

Resolution Number 7861

A resolution of the Missoula City Council to request that the Montana Department of Environmental Quality (DEQ) reconsider its conclusion regarding the anticipated future land use for the vacant portion of the White Pine Sash State Superfund Facility in Missoula's Northside neighborhood and recognize residential use as a future anticipated land use and to appropriately accommodate that use in DEQ's final remedy decision and cleanup plan.

Whereas, the White Pine Sash State Superfund Facility is contaminated with pentachlorophenol (PCP), dioxin, petroleum, methane, and metals and Huttig Building Products is the responsible party; and

Whereas, the DEQ evaluates four statutory factors found in Section 75-10-701(18) MCA to determine the future anticipated land use of the facility, which are: 1) local land and resource use regulations, ordinances, restrictions, or covenants; 2) historical and anticipated uses of the facility; 3) patterns of development in the immediate area, and 4) relevant indications of anticipated land use from the owner of the facility and local planning officials; and

Whereas, the DEQ has developed a Proposed Plan as of February 2014 for Proposed Final Cleanup for the Missoula White Pine Sash State Superfund Facility that has evaluated the reasonably anticipated future use of the vacant portion of the Facility to be commercial/industrial but not residential; and

Whereas, the DEQ's commercial/industrial conclusion regarding anticipated future land use dictates cleanup to a lower standard than would be required with a conclusion recognizing residential use; and

Whereas, the DEQ may revise or select a different remedy based on public comment or new information; and

Whereas, zoning for Facility properties is M1R-2 Limited Industrial-Residential, and the vacant parcels not owned by the City allow light industrial and residential use; and

Whereas, within city limits, 486 residential units have been permitted between 2008 and 2013 in areas zoned commercial or industrial with a residential component; and

Whereas, in its Proposed Plan for cleanup at the White Pine Sash Facility DEQ relies on the Joint Northside/Westside Neighborhood Plan in its discussion of local land and resource regulations, and whereas in the case of conflict between the Joint Northside/Westside Neighborhood Plan and the City's zoning regulations, zoning regulations take precedence and are the sole legal expression of local land use regulations relevant to this process;

Whereas, Scott Street Partners, LLP submitted a re-zoning request to prohibit residential use in 2008, and this request was recommended for denial by the Missoula Consolidated Planning Board in May 2008 and was tabled by City Council and eventually expired; and

Whereas, in its determination of reasonably anticipated future uses DEQ relies, in part, on "relevant indications of anticipated land use from... local planning officials," and whereas, a January 31, 2011, letter from Mike Barton, in his capacity as the City's chief municipal planning official, indicated in a response to DEQ that residential development is a viable potential future use of the vacant portion of the White Pine facility when he stated:

... the property: 1) Is adjacent to a park and a residential neighborhood; 2) Is convenient to Downtown and the Northside; 3) Is flanked to the north by recent residential development; and 4) Has been the subject of earnest residential development efforts. This leads me to conclude that residential use is one of the most valuable and most viable potential future uses of the northern portion of White Pine Sash. Accordingly, the City believes that DEQ should establish cleanup 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.

Whereas, in the Joint Northside/Westside Neighborhood Plan the neighbors' vision statement reads, "The neighbors' vision for the integration of commercial, industrial, and residential uses attempts to balance the need for jobs, services, and neighborhood economic stability with the equally pressing need for healthy residential neighborhoods," and whereas the Neighborhood plan "encourage[s] an appropriate mix of residential and commercial activities that protects the residential character of the neighborhoods and honors the traditional co-existence of residential, small business, and light industrial uses."

Now therefore be it resolved by the Missoula City Council that residential use is a valuable, viable, and anticipated land use for the vacant portion of the White Pine Sash Facility; and

Be it further resolved that the Missoula City Council requests that the DEQ recognize residential use – among a mix of residential and commercial/industrial activities – in its cleanup plan and final remedy decision and apply exposure levels appropriate to such use to ensure a healthy environment and neighborhood; and

Be it further resolved that the Missoula City Council requests the City Clerk to convey this resolution to DEQ as official City Council comment on the Proposed Plan before the comment period ends on March 30, 2014.

Passed and adopted this 24th day of March, 2014

ATTEST:

APPROVED:

/s/ Martha L. Rehbein
Martha L. Rehbein, CMC
City Clerk

/s/ John Engen
John Engen
Mayor

(SEAL)