

Public Comment Response (NMCDC) 3/30/2014

The following is written as public comment by the North-Missoula Community Development Corporation (NMCDC) in response to the Montana Department of Environmental Quality's **Proposed Final Cleanup Plan for the Missoula White Pine Sash State Superfund Facility.**

The NMCDC is a grass roots nonprofit neighborhood advocacy and development organization founded in 1996. The Corporation's **vision** is healthy neighborhoods and communities of opportunity in which people of all ages and abilities can live, work and play. The organization's **mission** is to build from community strengths to form partnerships for economic revitalization and holistic land stewardship.

The organization has been involved in bringing more than \$10.5 million in programs or projects to its neighborhood service area – one that surrounds the State of Montana CECRA White Pine Sash and Door Facility. The NMCDC is, itself, a property owner in the Northside neighborhood at Holmes and Phillips St. and in the Westside neighborhood at 1400 – 1500 Burns Street across the railroad tracks from the Facility in question. Both of those projects are situated in areas zoned the same as WPS's northern portion and both include housing.

The NMCDC has tracked the situation at White Pine Sash since the organization's incorporation and has been a principal in several federally- and locally-funded investigational, educational, and legislatively-adopted community planning efforts related to the Facility, its former employees, and the adjacent residential and commercial neighborhood. The NMCDC has, for many years, maintained an active relationship with MDEQ, received primary-party-notifications and continues to keep an extensive document file on the site's status as a designated "high priority" CECRA Facility. Additionally, the NMCDC has been a local voice informing neighbors about developments at the site in more than 18 years' worth of mass distribution neighborhood newsletters.

The NMCDC therefore feels it has particular and well-documented standing to make substantive comment as the proposed plan has invited: "DEQ will consider **the acceptability of the preferred alternative to the affected community, as indicated by community members and local government**, during the public comment period on this Proposed Plan." (pp. 30-31; emphasis added)

In its proposed final cleanup plan, DEQ asserts that it has thoroughly evaluated "the reasonably anticipated future uses of the MWPS Facility by assessing the four factors found in Section 75-10-701(18), MCA." Cognizant of the danger of DEQ's ability to craft a self-fulfilling prophecy regarding the Facility's future use as a function of the cleanup levels DEQ, itself, requires, the NMCDC finds it especially important to point out that DEQ's current analysis substantially fails meeting a clear weight of evidence regarding the four-criterion statutory test. Please consider the following NMCDC submissions on these four factors:

1) Local land and resource use regulations, ordinances, restriction, or covenants;

Some clarification/elaboration of MDEQ's reference to the Neighborhood Plan is in order. At the time of the Plan's original adoption and its subsequent review six years later, the White Pine Facility was zoned "D-Industrial" a zoning category now renamed "M-1R." It is the only one of three "I" (industrial) zones in Missoula that allows residential development by right. DEQ mentions a Planning Board recommendation for a denial of a rezoning application by the Scott Street investment partnership (SSLLP). DEQ fails, however, to mention that the principle findings of fact guiding the Planning Board's (and City Planning Staff's) 2008 recommendation-to-deny are primarily based on the proposed rezoning's exclusion of the possibility of residential development – especially factoring in the consequences of that exclusion's conditioning of cleanup standards – exactly the same conditions which will now prevail, in another guise, as a consequence of DEQ's preferred cleanup alternatives. More specifically, the Planning Board's decision was pinned to the commercial/industrial rezoning's failings in regard to the following "conclusions of law" (full report document attached):

- **Not** compatible with the Comprehensive Plan;
- **Not** promoting health or general welfare;
- **Not** giving reasonable consideration to the character of the district;
- **Not** conserving the value of the buildings in the immediately adjacent historic residential district, and
- **Not** encouraging the most appropriate use of land throughout the municipality.

In addition, SSLLP has, when it has best suited its interests of the moment (i.e., when seeking restrictive zoning changes for the property rather than promoting its sale for residential development), made frequent reference to deed restrictions placed on the property through SSLLP's purchase from Huttig Building Products. In 1999 when the investor partnership first purchased the property, Mike Stevenson was quoted in the Missoulian as saying that SSLLP was interested in exploring "residential applications." The SSLLP had prominent on-site signage for several years advertising it for sale and zoned for residential use (photo attached in "White Pine at a Crossroads" document submitted as ancillary testimony to this response).

DEQ's attorney, Cynthia Brooks, has long asserted that DEQ does not recognize restrictions made without the agency's prior approval. Long-term (but now former) WPS Project Manager, Colleen Owen, has reiterated the same DEQ position. DEQ, **until now**, has been completely consistent in asserting the position that the deed restrictions in question **would not** be recognized by DEQ **unless** SSLLP could rezone the property through normal local channels. (See the attached DEQ letters to SSLLP: one from 2002 by Denise Martin and another by Colleen Owen from 2006.)

This current DEQ Plan contains a dramatic and unexplained departure from DEQ's former position that recognized and relied on a legitimate local authority in zoning matters. This is specifically promoted in the following DEQ Plan statement: "While Huttig placed deed restrictions on some of the Facility properties when it conveyed the former Huttig properties in 1999, these deed restrictions were not approved by DEQ. The deed restrictions prohibit the property from being used for residential purposes unless approved by DEQ... DEQ anticipates that it may require additional institutional controls as part of the final remedy. In particular, since DEQ did not approve the restrictions executed by Huttig and the purchaser of the property in

1999 [SSLLP], **DEQ may require an additional restrictive covenant document that meets DEQ requirements.** Layering of additional or alternative institutional controls could provide assurance that future uses would be limited where necessary, depending on the remedial alternatives implemented.” (p.58; emphasis added)

DEQ does not explain how, or by whom, a layering of additional restrictive covenants would be monitored or enforced. DEQ makes no reference to the fact that since WPS’s listing as a CECRA facility, the Department has been unwilling or insufficiently empowered to restrict or even adequately monitor unauthorized building demolition, new construction, paving, landscaping, grading or soil excavation that have occurred at different times and locations across the entire site.

As mentioned above, findings of fact from the City-County Planning Board conditioned a 2008 recommendation to deny the rezoning effort that would have diminished the extent of site cleanup needed to assure the future health of the community. This consequence of the earlier proposed rezoning is exactly what MDEQ’s preferred alternatives now promote -- but in an act of extralocal fiat rather than through a determination derived through the local governing body. This DEQ action would relegate the local municipality’s elected representatives to, at best, an advisory capacity in this matter of critical importance to the affected urban neighborhood. City Council’s reaction to this usurpation of its authority can be seen in its unanimously adopted resolution of opposition to DEQ’s current plan on March 24, 2014.

2) Historical and anticipated uses of the Facility;

While it is true that the historical uses of the WPS Facility had been for lumber milling and wood fabrication, uses of that type are highly unlikely to return at any reasonably foreseeable date. The anticipated uses of the northern portion of the WPS Facility, as it is currently zoned, are open-ended by design and could include mixed use development. The adjoining former Clawson property is currently for sale and is being promoted as having greater value because it is located in a zoning district that allows all the M1-R, uses -- including residential. Invidious comparisons prevail south of the Clark Fork River, where two other “high priority” CECRA Facilities, the “Missoula Saw Mill” (see: <http://oldsawmilldistrict.com/>) and its adjacent Hart Refinery Facility (formerly sites *exclusively* used for heavy industry), are under DEQ supervision and now being cleaned to residential standards.

Three years ago, the Director of Missoula’s Office of Planning and Grants, Mike Barton, responded to MDEQ’s request for comment on anticipated future uses of the Facility by pointing out that the northern portion of the WPS facility:

- 1) “Is adjacent to a park and residential neighborhood;
- 2) Is convenient to the downtown and the Northside;
- 3) Is flanked to the north by recent residential development; and
- 4) Has [previously] been the subject of earnest residential efforts.”

He immediately went on to elaborate: “This leads me to conclude that residential use is one of the most valuable and most viable potential uses of the northern portion of White Pine Sash.

Accordingly, **the City believes that DEQ should establish clean up levels on the northern portion of the property that would permit such development in the future, and guarantee the health and safety of potential future residents.**” (emphasis added; document attached)

On December 13, 2014, the current Development Services Planning Manager, Laval Means, responded *again* to a direct MDEQ inquiry: “...thank you for opportunity to provide information regarding anticipated future uses of the City property and the patterns of development and land uses in the area of White Pine Sash. In January, 2011, the City received a similar request and provided a detailed response... Since 2011 very little has changed regarding patterns of development and future uses anticipated.” (document attached).

a.) Railroad proximity

In this “anticipated uses” Plan section, DEQ references that the Facility is “near” a railway that has been used for commercial and industrial uses in the past. It should be no secret to anyone familiar with recent development patterns in the adjacent neighborhoods that the proximity of the railroad’s mainline or its Bitterroot Spur cannot be considered predictive of likely future use. The northern SSSLP portion of the site is, in its majority, a city block’s distance from the rail yard. The areas of the WPS Facility closest to the tracks (i.e., the Zip Beverage and City Shops locations) currently make no use of railroad services and most of the former commercial sidetracks have been removed. Other areas in the Northside and Westside neighborhoods that are most proximate to rail lines have seen significant redevelopment of former trackside warehouses and businesses into new uses such as brew pubs, professional offices and artist studios – again most often accompanied by the removal of the service tracks once adjacent to the buildings.

If new rail extensions were actually developed at WPS, another set of problems could present. New rail service to the northern 19 acres would require lacing the property with new tracks and treated railroad ties, unless DEQ’s “layering of institutional controls” would include a requirement that concrete or composite non-treated materials be used for crossties or track placement. This also brings to fore the earlier posed question of long term monitoring. Who will do it? In terms of testing and monitoring the creosote and other chemical treatment used with wood crossties (penta still has an allowable use in some utility pole and rail tie manufacture and there are up to 750 crossties per ¼ mile of track), who would monitor this type of activity on this site? Would cleaning the property only to commercial standards lower the threshold at which the introduction of new, potentially leaching materials, tip a health or safety balance? Would DEQ’s “layering of institutional controls” bear on an issue such as this? How would it be monitored or enforced? As mentioned elsewhere in this report, monitoring and enforcement at this CECRA site has not been a DEQ strongpoint. Also of concern to the community would be what type of industrial uses could be associated with expanded rail service and what type of uses could be allowed under MDEQ’s ill-defined “layered institutional control” model. Will MDEQ’s actions or a proposed industrial park urban renewal district create a *de facto* M1 zone? As an example of concern to the neighborhood: the MDEQ-encouraged, but failed 2008 rezoning proposal for the SSSLP property would have, among many other uses, made junk- and salvage-yards conditionally permitted uses and included sanitary landfills, demolition debris landfills and solid waste separation and transfer facilities permitted by right.

3) Patterns of development in the immediate area;

Segueing from the discussion of the Planning Department's testimony, above, it is essential to note that patterns of development in areas zoned similarly to the WPS Facility, the former "D-Industrial" (now M1-R) areas, were in fact always representative of a mix of industrial, commercial and residential uses that have characterized the area since its railroad era development began in 1883. Again, it can come as no surprise to anyone familiar with development patterns in the neighborhood over the past ten years (as apparently DEQ is not) that one of the greatest redevelopment pressures in this "pyramidal" mixed-use and "transitional" zone has been for housing construction, particularly multi-family housing – this occurs on both sides of the main line railroad tracks in both the North and Westside neighborhoods. A recently-adopted City Council Resolution (mentioned below) cites 486 housing units constructed in similarly zoned areas of the city from 2008 to 2013. This pattern was also duplicated in the M1-R zone construction of 4 twenty-plex apartment buildings on Otis St., just one block to the north of the abutting Clawson property.

The City's presence on WPS Facility now buffers the northern SLLP section from both the rail yard and the Facility's "hot spot," or former dip shed area, in the southeastern section of the Facility. MDEQ's report can lead to a confused understanding of the site's layout by repeatedly treating the "Facility" as a monolithic whole. It would have been very valuable information for DEQ to have included in its published Plan a clear, *analyzable*, comparative cost breakdown for a commercial versus residential cleanup for the northern, SLLP portion, of the Facility.

In an earlier search for better clarity and more appropriate emphasis on the Facility's remediation needs, the NMCDC joined with SLLP and the Mayor's Office, some 13 years ago, and lobbied a state legislative committee for DEQ to separate the northern SLLP property from the southern more heavily contaminated section for separate review and expedited remediation action. As a result, in 2002, the State's Environmental Quality Council petitioned then Governor, Judy Martz, to encourage such a policy (see attached letter). If DEQ had adopted such a policy, clean up of the property would likely have been completed a multiple of years ago. Now, the City's lateral band of ownership across the Facility even more clearly delineates the two sections with, as DEQ's report states, the creation of two distinct zones: the shop area that was rezoned as a "special district" and the park area that is zoned "OP1."

That said and in terms of public process, it needs to be noted that **the City's ownership of its two separately zoned areas is substantively different from the SLLP owned portions.** To begin with, the City knew and could promise exactly what it intended to build on its section of the Facility. In acquiring the new zoning, the City listened to neighborhood concerns and ruled out some potential uses for the Shops' portion. It also agreed to remediate the public park section to a residential-quality standard. The City's rezoning was accomplished **without** objection from the Planning Board or opposition from the NMCDC or others in the adjoining residential neighborhood.

4) Relevant indications of anticipated land use from the owner of the Facility and local planning officials, as follows:

In reference to this fourth statutorily mandated assessment criterion, MDEQ makes the following misleading or erroneous assertions: “Finally, through the Joint Northside/Westside Neighborhood Plan, local planning officials have indicated light industrial development is anticipated for the Facility...” To clarify, the Missoula City-County Planning Board’s recommendation is nuanced quite differently from that assertion and two planning agency representatives provided DEQ opinions that would make that assertion misleading in several ways:

- The critique of MDEQ’s interpretation of the Neighborhood Plan that is cited in section #1, comes from the City-County Planning Board. While the SSSLP portion of the facility is certainly zoned in a light industrial category, it is one that, *by design*, permits commercial and residential uses -- existing in a context that recognizes the history of the railroad corridor and considers mixed uses as a perennial presence and potentially desirable use. From the cited document’s conclusions of law: “...the comprehensive plan encourages the use of the D (Industrial) zoning district as an ‘Industrial Transition’ district.” (p.6 of attached Planning Board document)
- As mentioned above in Section #2, City planning staff’s judgment, provided at direct request of DEQ, was that “...**residential use is one of the most valuable and most viable potential uses of the northern portion of White Pine Sash.**” (document attached, emphasis added)

Finally, DEQ also reports while addressing this fourth criterion “...the property owners have indicated their intent to develop/use the property for commercial/industrial purposes in the future.” With the DEQ-recognized exception of the City Park, this assertion is certainly true for both the City and Zip Beverage developed/developing portions of the Facility. This statement should be regarded as potentially misleading in regards to the SSSLP owned parcel, however.

In the past 14 years, the only serious attempt to develop the SSSLP section was in 2004. At that time, the Sparrow Group planned purchase in order to construct a mixed-use and mixed-income project, predominantly residential, with some provision for commercial services. The project site plan was architecturally drawn and a site remediation plan had been designed and submitted to MDEQ for review. It would have added almost 250 housing units in a combination of apartments and single-family homes to a central commons. Spaces for small retail businesses would have adjoined the City Park on Scott St. The Sparrow Group’s plan was welcomed by the NMCDC and a developer-funded residential-level cleanup proposal was welcomed by DEQ. The project ultimately fell through for a variety of reasons including a lack of community leadership in the face of the as-yet-to-be-remediated Brownfield site – **a situation that would not have occurred if DEQ had followed earlier promised timelines for providing a Record of Decision and final clean up order.**

In terms of SSSLP’s current site development plans, a meeting was called by Missoula’s Mayor on September 20th of 2013. The meeting included the following participants:

John Engen, Mayor;
Tracy Stone-Manning, Director MDEQ;
Jenny Chambers, MDEQ Remediation Division Head

Mike Stevenson, SSSLP
Vivian Brooke (for Joe Brooke, SSSLP),
Bryan Douglass, Douglass, Inc. (Huttig Rep) ,
Jeff Crouch, CTA Architects;
Bob Oaks, NMCDC;
John Adams, City of Missoula Grants and Community Programs Brownfield Coordinator;
Jason Wiener, Missoula City Council; and,
Ellen Buchanan, Missoula Redevelopment Agency

At the meeting Mayor Engen discussed the possibility of forming a new Urban Renewal District north of the railroad between Scott St. and Reserve St. The potential district would therefore include the Northside's WPS Facility as one of its largest areas for potential redevelopment in the proposed district.

Mike Stevenson and Jeff Crouch presented a "conceptual master plan" (dated 7/16/13) depicting potential light industrial and commercial development for SSSLP's vacant land (in a concept that is currently allowable given the site's zoning). When asked if there had been any potential tenants yet identified for either the light industrial or commercial buildings depicted in the drawing, Mr. Crouch responded in the negative. When asked if SSSLP intended to develop the site itself, Mr. Stevenson responded in the negative.

This situation is consistent with SSSLP's history of ownership of the site, in which the investor group, itself, has made no effort to develop the property, while making it available for sale to potential developers (including the City and the Sparrow Group). It is therefore misleading for DEQ to report that "the current property owners have stated a desire to develop the currently vacant portions of the MWPS Facility" (p.51), and it is equally misleading for DEQ to describe the existing owners' intention of developing the site for light industrial uses, when in fact the owners have, as recently as five months ago, stated there is no intention for SSSLP to personally develop anything at the site. (In opposition to the proposed Resolution rejection of DEQ's current plan, only on March 17th did Kris Kok provide Missoula City Council testimony that SSSLP actually did intend to develop the site itself but did not provide details of what that might be). Over the past almost 15 years, however, SSSLP has demonstrated itself to be essentially an investment rather than development group and has, to date, only shown interest in selling the vacant land, has advertised it for sale for both residential and commercial uses, and has engaged in serious negotiations with a major LIHTC housing developer. Showing schematic plans for something *that could be* developed on the property is *very different* from demonstrating a plan for an actual project that is planned for the site.

Another unmentioned element in the history of the site's ownership, was a proposal informally brought to the City in 2012 by Bryan Douglass, Huttig's Environmental Remediation Consultant. After a consultation with Mike Barton, then Director of Missoula's Office of Planning and Grants, Mr. Douglass' proposal was to ask City Council to separate some western portions of the SSSLP-owned property and rezone them more restrictively while keeping the easternmost section facing Scott St. in the current zoning category that would require a residential level cleanup. Mr. Douglass' rationale was that the costs associated with remediation of the front

sections, because of their low-levels of contamination, might not be considered unnecessarily cost prohibitive by his client.

The possible proposition was presented in a meeting by invitation of the Mayor in the Mayor's Conference Room to a group including the following:

Bryan Douglass, Douglass, Inc.
Mike Stevenson, SLLP
Cliff Larsen, MT Senate Dist. #50
Jason Wiener, Msla. City Council, Ward #1
Dave Strohmaier, Msla. City Council, Ward #1
Bob Jaffe, Msla. City Council, Ward #3 & PAZ Chair
Bob Oaks, NMCDC

The consensus of City Council members present was that such a proposal for the SLLP property needed to begin with subdivision review. Mr. Strohmaier counseled that, despite its up front expense, subdivision review might ultimately provide SLLP the best return opportunities for its investment. It appears the proposal was not further pursued, at least not in a realm of public disclosure.

Now, if DEQ's current plan remains unaltered, the need for such local process and review will be circumvented. This seems to the NMCDC a bad precedent for MDEQ to encourage. It also fails to provide the neighborhood with the best possible remedy for eliminating the long standing stigma of a neighborhood "high priority" state Superfund Site – the most thorough cleanup MDEQ could require. In fact, it will set in stone inflexibility for the market that would preclude what may well be the highest and best use of the site now or sometime in the future.

Neighborhood Character

It has been the NMCDC's long standing observation that it is not an uncommon occurrence for the Northside neighborhood to be perceived discriminatorily for reasons of class, income, renter vs. owner status, and home and lot size -- together with the proximity of the rail yard and close coincidence of former industrial employers. For many years it was one of Missoula's neighborhoods "of least resistance," a fact reflected in the old "B, C, and D" zoning classifications compounded by high rental proportions and the elementary school closure of 1985. The NMCDC also observes that the Northside has in actuality become a neighborhood on the rebound with many young families moving in and improving properties. MDEQ would best serve the neighborhood by taking note of this fact and encouraging this revitalization with a superior cleanup plan.

The neighborhood's efforts for resurgence have escaped Huttig Building Products, as well. This entity, which has been designated responsible for both the site's contamination and its future cleanup, through its attorney, has provided testimony to MDEQ in the form of its "Memo on Present and Reasonably Anticipated Future Uses" (November 7, 2013 and attached) making this abundantly clear:

“Historically, housing east of Scott Street accommodated workers employed by White Pine Sash, Clawson Manufacturing, or the railroad. White Pine Sash at one time employed more than 200 workers, and the area east of Scott Street was a convenient location. Now that White Pine Sash and Clawson Manufacturing are out of business, there are far fewer workers on the Property, and employees desiring housing close to their workplace are limited. In fact, there are several houses that are for sale or vacant in the area east of Scott Street. This is an indication that there is little desire or need to live by the Property. Moreover, in recent decades there is no longer a need to live close to work because most workers are mobile and own a car or truck. Additionally, most people do not desire to live in the proximity of the railyard due to the noise and problems associated with the transient population. It is reasonable to anticipate that the pattern of development in the immediate area of the Property will remain industrial and/or commercial.”

This is a statement offensive to many Northside neighbors and completely tone deaf in regard to the need for protecting and encouraging residential neighborhoods that are close to urban core infrastructure and services. That MDEQ is now promoting the same conclusions argued for by Huttig is frankly disturbing and seems to fly in the face of an environmental justice policy as defined by the EPA or the Equal Protection provisions of the U.S. Constitution:

“Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. EPA has this goal for all communities and persons across this Nation. It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.”
(<http://www.epa.gov/environmentaljustice/>)

At a public hearing held in Missoula on March 11, 2014 (in a second floor meeting room too small to seat or easily hold its attendees and also not handicap-accessible), DEQ staff informed those present that, with its CECRA sites, it scrupulously follows the same policies that the EPA uses in analysis and remediation of all federal superfund sites.

Looking to an EPA Directive from March 17, 2010 (OWSER Directive 9355.7-19) titled “Reasonably Anticipated Future Land Use and Reducing Barriers to Reuse at EPA-lead Superfund Remedial Sites,” the following policies are suggested:

“...the Agency considers reasonably anticipated future land use in the Superfund cleanup process in a number of ways, such as **working with local governments, local residents**, reuse entities and others as it identifies reasonably anticipated future land use for sites **or portions of sites** being cleaned up.” (pp. 2-3; emphasis added)

“Another opportunity to consider the reasonably anticipated future land use is during the Superfund site baseline risk assessment. This risk assessment is developed during the remedial investigation (RI) process, and evaluates exposures under both current and future land use conditions, including information gathered from a number of sources. **These sources include the community itself, population surveys, typographic and housing data, Census projections**, and other sources listed in the 1995 Land Use Directive. While multiple future land uses may be feasible at a site including non-residential exposures, EPA’s Risk Assessment Guidance for Superfund I, Human Health Evaluation Manual (part A) (1989) 9 recommends risk assessors **‘assume future residential land use if it seems possible based on the evaluation of available information. For example, if the site is currently industrial but is located near residential areas in an urban area, future residential land use may be a reasonable possibility...’**” (p. 5; emphasis added)

As mentioned at the beginning of this response, the Executive Director of the NMCDC participated in a Community Advisory Group (CAG) in the mid 1990's, which was initially set up but subsequently abandoned by DEQ. The local City-County Health Department picked up the ball and acted on some of this group's suggestions and found funding for further assessment outside of DEQ's aegis. Based on this experience, the NMCDC's Executive Director sent a history of the community's involvement and expectations for the site's remediation ("White Pine at a Crossroads;" attached to this report) to several DEQ staff members.

Only when queried in a phone call did the current WPS Project Manager, Scott Graham, tell the NMCDC he found the organizational white paper "interesting." Other submissions of a number of relevant documents cited in this response to DEQ were, over the past six months, sent by the NMCDC to the MDEQ Director, Tracy Stone-Manning, and the Remediation Division Administrator, Jenny Chambers. These submissions were not acknowledged as having been received and MDEQ's current alternatives for cleanup make no mention of, nor cite any valuation given to, this community input. In DEQ's now-proposed cleanup plan, engagement with the community itself or any demographic or housing data were not demonstrated to have been collected or given weight in the stated justifications of the Department's future use analysis -- **an arguable abuse of discretion in DEQ's process of evaluation.**

In that same vein and in terms of the earlier-mentioned 2011 OPG letter from Mike Barton, MDEQ, at the March 11th meeting, seemed to be seeking refuge in a rationale that only the portion of that letter relating to future uses of the City's *own* property was relevant (additionally glossing over or ignoring City staff comments and Planning Board judgments from 2008 on patterns of development and highest and best use related to zoning). When asked in an email for clarification on its valuing mechanisms, DEQ attorney Cynthia Brooks responded, "Mr. Barton's letter will be considered, along with other materials, when DEQ makes the final determination of 'reasonably anticipated future use.'"

At the public hearing, however, DEQ staff highlighted their rationale of evaluation by weighting only the stated intentions of the Scott St. LLP and an apparent Huttig or SLLP solicited letter from James Grunke, Executive Director of the Missoula Economic Partnership. What is unfortunately lost in this discussion is the high probability that had the site been cleaned by the PRP before 2004 (and in keeping with previous DEQ timelines for issuing a ROD and cleanup order), it would have been developed for mixed use by the Sparrow Group, the only serious developer, to date, that has been identified for the property. **DEQ's inactivity in pursuing the timely ROD, first promised in 1994** (see attached Missoulian story), **has itself been the greatest barrier to the Facility's successful remediation and reuse.** (See attached: 10.17.2000 letter from NMCDC; a DEQ revised timeline from 2001; and, a further revised DEQ timeline email from 2002.) The harm this DEQ inaction promoted has been a topic that the NMCDC has made in written form (again without response) in the past (see above cited 10/17/2000 letter to Mark Simonich).

DEQ's spotlight on the Grunke letter at the March 11th meeting, leads NMCDC to a conclusion that the Department has cherry picked evidence to justify a pre-determined conclusion rather than given weight to all available evidence before deriving its conclusion. Unfortunately, this casts a long shadow of doubt over other information the Department now presents.

The NMCDC requests that MDEQ revisit its proposed final cleanup plan, that it **listen to the Missoula local governing body's unanimously supported resolution of March 24, 2014 and the, also unanimous, City County Health Department and local Water Quality District Boards' responses of March 20, 2014.** Given MDEQ's unfortunate track record of inadequate oversight and abandoned timelines at this Facility, these Boards' position includes the following highly justified admonition to MDEQ:

"In general, a clean-up plan that relies on institutional controls when excavation and removal are possible will not meet... basic expectations. Nor will open-ended timeframes or unspecified means for monitoring enforcement of the plan. We know from other clean-up experience in our community that such approaches risk, at least, a transfer of costs from the responsible party to our residents, and, at worst, human exposure to hazardous materials in soils, air, and water – all of which are involved in this site.

Please give these broad-based community submissions their deserved weight in supporting the long-standing position of the NMCDC that the highest and best clean up for the Facility be aggressively pursued by MDEQ. It is only through such an action that the site's highest and best uses can be realized on the open market and **the only true way that the community's constitutional right to a clean and healthful environment can be assured.**