

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE,
THE STATE OF ALASKA DEPARTMENTS OF
ENVIRONMENTAL CONSERVATION AND NATURAL RESOURCES
AND KENNECOTT GREENS CREEK MINING COMPANY
CONCERNING RECLAMATION/CLOSURE BONDING
AND PERIODIC COOPERATIVE AUDITS
FOR THE GREENS CREEK MINE

This Memorandum of Understanding (hereinafter "MOU") is entered into between the United States Department of Agriculture Forest Service (Forest Service), the Alaska Department of Environmental Conservation (ADEC), the Alaska Department of Natural Resources (ADNR) and Kennecott Greens Creek Mining Company (KGCMC).

RECITALS

A. KGCMC operates the Greens Creek Mine, which is located on the northern end of Admiralty Island, in the Tongass National Forest, approximately 17 air miles from Juneau, Alaska. The mine is within the municipal boundaries of the City and Borough of Juneau (CBJ) and is partly within the Admiralty Island National Monument. Its operations are authorized, in part, under a series of leases and other land use authorizations from the Forest Service, and are carried out in accordance with a General Plan of Operations (GPO) approved by the Forest Service. Certain areas of the mine's operations are subject to other federal and state permits and approvals, including permits or approvals issued by ADEC and ADNR.

B. The Forest Service functions both as a land manager and a regulatory agency with respect to operation of the Greens Creek Mine. Under Section 503 of the Alaska National Interest Lands Conservation Act (ANILCA), the Forest Service must issue leases and permits necessary for mining and milling at the Greens Creek Mine, subject to certain conditions. In addition, under 36 C.F.R. Part 228, Subparts A and D, the Forest Service regulates mining on National Forest System lands and within the Admiralty Island National Monument specifically. The Forest Service has approved KGCMC's GPO, in accordance with those regulations, and, as required by ANILCA, has issued leases or special use permits for various aspects of the mine's operations, including the tailings disposal facility area, the access and haul roads, the development rock disposal area, and the communications system.

Pursuant to a December 14, 1994 Land Exchange Agreement between the United States and the company, KGCMC holds subsurface mining rights and associated surface use rights to approximately 7,300 acres on Admiralty Island, adjacent to KGCMC's other holdings (e.g., patented mining and mill site claims). That acreage will revert to ownership by the United States, and KGCMC's patented claims will be conveyed to the United States, at the end of mine life, and in any event by the year 2095. In the meantime, KGCMC's use of the lands acquired through the exchange is subject to the approved GPO and to applicable Forest Service regulations.

The Forest Service's regulations, and its guidelines in the Forest Service Manual (FSM), set standards for reclamation of mine properties and provide for bonding to assure performance of reclamation. (36 C.F.R. §§ 228.8(g) & 228.13; FSM §§ 2841 & 2842.) The Forest Service is authorized to coordinate bonding requirements with those of other agencies having overlapping jurisdiction, and is required to adjust the bond to conform to GPO modifications and to release amounts corresponding to completed reclamation activities. (FSM §§ 2843 & 2846.)

C. ADNR has issued certain land and water use authorizations, and a dam safety certificate covering some of the tailings facility infrastructure, for the Greens Creek Mine. In addition, ADNR regulates reclamation, and bonding therefor, for mining operations in the State of Alaska, even those located on federal and private lands, subject to certain limitations as to size and timing of the mining operation. ADNR establishes certain minimum standards for reclamation activities and minimum bonding amounts. (AS §§ 27.19.020-040; 11 AAC 97.200-450. ADNR is authorized to enter into cooperative agreements with federal and other state agencies for the purpose of implementing reclamation and bonding requirements. (AS § 27.19.060.)

Among the several permits and approvals issued by ADEC for the Greens Creek Mine project are: Clean Water Act section 401 certifications for federally permitted disposal activities associated with the tailings facility; and a state waste management permit authorizing tailings disposal (along with incinerator ash and sewage sludge in the tailings pile), and providing for management of production rock disposal. Under ADEC's solid waste regulations, KGCMC's operation of the tailings and production rock facilities will be subject to certain closure and post-closure care requirements. (18 AAC 60.490.) Proof of financial responsibility to carry out such activities (e.g., a performance bond) will be required unless KGCMC has provided equivalent assurance through another government agency. (18 AAC 60.265.)

D. The parties hereto desire to cooperate, to avoid overly burdensome, duplicative reclamation/closure and bonding requirements which otherwise would result

due to the overlapping jurisdiction of the Forest Service, ADNR, and the ADEC, and to achieve efficiencies among the agencies regarding oversight of reclamation-related matters for the Greens Creek Mine. The parties also desire to coordinate periodic, cooperative audits of the mine's environmental performance and the agencies' regulatory oversight of such performance, and to use the audit process to assist with updates of reclamation/closure expectations and the bonding requirements related thereto.

AGREEMENTS

1. Coordination of Reclamation Plan Requirement and Periodic Audits.

(a) The parties agree that KGCMC may satisfy its regulatory and land-use related obligations to prepare and implement a reclamation plan for the mine project, or a closure plan for any discrete part (e.g., solid waste disposal facility), through a single plan (hereinafter "the Reclamation Plan") prepared and submitted for review and, if appropriate, approval by the Forest Service, ADNR and the ADEC. Nothing in this paragraph shall require an agency to accept the plan as satisfying its specific reclamation/closure requirements simply because the plan is acceptable to one or more of the other agencies. The agencies, however, shall cooperate with one another, and with KGCMC, in an effort to coordinate reclamation/closure requirements such that KGCMC can reasonably be expected to be able to produce a single plan satisfactory to all of the agencies.

(b) The parties agree to coordinate periodic audits for the purpose of reviewing KGCMC's performance under its permits and approvals, and the agencies' regulatory oversight of such performance, and to aid in updating the detailed plan component of the Reclamation Plan and evaluating the bond amount. Such audits shall occur every five years, commencing in 2008, and shall be timed so that the auditor's site visit can occur during the snow-free season, far enough in advance of the deadline for KGCMC's submittal of a Reclamation Plan update that the results of the audit can be taken into account in that update. In January of the audit year, the parties shall confer to agree upon the minimum qualifications of and process for selecting an independent, third-party auditor, and to set the minimum requirements for the scope of the audit. The purpose of the audit will be to determine whether KGCMC's environmental management systems and the regulatory controls in place provide reasonable assurances that environmental objectives in the General Plan of Operations and relevant permits and approvals are being met and that the systems and controls are functioning as intended. The audit results will be used by KGCMC and the agencies to assist in updating, renewing, or issuing approvals and permits, in updating policies, plans, and procedures, and in determining compliance with permits and approvals.

2. Reclamation Plan Contents. The Reclamation Plan will consist of two components: (1) a general plan setting performance goals, schedules and procedural mechanisms; (2) a detailed, task-oriented plan capable of being used to estimate costs of specific work tasks and materials required to satisfy the performance goals of (1). The Reclamation Plan may be reviewed by the agencies periodically, consistent with their respective regulatory, code or permit requirements, but any changes requested by an agency shall be coordinated through the multi-agency process described in Paragraph 5 for changes proposed by KGCMC.

3. Coordination of Bond Requirement. The parties agree that KGCMC shall post a surety bond or other form of financial assurance/warranty (hereinafter "the Bond") to assure reclamation of disturbed surfaces and proper closure and post-closure monitoring of the tailings and waste rock disposal facilities in accordance with the approved Reclamation Plan and the ADEC Waste Disposal Permit. Except as otherwise agreed herein, the detailed plan component described in Paragraph 2 shall be used to calculate the amount of the Bond required by this paragraph. The Bond posted pursuant to this paragraph shall be deemed to satisfy the reclamation/closure financial responsibility requirements of the Forest Service, ADNR and the ADEC, and KGCMC shall not be required to post a separate bond or other form of financial responsibility/warranty, unless objection is made and not satisfactorily resolved pursuant to the process set forth in Paragraph 7.

4. Holder of Bond; Bond Amount. The parties agree that as the primary land manager agency, the Forest Service shall hold the Bond; provided, however, that all parties shall be entitled to review and approve the form of the Bond. The current bond posted with the Forest Service is in the amount of \$26,238,518, and KGCMC shall maintain the Bond at that amount until such time as the required bond amount is increased or decreased by the process set out in Paragraph 5.

5. Process for Revising Bond Amount or Releasing Bond. The amount of the Bond may be increased or decreased, to reflect changes in the amount of surface disturbance remaining or in the cost of reclamation/closure work required, and the Bond may be released in full or in part in accordance with the following process:

- a. Any party to this MOU, including KGCMC, may request a meeting of the parties to consider a proposed change in the amount of, or a proposed release or partial release of, the Bond. Such request may be made orally but shall be confirmed in writing to all of the parties, which writing shall give notice of the date, time and location set for the meeting.

- b. During the meeting, the party or parties requesting the change or release shall set out in detail, with necessary documentation, the reasons for the request. Such documentation shall be designed to demonstrate the nature of the change in surface disturbance or the basis for the change in anticipated costs, as the case may be.
- c. The parties shall attempt to reach an agreement by consensus on the amount, if any, of the change in the Bond amount required, or the extent to which the Bond may be released. If the parties fail to reach an agreement, the matter shall be referred for dispute resolution under Paragraph 7.
- d. As to any agreement reached that the Bond amount required shall be reduced, KGCMC shall be entitled to a corresponding partial release of the Bond, but may at its option elect to maintain the larger-than-required bond in place.

6. Process for Accessing Bond Funds in the Event of Default. In the event that KGCMC defaults in any of its obligations to perform required reclamation or solid waste facility closure work, or required post-closure maintenance or monitoring, 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 another party as follows:

- a. The party or parties declaring a default in KGCMC's obligations shall give written notice of the alleged default to KGCMC, by confirmed delivery means, with a copy of such notice to all other parties to this MOU.
- b. If KGCMC wishes to contest the notice of default, it shall give notice of contest to all of the parties within five business days of receipt of the notice of default and it shall be afforded an opportunity to address the allegations of default in a meeting with the parties. Such meeting shall be scheduled as soon as practicable after delivery of KGCMC's notice of contest, and in any event within ten business days thereafter. KGCMC may contest the notice on any good faith basis, including that the alleged default has not caused and does not threaten to cause a material, adverse effect on the successful achievement of the performance goals set forth in the Reclamation Plan.

- c. During the contest meeting, the parties shall attempt to determine through consensus whether a default has in fact occurred and, if so, how such default can be cured to the satisfaction of the agencies.
- d. Unless otherwise required by law or by a lawful order of one of the parties, KGCMC shall have a reasonable time in which to cure any default determined through the meeting of the parties, or conceded by KGCMC, to exist. The time for cure shall be set by concurrence of the parties and shall not be less than 60 days, unless exigent circumstances dictate that cure must be effected sooner to prevent injury to human health or irreparable harm to the environment.
- e. If KGCMC is unable or unwilling to cure the default, the agency parties may agree to have the Forest Service draw funds from the Bond for the purpose of performing, or paying a contractor to perform, the obligation in default. The agency parties shall attempt to reach agreement upon the conditions under which the Bond funds will be used, including which agency shall perform or contract for performance of the required work and how much of the total Bond amount may be used for such work.
- f. In the event of an unresolved dispute between or among the agencies or KGCMC as a result of the processes described above, the dispute shall be referred for resolution pursuant to Paragraph 7.
- g. For purposes of this Paragraph 6, the default must have actually occurred to be actionable. "Failure to provide adequate assurances" or "anticipatory default" shall not be acts of default for purposes of this MOU.
- h. If the agencies agree to call the bond, or a portion of it, in order to perform or have a contractor perform reclamation or closure work or monitoring, KGCMC shall be relieved of the corresponding obligation to perform the work or monitoring itself, and shall be relieved of any liability associated therewith, unless one of the agencies objects to such relief based on its regulatory or permit enforcement authority and that objection is not resolved through the Paragraph 7 dispute resolution process.

7. Process for Resolving Disputes. Any unresolved dispute between two or

more representatives of parties to this MOU shall first be elevated to the next level line supervisors of the respective disputing party-representatives before any party may take action inconsistent with the spirit or the letter of this MOU. When any such dispute is elevated up the agency or corporate line, the supervisor to whom the dispute is referred shall promptly confer with his/her counterpart(s) in the other disputing-party's(ies') organization, in an attempt to resolve the dispute, and, if necessary or potentially useful, will include representatives of the non-disputing parties in such conferences, to facilitate a resolution acceptable to all parties.

If the parties are unable to resolve a dispute by means of the process described above, the agency with jurisdiction over the disputed issue will make a final decision, and all other parties will have the opportunity to exercise their appeal rights under applicable state or federal laws.

8. General Provisions.

- a. **No Abrogation or Waiver.** Nothing in this MOU shall be construed to abrogate, delegate or otherwise diminish the duties and authorities of the agency parties under their respective regulations, leases, permits, approvals or other authorizations, or to waive any substantive or procedural rights or remedies of any party, including KGCMC.
- b. **Notices.** Any notices required or allowed under this MOU shall be to the parties' designated representatives who, as of the execution of this MOU, are as listed below and who may be changed upon written notice by a party to the other parties.

For the Forest Service	Kathryn E. Rodriguez Monument Ranger Admiralty National Monument 8465 Old Dairy Road Juneau, AK 99801-8041 Telephone: (907) 790-7472 Facsimile: (907) 586-8808 E-mail: krodriquez@fs.fed.us
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For ADNR	Thomas C. Crafford Large Mine Project Manager 550 West 7 th Avenue, Suite 1070 Anchorage, Alaska 99501-3579 Telephone: (907) 269-8629
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Facsimile: (907) 269-8930
Email: tom_crafford@dnr.state.ak.us

For ADEC

David Johnson
Technical Engineer
Wastewater Discharge Program
43335 K-Beach, Suite 11
Soldotna, AK 99669
Telephone: 907-262-5210 x238
Facsimile: 907-262-2294
Email: david_johnson@dec.state.ak.us

For KGCMC

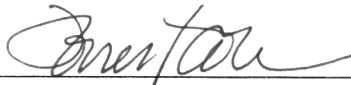
William F. Oelklaus
Environmental Manager
Kennecott Greens Creek Mining Co.
P.O. Box 32199
Juneau, Alaska 99802
Telephone: 907-789-8170
Facsimile: 907-789-8119
Email: bill.oelklaus@greenscreek.com

- c. **Authority.** Each party hereto represents that it has the requisite legal, corporate or other authority necessary to enter into and be bound by the MOU, and that its undersigned representative is duly authorized to sign on behalf of the party.
- d. **Non-Fund Obligating Document.** This instrument is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for noncompliance award to the cooperator of any contract or other agreement. Any contractor or agreement for training or other services must fully comply with all applicable requirements for competition.

- e. **Interpretation.** This MOU shall be interpreted in accordance with the laws of the State of Alaska.
- f. **Amendment/Modification.** No amendment or modification of this MOU shall be effective unless made by a writing subsequent to the date of this MOU and executed by each of the parties hereto.
- g. **Completion Date.** This agreement is executed as of the last date shown below and expires no later than **September 30, 2011.**
- h. **Entire Agreement.** This MOU constitutes the entire agreement between the parties on the subject hereof.

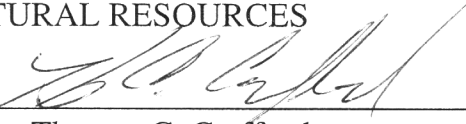
DATED: 4.2.07

UNITED STATES DEPARTMENT OF
AGRICULTURE, FOREST SERVICE

By: 
Forrest Cole
Forest Supervisor

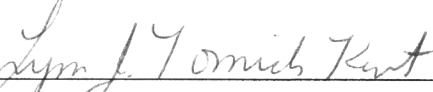
DATED: MARCH 23 2007

ALASKA DEPARTMENT OF
NATURAL RESOURCES

By: 
Thomas C. Crafford
Large Mine Project Manager

DATED: 3/22/2007

ALASKA DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: 
Lynn Kent, Director
Division of Water Quality

DATED: _____

KENNECOTT GREENS CREEK MINING
COMPANY

By: _____
Clayton Walker
General Manager

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DATED: _____

UNITED STATES DEPARTMENT OF
AGRICULTURE, FOREST SERVICE

By: _____
Forrest Cole
Forest Supervisor

DATED: _____

ALASKA DEPARTMENT OF
NATURAL RESOURCES

By: _____
Thomas C. Crafford
Large Mine Project Manager

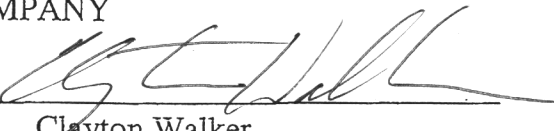
DATED: _____

ALASKA DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: _____
Lynn Kent, Director
Division of Water Quality

DATED: May 9, 2007

KENNECOTT GREENS CREEK MINING
COMPANY

By: 
Clayton Walker
General Manager



United States
Department of
Agriculture

Forest
Service

Alaska Region
Agreements Service
Center

648 Mission Street
Ketchikan, AK 99901
907-228-6261
Fax 907-228-6216

File Code: 1580

Date: May 23, 2007

State of Alaska
Department of Natural Resources
ATTN: Mr. Thomas C. Crafford
Large Mine Project Manager
550 West 7th Avenue, Suite 1070
Anchorage, AK 99501-3579

RECEIVED

MAY 29 2007

Re: FS Agreement No. 07MU-11100500-059

Dear Mr. Crafford:

Attached is your executed copy of the above-mentioned agreement.

Please contact Kathryn Rodriguez, Admiralty National Monument District Ranger, at 907/790-7472 if you have any questions. Thank you.

Sincerely,

MECHELE M. MACDONALD
Agreements Specialist

Enclosure (1)

CC: Kathryn Rodriguez

