

**3002986**Page: 1 of 3
07/05/2001 10:42A
Bk-M24 Pg-9865

**SUBDIVISION RESTRICTIONS FOR
THE WILDFIRE ACRES, LOT 2 MINOR SUBDIVISION**

WHEREAS, the undersigned, Thomas Lockyer and Kathleen Lockyer, of East Helena, Montana, are filing a plat of certain lands in Lewis and Clark County, Montana, known as the Wildfire Acres, Lot 2 Minor Subdivision with the Lewis and Clark County Clerk and Recorder for recordation, and

WHEREAS, the undersigned are the owners of all the lots in said tract and desire to place restrictions upon said lots for the use and benefit of themselves as present owners and for the future owners thereof, and for the benefit of the general public interest.

NOW, THEREFORE, these covenants and conditions are made to apply to a tract of land situated in the NE 1/4 of Section 30, T10N, R2W, Lewis and Clark County, Montana, and containing 20.38 acres.

All persons or corporations who now or shall hereafter acquire any interest in and to any of the above described property, shall be taken and held to agree and covenant with the owners of the lots in said tract with their heirs, successors and assigns, to conform to and observe the following restrictive covenants as to the use thereof.

These restrictive covenants and conditions are designed to provide a uniform plan for the development of the whole of said tract, protect the natural environment and promote public health and safety.

The following restrictive covenants are revocable or alterable only with the consent of the Board of County Commissioners of Lewis and Clark County.

1. Notice is hereby given of the potential health risk from radon concentrations; such risk can be evaluated through soil tests and mitigated through radon abatement techniques incorporated into structures.
2. All dwelling units within the subdivision shall be constructed to specifications which meet or exceed equivalent provisions in the Uniform Building Code for this seismic zone (Zone 3).
3. Each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, shall bear equal responsibility with all other lot owners for repair and maintenance expenses as follows:
 - a. ROADWAYS. Need for roadway repair shall be determined by majority vote of all lot owners. Vote may be taken at a meeting of the lot owners called for and held at such place and time specified in the notice. The meeting shall be held at the residence of the lot owner calling the meeting or any other location in Helena, Montana. Each lot owner shall be served with a copy of the notice ten (10) days before the meeting either by personal service or certified mail at such lot owner's last known mailing. The lot owners shall by majority vote (1) agree on the

need for repair, (2) the scope of repairs, (3) the procedure for hiring a contractor, and (4) the amount to be paid for the repairs.

b. PAYMENT. Each lot owner shall pay their prorata share of any expenses incurred pursuant to paragraph (a) within thirty (30) days of presentation of a statement from the provider of the service or the lot owner who contracted for the service. In the event any lot owner fails to pay their prorata share within such thirty (30) day period, any other lot owner may commence an action against the non-paying lot owner to recover the balance due together with court costs and attorney's fees.

c. LIEN. The provider of the service or the contracting lot owner, described in paragraph (b) is entitled to a construction lien for unpaid amounts due for costs incurred as provided in paragraph (a) hereof by following the procedure as outlined in Title 71, Chapter 3, Part 5, MCA. Such a lien may be foreclosed as a construction lien. The prevailing party shall be entitled to recover costs and attorney's fees.

d. WAIVER. Each lot owner waives the right to protest the creation of an RID for the purpose of improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs.

e. ARBITRATION. Any disagreement or controversy relating to this agreement shall only be settled by arbitration in accordance with the Montana Uniform Arbitration Act (Section 27-5-111, MCA, et seq.) and the rules of the American Arbitration Association, one Arbitrator, and shall be enforceable in any court having competent jurisdiction.

4. Any additional utility lines shall be installed underground.

5. Any exterior lighting shall be arranged and shielded so that the light source can not be seen from adjacent roads or property and so that no direct beam illuminate other private property or public roads, and shall not be visible from beyond the property lines.

6. Notice is hereby given of the potential health risk from metals concentrations in the soil; such risk can be further evaluated through on-site soil tests and mitigated through procedures established by the Environmental Protection Agency.

7. All rights to protest the creation of a community water or wastewater treatment system improvement district and a water/wastewater treatment system maintenance district, whenever such action may occur, are hereby waived.

8. The undersigned, their heirs, successors and assigns, and all future owners of property within the subdivision, agree to hold Lewis and Clark County harmless and indemnify Lewis and Clark County from all claims, demands, obligations, suits, causes of action, damages, and liability, including the County's costs and attorney's fees, arising in any manner whatsoever out of, or relating to, the existence, use, operation, repair, and/or maintenance of the following:

- a. variances granted for a private access easement and cul-de-sac length;
- b. elevated nitrates identified in the vicinity of the proposal;



c. ASARCO smelter facility.

Enforcement of these covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Dated at Helena, Montana, this 5th day of July, 2001.

Thomas Lockyer
Thomas Lockyer

Kathleen Lockyer
Kathleen Lockyer

SUBSCRIBED AND SWORN TO before me

this 5th day of July, 2001.

Notary Public for the State of Montana

Residing at Helena, Montana

My Commission Expires 3/08/2004

FILE: Covenant\WildfireAcL12Covs

Diane L Gorie



Lewis & Clark County

COV

3002986

Page: 3 of 3
07/05/2001 10:42A
Bk-M24 Pg-9865

