

STATE OF MONTANA
DEPARTMENT OF COMMERCE
HARD ROCK MINING IMPACT BOARD MEETING
October 30, 2019, 3:00 pm – Helena, Montana
301 South Park Avenue, Room 228

Keith Kelly, Helena – Financial Institution
John Rogers, Clancy – Public at large
Mark Thompson, Butte – Mining Industry

Donna von Nieda, Nye – School District
Jane Weber, Great Falls – County Commissioner

Notice of Public Meeting

The Board will be meeting at 3:00 pm, Wednesday, October 30, 2019 at the Montana Department of Commerce (301 South Park, Room 228) Helena, MT. For more information or to request reasonable accommodations for a disability, please contact Community Development Division staff at (406) 841-2770 or at DOCCDD@mt.gov before the meeting. Conference call information for this meeting is also available on the Hard Rock Mining Impact Board website (<http://comdev.mt.gov/Boards/HRMI/Meetings>).

Call in information: 1.877.273.4202

Access code: 437383983

Agenda:

1. Call to order
2. Roll call
3. Opportunity for public comment on items not on the agenda, but within the Board's jurisdiction
4. Sandfire Resources America, Black Butte Copper Project Draft Financial Guaranty
 - *Staff updates*
 - *Opportunity for public comment*
 - *Board discussion*
 - *Board action (as applicable)*
5. Opportunity for public comment
6. Adjournment

HARD-ROCK MINING IMPACT BOARD

October 11, 2019

Meagher County Commissioners
15 W. Main Street
White Sulphur Springs, MT 59645

City Council of White Sulphur Springs
105 West Hampton
White Sulphur Springs, MT 59645

White Sulphur Springs School District #8
405 S. Central Ave.
White Sulphur Springs, MT 59645

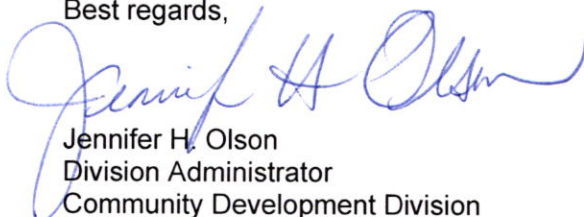
Tintina Montana
c/o Nancy Schlepp
17 E Main Street
White Sulphur Springs, MT 59645

**NOTICE OF PUBLIC COMMENT ON BLACK BUTTE COPPER PROJECT
DRAFT FINANCIAL GUARANTY**

This letter serves as an informal notice that the Hard Rock Mining Impact Board is in receipt of the draft financial guaranty for the Black Butte Copper Project. The Hard Rock Mining Impact Board has recommended modifications to the draft financial guaranty. During the Board's October 10, 2019 meeting the Board requested that a draft financial guaranty with recommended modifications be opened for public comment and sent to the affected local governments prior to their approval. This document can be found on the Hard Rock Mining Impact Board website: <https://comdev.mt.gov/Boards/HRMI>. The public comment period is open from October 11, 2019 to October 25, 2019 at 5:00 pm. Comments on the draft financial guaranty should be sent in writing by email or by mail:

Hard Rock Mining Impact Board
Department of Commerce, Community Development Division
PO Box 200523
301 S Park Ave
Helena, MT 59620-0523
DOCCDD@mt.gov

Best regards,



Jennifer H. Olson
Division Administrator
Community Development Division
Montana Department of Commerce



COMMUNITY DEVELOPMENT DIVISION



Hard Rock Mining Impact Board (HRMI)

NOTICE OF PUBLIC COMMENT ON BLACK BUTTE COPPER PROJECT DRAFT FINANCIAL GUARANTY

The Hard Rock Mining Impact Board is in receipt of the draft financial guaranty for the Black Butte Copper Project. The Hard Rock Mining Impact Board has recommended modifications to the draft financial guaranty. During the Board's October 10, 2019 meeting the Board requested that a draft financial guaranty with recommended modifications be opened for public comment and sent to the affected local governments prior to their approval. The public comment period is open from October 11, 2019 to October 25, 2019 at 5:00 pm.

Draft Black Butte Copper Project Financial Guaranty ([PDF](#))

Comments on the draft financial guaranty should be sent in writing by email or by mail:

Hard Rock Mining Impact Board
Department of Commerce, Community Development Division
PO Box 200523
301 S Park Ave
Helena, MT 59620-0523
DOCCDD@mt.gov

The Hard Rock Mining Impact (HRMI) Board administers the **Hard Rock Mining Impact Act** (HRMIA) and the companion Property Tax Base Sharing (PTBS) Act. The HRMI Board provides technical assistance with metal mines license tax distributions. The Board also can adjudicate disputes between affected entities.

The purpose of the HRMIA and PTBS Acts are to mitigate local government services, facility and fiscal impacts from new large-scale hard rock mineral developments in the State. Mineral developers and affected local governments prepare and implement impact plans intended to ensure that local government facilities and services are available when and where they are needed as a result of new mineral developments, without imposing additional costs on the existing local taxpayer.

Developers pay new capital and net operating costs through prepaid property taxes with a subsequent tax credit, grant, or facility impact bond. Under specified circumstances, affected entities may petition the Board to amend approved impact plans.

Responsibility and Action

ESCROW AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____ 2019, between Tintina Montana Inc., of 17 E. Main St., White Sulphur Springs, MT 59645 , hereafter referred to as (Developer); and Helena Abstract and Title Company of 314 Fuller Ave., (PO Box 853), Helena, MT 59601 (59624) hereafter referred to as (the Escrow Agent); ~~and~~ Meagher County, Montana at political subdivision, County Courthouse-, White Sulphur Springs, Montana 59645; ~~and~~ the Montana Hard-Rock Mining Impact Board, an agency of the State of Montana, Helena, Montana, hereafter referred to as "the Board-," the City of White Sulphur Springs, 105 West Hampton, White Sulphur Springs, MT 59645; and White Sulphur Springs School District #8, 405 S. Central Ave. White Sulphur Springs, MT 59645.

WITNESSETH:

WHEREAS, the Developer is developing mineral properties in Meagher County, Montana, and desires to establish an escrow account with the Escrow Agent to comply with the terms and conditions of the Hard-Rock Mining Impact Act, Sections 90-6-301, et seq., MCA, hereafter referred to as "Impact Act;"

WHEREAS, the Escrow Agent agrees to the establishment of the escrow account and to the holding and disbursement of such funds in accordance with the terms of this agreement; and

WHEREAS, the Board has accepted this escrow agreement in satisfaction of the requirement of Section 90-6-309(3), MCA, that a large-scale mineral developer guarantee that property tax prepayments called for by ~~the an~~ approved hard-rock mining impact plan, Black Butte Copper Project, White Sulphur Springs, Montana including any approved amendment to the impact plan, hereafter referred to as "Impact Plan," will be paid as needed for expenditures created by the impacts of the mineral development.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Establishment of Account. The Developer will deposit in an escrow account with the Escrow Agent the sum of Four Hundred and ~~Thirty-Seven~~Thirty-Seven Thousand and no 1/100's Dollars (\$437,000.00), as the initial deposit of impact funds. The fund balance will be reviewed on a quarterly basis, or more frequently if necessary, and the Developer will replenish the fund as required to meet its commitments under the Impact Act. The escrow account will hold funds pledged as tax prepayments (and other commitments for donations and grants) according to the Impact Plan.
2. Duration of the Escrow Account. The initial funds will be deposited by the Developer in the escrow account within 30 business days of the date the Developer receives its operating permit from the Montana Department of Environmental Quality. The parties estimate that the initial funding date will be approximately June 17, November 2019. The escrow account will continue to exist until the impact period terminates or until the Developer's tax prepayment commitments specified in the ~~impact~~Impact pPlan have been met, whichever is later, as certified by the Board. The Developer will notify the Board when it believes the impact period has terminated or its tax prepayment commitments as specified in the Impact Plan have been met. Before the end of the impact period and before approving the termination of the escrow account, the Board will notify Developer

Commented [BA1]: Does the developer want to update this date?

Commented [RA2]: Per the Board meeting on 10/10/19 and public comment by Ms. Schlepp of Tintina Montana, Inc. recommend changing the date to November 2019.

Commented [BA3]: The Department recommends adding this provision because it would be helpful (to the Board and staff) if the developer would notify the board when the impacts have been satisfied so that this doesn't fall thru the cracks in the next 4+ years.

and the affected jurisdictions that the account is to be terminated and that within 30 days the affected jurisdictions must notify the Board of any pending claims or anticipated requests for tax prepayments from that account or forfeit the right to receive payment from the account.

Commented [BA4]: Heads up: board responsibility

3. Fees Paid to the Escrow Agent. The Developer agrees to pay the Escrow Agent the sum of Four Hundred and Fifty and no/100's Dollars (\$450.00) as an initial setup charge for the escrow account, and the sum of Fifteen and no/100's Dollars (\$15.00) for each disbursement made from the escrow account. The Escrow Agent will bill the Developer for its services and the Developer will pay the Escrow Agent within 30 days of Invoice.

4. Interest Bearing Account. The escrow account will not bear interest. Funds will be deposited in The Escrow Agent's ~~Non-interest-bearing~~interest-bearing account at Valley Bank of Helena, a Division of Glacier Bank. If the Developer at some point in the future requests an interest bearing account the Developer must provide all information required under Federal anti-money laundering regulations. Additional fees and cost ~~to set up~~ associated with setting up an ~~!~~ interest bearing trust account would be borne by the Developer. All interest earned thereby will be the property of the Developer and may be withdrawn by the Developer at any time. Otherwise, the Escrow Agent will not withhold monies or make payments from the account except as authorized herein for payments to the affected jurisdictions identified in paragraph 5 below made in accordance with the Impact Plan or as directed by the Board in resolution of disputes, or to the Developer as directed by the Board at such time as the Board determines that the Developer is released from further obligations under this agreement.

5. Affected Jurisdictions. The following governmental and public agencies are eligible to receive tax prepayments for potential prepayments from this account in accordance with the Impact Plan: ~~(List here the local government units listed in the impact plan. Example below.)~~

- (a) Meagher County, Montana
- (b) City of White Sulphur Springs, Montana
- (c) ~~Meagher county~~White Sulphur Springs -School District #8

6. Maximum Allowable Payments. Each of the affected jurisdictions above is entitled to receive impact assistance payments up to the maximum amount shown below or a maximum amount authorized by an approved amendment to the Impact Plan:

~~HARD ROCK MINING IMPACT PLAN, BLACK BUTTE COPPER PROJECT, WHITE SULPHUR SPRINGS, MONTANA~~ Meagher County – \$338,700
City of White Sulphur Springs – \$98,300

Commented [BA5]: ARM 8.104.214(1)(a) requires "...the specific purpose of each prepayment must be specified with sufficient clarity that it can be determined that the guarantee corresponds with and is sufficient to meet all prepayment commitments in the approved impact plan." The specific purpose, amounts, and corresponding jurisdictions should be stated as opposed to just the impact plan.

5.7. Procedures of Distribution of Impact Plan Payment. The following procedures will be followed by the parties for the application and distribution of payments from the escrow account:

ARM 8.104.214(1)© requires "the funds contained in the guarantee mechanism must be protected from all uses not specified in or provided for by an approved impact plan or an approved amendment to the plan."

(a) The affected jurisdiction will submit a written request to the Developer with a copy to the Escrow Agent and the Board, providing the information specified on the "Request for Payment" (sample attached to this escrow agreement as exhibit A) in writing delivered by US Mail, Certified with Return receipt.

Commented [BA6]: Add this form to the agreement. There is a sample form found in Appendix XI-A in the Guide.

(b) For each ~~request for an impact payment for which a maximum amount is specified above~~ Request for Payment, the Escrow Agent shall make disbursements directly to the County Treasurer, Meagher County Courthouse, White Sulphur Springs, Montana, to be deposited in the impact fund of the affected jurisdiction. ~~All payments will be made by wire transfer, certified payment, or electronic funds transfer.~~ These payments will be made no sooner than ~~40-20~~ days but within ~~20-30~~ days of the Escrow Agent's receipt of the funding request, except as provided below.

Commented [BA7]: The Department recommends using electronic funds transfers. Below there is a provision about mailing checks and it may be easiest to set this up with only one method of disbursement as long as the local govts and the bank agree.

(c) Within 20 days of its receipt of a ~~fund~~ Request for Payment, the Developer may object in writing to the Escrow Agent, the Board, and the affected jurisdiction, questioning all or a portion of the request. If an objection is made, the Escrow Agent will not disburse that portion of the requested payment to which an objection has been made until the Escrow Agent has been notified in writing by the Board that the dispute has been resolved by the parties or that a final decision has been made by the Board. The Escrow Agent will make payment in resolution of the dispute as is directed by the Board.

Commented [BA8R7]: Per the Board meeting on 10/10/19 and the public comment by Mr. Gowen of Helena Abstract and Title Company, recommend changing the language to as follows: All payment will be made by wire transfer, certified payment or electronic transfer.

Commented [BA9]: Heads up: board responsibility

(d) In the event that an affected jurisdiction submits a ~~request~~ Request for payment Payment for a purpose or an amount that appears not to be ~~authorizes~~ authorized by the Impact Plan, the Developer or the Board may object in writing to all affected parties within 20 days of receipt of notice of the payment request. ~~It is understood that this section does not create an affirmative duty on the Board to monitor and review each Request for Payment for compliance with the Impact Plan.~~ Upon receipt of such an objection, the Escrow Agent will withhold the requested payment until it is notified in writing by the Board that the dispute has been resolved by the parties or that a final decision has been made by the Board. ~~The Board will authorize only such impact payments as are specified in or provided for by the Impact plan, or an approved amendment to the impact plan. If the Developer fails to comply with the Impact Plan, the Board may authorize the Escrow Agent to make a payment to an affected jurisdiction as provided in the Impact Plan.~~

Commented [BA10]: Heads up: board responsibility

(e) When any payment is made by the Escrow Agent to an affected jurisdiction, the Escrow Agent will notify the Developer and the Board of the payment, providing the information on the payment disbursement form in writing delivered by US Mail, Certified with Return Receipt (sample attached to this escrow agreement as exhibit B).

Commented [BA11]: Recommend using the payment form found in Appendix XI-A of the Guide.

(f) It is understood and agreed that all ~~non~~ payments, notices, and other items will be mailed by ordinary ~~first class~~ first-class mail or by federal wire transfer. The Escrow Agent is not responsible for any loss or damage caused by the U.S. Postal Service. If a check issued by ~~HA&TC~~ the Escrow Agent is lost or delayed in the mail, there is up to a ~~7 day~~ 7-day waiting period from the date of issuance of the check and the date of re-issue and stop payment on the original check.

8. Notices. Any notices required to be given pursuant to the terms of this agreement will be delivered personally or mailed by first class mail, postage prepaid, to the parties at the

following addresses:

(a) Developer:

Tintina Montana, Inc.
17 E. Main St.
White Sulphur Springs, MT 59645

(b) Escrow Agent:

~~Representative~~ Helena Abstract and Title Company
Attn: William C. Gowen, V.P.
PO Box 853
Helena, MT 59624-0853

(c) Meagher County:

~~Meagher County~~ Commission
County Courthouse
White Sulphur Springs, Montana 59645

(d) Board:

Montana Department of Commerce – Community Development Division
Hard-Rock Mining Impact Board
Administrative Officer
301 South Park Avenue, P. O. Box 200523
Helena, MT 59620

(e) City of White Sulphur Springs:

City Council of White Sulphur Springs
105 West Hampton
White Sulphur Springs, MT 59645

(f) White Sulphur Springs School District #8:

405 S. Central Ave.
White Sulphur Springs, MT 59645

6-9. The Escrow Agent's Duties. In performing its duties under this escrow agreement, the Escrow Agent's liabilities and responsibilities will be limited and defined as follows:

- (a) The Escrow Agent need not inquire into the authorization, execution, genuineness, accuracy, validity, legality or binding effect of any notices delivered to it pursuant to this escrow agreement, so long as such document appears on its face to meet any requirements set forth in this escrow agreement, and purports to be signed by a proper person identified in the appended list (exhibit C) of authorized signatures.
- (b) The Escrow Agent may employ attorneys for the reasonable protection of this escrow agreement and itself. Should the Escrow Agent be made a defendant in any suit by any party to this escrow agreement, or any other party, the cost of such

Commented [BA12]: This list should be added.

suit, including attorney's fees, may be received from the Developer.

- (c) The Escrow Agent shall not be obligated to take any action which, in the opinion of its counsel, may be unlawful or unduly expose the Escrow Agent to the risk of liability, and the Escrow Agent shall otherwise be entitled to rely on the advice of its counsel with respect to legal matters.

7.10. Amendment or Termination. This agreement may be amended or terminated only upon the written consent of ~~the three~~ all parties hereto and as provided in paragraph 2. The Developer hereby acknowledges that if, for any reason, this agreement fails to adequately guarantee ~~adequately~~ the tax prepayments required of the Developer under the Impact plan or its approved amendment, the Developer remains responsible for making these payments under Section 90-6-307, MCA.

8.11. Certification: Under penalties of perjury, the Developer does hereby certify that: 1) The Federal Tax Identification number (FEIN) provided by the Developer to Escrow Agent is the correct Taxpayer Identification Number(s), and 2) It not subject to backup withholding because: (a) It is exempt from backup withholding, or (b) It have not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (c): the IRS has notified it is no longer subject to backup withholding.;

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

TINTINA MONTANA INC., DEVELOPER

By: _____

By: _____ as _____

Title: _____

HELENA ABSTRACT AND TITLE COMPANY, ESCROW AGENT

By: _____

William C. Gowen, Vice President

MEAGHER COUNTY (MONTANA) COMMISSION

By: _____

Commented [OJ13]: The Department is recommending that all the affected local governments sign.

By: _____, Commission Chair ~~man~~

CITY OF WHITE SULPHUR SPRINGS (MONTANA)

By: _____

Title: _____

WHITE SULPHUR SPRINGS SCHOOL DISTRICT #8 (MONTANA)

By: _____

Title: _____

HARD-ROCK MINING IMPACT BOARD

By: ~~By: _____~~
Donna Von Nieda, Board Chair ~~man~~