



Dedicated to protecting and improving the health and environment of the people of Colorado

Covenant Information:

Covenant ID HMCOV00116

Covenant Date 10/15/2014

Self Reporting

Media of Concern:

Surface Water:

Ground Water:

Air:

Soil:

Other:

Site Contact Information:

Owner Corp: Estate of Allan G. Provost

Contact Name: Christopher Provost

Contact Address: Estate of Allan G. Provost

Contact City: Greenwood Village

Contact State: CO

Contact Zip: 80111

Contact Phone:

Contaminants of Concern:

Metals

Property Restrictions:

- 1: No excavating, grading or construction that disturbs the remedy cover or water management structures
- 2:
- 3:
- 4:
- 5:

Site Information:

ID: 980717577

Name: Clear Creek Togo 047

Address:

City:

State: CO

Zip:

Legal Description:

See Institutional Control

CLEAR CREEK TOGO 047

Featured Institutional Control

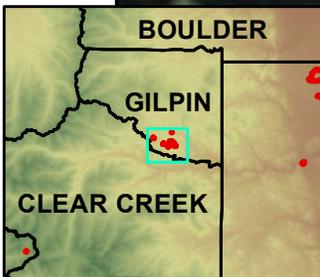


39°47'0"N

39°47'0"N



HMCOV00116



Source: Esri, DigitalGlobe, GeoEye, i-cubed, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community, Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors

HMCOV00116

0 20 40 Meters



COLORADO
Hazardous Materials
& Waste Management Division
Department of Public Health & Environment



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 Estate of Allan G. Provost, sometimes erroneously referred to as Allan G. Provost ("Grantor") grants an Environmental Covenant ("Covenant") this 15 day of October, 2014 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 "Colorado Act"). The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

Allan G. Provost is a record owner of certain property commonly referred to as the **Togo Lode Claim (M.S. # 17945)**, located in Gilpin 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"). Allan G. Provost died, and his interest in the property is subject to administration by Donald Provost and Christopher Provost, personal representatives of the estate of Allan G. Provost; and

WHEREAS, the Property is located within the Central City/Clear Creek Superfund Site Study Area ("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 in 1983; and

WHEREAS, in the Central City/Clear Creek Superfund Site Operable Unit 4 Record of Decision dated September 29, 2004 (the "ROD"), the EPA Region VIII Regional Administrator selected a "remedial action" for the Site, which provides, in part, for the following actions:

- a. Mine waste pile remediation including erosion control measures and/or in-place closure of certain mine waste rock piles;
- b. Stream restoration/stabilization actions;
- c. Sedimentation controls such as construction of drop control structures, catchment basins and sediment dams;
- d. Maintenance related to all construction components;
- e. Institutional controls (e.g., an environmental covenant) to ensure the long-term integrity of the remedial action; and

WHEREAS, pursuant to the ROD and The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"), a remedial action was taken on the Property. The area affected by these remedial actions is defined in Attachment B (hereinafter referred to as the "Subject Property"), incorporated herein by reference;



WHEREAS, the Subject Property as described includes the remedial action or a portion of the remedial action for:

the **Togo Lode Claim** overlies a portion of the **Centennial East** waste rock pile where erosion control measures were constructed on or around a mine waste pile, which included construction elements such as regrading, construction of run-on/run-off control structures, placement of rock covers over mine waste or riprap along the base of mine waste piles and revegetation of disturbed areas, and,

WHEREAS, the Central City/Clear Creek Superfund Site – OU4, Phase II/III Construction Completion Documentation, dated June 2011, provides the as-built construction drawings for the remedial action at the Property; and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by ensuring that constructed portions of the remedy remain intact and functioning as designed, and

WHEREAS, the estate of Allan G. Provost 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 estate of Allan G. Provost and all parties now or subsequently having any right, title or interest in the Property, or any part thereof, and any persons using the land, as described herein, for the benefit of the Department and OWNER.

NOW, THEREFORE, the estate of Allan G. Provost as Grantor hereby grants this Environmental Covenant to the Department, and declares that the Property as described in Attachment A and the interest of Allan G. Provost therein shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in paragraphs 1 through 12, below, which shall run with the Property in perpetuity and be binding on the estate of Allan G. Provost and all parties now or subsequently having any right, title or interest in the Property by, through or under said Grantor, or any part thereof, and any persons using the land, as described herein. As used in this Environmental Covenant, the term OWNER means the then current record owner of the Property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Property or placement of encumbrances on the Property, other than by the exercise of eminent domain.

1. Use restrictions - These use restrictions apply to the Subject Property, as described in Attachment B.
 - a) No tilling, excavation, grading, construction, or any other activity that disturbs the ground surface or sub-surface, including the cover and erosion control structures, is permitted, allowed, or shall be taken on the Subject Property without modification of this Covenant;
 - b) No uses or activities shall occur that would in any manner interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial actions performed at the Subject Property.



2. 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 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 an engineered feature or structure is no longer necessary;
 - e) information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and
 - f) other appropriate supporting information.
3. Conveyances OWNER shall notify the Department at least fifteen (15) days in advance of the closing on any proposed sale or other conveyance of any interest in any or all of the Subject Property.
4. 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 Subject Property.
5. 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 affecting the Subject Property.
6. 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.
7. Third Party Beneficiary The OWNER of the Property is a third party beneficiary with the right to enforce the provisions of this Covenant as provided in § 25-15-322, C.R.S. and hereby reserves such right.
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 estate of Allan G. Provost may file suit in district court to enjoin actual or threatened violations of this Covenant.



- 10. 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.
- 11. Notices Any document or communication required under this Covenant shall be sent or directed to:

If to the Department:

Remediation Project Manager
Central City/Clear Creek Superfund Site
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

If to OWNER:

Estate of Allan G. Provost
5750 DTC Parkway, Suite 210
Greenwood Village, CO 80111

- 12. Scope of Covenant By execution and delivery of this covenant, Grantor is confirming and giving notice of the statutory obligations imposed upon Grantor and rights granted to the Department under the Colorado Act, provided that Grantor is not by such action assuming or undertaking and shall not be deemed to have undertaken or assumed any obligation or liability not otherwise imposed by the Colorado Act upon an OWNER.

The Estate of Allan G. Provost has caused this instrument to be executed this _____ day of _____, 2014.

Estate of Allan G. Provost

By: _____
Title: Personal Representative

By: _____
Title: Personal Representative



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Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

If to OWNER:

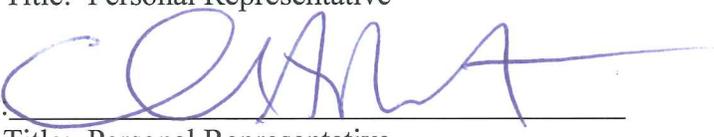
Estate of Allan G. Provost
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The Estate of Allan G. Provost has caused this instrument to be executed this 15 day of October, 2014.

Estate of Allan G. Provost

By: _____
Title: Personal Representative

By: 
Title: Personal Representative
Name: CHRISTOPHER PROVOST



STATE OF COLORADO)
) ss:
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 15th day of September 2014 by Donald Provost as personal representative of the Estate of Allan G. Provost



[Signature]
Notary Public

4439 S. LOWELL BLVD.
Address

DENVER, CO 80236

My Commission Expires 12/14/2014
My commission expires: 12-14-14

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014 by Christopher Provost as personal representative of the Estate of Allan G. Provost

Notary Public

Address

My commission expires: _____



STATE OF COLORADO)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014 by Donald Provost as personal representative of the Estate of Allan G. Provost

Notary Public

Address

My commission expires: _____

STATE OF Texas)
) ss:
COUNTY OF Dallas)

The foregoing instrument was acknowledged before me this 15 day of October, 2014 by Christopher Provost as personal representative of the Estate of Allan G. Provost



Tory McGuire

Notary Public
2100 McKinney Ave

Address
Dallas, TX 75201

My commission expires: 9/29/2016



**ATTACHMENT A
 TO COVENANT**

TAX OWNERSHIP CONFIRMATION

Account: N008092

<u>Location</u>	<u>Owner Information</u>	<u>Assessment History</u>	
Parcel Number	Owner Name	Actual (2012)	\$6,250
Tax Area 010 - TAX AREA 10 - 010	SKELTON	Assessed	\$1,810
Situs Address	DARRELL J & PROVOST ALLEN G	Tax Area: 010 Mill Levy: 22.706	
Legal Summary S: 14 T: 3S R: 73W MINE: TOGO - 17945 100% 0.94 ACRES RUSSELL	Owner Address 1208 QUAIL ST LAKEWOOD, CO 80215-4495	Type Actual Assessed Acres SQFT Units	
TAX SALE CERT: 6056 TAX Year: 2011		Land \$6,250	\$1,810 0.940 0.000 0.000
Business Name			

Transfers

Sale Price	Sale Date	Book Page
<u>\$170,690</u>	<u>12/21/1975</u>	<u>B: 0298 P: 0375</u>

Tax History

Images

Tax Year	Taxes
*2013	\$41.08
2012	\$41.08

* Estimated

ATTACHMENT B
TO COVENANT

This map depicts the portion of the Togo Lode Claim (cross-hatched area) subject to use restrictions.

12/09/2014 11:01 AM
COLLEEN STEWART GILPIN COUNTY, CO
Receipt #27526 Page 10 of 10
129 COVENANTS TotalFee:56.25 DocFee:0.00

152689

