdivision Regulations will require the following actions by the City Planning Board and the City Council.

Future Planning Board Actions for Subdivision Regulations

- Provide input and review during development of draft Subdivision Regulations.
- Hold public hearing on draft Subdivision Regulations and forward resolution with determination of accordance with the Growth Policy to City Council.

Future City Council Actions for Subdivision Regulations

- Identify/secure funding source(s) for developing subdivision regulations - Done.

- Issue a Request for Proposal for consultant planning services and select a planning consultant to do the work.
- Direct consultant to prepare subdivision regulations and establish a process for their adoption.
- Review, comment on, and amend draft Subdivision Regulations.
- Act on recommendation from City Planning Board to adopt Subdivision Regulations.

2. Update the City's Growth Policy.

The City's Growth Policy serves as a general guide for decisions about the community's physical development and enables the City's Zoning Ordinance and other plans, programs, policies, and regulations (including future City Subdivision Regulations).

While important, the implementation of the East Helena ICP is not the principal reason why updating the City's Growth Policy should be done. The update is needed because the annexation of former ASARCO lands occurred after the Growth Policy was adopted in 2009 and guidance for the future development of these new lands within the City is lacking. Undertaking a Growth Policy Update provides an opportunity to develop the necessary land use guidance for the newly annexed properties and recognize other changes in community conditions, including the implementation of the ICP.

Recommended Modifications or Additions to the Growth Policy:

- Acknowledge the annexation of more than 1,500 acres of Trust lands through map and text revisions.
- Consider input from EPA's May 2011 community design charrette, results of ongoing redevelopment planning studies by METG, and new community input to identify desired future land uses for annexed Trust lands.
- Include language that would enable the City to implement programs like tax-increment financing (TIF) for identified districts or new planning activities (like historic preservation or downtown redevelopment planning).
- Identify and describe any changes in community conditions.
- Revisit and modify community goals and objectives if necessary.
- Provide population and demographic information from the 2010 Census and update economic data for community.
- Acknowledge the implementation of the ICP, its administrative area, program goals, and ICP requirements including the potential need for sampling, soil displacement and disposal permits, and cleanup actions.

Implementation Considerations/Costs:

The City is currently seeking consulting services to prepare an update to the Growth Policy. The City has been awarded a planning grant from the Montana Department of Commerce and has also agreed to provide matching funds to accomplish the work.

The process will also require new citizen input and actions by the City Council and City Planning Board. These actions are highlighted below.

Future City Council Actions for the Growth Policy Update

- Identify and secure funding source(s) for updating the Growth Policy - Done.

- Issue a Request for Proposal for consultant planning services and select a planning consultant to do the work.
- Direct consultant to prepare revisions to the Growth Policy and establish a process for its adoption.
- Act on recommendations from City Planning Board to adopt update to Growth Policy.

Future Planning Board Actions for the Growth Policy Update

- Work with consultant to define process/timeline for Growth Policy Update.
- 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.

3. Modify the City’s Zoning Ordinance.

The City of East Helena adopted its Zoning Ordinance in late 2009 after approval of the Growth Policy and prior to annexation of former ASARCO lands. As with the Growth Policy, revisions to the City’s Zoning Ordinance are necessary to reflect proposed future reuse and redevelopment concepts for the recently annexed Trust lands. Appropriate zoning for these lands may facilitate redevelopment activities on these lands. The results of the Trust’s redevelopment planning and the City’s efforts to update the Growth Policy will dictate the kinds of modifications that may be needed for the Zoning Ordinance.

The City’s selected planning consultant will need to determine if the City’s existing zoning districts and associated development standards and requirements are sufficient or if new zoning districts are necessary.

The following recommendations should be included with future revisions to the City’s Zoning Ordinance to reflect the establishment of the ICP.

Recommended ICs Modifications to the City’s Zoning Ordinance:

- Add a section to “Chapter 1 General Provisions” of the City’s Zoning Ordinance that recognizes the existence of the ICP and associated regulations or requirements and acknowledges these ICP-specific requirements apply in all designated zoning districts. Suggested wording for this zoning ordinance text addition follows.

01.110 DEVELOPMENT IN THE EAST HELENA INSTITUTIONAL CONTROLS PROGRAM (ICP) ADMINISTRATIVE AREA.

The City of East Helena is located within the Administrative Area for the East Helena Superfund Site Institutional Control Program (ICP). Proposed development within the ICP Administrative Area requires coordination with the East Helena Lead Education and Abatement Program (LEAP) staff to determine if ICP compliance measures are necessary. Compliance measures may include soil sampling, obtaining an ICP soil displacement and disposal permit, and soil cleanup actions. ICP coordination and compliance requirements apply in all designated zoning districts within the City of East Helena. The LEAP office is located in Room 201 of the East Helena City Hall and staff may be contacted at 406-457-8583.

Recommended Modifications to the City’s Zoning Map:

- Add a note to the Official Zoning Map stating the City lies entirely within the Administrative Area for the East Helena Superfund Site ICP.

- Revise the City’s Zoning Map to reflect newly annexed lands and show the current city limits and zoning districts.

Recommended Modifications to City Zoning Forms and Guidance Materials:

- Add a new item (#18) to the list of criteria the city is to consider during Site Plan Reviews. Suggested language for the new review criterion is provided below.

18. Recommendations from East Helena Lead Education and Abatement Program (LEAP) staff for measures necessary to comply with requirements of the East Helena Superfund Site Institutional Control Program (ICP).

- Add a new bullet item to the list of conditions under Item 7 of the Conditional Use Permit Requirements in the City’s Conditional Use Permit Checklist. Suggested language for the new condition is provided below.

- Compliance with recommendations from the East Helena Lead Education and Abatement Program (LEAP) to meet the requirements of the East Helena Superfund Site Institutional Control Program (ICP).

Implementation Considerations/Costs:

The City is currently seeking consulting services to make appropriate changes to the Zoning Ordinance, as well as updating the Growth Policy and creating Subdivision Regulations. Revising the Zoning Ordinance will require input and the following actions by the City Council and Zoning Commission.

Future City Council Actions for Amendments to Zoning Ordinance

- Identify and secure funding source(s) for updating the Zoning Ordinance - Done.
- Issue a Request for Proposal for consultant planning services and select a planning consultant to do the work.
- Direct consultant to prepare amendments to the Zoning Ordinance and process for adoption
- Act on recommendations from City Zoning Commission to adopt amendments to Zoning Ordinance.

Future Zoning Commission Actions for Amendments to Zoning Ordinance

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

The cost of making the suggested ICs-related changes to the Zoning Ordinance and Conditional Use Permit Checklist will be minimal and the language can be readily incorporated into the revised Zoning Ordinance by the selected planning consultant.

4. Change City General Business License Process to include distribution of ICP informational materials at time of issuance or renewal.

Recommended Changes to Processing of Business Licenses:

- City staff would provide copies of ICP educational materials to business owners as they apply for or renew their business licenses each year.

Implementation Considerations/Costs:

This recommendation can be implemented as soon as directed by the City Council and can be accomplished with little or no cost to the City. LEAP will be the primary agency responsible for developing ICP educational materials.

It is assumed LEAP would provide copies of appropriate ICP informational materials to the City of East Helena. City staff would be obligated to distribute ICP materials to business owners at the time that business license applications and renewals are processed.

5. Modify City Website to Provide Links to ICP Education Information and Notices.

- It is recommended that the City’s website be modified over time to provide “links” to ICP educational materials developed by LEAP and relevant program notices.

Implementation Considerations/Costs:

This recommendation can be implemented as soon as ICP educational materials or other guidance becomes available.

The costs of modifying the website to include links would be minimal since other agencies would generally be responsible for developing the information. The City’s website developer (or knowledgeable City staff) would be required to occasionally add web links and verify that links are still valid.

6. Ensure City staff is familiar with ICP requirements and trained to make use of the ICP’s GIS Database.

To help ensure the effectiveness of the ICP, it is essential that staff from the City of East Helena be knowledgeable of program goals and requirements. Staff from Lewis and Clark County or LEAP (as the administrators of the ICP) will need to provide key City staff with training and educational materials about the ICP. LEAP’s office in the East Helena City Hall should facilitate the transfer of ICP information to City staff.

Lewis and Clark County’s IC consultant has developed a Draft Data Maintenance and Quality Control Plan to support long-term records maintenance for the ICP. The Plan is intended to be adopted by the Lewis and Clark County Board of Health as part of the overall ICP to regulate cleanup of surface soils within the Administrative Area. The type of data maintained for the ICP will include:

Sampling/Remediation Data

Location Information
Sample Results
Remedial Actions
Property Status

Cadastral Data

Ownership/Ownership Changes
Owner Name and Address
Parcel Identification Numbers

The GIS database will be maintained by Lewis and Clark County’s IT/GIS staff and updated primarily with information provided by LEAP. The City of East Helena will not have any direct responsibility for records management associated with the ICP’s GIS database. The City will be required to provide records of approved Construction Permits to the County GIS department once a year (or more frequently if requested).

As envisioned, the City (and other participating local governments) will be able to access the ICP's GIS database. Appropriate City staff will need training from LEAP or the County's IT/GIS department about how to access and query the ICP database.

OTHER CONSIDERATIONS

Funding Support for Implementing and Administering ICs

The City may need to develop Work Plans and new Cooperative Agreements with EPA to address IC administration costs and implementation efforts over the foreseeable future. As noted earlier, it is recommended that a new Cooperative Agreement be established to cover IC activities and administration during the 2013-2014 period.

Future Annexations by the City

It is recommended that landowners or prospective developers who contact the City Council or City Planning Board to discuss development adjacent to the City be advised of the ICP. In addition to being made aware of the City's requirements for annexation, developers need to know their projects would be subject to ICP review and they need to comply with the remediation standards for land uses as outlined in the ROD. City staff or Planning Board members should refer landowners/developers to LEAP so they can coordinate their proposed projects.

City of East Helena Capital Improvement Plan (CIP)

Capital improvements plans are short-range plans that list capital projects and equipment purchases, provide a planning schedule, and identify options for funding. The City's CIP process does not need to be revised to reflect the implementation of the ICP. However, City administrators and department heads should be aware that public works projects need to be coordinated with LEAP. The City's Growth Policy Update will also inform future CIPs.