

**Exhibit 1**  
**to Application for Warrant**  
**(Declaration of Paul Peronard)**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

**IN THE MATTER OF 185 WEST  
VALLEY DRIVE, KALISPELL,  
MONTANA**

**Case No. MJ-22-    -M-KLD**

**DECLARATION OF PAUL PERONARD**

**DECLARATION OF PAUL PERONARD**

I, PAUL PERONARD, in accordance with 28 U.S.C. § 1746, declare as follows:

**Background**

1. I am an On-Scene Coordinator (“OSC”) with the U.S. Environmental Protection Agency (“EPA”), Region 8, in Denver, Colorado.
2. I have worked for EPA for 37 years and for EPA Region 8’s Superfund/CERCLA Program for the last 24 years overseeing and performing environmental investigation and cleanup activities. I have a bachelor’s degree in chemical engineering from Georgia Institute of Technology.
3. As an OSC, I am responsible for coordinating the investigation and cleanup of sites contaminated with hazardous substances, pollutants or contaminants, and oil pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601 *et seq* and the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq*.
4. I am familiar with the records and files in EPA’s possession relating to the leaking tanks located at 185 West Valley Drive, Kalispell, Montana. I either have personal knowledge of the matters stated herein, have discussed these matters with others at EPA with personal knowledge, or have reviewed documents in EPA’s files relating to these matters created and maintained in the ordinary course of its business activities.
5. On July 14, 2022, EPA received a report via the National Response Center of 11 large, abandoned tanks located at 185 West Valley Drive, Kalispell, Montana containing possibly 50,000 gallons of various oils. The reporting party was a private citizen who stated that there was a present discharge of oils from these tanks.
6. After receiving the report from the National Response Center, EPA reached out to the reporting party via phone and email to gather additional information. The reporting party provided EPA with photos of the tanks located at 185 West Valley Drive, Kalispell, Montana. The reporting party stated that he lives near the property and expressed concern about the leaking tanks contaminating the nearby well water and the nearby creek. The

reporting party explained that the tanks are located uphill from the nearby creek. The reporting party also explained that Flathead County has been trying to contact the property owner to address the tanks, but the County has not had any luck tracking down the property owner.

7. The Montana Cadastral database, a 2007 Quitclaim Deed, and a 1993 Warranty Deed show that Irene J Serio is the current owner of the property located at 185 West Valley Drive, Kalispell, Montana (assessor number 0000325250) (“Serio Property”). See Exhibit A.
8. On July 18, 2022, I reached out to Travis Ahern, the Flathead County Attorney, via email to inquire about the Serio Property.
9. On July 20, 2022, Mr. Ahern provided me with the following information via email and advised that I also reach out to the Montana Department of Environmental Quality (“MDEQ”):
  - a. Flathead County received a complaint regarding the trash and debris on the Serio Property in the summer of 2018.
  - b. Flathead County made efforts to contact Irene Serio via mail to issue a notice of violation of the County’s decay ordinance. The County’s efforts were unsuccessful.
  - c. Flathead County conducted site visits at the Serio Property in summer of 2018, summer of 2019, January 2020, February 2020, and July 2020.
  - d. Flathead County posted a notice of violation on the property in 2020 with no response from Irene Serio.
  - e. Flathead County provided a list of potential addresses for Irene Serio.
10. On July 18, 2022, I reached out to MDEQ via email to inquire about the Serio Property.
11. On July 18, 2022, MDEQ provided EPA with its case files regarding the Serio Property, including various potential contact information for Irene Serio and data from MDEQ’s August 22, 2018 sampling event on the Serio Property (“MDEQ Sampling Data”).
12. MDEQ’s case files summarize MDEQ’s efforts in 2005 and from 2011 through 2017 to contact the property owner, Irene Serio, on multiple occasions through process server, mail, family members, and social media. MDEQ’s attempts to contact Irene Serio were unsuccessful.
13. MDEQ’s case files included Field Investigation Reports relating to the Serio Property dated July 18, 1996 and November 12, 2013. The 1996 report notes that Irene Serio and her husband operated Sure-Seal, a road dust suppression business, from the Serio Property. The 1996 report also notes that they were picking up crude oil tank bottoms from local businesses and veneer dryer precipitation residue from wood product plants. The 2013 report notes that one of the tanks on the Serio Property had a “Road Oiling” label.
14. Based on the MDEQ Sampling Data, MDEQ concluded that the material leaking from the tanks on the Serio Property is likely tack oil.

15. Tack oil is a black viscous product that is used as a binder for pavement surfacing.
16. I have reviewed the MDEQ Sampling Data and noted that MDEQ sampled the tanks on the Serio Property. The sampling results showed the presence of polynuclear aromatic hydrocarbons (“PAHs”), xylene, ethylbenzene, and naphthalene.
17. PAHs, xylene, ethylbenzene, and naphthalene are listed as “Hazardous Substances” under CERCLA.
18. The following health effects are associated with exposure to PAHs, xylene, ethylbenzene, and naphthalene.
  - a. Exposure to PAHs has been linked to lung, skin, and stomach cancer.
  - b. Exposure to xylene can cause irritation of the skin, eyes, nose, and throat; difficulty in breathing; impaired function of the lungs; impaired memory; stomach discomfort; possible changes in the liver and kidneys; headaches; lack of muscle coordination; dizziness; confusion; and changes in one's sense of balance. Some people exposed to very high levels of xylene for a short period of time have died.
  - c. Exposure to ethylbenzene has been linked to an increased risk of leukemia and hematopoietic cancers.
  - d. Exposure to naphthalene can result in hemolytic anemia, cataracts, and respiratory toxicity.
19. The MDEQ Sampling Data also showed that the material sampled had a combination of straight-chained aliphatic compounds and multi-ringed aromatic compounds, which is commonly characteristic of a material that is derived from coal.

#### **EPA’s Efforts to Obtain Consensual Access to the Serio Property**

20. EPA has sought to obtain consensual access to the Serio Property from Irene Serio (“Property Owner”), multiple times for the purposes of investigating and responding to conditions.
21. On July 27, 2022, I attempted to contact Irene Serio by telephone, placing six phone calls to six different phone numbers:
  - a. I called a phone number with a 406 area code at 12:55p MT, an operator stated “call could not be completed as dialed”
  - b. I called a phone number with a 561 area code at 12:59p MT, an operator stated “number disconnected or not in service”
  - c. I called a phone number with a 561 area code at 1:00p MT, an operator stated “number disconnected or not in service”
  - d. I called a phone number with a 561 area code at 1:00p MT, no one answered, and I received a message that the voicemail box was full.

- e. I called a phone number with a 406 area code at 1:09p MT, no one answered, and I left a voicemail message containing my contact information.
  - f. I called a phone number with a 406 area code at 1:10p MT, an individual answered and identified himself as the son of Irene Serio. This individual requested that I contact his father and provided me with an @aol.com email address.
22. On July 27, 2022, Irene Serio called me. During this conversation, I verbally requested that she sign EPA's Consent for Access form to allow EPA access to the Serio Property to investigate and cleanup the leaking tanks. Irene Serio stated that she bought the tack oil and pine resin that is in the tanks from a local timber company and that she and her husband planned to use the material in their paving business. She also stated that she was not afraid of the EPA and that "the EPA cannot do s\*\*\*\*" and hung up on me.
23. On July 27, 2022, EPA emailed Irene Serio and her husband requesting access to the Serio Property. Her husband responded via email saying, "f\*\*\* you and the horse you rode in on".
24. On August 1, 2022, EPA mailed six letters addressed to Irene Serio to the following addresses requesting access to the Serio Property. The letters included a standard Consent for Access Form:
- a. An address in Kalispell, Montana,
  - b. An address in Columbia Falls, Montana,
  - c. An address in Bigfork, Montana,
  - d. A post office box in Whitefish, Montana,
  - e. An address in Lake Worth, Florida, and
  - f. A post office box in Lake Worth, Florida.
25. EPA received confirmation from USPS that the letter that was sent to Irene Serio at a Columbia Falls, Montana address was successfully delivered on August 6, 2022 and "Serio" signed the USPS delivery receipt as "an agent" for Irene Serio.

#### **EPA's Need for Access to the Serio Property**

26. I visited the Serio Property on August 2 and 3, 2022, and observed the property conditions from the public right of way without entering the property. The property was mostly grass and trees and was scattered with debris. There was no visible house located on the property. I observed an abandoned trailer that did not look to be habitable.
27. I also observed several residences located within a few hundred feet of the Serio Property as well as children in the area.
28. I observed the 11 tanks on the Serio Property. They were visibly degrading and noticeably lacked any form of secondary containment. I observed rusting on the tanks and some of the tanks appeared to be unstable or leaning. The largest tank was visibly leaning and seemed to be propped up by the nearby fence post. This tank was located on the top of a small rise, just

a few feet from the nearby road, West Valley Drive. Photos of the tanks are included as Exhibit B.

29. I observed a dark material leaking from the large tank that was leaning on the fence post. This material was pooling on the ground in the public right of way. My team sampled this material. The sampling data shows that the material contains a large number of PAHs. The sampling data also shows that the Total Petroleum Hydrocarbons are 10,000 mg/kg, which is approximately 1%. This low ratio indicates that the material is likely a coal-tar-based pavement sealcoat, such as tack oil.
30. Based on my observations and the current state of the degrading tanks, I am concerned that the tanks are at risk of failing. I am concerned that the large tank that is leaning on the fence post will become unstable, roll onto the public right of way, crack, and empty its contents onto the road. I am also concerned that the other tanks will continue to deteriorate, and the amount of material leaking from these tanks will increase.
31. I believe that there will be a direct impact on the nearby watershed system if the leaking continues or if a catastrophic failure of one of the degrading tanks occurs.
32. The Serio Property is located approximately 1/3 of a mile from Ashley Creek. Ashley Creek is a tributary to Flathead River. The Flathead River flows into Flathead Lake.
33. EPA employees, agents, contractors, and other representatives need unrestricted access and entry to the Serio Property to perform the field work described below.
34. Access is needed for approximately twelve-week period, starting on the date the Warrant is issued.

### **Nature of Field Work**

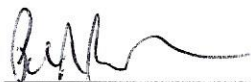
35. To investigate and cleanup the leaking tanks that are located on the Serio Property, EPA and its contractors and subcontractors need access to the Serio Property to conduct certain field work. Specifically, this field work will involve:
  - a. Performing site preparations;
  - b. Inspecting and assessing property conditions;
  - c. Inspecting and obtaining samples and analysis from the tanks and the surrounding area, including soil, surface water, and groundwater, as needed;
  - d. Removing and recycling and/or disposing of the contents of the tanks;
  - e. Recycling and/or disposing of the tanks and debris;
  - f. Excavating and removing any contaminated soils and materials;
  - g. Restoring disturbed areas;

- h. Taking photographs and video to document the above activities; and
  - i. Conduct other actions as needed to respond to the release or threatened release of hazardous substances, pollutants, or contaminants.
36. Performing site preparations will involve clearing debris and vegetation to establish a work area, creating vehicle access to the 11 tanks and reinforcing the dirt driveway to support the vehicles and equipment that will be needed.
37. Inspecting and assessing property conditions will involve assessing the integrity and functionality of the tanks to determine the best method for extracting the material from the tanks.
38. Inspecting and obtaining samples and analysis from the tanks will involve sampling each of the tanks individually and assessing whether the materials contain any halogenated or chlorinated solvents and/or polychlorinated biphenyls (PCBs).
39. Removing and recycling and/or disposing of the contents of the tanks will involve bringing in a suitable tanker to heat and pump the material out of the tanks and into the transportation vehicle. The material will either be taken to a recycling facility, or the material will be solidified and properly disposed of.
40. Recycling and/or disposing of the tanks and debris will involve cutting the tanks into smaller, moveable pieces and transporting them to a metal recycler.
41. If necessary, EPA will excavate and remove any contaminated soils and materials.
42. Restoring the disturbed areas will involve leveling out the area and reseeded and controlling for noxious weeds.
43. EPA plans to start its field work at the Serio Property as soon as the Warrant is issued. The initial phase of the field work will involve performing site preparations, inspecting site conditions, and obtaining samples. I anticipate that the initial phase of field work will take approximately one week. It is expected to take 3 days to perform site preparations and 2 days to inspect site conditions and obtain initial samples. The second phase of the field work will involve emptying the contents of the tanks, and recycling and/or disposing of the tanks, tank contents, and debris. I anticipate that the second phase of the field work will take approximately eight weeks. It is expected to take 2-4 days to empty the contents of each of the tanks; assuming that all 11 of the tanks are full, this could take up to 45 days to complete. It is expected to take 15 days to recycle and/or dispose of the tanks, tank contents, and debris. The final phase of field work will involve excavating and removing contaminated soils and materials and restoring disturbed areas. I anticipate that the final phase of the field work will take approximately 2-3 weeks.

44. Due to potential weather delays and other factors that may cause delay, it is not possible for me to predict the precise timeframe for completing the field work on the Serio Property. However, I anticipate completing entry and field work within the twelve-week access period requested in the United States' Application. If EPA needs to conduct field work beyond the twelve-week period requested, it will return to the Court to seek an extension.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 1, 2022

A handwritten signature in black ink, appearing to read 'Paul Peronard', is written over a horizontal line.

Paul Peronard  
On Scene Coordinator  
Region 8, U.S. EPA



# **Exhibit A**

Montana Cadastral Database results for 185 West Valley Drive, Kalispell, Montana 59901

Property Record Card | Property

svc.mt.gov/dor/property/prc#/map/07396516102010000?mapMode=standard

R8net SEMS CERCLA Docs CERCLA Training CERCLA Liens Colorado Smelter Part 22 EPA Administrative... GoAnywhere USA Performance R8 EJ SharePoint

07-3965-16-1-02-01-0000

General Information

Property Number	07-3965-16-1-02-01-0000
Assessment Code	0000325250
County	Flathead
Levy District	07-032403
Neighborhood	207.150.0
Situs Address	185 WEST VALLEY DR, KALISPELL, MT 59901
Legal Description	S16, T28 N, R22 W, TR 1AB IN SE4NE4, ASSR #0000325250
Owner Name	SERIO IRENE J
Property Last Updated	7/14/2022

Value History

Year	Market Value	Taxable Value
2020	\$69,560	\$939
2021	\$67,468	\$911

M

2007 Quitclaim Deed

Return to  
Irene Serio  
6726 Lawrence Woods  
court  
Lake Worth, FL 33462

QUITCLAIM DEED  
(Terminate Joint Tenancy)

FOR A VALUABLE CONSIDERATION, the receipt of which is acknowledged, the undersigned, Anthony J. Serio and Irene J. Serio, husband and wife, hereby remise, release and quitclaim unto Irene J. Serio, and \_\_\_\_\_, husband and wife, of Kalispell Montana, \_\_\_\_\_, as tenants in common, real property in Flathead County, Montana, described as follows:

[Property Description]

a Tract of land - in the SE 1/4 NE 1/4 Described as follows:  
Tract 1 of COS5467 16-28-22  
TO HAVE AND TO HOLD unto the Grantees, and to their heirs

and assigns, forever.

Dated: 8.23.2007

Anthony J. Serio  
[Type husband's name]

Irene J. Serio  
[Type wife's name]

STATE OF MONTANA )  
: ss.  
County of Flathead

On this 23 day of Aug, in the year 2007, before me, [insert name], Notary Public for the State of Montana, personally appeared Irene Serio, and Anthony J. Serio husband and wife, known to me [or proved to me on the oath of \_\_\_\_\_] to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

200700026620 Fees: \$22.00 by: VW  
QUIT CLAIM DEED by IRENE J SERIO  
Date 8/30/2007 Time 3:09 PM Page: 1 of 2  
Paula Robinson, Flathead County Montana

0325250  
APPROVED 8/30/07

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my  
official seal the day and year hereinabove first written.



(NOTARIAL SEAL)

Pat Miller  
Notary Public for the State of Montana  
Residing at Bellevue Montana  
My Commission expires: 7/26/2010



Document Number: 200700026620  
Page: 2

1993 Warranty Deed

19930410306

WARRANTY DEED

FOR VALUE RECEIVED, CHARLES LEONARD MAYCUMBER, of 2217 Highway 2 East, Kalispell, Montana, the Grantor, does hereby grant, bargain, sell and convey unto ANTHONY J. SERIO AND IRENE J. SERIO, husband and wife, as joint tenants with right of survivorship, of P.O. Box 2322, Kalispell, Montana, the Grantees, the following described premises in Flathead County, Montana, to wit:

A tract of land located in the SE1/4 of Section 16, Township 28 North, Range 22 West, M.P.M., Flathead County, Montana, more particularly described on Exhibit "A" attached hereto and incorporated herein by reference. SUBJECT TO reservations and exceptions of record, rights of way or access exceptions, easements, and any building and use restrictions, including but not limited to those set forth in preliminary title commitment no. M1-57708 issued by Security Title Company, of Kalispell, Montana.

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said Grantees, and to the survivor's heirs and assigns, forever. And the said Grantor does hereby covenant to and with the said Grantees, that he is the owner in fee simple of said premises; that it is free from all encumbrances, EXCEPT 1992 taxes, covenants, conditions, restrictions, reservations, easements, rights and rights of way apparent or of record, and all encumbrances of record to date of this transfer, including but not limited to those encumbrances listed on the Title Report Schedules, attached hereto as Exhibit "B", and that he will warrant and defend the same from all lawful claims whatsoever.

DATED this 14 day of April, 1993.

Charles Leonard Maycumber  
Charles Leonard Maycumber

STATE OF MONTANA )  
                          : ss.  
County of Flathead )

On this 14<sup>th</sup> day of April, 1993, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Charles Leonard Maycumber, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereto set my hand and affixed by Notarial Seal, the day and year in this certificate last above written.



Coni M. Ribben  
Notary Public for the State of Montana  
Residing at Kalispell, MT  
My Commission Expires 5-15-95

EXHIBIT "A"

03124/0300

## COMMITMENT FOR TITLE INSURANCE

## SCHEDULE C

File No.: MI-87708

The land referred to in this Commitment is described as follows:

A tract of land located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 16, Township 28 North, Range 22 West, M.P.M., Flathead County, Montana, described as follows:

Commencing at the East quarter corner of said Section 16; thence North 01°21'00" East along the East line of said Section 16 a distance of 673.47 feet to the Point of Beginning of the tract being described; thence North 89°38'00" West a distance of 16.32 feet to a point in the centerline of a 60.00 foot declared County Road; thence the following courses along the centerline of said County Road North 05°21'52" East a distance of 140.16 feet to the beginning of a 198.50 foot radius curve; thence along said curve, a distance of 139.89 feet through a central angle of 40°22'40" to the left; thence North 35°00'48" West a distance of 121.28 feet to a point; thence North 48°06'55" West a distance of 254.47 feet to the beginning of a 182.00 radius curve; thence along said curve a distance of 11.35 feet through a central angle of 03°34'19" to the right; thence leaving the centerline of said County Road North 01°21'00" East a distance of 129.33 feet to a point; thence South 89°04'00" East a distance of 318.37 feet to the Northeast corner of said SE $\frac{1}{4}$ NE $\frac{1}{4}$ ; thence South 01°21'00" West along the East line of said SE $\frac{1}{4}$ NE $\frac{1}{4}$  a distance of 673.47 feet to the Point of Beginning.

EXCEPTING THEREFROM Public Roads and Rights of Way.

Tract 1 on Certificate of Survey No. 5467.

EXCEPTING liability as to all minerals in or under said land including but not limited to metals, oil, gas, coal, stone, and mineral rights, mining rights and easement rights or other relating thereto, whether expressed or implied.

SCHEDULE C  
ALTA Commitment-1998  
Recorder Form No. 11724

STATE OF MONTANA,  
County of Flathead }

ss

Recorded at the request of P. Springer  
this 4 day of May 1993 at 10:30 o'clock AM and recorded in  
the records of Flathead County, State of Montana.

Fee \$ 12- Pd.

RECEPTION NO. 93124 10300

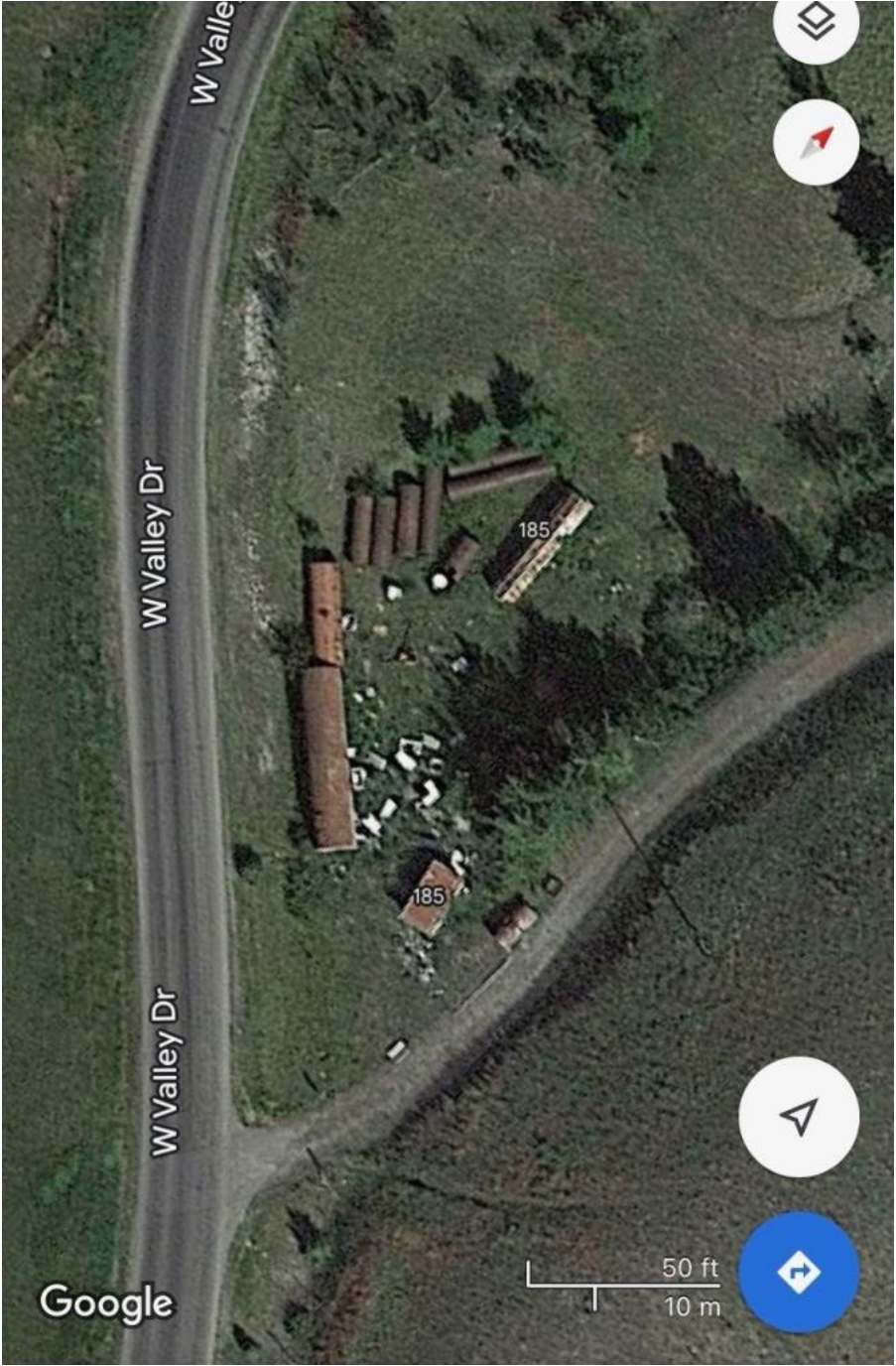
RETURN TO Patrick M Springer  
PO Box 1112  
Kal. Mt. 59903-1112

Susan H. Kavanagh  
Flathead County Clerk and Recorder  
W. K. Kavanagh  
Deputy

## **Exhibit B**



Overhead view of the tanks





**View of the tanks from West Valley Drive**





**Close up view of the hydrocarbon product that has been released or discharged from a tank into the right a way drainage pathway along West Valley Drive (Photo taken on August 2, 2022)**

