



RESOLUTION NO. 2014 - 97

**A RESOLUTION TO REVOKE
AN AGRICULTURAL COVENANT**

WHEREAS, Walter and Crystal Crane are the owners of a 1.59 acre parcel shown on Certificate of Survey No. 372205, located in the NE ¼ of Section 23 T10N, R4W, Lewis and Clark County, Montana; and

WHEREAS, on April 24, 1984, an agricultural covenant was placed upon this tract of land shown on Certificate of Survey Number 372205, with the filing of the Declaration of Covenant; and

WHEREAS, § 76-3-207(1)(c), MCA, allows the Commission to revoke an agricultural covenant running with the land with the mutual consent of the property owner; and

WHEREAS, the Lewis and Clark County Board of Commissioners (Commission) may revoke an agricultural covenant pursuant to Resolution No. 1986-55; and

WHEREAS, on September 14, 1999, the landowners requested the Commission to revoke the agricultural covenant; and

WHEREAS, public notice was posted and adjacent property owners and affected agencies were noticed, and comments were received;

WHEREAS, on October 28, 1999, the Commission approved the revocation of the agricultural covenant, subject to the following conditions of approval:

1. Prior to any development activity on the subject property, the Applicants shall submit a development plan to the Department of Environmental Quality, Superfund Section, for review and approval. All conditions, recommendations and specifications of the Department shall be met. Prior to commencing of development activity, copies of all correspondence shall be submitted to the Planning Department.
2. The Book and Page reference to the restrictive covenants (filed with the County Clerk and Recorder) shall be indicated on the face of the plat. In addition, restrictive covenants, revocable or alterable only with the consent of the Board of County Commissioners, shall be placed upon the property and shall provide for the following:
 - a. Notification of the subject property's past use as a mill site and that hazardous materials have been identified and removed from the subject property;
 - b. A waiver of right to protest joining a road maintenance and/or improvement district for the roads serving the subject property, in accordance with the County Subdivision Regulations;
 - c. The prohibition against construction of basements or other below grade living spaces, due to the near-surface groundwater;

- d. A waiver of the right to protest joining a public/community water and/or wastewater treatment system improvement district;
- e. A restrictive covenant, binding the landowner, any heirs, successors and assigns, and all future owners of property within the subdivision, agreeing therein 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:
 - 1. The identification and removal of hazardous materials from the subject property.

WHEREAS, the property is part of the Joslyn Street Tailings State Superfund Site, overseen by the Montana Department of Environmental Quality; and

WHEREAS, the BNSF Railway has entered into a Voluntary Cleanup Plan with DEQ to remediate the Joslyn Street Tailings State Superfund Site; and

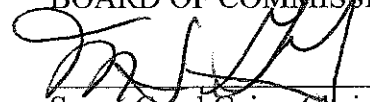
WHEREAS, the property may not be developed until the Voluntary Cleanup Plan is closed; and

WHEREAS, the property owners have prepared restrictive covenants to be filed with this resolution.

NOW, THEREFORE, BE IT RESOLVED that the Lewis and Clark County Board of County Commissioners does hereby consent to revoke the agricultural covenant placed on the tract of land shown on Certificate of Survey Number 372205.

DATED this 28 day of August, 2014

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS



Susan Good Geise, Chair

ATTEST:



Paulette J. DeHart, Clerk of Board



RESTRICTIVE COVENANTS

WHEREAS, the undersigned, Walter and Crystal Crane, of Helena, Montana, are the owners of a tract of land in Lewis and Clark County, Montana, known as 1938 Brady Street, as depicted on Certificate of Survey Number 372205 filed with the Lewis and Clark County Clerk and Recorder, and

WHEREAS, the undersigned desire to place restrictions upon said property for the use and benefit of Walter and Crystal Crane, as present owners and for the future owner(s) thereof, and for the benefit of the general public interest.

NOW, THEREFORE, these covenants are made to apply to a tract of land situated in the NE $\frac{1}{4}$ of section 23, T10N, R4W, P.M.M., Lewis and Clark County, Montana, as depicted on Certificate of Survey Number 372205 filed with the Lewis and Clark County Clerk and Recorder.

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.

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 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.

These Restrictive Covenants, are revocable or alterable only with the consent of the Board of County Commissioners, and provides for the following:

- a. Notice is hereby given of the subject property's past use as a mill site and that hazardous materials have been identified and removed from the subject property;

- b. Notice is hereby given of a waiver of right to protest joining a road maintenance and/or improvement district for the roads serving the subject property, in accordance with the County Subdivision Regulations;
- c. Notice is hereby given of the prohibition on construction of basements or other below grade living spaces, due to the near-surface groundwater;
- d. Notice is hereby given of the waiver of the right to protest joining a public/community water and/or wastewater treatment system improvement district;
- e. Notice is hereby given that the landowner, any heirs, successors and assigns, and all future owners of the property, agree therein to hold 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:
 - 1. The identification and removal of hazardous materials from the subject property.

DATED THIS 25th DAY OF AUGUST, 2014

Crystal Crane
 Print: Crystal Crane
 Crystal Crane
 PO Box 4998
 Helena MT 59604

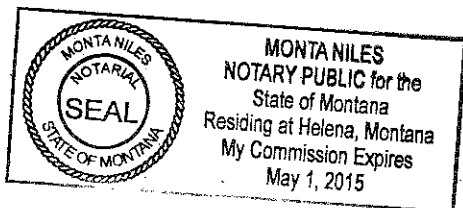
Walter Crane
 Print: Walter Crane
 Walter Crane
 PO Box 4998
 Helena MT 59604

STATE OF MONTANA)
) ss.
 COUNTY OF LEWIS AND CLARK)

On this 25 day of August, 2014, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Crystal & Walter Crane and _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

[Signature]
 Notary Public for the State of Montana
 Print:
 Residing at _____, Montana
 My Commission Expires _____



We, Walter and Crystal Crane, are the owners of a 1.59 acre parcel shown on Certificate of Survey No. 372205, located in the NE ¼ of Section 23 T10N, R4W, Lewis and Clark County, Montana. We consent to the revocation of the agricultural covenant placed on our property on April 24, 1984. The Lewis and Clark County Board of Commissioners consented to the revocation of the agricultural covenant in Resolution No. 2014-97.

DATED THIS 28th DAY OF AUGUST, 2014

Crystal Crane
Print: Crystal Crane
Crystal Crane
PO Box 4998
Helena MT 59604

Walter Crane
Print: Walter Crane
Walter Crane
PO Box 4998
Helena MT 59604

STATE OF MONTANA)
) ss.
COUNTY OF LEWIS AND CLARK)

On this 28th day of August, 2014, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Crystal Crane and Walter Crane, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

Brenda L. Hasselbacher
Notary Public for the State of Montana
Print: Brenda L. Hasselbacher
Residing at Helena, Montana
My Commission Expires 12-23-2016

