

IN THE MATTER OF:	)	<b>SETTLEMENT AGREEMENT</b>
	)	<b>FOR RECOVERY OF PAST</b>
MCLAREN TAILINGS SITE	)	<b>RESPONSE COSTS</b>
Cook City, Park County, Montana,	)	
SSID #08-93	)	U.S. EPA, Region 8
	)	CERCLA Docket No. <b>CERCLA-08-2008-0002</b>
CAMJAC, INC.	)	
SETTLING PARTY.	)	PROCEEDING UNDER SECTION
	)	122(h) of CERCLA
	)	42 U.S.C. § 9622(h)(1)

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## **I. JURISDICTION**

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and further delegated.

2. This Settlement Agreement is made and entered into by EPA and Camjac, Inc. (“Settling Party”). Settling Party consents to and will not contest EPA’s authority to enter into this Settlement Agreement or to implement or enforce its terms.

## **II. BACKGROUND**

3. This Settlement Agreement concerns the McLaren Tailings Site (“Site”), located in Cooke City, Park County, Montana. EPA alleges that the Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

5. In performing response activities, including investigating the release or threatened release of hazardous substances in connection with the Site, EPA incurred response costs at or in connection with the Site.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred or to be incurred at or in

connection with the Site.

7. EPA and Settling Party desire to resolve Settling Party's alleged civil liability for Past Response Costs without litigation and without the admission or adjudication of any issue of fact or law.

8. Settling Party contends that it has a limited ability to pay the total unreimbursed response costs incurred in connection with the Site. Settling Party submitted Financial Information, as identified in Appendix A hereto, to EPA to support this contention. EPA has reviewed this information and, in reliance on the truth and completeness of that information and Settling Party's representations, EPA has entered into this Settlement Agreement with Settling Party based upon Settling Party's limited ability to pay the total unreimbursed response costs incurred by EPA. Settling Party, by signing this Settlement Agreement, certifies that to the best of its knowledge, information, and belief, the financial data and information provided to EPA is true, accurate, and complete. This Settlement Agreement, however, does not constitute an adjudication of Settling Party's ability to pay any amount.

9. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

### **III. PARTIES BOUND**

10. This Settlement Agreement shall be binding upon EPA and Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of a Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

### **IV. DEFINITIONS**

11. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Settlement Agreement" shall mean this Settlement Agreement and any appendix. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "Effective Date" shall mean the effective date of this Settlement Agreement as

provided by Section XVII.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "Financial Information" shall mean those financial documents identified in Appendix A.

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

i. "Parties" shall mean EPA and Settling Party.

j. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through the Effective Date of this Settlement Agreement, plus accrued Interest on all such costs through such date.

k. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

l. "Settling Party" shall mean Camjac, Inc.

m. "Site" shall mean the McLaren Tailings Site, which encompasses approximately 33 acres, at or near Cooke City, Park County, Montana, and is described in

Appendix B.

n. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

**V. PAYMENT OF RESPONSE COSTS**

12. Within 30 days of the Effective Date of this Settlement Agreement, Settling Party shall pay to EPA Five Thousand Dollars (\$5000.00).

13. Payment(s) shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" or by Electronic Funds Transfer ("EFT"). Payment(s) shall be accompanied by a statement identifying the name and address of the party making payment, the Site name ( McLaren Tailings Site), Site/Spill ID Number 08-93 ("SSID #08- 93"), and the EPA docket number for this action. Payment shall be sent to:

Regular Mail: U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

Overnight Mail: U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Wire transfers shall be sent to the Federal Reserve Bank in New York, New York, with the following information:

ABA=021030004  
Account=68010727  
SWIFT address=FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

14. At the time of payment, Settling Party shall send notice that such payment has been made to the following individuals:

Martha Walker 8TMS-F  
Financial Management Officer  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

Carol Pokorny 8ENF-RC  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

15. The total amount to be paid pursuant to Paragraph 12 shall be deposited in the EPA Hazardous Substance Superfund.

#### **VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT**

16. Interest on Late Payments. If Settling Party fails to make payment required by Paragraph 12 by the required due date, Interest shall accrue on the unpaid balance from the effective date of this Settlement Agreement through the date of payment.

17. Stipulated Penalty.

a. If any amount due to EPA under Paragraph 12 is not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 16, \$250 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "EPA Hazardous Substance

Superfund.” The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name (McLaren Tailings Site), SSID #08-93, and the EPA Docket Number for this action. Payment shall be sent to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

c. At the time of each payment, Settling Party shall also send notice that payment has been made to EPA in accordance with instructions set forth in Section V.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

18. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party’s failure to comply with the requirements of this Settlement Agreement, if Settling Party fails or refuses to comply with the requirements of this Settlement Agreement, Settling Party shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

19. Notwithstanding any other provision of this Section, EPA may, in its unreviewable



discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Settling Party from payment as required by Section V or from performance of any other requirements of this Settlement Agreement.

#### **VII. COVENANT NOT TO SUE BY EPA**

20. Covenant Not to Sue Settling Party by EPA. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section V (Payment of Response Costs) and any amounts due under Section VI (Failure to Comply with Settlement Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of their obligations under this Settlement Agreement. This covenant not to sue extends only to Settling Party and does not extend to any other person.

#### **VIII. RESERVATIONS OF RIGHTS BY EPA**

21. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 20. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Setting Party with respect to all other matters, including but not limited to:

a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;

b. liability for injunctive relief or administrative order enforcement under Section

106 of CERCLA, 42 U.S.C. § 9606;

c. criminal liability; and

d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

22. Nothing in this Settlement Agreement is intended to be, nor shall it be construed as, a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

**IX. COVENANT NOT TO SUE BY SETTLING PARTY**

23. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Montana, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

24. Nothing in this Settlement Agreement shall be deemed to constitute approval or

preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

25. Settling Party agrees not to assert any CERCLA claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

#### **X. EFFECT OF SETTLEMENT/CONTRIBUTION**

26. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement. Except as provided in Paragraph 25, EPA and Settling Party each expressly reserves any and all rights, defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

27. EPA and Settling Party agree that the actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in Section II of this Settlement Agreement.

28. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Party is entitled, as of the Effective Date of this Settlement Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are Past Response Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Settling Party has, as of the Effective Date, resolved its liability to the United States for Past Response Costs.

29. Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

30. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent

proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section VII.

#### **XI. RETENTION OF RECORDS**

31. Until 7 years after the effective date of this Settlement Agreement, Settling Party shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

32. After the conclusion of the 7-year document retention period in the preceding paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such records and, upon request by EPA, Settling Party shall deliver any such records to EPA. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the

EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

## **XII. CERTIFICATION**

33. By signing this Settlement Agreement, Settling Party certifies that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents or information, and has fully and accurately disclosed to EPA, all documents or information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage, or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any documents or information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site;

c. fully complied with any and all EPA requests for documents or information regarding the Site and Settling Party's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e); and

d. submitted to EPA Financial Information that is true and accurate and which sets forth its financial circumstances at the time of the submission, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Party executes this Settlement Agreement.

### **XIII. NOTICES AND SUBMISSIONS**

34. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Party.

As to Department of Justice:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
Re: McLaren Tailings Site, 90-11-3-1644/1

As to U.S. Environmental Protection Agency:

Richard H. Baird, Esq. 8ENF-L  
U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, CO 80202-1129

Steve Way 8EPR-ER  
U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, CO 80202-1129

As to Settling Defendant Camjac, Inc.:

L. D. Nybo, Esq.  
Conklin, Nybo, LeVeque & Lanning, P.C.  
410 Central Avenue, 309  
P.O. Box 2049  
Great Falls, MT 59403-2049

#### **XIV. INTEGRATION/APPENDICES**

35. This Settlement Agreement and its appendices constitute the final, complete and exclusive Settlement Agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement: "Appendix A" is a list of the Financial Information submitted to EPA by Camjac, Inc.; and "Appendix B" is the map of the Site.

#### **XV. PUBLIC COMMENT**

36. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

#### **XVI. ATTORNEY GENERAL APPROVAL**

37. The Attorney General or his designee has approved the settlement embodied in this Settlement Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

#### **XVII. EFFECTIVE DATE**

38. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 36 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.



### **XVIII. PROPERTY TRANSFER**

39. Within 10 days after expiration of the public comment period, Settling Party shall contact EPA regarding its review of any public comments received. Unless EPA notifies Settling Party that there is an actual or potential basis for it to withdraw its consent to the Settlement Agreement, Settling Party Camjac, Inc., shall, within 5 days of its contact with EPA, which period may be extended by EPA for good cause, transfer the property that it owns which is part of the Site, as described in Appendix B, to the State of Montana for appropriate consideration agreed upon by Camjac, Inc., and the State. This Settlement Agreement shall become effective only if the transfer of the property occurs in accordance with this Paragraph. As provided in Paragraph 20, EPA's covenant not to sue is conditioned upon Settling Party's satisfactory performance with the obligations under this Settlement Agreement.

IT IS SO AGREED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

By: Sharon L. Kercher  
SHARON L. KERCHER, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Michael T. Risner  
MICHAEL T. RISNER, Director  
Legal Enforcement Program  
Office of Enforcement Compliance  
and Environmental Justice

December 5, 2007  
Date

12/5/07  
Date

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter relating to the McLaren Tailings Site, located in Cooke City, Park County, Montana :

FOR SETTLING PARTY CAMJAC, INC. CAMJAC, INC.  
by Richard E Peter, President

By:

Richard E Peter, President  
Name/Title

OCT. 4, 2007  
Date

## **APPENDIX A**

### LIST OF FINANCIAL DOCUMENTS SUBMITTED BY CAMJAC, INC. WHICH WERE REVIEWED BY EPA

Camjac, Inc.'s federal income tax returns (Form 1120S) for the years 2001, 2002, 2003, 2004, 2005, and 2006, including schedules and attachments

Unaudited financial statements including income statement and balance sheets for the years 2001 through 2005

PRP correspondence dated April 24, 2006, including a status of corporate activities and a notarized certificate signed by Dick Peterson, President of Camjac, Inc.

## APPENDIX B

The McLaren Tailings Site is described as follows:

Patented mining claims located in the New World (unorganized) Mining District, Township Nine (9) South, Range Fourteen (14) East, M.P.M., Park County, Montana, known as:

IDABELLE Lode Mining Claim, M.S. No. 10815A;

IDABELLE Mill Site Claim, M.S. No. 10815B;

COPPER GLANCE Mill Site Claim, and COPPER GLANCE Mill Site No. 2 Claim M.S. No. 10814;

That portion of the HORSE SHOE and GREELEY Placer claim, M.S. No. 4072, located south of the R.O.W. Hwy 212;

ORE CACHE Mill Site Claim, M.S. No. 53B (also known as Blocks One (1), Two (2), and Three (3) of Vilas and Henry Addition to Cooke City, Montana); and the following mineral surveys located in New World (unorganized) Mining District, Township 9 South, Range 14 East M.P.M., Park County, Montana:

GRUBSTAKE M.S. No. 4155; FAIRVIEW M.S. No. 55B; and Blocks One (1) Two (2) and Three (3) of Vilas and Henry Addition to the Town of Cooke City, Park County, Montana.