STATE OF COLORADO

John W. Hickenlooper, Governor
Christopher E. Urbina, MD, MPH
Executive Director and Chief Medical Officer

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

4300 Cherry Creek Dr. S.
Denver, Colorado 80246-1530
Phone (303) 692-2000
Located in Glendale, Colorado

Laboratory Services Division
8100 Lowry Blvd.
Denver, Colorado 80230-6928
(303) 692-3090

http://www.cdphe.state.co.us

Colorado Department of Public Health and Environment

Covenant Information:

Covenant ID RSNOT00003

Covenant Date 1/20/2012

Self Reporting ☑

Media of Concern:

- **Surface Water:** ☑
- **Ground Water:** ☑
- **Air:** ☐
- **Soil:** ☐
- **Other:** ☐

Contaminants of Concern:

Arsenic, Iron, Manganese

Site Contact Information:

Owner Corp:

Contact Name: Dan Follett, Environmental Restoration Prog

Contact Address: 8120 Edgerton Drive

Contact City: U.S. Air Force Academy

Contact State: CO

Contact Zip: 80840

Contact Phone: 719-241-0218

Property Restrictions:

1: The Property will be Classified as "Restricted Open Space"

2: All Projects Involving Construction, Digging, and any other intrusive activity which disturbs subsurface soil must be reviewed, approved, followed …

3: Signage will be positioned at property boundaries stating "Environmental Restoration Site - Keep off".

4: Long-Term Monitoring of the RipRap covers shall be accomplished on an annual basis.

5: Long-Term monitoring/compliance monitoring program for groundwater and surface water (Monument Creek) shall be performed on an annual basis.

Site Information:

ID: 110001430559

Name: U. S. A. F. Academy, Env Restoration Site 7: Landfill No.2

Address: 8120 Edgerton Drive (note: see Legal Description)

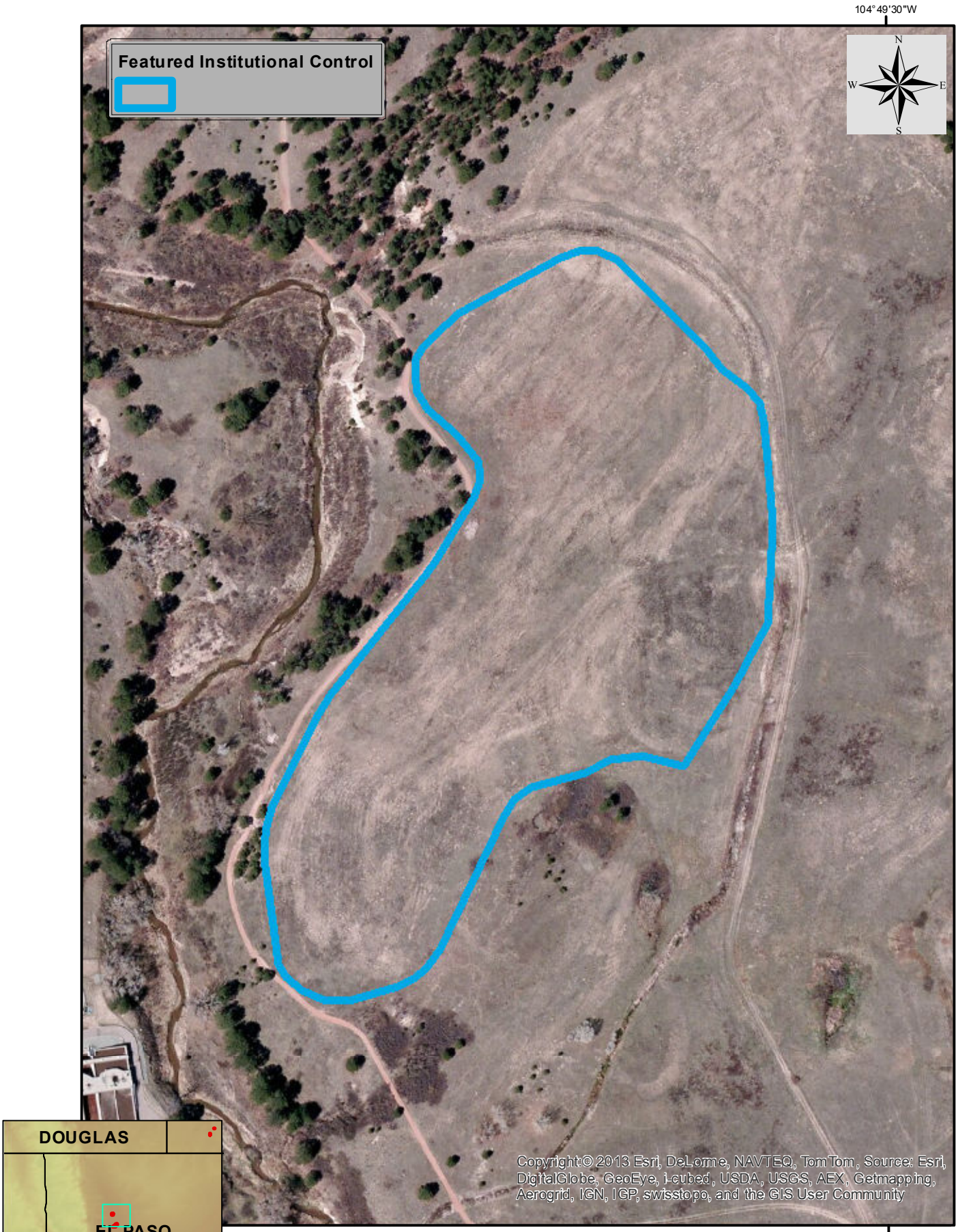
City: U.S. Air Force Academy

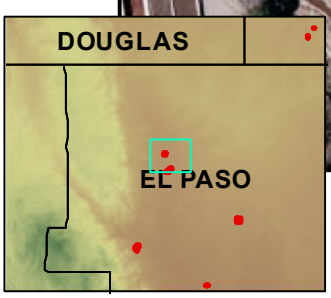
State: CO

Zip: 80840

Legal Description:

U. S. A. F. Academy Site 7, LFL 2





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Colorado Department of Public Health and Environment

WAYNE W. WILLIAMS El Paso County, CO
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This Property is subject to a Notice of Environmental Use Restrictions Imposed by the Colorado Department of Public Health and Environment Pursuant to Section 25-15-321.5, Colorado Revised Statutes
Revisions June 8, 2010

Notice of Environmental Use Restrictions

WHEREAS, the United States Government is the owner of certain property at the Air Force Academy whereat the Department of the Air Force exercises administrative land-holding authority and control over a portion of land commonly referred to as "Site 7," an inactive landfill of solid waste, located within the confines of the Academy, more particularly described in Attachment A (the "Property"), attached hereto and incorporated herein by reference as though fully set forth; and

WHEREAS, the Property is the subject of remedial action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.* ("CERCLA") that requires land use controls and restrictions for the Property, pursuant to the Record of Decision ("ROD") dated 27 Dec 11, to ensure protection of human health and the environment; and

WHEREAS, the purpose of this Notice of Environmental Use Restrictions (hereinafter, "Restrictive Notice") is to ensure protection of human health and the environment by restricting the classification of the Property, activities permitted on the Property, and specifying certain procedures in order to preserve the integrity and effectiveness of the cover, the drainage and erosion controls, slope stability, and groundwater and gas monitoring and control systems, including monitoring and notification of compliance; and

WHEREAS, the United States Air Force Academy has requested that the Colorado Department of Public Health and Environment ("Department") approve this Restrictive Notice as provided in Article 15 of Title 25, Colorado Revised Statutes ("C.R.S."),

NOW, THEREFORE, the Department approves this Restrictive Notice pursuant to C.R.S. § 25-15-321.5. The Property shall hereinafter be subject to the following requirements set forth in paragraphs 1 through 12 below, which shall be binding on the United States and the Department of the Air Force, and any subsequent OWNERS and any person using or possessing an interest in the Property, or any part thereof as described herein. As used in this Restrictive Notice, 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 The Property is subject to the following restrictions:

a. While the Air Force exercises administrative land-holding authority over the Property, the Property shall remain classified as "Restricted Open Space" as specified in § 5.3 of the ROD, incorporated herein by reference, under the Air Force Academy General Plan. "Restricted Open Space" is:

> [R]eserved, undevelopable land areas designated on the basis of safety requirements. Intensive use of these areas would present an unacceptable level of risk to person and property. The potential harm may be manmade or natural in its

origin.

b. While the Air Force exercises administrative land-holding authority over the Property, the administrative procedures set forth in Air Force Instructions (AFI) 32-1001, *Operations Management* and 32-1021, *Planning and Programming Military Construction (MILCON) Projects*, concerning review and approval of all projects involving construction, digging, and any other intrusive activity which disturbs subsurface soil must be followed and coordinated with installation restoration personnel. Any revisions to these AFIs are not effective with respect to the Property unless and until this paragraph is modified in accordance with the procedures set forth herein.

c. While the Air Force exercises administrative land-holding authority over the Property, the Property is subject to the land use controls (LUCs) set forth in the ROD. Any revision of the LUCs required under the ROD are not effective with respect to the Property unless and until this Restrictive Notice is modified in accordance with the procedures set forth herein. The term "LUCs" as used in the ROD and applicable herein includes both engineering controls and institutional controls. Engineering controls are physical features, such as landfill caps and fences, that prevent disallowed land uses and exposures. Institutional controls are property, administrative, and legal controls and devices, such as digging and construction review and approval processes, that prevent disallowed uses and exposures. The following is a list from the ROD of the LUCs and long-term management and maintenance activities to be implemented, in accordance with the approved "Landfill Cover Monitoring and Maintenance Plan for Environmental Restoration Program Sites 6 and 7":

i. Signage positioned at Property boundaries stating "Environmental Restoration Site - Keep Off";

ii. Work Clearance Request Form required for any intrusive work on the cover or intrusive work on any adjacent areas that might expose landfill material; this is an administrative process that must be coordinated with base environmental personnel;

iii. Review and approval for all construction proposed at the site, which will be coordinated with base environmental personnel;

iv. All LUCs specified in the ROD for the site will be entered in the Air Force Academy General Plan no later than 30 days after the ROD is signed, but are applicable upon the signing of this Restrictive Notice;

v. Use of the base environmental impact analysis process, which will be coordinated with base environmental personnel, to ensure all projects proposed at the site are assessed for environmental impacts, to include compliance with use restrictions and LUCs at the site;

vi. Long-term monitoring of the riprap covers shall be accomplished on an annual basis. Annual monitoring will be focused on ensuring that the riprap covers remain in place and effectively control exposure to potential receptors. The annual riprap cover evaluation will include recommendations for maintenance. The Air Force shall implement the appropriate cover maintenance promptly where necessary for protectiveness, otherwise as agreed to by the Air Force and the Department following completion of the cover evaluation;

vii. The long-term monitoring/compliance monitoring program for groundwater and surface water (Kettle Creek) shall be performed by the Air Force and reported to the Department on an annual basis. The Air Force may request modification in accordance with Paragraph 2, based upon the results of a CERCLA mandated 5-year review;

viii. Five (5) years after the riprap has been placed at Site 7, the Air Force will conduct and document the 5-year review to determine if 1) the former pathways for potential human and ecological exposure have been effectively controlled, 2) there are no new pathways for potential exposure, and 3) the LUCs are effective at preventing human access to the contaminated areas. If these three conditions are met, the Air Force may recommend to the Department that the long-term monitoring be discontinued. If not, then annual sampling will continue until a subsequent CERCLA mandated 5-year review indicates that long-term monitoring can be discontinued;

ix. The earthen cover, stormwater control features, institutional controls, and planned seep covers shall be monitored by the Air Force and reported to the Department on an annual basis during the growing season and following major storm events yielding greater than 1.65 inches of rainfall in a 1-hour period. The annual monitoring will be conducted to observe and document general conditions and changes in the earthen cover and prevent exposed or flowing stormwater, erosion, and excessive sedimentation at the seep. If adverse conditions exist, maintenance activities shall be conducted by the Air Force promptly where necessary for protectiveness, otherwise as agreed to by the Air Force and the Department; and

x. The Air Force shall perform annual monitoring of the conditions of the signs positioned at Property boundaries stating "Environmental Restoration Site - Keep Off". Missing, damaged, or otherwise impaired signs shall be replaced promptly or as otherwise agreed to by the Air Force and the Department following completion of the monitoring event.

d. Subsequent to the time the Air Force ceases exercising administrative land-holding authority over the Property, neither the OWNER nor any other person shall change the current undeveloped and restricted use of the Property.

e. While the Air Force exercises administrative land-holding authority over the Property, neither the Air Force nor any other person shall conduct or permit others to conduct any excavation, construction, drilling, or other intrusive activity without first providing notice to the Department of the planned activity at least 30 days prior to the activity, except in cases of emergencies in which case the notice shall be provided as soon as possible. All such actions are subject to the LUCs and long-term management and maintenance activities specified in paragraph 1) c. of this notice. Subsequent to the time the Air Force ceases exercising administrative land-holding authority over the Property, no OWNER nor any other person shall conduct or permit others to conduct any excavation, construction, drilling, or other intrusive activity without the provision of notice to and the prior written approval of the Department, except in cases of emergencies in which case the notice shall be provided as soon as possible.

f. Neither the OWNER nor any other person shall conduct any activity on the Property, including but not limited to grading, excavating, or drilling that could adversely affect the integrity of the cover, the effectiveness of the drainage or erosion controls, slope stability, or

groundwater or gas monitoring or control systems.

g. Subsequent to the time the Air Force ceases exercising administrative land-holding authority over the Property, long-term management and maintenance activities set forth in the ROD , and detailed in the approved "Landfill Cover Monitoring and Maintenance Plan for Environmental Restoration Program Sites 6 and 7,"shall be performed by the OWNER, as follows:

i. Long-term monitoring of the riprap covers shall be accomplished on an annual basis. Annual monitoring will be focused on ensuring that the riprap covers remain in place and effectively control exposure to potential receptors. The annual riprap cover evaluation will include recommendations for maintenance. The OWNER shall notify the Department of any adverse conditions within 48 hours, and implement the appropriate cover maintenance within 30 days following completion of the cover evaluation;

ii. The long-term monitoring/compliance monitoring program for groundwater and surface water (Kettle Creek) shall be performed by the OWNER and reported to the Department on an annual basis. The OWNER may request modification in accordance with Paragraph 2, based upon the results of a CERCLA mandated 5-year review;

iii. The earthen cover, stormwater control features, institutional controls, and planned seep covers shall be monitored by the OWNER and reported to the Department on an annual basis during the growing season and following major storm events yielding greater than 1.65 inches of rainfall in a 1-hour period. The annual monitoring will be conducted to observe and document general conditions and changes in the earthen cover and prevent exposed or flowing stormwater, erosion, and excessive sedimentation at the seep. If adverse conditions exist, the OWNER shall notify the Department within 48 hours, and maintenance activities shall be conducted by the OWNER within 30 days; and

iv. The OWNER shall perform annual monitoring of the conditions of the signs positioned at Property boundaries stating "Environmental Restoration Site - Keep Off". Missing, damaged, or otherwise impaired signs shall be replaced within 30 days following completion of the monitoring event.

2) Modifications This Restrictive Notice shall remain and continue in full force and effect, and be fully binding on the United States, the United States Air Force, and all subsequent owners and successors unless modified or terminated in accordance with C.R.S. § 25-15-319 or any successor statute, as approved by the Department. A request to modify or terminate in accordance with C.R.S. § 25-15-319 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 Restrictive Notice will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Restrictive Notice 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 the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and
e) other appropriate supporting information.

3) Notification of Violations, Inconsistent Activities, and Corrective Measures The OWNER will notify the Department of any violation of the LUCs or any other activity that is consistent with the LUCs or LUC objectives, as well as any obstacles to correcting the same. The OWNER must notify the Department as soon as practicable, but no longer than 10 days after discovery, of any activity that violates or is inconsistent with the LUC objectives or restrictions, or any other action that may interfere with the effectiveness of the LUCs. The OWNER must take prompt measures to correct the violation or deficiency and prevent its recurrence. In this notification, the OWNER will identify any corrective measures it has taken or any corrective measures it plans to take and the estimated time frame for completing them. For corrective measures taken after the notification, the OWNER shall notify the Department when the measures are complete.

4) Conveyances The Air Force will provide notice to the Department at least 6 months whenever possible, but no later than 30 days, prior to any transfer, grant, sale, or other conveyance of the Property so that the Department can be involved in discussions to ensure that appropriate provisions are included in the transfer terms or conveyance documents. In addition to the land transfer notice and discussion provisions above, the Air Force further agrees to provide the Department with similar notice, within the same time frames, as to federal-to-federal transfer of property. The Air Force shall provide a copy of the executed deed or transfer assembly to the Department. Subsequent to the time the Air Force ceases exercising administrative land-holding authority over the Property, any OWNER shall notify the Department at least 30 days in advance of the closing on any proposed sale or other conveyance of any interest in any or all of the Property.

5) Notice to Lessees and Contractors The OWNER will inform, monitor, bind and enforce this Restrictive Notice as to all leases, licenses, permits, and contracts at this site, as well as any other authorized occupants. The OWNER agrees to incorporate either in full or by reference the restrictions of this Restrictive Notice in any leases, licenses, permits, or other instruments granting a right to use the Property.

6) Notification for Proposed Construction and Land Use The Department of the Air Force and any subsequent Federal OWNER shall notify the Department within 30 days of any proposed construction or other ground-disturbing activity at the site. Any subsequent non-Federal OWNER shall 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 Restrictive Notice. Nothing in this Restrictive Notice shall impair any other authority the Department may otherwise have to enter and inspect the Property. The Department of Defense, the Air Force, and the Air Force Academy do not relinquish any legal rights and authorities they possess regarding physical access to the Academy.

8) Third Party Beneficiary The OWNER is a third party beneficiary with the right to enforce the provisions of this Restrictive Notice as provided in § 25-15-322, C.R.S.

9) No Liability The Department does not acquire any liability under State law by virtue of approving

this Restrictive Notice, nor does any third party beneficiary.

10) Enforcement The Department may enforce the terms of this Restrictive Notice pursuant to C.R.S. § 25-15-322. The Department of the Air Force, and any third party beneficiaries, may file suit in district court to enjoin actual or threatened violations of this Restrictive Notice.

11) Monitoring and Reporting The Air Force is required to yearly monitor and inspect all LUCs to ensure their continued implementation, effectiveness, and protectiveness. The Air force will submit to the Department yearly a report of such monitoring and inspection. The report shall state the frequency, scope and nature of the monitoring and inspection activities and who conducted the activity, the result of the monitoring and inspection, any changes that have been made to any LUC, and violations or deviations from the LUCs and corrective actions taken or planned to address them, as well as the date it was reported to the Department. The report shall state the Air Force's determination whether the LUCs in the ROD remain in full force, whether they were fully implemented, effective and protective and that the Air Force has fully complied with all such LUCs as well as any other additional provision in the Restrictive Notice. Subsequent to the time the Air Force ceases exercising administrative land-holding authority over the Property, any 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 Restrictive Notice.

12) Notices Any document or communication required under this Restrictive Notice shall be sent or directed to:

Hazardous Materials and Waste Management Division Colorado
Department of Public Health and the Environment
Attention: Monica Sheets
Remediation Program
Federal Facilities Remediation and Restoration Unit
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

By requesting the Department's approval of this Restrictive Notice, neither the United States nor the Department of the Air Force are creating a property interest, and it is not their intent to do so. The United States Air Force Academy hereby requests that the Colorado Department of Public Health and Environment approve this Restrictive Notice this 27th day of December, 2011.

By:

Thomas L Gibson 27 Dec 11

THOMAS L. GIBSON, Col, USAF Date:
Commander, 10th Air Base Wing

[NOTARY]

This Notice of Environmental Use Restrictions is approved and issued by the Colorado Department of Public Health and Environment this 6th day of January, ~~2011.~~ 2012.

By:

Gary W. Baughman Jan. 6, 2012

GARY W. BAUGHMAN Date:
Director, ~~Hazardous~~ Materials and Waste Management Division
Colorado Department of Public Health and Environment

[NOTARY]

SUBSCRIBED AND AFFIRMED OR SWORN TO BEFORE ME IN THE COUNTY OF DENVER STATE OF COLORADO THIS 6 DAY OF JANUARY 2012
Claudette M. Ferris
NOTARY PUBLIC STATE OF COLORADO
My Commission expires October 21, 2015