

MEMORANDUM OF UNDERSTANDING  
Between The  
ALASKA DEPARTMENT OF NATURAL RESOURCES, ALASKA  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
And The  
U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE CONCERNING  
RECLAMATION/CLOSURE/POST-CLOSURE BONDING<sup>1</sup>  
FOR THE GREENS CREEK MINE

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the following parties: Alaska Department of Natural Resources (ADNR), the Alaska Department of Environmental Conservation (ADEC), hereinafter collectively referred to as the "State", and the U.S. Department of Agriculture (USDA), Forest Service, Tongass National Forest, hereinafter referred to as the "Forest Service."

**I. Background:**

- A. The Forest Service has statutory and regulatory authority and mandates under Federal Law to manage surface lands including the approval of reclamation plan and financial assurance estimates within the boundaries of the Tongass National Forest, as described in Section I D of this MOU.
- B. The State has statutory and regulatory authority under State Law over financial assurances for reclamation of mining activities under the laws set out in sections I F, G of this MOU.
- C. Hecla Greens Creek Mining Company (HGCMC or Company) owns and operates the Greens Creek Mine, located on Admiralty Island, in the Tongass National Forest, approximately 17 air miles southwest of Juneau, Alaska.
- D. The mine operations are conditioned upon, and are carried out in accordance with, a General Plan of Operations (GPO) approved by the Forest Service. Certain mine operations are also subject to other federal and state permits and approvals, including authorizations issued by the State.
- E. Forest Service regulations, and guidelines in the Forest Service Manual (FSM), set standards for reclamation of mine properties and provide for bonding to assure reclamation performance (36 C.F.R. §§ 228.8(g) and 228.13; FSM §§ 2840 et seq.). The Forest Service is authorized to coordinate bonding requirements with those of other agencies having over-lapping jurisdiction and is required to adjust the bond to conform to GPO modifications (FSM §§ 2843 & 2846.)
- F. ADNR has issued certain land and water use authorizations for the Greens

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<sup>1</sup>In this MOU, the terms "bond" and "bonding" refer generally to the financial assurance requirements of federal and state law, which may vary in their precise terminology. Use of those terms does not signify that the financial assurance requirements will be satisfied by a surety bond, as opposed to some other acceptable mechanism.

Creek Mine. In addition, ADNR regulates reclamation and bonding for mining operations in the State of Alaska, including those located on federal and private lands (AS §§ 27.19.020-040; 11 AAC 97.200-450). ADNR regulations contain bonding requirements associated with dam safety at 11 AAC 93.171(d), 11 AAC 93.171(f)(2)(C), 11 AAC 93.171(f)(4)(F), and 11 AAC 93.172(a)(6)(C). ADNR may enter into cooperative agreements with federal and other state agencies for the purpose of implementing reclamation and bonding requirements. (AS § 27.19.060.)

- G. Among the permits and approvals for the Greens Creek Mine is an integrated waste management permit issued by ADEC under AS 46.03.100(d) for disposal of solid and liquid wastes. Proof of financial responsibility for HGC MC's operations at the Greens Creek Mine is required by ADEC under AS 46.03.100(f) and 18 AAC 60.265. Under AS 46.03.020 and AS 46.03.100(f), ADEC may enter into agreements with federal and state agencies concerning the proof of financial responsibility required.
- H. HGC MC must obtain approval for each modification of the GPO and must maintain an updated and approved Reclamation and Closure Plan (RCP) on file within the Company, and with the Forest Service, ADNR, and ADEC.
- I. In accordance with the federal and state laws referenced above, the State and the Forest Service must review updated RCP documents and financial assurance calculations. HGC MC must adhere to the approved RCP and provide the required financial assurance.

**II. PURPOSE:** The purpose of this MOU is to document the cooperation between the parties regarding reclamation, closure, and post-closure bonding requirements for the Greens Creek Mine in accordance with the following provisions.

**III. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:** The agreements and arrangements described in this MOU are intended to avoid overly burdensome, duplicative reclamation, closure, and post-closure bonding requirements, which otherwise may result due to the overlapping jurisdiction of the State and Forest Service, and achieve efficiencies among the parties regarding the oversight of bond administration for the Greens Creek Mine. Pursuant to 11 AAC 97.400(3), the Commissioner of ADNR has determined that Forest Service's bond requirements are at least as effective as those in AS 27.19 and that requiring another bond would be unnecessary.

In consideration of the above premises, the parties agree as follows:

**IV. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:**

**A. COORDINATION AMONG THE PARTIES:**

The parties agree to coordinate their management of financial assurance to avoid burdensome, duplicative requirements related to bonding requirements at the Greens Creek Mine.

**B. BOND REQUIREMENTS.**

- 1) Holder of Bond. The parties agree that the Forest Service, as the primary land management agency, shall hold any bond already posted or to be posted by HCGMC with regard closure or reclamation activities for to the Greens Creek Mine. The parties agree that ADNR and ADEC shall hold any bond or bonds posted by HCGMC with regard to post-closure care and maintenance activities for the Greens Creek Mine.
- 2) Revising Bond Amount. The parties will work cooperatively when any party believes that the amount of the required bonding should be increased or decreased to reflect changes in the amount of remaining reclamation, closure, or post-closure requirements, or changes in the cost of required reclamation, closure, or post-closure work.
- 3) Accessing Bond Funds in the Event of Default. In the event that HCGMC defaults in any of its obligations to perform required reclamation, closure, or post-closure activities, and such default remains uncured after notice and opportunity to cure as provided below, the bond funds may be accessed for use in performance of such activities by or on behalf of any party as follows:
  - The party declaring a default in obligations shall give written notice of the alleged default to HCGMC, by confirmed delivery means, with a copy of such notice to the other parties contained within this MOU.
  - If HCGMC fails to cure a default, the parties will work cooperatively to draw funds from the bond for the purpose of performing, or paying a contractor to perform, the obligation in default. The parties will cooperate to ensure adequate funds remain available to address foreseeable future reclamation, closure, or post-closure activities.
  - The party with primary land management authorities over the land upon which specific reclamation, closure, or post-closure activities are to occur shall perform or contract to perform such activities within the parameters described in Section XI.
  - In the event of an unresolved dispute between the parties as a result of the processes described in Section IV-B, the dispute shall be referred for resolution pursuant to Section IV-C of this MOU.
- 4) Trust Fund.
  - Pursuant to the June 2014 Reclamation and Closure Plan submitted by HCGMC and approved via the ADEC Waste Management Permit (No. 2014DB0003) Section 4.2, ADNR Reclamation Plan Approval (J20142682) Section 5.3.3, and the Forest Service Reclamation Plan Approval (issued Sept. 25, 2014), the State has received and accepted a surety bond (Bond # K08399232) in the amount of \$13,573,219.00.
  - In the event that HCGMC fails to establish an approved trust fund at the time of permanent cessation of operations at Greens Creek Mine, it is the intent of the parties to establish a trust fund, in accordance with AS 37.14.800, using Surety Bond # K08399232 or its replacement, for funding the performance of long-term

post-closure water treatment, monitoring, and periodic dam safety inspections.

**C. PROCESS FOR RESOLVING DISPUTES.**

The parties agree to make reasonable efforts to informally resolve all disputes. Any unresolved dispute between two or more representatives of parties to this MOU shall first be elevated to the next level supervisor of the respective disputing party-representatives before any party may take action inconsistent with the letter or spirit of this MOU. When any such dispute is elevated, the supervisor to whom the dispute is referred shall promptly confer with his/her counterpart(s) in any other disputing party's organization(s), in an attempt to resolve the dispute, and will include representatives of the non-disputing parties in such conferences, to facilitate a resolution acceptable to all parties.

If the parties reach an impasse on a particular issue related to this MOU, then any party may initiate a neutral third-party alternative dispute resolution process (i.e. Federal Mediation and Conciliation Service or similar organization) to resolve the impasse to the satisfaction of all parties.

If the parties are unable to resolve a dispute by means of the process described above, the parties will unilaterally exercise their individual authorities, and each will have the opportunity to exercise their legal rights under applicable state or federal laws.

**D. PRINCIPAL CONTACTS.** Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

<b>Cooperator Program Contact</b>	<b>Cooperator Administrative Contact</b>
Name: Stephen Buckley Address: DNR Division of Mining, Land & Water 550 West 7th Avenue, Suite 900D City, State, Zip: Anchorage, AK, 99501 Telephone: (907) 269-8621 Email: stephen.buckley@alaska.gov	Name: Kyle Moselle Address: DNR, Office of Project Management & Permitting PO Box 111030 City, State, Zip: Juneau, AK, 99801 Telephone: (907) 465-6849 Email: kyle.moselle@alaska.gov

<b>Cooperator Program Contact</b>	<b>Cooperator Administrative Contact</b>
Name: Allan Nakanishi Address: 555 Cordova Street City, State, Zip: Anchorage, AK, 99501 Telephone: (907) 269-4028 Email: allan.nakanishi@alaska.gov	Name: Allan Nakanishi Address: 555 Cordova Street City, State, Zip: Anchorage, AK, 99501 Telephone: (907) 269-4028 Email: allan.nakanishi@alaska.gov

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Name: Matthew Reece Address: 8510 Mendenhall Loop Road City, State, Zip: Juneau, AK 99801 Telephone: (907) 789-6274 Email: matthewareece@fs.fed.us	Name: Matthew Reece Address: 8510 Mendenhall Loop Road City, State, Zip: Juneau, AK 99801 Telephone: (907) 789-6274 Email: matthewareece@fs.fed.us

**VII. NON-LIABILITY.** The parties do not assume liability for any third-party claims for damages arising out of this agreement.

**VIII. NOTICES.** Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or the State is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the MOU.

To the State, at the ADNR's and ADEC's address shown in the MOU or such other address designated within the MOU.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

**IX. PARTICIPATION IN SIMILAR ACTIVITIES.** This MOU in no way restricts any party from participating in similar activities with other public or private agencies, organizations, and individuals.

**X. ENDORSEMENT.** Contributions made under this MOU do not by direct reference or implication convey either party's endorsement of the other's products or activities.

**XI. NONBINDING AGREEMENT.** This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity. The parties shall manage their respective resources and activities in a separate, coordinated, and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate agreements and are contingent upon numerous factors, including, as applicable, but not limited to agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation agreement that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective agreement, each party operates under its own laws, regulations, and/or policies, and any party's obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective agreements must comply with all applicable laws.

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

**XII. USE OF U.S. FOREST SERVICE INSIGNIA.** In order for the State to use the

U.S. Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications (Washington Office) prior to use of the insignia.

**XIII. MEMBERS OF U.S. CONGRESS.** Pursuant to 41 U.S.C. 22, no U.S. member of, or U.S. delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.

**XIV. FREEDOM OF INFORMATION ACT (FOIA).** Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information Act (5 U.S.C. 552).

**XV. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA.** The State shall acknowledge

U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this MOU.

**XVI. NONDISCRIMINATION STATEMENT- PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL.** The State shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

*In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)*

*To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.*

If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:

*This institution is an equal opportunity provider.*

**XVII. TERMINATION.** Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time following commencement.


**XVIII. DEBARMENT AND SUSPENSION.** The State shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should the State or any of their

principals receive a transmittal letter or other official Federal notice of debarment or suspension, they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.

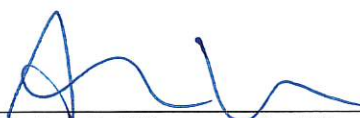
**XIX. MODIFICATIONS.** Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.

**XX. COMMENCEMENT/EXPIRATION/REVIEW.** This MOU is executed as of the date of the last signature and is effective until terminated, per Section XVII, or modified, per Section XIX. The parties will periodically review this agreement concurrent with state or federal authorizations requiring bonding


**XXI. AUTHORIZED REPRESENTATIVES.** By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of the last date written below.

  
\_\_\_\_\_  
Martin Parsons, Director  
State of Alaska Department of Natural Resources  
Division of Mining, Land, and Water

6/28/19  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Amber LeBlanc, Acting Director  
State of Alaska Department of Environmental Conservation  
Division of Water

7/23/19  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Earl Stewart, Forest Supervisor  
U.S. Forest Service  
Tongass National Forest

31 Jul 19  
\_\_\_\_\_  
Date