8 7 2 6 1 7 9
Cheri Brunvand-Summit County Recorder 11/1/2007 10:49 DF:

This property is subject to an Environmental Covenant held by the Colorado Department of Public Health and Environment pursuant to section 25-15-321, C.R.S.

ENVIRONMENTAL COVENANT

THE TOWN OF BRECKENRIDGE, a Colorado Municipal Corporation, and the BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO (collectively, "OWNER") grant an Environmental Covenant ("Covenant") effective the 20th day of September, 2005, to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment (the "Department") pursuant to § 25-15-321 of the Colorado Hazardous Waste Management Act, §§ 25-15-101, *et seq*. The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

WHEREAS, OWNER is the owner of certain property covering approximately 4.7 acres upon which response actions will be taken in the vicinity of the Wellington Oro Mine and Seep FG-6C, in Summit County, Colorado. The location of such property is generally depicted on the GIS map attached hereto and incorporated herein as Attachment A. The property shall hereinafter be referred to as the "Wellington Oro Property" or the "Property";

WHEREAS, pursuant to the Settlement Agreement, Covenants Not To Sue and Consent Decree entered into between the United States, the State and The B&B Mines, Inc. *et al.*, Civil Action No. 05-CV-992 (D. Colo.) (the "Consent Decree"), the Wellington Oro Property is the subject of certain response actions pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.* ("CERCLA") as set forth in the Consent Decree and the Statement of Work ("SOW") attached to the Consent Decree, and additional response actions described in the Joint EPA and USDA-Forest Service Action Memorandum concerning the Time-Critical Removal Action at the Shock Hill/Claim Jumper Mine Site ("Action Memorandum") and the Memorandum of Understanding among the U.S. Environmental Protection Agency, USDA-Forest Service Region 2, Town of Breckenridge and Summit County Concerning the Shock Hill/Claim Jumper Mine Site and the Wellington Oro/French Gulch Site Joint Repository Agreement ("Joint Repository Agreement");

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by providing for maintenance, monitoring, or operation in accordance with the Consent Decree, the SOW, the Action Memorandum and the Joint Repository Agreement, and of restricting future uses of the Wellington Oro Property as set forth herein for as long as any residual contamination remains hazardous, and by assuring that the Wellington Oro Property will be used as "public open space" (as hereafter defined) in perpetuity; and

WHEREAS, OWNER desires to subject the Wellington Oro Property to certain covenants and restrictions as provided in Article 15 of Title 25, Colorado Revised Statutes, which covenants and restrictions shall burden the Property and bind OWNER and all parties having any right, title or interest in the Wellington Oro Property, or any part thereof, their heirs,

successors and assigns, and any persons using the land, as described herein, for the benefit of the Department.

NOW, THEREFORE, OWNER hereby grants this Environmental Covenant to the Department, and declares that the Wellington Oro Property as described in Attachment A shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in Sections I, II and III below, which shall run with the Wellington Oro Property in perpetuity and be binding on OWNER and all parties having any right, title or interest in the Wellington Oro Property, or any part thereof, their heirs, successors and assigns, as described herein. As used in this Environmental Covenant, the term OWNER means the record owner of the Wellington Oro Property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Wellington Oro Property or placement of encumbrances on the Wellington Oro Property, other than by the exercise of eminent domain.

I. ENVIRONMENTAL USE RESTRICTIONS

A. Prohibition on Residential Use. OWNER shall not allow, permit or construct any residential building, including but not limited to, any single family or multi-family residential dwelling or living unit, whether permanent or temporary, at the Wellington Oro Property, and OWNER shall not permit any overnight camping to occur at the Property.

B. Prohibition on Agricultural Use. OWNER shall not allow or permit any agricultural use of the Wellington Oro Property, including but not limited to, the cultivation or storage of any crop or the grazing, feeding or keeping of any animal for agricultural or commercial purposes.

C. Restriction on Excavation. OWNER shall not make or allow any excavation on or under the Property, except as provided for under the approved Consent Decree and the SOW which are attached to the original Environmental Covenant and incorporated herein by reference, and the Joint Repository Agreement and the Action Memorandum attached hereto and incorporated herein by reference, and any document generated thereunder and as may be necessary to implement, operate or maintain any of the actions required under the Consent Decree, the SOW, the Action Memorandum and the Joint Repository Agreement, or as provided in the attached Materials Handling Plan, attached hereto and incorporated herein by reference as if set forth in full.

D. Prohibition on Use of Water. OWNER shall make no use of either groundwater under or surface water on the Property, except as provided for under the approved Consent Decree, the SOW, the Action Memorandum and the Joint Repository Agreement, or any documents generated thereunder and as may be necessary to implement, operate or maintain any of the actions required under the Consent Decree, the SOW, the Action Memorandum and the Joint Repository Agreement, or as provided in the attached Materials Handling Plan. For example, use of water may be necessary for revegetation, planting or restoration efforts under the Consent Decree, the SOW, the Action Memorandum or the Joint Repository Agreement. OWNER shall not allow such waters to be developed for any other purpose.

E. Prohibition on Well Construction. OWNER shall not dig, bore or drill any well for the production of water or from which water is produced on the Property, except as provided for under the approved Consent Decree or SOW and as may be necessary to implement or maintain any of the actions specified under the Consent Decree, or as provided in the attached Materials Handling Plan.

F. Protection of the Integrity and Benefits of Response Actions Under Consent Decree and Action Memorandum. OWNER shall not use the Wellington Oro Property in any way that interferes with the operation and/or maintenance of the response actions on the Property under the Consent Decree, the SOW, the Action Memorandum or the Joint Repository Agreement, including but not limited to, the water treatment system for the FG-6C seep, any equipment or infrastructure constructed or used for the water treatment system and the mine waste repository.

1. Hiking trails other than the existing roads on the Wellington Oro Property will be routed away from the water treatment system for the FG-6C seep.

2. OWNER shall ensure that appropriate and effective signage is erected and maintained at the Property that warns recreational users of the Property to avoid contact with the waste-rock and tailings materials and the adit discharge on the Property.

3. OWNER shall undertake Post-Removal Site Control of the mine waste repository pursuant to the Joint Repository Agreement to maintain the integrity of and prevent the disturbance of the repository cover.

4. OWNER shall ensure that a physical barrier in French Creek prevents non-native trout from migrating from the Blue River into upper French Creek. Owner shall ensure the effectiveness of the barrier(s) by permanently affixing a placard to any fish barrier structures that indicates that the barrier protects sensitive aquatic species and that prior to modifications of the barrier(s), the Colorado Division of Wildlife must be notified and consulted.

5. OWNER declares that the Wellington Oro Property shall be maintained and used, that cleanup actions and maintenance activities shall be performed, and that use restrictions shall be maintained in accordance with the approved Consent Decree, the SOW, the Action Memorandum and the Joint Repository Agreement.

II. PUBLIC OPEN SPACE

A. Wellington Oro Property to Be Maintained and Used As Public Open Space. OWNER hereby declares that the Wellington Oro Property shall be maintained and used by the OWNER and any person now or hereafter having any right, title or interest in the Wellington Oro Property or any part thereof, and their heirs, successors, personal representatives and assigns as Public Open Space in perpetuity for the benefit of the residents of the Town of Breckenridge, the County of Summit, the State of Colorado, and the United States.

B. "Public Open Space" Defined. As used in this Environmental Covenant, the term "Public Open Space" shall mean land that is left in predominantly an undeveloped state and which provides for one or more of the following community benefits as determined by OWNER: (i) extensions to existing undeveloped open space lands; (ii) buffers to developed areas; (iii) view corridors; (iv) access to trails, trailheads, water bodies or National Forest area; (v) passive recreation uses; (vi) active recreation uses, including but not limited to recreational trails, consistent with the open space character of the Wellington Oro Property under the Town of Breckenridge's and Summit County's Open Space Plans and determined in accordance with the Town of Breckenridge's and Summit County's public processes; (vii) unique ecological habitats; and (viii) historical sites. The term "Public Open Space" shall include those uses provided from time to time: (i) in the "Town of Breckenridge Open Space Plan" as adopted and amended from time to time by the Town Council of the Town of Breckenridge pursuant to Section 3-5-2 of the Breckenridge Town Code or any successor ordinance; and (ii) in the "Summit County Open Space Protection Plan," or its equivalent, as adopted and amended from time to time by the Board of County Commissioners of Summit County. The term "Public Open Space" shall exclude the following: golf course (this exclusion does not apply to Frisbee golf), swimming pool, or a substantial recreation center building, *i.e.*, over 10,000 square feet.

III. MISCELLANEOUS

A. Modifications. This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. OWNER may request that the Department approve a modification or termination of the Covenant. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The Department shall review any submitted information, and may request additional information. If the Department determines that the proposal to modify or terminate the Covenant will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Covenant shall be effective unless the Department has approved such modification or termination in writing. Information to support a request for modification or termination may include, but is not limited to, one or more of the following:

a) a proposal to perform additional or alternative response actions;

b) new information regarding the risks posed by the residual contamination;

c) information demonstrating that residual contamination has diminished;

d) information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and

e) other appropriate supporting information.

B. Conveyances. OWNER shall notify the Department at least fifteen (15) days in advance of any proposed grant, transfer or conveyance of any interest in any or all of the Wellington Oro Property.

C. **Notice to Lessees.** OWNER agrees to incorporate either in full or by reference the restrictions of this Covenant in any leases, licenses, or other instruments granting a right to use the Wellington Oro Property.

D. **Notification for Proposed Construction and Land Use.** OWNER shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use on the Property.

E. **Inspections.** The Department shall have the right of entry to the Wellington Oro Property at reasonable times with prior notice for the purpose of determining compliance with the terms of this Covenant. Nothing in this Covenant shall impair any other authority the Department may otherwise have to enter and inspect the Wellington Oro Property.

F. **No Liability.** The Department does not acquire any liability under State law by virtue of accepting this Covenant.

G. **Enforcement.** The Department may enforce the terms of this Covenant pursuant to Section 25-15-322, C.R.S. OWNER may file suit in district court to enjoin actual or threatened violations of this Covenant.

H. **Owner's Compliance Certification.** OWNER shall execute and return a certification form provided by the Department, on an annual basis, detailing OWNER's compliance, and any lack of compliance, with the terms of this Covenant.

I. **Notices.** Any document or communication required under this Covenant shall be sent or directed to:

Jeffrey Deckler
Remediation Program Manager
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and the Environment
Remedial Programs Section
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Todd Robertson
Summit County Open Space and Trails Director
P.O. Box 5660
Frisco, Colorado 80443

Timothy J. Gagen
Town Manager
Town of Breckenridge
P.O. Box 168
Breckenridge, Colorado 80424

J. **Recording and Filing.** This Environmental Covenant and the Consent Decree, including the approved Voluntary Cleanup application, shall be placed in the real property records in the office of the Clerk and Recorder of Summit County, Colorado.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By: _____
Timothy J. Gagen

Title: Town Manager

NOTARY PUBLIC
KAREN L. BAILEY
STATE OF COLORADO

STATE OF Colorado)
) ss:
COUNTY OF Summit)

The foregoing instrument was acknowledged before me this 22 day of August, 2007, by Timothy J. Gagen, on behalf of the Town of Breckenridge.

Karen L. Bailey
Notary Public
322 Idlewild Dr., Dillon 80435
Address

My commission expires: 04-25-08

BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO

By: _____
Stephen V. Hill

Title: Interim County Manager

STATE OF Colorado)
) ss:
COUNTY OF Summit)

The foregoing instrument was acknowledged before me this 21 day of August, 2007, by Stephen Hill, on behalf of the Board of County Commissioners of Summit County, Colorado.

NOTARY PUBLIC KAREN L. BAILEY STATE OF COLORADO

_____
Notary Public
322 Idlewild Dr. Dillon CO 80435
Address

My commission expires: 04-25-08

ACCEPTED BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, this 28th day of September, 2007.

By: _____

Title: Director, HMWMD

STATE OF COLORADO)
) ss:
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 28 day of SEPTEMBER, 2007, by GARY BAUSHMAN, on behalf of Colorado Department of Public Health and Environment.

_____
Notary Public
4300 Cherry Creek Dr So
Address
Denver, CO 80246

My commission expires: October 21, 2007

This map is for display purposes only.
Do not use for legal conveyance.
Not necessarily accurate by surveying standards and
does not comply with National Mapping Accuracy Standards.
© 2005 Summit County Government, Open Space and Trails Department.

NORTH

Covenant Area

0 115 230 460 Feet

This map is for display purposes only.
Do not use for legal conveyance.
Not necessarily accurate by surveying standards and
does not comply with National Mapping Accuracy Standards.
© 2005 Summit County Government, Open Space and Trails Department.

NORTH

Covenant Area

0 115 230 460 Feet

Materials Handling Plan

Wellington Oro Property

Submitted by: Summit County Government and Town of Breckenridge

No offsite transport or disposal of materials is anticipated as part of the reclamation of historic mining activities at the Wellington-Oro Property. Handling, transport and disposal of materials is provided for in the Joint EPA and USDA-Forest Service Action Memorandum Concerning the Time-Critical Removal Action at the Shock Hill/Claim Jumper Mine Site ("Action Memorandum") and the Wellington-Oro/French Gulch Site Joint Repository Agreement ("Agreement"). All materials within the environmental covenant area will be handled in accordance with the Action Memorandum and Agreement.

In the event that future site activities result in the generation of potentially hazardous materials, or that offsite transport or disposal becomes necessary, all materials will be handled, stored, transported, and disposed of in compliance will applicable State and Federal laws in accordance with CERCLA.