CHECKLIST ENVIRONMENTAL ASSESSMENT

Project Name:	LHC, Inc. Aggregate Take and Remove Permit
Proposed Implementation Date:	Spring 2025
Proponent:	LHC, Inc.
Location:	T15N-R25W-Sec 35 Approximately 105 acres within the N2, SW4, W2SE4, N2NE4SE4, SW4NE4SE4, N2NE4SE4, N2N2NE4SE4
County:	Mineral
Trust:	Montana State University Eastern, University of Montana Western

I. TYPE AND PURPOSE OF ACTION

LHC, Inc. henceforth referred to as the proponent, has applied for an aggregate take and remove permit on the above referenced tract in Mineral County. The Proponent has obtained an opencut mining permit from the Montana Department of Environmental Quality (DEQ) for this tract. Opencut permit number 3545 was approved by the Montana Department of Environmental Quality's Opencut Mining Bureau on June 21, 2024. In conjunction with the approval of the Opencut Minting Permit, the Montana DEQ conducted an environmental assessment in accordance with the Montana Environmental Policy Act. The Montana DEQ selected the Action Alternative within their analysis and issued an opencut mining permit on 105 acres of State Trust Lands in Mineral County, Montana. The dryland DEQ opencut permit does allow for the use of an asphalt plant, asphalt recycling, concrete recycling, a wash plant, a crusher and a pug mill. The DEQ EA contemplates these uses and these uses are also included in this assessment.

The Montana Department of Natural Resources and Conservation (DNRC) has the authority to tier to an existing environmental analysis under Montana Administrative Rule 36.2.534. In order to tier to an existing document, the agency must determine that the following are true:

> a) that the existing EIS (EA) covers an action paralleling or closely related to the action proposed by the agency or the applicant.
> (b) on the basis of its own independent evaluation, that the information contained in the existing EIS (EA) has been accurately presented; and
> (c) that the information contained in the existing EIS (EA) is applicable to the action currently being considered.

An aggregate take and remove permit from the Montana DNRC, in effect is a landowner and operator agreement, similar to a lease. In conjunction with the DEQ opencut permit, the proposed action would authorize LHC, Inc. the ability to mine gravel on Montana Trust Lands. The proposed action meets all the qualifications to be evaluated under ARM 36.2.534.

The Montana DEQ Opencut Mining Division's EA is attached to this document as Appendix A and is incorporated herein by reference. The Montana DEQ Opencut Mining Permit is attached to this document as Appendix B.

II. PROJECT DEVELOPMENT

1. PUBLIC INVOLVEMENT, AGENCIES, GROUPS OR INDIVIDUALS CONTACTED:

Provide a brief chronology of the scoping and ongoing involvement for this project.

- The proponent submitted an application for an aggregate take and remove permit.
- The DNRC Missoula Unit was notified of the application.
- Wildlife Biologist Garrett Schairer was scoped and provided the wildlife sections of this document.
- The proponent applied for and obtained the Montana DEQ opencut permit. As part of the opencut permitting process all adjacent landowners within ½ mile of the pit boundaries were notified of the application.
- Adjacent Landowners within one-half mile of the opencut boundaries were scoped for comment. No comments were received.
- The MT FWP was scoped for comments and provided a comment, which is included in Appendix C. The comments were addressed by Montana DNRC's biologist staff in the wildlife section of this analysis.
- The United States Forest Service was scoped for comments, no comment was provided. However, a road use agreement for Ronck Rd. was established in order to access the project area. It is attached to this document as Appendix D.
- The Mineral County Commissioners were scoped for comments, no comments were provided.
- There is no current surface lessee.

2. OTHER GOVERNMENTAL AGENCIES WITH JURISDICTION, LIST OF PERMITS NEEDED:

To mine for Gravel on Montana State Trust Lands the operator must obtain and keep current the following permits:

- Aggregate Take and Remove Permit – Montana DNRC
- Opencut Mining Permit – Montana DEQ
- Access agreements – The site is accessed through an agreement signed by the USFS, the Montana DNRC, and the proponent.

3. ALTERNATIVES CONSIDERED:

No Action Alternative: The aggregate take and remove permit would be denied, and the proponent would not be authorized to mine for gravel on State of Montana Trust Lands. The impacts of the No Action Alternative are expected to directly correlate to the impacts of the No Action Alternative of the Montana DEQ Opencut Mining Division's EA.

Action Alternative: The aggregate take and remove permit would be authorized and the proponent would be authorized to mine for gravel on State of Montana Trust Lands. The impacts of the Action

Alternative are expected to directly correlate to the impacts of the Action Alternative of the Montana DEQ Opencut Mining Division's EA.

SUMMARY OF POTENTIAL IMPACTS

The impact analysis will identify and estimate whether the impacts are direct or secondary impacts. Direct impacts occur at the same time and place as the action that causes the impact. Secondary impacts are a further impact to the human environment that may be stimulated, or induced by, or otherwise result from a direct impact of the action (ARM 17.4.603(18)). Where impacts would occur, the impacts will be described.

Cumulative impacts are the collective impacts on the human environment within the borders of Montana of the Proposed Action when considered in conjunction with other past and present actions related to the Proposed Action by location and generic type. Related future actions must also be considered when these actions are under concurrent consideration by any state agency through preimpact statement studies, separate impact statement evaluation, or permit processing procedures. The projects identified in Table 1 were analyzed as part of the cumulative impacts assessment for each resource.

III. IMPACTS ON THE PHYSICAL ENVIRONMENT

- *RESOURCES potentially impacted are listed on the form, followed by common issues that would be considered.*
- *Explain POTENTIAL IMPACTS AND MITIGATIONS following each resource heading.*
- *Enter "NONE" If no impacts are identified or the resource is not present.*

4. GEOLOGY AND SOIL QUALITY, STABILITY AND MOISTURE:
Consider the presence of fragile, compactable or unstable soils. Identify unusual geologic features. Specify any special reclamation considerations. Identify any cumulative impacts to soils.

The author agrees with the impacts to geology and soil quality, stability, and moisture as they are evaluated in section 1. of the DEQ opencut environmental analysis.

5. WATER QUALITY, QUANTITY AND DISTRIBUTION:
Identify important surface or groundwater resources. Consider the potential for violation of ambient water quality standards, drinking water maximum contaminant levels, or degradation of water quality. Identify cumulative effects to water resources.

The author agrees with the impacts to water quality, quantity and distribution as they are evaluated in section 2. of the DEQ opencut environmental analysis.

If the Action Alternative is selected, a special stipulation to prevent fuel leaks from impacting water quality will be added to the aggregate take and remove permit. The stipulation will require that all fuel stored onsite will be in primary and secondary containment, or in double-walled containment. There will also be a stipulation that equipment must be regularly inspected by the permittee to ensure it is not leaking hazardous materials or causing fire hazards.

6. AIR QUALITY:
What pollutants or particulate would be produced? Identify air quality regulations or zones (e.g. Class I air shed) the project would influence. Identify cumulative effects to air quality.

The author agrees with the impacts to air quality as they are evaluated in section 3 and partially in section 23 of the DEQ opencut analysis.

Section 3 of the DEQ analysis says that fugitive dust will be created as a result of the proposed activity. This is accurate, and if the Action Alternative is selected a stipulation will be added to the aggregate take and remove permit that the permittee shall minimize fugitive dust dispersion through the use of water trucks or other forms of dust abatement. This will help to mitigate the impacts of blowing dust for nearby motorists, residents and recreationists.

As it relates to section 23 and the DEQ's analysis of greenhouse gases, the author agrees that the proposed action will emit greenhouse gases in the amounts described within the DEQ analysis. However, the author of this analysis does not agree nor disagree with DEQ's assertion that these emissions will lead to atmospheric radiative forcing, or climate change. Climatology is a complex scientific area of study, and the author of this document does not make any assertion between the possible connection of greenhouse gas emissions created by this proposed action and climate change.

7. VEGETATION COVER, QUANTITY AND QUALITY:
What changes would the action cause to vegetative communities? Consider rare plants or cover types that would be affected. Identify cumulative effects to vegetation.

The author agrees with the impacts to vegetation cover. However, the DEQ permit states that the post mining land use for the site would be cropland/farmland or rangeland/pasture. This area is classified as forested land. If the Action Alternative were selected, a stipulation would be added into the permit, to ensure that the mined area would return to forested lands. Through this stipulation, the proponent would be required to plant trees in the reclaimed area.

Access road maintenance on State of Montana Trust Lands may require the removal of merchantable trees. If the Action Alternative is selected, a stipulation would be added to the aggregate take and remove permit that would require LHC to seek approval and coordination from the DNRC's Missoula Unit to remove any merchantable trees.

8. TERRESTRIAL, AVIAN AND AQUATIC LIFE AND HABITATS:
Consider substantial habitat values and use of the area by wildlife, birds or fish. Identify cumulative effects to fish and wildlife.

This section was written by DNRC Forestry and Trust Lands Division staff biologist, Garrett Schairer. The Montana FWP comments received in scoping are incorporated herein by reference.

The project area could be used by a variety of terrestrial and avian wildlife, including white-tailed deer, mule deer, elk, black bears, coyotes, foxes, mountain lions, raptors, rodents, and songbirds, among others. Generally, many of these species are fairly common in the region. The project area serves as mule deer, elk, and moose winter range and non-winter use by deer, elk, and moose is likely. Proximity to Highway 90, numerous residences, and other forms of human disturbance have likely altered the usefulness of the project area by big game.

The project area likely contributes to wildlife movements in the area. A variety of wildlife may pass through the project area as part of their seasonal migratory travels or more frequent movements between habitats. The area is within the Fish Creek Linkage Zone that has been identified as a priority

area for wildlife passage and connectivity. As indicated earlier, disturbance in the vicinity, including the effects of Highway 90, numerous residences, various recreational activities, and other forms of human disturbance has affected the ability of the area to be used for wildlife movements. Given the disturbance levels and general hiding cover levels in the project area, many wildlife species have likely altered how they use the project area and likely use the area at times when human presence and disturbance is reduced or minimal (such as at night).

No Action Alternative: Direct, Secondary, and Cumulative Effects

No further potential for disturbance to the suite of wildlife species using the project area would be anticipated. No further habitat-altering land uses would occur with this alternative, thus no changes to the existing habitats or levels of use by any of the existing wildlife species would be anticipated. Existing levels of human disturbance would not appreciably change. No direct, secondary, or cumulative effects to the suite of wildlife found in the project area would be anticipated since: 1) no appreciable changes to existing habitats would occur; 2) human disturbance levels would not be anticipated to change; and 3) no changes in wildlife use would be expected to occur.

Action Alternative: Direct, Secondary, and Cumulative Effects

Proposed activities could temporarily disturb and/or displace wildlife in the vicinity for several years while activities would be occurring. The effect of this disturbance would vary by the species and/or individual. Overall, individuals of several species could be displaced during proposed activities, but no appreciable population level changes to any species using the area would be anticipated. Generally, other suitable habitat for displaced individuals exists in the vicinity. The proposed activities would not be occurring year-round, and any disturbance associated with this alternative generally would be intermittent. During inactive times, no appreciable disturbance to wildlife would be anticipated. Following proposed reclamation, human disturbance levels would revert to levels similar to current conditions.

Proposed vegetation removal would occur on a relatively small amount (~110 acres) of the project area and would not appreciably alter winter range habitat attributes. Minor amounts of trees would be removed that are largely too small to provide thermal cover and/or snow intercept for big game species. Slight reductions of potential forage could occur in a small portion of the project area and larger winter ranges would be anticipated; proposed reclamation would return these areas to potential foraging habitats following proposed activities. A site-appropriate seed mix would be used to revegetate following proposed activities. Overall, no changes in carrying capacity of the winter range would be anticipated.

Slight increases in sight distance could alter the way wildlife move across the project area. During proposed activities, these movements would likely be displaced and shifted to surrounding areas; proposed activities would not prohibit wildlife from moving across Interstate 90 and between habitat components. Proposed activities would likely divert wildlife use from the project area into some of the other areas nearby. Some use by wildlife moving through the area would be expected during periods when activities are not occurring such as nighttime and quiet periods when activities are shut down. Following proposed activities, the project area may again be useful in connecting these areas and facilitating wildlife movements albeit with slightly less cover than present. Overall, no long-term changes in the viability of this area to facilitate wildlife movements would be anticipated. Generally, moderate direct, secondary, or cumulative effects to native wildlife in the project area and overall ability of the project area to facilitate wildlife movements would be anticipated since: 1) minor amounts of grassland and seedling/sapling trees would be temporarily removed in an area where other

suitable habitats are present; 2) human disturbance levels would be further elevated in an area that already has high disturbance levels caused by Interstate 90 and numerous residences but would be relatively short-lived and would revert to levels similar to present following proposed activities; and 3) some short-term decreases in use of the project area would be anticipated, but no appreciable effects at the scale of the cumulative effects analysis area would be anticipated, and overall wildlife use of the project area and cumulative effects analysis area would not appreciably change in the long-term.

To mitigate impacts to wildlife, if the Action Alternative were selected, a stipulation will be added to limit the operations to daylight hours only. This would decrease the human presence during the time in which wildlife is most likely to use the project area, therefore decreasing the impact of the project on wildlife.

9. UNIQUE, ENDANGERED, FRAGILE OR LIMITED ENVIRONMENTAL RESOURCES:
Consider any federally listed threatened or endangered species or habitat identified in the project area. Determine effects to wetlands. Consider Sensitive Species or Species of special concern. Identify cumulative effects to these species and their habitat.

This section was written by DNRC Forestry and Trust Lands Division staff biologist, Garrett Schairer. The scoping comments received by the Montana FWP are incorporated herein by reference.

The project area is a mix of semi-open ponderosa pine seedling/saplings intermixed with grass/shrublands that established following the 2006 Tarkio fire and subsequent salvage activities. Existing disturbance to wildlife is likely relatively high given the proximity to open roads, Highway 90, human residences, timber management, and various forms of recreation. Potential habitats for Canada lynx and Yellow-Billed Cuckoos do not exist in the vicinity of the proposed activity, thus no direct, secondary, or cumulative effects to Canada lynx or Yellow-Billed Cuckoos would be anticipated. The proposed project area is 37 miles southwest of the Northern Continental Divide Ecosystem (NCDE) Recovery Zone (USFWS 1993) and 18 miles southwest of "occupied habitat" area as mapped by grizzly bear researchers and managers to address increased sightings and encounters of grizzly bears in habitats outside of recovery zones (Wittinger 2002). However, the project area is roughly 4 miles from the Bitterroot Ecosystem, which is not currently known to support a population of grizzly bears. Furthermore, the area is within the Fish Creek Linkage Zone, which could provide connectivity between to the NCDE Ecosystem and the Bitterroot Ecosystem. Proximity to human residences, Highway 90, other human developments, and the general lack of cover in portions of the project area may limits habitat quality in the project area for grizzly bears. Overall extensive use of the project area by grizzly bears is not likely and any use would be expected to be quick and likely occur at times when human disturbance is minimal (such as at night).

The project area is in the home range associated with the Fish Creek bald eagle territory. Potential habitat for flammulated owls, fringed myotis, and hoary bats could exist in the project area. Other potential sensitive species that could be in the vicinity include golden eagles, northern goshawks, long-billed curlews, and western toads. Habitats for other sensitive species are either not present or would not be affected by the proposed activities.

No Action Alternative: Direct, Secondary, and Cumulative Effects

No further potential for disturbance to threatened, endangered, or sensitive wildlife would be anticipated. No further habitat-altering land uses would occur with this alternative, thus no changes to the existing habitats or levels of use by any of the terrestrial threatened, endangered, or sensitive wildlife species would be anticipated. Existing levels of human disturbance would not appreciably change. No direct, secondary, or cumulative effects to terrestrial threatened, endangered, or sensitive wildlife species would be anticipated since: 1) no appreciable changes to existing habitats would occur; 2) human disturbance levels would not be anticipated to change; and 3) no changes in wildlife use would be expected to occur.

Action Alternative: Direct, Secondary, and Cumulative Effects

Elevated disturbance levels associated with proposed activities could cause some short-term shifts in use and/or avoidance of portions of the project area. Following proposed activities, use would be expected to revert to levels similar to existing levels. Proposed activities would largely occur in the sparse young-forested stands north of Interstate 90; some removal of seedling/sapling trees would occur, which could alter some hiding cover and/or foraging habitats in this small area. Overall, a slight loss of vegetative cover would be anticipated that could alter how some threatened, endangered, and sensitive wildlife species use the project area (see Wildlife Table 1). Several species that rely on riparian and aquatic environments were considered, but since proposed activities would be more than 3/4 mile from the river and would be screened by forested habitats and separated by Interstate 90, over all minimal or no effects to these species would be anticipated. No changes in legal motorized public access would occur in the project area. Contract stipulations would minimize the presence of human-related attractants for the duration of the proposed activities. Generally, minor or negligible direct, secondary, or cumulative effects to terrestrial threatened, endangered, or sensitive wildlife species would be anticipated since: 1) minor amounts of habitats would be altered; 2) human disturbance levels would be further elevated in an area that already has high disturbance levels caused by Highway 90 and numerous residences but would be relatively short-lived and would revert to levels similar to present following proposed activities; and 3) some shifts in use of the project area and cumulative effects analysis area would be likely, but overall wildlife use of the project area and cumulative effects analysis area would not appreciably change.

WILDLIFE Table 1

CHECKLIST FOR ENDANGERED, THREATENED AND SENSITIVE SPEICES
SOUTHWESTERN LAND OFFICE
Tarkio Aggregate Take and Remove Project

Threatened and Endangered Species	[Y/N] Potential Impacts and Mitigation Measures N = Not Present or No Impact is Likely to Occur Y = Impacts May Occur (Explain Below)
THREATENED AND ENDANGERED SPECIES	
Grizzly bear (*Ursus arctos*) Habitat: Recovery areas, security from human activity	[Y] The proposed project area is 37 miles southwest of the NCDE Recovery Zone and 18 miles southwest of "occupied habitat" area as mapped by grizzly bear researchers and managers to address increased sightings and encounters of grizzly bears in habitats outside of recovery zones (Wittinger 2002). However, the project area is roughly 4 miles from the Bitterroot Ecosystem, which is not currently known to support a population of grizzly bears. Furthermore, the area is within the Fish Creek Linkage Zone and the area has been included in a block of public lands in area that has a high priority for wildlife connectivity and passage. A radio-collared grizzly bear sow has successfully crossed Interstate 90 in the vicinity of the project area in the past. Proximity to human residences, Highway 90, other human developments, and the general lack of cover in portions of the project area may limits habitat quality in the project area for grizzly bears. Overall extensive use of the project area by grizzly bears is not likely and any use would be expected to be quick and likely occur at times when human disturbance is minimal (such as at night). Any disturbance associated with the proposed activities would be additive to other disturbances in the vicinity. Some losses of hiding cover in a rather small area would be possible with the vegetation removal, however given the existing habitats, levels of human disturbance, small area, anticipated timing of grizzly bear use of the project area, and availability of other suitable habitats in the vicinity, this would not be expected to appreciably alter grizzly bear use of the vicinity. Overall proposed activities would have a relatively small footprint in relation to the home range of a grizzly bear, and would be relatively small in relation to the potential linkage zone in the area. Thus, a short-term, minor risk of adverse direct, secondary, or cumulative effects to grizzly bears would be anticipated with the proposed activities.
Canada lynx (*Felis lynx*) Habitat: Subalpine fir habitat types, dense sapling, old forest, deep snow zone	[N] No lynx habitats occur in the project area. Thus, no direct, secondary, or cumulative effects would be anticipated to lynx.

Yellow-Billed Cuckoo (*Coccyzus americanus)* Habitat: Deciduous forest stands of 25 acres or more with dense understories and in Montana these areas are generally found in large river bottoms	[N] No suitable deciduous riparian habitats are in the project area. Thus, no direct, secondary, or cumulative effects to yellow-billed cuckoos would be expected to occur as a result of either alternative.
DNRC Sensitive Species	[Y/N] Potential Impacts and Mitigation Measures N = Not Present or No Impact is Likely to Occur Y = Impacts May Occur (Explain Below)
Bald eagle (*Haliaeetus leucocephalus*) Habitat: Late-successional forest more than 1 mile from open water	[Y] The project area is roughly 1.0 miles north of the Fish Creek bald eagle territory. Bald eagle use of the area would likely be focused south of Highway 90 where mature forested habitats are in close proximity to the Clark Fork River; overall more limited use of the northern portions of the project area would be anticipated except for some possible foraging forays seeking carrion, small mammals, or upland birds. Proposed activities could occur during the bald eagle nesting season or the non-nesting season. Minor disturbance to bald eagles could occur for any activities conducted during the nesting period. Conversely, no disturbance to nesting bald eagles would be anticipated should those activities be conducted during the non-nesting period; however some slight disturbance to wintering bald eagles in the vicinity could occur. Overall, given the habitats present, distance from the nest, and proximity to Highway 90 and other forms of human disturbance in the vicinity, little use of the project area by bald eagles would be anticipated and any potential disturbance would not appreciably alter bald eagle use of the home range. Generally, proposed activities would occur in the more open habitats away from the riparian features and away from the portions that are more likely to receive any use by bald eagles. Negligible reductions in the availability of large snags or emergent trees that could be used as nest or perch trees would occur in the home range. No changes to human access to the home range would occur, thereby limiting potential for introducing additional human disturbance to the territory. However, proposed activities could introduce additional noise and disturbance within the home range, which would be additive to existing disturbances. This could alter bald eagle use of the project area but would not be expected to alter home range occupancy. Thus, a short-term, minor risk of adverse direct, secondary, or cumulative effects to bald eagles would be anticipated with the proposed activities.

Black-backed woodpecker (*Picoides arcticus*) Habitat: Mature to old burned or beetle-infested forest	[N] No recently (less than 5 years) burned areas are in the project area. Thus, no direct, secondary, or cumulative effects to black-backed woodpeckers would be expected to occur as a result of either alternative.
Fisher (*Martes pennanti*) Habitat: Dense mature to old forest less than 6,000 feet in elevation and riparian	[N] No suitable fisher covertypes exist in the project area. Given the lack of habitat, the limited area, the proximity to human developments, and the surrounding landscape, no direct, secondary, or cumulative effects to fisher would be anticipated.
Flammulated owl (*Otus flammeolus*) Habitat: Late-successional ponderosa pine and Douglas-fir forest	[Y] Some potential flammulated owl habitats exists in the project area, largely in those forested stands in the southern portion of the project area. Additionally, some foraging may occur at the ecotone between the mature stands of ponderosa pine and more open grasslands in the project area. Flammulated owls can be tolerant of human disturbance (McCallum 1994), however the elevated disturbance levels associated with proposed activities could negatively affect flammulated owls should activities occur when flammulated owls are present. Proposed activities would alter existing saplings that originated following recent wildfire activity would occur that may be suitable foraging habitats for flammulated owls. Overall, the proposed removal of trees and grassland habitats under this proposal could affect a portion of a nesting territory for 1 pair of flammulated owls. Generally, considerable other nesting and foraging habitats would persist in the project area and cumulative effects analysis area. Additionally, once the site is reclaimed, some potential use for foraging habitats could again return to this portion of the project area. Thus, a short term, minor risk of adverse direct, secondary, or cumulative effects to flammulated owls would be anticipated.

Fringed myotis (*Myotis thysanodes*) Habitat: low elevation ponderosa pine, Douglas-fir and riparian forest with diverse roost sites including outcrops, caves, mines	[Y] Fringed myotis are year-round residents of Montana that use a variety of habitats, including deserts, shrublands, sagebrush-grasslands, and forested habitats. They overwinter in caves, mines, crevices, or human structures. Fringed myotis forage near the ground or near vegetation. No known caves, mines, crevices, or other structures used for roosting occur in the project area or immediate vicinity; some rock outcrops exist to the east and north of the project area which could provide potential roosting habitats for fringed myotis. Fringed myotis have been documented in the vicinity along the Clark Fork River, and the project area could be used for foraging given the presence of ponderosa pine that is close to the riparian areas associated with the Clark Fork River. Proposed activities could disturb fringed myotis should they be in the area when activities are occurring. Changes in vegetation structural attributes could change overall prey availability in this small area, but considerable foraging habitats would persist in the project and cumulative effects analysis areas. Overall, no appreciable changes to fringed myotis use of the project area or cumulative effects analysis areas would be anticipated. Thus, a short term, negligible risk of direct, secondary, or cumulative effects to fringed myotis would be anticipated.
Hoary bat (*Lasiurus cinereus*) Habitat: coniferous and deciduous forests and roost on foliage in trees, under bark, in snags, bridges	[Y] Hoary bats are summer residents (June-September) across a variety of forested habitats in Montana. Hoary bats frequently forage over water sources near forested habitats. Hoary bats are generally thought to roost alone, primarily in trees, but will also use caves, other nests, and human structures. Some use by hoary bats would be possible due to the proximity to the Clark Fork River, which is likely used for foraging. Some individual trees and snags on DNRC-managed lands could be used for roosting. No known caves or other structures used for roosting occur in the project area or immediate vicinity; some rock features exist to the east and north of the project area which could provide potential roosting habitats for hoary bats. Hoary bats have been documented in the vicinity. Proposed activities could disturb hoary bats should they be in the area. Negligible numbers of small snags could be removed, which could lead to loss of potential roosting habitats, but overall few trees would be removed, and considerable amounts of forested habitats would persist in the project area and cumulative effects analysis area. No changes in foraging habitats would be anticipated. Overall, no appreciable changes to hoary bat use of the project area or cumulative effects analysis areas would be anticipated. Thus, a short term, negligible risk of adverse direct, secondary, or cumulative effects to hoary bats would be anticipated.
Peregrine falcon (*Falco peregrinus*) Habitat: Cliff features near open foraging areas and/or wetlands	[N] No preferred cliff features suitable for use by peregrine falcons occur in the project area. Thus, no direct, secondary, or cumulative effects to peregrine falcons would be expected to occur as a result of either alternative.

Pileated woodpecker (*Dryocopus pileatus*) Habitat: Late-successional ponderosa pine and larch-fir forest	[N] While some potential pileated woodpecker habitats exist in the overall project area (all south of Highway 90), no habitats exist in the vicinity of the proposed activities. Thus, no direct, secondary, or cumulative effects to pileated woodpeckers would be expected to occur as a result of either alternative.
Townsend's big-eared bat (*Plecotus townsendii*) Habitat: Caves, caverns, old mines	[N] DNRC is unaware of any mines or caves within the project area or close vicinity that would be suitable for use by Townsend's big-eared bats. Rock outcrops exist to the north and east of the DNRC-managed lands could be suitable for Townsend's big-eared bats but are distant enough that they would not be affected by any activities occurring in the project area. Thus, no direct, secondary or cumulative effects to Townsend's big-eared bats would be expected to occur as a result of either alternative.
Wolverine (*Gulo gulo*) Habitat: Alpine tundra and high-elevation boreal forests, areas with persistent spring snow.	[N] Generally wolverines are found in sparsely inhabited remote areas near tree line characterized by cool to cold temperatures year-round and rather deep and persistent snow well into the spring (Copeland et al. 2010). The availability and distribution of food is likely the primary factor in the large home range sizes of wolverines (Banci 1994). The project area is generally below the elevations where wolverines tend to be located. No areas of deep persistent spring snow occur in the project area. Individual animals could occasionally use lands in the project area while dispersing or possibly foraging, and they could be displaced by project-related disturbance if they are in the area during proposed activities. However, given their large home range sizes (~150 sq. mi. -- Hornocker and Hash 1981), and way they use a broad range of forested and non-forested habitats, the proposed activities would have negligible influence on wolverines. Thus, negligible short-term risk of direct, secondary, or cumulative effects to wolverines would be anticipated.
Golden Eagle (*Aquila chrysaetos*) Habitat: Wide range of habitats associated with mountains, valleys, prairies, including woodlands, grasslands, shrublands and rangelands. Nest in cliffs or large trees.	[Y] Since there are no suitable cliffs in the project area, any potential nesting would have to occur in large trees. Golden eagles could use the project area for foraging and the project area likely provides a diversity of prey species, including rodents, small mammals, numerous avian species, and carrion. Golden eagles have been documented in the vicinity. Proposed activities could disturb golden eagles should they be in the area, however elevated disturbance associated with Highway 90, numerous residences, and a variety of other human disturbances in the vicinity likely already limit use of the project area. Proposed vegetation removal could alter a small amount of potential foraging habitats, but no potential perch trees would be removed. Overall , given their large home ranges, these losses would have negligible effects on a pair of golden eagles should they even be in the vicinity. Thus, a short term, negligible risk of adverse direct, secondary, or cumulative effects to golden eagles would be anticipated.

Common Loon *(Gavia immer)* Habitat: Cold mountain lakes, nest in emergent vegetation	[N] No suitable lakes occur in the project area. Thus no direct, indirect, or cumulative effects to common loons would be expected under either alternative.
Harlequin Duck *(Histrionicus histrionicus)* Habitat: White-water streams, boulder and cobble substrates	[N] No suitable high-gradient stream or river habitats occur in the project area. No direct, indirect or cumulative effects to harlequin ducks would be expected to occur as a result of either alternative.
Mountain Plover (*Charadrius montanus*) Habitat: short-grass prairie & prairie dog towns	[N] No prairie dog colonies or other shortgrass prairie habitats occur in the project area. Thus, no direct, indirect, or cumulative effects to mountain plovers would be anticipated to occur as a result of either alternative.
Northern Bog Lemming *(Synaptomys borealis)* Habitat: Sphagnum meadows, bogs, fens with thick moss mats	[N] No suitable sphagnum bogs or fens occur in the project area. Thus, no direct, indirect, or cumulative effects to northern bog lemmings would be expected to occur as a result of either alternative.
Black Swift (*Cypseloides niger*) Habitat: Nests on ledges or shallow caves on steep rockfaces behind waterfalls, forage over open bodies of water.	[N] Potential foraging habitats could exist along the Clark Fork River. Proposed activities would be more than 3/4 mile from the river and would be screened from the waterbodies by forested habitats, thus minimal or no disturbance to foraging habitats would be anticipated. Proposed vegetation removal would not be expected to affect black swifts. Thus, no risk of adverse direct, secondary, or cumulative effects to black swifts would be anticipated.
Long-Billed Curlew (*Numenius americanus*) Habitat: Mixed grass prairie, moist meadows and short-statured grasslands.	[Y] Long-billed curlews generally use sparse short grass prairie, mixed grass prairie, and moist meadows while avoiding areas with trees or dense shrubs. Thus, some potential foraging and nesting habitats may exist in the project area. However, long-billed curlews have not been documented in the vicinity. Proposed activities could disturb long-billed curlews should they be in the area. Proposed vegetation removal could reduce long-billed curlew habitats, that could affect 1 or 2 pairs of curlews should they be in the area. Long-term reductions in forested habitats on a small portion of the project area could improve long-billed curlew habitats in the future. Thus, a short term, minor risk of adverse direct, secondary, or cumulative effects to long-billed curlews would be anticipated.
Trumpeter Swan (*Cygnus buccinator*) Habitat: Lakes, ponds, marshes with adequate vegetation to support nesting.	[N] Potential nesting and foraging habitats may exist along the Clark Fork River. Trumpeter Swans have been documented upstream on the Clark Fork River. Proposed activities would be more than 0.75 miles from potential habitats and would be screened from the waterbodies by forested habitats, thus minimal or no disturbance would be anticipated. Proposed vegetation removal would not be expected to affect Trumpeter swans. Thus, no risk of adverse direct, secondary, or cumulative effects to Trumpeter swans would be anticipated.

Coeur d'Alene Salamander *(Plethodon idahoensis)* Habitat: Waterfall spray zones, talus near cascading streams	[N] No moist talus or streamside talus habitat occurs in the project area. Thus, no direct, indirect, or cumulative effects to Coeur d'Alene salamanders would be expected to occur as a result of either alternative.
Northern Leopard Frog (*Lothobates pipiens*) Habitat: Low elevation and valley bottom ponds, beaver ponds, reservoirs, lakes, creeks, potholes, and marshes.	[N] Leopard frogs appear to have all but disappeared from western Montana, with the closest known breeding population occurring near Kalispell. Proposed activities would be more than 0.75 miles from the Clark Fork River and would be screened from the river by forested habitats, thus minimal or no disturbance would be anticipated. Proposed vegetation removal would not be expected to affect Northern leopard frogs. Thus, no risk of adverse direct, secondary, or cumulative effects to Northern leopard frogs would be anticipated.
Western Toad (*Anaxyrus boreas*) Habitat: Ponds, potholes reservoirs, streams, marshes, lake shores, and wet meadows during breeding, and a variety of forested and non-forested habitats the remainder of the year.	[Y] Riparian habitats associated with the Clark Fork River could be suitable Western Toad habitats and potential use of the uplands during the nonbreeding season could occur. Western Toads have not been documented in the vicinity. Proposed activities would be more than 0.75 miles from the Clark Fork River and would be screened from the waterbodies by forested habitats, thus minimal or no disturbance would be anticipated. Proposed vegetation removal would not be expected to alter non-breeding habitats for Western Toads should they be in the area, and considerable other habitats would be present in the project area and cumulative effects analysis area should they be in the vicinity. Thus, a short term, negligible risk of adverse direct, secondary, or cumulative effects to Northern leopard frogs would be anticipated.

To mitigate impacts to endangered, threatened, and protected species, if the Action Alternative were selected, a stipulation would be added to limit the operations to daylight hours only. This would decrease the human presence during the time in which wildlife is most likely to use the project area, therefore decreasing the impact of the project on wildlife.

10. HISTORICAL AND ARCHAEOLOGICAL SITES:
Identify and determine effects to historical, archaeological or paleontological resources.

Alternatives

No Action Alternative: The No Action Alternative is not expected to have impacts to historical and archaeological sites.

Action Alternative, Direct, Secondary and Cumulative impacts.

This section of the document was written by DNRC Forestry and Trust Lands Archeologist Patrick Rennie.

A Class III inventory of cultural and paleontologic resources in response to a proposed gravel pit in southeast Mineral County. The proposal is designated here as the "Tarkio Gravel Pit". The area of

potential effect (APE) considers current and future testing and development potential and is defined as a 400-acre area situated north of Interstate 90 in Section 35, T15N R25W. A more refined legal 11 descriptions for the APE is the N1/2, N1/2N1/2S1/2, and N1/2S1/2N1/2SE1/4 of Section 35, T15N R25W.
Three previously documented cultural resources were found to be within the APE and site form updates were prepared for each. Site 24MN133 is the Mineral County segment of the Mullan Road. Much of the original route in the APE is still utilized as a two track interior administrative trail and will be avoided with gravel quarrying activities. Site 24MN314 is abandoned segments of US Highway 10 in Mineral County. The segment in the APE is used as the primary interior access trail and exhibits a deteriorated blacktop surface. It will serve as the access and haul route for gravel quarried within the section so it will not be disturbed with gravel quarrying activities. Site 24MN475 consists of two bearing trees, a reflector post, and a survey monument and low-profile cairn situated at the quarter-section boundary between sections 26 and 35, T15N R25W. Although the bearing trees are just inside the APE, survey monuments must be protected from project related developments. As such, site 24MN475 cannot be disturbed. It is recommended here that proposed gravel pit developments will have No Effect to sites 24MN133, 24MN314, and 24MN475. No additional archaeological or historical investigative work is warranted.

If the Action Alternative is selected, a stipulation will be added that all work must stop until a professional assessment can be made by the DNRC's staff archeologist, if any paleontologic or archeologic features are found during mining activities.

11. AESTHETICS:
Determine if the project is located on a prominent topographic feature, or may be visible from populated or scenic areas. What level of noise, light or visual change would be produced? Identify cumulative effects to aesthetics.

The author agrees with the impacts to aesthetics as they are evaluated in section 8 of the DEQ opencut environmental analysis. However, if the Action Alternative is selected, the stipulation limiting the operations to daylight hours only will also mitigate the impacts to aesthetics. The DEQ analysis states that the Opencut Mining Act does not regulate hours of operation, but the stipulation within the aggregate take and remove permit would.

12. DEMANDS ON ENVIRONMENTAL RESOURCES OF LAND, WATER, AIR OR ENERGY:
Determine the amount of limited resources the project would require. Identify other activities nearby that the project would affect. Identify cumulative effects to environmental resources.

The author agrees with the impacts to demands on environmental resources of land, water, air or energy as they are evaluated in section 9 of the DEQ opencut environmental analysis.

13. OTHER ENVIRONMENTAL DOCUMENTS PERTINENT TO THE AREA:
List other studies, plans or projects on this tract. Determine cumulative impacts likely to occur as a result of current private, state or federal actions in the analysis area, and from future proposed state actions in the analysis area that are under MEPA review (scoped) or permitting review by any state agency.

The author agrees with the impacts to other environmental documents pertinent to the area as they are evaluated in section 10 of the DEQ opencut environmental analysis.

The DNRC has managed the tract for timber sales in the past and would do so into the future. The mine and a timber sale could coincide at some point in the future. Coordination on trucking capacity and rules would be necessary.

The Montana DNRC's Habitat Conservation Plan (HCP) and State Forest Land Management Plan (SFLMP) rules both apply to this section.

IV. IMPACTS ON THE HUMAN POPULATION

- *RESOURCES potentially impacted are listed on the form, followed by common issues that would be considered.*
- *Explain POTENTIAL IMPACTS AND MITIGATIONS following each resource heading.*
- *Enter "NONE" If no impacts are identified or the resource is not present.*

14. HUMAN HEALTH AND SAFETY:
Identify any health and safety risks posed by the project.

The author agrees with the impacts to human health and safety as they are evaluated in section 11. of the DEQ opencut environmental analysis.

15. INDUSTRIAL, COMMERCIAL AND AGRICULTURE ACTIVITIES AND PRODUCTION:
Identify how the project would add to or alter these activities.

The author agrees with the impacts to industrial, commercial, and agriculture activities and production as they are evaluated in section 12. of the DEQ opencut environmental analysis.

16. QUANTITY AND DISTRIBUTION OF EMPLOYMENT:
Estimate the number of jobs the project would create, move or eliminate. Identify cumulative effects to the employment market.

The author agrees with the impacts to quantity and distribution of employment as they are evaluated in section 13 of the DEQ opencut environmental analysis.

17. LOCAL AND STATE TAX BASE AND TAX REVENUES:
Estimate tax revenue the project would create or eliminate. Identify cumulative effects to taxes and revenue.

The author agrees with the impacts to local and state tax base and tax revenues as they are evaluated in section 14 of the DEQ opencut environmental analysis.

18. DEMAND FOR GOVERNMENT SERVICES:
Estimate increases in traffic and changes to traffic patterns. What changes would be needed to fire protection, police, schools, etc.? Identify cumulative effects of this and other projects on government services.

The author agrees with the impacts to demand for government services as they are evaluated in section 15 of the DEQ opencut environmental analysis.

An operation and maintenance plan was entered into by the USFS, the Montana DNRC and the proponent for Ronck Road 18014 from mile 0.00 to 0.53. This is the portion of the road that is through private lands from the county road to State of Montana Trust Land. The agreement is attached to this document as Appendix D.

The proponent will be required to maintain the road on State of Montana Trust Land also and will be the sole cost-bearing party for any improvements or maintenance to the road.

19. LOCALLY ADOPTED ENVIRONMENTAL PLANS AND GOALS:
List State, County, City, USFS, BLM, Tribal, and other zoning or management plans, and identify how they would affect this project.

The author agrees with the impacts to locally adopted environmental plans and goals as they are evaluated in section 16 of the DEQ opencut environmental analysis.

Additional plans are listed in section 13 of this document and are applicable to this project.

20. ACCESS TO AND QUALITY OF RECREATIONAL AND WILDERNESS ACTIVITIES:
Identify any wilderness or recreational areas nearby or access routes through this tract. Determine the effects of the project on recreational potential within the tract. Identify cumulative effects to recreational and wilderness activities.

The author agrees with the impacts to access to and quality of recreational and wilderness activities as they are evaluated in section 17 of the DEQ opencut environmental analysis.

21. DENSITY AND DISTRIBUTION OF POPULATION AND HOUSING:
Estimate population changes and additional housing the project would require. Identify cumulative effects to population and housing.

The author agrees with the impacts to density and distribution of population and housing as they are evaluated in section 18 of the DEQ opencut environmental analysis.

22. SOCIAL STRUCTURES AND MORES:
Identify potential disruption of native or traditional lifestyles or communities.

The author agrees with the impacts to social structures and mores as they are evaluated in section 19 of the DEQ opencut environmental analysis.

23. CULTURAL UNIQUENESS AND DIVERSITY:
How would the action affect any unique quality of the area?

The author agrees with the impacts to cultural uniqueness and diversity as they are evaluated in section 20 of the DEQ opencut environmental analysis.

24. OTHER APPROPRIATE SOCIAL AND ECONOMIC CIRCUMSTANCES:
Estimate the return to the trust. Include appropriate economic analysis. Identify potential future uses for the analysis area other than existing management. Identify cumulative economic and social effects likely to occur as a result of the proposed action.

No Action Alternative: The selection of the No Action Alternative would deny the application for an aggregate take and remove permit. The trust beneficiary would not receive revenue from gravel mining operations.

Action Alternative: The selection of the Action Alternative would approve the application for an aggregate take and remove permit. The permit would include a $500.00 annual advanced royalty. This amount would be due annually every year the permit is active. Annual advanced royalties are minimum amounts that are non-refundable. They act as a pre-payment of material up to a certain volume. The agreement would include a $2.50 per cubic yard royalty. The Montana DEQ opencut permit includes a maximum estimated quantity of mine material to be excavated and removed at 3,387,300 cubic yards. If the per yard royalty remains consistent at $2.50/cubic yard over the life of the permit, the trust is expected to receive $8,468,250 from gravel royalties. It would be expected that per yard royalties would increase over the life of the mine, commensurate with inflation.

Upon expiration of the DEQ permit or the Trust Lands take and remove permit, the area would be reclaimed and returned to forested lands by planting seedlings. The proponent must seed the area with a seed mix and seedling mix approved by the Missoula Unit Office.

EA Checklist Prepared By:	**Name:**	Zack Winfield	**Date:**	7/29/25
	Title:	Mineral Resource Specialist		

V. FINDING

25. ALTERNATIVE SELECTED:

After thorough review of the Environmental Assessment (EA), the Montana DEQ Opencut Mining Division's Environmental Analysis, the project file, and the applicable Montana statutes and rules, I have made the decision to select the Action Alternative. The proponent's aggregate take and remove application will be approved and the DNRC's Forestry and Trust Lands Division will enter into an agreement with LHC, Inc. for the mining and removal of Gravel on State of Montana Trust Lands, Section 35, Township 15N, Range 25W as described within this document.

The selection of the Action Alternative is consistent with the State of Montana Trust Lands mission which states "Manage the State of Montana's trust lands resources to produce revenues for the beneficiaries while considering environmental factors and protecting the future income-generating capacity of the land." (Forestry and Trust Lands Division Annual Report, 2023, p. 4). The selection of the Action Alternative is also consistent with MCA §77-1-601 which states that "*It is in the best interest and to the great advantage of the state of Montana to seek the highest development of state-owned lands in order that they might be placed to their highest and best use and thereby derive greater revenue for the support of the common schools, the university system, and other institutions benefiting therefrom, and that in so doing the economy of the local community as well as the state is benefited as a result of the impact of such development.*"

26. SIGNIFICANCE OF POTENTIAL IMPACTS:

After reviewing this Environmental Analysis I conclude that granting of the requested aggregate take and remove on this tract of State Trust Lands is not expected to result in, nor cause significant negative environmental impacts. The proposed action satisfies the Trust's fiduciary mandate and ensures the long-term productivity of the land. An environmental assessment is the appropriate level of analysis for the proposed action.

The aggregate take and remove permit shall also contain the following stipulations in order to further mitigate impacts as evaluated within the analysis.

Special Stipulations to be included in aggregate take and remove permit.

1. All fuel or other hazardous materials stored onsite must be stored in primary and secondary containment in which the secondary containment is of equal or greater volume as the primary containment. Double walled containment may be used instead of secondary containment.
2. All equipment must be inspected, maintained, and washed to ensure it is not leaking hazardous fluids, spreading noxious weeds, or creating an undue fire hazard. Inspections will be conducted by a DNRC employee.
3. The permittee shall utilize a water truck or other means as necessary to mitigate dust dispersion from the site and the access road.
4. Any merchantable trees on State of Montana Trust Land that must be removed from the pit area or the access road area shall be approved and coordinated by the DNRC's Missoula Unit.

5. The permittee shall consult the local DNRC office for a grass seed-mix recommendation prior to reclamation.If grass seed fails to germinate, the area must be reseeded. In addition the recommendation will include a requirement to plant Ponderosa pine at 200 trees per acre of styro 10 seedlings or comparable size. Stock must be from a local seed source.
6. The permittee may only operate the pit during daylight hours, unless a written exemption is approved by the DNRC.
7. If any previously unknown paleontological or archeological features are discovered during mining activities, the proponent will avoid disturbance of the resource, stop-work and contact the Montana DNRC. Work may only resume after a professional assessment of the resource is completed.
8. The permittee shall always keep fire extinguishers onsite when equipment is present. If a fire start occurs, the permittee shall first call 911 and then immediately thereafter notify the Missoula Unit.
9. The site shall be kept in a clean and workmanlike manner at all times.
10. No camping by the permittee's employees or the permittee's contractors will be allowed unless a written exception is provided by the DNRC.
11. Contractors and purchasers conducting contract operations will be prohibited from carrying firearms while on duty.
12. Food, garbage, and other attractants will be stored in a bear-resistant manner.
13. A DNRC biologist will be consulted if a threatened or endangered species is encountered to determine if additional mitigations that are consistent with the administrative rules for managing threatened and endangered species (ARM 36.11.428 through 36.11.435) are needed.

27. NEED FOR FURTHER ENVIRONMENTAL ANALYSIS:

[ ]	EIS	[ ]	More Detailed EA	[X]	No Further Analysis

EA Checklist Approved By:	**Name:** Amy Helena **Title:** Missoula Unit Manager
Signature:	**Date**: 7/30/25

Appendix A: MT DEQ Environmental Assessment

DEQ
Montana Department of Environmental Quality

Air, Energy & Mining Division

DRYLAND OPENCUT MINING PERMIT APPLICATION

PERMIT/OPENCUT#3545

LHC, INC.

TARKIO

Tarkio, MT

June 2024
Environmental Assessment

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PROJECT OVERVIEW

COMPANY NAME:	LHC, Inc.
EA DATE:	June 2024
SITE NAME:	Tarkio
OPENCUT#:	3545
PERMITTED ACREAGE:	105.0
NON-BONDED ACREAGE:	85.0
MINING DEPTH:	20 feet
RECLAMATION DATE:	December 2050
POSTMINING LAND USE(s):	Cropland/Farmland, Rangeland and/or Pasture
CUBIC YARDS MINED	Unspecified in Application
AMENDMENT #:	Not applicable
DATE APPLICATION RECEIVED:	May 22, 2024
DATE APPLICATION COMPLETE:	May 29, 2024

Location

Lat/Long: 47.01485, -114.71951
County: Mineral
Distance to nearest Town or Major Intersection: 1 mile southeast of Tarkio, MT
PROPERTY OWNERSHIP: FEDERAL ☐ STATE ☒ COUNTY☐ PRIVATE ☐

Compliance with the Montana Environmental Policy Act

Under the Montana Environmental Policy Act (MEPA), Montana agencies are required to prepare an environmental review for state actions that may have an impact on the human environment. The proposed action is considered to be a state action that may have an impact on the human environment and, therefore, the Department of Environmental Quality (DEQ) must prepare an environmental review. This Environmental Assessment (EA) will examine the proposed action and alternatives to the proposed action and disclose potential impacts that may result from the proposed and alternative actions. DEQ will determine the need for additional environmental review based on consideration of the criteria set forth in Administrative Rules of Montana (ARM) 17.4.608. DEQ may not withhold, deny, or impose conditions on the permit based on the information contained in this Environmental Assessment (§75-1-201(4), MCA).

Proposed Action

DEQ would issue Opencut Permit OC#3545 (Permit) to LHC, Inc. (Applicant) if DEQ has determined that the Applicant has met the criteria set forth in Section 82-4-432, Montana Code Annotated (MCA). If approved, the permit to conduct opencut activities would be granted until December of 2050.

Purpose and Need

DEQ's purpose and need in conducting this environmental review is to act upon LHC, Inc.'s Application, located on State land for a permit to conduct opencut activities in compliance with the Opencut Act. The Application for OC#3545 (Application) was received by DEQ on May 22, 2024 and deemed complete on May 29, 2024. Pursuant to Section 82-4-432, MCA, the Applicant has revised and resolved outstanding deficiencies regarding its Application.

The Applicant's purpose and need in proposing this action is to obtain a new source for future operating needs.

TABLE 1: SUMMARY OF ACTIVITIES PROPOSED IN APPLICATION

Table 1. Summary of Proposed Activities in Application	
General Overview	The Applicant proposes to permit a new, Dryland opencut operation to conduct opencut activities from a 105.0-acre site located approximately 1 mile southeast of Tarkio, MT. The site would be located on State property. The proposed site location sits within Montana State Trust Lands. The site was not inspected by an opencut scientist due to statutory timeframes not allowing time for field work. Therefore, all information included in the EA is derived from the Application, analysis of aerial photography, topographic maps, and other information available to the Department at the time of review. At the conclusion of mining, the site would be reclaimed to Cropland/Farmland, Rangeland and/or Pasture. The proposed site would be eligible for Phase I Release after ripping/deep-tilling and disking areas within the proposed permit area that are affected by compaction, restoring slopes to 3:1 or flatter, replacing salvaged soil and overburden, and seeding the site. The site would be eligible for Phase II Release after two full growing seasons have passed and after the site is reclaimed to Phase I Release requirements, and vegetation is well-established for pastureland/rangeland areas. Cropland only requires one successful harvest to meet Phase II reclamation requirements. The Applicant may file to extend the final reclamation date at any time if the Applicant wishes to continue to mine the site and DEQ would apply the applicable permitting process to the application at that time.
Proposed Dimensions	
Facilities and surface disturbances	Opencut disturbance would be permitted to occur on the entire 105.0 acres.
Length of highwall (ft)	Highwall would be permitted and bonded to be a maximum of 1,000 linear feet.
Height of highwall (ft)	Highwall would be permitted and bonded to be a maximum of 20 feet high.
Current disturbance onsite	There is no existing onsite disturbance.

Existing permitted access road length (lf)	As requested by the landowner on the Landowner Consultation form, no access road would be permitted for this site.
Total Permitted Acreage	The site would be permitted for 105.0 acres.
Total Bonded Acreage	The site would be bonded for 20.0 acres.
Specific Proposed Activities	
Duration and timing	**Start Date**: Start date is defined as the date on which DEQ issues the Permit (§§ 82-4-432(10)(c), (14)(d), MCA). **Final Reclamation Date**: December 2050 Final reclamation date is defined as the date that the Applicant identifies in the Application. The Applicant has not proposed any specific hours of operation, so this environmental review is analyzing the effects of operations taking place for 24 hours per day and seven days per week. Upon final reclamation, the site would be reclaimed to Cropland/Farmland, Rangeland and/or Pasture. Phase I and Phase II reclamation requirements are required to be met prior to the December 2050 reclamation date stated in the Application. The Applicant may file to extend the final reclamation date if the Applicant wishes to continue to mine the site and DEQ would apply the applicable permitting process to the application at that time.
Equipment	Typical opencut excavating/hauling equipment includes a backhoe, bulldozer, dump/haul truck, excavator, loader, and scraper. Typical opencut processing equipment includes a conveyor, screen, pug mill, grizzly, wash plant, concrete plant, asphalt plant, and crushing equipment.
Location and analysis area	**Location**: 47.01485, -114.71951 **Distance from nearest town/city**: Site is located 1 mile southeast of Tarkio, MT **Analysis Area**: The area being analyzed as part of this environmental review includes the immediate project area as well as neighboring lands surrounding the analysis area, as appropriate for the impacts being considered. Refer to Location Map and any other maps below (Figure 1).
Personnel on-site	Personnel would include those hired by the Operator, contractors, representatives and others allowed onsite.

Structures	The Applicant has not discussed any existing or future planned structures for the proposed site.
Project water source	It is unknown if water would be used for this project or where it would be sourced. The Opencut Mining Act does not require a plan of operation to be submitted for a Dryland Opencut Mining Application.
Supplemental lighting	To comply with federal Mine Safety and Health Administration (MSHA) regulations, artificial light sources would be used on site during periods of operations when little or no sunlight is available. The Applicant did not state whether they will use lights in active work areas.
Air quality	The Applicant has not discussed any mitigations for dust control or other air quality issues. The Applicant is required to comply with the applicable local, county, state, and federal requirements pertaining to air quality.
Water quality	The Application did not discuss where fueling would occur. The Applicant is required to comply with the applicable local, county, state, and federal requirements pertaining to water quality.
Erosion control and sediment transport	The Applicant would install erosion control as necessary. The Applicant would seed and revegetate all soil and overburden stockpiles to prevent sediment runoff. The Applicant would be required to obtain any necessary permits from the Water Protection Bureau. The Applicant is required to comply with the applicable local, county, state, and federal requirements pertaining to erosion control and sediment transport.
Solid waste	The Applicant would stockpile and crush up to 5,000 cubic yards of asphalt onsite per the Reclamation Bond Spreadsheet. The Applicant is required to comply with the applicable local, county, state, and federal requirements pertaining to solid waste.
Cultural resources	The Applicant has not proposed any actions that would reduce any potential impacts to cultural resources. The State Historical Preservation Office (SHPO) conducted a cultural resource file search and found that there have been a few previously recorded sites within the designated search locales. SHPO also stated that there have been a few cultural resource inventories conducted in the area and provided LHC, Inc. with a list of the documented sites and reports.

	SHPO recommends that if any structures are within the Area of Potential Effect and are over fifty years old, LHC, Inc. should record and determine their eligibilty before any disturbance takes place. The Applicant is required to comply with the applicable local, county, state, and federal requirements pertaining to cultural resources.
Aesthetics	The Application has not proposed measures to reduce aesthetic impacts. The Applicant would mitigate impacts to aesthetics through reclaiming to a successful postmining land use. The Applicant is required to comply with the applicable local, county, state, and federal requirements pertaining to aesthetics.
Hazardous substances	The Applicant does not discuss mitigations to manage hazardous substances in the Application. The Applicant is required to comply with the applicable local, county, state, and federal requirements pertaining to hazardous substances.
Weed Control	Noxious weeds would be required to be controlled on site at all times throughout the life of the permit. The Applicant would follow the Mineral County Weed District permit/requirements. The Applicant is required to comply with the applicable local, county, state, and federal requirements pertaining to weed control.
Operation Requirements	The proposed opencut operation would need to comply with the Opencut Mining Act, § 82-4-401, et seq., MCA ("the Opencut Mining Act"), and the rules adopted under the Opencut Mining Act governing permitted opencut operations. The activities proposed by the Applicant may be subject to additional regulatory oversight and operating conditions at federal, state, county, and/or local levels. DEQ has not assessed whether or not the proposed activities examined in this EA necessarily meet operational or regulatory requirements beyond those set forth in the Opencut Mining Act and the rules adopted under the Opencut Mining Act.
Reclamation Plans	Upon commencement of mining, 12 inches of soil and 12 inches of overburden would be stockpiled in locations across the site that would be protected from loss. Stripping of soil and overburden would occur prior to disturbance of the area. Upon final reclamation, 12 inches of soil and 12 inches of overburden would be replaced in areas that have been affected by mining and mining related activities. The site would be reclaimed to Cropland/Farmland, Rangeland and/or Pasture. The site would be seeded with a seed mix approved by the landowner at time of reclamation, as designated on the Landowner Consultation Form. The proposed site would be eligible for Phase I Release after 1) the ground is graded, shaped and sloped to 3:1 or flatter, 2) the soil has been replaced, 3)

	the soil has been tilled to relieve compaction, and 4) the area has been seeded. The proposed site would be eligible for Phase II Release after two full growing seasons have passed since the site was reclaimed to Phase I Release standards, and after vegetation is well established. Phase I and Phase II reclamation requirements would be required to be met prior to the December 2050 reclamation date stated in the application. The Applicant may also file to extend the final reclamation date if the Applicant wishes to continue to mine the site and DEQ would apply the applicable permitting processes to the application at that time
Cumulative Impact Considerations	
General setting	The site would be located at the foothills of the Ninemile Range and is designated Montana State Trust Lands. The site slopes gently to the south and sits roughly 400-500 feet in elevation above the Clark Fork River. US Interstate Highway 90 runs directly to the south of the proposed site. The current land use on site includes Montana State Trust Lands activities.
Past actions	The nearest opencut site would be located approximately 0.4 miles to the northwest, just east of Interstate Highway 90. Another opencut site is located approximately 3 miles to the east, just south of Interstate Highway 90. Opencut operations would occur at a site where no past opencut operations have been permitted.
Present actions	DEQ is not currently considering any other applications for opencut mining permits in the immediate area.
Related future actions	Future actions are unknown at this time. The Operator has the ability to submit to DEQ an application to amend the permit for the site at any time, which DEQ would review pursuant to the Opencut Mining Act and rules adopted under the Opencut Mining Act at this time.

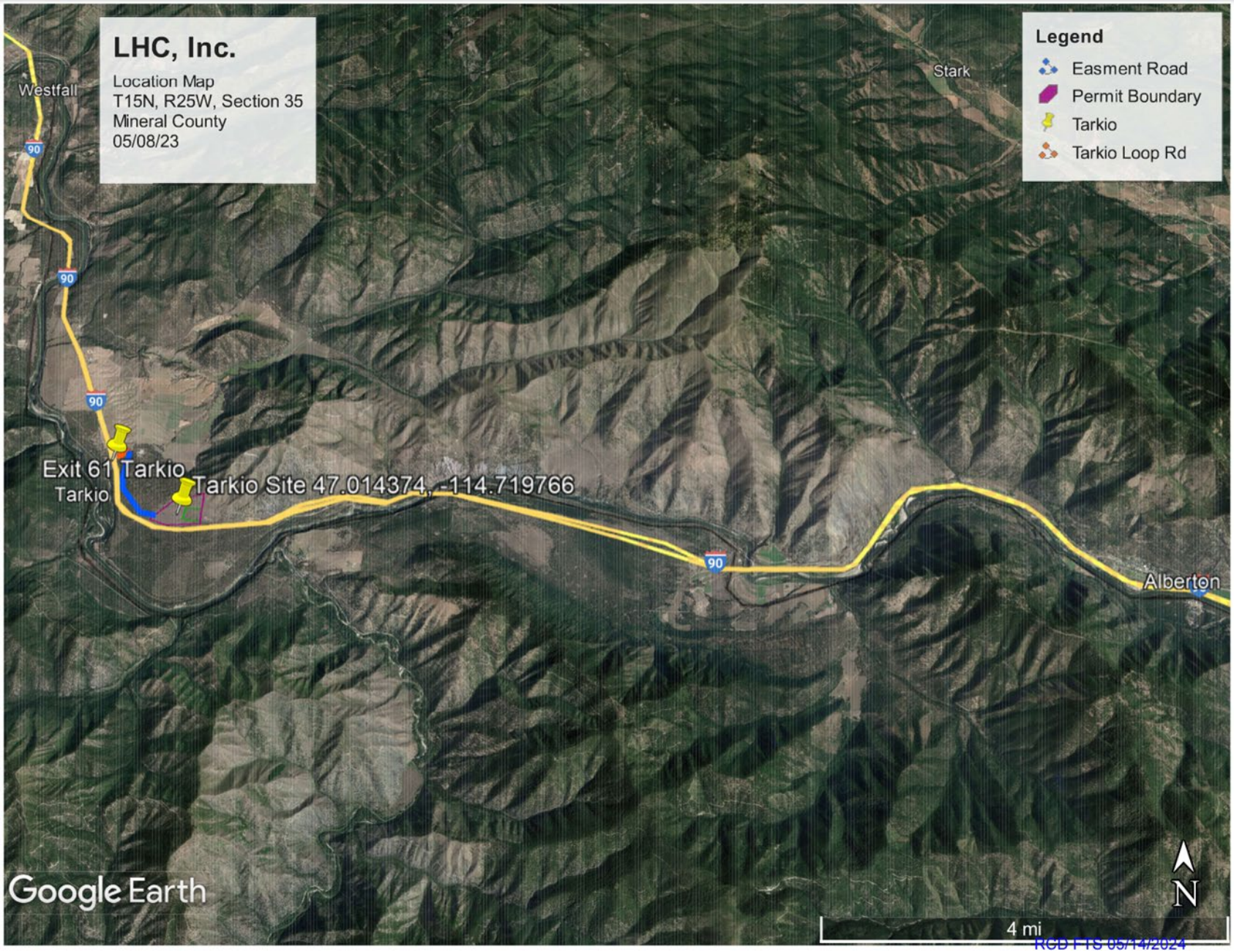

Figure 1: Location Map

Figure 2: Tarkio Test Holes

SUMMARY OF POTENTIAL IMPACTS

The impact analysis will identify and estimate whether the impacts are direct or secondary impacts. Direct impacts occur at the same time and place as the action that causes the impact. Secondary impacts are a further impact to the human environment that may be stimulated, or induced by, or otherwise result from a direct impact of the action (ARM 17.4.603(18)). Where impacts would occur, the impacts will be described.

Cumulative impacts are the collective impacts on the human environment within the borders of Montana of the Proposed Action when considered in conjunction with other past and present actions related to the Proposed Action by location and generic type. Related future actions must also be considered when these actions are under concurrent consideration by any state agency through pre-impact statement studies, separate impact statement evaluation, or permit processing procedures. The projects identified in Table 1 were analyzed as part of the cumulative impacts assessment for each resource.

1. Geology and Soil Quality, Stability, and Moisture

[Are soils present, which are fragile, erosive, susceptible to compaction, or unstable? Are there unusual or unstable geologic features? Are there special reclamation considerations?]

The Applicant proposes to mine material from a 105.0-acre site located on State land, approximately 1 mile southeast of Tarkio, MT. The site is situated at the foothills of the Ninemile Range. The site slopes gently to the south and sits roughly 400-500 feet in elevation above the Clark Fork River. US Interstate Highway 90 runs directly to the south of the proposed site.

The surficial geology consists of glacial flood deposit. The deposit is composed of clasts ranging from boulder gravel to interbeds of laminated silty clay and very fine grained sand. Large scale crossbedding can be seen within the deposit, ranging from one meter to tens of meters in height. Imbricated boulder-sized clasts and planar cross-stratified gravel with set heights of 1-30 meters display paleocurrents oriented down the Clark Fork River and up tributaries to the Clark Fork, suggesting a high-energy, high volume alluvial environment (Montana Bureau of Mines and Geology).

The onsite soils mapped by the Natural Resources Conservation Service (NRCS) consist predominately of Krause gravelly loam, 8 to 15 percent slopes. This area receives approximately 15 to 30 inches of precipitation per year and is located about 3,300 to 3,140 feet above mean sea level. As part of reclamation, the Applicant would replace 12 inches of soil and 12 inches of overburden as stated in the Application.

No unusual or unstable geologic features are present, and no fragile or particularly erosive or unstable soils are present.

Direct Impacts:

An irreversible and irretrievable removal of opencut materials from the site would occur. Soil and overburden would be salvaged and replaced across the 105.0-acre site upon reclamation. An impact to the quantity and quality of soils from salvaging, stockpiling, and resoiling activities also would occur (i.e. erosion due to wind or water, a loss of soil and soil structure and increased compaction, etc.), but this would not impair the capacity of the soils to support final reclamation of the site.

The information provided above is based on the information that DEQ had available at the time of completing this EA. Available information was obtained from the Application, analysis of aerial photography, topographic maps, geologic maps, soil maps, and other research tools listed in the reference section below. Based on this information, DEQ does not anticipate a detrimental impact to geology and soil quality, stability and moisture once reclamation is achieved.

Secondary Impacts:

The proposed activities could allow for the establishment of weeds. The Applicant would be required to comply with the Mineral County Weed permit/requirements.

Cumulative Impacts:

Erosion could add to cumulative impacts associated with potential erosion on existing roads and other historical disturbances in the proposed project area.

2. Water Quality, Quantity, and Distribution

[Are important surface or groundwater resources present? Is there potential for violation of ambient water quality standards, drinking water maximum contaminant levels, or degradation of water quality?]

The Clark Fork River is located roughly 0.5 miles to the west of the Tarkio site. The site slopes gently to the south and sits roughly 400-500 feet in elevation above the Clark Fork River.

Groundwater Information Center (GWIC) well ID 243143 appears to be located approximately 2,670 feet to the east of the proposed permit boundary. This Montana Department of Transportation (MDT) test well was drilled to a depth of 26.5 feet and remained dry. This information was obtained from the a review of well logs obtained from the Opencut Mining Web Mapping Application (WMA).

The Applicant has certified that Opencut operations would not intersect groundwater, surface water, or water conveyance facilities.

This information was obtained from the Application and review of well logs and other data obtained from the Opencut Mining WMA. As a plan of operation is not required to be submitted with a Dryland Opencut Mining Permit Application, it is unknown whether water would be used on site or what the source of water would be. Site topography would be altered, but it is unclear whether the site would be self-contained or blend with the surrounding topography and drain externally. Precipitation would be generally expected to infiltrate into the sub-surface, but any water that leaves the site may carry sediment from the disturbed site.

Available soils on site would be salvaged for reclamation. At the first seasonal opportunity, the Applicant would be required to shape and seed any soil stockpiles that would remain in place for two or more years with an approved perennial seed mix. Vegetation of the berms would prevent any water that may leave the site from carrying sediment.

The Montana Department of Environmental Quality Water Quality Division may require the Applicant to obtain various permits to address water quality. The Applicant is required to comply with all applicable federal, state, county, or local regulations, ordinances, and permits, licenses, and approvals for the operation of the site.

The information provided above is based on the information that DEQ had available to it at the time of completing this EA. Sources include the Application, analysis of aerial photography, and topographic maps.

Direct Impacts:

The site topography would be altered due to opencut mining activities. During the beginning stages of mining, collected precipitation that may leave the site during a heavy storm event that could carry sediment. Fuel could be spilled during refueling activities or in the event of a fuel tank leak, at which point, fuel could discharge to groundwater. Any impacts would last through the life of the Permit, unless otherwise noted. The Applicant is required to have any other required permit(s) in place to ensure protections of the site so that it can be reclaimed to the productive postmining land use of Cropland/Farmland, Rangeland and/or Pasture.

The Operator has certified the operation would not affect surface water, including intermittent or perennial streams, groundwater, or water conveyance facilities, which meets the requirements of the Opencut Act and associated rules. The Department does not anticipate impacts to surface water features and water quality, quantity, and distribution.

The Applicant is required to comply with all applicable federal, state, county, or local regulations, ordinances, and permits, licenses, and approvals for the operation of the site.

Secondary Impacts:

No secondary impacts to water quality, quantity and distribution would be expected. The Opencut Mining Act does not regulate water quality or quantity. However, Applicants are required to comply with all laws relating to water, such as the federal Clean Water Act and the Montana Clean Water Act, and to obtain all required permits.

Cumulative Impacts:

No cumulative impacts to water quality, quantity and distribution would be expected.

3. Air Quality

[Will pollutants or particulate be produced? Is the project influenced by air quality regulations or zones (Class I airshed)?]

The closest Class I airshed to the proposed project is the Flathead Reservation, located roughly 18 miles to the northeast. This project would not be expected to impact this airshed due to the scale of activity and the distance between the proposed permit boundary and the Flathead Reservation.

Nonmetallic mineral processing sites can consist of portable asphalt plants, rock crushers, screens, conveyor belts, and portable generator sets. The proposed permitting action would allow for the mining, screening, crushing, stockpiling, and transportation of material.

The Opencut Mining Act does not regulate air quality, however, Applicants are separately required to comply with all laws relating to air, such as the Federal Clean Air Act, National Ambient Air Quality Standards set by the Environmental Protection Agency (EPA) and the Clean Air Act of Montana. In

addition, the Administrative Rules of Montana (ARM 17.8.308) would require that the Applicant take reasonable precautions to control airborne particulate matter.

The Applicant is required to complete an Air Quality Registration Notification Form through the DEQ Air Quality Bureau if the applicant uses a portable facility. This form is required for all sites that use equipment to crush, grind, or screen nonmetallic minerals. ARM 17.24.1806 requires all applicants who operate portable facilities to install, operate, and maintain equipment to provide maximum air pollution control and employ dust suppression.

Direct Impacts:

Impacts to air quality, including odor, could be expected due to operations at this site. Fugitive dust from point source mining activities could be generated from mining, conveying, screening, and crushing. Fugitive dust from non-point source mining activities could be generated from the pit floor, soil stockpiles, equipment used onsite and gravel roads used for access. Dust consisting of particulate matter (PM), and particulate matter with an aerodynamic diameter of less than 10 microns (PM10), and particulate matter with an aerodynamic diameter of less than 2.5 microns (PM2.5) could be generated from opencut activities of material. Dust would also be produced while driving on/off site.

Dust impacts from mining activities would be mitigated by the revegetation of soil stockpiles as required by the Application. Emissions from the operation of standard mining equipment used onsite could also temporarily impact air quality. The Applicant would be expected to maintain compliance with the Clean Air Act of Montana regarding the need to take reasonable precautions to control airborne particulate matter.

Secondary Impacts:

Fugitive dust that leaves the site and is not dispersed by air movement could be deposited in the area in close proximity to the site, which could cause irritation in varying degrees of severity to receptors who come into contact with that dust.

Cumulative Impacts:

The production of dust and emissions could add to cumulative impacts associated with nearby roadway travel and other industrial activities in the project area.

4. Vegetation Cover, Quantity, and Quality

[Will vegetative communities be significantly impacted? Are any rare plants or cover types present?]

There are no known rare or sensitive plants or cover types present within the proposed permit boundary. No known fragile or unique resources or values, or resources of statewide or societal importance, are present within the proposed permit boundary.

Onsite vegetation likely consists of rangeland species, some coniferous species, and other grasses and forbs and provides approximately 60-70% cover as estimated from aerial photography. Existing vegetation would be removed as 12 inches of soil and 12 inches of overburden is stripped and salvaged from undisturbed areas. The site or portions of the site would need to be revegetated with the seed mix or crop chosen by the landowner. The post mining land use for this site would be Cropland/Farmland, Rangeland and/or Pasture.

The Applicant would be required to follow any requirements set forth by the Mineral County Weed Board.

Direct Impacts:
Based on information included in the Application, site inspections, and analysis of aerial photography in the DEQ Opencut WMA, DEQ does anticipate an impact to vegetative cover, quantity, and quality. Vegetation would be removed as soil is stripped and salvaged. Subsequent revegetation would likely cause a change in species composition from what originally occurred at the site. DEQ does not anticipate impacts to rare plants.

Secondary Impacts:
Land disturbance at the site may result in propagation of noxious weeds. Noxious weeds would be required to be controlled throughout the life of the permit. Final release of the site and permit termination would not occur if noxious weeds were not controlled at the site. Soil stockpiles that would remain in place for more than two years are required to be seeded at the first seasonal availability. Any surface disturbances would be reclaimed and seeded with an appropriate seed mix. If the Permit were approved, weed control during mining and reclamation would be a requirement.

Cumulative Impacts:
The proposed operation and subsequent reclamation could cause a change in species composition in the vicinity, including propagation of noxious weeds.

5. Terrestrial, Avian, and Aquatic Life and Habitats

[Is there substantial use of the area by important wildlife, birds or fish?]

Although the permit area would be used primarily for opencut operations, based on available information, it also likely could support individual members of populations of black bear, coyotes, deer, elk, fox, grizzly bear, raptors, rodents, song birds, upland birds, among other species. Population numbers for species listed in this section are not known.

Common wildlife may utilize the project area and may be temporarily displaced while machinery and equipment would be operating.

Direct Impacts:
The proposed mine could temporarily displace some individual members of species during operation of the proposed project, and it is likely that the site could be re-inhabited following reclamation to the permitted post mining land uses, with slopes restored to 3:1 or flatter as listed in the Application. Any displaced animals could find other suitable habitat nearby and return to the project area shortly after the project conclusion. Although some wildlife and wildlife habitat may be impacted until the project disturbance is reclaimed, non-developed land exists around the proposed site that could be used by the temporarily displaced animals. Habitat fragmentation from the proposed project is limited as other National Forest land of similar composition would remain intact and undisturbed.

Secondary Impacts:
No secondary impacts to terrestrial, avian and aquatic life and habitats stimulated or induced by the direct impacts analyzed above would be expected.

Cumulative Impacts:
No cumulative impacts to terrestrial, avian, and aquatic life and habitats would be expected.

6. Unique, Endangered, Fragile, or Limited Environmental Resources

[Are any federally listed threatened or endangered species or identified habitat present? Any wetlands? Species of special concern?]

The proposed project would not be in core, general or connectivity sage grouse habitat, as designated by the Sage Grouse Habitat Conservation Program (Program) at: http://sagegrouse.mt.gov.

The Montana Natural Heritage Program (MNHP) lists the following species of concern in the vicinity of the site: Westslop Cutthroat Trout, Bull Trout, Bald Eagle, Evening Grosbeak, Pileated Woodpecker, Western Skink, Cassin's Finch, Clark's Nutcracker, Flammulated Owl, Northern Alligator Lizard, Fringed Myotis, Long-eared Myotis, Pacific Wren, Fisher, Grizzly Bear, Wolverine, Little Brown Myotis, and Hoary Bat.

The MNHP also identified the following important Animal Habitat: Bat Roost (Non-Cave)

There are no wetlands mapped within 0.5 miles of the proposed permit boundary, as mapped by the Montana Riparian & Wetland Framework.

Direct Impacts:
The Sage Grouse Habitat Conservation Program has stated that the proposed project would not occur in core, general or connectivity sage grouse habitat. Therefore, impacts to sage grouse would not occur.

The project area would be located within an rural area southeast of Tarkio, MT. While potential habitat for some individuals of the threatened and endangered species listed above may exist, the surrounding area is comprised of intermixed agricultural, rural and open habitat. Even if suitable habitat did exist on this proposed site, the disturbance area would be relatively small, and large areas of similar or identical habitat surround the site.

Secondary Impacts:
No secondary impacts to sage grouse or sage grouse habitat would be expected as this site is not in Sage Grouse habitat.

No secondary impacts to unique, endangered, fragile, or limited environmental resources that could be stimulated or induced by the direct impacts analyzed above would be expected.

Cumulative Impacts:
No cumulative impacts to unique, endangered, fragile, or limited environmental resources would be expected.

7. Historical and Archaeological Sites

[Are any historical, archaeological or paleontological resources present?]

The Montana State Historic Preservation Office (SHPO) was notified of the Application.

The State Historical Preservation Office (SHPO) conducted a cultural resource file search and found that there have been a few previously recorded sites within the designated search locales. SHPO also stated that there have been a few cultural resource inventories conducted in the area and provided LHC, Inc. with a list of the documented sites and reports.

SHPO recommends that if any structures are within the Area of Potential Effect and are over fifty years old, LHC, Inc. should record and determine their eligibilty before any disturbance takes place.

The Applicant is required to comply with the applicable local, county, state, and federal requirements pertaining to cultural resources.

Direct Impacts:

Unidentified cultural resources may be disturbed by Opencut operations.

If cultural resources were found during mining, SHPO requests that the Operator contact the DNRC Archeologist. The Applicant would be required to follow any applicable laws and regulations regarding historic and archeological sites.

Secondary Impacts:

No secondary impacts to historical and archaeological sites are anticipated.

Cumulative Impacts:

No cumulative impacts to historical and archeological sites would be expected.

8. Aesthetics

[Is the project on a prominent topographic feature? Will it be visible from populated or scenic areas? Will there be excessive noise or light?]

The site is located in an agricultural, rural area. The proposed mining would occur entirely on State land. The project area is expected to be visible from US Interstate Highway 90. The operator has certified that there are fewer than 10 occupied dwelling units within 0.5 miles of the proposed permit boundary.

The Opencut Mining Act does not regulate hours of operation, but for the purposes of this MEPA environmental review, it is assumed that the proposed operation would occur at the maximum capacity of 24 hours per day, 7 days per week. If the Applicant would be operating during times of little or no sunlight, artificial light sources would be used on site to comply with federal Mine Safety and Health Administration (MSHA) regulations.

Noise is defined as unwanted and objectionable sound. Sound levels are usually measured and expressed in decibels (dB), which are logarithmic units that can be used to conveniently compare wide

ranges of sound intensities. The A-weighted decibel (dBA) scale of frequency sensitivity accounts for the sensitivity of the human ear, which is less sensitive to low frequencies, and correlates well with human perceptions of the annoying aspects of noise. On the logarithmic decibel scale, a 70 dBA sound level is approximately twice as loud as a 60 dBA sound level and four times as loud as a 50 dBA sound level. (PG&E Cressey-Gallo 115 kV Power Line Project Initial Study).

Typical Sound Levels Measured in the Environment		
Examples of Common, Easily Recognized Sounds	Decibels (dBA, at 50 feet)	Subjective Evaluations
Near Jet Engine	140	Deafening
Threshold of Pain (Discomfort)	130	
Threshold of Feeling - Hard Rock Band	120	
Accelerating Motorcycle (at a few feet away)	110	
Loud Horn (at 10 feet away)	100	Very Loud
Noisy Urban Street	90	
Noisy Factory	85	
School Cafeteria with Untreated Surfaces	80	Loud
Near Freeway Auto Traffic	60	Moderate
Average Office	50	
Soft Radio Music in Apartment	40	Faint
Average Residence Without Stereo Playing	30	
Average Whisper	20	Very Faint
Rustle of Leaves in Wind	10	
Human Breathing	5	
Threshold of Audibility	0	
Note: Continuous exposure above 85 dBA is likely to degrade the hearing of most people. Range of speech is 50 to 70 dBA.		
Source: U.S. Department of Housing and Urban Development, The Noise Guidebook, 1985.		

Source: PG&E Cressey-Gallo 115 kV Power Line Project Initial Study

Typical Construction Equipment Noise Levels						
Equipment Description	Acoustical Usage Factor (%)	Specified Lmax at 50 feet (dBA)	Specified Lmax at 100 feet (dBA)	Specified Lmax at 1,000 feet (dBA)	Specified Lmax at 2,000 feet (dBA)	Specified Lmax at 4,000 feet (dBA)

All Other Equipment > 5 horsepower	50	85	76	56	50	44
Auger Drill Rig	20	85	72	52	46	40
Backhoe	40	80	70	50	44	38
Crane	16	85	71	51	45	39
Dump Truck	40	84	74	54	48	42
Grader	40	85	75	55	49	43
Pickup Truck	40	55	45	25	19	13
Tractor	40	84	74	54	48	42
Notes: dBA = A-weighted decibels; Leq = equivalent sound pressure level Equation to calculate Lmax at 1,000, 2,000 and 4,000 feet is as follows: Leq(h) = Lmax + 10*log(A.U.F.) – 20*log(D/Do) where: Lmax = Maximum noise emission level of equipment based on work cycle at D/Do (decibel). A.U.F. = Acoustical usage factor, which accounts for the percent time that equipment is in use over the time period of interest (1 hour). D = Distance from the equipment to the receptor (feet). Do = Reference distance (generally, 50 feet) at which the Lmax was measured for the equipment of interest (feet). Source: FHA 2006						

Source: PG&E Cressey-Gallo 115 kV Power Line Project Initial Study

Direct Impacts:

There would be a temporary alteration of aesthetics while mining is underway. Nearby residences would incur visual and noise impacts during operation of the opencut operation.

Noise associated with the project may be heard by receptors located in an area where sound related to the project has not been fully diminished by distance, berms or another sound dampening feature. The tables above (entitled: *Typical Sound Levels Measured in the Environment* and *Typical Construction Equipment Noise Levels*) show the noise potentially experienced by receptors in the vicinity of the proposed project. The further a receptor is from the proposed project in distance it begins to lessen the noise impact to the receptor. Those receptors in the immediate vicinity of the proposed project would have a higher noise impact than those who are further from the proposed project. The Applicant would be required to comply with any and all federal, state, county and local laws and ordinances limiting the exposure of noise to workers and surrounding neighbors. Noise is typically regulated at the local, and/or county level through zoning. Nearby residents could have noise impacts up to 50 dBA or moderate noise impacts at the high end of the spectrum of impacts.

This project would be reclaimed by 2050. Impacts to aesthetics and noise would continue through the life of the permit.

Secondary Impacts:

No secondary impacts to aesthetics are anticipated.

Cumulative Impacts:

The increase in ambient noise and alteration of viewshed that would occur from the proposed opencut operations could add to impacts to aesthetics from nearby agricultural, industrial and roadway activities.

9. Demands on Environmental Resources of Land, Water, Air, or Energy

[Will the project use resources that are limited in the area? Are there other activities nearby that will affect the project?]

The proposed opencut operation would mine natural deposits from the site. No unusual demands on land, water, air, or energy are anticipated from the proposed opencut operation. Examples of unusual demands, which are not anticipated from this proposed opencut operation, would be rerouting creeks, rebuilding of roads, or relocated specific utilities.

The site would be reclaimed to the postmining land use stated in the Application with slopes restored to 3:1 or flatter as stated in the Application.

The Applicant would be required to comply with all applicable federal, state, county, or local regulations, ordinances, and permits, licenses, and approvals for the operation of the site.

Direct Impacts:

Based on the analysis of available data and certifications made by the Applicant, DEQ does not foresee any unusual demands on land, water, air or energy from this proposed opencut operation. Therefore, no direct impacts would be anticipated.

Secondary Impacts:

No secondary impacts to demands on environmental resources of land, water, air, or energy would be anticipated.

Cumulative Impacts:

No cumulative impacts to demands on environmental resources of land, water, air, or energy would be expected.

10. Impacts on Other Environmental Resources

[Are there other activities nearby that will affect the project?]

The site is immediately in a semi-forested area that is surrounded by undeveloped land to the east, north, and west. US Interstate Highway 90 is located immediately to the south.

DEQ searched the Opencut WMA and the following websites or databases for nearby activities that may affect the project:

- Montana Department of Natural Resource and Conservation (DNRC)
- Montana Department of Environmental Quality (DEQ)
- Montana Department of Transportation (MDT)
- Mineral County
- United States Department of Interior, Bureau of Land Management (BLM)
- United States Forest Service (USFS)

Four MDT projects were identified within four miles of the proposed permit boundary:

- SF 209 MISSOULA SOUTH SIGNS - The SF 209 Missoula South Dist Signs project is to address identified crash trends in Flathead, Granite, Lake, Mineral, Missoula, Ravalli, and Sanders counties. The improvements are a varying combination of signing, flashers, curve signing, and delineation.
- CLARK FORK/ OLD HWY 10 BRIDGES - Bridge replacement of fracture critical steel girder structures in Poor condition on I-90 (from RP 65.0 to 71.0) near Alberton. Anticipated Let Date = May of 2025. Estimated PE Phase End Date = December of 2025.
- SF229 MISSOULA DIST GUARDRAIL - HSIP project to address road departure crashes on Mullan Road East (X-31070) near Superior. Proposed improvements include guardrail upgrades and new pavement markings. Specific work elements: Update the guardrail and install 6" shoulder pavement markings along the corridor.
- QUARTZ FLATS REST AREA - This project was advanced by the Rest Area Prioritization Committee and approved by the Transportation Commission on February 12, 2009. The Quartz Flats Rest Area facility was originally constructed in 1967 - thus the recommendation is to reconstruct the facility to current design standards. Anticipated Let Date = June of 2020. Estimated PE Phase End Date = December of 2023.

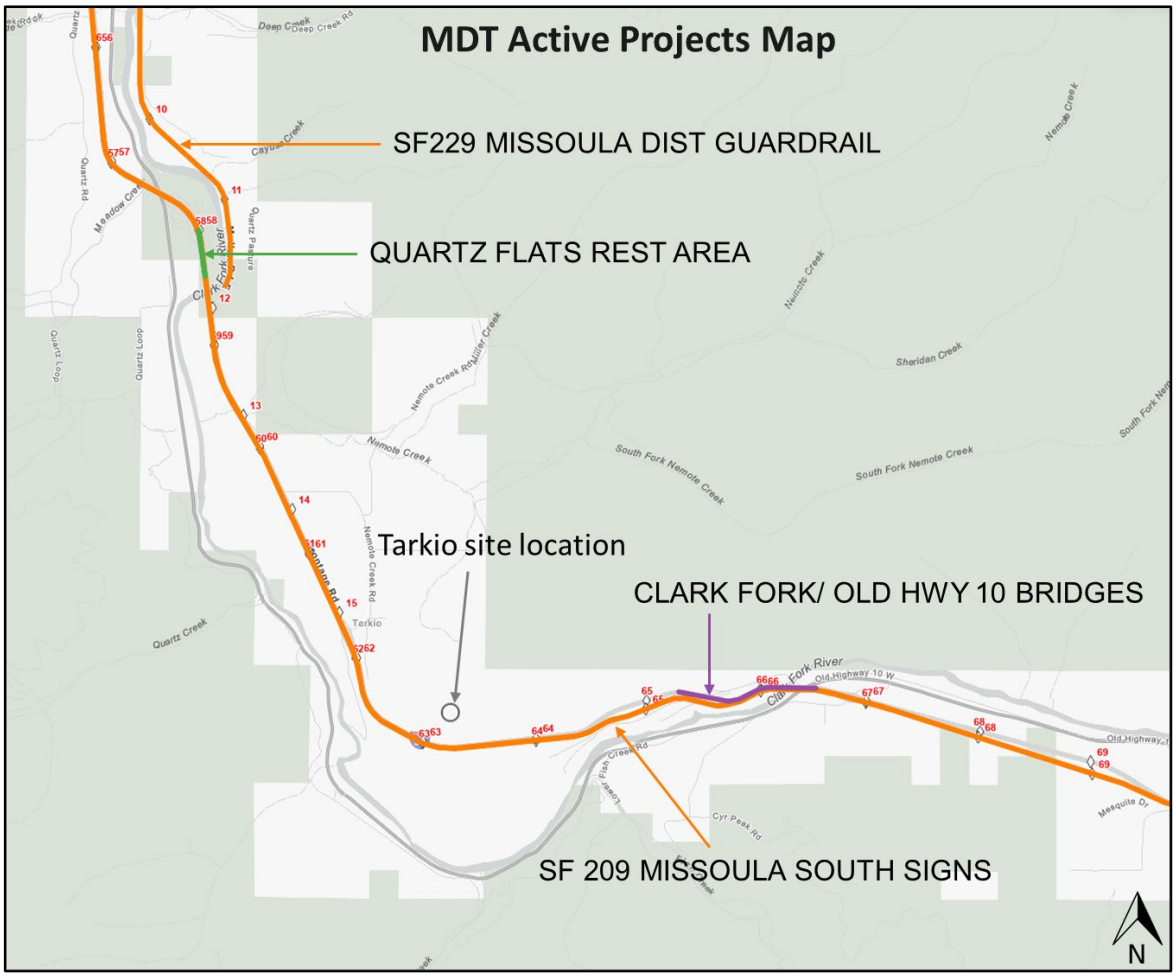

Figure 3: MDT Active Projects Map

All above listed MDT projects have the potential to affect traffic around the proposed Tarkio site location.

MT DEQ:

- The Tarkio site would be located within the Montana Watershed Restoration Plan (WRP) Area.
- The Clark Fork River is listed as a Montana impaired waterway in Montana's 305(b)/303(d) Integrated Water Quality Report for the 2020 cycle.

None of the above listed MT DEQ projects have the potential to impact the proposed Tarkio site.

Direct Impacts:

Based on the analysis of available data and on the certifications made by the Applicant, DEQ does not foresee any impacts on other environmental resources from this opencut operation. Therefore, no direct impacts are anticipated.

Secondary Impacts:

No secondary impacts to other environmental resources are anticipated as a result of the proposed project.

Cumulative Impacts:

No cumulative impacts to other environmental resources would be expected.

11. Human Health and Safety

[Will this project add to health and safety risks in the area?]

The Applicant has certified that there are fewer than 10 occupied dwelling units within one-half mile of the project area. An occupied dwelling unit is defined as “a structure with permanent water and sewer facilities that is used as a home, residence, or sleeping place by at least one person who maintains a household that is lived in as a primary residence” [82-4-403(7), MCA]. Impacts to other resources such as air and water are discussed above.

The Applicant would be required to adhere to all applicable state and federal safety laws. Industrial work such as the work proposed by the applicant is inherently dangerous. The Occupational Safety and Health Administration (OSHA) has developed rules and guidelines to reduce the risks associated with this type of labor. Few, if any, members of the public would be in the general project proximity during mining operations.

Direct Impacts:

Increases in operation-related traffic would likely occur. Wear and tear to local roads would be expected. The daily traffic that would be leaving the site could vary greatly. The location of the proposed site was chosen by the Applicant because of the location of the resources and to provide materials for their commercial enterprise.

Secondary Impacts:

Fugitive dust that leaves the site and is not dispersed by air movement could be deposited in the area in close proximity to the site, which could cause irritation with varying degrees of severity to receptors who come into contact with that dust. ARM 17.8.308 would require the Applicant to take reasonable precautions to control airborne particulate matter.

Dust impacts from mining activities would be mitigated by the revegetation of soil stockpiles as required by the Application.

Cumulative Impacts:
An increase in traffic and the production of dust, exhaust, and emissions could add to cumulative impacts from traffic of nearby industrial, agricultural, and roadway travel and operations.

12. Industrial, Commercial, and Agricultural Activities and Production

[Will the project add to or alter these activities?]

The acreage listed in the proposal would be taken out of rangeland and other unknown uses by the landowner.

Upon completion of mining, the land would be reclaimed to the postmining land uses described in the Application with slopes restored to 3:1 or flatter.

Direct Impacts:
Impacts to industrial, commercial, and agricultural activities and production are anticipated as the permit is proposed for a commercial enterprise. The acreage listed in the Application would be taken out of rangeland and other unknown uses and would be reduced as soil stripping and operations progress across the site. If the Application is approved, all existing non-Opencut activities would cease on the acreage listed, but would be restored to the permitted postmining land use when the site is reclaimed.

Secondary Impacts:
Secondary impacts to industrial, commercial, and agricultural activities and production would be expected. Opencut materials would be available for use or sale to other entities.

Cumulative Impacts:
Impacts on the industrial, commercial, and agricultural activities and production would occur for the total duration of operations. The loss of rangeland from the proposed project would reduce available area for rangeland use. However, all disturbance related to this project would be reclaimed at the conclusion of the project.

13. Quantity and Distribution of Employment

[Will the project create, move, or eliminate jobs? If so, estimated number.]

Existing employees would likely be utilized for this operation, but it is unknown if this mine site would require the Applicant to hire additional employees. It is not anticipated that this project would create, move, or eliminate jobs.

Direct Impacts:
New employment opportunities would be limited. No lasting positive or negative impacts to employment would be expected from this project.

Secondary Impacts:
No secondary impacts to quantity and distribution of employment are anticipated as a result of the proposed work.

Cumulative Impacts:
No cumulative impacts to the quantity and distribution of employment would be expected.

14. Local and State Tax Base and Tax Revenues

[Will the project create or eliminate tax revenue?]

The tax base for this land use type would change from agricultural to industrial, but the proposed site is on land owned by the State of Montana and managed by DNRC as part of the State School Trust Lands. There would most likely be an increase in revenues for the State School Trust. Additionally, the proposed project would have a limited increase in tax revenue related to the payroll taxes from new and/or existing employees residing and/or working in the area.

Direct Impacts:
Local, state, and federal governments would be responsible for appraising the property, setting tax rates, collecting taxes, etc., from the companies, employees, or landowners benefitting from this operation. Revenues would be collected and added to the State School Trust, generating funds for Montana public schools. However, minimal tax revenue from income or expenses would be expected from this project. The impact to local and state tax base and tax revenue would last for the duration of the operation. Following reclamation, it is assumed the tax base would revert to pre-mine levels.

Secondary Impacts:
No secondary impacts to local and state tax base and tax revenues would be expected.

Cumulative Impacts:
No cumulative impacts to local and state tax base and tax revenues would be expected.

15. Demand for Government Services

[Will substantial traffic be added to existing roads? Will other services (fire protection, police, schools, etc.) be needed?]

The proposed operation would remove material from the 105.0-acre site over the life of the Permit, if issued. The Opencut Mining Act does not regulate local haul roads and/or site access and it would be up to the local zoning ordinance to regulate impacts that would occur to roads. Occasional increases in construction-related traffic may occur. Traffic load would depend on site activity and is unknown at this time.

The location of the proposed site was chosen by the Applicant because of the location of the resources and to provide materials for their commercial enterprise.

Direct Impacts:
Occasional increases in operation-related traffic would likely occur. Wear and tear to local roads and bridges may occur. The daily traffic that would be leaving the site could vary greatly. Local roads may be required to be improved, depending on Mineral County requirements.

Secondary Impacts:
No secondary impacts to government services are anticipated as a result of the proposed opencut operation.

Cumulative Impacts:
Truck traffic from the proposed project could contribute to the cumulative impacts to wear and tear on local roads.

16. Locally Adopted Environmental Plans and Goals

[Are there State, County, City, USFS, BLM, Tribal, etc. zoning or management plans in effect?]

The proposed operation would occur within Mineral County.

The Applicant submitted zoning compliance forms completed by Mineral County for the proposed project that indicate opencut operations can occur within the permit boundary. The site zoning status is described in the permit on the zoning forms as not zoned.

DEQ is aware of the following policies and plans:

- Montana State Trust Lands Recreational Use Guide

None of the above listed plans would impact the issuance of an opencut mining permit as long as the Application complies with the Opencut Mining Act. The Applicant would be required to comply with all laws and to obtain all required permits, licenses, or approvals for operation.

Direct Impacts:
If State Trust Lands are leased for commercial use, access to the land for recreation purposes is restricted (Montana State Trust Lands Recreational Use Guide). This limited access would have no impact on the proposed operation, but would impact the general public.

Secondary Impacts:
No secondary impacts to locally-adopted environmental plans and goals are anticipated as a result of the proposed work.

Cumulative Impacts:
No cumulative impacts to locally adopted environmental plans and goals are anticipated.

17. Access to and Quality of Recreational and Wilderness Activities

[Are wilderness or recreational areas nearby or accessed through this tract? Is there recreational potential within the tract?]

The proposed project could limit access to wilderness or recreational areas nearby. If State Trust Lands are leased for commercial use, access to the land for recreation purposes is restricted. This limited access would have no impact on the proposed operation, but would impact the general public.

The proposed activities would occur on State land.

Direct Impacts:
If State Trust Lands are leased for commercial use, at the proposed site, the general public may be restricted from accessing 105.0 acres of State Trust Lands. While access to this acreage would be restricted to the general public for recreational activities, there are other areas nearby of similar landscape that could be utilized. Additionally, it appears that roads that bisect the proposed permit area connecting two areas can be accessed through a different route.

Secondary Impacts:
No secondary impacts to wilderness or recreational areas are anticipated.

Cumulative Impacts:
No cumulative impacts to access to, and quality of, recreational and wilderness activities would be expected.

18. Density and Distribution of Population and Housing

[Will the project add to the population and require additional housing?]

The Applicant has certified that there are fewer than 10 occupied dwelling units within one-half mile of the project area. An occupied dwelling unit is defined as “a structure with permanent water and sewer facilities that is used as a home, residence, or sleeping place by at least one person who maintains a household that is lived in as a primary residence” [82-4-403(7), MCA].

Direct Impacts:
This commercial pit was proposed by the Applicant in this area because of the location of the resource, and to provide materials for local projects. The project may or may not add to the population or require additional housing. Therefore, it is unknown if impacts to density and distribution of population and housing would occur. It is unlikely this site would add to the population.

Secondary Impacts:
No secondary impacts to density and distribution of population and housing are anticipated as a result of the proposed opencut operation.

Cumulative Impacts:
No cumulative impacts to the density and distribution of population and housing would be expected.

19. Social Structures and Mores

[Is some disruption of native or traditional lifestyles or communities possible?]

The Applicant did not provide any information on social structures or mores, nor was public comment submitted. DEQ is not aware of any native cultural concerns that would be affected by the proposed activity and also described in *Section 7: Historical and Archaeological Sites* above. It is not anticipated that this project would disrupt native or traditional lifestyles or communities.

Direct Impacts:
No direct impacts to social structures and mores are anticipated as a result of the proposed opencut operations.

Secondary Impacts:
No secondary impacts to social structures and mores are anticipated as a result of the proposed opencut operations.

Cumulative Impacts:
No cumulative impacts to social structures and mores would be expected.

20. Cultural Uniqueness and Diversity

[Will the action cause a shift in some unique quality of the area?]
The Applicant did not provide any information on cultural uniqueness and diversity, nor was public comment submitted. The site would be located within Lolo National Forest at the foothills of the Ninemile Range and is designated Montana State Trust Lands. The site slopes gently to the south and sits roughly 400-500 feet in elevation above the Clark Fork River. US Interstate Highway 90 runs directly to the south of the proposed site. DEQ is not aware of any unique qualities of the area that would be affected by the proposed activity. It is not anticipated that this project would cause a shift in some unique quality of the area.

Direct Impacts:
No impacts to cultural uniqueness and diversity are anticipated from this project.

Secondary Impacts:
No secondary impacts to cultural uniqueness and diversity are anticipated as a result of the proposed work.

Cumulative Impacts:
No cumulative impacts to cultural uniqueness and diversity would be expected.

21. Private Property Impacts

[Are we regulating the use of private property under a regulatory statute adopted pursuant to the police power of the state? (Property management, grants of financial assistance, and the exercise of the power of eminent domain are not within this category.) If not, no further analysis is required. Does the proposed regulatory action restrict the use of the regulated person's private property? If not, no further analysis is required. Does the agency have legal discretion to impose or not impose the proposed restriction or discretion as to how the restriction will be imposed? If not, no further analysis is required. If so, the agency must determine if there are alternatives that would reduce, minimize or eliminate the restriction on the use of private property, and analyze such alternatives.]

The proposed project would take place on State land not owned by the Applicant. DEQ's approval of Opencut Permit #3545, with conditions, would affect the landowner's real property. DEQ has determined, however, that the permit conditions are reasonably necessary to ensure compliance with applicable requirements under the Opencut Mining Act and demonstrate compliance with those requirements or have been agreed to by the Applicant and landowner through the signed *Landowner Consultation Form*. Therefore, DEQ's approval of a permit for Tarkio site would not have private property-taking or damaging implications.

22. Other Appropriate Social and Economic Circumstances

Due to the nature of the proposed mining activities, no further direct or secondary impacts would be anticipated from this project.

23. Greenhouse Gas Analysis

Briefly explain the purpose and actions of the equipment and vehicles that may be associated with this project. Issuance of this permit would authorize use of various equipment and vehicles to conduct Opencut Operations.

The analysis area for this resource is limited to the activities regulated by the issuance of the Opencut permit which are construction, operations, and reclamation of the opencut pit. Issuance of the Opencut permit would authorize use of various equipment and vehicles to mine and process material and reclaim the site. Vehicles would also be used to transport material from the site. Typical Opencut excavating, mining, and hauling equipment includes bulldozers, dump trucks, haul trucks, excavators, loaders, scrapers, and backhoes. The site would be permitted to utilize processing equipment, which would consume fuel. The amount of diesel fuel utilized at this site may be impacted by a number of factors including seasonal weather impediments and equipment malfunctions. To account for these factors, DEQ has calculated the range of emissions using a factor of +/- 10% of DEQ's estimate.

For the purpose of this analysis, DEQ has defined greenhouse gas emissions as the following gas species: carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), and many species of fluorinated compounds. The range of fluorinated compounds includes numerous chemicals which are used in many household and industrial products. Other pollutants can have some properties that also are similar to those mentioned above, but the EPA has clearly identified the species above as the primary GHGs. Water vapor is also technically a greenhouse gas, but its properties are controlled by the temperature and pressure within the atmosphere, and it is not considered an anthropogenic species.

The combustion of diesel fuel at the site would release GHGs primarily being carbon dioxide (CO_2), nitrous oxide (N_2O) and much smaller concentrations of non-combusted fuel components including methane (CH_4) and other volatile organic compounds (VOCs).

DEQ has calculated GHG emissions using the EPA Simplified GHG Calculator version dated June 2024 for the purpose of totaling GHG emissions. This tool totals carbon dioxide (CO_2), nitrous oxide (N_2O), and methane (CH_4) and reports the total as CO_2 equivalent (CO_2e) in metric tons CO_2e. The calculations in this tool are widely accepted to represent reliable calculation approaches for developing a GHG inventory.

Direct Impacts

Operation of diesel-fueled vehicles throughout the life of the proposed project would produce exhaust fumes containing GHGs.

Previous estimates from Opencut operators have indicated that up to 70 gallons of diesel would be utilized per 1,000 cubic yards of material extracted and transported.

The site would be permitted for 105.0 acres and the Applicant would bond for a highwall that would be 20 feet high/mine to a depth of 20 feet. Based on these parameters, DEQ estimates that approximately 3,387,300 cubic yards of material is the maximum amount that would be possible to mine from the site.

At 70 gallons of diesel per 1,000 cubic yards of material mined and transported, this would result in 237,111 gallons of diesel used over the life of the operation. To account for variability due to the factors described above, DEQ has calculated the range of emissions using a factor of +/- 10% of DEQ's estimate (from 213,400 -260,822 gallons over the life of the operation). Using the Environmental Protection Agency's (EPA) simplified GHG Emissions Calculator for mobile sources, between 643 and 786 kilograms of CO2e would be produced per 1,000 cubic yards. Mining up to 3,387,300 cubic yards would produce between 2,178.8 and 2,663 metric tons of CO2e (MTCO2e)

Secondary Impacts

GHG emissions contribute to changes in atmospheric radiative forcing, resulting in climate change impacts. GHGs act to contain solar energy loss by trapping longer wave radiation emitted from the Earth's surface and act as a positive radiative forcing component (BLM 2021). The impacts of climate change throughout the Northern Great Plains may include flooding and drought, rising temperatures, and the spread of invasive species (BLM 2021).

Cumulative Impacts

Montana recently used the EPA State Inventory Tool (SIT) to develop a greenhouse gas inventory in conjunction with preparation of a possible grant application for the Community Planning Reduction Grant (CPRG) program. This tool was developed by EPA to help states develop their own greenhouse gas inventories, and this relies upon data already collected by the federal government through various agencies. The inventory specifically deals with carbon dioxide, methane, and nitrous oxide and reports the total as CO_2e. The SIT consists of eleven Excel based modules with pre-populated data that can be used as default settings or in some cases, allows states to input their own data when the state believes their own data provides a higher level of quality and accuracy. Once each of the eleven modules is filled out, the data from each module is exported into a final "synthesis" module which summarizes all of the data into a single file. Within the synthesis file, several worksheets display the output data in a number of formats such as emissions by sector and emissions by type of greenhouse gas.

DEQ has determined the use of the default data provides a reasonable representation of the greenhouse gas inventory for the various sectors of the state, and an estimated annual greenhouse gas inventory by year. The SIT data is currently only updated through the year 2020, as it takes several years to validate and make new data available within revised modules.

Future GHG emissions from operations such as this site would be represented within the module Carbon Dioxide Emissions from Fossil Fuel Combustion, and emissions from the Transportation Sector within the Commercial and Industrial sectors in Montana. At present, the Industrial Sector accounts for 5.4 million

metric tons of CO2e (MMTCO2e) and the Transportation Sector accounts for 7.9 MMTCO2e annually1. The estimated emissions of 2,178.8 and 2,663 metric tons of CO2e (MTCO2e) or between 0.00218 and 0.00266 million metric tons (MMTCO2e) over the life of the project would be equivalent to between 0.0164% and 0.02% of Montana's annual emissions from the Industrial and Transportation sectors combined.

GHG emissions that would be emitted as a result of the proposed activities would add to GHG emissions from other sources. The current rangeland use or No Action Alternative also produces GHG emissions.

CONSULTATION

DEQ engaged in internal and external efforts to identify substantive issues and/or concerns related to the proposed project. Internal scoping consisted of internal review of the environmental assessment document by DEQ staff.

External scoping efforts also included queries to the following websites/ databases/ personnel:

- Montana State Historic Preservation Office (SHPO)
- Montana Department of Natural Resource and Conservation (DNRC)
- Montana Department of Environmental Quality (DEQ)
- Montana Department of Transportation (MDT)
- Mineral County
- US Geological Society – National Hydrography Data Set
- Montana Natural Heritage Program (MTNHP)
- Montana Cadastral Mapping Program
- Montana Groundwater Information Center (GWIC)
- Montana Bureau of Mines and Geology (MBMG)
- United States Department of Interior, Bureau of Land Management (BLM)
- United States Forest Service (USFS)

PUBLIC INVOLVEMENT

DEQ has not received public comment on this permit application since first receiving the application on May 22, 2024.

OTHER GOVERNMENTAL AGENCIES WITH JURISDICTION

The proposed project would be located on State land. All applicable state and federal rules must be adhered to, which, at some level, may also include other state, federal, or county jurisdiction.

This environmental review analyzes the proposed project submitted by the Applicant. Any impacts from the project would be negligible and would be fully reclaimed to the permitted postmining land uses at the conclusion of the project and thus would not contribute to the long-term cumulative effects of mining in the area.

[1] Calculated by DEQ using the EPA SIT Tool.

NEED FOR FURTHER ANALYSIS AND SIGNIFICANCE OF POTENTIAL IMPACTS

When determining whether the preparation of an environmental impact statement is needed, DEQ is required to consider the seven significance criteria set forth in ARM 17.4.608, which are as follows:

1. The severity, duration, geographic extent, and frequency of the occurrence of the impact;
2. The probability that the impact will occur if the proposed action occurs; or conversely, reasonable assurance in keeping with the potential severity of an impact that the impact will not occur;
3. Growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts;
4. The quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources and values;
5. The importance to the state and to society of each environmental resource or value that would be affected;
6. Any precedent that would be set as a result of an impact of the proposed action that would commit the department to future actions with significant impacts or a decision in principle about such future actions; and
7. Potential conflict with local, state, or federal laws, requirements, or formal plans.

The severity, duration, geographic extent and frequency of the occurrence of the impacts associated with the proposed mining activities would be limited. The proposed action would result in the disturbance of about 105.0 acres at the site. The Applicant is proposing to conduct opencut operations at the site as explained in the Application to extract opencut materials. The site would be reclaimed to the permitted postmining land use of Cropland/Farmland, Rangeland and/or Pasture by December 2050. It does not appear to contain unique, endangered, fragile, or limited environmental resources. The surface disturbance would be reclaimed within 2 years of completion of the mining activities as stated in the permit and prior to the reclamation date of December 2050.

The Applicant's processing equipment would be set up within the permitted boundary. Local topography would be altered. There would be impacts to viewshed aesthetics as the mining disturbance would be viewable from US Interstate Highway 90. While viewshed aesthetics would be impacted by the proposed operations, the visual disturbance would not dominate the landscape. Over time disturbances to the viewshed would be less noticeable as revegetation and reclamation occurs.

As discussed in this EA, DEQ has not identified any significant impacts associated with the proposed mining activities for any environmental resource. DEQ does not believe that the proposed mining activities by the Applicant would have any growth-inducing or growth-inhibiting aspects. There would be impacts to geology through removal of rock product, although limited to the permit area. The site would be reclaimed to provide stability of adjacent undisturbed areas.

Impacts to soil would occur through soil salvage, which would disrupt the soil horizon and soil properties. Where possible soil would be salvaged and replaced during reclamation, then seeded with a seed mix designated by the landowner at the time of reclamation.

The Operator has certified the operation would not affect water, including intermittent or perennial streams, groundwater, surface water or water conveyance facilities, which meets the requirements of the Opencut Act and associated rules. DEQ does not anticipate impacts to water, water features and water quality, quantity, and distribution.

Groundwater would not be intersected at this Dryland site.

The Opencut Mining Act does not require the mitigation of impacts to air quality. ARM 17.8.308 requires that the Applicant take reasonable precautions to control airborne particulate matter. The DEQ Air Quality Bureau may have additional mitigation requirements if the Applicant is using a portable facility registered with DEQ.

Impacts to vegetation would occur as soil is stripped and salvaged at the site. Weed control would occur throughout the life of the project and would be required to meet Mineral County standards.

Impacts to terrestrial, avian, and aquatic life and habitats would occur throughout the life of the Permit. These impacts would be reduced through reclamation to Cropland/Farmland, Rangeland and/or Pasture. Impacts during mining would be reclaimed as the gravel source was depleted. The Permit states measures to be taken to minimize impacts. Additionally, the Applicant is responsible for obtaining other necessary permits to conduct opencut operations.

Unique, endangered, fragile, or limited environmental resources have been evaluatedThe State Historical Preservation Office (SHPO) conducted a cultural resource file search and found that there have been a few previously recorded sites within the designated search locales. SHPO also stated that there have been a few cultural resource inventories conducted in the area and provided LHC, Inc. with a list of the documented sites and reports. SHPO recommends that if any structures are within the Area of Potential Effect and are over fifty years old, LHC, Inc. should record and determine their eligibilty before any disturbance takes place.

Demands on environmental resources of land, water, air, or energy would not be significant. The impacts from the proposed action would be reclaimed at the end of the opencut operations.

Impacts to human health and safety would not be significant as access roads would be closed to the public and because the site is on State land. The public is not allowed on the mine site. Truck traffic from the proposed project would contribute to the cumulative impacts to traffic. Operations at the site would release GHGs into the atmosphere.

Finally, DEQ does not believe that the proposed mining activities by the Applicant would have any growth-inducing or growth-inhibiting aspects that would conflict with any local, state, or federal laws, requirements, or formal plans.

As discussed in this EA, DEQ has not identified any significant impacts associated with the proposed activities on any environmental resource.

Issuance of a Dryland Opencut Mining Permit to the Applicant does not set any precedent that commits DEQ to future actions with significant impacts or a decision in principle about such future actions. If the Applicant submits another permit or amendment to conduct additional mining, DEQ is not committed to issuing those authorizations. DEQ would conduct an environmental review for any subsequent authorizations sought by the Applicant that require environmental review. DEQ would make a permitting decision based on the criteria set forth in the Opencut Mining Act.

Issuance of the Permit to the Applicant does not set a precedent for DEQ's review of other applications for permits, including the level of environmental review. The level of environmental review decision is made based on case-specific consideration of the criteria set forth in ARM 17.4.608.

Based on a consideration of the criteria set forth in ARM 17.4.608, the proposed operation is not predicted to significantly impact the quality of the human environment. Therefore, preparation of an EA is the appropriate level of environmental review for MEPA.

TABLE 2: ASSESSMENT OF SIGNIFICANCE

Table 2: Assessment of Significance (ARM 17.4.608)						
Affected Resource and Section Reference	**Potential Impact**	**Severity[1], Extent[2], Duration[3], Frequency[4], Uniqueness and Fragility (U/F)**	**Probability impact will occur[5]**	**Cumulative impacts**	**Measures to reduce impact as proposed by Applicant**	**Significance (yes/no)**
1. Geology and Soil Quality, Stability, and Moisture	A. Disruption of soil horizons and other soil properties. B. Erosion and/or loss of soil C. Irreversible/irretrievable removal of opencut materials	A. **S**-High: Of the 105.0 acres of ground that would be disturbed, all disturbance would disrupt soil horizons and properties. **E**-Small: Total surface disturbance susceptible to disruption of soil horizons would be 105.0acres. **D**- The site would be fully reclaimed by December of 2050. Natural soil horizons would take many years to redevelop. **F**-Indefinitely until horizons are re-established. **U/F**-Not unique or particularly fragile. B. **S**-High: Of the 105.0acres of ground that would be disturbed, all disturbance would be susceptible to erosion. **E**-Small: Total surface disturbance susceptible to erosion would be 105.0acres. **D**- The site would be fully reclaimed by December of 2050. **F-**During occasional storm events. **U/F-**Not unique or particularly fragile. C. **S**-High: On the 105.0acres of ground that would be disturbed, opencut materials would be	A. Certain B. Potential C. Certain	A. Disturbance of soil would not result in any cumulative impacts. B. Erosion would add to cumulative impacts associated with existing roads, farmed surfaces, and other historic disturbances in the proposed project area. C. Removal of opencut materials could add to the cumulative impacts associated with other permitted opencut operations in the vicinity.	A. The Applicant has not proposed any mitigations to prevent disruption of soil. B. Establishing vegetation capable of sustaining the designated post-mining land use, seeding and vegetating soil stockpiles. C. The Applicant has not proposed any mitigations to prevent removal of opencut materials.	No

Table 2: Assessment of Significance (ARM 17.4.608)						
Affected Resource and Section Reference	**Potential Impact**	**Severity[1], Extent[2], Duration[3], Frequency[4], Uniqueness and Fragility (U/F)**	**Probability impact will occur[5]**	**Cumulative impacts**	**Measures to reduce impact as proposed by Applicant**	**Significance (yes/no)**
		removed. **E**-Small: Total surface disturbance susceptible to removal of material would be 105.0acres. **D**- The site would be fully reclaimed with no further material removal permitted by December of 2050. However, the removal of materials during the life of the operation would be permanent. **F-** Daily during opencut operations. **U/F-**Not unique or particularly fragile.				
2. Water Quality, Quantity, and Distribution	A. Erosion of soil/discharge to surrounding area B. Water contamination through fuel spills	A. **S**-High: Of the 105.0acres of ground that would be disturbed, all disturbance could potentially contribute to erosion of soil in the event of a heavy storm event. **E**-Small: The total area susceptible to water impacts would be the 105.0-acre permit and areas beyond the permit where contaminants could be transported before being diluted. **D**-The site would be fully reclaimed by December of 2050. **F-** Erosion would occur during occasional heavy storm events. **U/F**-Not unique or particularly fragile.	A. Possible B. Possible	No cumulative impacts would be expected	The Applicant certifies that the operation would not affect surface water, groundwater, or water conveyance facilities. This would be achieved through taking suitable measures, including the following: A. Establishing vegetation capable of sustaining the designated postmining land use, seeding and vegetating soil	No

Table 2: Assessment of Significance (ARM 17.4.608)						
Affected Resource and Section Reference	**Potential Impact**	**Severity[1], Extent[2], Duration[3], Frequency[4], Uniqueness and Fragility (U/F)**	**Probability impact will occur[5]**	**Cumulative impacts**	**Measures to reduce impact as proposed by Applicant**	**Significance (yes/no)**
		B. **S**- Low: Of the 105.0 acres of ground that would be disturbed, only a small portion of that disturbance would have the potential for fuel spills. The Applicant would have a contained fueling area as shown on the site map. **E**-Small: The total area susceptible to water impacts would be the 105.0-acre permit and areas beyond the permit where contaminants could be transported before being diluted. **D**-The site would be fully reclaimed by December of 2050. **F-**Fuel spills could occur daily during mining and reclamation activities. **U/F**-Not unique or particularly fragile.			stockpiles. B. The Applicant has not proposed any mitigations. The Applicant would be required to comply with all applicable laws relating to fuel storage and spill reporting.	
3. Air Quality	A. Increased equipment exhaust and dust from activities onsite. B. Irritation to receptors who come into contact with dust/emissions.	A./B. **S**-High: All areas within the 105.0-acre permit, and some areas outside of the permit area would be susceptible to the impacts of equipment exhaust, emissions and dust. **E**-Small: Air quality impacts would occur over the entire 9.0-acre permit area and areas beyond the permit where contaminants could be transported before being	A. Certain B. Certain	The production of dust and emissions could add to cumulative impacts associated with nearby roadway travel and other industrial activities in the project area.	Applicants would be required to follow all applicable laws relating to air quality. The Applicant's applicable equipment would be required to be registered through the DEQ Air Quality Bureau.	No

Table 2: Assessment of Significance (ARM 17.4.608)						
Affected Resource and Section Reference	**Potential Impact**	**Severity[1], Extent[2], Duration[3], Frequency[4], Uniqueness and Fragility (U/F)**	**Probability impact will occur[5]**	**Cumulative impacts**	**Measures to reduce impact as proposed by Applicant**	**Significance (yes/no)**
		diluted. **D**-Daily until final reclamation in December of 2050. **F**- Continually until December of 2050. **U/F**-Not unique or particularly fragile.				
4. Vegetation Cover, Quantity, and Quality	A. Propagation of noxious weeds. B. Change in species composition	A./B. **S**-High: Of the 105.0 acres of ground that would be disturbed, all disturbance would be susceptible to impacts to vegetation. **E**-Small: Total surface disturbance susceptible to vegetation impacts would be 105.0 acres. **D**-The site would be fully reclaimed by 2050. **F**-Continually until reclamation is completed. **U/F**-Not unique or particularly fragile.	A. Certain B. Certain	A. Propagation of noxious weeds would add to other noxious weed issues in the surrounding area. B. The proposed project and subsequent reclamation could cause a change in species composition in the vicinity.	The Applicant would be required to control weeds during mining and reclamation and follow any weed control measures established by Mineral County.	No
5. Terrestrial, Avian, and Aquatic Life and Habitats	A. Displacement of species B. Habitat Fragmentation	A. **S**-High: Of the 105.0 acres of ground that would be disturbed, animals could be displaced from all disturbed areas. **E**-Small: Total surface disturbance of 105.0 acres is within an area with other similar habitat.	A. Possible B. Possible	No cumulative impacts would be expected	The Applicant has not proposed anything to mitigate impacts to terrestrial, avian and aquatic life and habitats.	No

Table 2: Assessment of Significance (ARM 17.4.608)						
Affected Resource and Section Reference	**Potential Impact**	**Severity[1], Extent[2], Duration[3], Frequency[4], Uniqueness and Fragility (U/F)**	**Probability impact will occur[5]**	**Cumulative impacts**	**Measures to reduce impact as proposed by Applicant**	**Significance (yes/no)**
		D-The site would be fully reclaimed by December of 2050. **F**-Continually until reclamation is completed. **U/F**-Not unique or particularly fragile. B. **S**-High: Of the 105.0 acres of ground that would be disturbed, all could contribute to habitat fragmentation. **E**-Small: Total surface disturbance of 105.0 acres is within an area with other similar habitat. **D**-The site would be fully reclaimed by December of 2050. **F**-Continually until reclamation is completed. **U/F**-Not unique or particularly fragile.				

Table 2: Assessment of Significance (ARM 17.4.608)						
Affected Resource and Section Reference	**Potential Impact**	**Severity[1], Extent[2], Duration[3], Frequency[4], Uniqueness and Fragility (U/F)**	**Probability impact will occur[5]**	**Cumulative impacts**	**Measures to reduce impact as proposed by Applicant**	**Significance (yes/no)**
6. Unique, Endangered, Fragile, or Limited Environmental Resources	A. Displacement of species B. Habitat Fragmentation	A. **S**-High: Of the 105.0 acres of ground that would be disturbed, animals could be displaced from all disturbed areas. **E**-Small: Total surface disturbance of 105.0acres is within an area with other similar habitat. **D**-The site would be fully reclaimed by December of 2050. **F**-Continually until reclamation is completed. **U/F**-Not unique or particularly fragile. B. **S**-High: Of the 105.0 acres of ground that would be disturbed, all could contribute to habitat fragmentation. **E**-Small: Total surface disturbance of 105.0 acres is within an area with other similar habitat. **D**-The site would be fully reclaimed by December of 2050. **F**-Continually until reclamation is completed. **U/F**-Not unique or particularly fragile.	A. Possible B. Possible	No cumulative impacts would be expected	The Applicant has not proposed anything to mitigate impacts to unique, endangered, fragile, or limited environmental resources.	No
7. Historical and Archaeological Sites	Unidentified resources may be disturbed.	**S**-High: Of the 105.0 acres of ground that would be disturbed, unidentified resources may be found or disturbed throughout. **E**-Small: Total surface disturbance of 105.0 acres is within an area with other similar terrain and historic land	Possible	No cumulative impacts are anticipated.	The Applicant has not proposed anything to mitigate impacts to historical or archeological resources.	No

Table 2: Assessment of Significance (ARM 17.4.608)						
Affected Resource and Section Reference	**Potential Impact**	**Severity[1], Extent[2], Duration[3], Frequency[4], Uniqueness and Fragility (U/F)**	**Probability impact will occur[5]**	**Cumulative impacts**	**Measures to reduce impact as proposed by Applicant**	**Significance (yes/no)**
		use. **D**-The site would be fully reclaimed by 2050. **F**-Continually until reclamation is completed. **U/F**-Unique and fragile				
8. Aesthetics	Increase in ambient noise and alteration of viewshed.	**S**-Low: Most disturbed surfaces are set away from the local roads with only residence, owned by the Applicant with ½ mile. **E**-Small: Total disturbance would be 105.0 acres and located in a remote area. Noise may be heard by receptors located in an area where sound related to the project has not been fully diminished by distance or another sound dampening feature. **D**-Mining and reclamation activities would be finished by December of 2050. **F**-Continually until reclamation is completed. **U/F**-Not unique or particularly fragile.	Certain	Impacts to aesthetics would add to impacts from nearby agricultural, industrial and highway activities.	This Dryland site does not require any precautions above and beyond what the Opencut Mining Act requires.	No
9. Demands on Environmental Resources of Land, Water, Air, or Energy	No anticipated impacts	N/A	N/A	N/A	N/A	No
10. Impacts on Other Environmental Resources	No anticipated impacts	N/A	N/A	N/A	N/A	No

Table 2: Assessment of Significance (ARM 17.4.608)						
Affected Resource and Section Reference	**Potential Impact**	**Severity[1], Extent[2], Duration[3], Frequency[4], Uniqueness and Fragility (U/F)**	**Probability impact will occur[5]**	**Cumulative impacts**	**Measures to reduce impact as proposed by Applicant**	**Significance (yes/no)**
11. Human Health and Safety	A. Increase in traffic B. Irritation to receptors by dust, exhaust, and emissions	A. **S**-Medium: The proposed project would add to traffic on nearby roads. **E**-Small: The total increase in traffic would not significantly add to traffic already travelling on nearby roads. **D**-Daily until final reclamation in December of 2050. **F**- Continually until December of 2050. **U/F**-Not unique or particularly fragile. B. **S**-High: All areas within the 105.0-acre permit, and some areas outside of the permit area would be susceptible to the impacts of equipment exhaust, emissions and dust. **E**-Small: Air quality impacts would occur over the entire 9.0-acre permit area and areas beyond the permit where contaminants could be transported before being diluted. **D**-Daily until final reclamation in December of 2050. **F**- Continually until December of 2050. **U/F**-Not unique or particularly fragile.	A. Certain B. Possible	An increase in traffic and the production of dust, exhaust, and emissions could add to cumulative impacts from nearby industrial, agricultural, and roadway travel.	A. The Applicant has not proposed anything to mitigate impacts to traffic. B. The Applicant is required to mitigate dust and air quality impacts as discussed in Section 3 and is required to follow all laws.	No

Table 2: Assessment of Significance (ARM 17.4.608)						
Affected Resource and Section Reference	**Potential Impact**	**Severity[1], Extent[2], Duration[3], Frequency[4], Uniqueness and Fragility (U/F)**	**Probability impact will occur[5]**	**Cumulative impacts**	**Measures to reduce impact as proposed by Applicant**	**Significance (yes/no)**
12. Industrial, Commercial, and Agricultural Activities and Production	A. Reduction of rangeland B. Opencut Materials would be available for use/sale	A. **S**-High: Of the 105.0 acres of ground that would be disturbed, all disturbance would be removing existing rangeland. **E**-Small: The disturbance would occur within an area surrounded by other rangeland. **D**-Final reclamation would be complete in December of 2050. **F**-Continually until December of 2050. **U/F**-Not unique or particularly fragile. B. **S**-High: Of the 105.0 acres of ground that would be disturbed, most would be utilized to mine opencut materials and make them available for use/sale. **E**-Small: The amount of material to be mined is a small quantity in the context of state-wide opencut resources available on the market. **D**-Final reclamation would be complete in December of 2050. **F**-Continually until December of 2050. **U/F**-Not unique or particularly fragile.	A. Certain B. Certain	A. The loss of rangeland from the proposed project would reduce the available area for rangeland use. B. Material mined from the proposed site would be available for use and sale in competition with other producers.	The Applicant has not proposed anything to mitigate impacts to industrial, commercial, and rangeland activities and production.	No

Table 2: Assessment of Significance (ARM 17.4.608)						
Affected Resource and Section Reference	**Potential Impact**	**Severity[1], Extent[2], Duration[3], Frequency[4], Uniqueness and Fragility (U/F)**	**Probability impact will occur[5]**	**Cumulative impacts**	**Measures to reduce impact as proposed by Applicant**	**Significance (yes/no)**
13. Quantity and Distribution of Employment	No anticipated impacts	N/A	N/A	N/A	N/A	No
14. Local and State Tax Base and Tax Revenues	A. The tax base on the land expect to change from agricultural to industrial. B. Increase in payroll taxes	A. **S**-Low: Of the 105.0 acres to be permitted, all would be considered industrial. **E**-Small: All 105.0 acres would be considered industrial, but it is a small area compared to the surrounding rangeland. **D**-Final reclamation would be complete in December of 2050. **F**-Ongoing until December of 2050. **U/F**-Not unique or particularly fragile. B. **S**-Low: It is unlikely that this proposed site would require sufficient employees to cause a noticeable increase in payroll tax revenue. **E**-Small: The site is relatively small, and it is unknown how many employees would be required to work the site. **D**-Final reclamation would be complete in December of 2050. **F**-Ongoing until December of 2050 **U/F**-Not unique or particularly fragile.	A. Certain B. Possible	No cumulative impacts are anticipated.	The Applicant has not proposed anything to mitigate impacts to local and state tax base and tax revenues.	No

Table 2: Assessment of Significance (ARM 17.4.608)						
Affected Resource and Section Reference	**Potential Impact**	**Severity[1], Extent[2], Duration[3], Frequency[4], Uniqueness and Fragility (U/F)**	**Probability impact will occur[5]**	**Cumulative impacts**	**Measures to reduce impact as proposed by Applicant**	**Significance (yes/no)**
15. Demand for Government Services	Increased traffic to/from the site may contribute to wear and tear on local roadways.	**S**-Low: The proposed project would add to traffic on nearby roads. **E**-Small: The total increase in traffic would not significantly add to traffic already travelling on nearby roads. **D**-Daily until final reclamation in December of 2050. **F**- Continually until December of 2050. **U/F**-Not unique or particularly fragile.	Certain	Wear and tear due to increased truck traffic from the proposed project could contribute to cumulative impacts on local roads.	The Applicant has not proposed any measures to mitigate impacts to the demand for government services.	No
16. Locally Adopted Environmental Plans and Goals	Leasing State Trust Lands for commercial use would restrict access to the land for recreational use.	**S**-High: Access would be restricted to all 105.0 acres of State Lands that would be leased for commercial use. **E**-Small: Total surface disturbance susceptible to access restrictions would be 105.0 acres. **D**- Mining and reclamation activities would be finished by December of 2050. **F**-Continually until reclamation is completed. **U/F**-Not unique or particularly fragile.	Certain	No cumulative impacts are anticipated.	The Applicant has not proposed any measures to mitigate impacts from restricted public land access.	No
17. Access to and Quality of Recreational and Wilderness Activities	Leasing State Trust Lands for commercial use would restrict access to the land for recreational use.	**S**-High: Access would be restricted to all 105.0 acres of State Lands that would be leased for commercial use. **E**-Small: Total surface disturbance susceptible to access restrictions would be 105.0 acres. **D**- Mining and reclamation activities would be finished by December of 2050. **F**-Continually until reclamation is completed. **U/F**-Not unique or particularly fragile.	Certain	No cumulative impacts are anticipated.	The Applicant has not proposed any measures to mitigate impacts from restricted public land access.	No

Table 2: Assessment of Significance (ARM 17.4.608)						
Affected Resource and Section Reference	**Potential Impact**	**Severity[1], Extent[2], Duration[3], Frequency[4], Uniqueness and Fragility (U/F)**	**Probability impact will occur[5]**	**Cumulative impacts**	**Measures to reduce impact as proposed by Applicant**	**Significance (yes/no)**
18. Density and Distribution of Population and Housing	May add to population or require additional housing.	**S**-Low: It is unlikely that this proposed site would require sufficient employees to cause a noticeable increase in housing demand. **E**-Small: The site is relatively small and it is unknown how many employees would be required to work the site. **D**-Final reclamation would be complete in December of 2050. **F**-Ongoing until December of 2050. **U/F**-Not unique or particularly fragile.	Possible.	No cumulative impacts are anticipated.	The Applicant has not proposed anything to mitigate impacts to density and distribution of population and housing.	No
19. Social Structures and Mores	No anticipated impacts	N/A	N/A	N/A	N/A	No
20. Cultural Uniqueness and Diversity	No anticipated impacts	N/A	N/A	N/A	N/A	No
21. Private Property Impacts	No anticipated impacts	N/A	N/A	N/A	N/A	No
22. Other Appropriate Social and Economic Circumstances	No anticipated impacts	N/A	N/A	N/A	N/A	No
23. Greenhouse Gas Analysis	A. Emission of GHGs B. Changes in atmospheric radiative forcing	A. **S**-High: All vehicles and equipment that utilize diesel fuel within the 105.0-acre Permit, and some areas outside of the Permit area would emit GHGs. **E**-Small: GHG emissions would occur over the entire 105.0-acre Permit area and areas beyond the Permit where contaminants are	A. Certain B. Probable	GHGs from this site would add to emissions from nearby roadway travel and other agricultural, industrial, and commercial activities in the project area.	The Applicant has not included any information in the Application regarding proposed mitigation of impacts from greenhouse gas emissions or associated effects..	No

Table 2: Assessment of Significance (ARM 17.4.608)						
Affected Resource and Section Reference	**Potential Impact**	**Severity[1], Extent[2], Duration[3], Frequency[4], Uniqueness and Fragility (U/F)**	**Probability impact will occur[5]**	**Cumulative impacts**	**Measures to reduce impact as proposed by Applicant**	**Significance (yes/no)**
		emitted before being diluted into the atmosphere. **D**- The site would be fully reclaimed by December of 2050. **F**- Daily during mining and reclamation activities. **U/F**-Not unique or particularly fragile. B. **S**-Low: GHGs would dissipate and be spread throughout the broader atmosphere instead of remaining densely clustered around the source. **E**-Large: GHGs would dissipate into the broader atmosphere. **D**- The site would be fully reclaimed by December of 2050. **F**- Daily during mining and reclamation activities. **U/F**-Not unique or particularly fragile.				

1. Severity (**S**) describes the density at which the impact may occur. Levels used are low, medium, high.
2. Extent (**E**) describes the land area over which the impact may occur. Levels used are small, medium, and large.
3. Duration (**D**) describes the time period over which the impact may occur. Descriptors used are discrete time increments (day, month, year, and season).
4. Frequency (**F**) describes how often the impact may occur.
5. Probability describes how likely it is that the impact may occur without mitigation. Levels used are: impossible, unlikely, possible, probable, certain

Preparation and Approval

Environmental Assessment and Significance Determination prepared by:

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Environmental Assessment Reviewed by: Carly Russell

Approved by: Whitney Bausch

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APPENDIX

Montana Department of Justice
ATTORNEY GENERAL'S GUIDELINES
Revised January 2011

Introduction

The 54th Legislature enacted the Private Property Assessment Act, Chapter 462, Laws of Montana (1995), which is in Title 2, Chapter 10, Part 1 of the Montana Code Annotated. The law required the Attorney General to develop guidelines, including a checklist, to assist state agencies in identifying and evaluating proposed agency actions that may result in the taking or damaging of private property. The intent was to establish an orderly and consistent internal management process for state agencies to evaluate their proposed actions under the "Takings Clauses" of the United States and Montana Constitutions, as those clauses are interpreted and applied by the United States and Montana Supreme Courts. In addition to these Guidelines with checklist questions, there are three related documents: Takings—Selected Supreme Court Opinions, Private Property Assessment Act Checklist, and Checklist Flowchart.

The Attorney General's Guidelines and Checklist were issued in September, 1995. In the years since then, numerous opinions of the United States Supreme Court and the Montana Supreme Court have analyzed takings issues. This revision of the Guidelines and Checklist is intended to be in compliance with the principles discussed in the Court decisions, and to be of assistance to state agencies in determining when a proposed action may have takings implications.

The Private Property Assessment Act applies to proposed agency actions, (such as an administrative rule, policy, or permit condition or denial), pertaining to land or water management or to some other environmental matter that if adopted and enforced would constitute a deprivation of private property in violation of the United States or Montana Constitutions. The Act defines "private property" to mean real property, including water rights. The term "private property" does not mean personal property, contract rights, government grants, loans or guarantees, business expectations, or an interest in a license. The Act does not apply to proposed eminent domain proceedings. The Act does not apply to a broad range of state regulation of commercial activities including banking, insurance and securities, utilities regulation, occupational licensing rules, and industrial safety standards. The Act did not expand or diminish the constitutional provisions nor create any right, claim, or cause of action.

Montana Department of Justice
TAKINGS – SELECTED SUPREME COURT OPINIONS

UNITED STATES SUPREME COURT:

Andrus v. Allard, 444 U.S. 51 (1979) (prohibition of the sale of lawfully acquired property is not a taking).

Dolan v. City of Tigard, 512 U.S. 374 (1994) (conditioning approval of building permit on the dedication of a portion of private land to public access is a taking unless there is rough proportionality between the exaction and the impact of the proposed development).

First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304 (1987) (the Takings Clause requires compensation for the period of time that the government denies the owner all use of the property, even if the taking is not permanent).

Hodel v. Irving, 481 U.S. 704 (1987) (abolition of the right to pass one's property to one's heirs is a taking).

Kelo v. City of New London, 545 U.S. 469 (2005) (condemnation case discussing the meaning of "public use").

Keystone Bituminous Coal Association v. DeBenedictis, 480 U.S. 470 (1987) (restriction on amount of coal that may be mined in order to prevent surface subsidence was proper exercise of police powers to guard health, safety, and general welfare of the public and did not make profitable mining impossible).

Lingle v. Chevron U.S.A. Inc., 544 U.S. 528 (2005) (whether a law substantially advances legitimate governmental interests is a due process test, not a takings test).

Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982) (minor but permanent physical occupation of private property is a taking).

Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992) (restriction that denies property owner all economically viable use of land is a taking).

Nollan v. California Coastal Commission, 483 U.S. 825 (1987) (conditioning building permit on granting of public access across the property does not serve public purposes related to the building permit requirement and is a taking).

Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978) (case describing significant factors for analysis of regulatory takings).

Montana Supreme Court:

Adams v. Department of Highways, 230 Mont. 393, 753 P.2d 846 (1988) (in the absence of a physical taking, landowners along a street were not entitled to compensation after the doubling of traffic with an increase in noise, fumes, and dust because of road improvements; residential value of property had decreased but commercial value had increased).

Billings Properties, Inc. v. Yellowstone County, 144 Mont. 25, 394 P.2d 182 (1964) (requirement that subdivision dedicate land for public parks and playgrounds was valid). The United States Supreme Court has criticized this case for stating a standard that is too lax to protect adequately private property rights. Dolan v. City of Tigard, 512 U.S. 374, 389 (1994).

Buhmann v. State, 2008 MT 465, 348 Mont. 205, 201 P.3d 70 (takings clauses of United States and Montana Constitutions are coextensive; "or damaging" language of Montana's takings clause applies to consequential damages of a physical condemnation).

Germann v. Stephens, 2006 MT 130, 332 Mont. 303, 137 P.3d 545 (takings claim failed because owner of motel did not have a protected property interest in operating a bar or casino).

In re Yellowstone River, 253 Mont. 167, 832 P.2d 1210 (1992). (water rights and other property rights are subject to the reasonable exercise of the police power of the state to regulate for the health, safety, and general welfare of the public).

Kafka v. Montana Department of Fish, Wildlife & Parks, 2008 MT 460, 348 Mont. 80, 201 P.3d 8 (passage of Initiative barring fee-shooting of game farm animals was not a taking).

Knight v. City of Billings, 197 Mont. 165, 642 P.2d 141 (1982) (property owners may recover in inverse condemnation suit where property across the street was taken by condemnation to enlarge existing street, which greatly increased traffic, noise, and dirt and reduced value of residential property 20-30 percent).

Knight v. City of Missoula, 252 Mont. 232, 827 P.2d 1270 (1992) (property owners may recover in inverse condemnation suit where actual physical damage is caused to their properties by a new public road).

Kudloff v. City of Billings, 260 Mont. 371, 860 P.2d 140 (1993) (annexation of real property may have diminished its value but did not require compensation).

Less v. City of Butte, 28 Mont. 27, 72 P. 140 (1903) (owner entitled to compensation because adjacent street was excavated to a depth of 7 feet, impairing his access).

Madison River R.V. Ltd. v. Town of Ennis, 2000 MT 15, 298 Mont. 91, 994 P.2d 1098 (suit challenging denial of application to build recreational vehicle park did not state an inverse condemnation claim because the owner had not alleged denial of all economically beneficial use of the property).

McElwain v. County of Flathead, 248 Mont. 231, 811 P.2d 1267 (1991) (owner was not entitled to compensation after adoption of more stringent septic regulations reduced the value of owner's riverfront property by 2/3's; the new rules did not deprive the owner of economically viable use for residential development).

Rauser v. Toston Irrigation District, 172 Mont. 530, 565 P.2d 632 (1977) (property owner may recover in inverse condemnation suit where construction of irrigation project flooded owner's land).

Seven Up Pete Venture v. State, 2005 MT 146, 327 Mont. 306, 114 P.3d 1009 (passage of Initiative prohibiting cyanide leaching in mines that were not yet operating was not a compensable taking of property rights).

Western Energy Co. v. Genie Land Co., 227 Mont. 74, 737 P.2d 478 (1987) (unexpired leasehold interest in mineral estate is property interest; statute requiring

consent of surface owner to strip mine coal effectively deprived owner of coal of the right to mine).

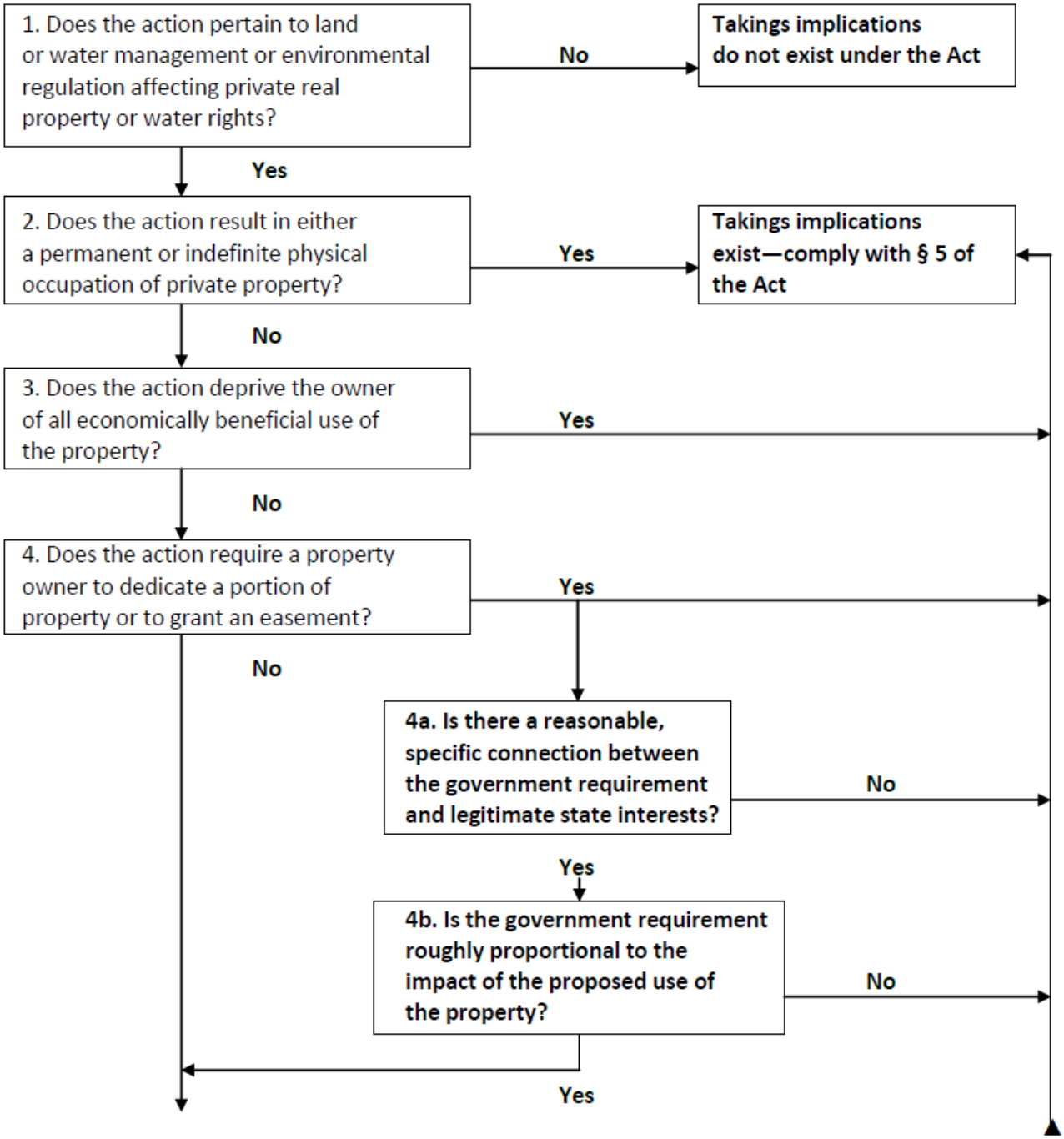
Yellowstone Valley Electric Cooperative, Inc. v. Ostermiller, 187 Mont. 8, 608 P.2d 491 (1980) (acts conducted in the reasonable exercise of the police power for the public's health, safety, and general welfare do not constitute a taking unless there is an appropriation of property).

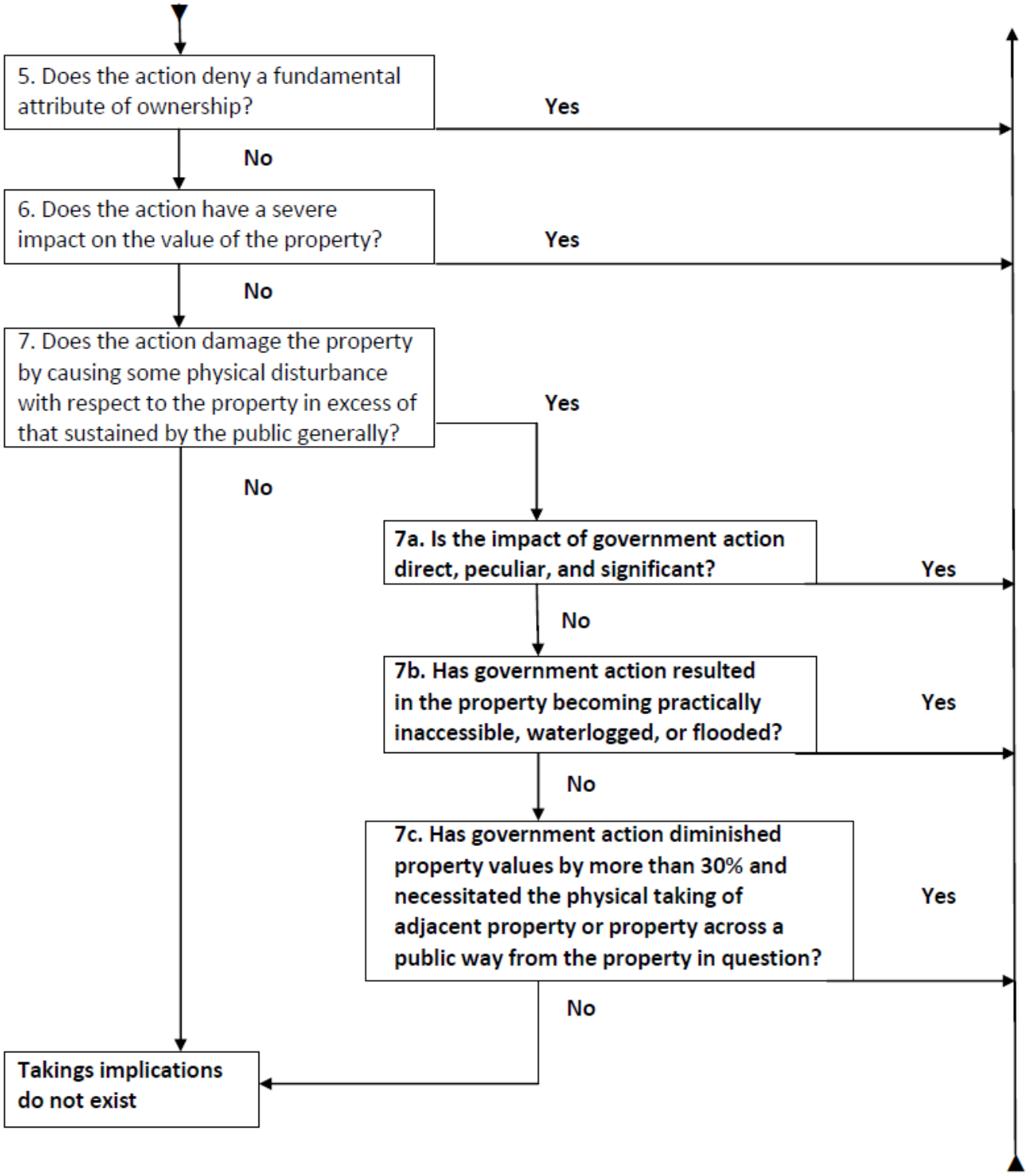
Montana Department of Justice

CHECKLIST FLOWCHART

Does the proposed agency action have takings implications under the Private Property Assessment Act?

START HERE:




5. Does the action deny a fundamental attribute of ownership?
Yes
No
6. Does the action have a severe impact on the value of the property?
Yes
No
7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally?
Yes
No
7a. Is the impact of government action direct, peculiar, and significant?
Yes
No
7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?
Yes
No
7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?
Yes
No
Takings implications do not exist

Montana Department of Justice

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST

DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS UNDER THE PRIVATE PROPERTY ASSESSMENT ACT?

YES	NO	
X		1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?
	X	2. Does the action result in either a permanent or indefinite physical occupation of private property?
	X	3. Does the action deprive the owner of all economically beneficial use of the property?
	X	4. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is NO, skip questions 4a and 4b and continue with question 5.]
		4a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?
		4b. Is the government requirement roughly proportional to the impact of the proposed use of the property?
	X	5. Does the action deny a fundamental attribute of ownership?
	X	6. Does the action have a severe impact on the value of the property?
	X	7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? [If the answer is **NO**, do not answer questions 7a-7c.]

7a. Is the impact of government action direct, peculiar, and significant?

7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?

7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?

Taking or damaging implications exist if **YES** is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 5, 6, 7a, 7b, 7c; or if **NO** is checked in response to questions 4a or 4b.

If taking or damaging implications exist, the agency must comply with Section 5 of the Private Property Assessment Act, Mont. Code Ann. § 2-10-105, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.

I. GENERAL GUIDELINES

A. Overview

The Takings Clause of the Fifth Amendment of the United States Constitution provides: "nor shall private property be taken for public use, without just compensation." Under the Fourteenth Amendment this limitation upon the power of the federal government is applied to the states. Similarly, Article II, Section 29, of the Montana Constitution provides: "Private property shall not be taken or damaged for public use without just compensation . . . ." Although the Montana Constitution contains the "or damaged" language that is absent from the Fifth Amendment, the Montana Supreme Court has ruled that the protections of the two clauses are coextensive. The Takings Clauses do not prohibit the taking of private property, but they do place a condition on the exercise of the power of the government by requiring compensation.

The Takings Clauses are intended to bar the government from forcing some people (whose property is taken) to bear burdens that, in fairness and justice, should be borne by the public as a whole (whose taxes would be used to pay just compensation). However, no single formula exists for determining whether economic injuries caused by government action constitute a taking of private property.

Under Montana's Private Property Assessment Act, state agencies should consider and follow obligations imposed by the Fifth and Fourteenth Amendments to the Constitution of the United States and Article II, Section 29, of the Montana Constitution, as construed by the United States Supreme Court and the Montana Supreme Court, when considering and implementing an action with taking or damaging implications in order to avoid unanticipated and undue burdens on the state treasury. Mont. Code Ann. § 2-10-104(2).

Court decisions interpreting and applying the Takings Clauses of the United States and Montana Constitutions to specific factual situations provide guidance for evaluating whether a proposed government agency action may involve a taking of private property requiring the payment of just compensation. Although the language of the Montana Constitution is broader than the federal language, the Montana Supreme Court usually looks to the decisions of federal courts for guidance in considering takings claims. The courts have yet to answer many questions concerning the law of takings. The questions they have answered do not always provide a clear, consistent framework for analyzing takings issues that may arise. Each case must be examined on its own facts in light of the standards that have been developed by the courts. The purpose of these guidelines is to identify those legal standards and to provide state agencies with a framework for analyzing their actions on a case-by-case basis.

Adding to the difficulty involved in analyzing the question, "Is there a taking of property?" is the concept of "property." The constitutions of the United States and of the State of Montana do not define what is meant by the term "property." Besides the physical dimension of property (its

size, shape, and location), property has a functional dimension (the owner's use and disposition of the property), and a temporal dimension (the duration of the owner's interest in the property or of the government's interference with it). Many courts have described "property" as a "bundle" of expectations or rights, such as the rights to possess, exclude others, use, derive income from, and dispose of the property. Government actions may adversely affect one or more "strands" in the "bundle" of rights without there being a taking requiring the payment of compensation.

The rights associated with the concept of property are not absolute. Various laws limit property rights. For example, sometimes a use of property that endangers public health, morals, or safety is considered a nuisance under state law. The government may prohibit a use of property that is a nuisance without paying compensation, because the "right" to create a nuisance is not a component part of the "bundle of rights" that an owner of property enjoys.

When the government obtains title to land, the requirement for the government to pay compensation is clear. The law is firmly established that when the government seeks to use private property for a government building, a highway, or some other public purpose, it may acquire the property by use of its power of eminent domain. The process whereby the government acquires the property and the owner is paid compensation is often called condemnation.

The law is also clear that when the government physically occupies private land on a permanent basis, it is liable to pay just compensation to the owner. Sometimes this occurs because of a mistake, such as when a public road is built on private land as a result of a surveying error. Inverse condemnation is the process by which a landowner recovers just compensation for property that the government has taken without first instituting condemnation proceedings. The Private Property Assessment Act does not apply to condemnation and inverse condemnation proceedings, which obviously involve a taking. Instead, the Act pertains to regulatory actions by state agencies that might result in the taking of private real property, including water rights.

The government has the authority and responsibility to protect the public health, safety, and welfare. Often this is referred to as the "police power" of the state. Pursuant to this power, the government may regulate the use of private property for the public good. Normally, land use regulations such as zoning ordinances, setback requirements, building codes, sanitary requirements, and other environmental regulations substantially advance legitimate public interests and do not deprive owners of all beneficial use of their property. Such regulations are applicable to all similarly situated property and produce a widespread public benefit in which the property regulated also participates. The government may also establish conditions or requirements that must be satisfied in return for government permission to use private property in certain ways. Commonly required conditions include the payment of fees and the obtaining of permits.

To require compensation for all government actions that adversely affect property rights and values would effectively compel the government to regulate by purchase. The courts have not interpreted the Takings Clauses of the United States and Montana Constitutions to require compensation because of the effect on private property of typical land use regulations. Nevertheless, at some point the government regulations attempting to adjust private rights and public benefits may go too far and constitute a taking of private property.

B. Two Categorical Rules

The courts have identified two categories of government action that will be deemed takings. The right to the exclusive possession of property is one of the most fundamental property interests. Thus, government action that requires an owner to allow another to occupy any part of an owner's private property is a taking. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982) (law requiring apartment building owners to allow installation of cable TV equipment was a taking). Even small physical takings are covered. In Loretto the cable TV equipment occupied only about 1½ cubic feet of the owner's property. 458 U.S. at 438 n.16. This categorical rule also applies to government action creating a public easement. A permanent physical occupation has occurred where individuals are given a permanent and continuous right to pass to and fro, so that the real property may be continuously traversed, even though no particular individual is permitted to station himself permanently upon the premises. Nollan v. California Coastal Commission, 483 U.S. 825, 832 (1987).

The second categorical rule is that government action that deprives the owners of all economically feasible use of their real property is a taking. Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992). In Lucas the owner had paid nearly one million dollars for two residential lots in a beachfront community on an island, intending to build single family homes. Two years later the state adopted an act that barred the owner from building any permanent structures on the land. The state trial court had found that the state law in question had deprived the owner of the lots "of any reasonable economic use of the lots." The Supreme Court found that the owner had suffered a taking. The Court referred to the denial of "all economically beneficial or productive use of land" (505 U.S. at 1015), the denial of "economically viable use" (505 U.S. at 1016), and "deprivation of all economically feasible use" (505 U.S. at 1016 n.7). Typically, this situation may arise when the government action requires a parcel of land to be left substantially in its natural condition, or prohibits development for a temporary but indefinite period. First English Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. 304 (1987). By comparison, a government action that deprives property of its most beneficial use, but not other uses, is not necessarily a taking. Goldblatt v. Town of Hempstead, 369 U.S. 590 (1962).

In Goldblatt a company had mined sand and gravel on its 38-acre tract in the town for more than 30 years, creating a 20-acre lake with an average depth of 25 feet. Meanwhile, the town had grown around the site and become densely populated. As a safety measure, the town prohibited the excavation of sand and gravel below the groundwater level. The Court ruled this was a valid exercise of the town's police powers, even though the practical effect was to make further mining on the site impossible. The record before the Court did not show that the town's ordinance had destroyed all the value of the land.

Unfortunately, the United States Supreme Court has not explained what the property interest is against which the loss of value is to be measured. In some cases the Court evaluated the economic impact of a regulation with respect to the property as a whole. Since economically viable use of the property remained available, even though it was not the owner's desired use, there was no taking. Cf. Keystone Bituminous Coal Association v. DeBenedictis, 480 U.S. 470 (1987) (owner of subsurface coal required to leave some coal in the ground to prevent surface subsidence); Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978) (denial of permission to build skyscraper above owner's existing train station). In another opinion the Court noted the existence of uncertainty concerning the calculation of the loss of value. Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1016 n.7 (1992).

C. Land-Use Exaction

An exception to the two categorical rules is a land-use exaction—a government demand that a landowner grant an easement allowing public use of a portion of the property as a condition of obtaining a development permit. Such exactions are allowed where the benefit conferred by the government is sufficiently related to the property and roughly proportional to the impact of the proposed development. For example, as a condition for permission to develop a subdivision the government may require easements for public roads and bike trails and the dedication of undeveloped land for parks and open spaces. Billings Properties, Inc. v. Yellowstone County, 144 Mont. 25, 394 P.2d 182 (1964); but see Dolan v. City of Tigard, 512 U.S. 374, 389 (1994) (criticizing Billings Properties for stating a standard that is too lax to protect adequately private property rights).

The owner of a house on waterfront property may not be required to grant a public easement across his property as a condition to replacing an existing house with a new dwelling, because the connection between the permit to build and the government interest in access to the beach is insufficient. However, the owner could be required to observe certain size and height restrictions so that the new construction would not block the public's view of the water. Nollan v. California Coastal Commission, 483 U.S. 825 (1987). Similarly, it is lawful to require a property owner who applies for a permit to expand the size of a store and parking lot to leave undeveloped a vegetated strip in a flood plain. There is a connection between the proposed development and the government interest in flood control. But the government goes too far if it also requires the vegetated strip in the flood plain to be open to the public. Dolan v. City of Tigard, 512 U.S. 374 (1994).

D. Fact-Specific Balancing

When the regulation does not involve a permanent physical invasion of the property or the destruction of all economically beneficial use or a land-use exaction, the courts engage in an ad hoc, fact-specific balancing of the public interest and private loss to assess whether the regulation forces some property owners to bear burdens that should, in fairness and justice, be borne by the public as a whole. Although there is no set formula, the courts often examine the following factors to assess the severity of the burden imposed by the government: (1) the character of the government action, (2) the extent to which the action has interfered with reasonable investment-back expectations of the owner; and (3) the magnitude of the economic impact of the regulation on the owner.

1. Character Of Government Action

The character of the government action focuses on the severity of the burden the government imposes on property rights. At one extreme, if the government action involves a permanent physical occupation of the property or the denial of all economically viable use of the land, there is a taking and further analysis is unnecessary. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982). If a regulation abolishes one or more "strands" composing the "bundle" of rights embodied in the concept of "property," a taking may have occurred, but further analysis is usually required. However, barring the inheritance of certain interests in land was a taking. Hodel v. Irving, 481 U.S. 704 (1987). In contrast, a law barring the sale of eagle feathers did not amount to a taking. Andrus v. Allard, 444 U.S. 51 (1979). Similarly, a law barring the shooting of game farm animals was not a taking. Kafka v. Montana Department of Fish, Wildlife & Parks, 2008 MT 460, 348 Mont. 80, 201 P.3d 8. At the other extreme, if the government action involves the traditional exercise of police powers to promote the public health, safety, and welfare, it is unlikely that the regulation has taken private property. Similarly, if the government regulation simply enforces established principles of nuisance law, there is no taking.

2. Reasonable Investment-Backed Expectations

The extent to which the regulation has interfered with the reasonable investment-backed expectations of the property owner is an objective test. For example, if the owner purchased land in order to subdivide it and after the property was being developed new government regulations barred further development, then the impact of the government action on the investment-backed expectations of the owner would be obvious. In contrast, if existing government regulations restrict land uses and the owner purchased the property with the intention of developing it in a manner already limited by the government, the owner's expectations would not be reasonable. For highly regulated activities, such as mining, the owner of mineral rights does not have a reasonable expectation that a mine can be developed without compliance with government regulations. Seven Up Pete Venture v. State, 2005 MT 146, 327 Mont. 306, 114 P.3d 1009.

3. Economic Impact

The magnitude of the economic impact on the value of the property reflects the severity of the burden imposed on private property rights by the government regulation. The economic impact is measured by the change in the fair market value of the property caused by the government regulation. This compares the value that was taken from the property with the value that remains in the property. The focus is on the owner's loss, not the government's gain. However, a substantial reduction in the value of a property or a denial of its most profitable use is not necessarily a taking requiring compensation.

II. CHECKLIST QUESTIONS

Agency staff should use the following questions, and the checklist and flowchart in assessing the impact of a proposed agency action on private property as required by Section 5 of the Private Property Assessment Act, Mont. Code Ann. § 2-10-105. A thorough assessment requires a careful review of all of the issues identified in these materials. Court decisions concerning takings questions arise in the context of specific facts. Although these materials are based upon court decisions, slight differences in the facts may lead to different conclusions regarding whether a taking is involved. If the application of the checklist to a particular proposed agency action is not clear, agency legal staff should be consulted.

1. **Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?**

   The Private Property Assessment Act does not apply to the great number and variety of state agency actions outside of this context, such as personal property, worker safety regulations, workers' compensation, or insurance and securities regulation.

2. **Does the action result in either a permanent or indefinite physical occupation of private property?**

   Regulation that results in a permanent or indefinite physical occupation of all or a portion of private real property will constitute a taking.

3. **Does the action deprive the owner of all economically beneficial use of the property?**

   Regulation that requires a parcel of private land to be kept in its natural state may constitute a taking.

4. **In the case of a land-use exaction, does the action require a property owner to dedicate a portion of property or to grant an easement? If so, there is a taking unless both of the following questions are answered affirmatively: (a) is there a reasonable, specific connection between the government requirement and legitimate state interests and, (b) is the government requirement roughly proportional to the impact of the proposed use of the property?**

Sometimes the developer of property is required, as a condition to obtaining permits, to set aside a portion of the land for such public uses as roads, utilities, and recreation. When the government requires that property be made available for certain purposes, there must be a reasonable, specific connection to legitimate state interests. In addition, the nature and extent of the government's requirements must be roughly proportional to the impact of the proposed development and specifically designed to prevent or compensate for adverse effects of the proposed development. A precise mathematical calculation is not required. Nevertheless, the agency must make an individualized determination that the requirements imposed by the government are related in both nature and extent to the impact of the proposed use of the property. Regulations such as those requiring subdivision developers to dedicate a certain percentage of areas to public streets and open spaces are normally allowed because there is a specific connection between the requirements and the legitimate public interest in the prevention of excessive congestion and because such requirements are roughly proportional to the impact of the development. Dolan v. City of Tigard, 512 U.S. 374, 390-91 (1994).

5. **Does the action deny a fundamental attribute of ownership?**

This question is related to the metaphor that conceives of property as consisting of a "bundle" of rights. Among the fundamental attributes of ownership are the rights to possession, to exclude others, to use, and to dispose of, the property. The denial of a single strand in the bundle does not always amount to a taking of property for which compensation is required. In the interest of flood control, government may prohibit a property owner from developing land in a flood plain, but government may not require the owner, without compensation, to grant the public access to the flood plain. Dolan v. City of Tigard, 512 U.S. 374 (1994).

6. **Does the action have a severe impact on the value of the property?**

The purpose of this question is to evaluate whether the proposed government action goes too far in the regulation of the use of property so that a taking requiring compensation has occurred. Although a reduction in property value alone is not a taking, a severe reduction in value may indicate that, in fairness, the economic injuries caused by the government action should be compensated by the government. No clear, concise test exists to separate a compensable regulatory taking from those government actions that do not constitute compensable takings. Nevertheless, the Courts have identified three

factors of particular significance: (1) the character of the government action; (2) the extent to which the regulation has interfered with reasonable investment-backed expectations of the owner; and (3) the magnitude of the economic impact of the regulation on the property owner. Applying these factors, government action prohibiting the erection of a skyscraper over a historic building was not a taking. Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978).

Although the enactment of septic regulations diminished the value of certain property, there was no taking because the regulation was substantially related to the legitimate government interest of protecting the health, safety, and general welfare of the public and did not deny owners economically viable use of their land. McElwain v. County of Flathead, 248 Mont. 231, 811 P.2d 1267 (1991).

The annexation of land to a municipality was allowed without compensation as a legitimate exercise of government powers, even though the value of the property was diminished. Kudloff v. City of Billings, 260 Mont. 371, 860 P.2d 140 (1993).

7. **Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally?**

The Takings Clause of the Montana Constitution contains "or damaged" language that applies to consequential damages to property affected by condemnation or inverse condemnation. The "or damaged" language does not apply to regulatory takings. Buhmann v. State, 2008 MT 465, ¶¶ 60-74, 348 Mont. 205, 201 P.3d 70. However, where the government action results in a permanent or indefinite physical occupation of all or a portion of private real property or deprives the owner of all economically beneficial use of the property, the "or damaged" language should be considered. To constitute damage, the impact of government action on property must be direct, peculiar, and significant. Thus, land that becomes waterlogged because of the effect of an adjacent government irrigation project on the ground water table is damaged and compensation is required. Rauser v. Toston Irrigation District, 172 Mont. 530, 565 P.2d 632 (1977). Construction that lowers the grade of a city street by seven feet, thus denying homeowners fronting the street with easy access to the street, damages their property. Less v. City of Butte, 28 Mont. 27, 72 P. 140 (1903). In contrast, landowners on a street subjected to increased traffic because of bridge construction have not suffered damage under the takings clause of the Montana Constitution. Although the value of the property for residential use has decreased, the value for commercial use has increased. Adams v. Department of Highways, 230 Mont. 393, 753 P.2d 846 (1988). However, if government road construction requires the physical taking of some property and other property adjacent to the road is diminished in value for its permitted use by 30% or more because of increased traffic or drainage problems, the remaining homeowners may be entitled to compensation for damage. Knight v. City of Billings, 197 Mont. 165, 642 P.2d 141 (1982).

CONCLUSION

If the use of the guidelines, questions, checklist, and flowchart indicates that a proposed agency action has taking or damaging implications, the agency must prepare an impact assessment in accordance with Section 5 of the Private Property Assessment Act, Mont. Code Ann. § 2-10-105. Agencies should develop internal procedures to ensure that agency legal staff are consulted during this process.

Appendix B: MT DEQ Dryland Permit #3545

DEQ OPENCUT MINING SECTION • PO BOX 200901 • HELENA MT 59620-0901 • PHONE: 406-444-4970 • Email: DEQOpencut@mt.gov

For Office Use Only

Payor LHC, Inc. Payment No. FACTS Payment Amt $ 500.00 Date July 27, 2023

DRYLAND OPENCUT MINING PERMIT APPLICATION

This form is used to permit a new site, re-permit a site into the 2021 law, and for amending existing permits where: ***a)*** *neither water resources nor water conveyance facilities are affected, and* ***b)*** *where less than 10 Occupied Dwelling Units are located within one-half mile of the permit boundary. If either of these two conditions are not met, complete and submit the Standard Opencut Mining Permit Application, not this form. § 82-4-431(1), MCA; § 82-4-432(1 & 14); § 82-4-434(2)(j), MCA; & ARM 17.24.228.*

Operator Name: LHC, Inc.

Site Name: Tarkio

INSTRUCTIONS - How to submit a complete and accurate Dryland Opencut Mining Permit Application:

1. Before completing this form, **verify the most current version is being used** and read the guidance information available on the Opencut Mining Section's website at https://deq.mt.gov/mining/assistance.
2. Fill in all blanks and provide a detailed answer for each question. Write "None" if that is the correct answer.
3. This form includes automated calculations that require Microsoft Word 2010 or newer. As data is entered into this form, auto-calculate fields will auto-populate with red text. Tab out of each field to ensure they auto-calculate. If an auto-calculate field is blank, either: **a)** the required information was not entered, or **b)** the blank field does not pertain to your application.
4. Opencut Mining Permits are "living" documents, meaning that whenever a permit is amended, the updated information replaces the outdated information. As a result, this form must be filled in completely for a **Permit** or an **Amendment**.
5. The Department of Environmental Quality (DEQ) recommends completing this application form in electronic format. Doing so will make applying for a future amendment much easier. Operators should keep original electronic files and backups.
6. Operator is required to submit all **Required Support Documents**, unless the exception box is appropriately checked. Operator is required to submit a copy of a previously approved support document with an amendment application. If permitted after 2010, the previously approved documents can be found on the Opencut website at https://deq.mt.gov/mining/assistance. (Click on the "Search Opencut Permits" tab.)
7. Before submitting, check that all additional support documents have the same name or title shown in the "Support Documents" section. Include a Cover Letter with the application materials that lists the names of all "Other" support documents submitted.
8. Sign and date the certification in Section G.
9. Submit all required application materials as one package to the Opencut Mining Section electronically, through the link provided above, or by mail, addressed to: Montana Department of Environmental Quality, Opencut Mining Section, P.O. Box 200901, Helena, MT 59620-0901.

	REQUIRED SUPPORT DOCUMENTS (*unless exception applies & box is checked*)
a	☒ **$500 Non-Refundable Fee for a Dryland Permit or Dryland Amendment application** § 82-4-432(14)(a)(vii), MCA ☒ **This application was submitted electronically and the check has been mailed.** (Make checks payable to Montana Department of Environmental Quality) ☐ **This application was submitted electronically and the payment was made electronically.** *Exception*: ☐ **No Application Fee for Government entities**
b	**Consultation with DNRC on Sage Grouse** (Compliance with Title 76, chapter 22, part 1) § 82-4-432(14)(a)(v), MCA *Exception*: ☒ Opencut site not located in Core, General Habitat, or Interconnectivity Sage Grouse Areas: https://sagegrouse.mt.gov *Exception*: ☐ Amendment is not changing the existing permit boundary; therefore, no new sage grouse consultation is needed and Operator has submitted the existing sage grouse consultation.
c	**Documentation of Consultation with State Historic Preservation Office (SHPO)** § 82-4-432(14)(a)(ii), MCA
d	**Soil Photos Meeting Requirements of the Soil Guideline** & § 82-4-432(14)(a)(vi), MCA *Exception*: ☐ Amendment **or** "Re-Permit" under HB599 is not adding acreage and site was permitted prior to 2016 rule change (If site was permitted after 2016, previously approved soil photos must be submitted).
e	**Location Map** § 82-4-432(14)(a)(viii), MCA & ARM 17.24.228(7)
f	**Boundary Coordinate Table or Proposed Permit Boundaries in format acceptable to the Department** § 82-4-434(14)(a)(viii), MCA *Exception*: ☐ Amendment is not changing the existing permitted boundaries and Opencut has a previous Permit Boundary submitted via BCT or other format acceptable to the Department (check with Opencut).
g	**Reclamation Bond Spreadsheet** *Exception*: ☐ Government Operator § 82-4-432(14)(a)(iii), MCA
h	**Landowner Consultation** § 82-4-432(14)(ai), MCA **Previously approved forms** are acceptable for an Amendment not adding acreage, an asphalt or concrete plant, not changing the postmining land use, and not extending the reclamation date, as long as landowner has not changed.

	Exception: ☒ Landowner is BLM or DNRC State Lands and the appropriate permit is attached.
i	**Zoning Compliance** § 82-4-432(14)(a)(v), MCA **Previously approved forms** are acceptable for an Amendment not adding acreage, not changing the postmining land use, and not adding an asphalt or concrete plant. If the previously approved form cannot be found a new form is required. *Exception*: ☐ Not required for applications mining bentonite, clay, scoria, peat, or soil only.
j	**Bond** § 82-4-433, MCA **(Original paper bond must be received by Opencut before the permit can be issued.)** *Exception*: ☐ Government Operator exempt from bonding. *Exception*: ☐ The submitted Reclamation Bond Spreadsheet does not require a higher bond.

	ADDITIONAL SUPPORT DOCUMENTS* (as required)
k	☐ Water Conveyance Facility or Associated Easement
l	☒ Other: **Test hole map**
m	☒ Other: **DNRC LOC Letter**
n	☐ Other:

***Additional support documents must be clearly named or titled to be consistent with the names or titles above.**

SECTION A – APPLICATION INFORMATION

A1. General Information *§ 82-4-432(1)(a &c), MCA; § 82-4-432(14), MCA; ARM 17.24.228*

1. Indicate which of the following is being requested (check one):
   - a. ☒ **New Permit** (includes expiry sites)
   - b. ☐ **Convert Limited Opencut Operation to a Permit**
   - c. ☐ **Amendment of Existing Dryland Permit**
   - d. ☐ **Amendment of Existing pre-2021 Permit** (Permit obtained on 2019 form or earlier. Amendment is seeking change of reclamation date and/or postmining land use **AND** other parameters)
     - i. ☐ **Reclamation Date**
     - ii. ☐ **Postmining Land Use**
     - iii. **Other Reason for Amendment: Adding/Changing other parameters in existing permit.**

   Note: If ONLY changing the reclamation date or postmining land use, do not use this form. Use either the Application to Change Reclamation Date or Application to Change Postmining Land Use form).

2. **Operator Name:** LHC, Inc.

   Site Name: Tarkio

   Final Reclamation Date auto-populated from Section E1-1: December 2050

   Operator Address:
   LHC, Inc.
   City: Kalispell State: MT Zip Code: 59904-0338
   Office Phone # 406-758-6420 Cell # 406-253-9450 Operator/Business Email: frank@lhcmt.com

3. Site Contact Name: Frank Tabish Site Contact Email: frank@lhcmt.com Cell # 4046-253-9450
   Note: All official correspondence will be sent to the business email. The site contact name would be copied on emails.

4. **LHC, Inc.** requests that correspondence also be emailed to the consultant for this application (if not applicable proceed to #5).
   Consultant Name: _____ Consultant Email:

5. Landowner 1 Name: Montana DNRC - Trust Lands Division
   Address: 1539 11th Ave
   City: Helena State: MT Zip Code: 59601
   Phone #: 406-444-9518 Optional Additional Contact Information (e.g. email, other phone #): zackary.winfield@mt.gov
   If there is an additional landowner, provide contact information below; otherwise leave blank.
   Landowner 2 Name: _____
   Address: _____
   City: _____ State: _____ Zip Code: _____
   Phone #: _____ Optional Additional Contact Information (e.g. email, other phone #): _____
   Additional Landowners (if applicable, use the space provided and use same format as above): _____

6. County where the proposed site is located: Mineral

7. This Dryland Permit allows the use of an Asphalt Plant, Concrete Plant, Conveyor, Crushing Equipment, Pug Mill, Screen, Wash Plant or other dryland gravel processing equipment.

8. **Total Permit Acreage Breakdown** ***(acreages must be entered to the nearest TENTH of an acre, and must match the acreages of the boundary submitted to DEQ Opencut)***

	Existing or New Permit Acres	Amendment Acres (if any)	Total Permitted Acres
a. Bonded Acres*	20		20.0
b. Non-Bonded Acres**	85		85.0
c. Bonded Access Road Acres***			0.0
Totals	105.0	0.0	105.0

Note: To ensure that the "Totals" display, use the Tab key after entering each acreage amount.

a. *Although Government Operators do not "bond," they would fill in this row to display entire permitted acreage.
b. **Government Operators cannot have non-bonded acres and would not fill in this row.
c. ***Complete only if Landowner Consultation form states an access road would be permitted.

Note: For amendments, if the acreage increase causes 10 or more occupied dwelling units to be within ½ mile of the proposed permit boundary, this Dryland Opencut Mining Application cannot be used.

9. **Private Operators Proposing to Permit Non-Bonded Area:**
If Non-Bonded acreage is proposed, the Operator agrees not to disturb any Non-Bonded acreage for any opencut purpose until: **a)** the Operator submits a *Request to Modify Bonded Acreage* form with appropriate attachments and a reclamation bond, and **b)** DEQ provides **written approval** of the request.

A2. ADDITIONAL INFORMATION *§ 82-4-432(14), MCA & ARM 17.24.228*

1. If applicable, provide additional application information not addressed above.
Answer:

SECTION B – PRE-MINE INFORMATION

B1. DIRECTIONS TO SITE

1. Describe in detail how to get from the nearest town or public road intersection to the permit area. Provide directions that can be interpreted and followed by anyone viewing the Location Map for the site, both now and in the future (e.g. identify roads, mileposts, landmarks, and distances; include information on how to obtain keys or combinations for locks). Label the nearest town or public road intersection on the Location Map.
Answer: To access the site Exit I90 at Exit 61 (Tarkio), proceed East approximately ½ mile on Tarkio Loop Road, then turn south on an un-named access road for approximately1.2 miles to the proposed site.

SECTION C – SITE PREPARATION AND PLANNING

C1. Commitments

1. **LHC, Inc.** Certifies the operation would not affect surface water, including intermittent or perennial streams; ground water, or water conveyance facilities § 82-4-403(16), MCA; § 82-4-431(1)(b)(i), MCA;§ 82-4-432(14), MCA, and ARM 17.24.227.
2. **LHC, Inc.** Certifies fewer than ten Occupied Dwelling Units are located within one-half mile of the permit boundary § 82-4-403(7), MCA;§ 82-4-432(1)(b), MCA;§ 82-4-432(14)(a)(ix), MCA.
3. **LHC, Inc.** Certifies that public notice was completed in accordance with § 82-4-432(14)(a)(x), MCA & ARM 17.24.228(2) by: **a)** publishing twice in a newspaper of local circulation, **b)** mailing to surface owners of land located within ½-mile of the proposed permit boundary, and **c)** posting in at least two prominent locations at the site.
Note: Public notice for a Dryland Permit must be completed prior to submittal of this application to Opencut.
4. **LHC, Inc.** Certifies they have informed the County Weed Board of this operation.
5. By March 1st of each year, **LHC, Inc.** must complete and return the Annual Production Report (APR) form that the Opencut Mining Section sends early in the year. **LHC, Inc.** must report the requested information regarding mining conducted during the preceding calendar year. In addition, **LHC, Inc.** must calculate the fee for the preceding year's production (per cubic yard of material mined) and submit payment to DEQ along with the APR. Government operators (cities, counties and towns) do not pay the APR fee, but are required to submit a completed APR form.

C2. SOIL AND OVERBURDEN *§ 82-4-403(15), MCA;§ 82-4-432(14)(a)(vi), MCA; § 82-4-434(2)(b); ARM 17.24.228(3)*

1. **LHC, Inc.** is required to provide no less than three (3) test holes spaced representatively to provide soil and overburden thickness data within the proposed permit area (bonded and non-bonded areas). The submitted soil test pit data must meet the Soil Guideline requirements.
   - For tips on proper identification of soil depths and taking photos that will be accepted by the Opencut Mining Section,

refer to the *Soil Guideline* found at: https://deq.mt.gov/mining/assistance (click on the "Forms" tab)

2. **Date test pits were dug: 06/15/2023**
   Logged by: Frank Tabish

Soil Test Hole I.D. on Map	Soil Thickness (inches)	Overburden Thickness (inches)	Total Depth of Test Hole (feet)	Water encountered in Test Hole? (feet)
T1	4	20	3	☒No ☐Yes-Depth to water =
T2	5	19	3	☒No ☐Yes-Depth to water =
T3	4	20	3	☒No ☐Yes-Depth to water =

Note: Opencut has the authority to ensure the above soil depths are consistent with the soil photos.

3. **LHC, Inc.** is required to salvage all soil from the area prior to any disturbance.
4. **Note:** This application may be found deficient if test holes do not meet the specifications described the *Soil Guideline*.
5. **In the table below**, provide soil and overburden thicknesses to be stripped and salvaged for reclamation to the nearest inch.
   If available, up to 24 inches of soil and overburden must be stripped, salvaged and replaced for reclamation. The soil to be stripped, salvaged and replaced for reclamation must include the **top** 24 inches of the soil profile.
   Note: If overburden is a mine material or will be used as binder, an appropriate quantity must first be stripped and salvaged to satisfy the soil plus overburden replacement thickness requirement (24 inches cumulative).

Soil	Average Soil Thickness to be Stripped, Salvaged, and Replaced for Reclamation (inches)
Permit Area Soil	24
Permitted Access Road Soil	0
Overburden	**Average Overburden Thickness to be Stripped, Salvaged and Replaced for Reclamation (inches)**
Permit Area Overburden	0
Total Soil & Overburden thickness to be Replaced for Reclamation (up to 24 inches required if available).	24

Note: Depending on the additional surface area created from opencut mining, the actual soil depths replaced for reclamation may vary slightly across the site from the amount noted above.

a. Use this section to provide custom information pertaining to soil replacement (if applicable): **8 additional test pits were dug to 10' no water was encountered and the excavation stopped in clean gravel See attached map for location and elevation.,**

b. If the average depth of **soil** at this site is 24 inches or less, skip to Section C3. If the average depth of **soil** at this site is greater than 24 inches, explain what will be done with the excess soil:
   ☐Soil in excess of 24 inches will be stripped, salvaged and replaced for final reclamation.
   ☐Soil in excess of 24 inches will not be saved for final reclamation, but will leave the site. **LHC, Inc.** understands they must strip, salvage and replace the **top** 24 inches of soil for final reclamation.
   ☐Other – Explain:

C3. MAPPING *§ 82-4-432(14)(a)(viii), MCA & ARM 17.24.228(7)*

1. The Location Map must meet the requirements of the Opencut Mining Act, associated rules, and Map Guideline. The Map Guideline can be found on the Opencut website at https://deq.mt.gov/mining/assistance (click on the "Forms" tab).

C4. MARKERS

1. The site must be marked in accordance with the Opencut Mining Act and associated rules.

C5. ADDITIONAL INFORMATION *§ 82-4-432(14), MCA & ARM 17.24.228*

1. If applicable, provide additional site preparation and planning information not addressed above.

Answer:

SECTION D – WATER CONVEYANCE FACILITIES

D1. WATER CONVEYANCE FACILITY *§ 82-4-403(16), MCA; § 82-4-432(1)(b)(i), MCA; §82-4-434(2)(l), MCA*

1. Is a water conveyance facility or associated easement within the permit boundary?
   ☐Yes ☒No
   If No, skip to section E. If Yes, provide documentation from the easement holder on their requirements. List the easement documentation in the table on page 2 under Additional Support Documents.
   Additional Information:

SECTION E – RECLAMATION PLAN

E1. RECLAMATION TIMEFRAME *§ 82-4-431(6 & 7) & ARM 17.24.228(4)*

1. Reclamation must be completed in accordance with § 82-4-432(14), MCA:
   a. **Final Reclamation Date is:** Month **December,** Year **2050**
      If **LHC, Inc.** will not be able to achieve the postmining land use by this date, an amendment application must be submitted to extend the final reclamation date.

E2. POSTMINING LAND USES *§ 82-4-432(14)(j), MCA*

1. The site will be reclaimed to the postmining land use(s) below.
   ☐**Permitted Access Road(s): Length _____ Width _____**
   ☐**Internal Road(s): Length _____ Width _____**
   ☒**Cropland/Farmland, Rangeland and/or Pasture** (Cropland requires 5:1 or flatter slopes for final reclamation; Rangeland and/or Pasture require 3:1 slopes or flatter for final reclamation)
   ☐**Berms** ☐**Fences** ☐**Landowner Equipment Storage Area**
   ☐**Landowner Material Stockpile Area** (A shaped and seeded soil stockpile sufficient to reclaim the area beneath the material stockpile must remain within 100 feet of any remaining material stockpiles. Landowner material stockpiles must be consolidated into one area.)
   ☐**Feedlot**
   ☐**Industrial/Commercial** ☐**Residential** ☐**Vegetative Screens** ☐**Other:**

E3. SITE CLEANUP, GRADING AND RECLAMATION *§ 82-4-432(14)(j), MCA*

1. Prior to the final reclamation date, **LHC, Inc.** shall grade the affected land to 3:1 or flatter slopes for rangeland and 5:1 or flatter slopes for farmland and cropland, blend the graded land into the surrounding topography, replace the permitted amount of overburden and all soils, and reclaim to conditions either present prior to operations or as specified by the landowner including all access roads used for the operation unless the landowner requests in writing that specific roads or portions of roads remain in place. Roads left at the landowner's request must be sized to support the use of the road after operations.

E4. REVEGETATION *§ 82-4-432(14)(j), MCA & ARM 14.24.228(4)*

1. **LHC, Inc.** must seed the site with the seed mix appropriate for the postmining land use. Vegetation must be established for at least two years, with the exception of cropland which must have a successful harvest prior to submitting a Phase II Release Request.

E5. ADDITIONAL INFORMATION *§ 82-4-432(14), MCA*

1. If applicable, provide additional reclamation information not addressed above.
   Answer:

SECTION F – RECLAMATION BOND CALCULATION *§ 82-4-433, MCA*

Government Operators: Skip to Section G.

Non-Government Operators:

1. Attach a proposed *Reclamation Bond Spreadsheet* and check the appropriate box on page 1.
2. **LHC, Inc.** understands that DEQ may adjust the bond yearly.
3. Provide additional information relevant to the *Reclamation Bond Spreadsheet* if applicable:

SECTION G – CERTIFICATION *§ 82-4-432(14), MCA*

The person signing below represents that (check one box):

☒ I am an officer or an employee of **LHC, Inc.** and I am duly authorized to bind the Operator identified on page 1 of the *Dryland Opencut Mining Permit Application* as a corporation, limited partnership, limited liability company, or other corporate entity in good standing and authorized to do business in Montana, and in this capacity I acknowledge and certify that:

Or

☐ I am the Operator identified on page 1 of the *Dryland Opencut Mining Permit Application* and I acknowledge and certify that:

1. The attachments that follow my signature are incorporated into and enforceable as part of the *Dryland Opencut Mining Permit Application*;
2. **LHC, Inc.** has the legal right to conduct opencut operations in the permit area described in the *Dryland Opencut Mining Permit Application*;
3. **LHC, Inc.** consents to and acknowledges that DEQ and its representatives may access the site to inspect the permit area at any reasonable time, and that while DEQ attempts to provide reasonable notice of an inspection to **LHC, Inc.** when practicable under the circumstances, inspections may be conducted without prior notice as necessary to determine whether opencut operations are being conducted in compliance with the permit, Act, and rules 82-4-422(1)(d) and 425, MCA & ARM 17-24-206(3).
4. I have read and understand all the information, representations, terms, requirements, and conditions set forth in *Dryland Opencut Mining Permit Application*;
5. The information, representations, and statements provided or acknowledged in the *Dryland Opencut Mining Permit Application* are, to the best of my knowledge and belief, true and correct; and,
6. **LHC, Inc.** agrees to abide by and comply with the Opencut Mining Act, MCA §§ 82-4-401 through 82-4-446, and ARMs 17.24.201 through 17.24.228, and all representations, terms, requirements, and conditions set forth in the *Dryland Opencut Mining Permit Application* and the *Opencut Mining Permit* approved by DEQ, and communicate the same to any contractor or supervisor who directs opencut operations under authority of the *Opencut Mining Permit*.
7. **LHC, Inc.** understands that obtaining an Opencut Mining Permit does not relieve **LHC, Inc.'s** obligation to comply with any other applicable federal, state, county, or local regulations, or ordinances and permits, licenses, and approvals for the operation. Obtaining an Opencut Mining Permit does not mean that an Operator can legally mine the site without first obtaining permits from other agencies. DEQ recommends contacting the DEQ Water Protection Bureau, at 406-444-5546, to determine if a water discharge permit is required and DEQ Air Quality Bureau, at 444-3490, to determine if an air quality permit is required for this opencut operation.

By: _____
Signature

Frank Tabish
Legibly print or type name

Compliance
Title

5/14/2024
Date

Soil Profile #1 47.01428,-114.71458

3’ depth – 4” Topsoil – 20” Overburden

Soil Profile #2 47.01413,-114.71761

3’ depth – 5” Topsoil – 19” Overburden

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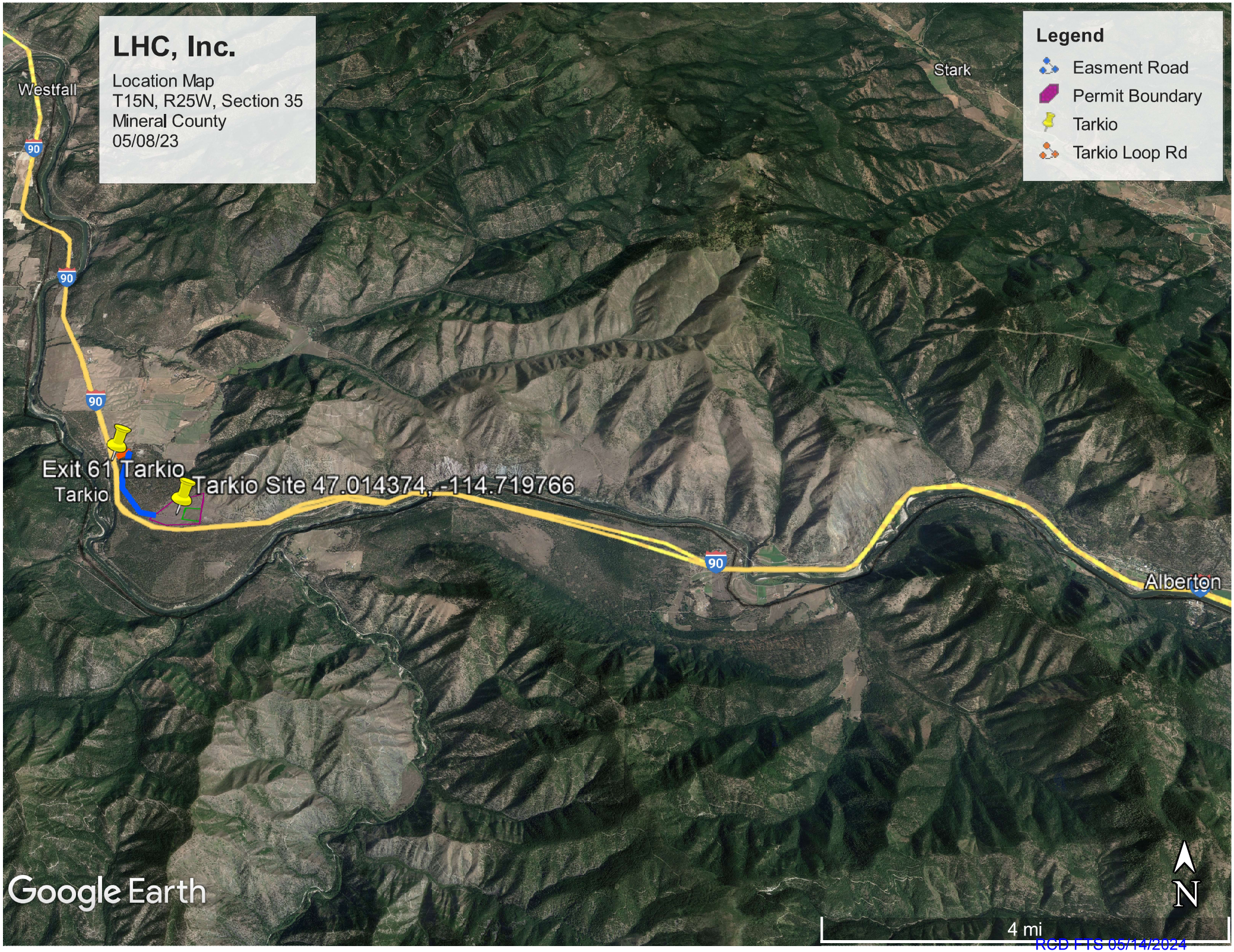
Soil Profile #3 47.01430,-114.72021

3’ depth – 4” Topsoil – 20” Overburden


LHC, Inc.
Location Map
T15N, R25W, Section 35
Mineral County
05/08/23
Legend
Easment Road
Permit Boundary
Tarkio
Tarkio Loop Rd
Westfall
Stark
Exit 61 Tarkio
Tarkio
Tarkio Site 47.014374, -114.719766
Alberton
90
Google Earth
N
4 mi
RCD FTS 05/14/2024

POINTS ARE VALID

OPERATOR PROPOSED PERMIT BOUNDARY COORDINATES TABLE

Purpose of this Boundary Coordinate Table: **Permit Application**

1) Use this form to submit coordinates to delineate the **Operator Proposed Permit Boundary**.

2) If delineating multiple Permit Boundaries, use separate **Operator Proposed Permit Boundary** tables to delineate each Permit Boundary.

3) When providing coordinates for an **Amended** Permit boundary, you must include coordinates that delineate the ***entire*** new Operator Proposed Permit Boundary (i.e. one proposed boundary that encompasses both the existing permitted boundary and proposed amendment area).

4) If **Bonded** and **Non-Bonded** area is present, complete the **Operator Proposed Non-Bonded Boundary Coordinate** table **in addition** to this form.

5) All boundaries are created automatically by a computer program, therefore;

• All coordinates **must** be in geographic sequence, so that the Operator Proposed Permit Boundary is created by connecting Map ID #P1 to Map ID #P2 to Map ID #P3, etc.

• The last Map ID # in the BCT would connect to the first Map ID# to complete the boundary.

• The Map ID# for each coordinate (e.g. P1, P2, P3 etc.) must be shown on the site map.

• Coordinates must be submitted in **Decimal Degrees** and **WGS 84** datum and include a negative longitude to plot in Montana.

6) Do Not provide coordinates for any other features (e.g. screen, test holes, asphalt plant, etc.).
Do Not leave blank rows in between coordinates in the BCT. Providing coordinates for additional features or leaving spaces will result in a boundary that cannot be drawn and the BCT will be deemed incomplete and/or deficient.

7) Only put numerical coordinates in the Latitude or Longitude boxes (i.e. no "N" or "W"), or this BCT will not be accepted. Coordinates must be in decimal degree format and provided to the fifth decimal point.
Example: Latitude 46.58946 & Longitude -112.00480.

8) Email the completed Microsoft Excel table to: DEQopencut@mt.gov with "Subject" line: **BCT (Operator-Site Name)**. Do **not** include a printed version of this table with the paper application submitted to the Program's Helena office.

Operator Name: LHC, Inc.

Site Name: Tarkio

Permit # (if not a new app) | **Date:** 5/15/2024

MAP ID#	LATITUDE	LONGITUDE (must be negative)	DESCRIPTION (not required)
P1	47.01366	-114.72643	
P2	47.01689	-114.72154	
P3	47.01841	-114.71369	
P4	47.01274	-114.71370	
P5	47.01253	-114.72216	
P6			
P7		-	
P8		-	
P9		-	
P10		-	
P11		-	
P12		-	
P13		-	
P14		-	
P15		-	
P16		-	
P17		-	
P18		-	

POINTS ARE VALID

OPERATOR PROPOSED NON-BONDED BOUNDARY COORDINATE TABLE

Private Operators bonding the entire site would **Not** use this table.
Counties and other Government agencies not required to post a bond would **Not** use this table.
Use the **Operator Proposed Permit Boundary Coordinate** table to depict the operator proposed permit boundary.

1) Use this form to submit coordinates to delineate the Operator Proposed Non-Bonded boundary only. By default, the remaining area would be the Bonded area.

2) If delineating multiple Non-Bonded boundaries, use separate **Operator Proposed Non-Bonded Boundary Coordinate** tables to delineate each Non-Bonded boundary.

3) This table must be submitted in conjunction with the Operator Proposed Permit Boundary Coordinate Table, which delineates the entire proposed permit boundary, except when the existing permit boundary is not changing. If the permit boundary is already defined by coordinates and isn't changing, do not resubmit an Operator Proposed Permit Boundary Coordinates Table.

4) All boundaries are created automatically by a computer program, therefore:

- All coordinates must be in geographic sequence, so that the Operator Proposed Permit Boundary is created by connecting Map ID #N1 to Map ID #N2 to Map ID #N3, etc.
- The last Map ID # in the BCT would connect to the first Map ID# to complete the boundary.
- The Map ID# for each coordinate (e.g. N1, N2, N3 etc.) must be shown on the site map.
- Coordinates must be submitted in Decimal Degrees and WGS 84 datum and include a negative longitude to plot in Montana

5) Do Not provide coordinates for any other features (e.g. screen, test holes, asphalt plant, etc.).
Do Not leave blank rows in between coordinates in the BCT.
Providing coordinates for additional features or leaving spaces will result in a boundary that cannot be drawn and the BCT will be deemed incomplete and/or deficient.

6) Only put numerical coordinates in the Latitude or Longitude boxes (i.e. no "N" or "W"), or this BCT will not be accepted. Coordinates must be in decimal degree format and provided to the fifth decimal point.
Example: Latitude 46.58946 & Longitude -112.00480.

7) Email the completed Microsoft Excel table to: DEQopencut@mt.gov with "Subject" line: **BCT (Operator-Site Name)**. Do **not** include a printed version of this table with the paper application submitted to the Program's Helena office.

Operator Name:	**LHC, Inc.**
Site Name:	**Tarkio**
Permit # (if not a new app)	
Date:	**5/15/2024**

MAP ID#	LATITUDE	LONGITUDE	DESCRIPTION (not required)
N1	47.01366	-114.72643	
N2	47.01689	-114.72154	
N3	47.01841	-114.71370	
N4	47.01547	-114.71370	
N5	47.01570	-114.71781	
N6	47.01361	-114.71827	
N7	47.01317	-114.71370	
N8	47.01274	-114.71370	
N9	47.01253	-114.72216	
N10			
N11		-	
N12		-	
N13		-	
N14		-	
N15		-	
N16		-	
N17		-	

Reclamation Bond Spreadsheet

INSTRUCTIONS: Enter your data in the shaded boxes. See page 3 for detailed instructions.

Operator Name:	LHC, Inc.
Site Name:	Tarkio
Prepared by:	Frank Tabish
Date:	5/14/2024

Total Permitted Acres = 105 **acres***

*Must match the "Total Permitted Acres" in Section A1 of the Opencut Mining Permit Application.

Comments:

BONDED ACREAGE BREAKDOWN

Must match the "Acreage Breakdown" in section A1 of the Opencut Mining Permit Application.

Bonded	20.0	**acres**
Phase I Release Bonded Area		**acres**
Non-Bonded	85.0	**acres**
Access Road		**acres**
Total Bonded Area =	20.0	**acres****

**The Total Bonded Area must be identical to the acreage on the Bond submitted by the Operator to the Department.

Lineal Feet & Height must match the parameters within the Opencut Mining Permit Application

Highwall Cut/Fill

Description	**linear feet**	**height**	**reclamation slope ratio**		**cubic yards**	
Highwall	1000	20	3	:1	5,556	**total**
				:1	0	5,556

Highwall Backfill - Covers cost of grading & sloping fill material along highwall face to create the permitted slope. Must also complete **Backfill Transport/Placement** line item below.

Description	linear feet	height	reclamation slope ratio		cubic yards	
				:1	0	total
				:1	0	0

Mine Area Backfill - Covers the cost of placing backfill material in the pit or to raise the level of the pit floor. Must also complete **Backfill Transport/Placement** line item below.

Description	acres	depth		compaction %	cubic yards	
					0	total
					0	0

Mine soil replacement	4	inches soil	Overburden Replacement	20	inches OB	total	24
Access road soil replacement		inches soil	Overburden Replacement		inches OB	total	0

* Soil and overburden inches must match section C2.

ITEM	UNIT		AMOUNT		RATE		TOTAL
Highwall Cut/Fill			5,556	cu yds	$1	per cubic yard	$5,556
Highwall Backfill & Mine Area Backfill			0	cu yds	$1.50	per cubic yard	$0
Backfill Transport/Placement Cost-Onsite $2cy, offsite $15c			0	cu yds		per cubic yard	$0
Bonded area grading			20.0	acres	$100	per acre	$2,000
Bonded area ripping			20.0	acres	$100	per acre	$2,000
Bonded soil and OB replacement	24	inches	20.0	acres	$1.25	per cubic yard	$80,667
Access road area grading			0.0	acres	$100	per acre	$0
Access road area ripping			0.0	acres	$100	per acre	$0
Access road soil replacement	0	inches	0.0	acres	$1.25	per cubic yard	$0
Seeding or other revegetation			20.0	acres	$600	per acre	$12,000
Weed control			20.0	acres	$100	per acre	$2,000
Fencing				linear ft	$1.40	per linear foot	$0
Cost to crush onsite asphalt			5000	cu yds	$4	per cubic yard	$20,000
Cost to import, purchase and place soil				cu yds	$18	per cubic yard	$0
Cost to bond for reject fines				cu yds	$1	per cubic yard	$0
							$0
							$0
							$0
						Total =	$124,223

Indirect Reclamation costs to DEQ (Mob/DeMob, Contingency, Engineering, Overhead, & Project Management) = 25% up to $1,000,000 bond and 20% for a bond over $1,000,000. Minimum Bond Amount is $25,000 $31,056

Total Area Bonded =	20.0	Rate Per Bonded Acre =	$7,763.92	**Total Bond =**	**$155,278**

RCD FTS 05/14/2024

DEQ OPENCUT MINING SECTION • PO BOX 200901 • HELENA MT 59620-0901 • PHONE: 406-444-4970 • Email: DEQOpencut@mt.gov

LANDOWNER CONSULTATION

This form is required for **all** applicants applying for an Opencut Mining permit **or** for an amendment that will: **a)** add acreage, an asphalt plant, or a concrete plant; **b)** change the postmining land use; or **c)** extend the reclamation date. MCA § 82-4-432; ARM 17.24.206.

OPERATOR SECTION: All fields must be completed.

Operator Name: Ihc, Inc.

Site Name: Tarkio **County:** Mineral

The person signing below represents that (*check one box*):

☒ I am an officer or an employee of the Operator and I am duly authorized to bind the Operator, which is a corporation, limited partnership, limited liability company, or other corporate entity in good standing and authorized to do business in Montana, and in this capacity I acknowledge and certify that:

Or

☐ I am the Operator and I acknowledge and certify that:

1) The Operator consents to and acknowledges that DEQ and its representatives may access the site to inspect the permit area at any reasonable time. While DEQ attempts to provide reasonable notice of an inspection, inspections may be conducted without prior notice to determine whether Opencut operations are being conducted in compliance with the permit, Opencut Act, and Administrative Rules of Montana. MCA § 82-4-422(1)(d) and 425 & ARM 17-24-206(2)(f) and 206(3).

2) The Operator shall complete reclamation: **a)** as required by the terms of the approved Permit, concurrently with operations, if feasible; **b)** within one year of the cessation of operations **or** the termination of the right to conduct operations; and **c)** no later than the permitted final reclamation date.

By: _____ Frank Tabish

Signature **Legibly print or type name**

Compliance 7/25/23

Title **Date**

LANDOWNER SECTION: All fields must be completed. A private road may be included as affected land only with the landowner's consent MCA § 82-4-403(1).

A. Does the Landowner want the Operator to permit an access road(s) (i.e. existing or proposed non-public road that connects an Opencut operation to a public access)?

☐ **Not applicable:** The site will be accessed from the immediately adjacent public road.

☒ **No:** The landowner does not want an access road included in the permit, but understands the operator would use the road.

☐ **Yes and:** ☐ **Access road will be reclaimed at final reclamation or** ☐ **Access road will remain at final reclamation:**

Access Road 1 **Width:** feet, Location must be identified on the site map and reclamation map.

Access Road 2 **Width:** feet, Location must be identified on the site map and reclamation map.

B. Does the Landowner want stockpile(s) of mine material left at the conclusion of Opencut operations? ☒**No** ☐**Yes**

Note: **a)** mine material must be left in a location that will be accessible by road; **b)** the total volume of mine material left is typically 10,000 cubic yards or less (to help ensure it can be consumed and the site reclaimed within 5-10 years); and **c)** once consumed, the Landowner is responsible for reclaiming the area using a soil stockpile left by the Operator for that purpose.

If **Yes,** ARM 17.24.219(1)(b) requires a description of the type and volume of mine material(s) to be left:

Type of mine material(s) to be left: ☐**Gravel** ☐**Sand** ☐**Other:**_____

Total volume of mine material to be left in **cubic yards:** _____

If the total is more than 10,000 cubic yards, identify potential local uses consistent with it being consumed within 5-10 years:

_____

C. Does the Landowner consent to allow the burial of onsite generated asphalt on their land within the permitted boundaries?

☒**No** ☐**Yes** (ARM 17.24.219(1)(b))

If **Yes,** refer to applicable section in the Permit Application.

LANDOWNER SECTION (Continued):

D. Landowner acknowledges and affirms the following:

1. The Operator is applying for a permit to conduct opencut operations regulated by: **a)** the Opencut Mining Act (MCA Title 82, Chapter 4, Part 4); **b)** its implementing rules (ARM Title 17, Chapter 24, Subchapter 2); and **c)** the site-specific Permit.
2. The Landowner: **a)** owns the land, mineral rights and the legal rights to all its earthen materials; **b)** has been consulted by the Operator about the proposed permit application; and **c)** understands the Montana Department of Environmental Quality (DEQ) may require the Operator to revise the application before the permit or amendment is approved.
3. If DEQ approves the permit, the following will apply to the permitted area:
   a. The Operator will have the exclusive right to conduct Opencut operations.
   b. The Operator and any future assignees (party assuming the permit) may allow another party to conduct permitted Opencut operations only if the Operator retains control over that party's activities and the Operator remains responsible for any violations that may occur.
   c. The Landowner cannot authorize Opencut operations by another party without the Operator's permission.
   d. Even if the Landowner revokes or otherwise terminates the Operator's right to mine, the Landowner expressly agrees that the Operator can continue to access the site until the Operator completes the required reclamation and that DEQ can inspect the site to inspect, monitor, or evaluate reclamation activities until final reclamation is completed.
4. DEQ enforces the Opencut Act, ARMs, and Permit. Any other arrangements or understandings between the Landowner and Operator are private matters that should be stated in a separate written agreement.
5. The Act authorizes DEQ to inspect the operations and/or reclamation at the permitted area at any reasonable time. Landowner understands and expressly agrees that Operator and DEQ's agents or contractors have the right to access the site to complete reclamation as required by the Permit.
6. The Operator may request Phase I or Phase II release of the Permit if the site is fully or partially reclaimed according to the Permit. DEQ will notify Operator and Landowner of its decision regarding each release request.
7. DEQ typically releases a site reclaimed to cropland after one successful crop; a site reclaimed to perennial vegetation (i.e. rangeland and/or pasture) is typically released after two complete growing seasons or when revegetation is established, whichever is longer.
8. Prior to selling land containing this site, Landowner must disclose this form to any prospective purchaser and advise the purchaser of the status of the Opencut Mining Permit.
9. If a pond remains at final reclamation, Landowner may be required to obtain a water right from the DNRC.
10. Landowner is not aware of any conservation easements, covenants or other land use restrictions that would affect opencut operations.

E. The following must be filled out for sites located in Sage Grouse Habitat:

If the site is in Sage Grouse habitat designated by Executive Orders 12-2015 and 21-2015, and any part of the proposed permit area is privately owned, the private Landowner acknowledges that he/she:

- Has knowledge of the Montana Sage Grouse Habitat Conservation Program letter contained in the Opencut permit application, and understands the letter provides recommendations for reclamation of this site to maintain sage grouse populations and habitat so Montana can manage its own lands, wildlife, and economy, and a listing under the Endangered Species Act will not be warranted?
- Understands Executive Order 12-2015 stipulates that:
  - Reclamation should re-establish native grasses, forbs, and shrubs to achieve cover, species composition, and life form diversity commensurate with the surrounding plant community and replace sage grouse habitat to the degree conditions allow.
  - Landowners should be consulted on the desired plant mix on private land and have the option of deciding whether the site will be reclaimed with the recommended sage grouse seed mix or an alternate seed mix.

    Landowner chooses the following seed mix:

    ☐ **Recommended seed mix for Sage Grouse Habitat** ☐ **Alternate seed mix as chosen in Section E of the Application**

F. LANDOWNER SIGNATURE:

Landowner Name (print or type): Montana DNRC - Trust Lands Division

Address: 1539 11th Ave

City: Helena **State:** MT **Zip:** 59601

Phone#: 406-444-5370 **Cell Phone# (optional):**

Email (optional): thomas.palin@mt.gov

Landowner Signature: [signature] **Date:** 7/25/2023

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Trust Land Management Division

GREG GIANFORTE, GOVERNOR

1539 ELEVENTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE (406) 444-2074
TELEFAX NUMBER (406) 444-2684

PO BOX 201601
HELENA, MONTANA 59620-1601

July 25, 2023

Frank Tabish
LHC, Inc.
Delivered via Email

Frank,

Attached is your landowner consultation form needed for your DEQ opencut application. Please note that signing this document does not provide permission or access to mine gravel on State Trust Lands, nor does it imply the approval of a necessary take and remove permit. An aggregate take and remove permit and the corresponding environmental assessment must be completed and authorized prior to LHC, Inc. beginning any work on Trust Lands.

Sincerely,

Thomas Palin
Mineral Resource Specialist
DNRC - Minerals Management Bureau

DEQ OPENCUT MINING SECTION • PO BOX 200901 • HELENA MT 59620-0901 • PHONE: 406-444-4970 • Email: DEQOpencut@mt.gov

ZONING COMPLIANCE

In accordance with Opencut Mining Act sections 82-4-431(2)(a)(iv)(D); 82-4 432(2)(b)(ii) & 82-4-432(14)(a)(v), sand and gravel operations must meet applicable local zoning regulations. As a result, this form is required unless the Operator is proposing to mine **bentonite**, **clay**, **scoria**, **peat**, or **soil**.

In accordance with section 17.24.223 of the rules implementing the Act, this form is required for a sand or gravel operation to apply for a **permit** or **an amendment adding acreage, changing the postmining land use or adding an asphalt or concrete plant**.

OPERATOR SECTION: All fields must be completed.

Operator Name: LHC, Inc.

Site Name: Tarkio **County:** Mineral

LOCAL GOVERNING BODY SECTION: Complete all applicable below items.

In accordance with MCA 82-4-432(2)(b) of the Opencut Mining Act and ARM 17.24.223 of the rules implementing the Act, **the local governing body having jurisdiction over the area to be mined must certify that the proposed mine site and Plan of Operation comply with applicable local zoning regulations** adopted under MCA Title 76, Chapter 2. The certification must be submitted on this DEQ form.

1. The Operator has provided the local governing body with a Site Map and Location Map for a Standard Opencut Mining Permit Application and a Location Map for a Dryland Opencut Mining Permit Application for the proposed sand and gravel operation identified above:
   ☒ **Yes** or ☐ **No** If **No**, this form is not acceptable.
2. Check **one** box:
   a. ☒ Site is **not** zoned. Andrew J. Short, Director EH&P Mineral County, 6/14/23
   b. ☐ Site is **zoned** and **does not comply** with local zoning regulations.; therefore, **no Opencut operations can occur**. Site is zoned as: _____
   c. ☐ Site is **zoned** and local zoning regulations **do not require** a local license or permit for the proposed Opencut operations. Site is zoned as: _____
   d. ☐ Site is **zoned** and local zoning regulations **require** a local license or permit for the proposed Opencut operations. Site is zoned as: _____

   Local zoning regulations require the following license or permit: _____

The application for a Standard Permit cannot be deemed complete until a copy of the local license or permit for the proposed operation is submitted to the Department.

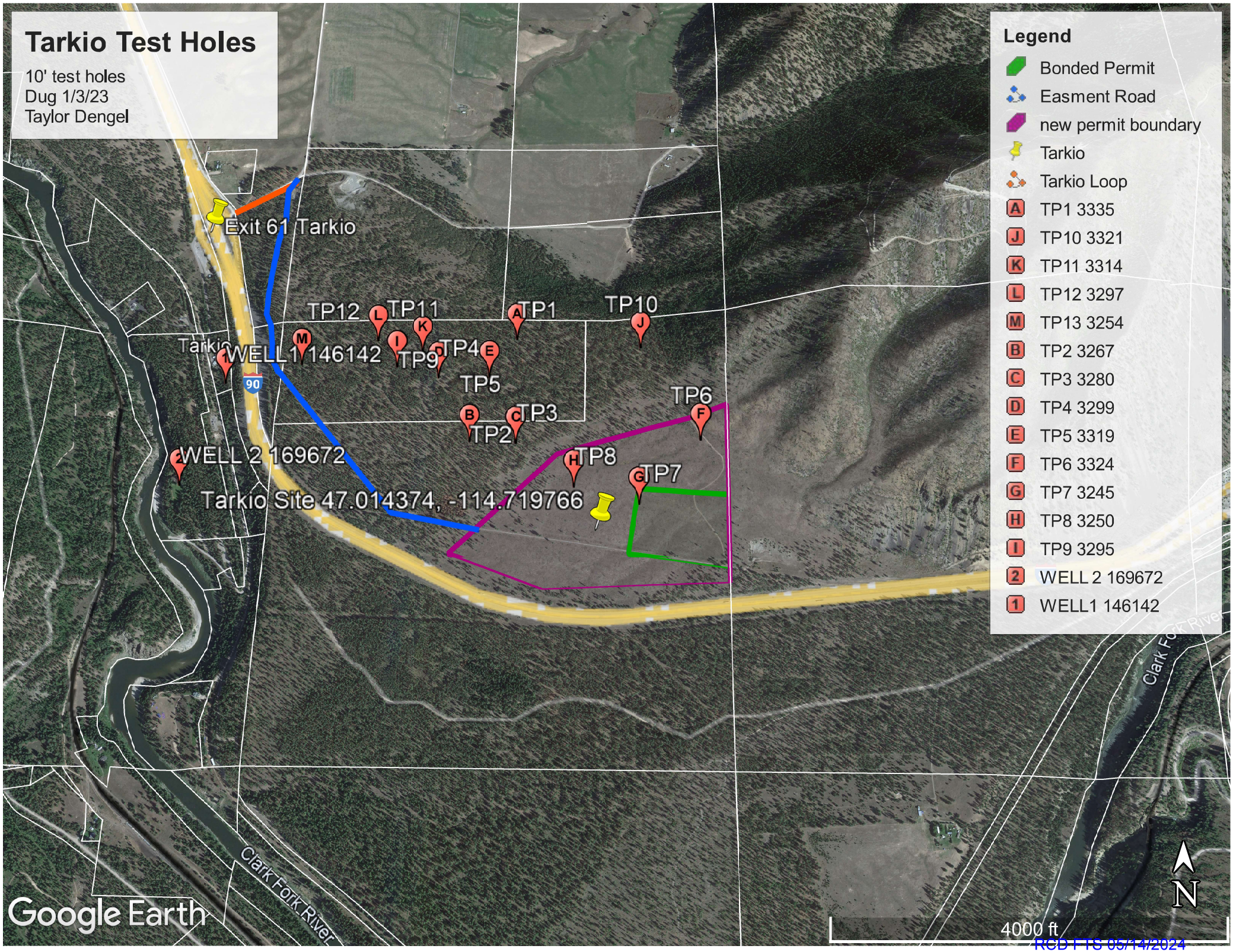
MCA 82-4-432(2)(b)(ii) states *proposed sand and gravel opencut operation complies with applicable local zoning regulations adopted under Title 76, chapter 2, and in effect prior to the filing of a permit application or at the time a written request is received for a preapplication meeting pursuant to this section.*

CERTIFICATION BY LOCAL GOVERNING BODY:

Name of Local Governing Body: Mineral County

Official's Name (print legibly): Andrew Short **Title:** Director, EH&P

Signature: _____ **Date:** 7/14/2023



Appendix C: Scoping Comments Received

Montana Fish, Wildlife and Parks - Region 2
3201 Spurgin Road
Missoula, MT 59804
(406) 542-5500
06-01-2023

Department of Natural Resources and Conservation
Minerals Management Bureau Mineral Resource Specialist
Attn: Thomas Palin
1539 11th Ave.
Helena, MT 59601

Subject: Tarkio Gravel Permit Application

Dear Mr. Palin,

Thank you for the opportunity for Montana Fish, Wildlife & Parks (FWP) to comment on the Montana Department of Natural Resources and Conservation's (DNRC) Tarkio Gravel aggregate take and remove permit located north of Interstate 90 in Section 35, Township 15N, Range 25W. FWP notes that the proposal is likely to have direct impacts on landscape connectivity for grizzly bears, and on wildlife populations that include other large carnivores and game animals like elk and black bears.

FWP offers the following specific comments, and some suggestions for changes and/or mitigations to the chosen alternative, that may help offset potential negative impacts to fish and wildlife species and their habitats:

Grizzly Bear and Large Carnivore Comments

This site is within the Fish Creek Wildlife Linkage Zone. The three state sections, 35, 36 and 2, are strategic properties along the north side of the river where the Martel Mountain Ridge System to the north connects directly into the Clark Fork Canyon opposite three ridge systems between Fish Creek and Quartz Creek that are part of the Fish Creek Wildlife Management Area (WMA) complex. This is one of the few spots along the Lower Clark Fork River between Alberton and Superior where state land along the valley floor connects directly to state and federal properties on either side of the canyon. This area is a "pinch point" where an existing connection between two mountain ecosystems is bridged by state and federal lands that provide connectivity for wildlife passage. The block of state properties has been identified as a high priority for wildlife passage by FWP and by groups like the Mineral County Wildlife Movement Working Group, the Highway Management in Linkage Zones Task Force, the Public Lands Management in Linkage Zones Task Force, and the Missoula Regional Connectivity Group. Importantly, an Interstate 90 crossing by a radio-collared female grizzly bear has been documented at this site. This area is unique, and likely critical in continuing to provide important wildlife connectivity into the future. The proposed development risks loss of the connectivity that remains in this strategic area.

General Wildlife Comments

More information regarding the timelines associated with the project and reclamation completion would be helpful to fully understand potential impacts to wildlife. The location of the proposed gravel mining operation lies in an area rich with a variety of wildlife. Elk frequent this area regularly during spring green up and occasionally during other times of the year. Elk are documented using this particular site for cover during the day after feeding in the nearby open meadows/ag land. Land clearing and road building would likely influence how elk use the area. Anything larger or longer term than the proposed ~25-acre project is not recommended, as this site is already impacted by the highway.

Parks/FAS Recreation Comments

The proposed project is across I-90 from the Tarkio Fishing Access Site. Consideration should be given to the impacts of heavy equipment and gravel trucks interacting with heavy recreational traffic for the Fish Creek and Alberton Gorge busy seasons generally, and the Tarkio interchange specifically.

We encourage continued communication throughout this project.

Members of FWP's Region 2 team will be the primary contacts for this project:

1) Ryan Klimstra, Missoula Area Wildlife Biologist, ryan.klimstra@mt.gov, 406-552-5516
2) Jamie Jonkel, Region 2 Conflict Specialist Manager, jajonkel@mt.gov, 406-542-5508
3) Loren Flynn, Region 2 Recreational Manager, LFlynn2@mt.gov, 406-542-5517

We encourage you to reach out to Ryan, Jamie, or Loren as the primary contacts with any questions or concerns about these comments. Thank you for the opportunity to comment and we look forward to working with you.

Sincerely,

Randy Arnold
Regional Supervisor, Region 2

Appendix D: Road Use Agreement between DNRC, USFS and LHC

OPERATION AND MAINTENANCE PLAN
FOREST SERVICE ROAD USE AGREEMENT
for

Montana Department of Natural Resources and Conservation

July 2025

This Operation and Maintenance Plan (Plan) is for Ronk Road 18014, from MP 0.00 to 0.53. This agreement outlines requirements for the Montana DNRC and LHC, Inc. (Permitee) to reconstruct the road, use the road to haul commercial materials, and maintain the road during periods of use. In accordance with Cost Share Agreement Easement Authorization ID: NIN109, dated December 3, 2010, the State of Montana was permitted an easement by the United States Forest Service which allows for the proposed activities. Either party may propose to amend or revise this Plan.

Current road standard is 14-foot width plus curve widening, native road surface, no ditch. The Permitee is authorized to reconstruct the road to the following standard: Up to 18-foot width plus curve widening, aggregate surface, no ditch. All reconstruction disturbance shall be contained inside the surveyed road right of way.

The approach to Tarkio loop road shall be permitted appropriately with Mineral County.

Disposal of merchantable trees removed for road reconstruction will be coordinated with the appropriate landowner upon which the trees are removed. Merchantable trees are defined as 8" DBH or larger. Disposal of clearing slash, tops, and limbs is to pile within the old gravel pit on Trust Lands, DNRC will conduct the burn when appropriate. Disposal of stumps is bury OR remove from Forest Service easement lands.

Permittee shall perform road maintenance commensurate with use, including road blading, road surface repair, vegetation removal, and slump repair commensurate with use to the standard that accommodates their use. Permittee does not currently have any uses that require commensurate maintenance. Permittee shall mitigate dust from hauling so that airborne dust does not negatively affect residences along the road. Dust abatement product application may be necessary.

This Operational Maintenance Plan expires at midnight on December 31st, 2027. The permit may be extended if applied for by the Montana DNRC based on operating conditions at that time.

Primary contacts for this project are Brian Story at brian.story@usda.gov, and Zackary Winfield at Zackary.winfield@mt.gov

CHRISTOPHER GAUGER

Digitally signed by CHRISTOPHER GAUGER
Date: 2025.07.22 12:02:52 -06'00'

Ninemile District Ranger DATE

Amy Helena

Digitally signed by Amy Helena
Date: 2025.07.22 15:38:05 -06'00'

DNRC FTLD Missoula Unit Manager DATE

7/28/25

Permittee Representative DATE

Frank Tabish
LHC, Inc.