

## **Summitville Mine (Aztec Minerals) Environmental Covenant Summary**

**Covenant ID: HMC0V00003**

### **Covenant Information:**

Covenant Date: April 8, 2002

Self Reporting: No

Media of Concern:

Surface Water: Yes

Groundwater: No

Air: No

Soil: Yes

Other: No

Contaminants of Concern: heavy metals including iron, copper, zinc, manganese, cyanide

Property Restrictions:

1. No construction of any building
2. No disturbance of ground surface, including digging, drilling, grading, excavation or mining
3. No action that disturbs vegetation
4. No action that interferes with any portion of the Superfund remedial action

### **Site Information:**

ID: N/A

Name: Summitville Mine Site

Address: See legal description

City: Del Norte

State: CO

Zip Code: 81132

Legal Description: See attachment in covenant - made up of multiple mining claims

County: Rio Grande

### **Site Contact Information:**

Aztec Minerals Group

Name: Brad Morse

Address: 825 Sun Ridge Lane

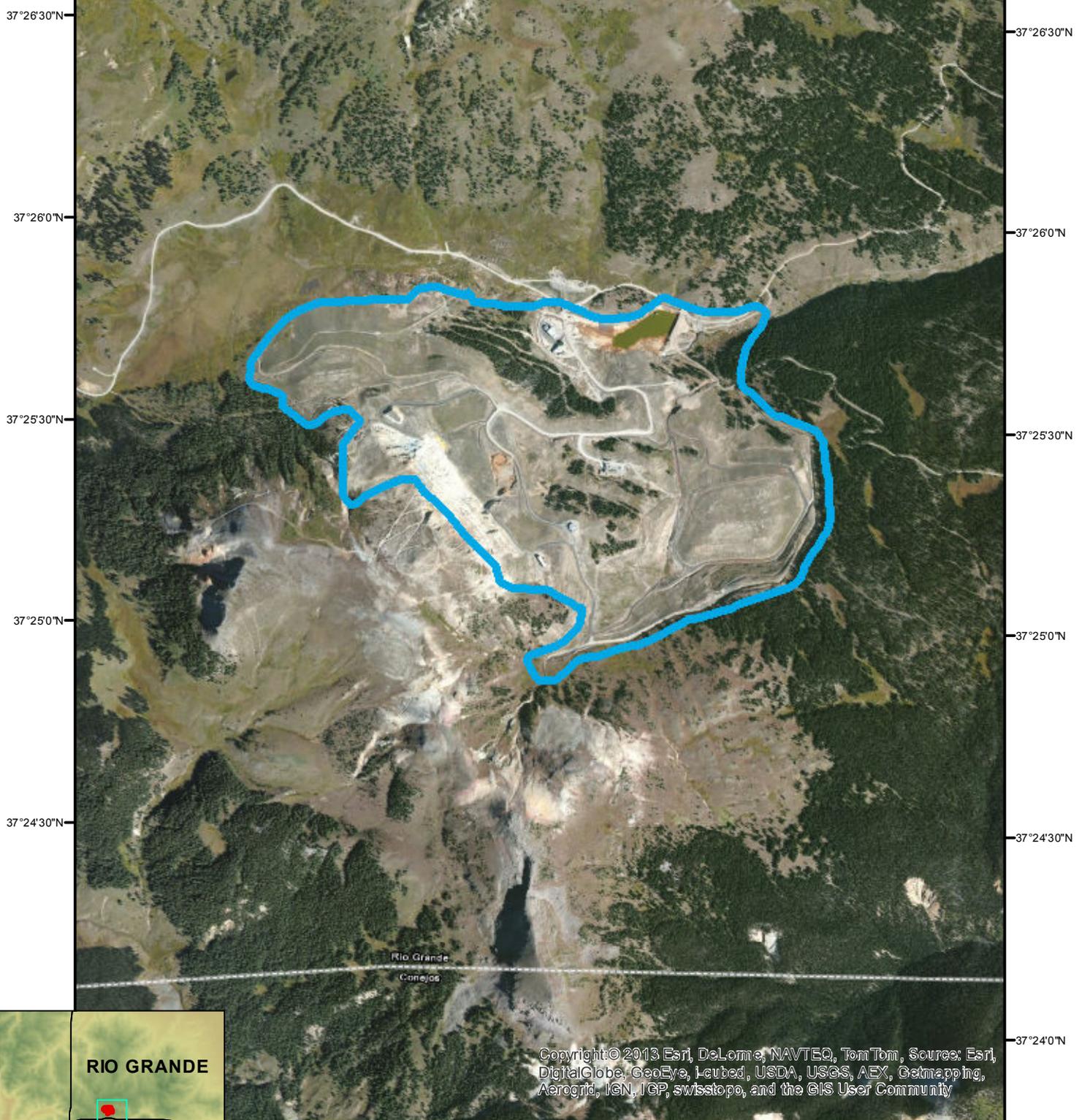
City: Chagrin Falls

State: OH Zip Code: 44022

# SUMMITVILLE MINE

106° 37' 0" W      106° 36' 30" W      106° 36' 0" W      106° 35' 30" W      106° 35' 0" W      106° 34' 30" W

**Featured Institutional Control**



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## HMCOV00003



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**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**

By this deed, the Aztec Minerals Corporation, 824 Sun Ridge Lane, Chagrin Falls, Ohio 44022; Gray Eagle Mining Corporation, 250 Arapahoe Avenue, Suite 250, Boulder, Colorado 80302; and South Mountain Minerals Corporation, 171 Franklin Street, Denver, Colorado 80218 (the three corporations are collectively the "Aztec Group") grant an Environmental Covenant ("Covenant") this 8th day of April, 2002, ~~2001~~ 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 Act, § 25-15-101, *et seq.* The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

WHEREAS, the Aztec Group is the owner of certain property commonly referred to as the Summitville Mine Site located in Rio Grande County, Colorado, more particularly described in Attachment A, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as "the Property"); and

WHEREAS, the Property is part of the Summitville Mine Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on May 31, 1994; and

WHEREAS, in a Record of Decision dated September 28, 2001 (the "ROD"), the EPA Region VIII Regional Administrator selected a "remedial action" for the Site, which provides, in part, for the following actions:

- a. Construction of a Water Treatment Plant;
- b. Construction of a new retaining pond;
- c. Rehabilitation of one or more adits at the Site;
- d. Monitoring of Mine pool;
- e. Continued monitoring of surface water flows and levels of surface and groundwater water contamination; and

WHEREAS, pursuant to the ROD, the Property is the subject of remedial action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); and

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WHEREAS, the Aztec Group desires to subject the 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 the Aztec Group its heirs, successors, assigns, and any grantees of the Property, their heirs, successors, assigns and grantees, and any users of the Property, for the benefit of the Department.

NOW, THEREFORE, the Aztec Group hereby grants this Environmental Covenant to the Department, and declares that the Property as described in Attachment A shall hereinafter be bound by, held, sold, and conveyed subject to the requirements set forth in paragraphs 1 through 10 below, which shall run with the Property in perpetuity and be binding on the Aztec Group and all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and any persons using the land. This interest shall be recorded in the public lands office of the County of Rio Grande, State of Colorado.

1. Environmental Use Restrictions: The following uses and activities are prohibited on the Property:
  - a. Construction of any building, structure, facility or fixture;
  - b. Any disturbance of the ground surface, including any contouring, grading, drilling, excavation, digging, mining or re-mining;
  - c. Any action that impairs or interferes with the growth of vegetation in the re-vegetated areas;
  - d. Any action or use that interferes with the operation or maintenance of any building, structure or facility that is necessary for implementation of the remedial action, including, without limitation: water treatment plants, retaining ponds, adits, dams, roads, ditches, pipelines, utility corridors, and solid waste disposal facilities;
  - e. Any other uses or activities that would in any manner interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed at the Site.
  
2. Environmental Protection Covenant: The Aztec Group hereby provides to the Department an irrevocable, permanent and continuing right of access at all times to the Property for purposes of:
  - a. Implementing the response actions in the ROD, including but not limited to: construction, modification or maintenance of any buildings, structures or facilities necessary for implementation of the remedial action, specifically, but without limitation: water treatment plants, retaining ponds, dams, roads, ditches, pipelines, utility corridors, and solid waste disposal facilities; and
  - b. Verifying any data or information submitted to EPA or the State;
  - c. Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
  - d. Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;

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- e. Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations; and
  - f. Implementing additional or new response actions if the State or EPA, in their sole discretion, determine: i) that such actions are necessary to protect the environment because either the original remedial action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action in a significantly more efficient or cost effective manner; and, ii) that the additional or new response actions will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.
3. Notice requirement: The Aztec Group agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

**NOTICE:**

**THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED April 8, 2001, RECORDED IN THE PUBLIC LAND RECORDS ON April 17, 2002, IN BOOK 501, PAGE 1914-1925, HELD BY AND IN FAVOR OF THE COLORADO DEPARTMENT OF PUBLIC HEALTH & ENVIRONMENT PURSUANT TO C.R.S. SECTION 25-15-321.**

Within thirty (30) days of the date any such instrument of conveyance is executed, the Aztec Group must provide the State with a certified true copy of said instrument and with the recording reference in the public land records.

4. Modifications: This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. The Aztec Group and/or its successors and assigns 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. Any such modifications, as approved, shall be recorded in the public lands records, as provided above. Information to support a request for modification or termination may include one or more of the following:
- a. a proposal to perform additional remedial work;
  - 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

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- e. other appropriate supporting information.
5. Conveyances: The Aztec Group 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 Property.
6. Notification for proposed construction and land use: The Aztec Group agrees to notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use.
7. Inspections: The Department shall have the right of entry to the 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 Property.
8. No Liability: The Department does not acquire any liability under State law by virtue of accepting this Covenant.
9. Enforcement: The Department may enforce the terms of this Covenant pursuant to §25-15-322, C.R.S. The Aztec Group may file suit in district court to enjoin actual or threatened violations of this Covenant.
10. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

**The Aztec Group:**

Aztec Minerals Corporation  
Attention: Brad G. Morse  
824 Sun Ridge Lane  
Chagrin Falls, Ohio 44022

Gray Eagle Mining Corporation  
Attention: David Tippit  
250 Arapahoe Street, Suite 250  
Boulder, Colorado 80302

South Mountain Minerals Corporation  
Attention: William A. Moore  
171 Franklin Street  
Denver, Colorado 80218

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**Attorney for the Aztec Group:**

Donn L. Calkins, Esq.  
Gablehouse & Epel, LLC  
410 17<sup>th</sup> St., Suite 1375  
Denver, CO 80202

**State:**

Remedial Programs Section Chief  
Hazardous Materials and Waste Management Division  
Colorado Department of Public Health & Environment  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

Superfund Unit Leader  
Hazardous Materials and Waste Management Division  
Colorado Department of Public Health & Environment  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

Deputy Attorney General  
Natural Resources and Environment Section  
Colorado Department of Law  
1525 Sherman Street, 7th Floor  
Denver, Colorado 80203

First Assistant Attorney General  
CERCLA Litigation Unit  
Colorado Department of Law  
1525 Sherman Street, 7<sup>th</sup> Floor  
Denver, Colorado 80203







STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Address

My commission expires: \_\_\_\_\_

Accepted by the Colorado Department of Public Health and Environment this 20 day of March, 2002~~4~~.

By: Doug Benevento

Title: Environmental Programs Director  
Colorado Department of Public Health & Environment

STATE OF COLORADO )  
 ) ss:  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 20 day of March, 2002~~4~~ by Douglas Benevento on behalf of the Colorado Department of Public Health and Environment.

Diana Huber  
Notary Public

4300 Cherry Creek Dr South  
Address

Denver, CO 80246

My commission expires: 2-29-04

ATTACHMENT A

Property			
No.	Description	Schedule No.	Commonly Known As
1	SEC 24-37-3 and SEC 30-37-4	5319300004 R	San Juan Placer (One-Third Interest)
2	SEC 25-37-3	5330000001 R	Bobtail Lode
3	SEC 25-37-3	5125200004 R	Bowen Placer
4	SEC 25-37-3	5125400063 R	Dilworth Lode
5	SEC 25-37-3	5125100001 R	Dyer Placer (Undivided One-Third)
6	SEC 25-37-3	5330000022 R	Empire Lode
7	SEC 25-37-3	5123100020 R	Flag Lode
8	SEC 25-37-3	5125400025 R	Jubilee Lode
9	SEC 25-37-3	5330000001 R	Margaretta Lode
10	SEC 25-3-3	5330000001 R	Peterson Placer
11	SEC 25-37-3 and SEC 30-37-4	5330000001 R	Pittsburgh Lode, Aurora Lode, and Vanner Lode
12	SEC 25-37-3	5125100061 R	Saunders Lode
13	SEC 25-37-3	5125100062 R	Stars & Stripes Lode
14	SEC 25-37-3	5125100020 R	Tunnel No. 2 Lode
15	SEC 29-37-4	5329300016 R	Schiffer Placer
16	SEC 30-37-3	5330000001 R	Del Norte Lode
17	SEC 30-37-3	5330000001 R	Little Annie Lode
18	SEC 30-37-3	5330000001 R	Sherican Lode
19	SEC 30-37-4	5330000001 R	Aztec Lode
20	SEC 30-37-4	5330000001 R	Bay State Lode
21	SEC 30-37-4	5330000001 R	Bayard Lode

Property			
No.	Description	Schedule No.	Commonly Known As
22	SEC 30-37-4	5330000001 R	Boss Lode
23	SEC 30-37-4	5330000001 R	Brandt Placer
24	SEC 30-37-4	5330000001 R	CB & Q Lode
25	SEC 30-37-4	5330000004 R	Chicago Lode (Two-Thirds Interest)
26	SEC 30-37-4	5330000001 R	Columbia Lode
27	SEC 30-37-4	5330000001 R	Dexter Lode
28	SEC 30-37-4	5330000001 R	Eighth Wonder Lode
29	SEC 30-37-4	5330000001 R	Eureka Lode
30	SEC 30-37-4	5330000001 R	Gamecock Lode
31	SEC 30-37-4	5330000001 R	Garfield Lode
32	SEC 30-37-4	5330000001 R	Golconda Lode
33	SEC 30-37-4	5330000001 R	Golden Independence Lode
34	SEC 30-37-4	5330000001 R	Golden Queen Lode
35	SEC 30-37-4	5330000001 R	Golden Star No. 2
36	SEC 30-37-4	5330000001 R	Golden Vault Lode
37	SEC 30-37-4	5330000002 R	Grey Eagle Lode
38	SEC 30-37-4	5330000001 R	Highland Mary Lode
39	SEC 30-37-4	5330000001 R	Homestake Lode
40	SEC 30-37-4	5330000001 R	I & CC Placer
41	SEC 30-37-4	5330000001 R	Iowa Lode
42	SEC 30-37-4	5330000001 R	Little Hattie Lode
43	SEC 30-37-4	5330000001 R	Little Ida Lode
44	SEC 30-37-4	5330000010 R	Little Jessie Lode, 700 Ft.

Property			
No.	Description	Schedule No.	Commonly Known As
45	SEC 30-37-4 and SEC 25-37-3	5330000060 R	Little Nellie Lode
46	SEC 30-37-4	5330000001 R	Logan Lode
47	SEC 30-37-4	5330000001 R	Missionary Lode
48	SEC 30-37-4	5330000001 R	Moltke Lode
49	SEC 30-37-4	5330000001 R	N 800 Ft. Little Jessie Lode
50	SEC 30-37-4	5330000001 R	Oding Lode
51	SEC 30-37-4	5330000001 R	Parole Lode
52	SEC 30-37-4	5330000001 R	Paystreak Lode
53	SEC 30-37-4	5330000001 R	Snow Bank Lode
54	SEC 30-37-4	5330000001 R	South Columbia Lode
55	SEC 30-37-4	5330000001 R	Spar Placer
56	SEC 31-37-4	5330000009 R	Byron Revenue – 4 Different Mines
57	SEC 31-37-4	5331200059 R	Golden Star
58	SEC 31-37-4	5330000001 R	Jennie Placer
59	SEC 31-37-4	5330000001 R	Nick Lode
60	SEC 31-37-4	5331100026 R	Omega Lode and Omega No. 2 Lode
61	SEC 31-37-4	5330000001 R	Tunnel No. 1 Lode
62	SMD Survey No. 605	5330000056 R	Baker Lode
63	SMD Survey No. 714	5330000055 R	Anna Belle Lode