

12318511
7/12/2016 10:09:00 AM \$37.00
Book - 10451 Pg - 4480-4493
Gary W. Ott
Recorder, Salt Lake County, UT
FIRST AMERICAN TITLE
BY: eCASH, DEPUTY - EF 14 P.

When Recorded Return To:

Kennecott Utah Copper LLC
Attn: Environmental Manager
4700 West Daybreak Parkway
South Jordan, UT 84095

With Copies To:

U.S. EPA – Region 8
Attn: Regional Institutional Control Coordinator & Kennecott Remedial Project Manager
Mail Code: 8EPR-SR
1595 Wynkoop Street
Denver, CO 80202

Utah Department of Environmental Quality
Division of Environmental Response and Remediation
Attn: Kennecott Project Manager
195 North 1950 West
P O Box 144840
Salt Lake City, UT 84114-4840

Tax Parcel Nos.: 26-15-251-003-0000 and 26-15-276-003-0000

ENVIRONMENTAL COVENANT

Pursuant to the Utah Uniform Environmental Covenants Act, Utah Code Ann. Section 57-25-101 et seq., (the Utah Act), Kennecott Land Company, a Delaware corporation (Grantor) makes and imposes this Environmental Covenant upon portions of the parcels located in Salt Lake County and identified by Tax Parcel Nos. 26-15-251-003-0000 and 26-15-276-003-0000 (Parcels) encompassing approximately 12.717 acres and more particularly described and illustrated in Exhibit A attached hereto (Property), subject to the terms and conditions stated herein.

1. Notice. Notice is hereby given that the Property is or may be contaminated with Hazardous Substances, as described below, and, therefore, this Environmental Covenant must be imposed to mitigate the risk to the public health, safety and the environment.
2. Environmental Response Project. Elevated levels of lead and arsenic have been found within the boundaries of Operable Unit 1 of the Kennecott South Zone Site (the "Site"), also referred to as Bingham Creek, as described in the Record of Decision (ROD), executed on November 3, 1998 (Site). The Property is a portion of the Site, and the Property was part of a response action at the Site overseen by the United States Environmental Protection Agency (EPA) and the Utah Department of Environmental Quality (DEQ) to address lead and arsenic (Hazardous Substances) in the soils (the Environmental Response Project). The Property is subject to the Bingham Creek Consent Decree, entered on November 10, 1999, in the United

States District Court, District of Utah, Central Division, Case No. 2:99-CV-0437K (Consent Decree). The Property is subject to the December 2006 Amended Operation and Maintenance Plan (2006 O&M Plan). The Environmental Covenant outlined herein is necessary to fully implement the response actions selected for the Site, which include among other things, soil cleanup levels of 100 ppm arsenic and 700 ppm lead for residential use established for properties within the Daybreak Development as documented in a letter from Mr. Douglas Bacon and Ms. Rebecca Thomas to Mr. Francisco Benavides dated November 17, 2006, attached hereto as Exhibit B.

3. Grantor. Kennecott Land Company, is the Grantor of this Environmental Covenant and is also the Owner as defined in Paragraph 4. The property interest is defined further in Exhibit A.

4. Owner. The “Owner” of the Property is a person who controls, occupies, owns or holds an interest (other than this Environmental Covenant) in the Property at any given time. Consistent with Paragraph 9 of this Environmental Covenant, the obligations of the Owner are imposed on assigns, successors in interest, including without limitation, future owners of an interest in fee simple, mortgagees, lenders, easement holders, lessees, and any other person or entity who acquires any interest whatsoever in the Property, or any portion thereof, whether or not any reference to this Environmental Covenant or its provisions are contained in the deed or other conveyance instrument, or other agreements by which such person or entity acquires its interest in the Property or any portion thereof (the “Transferees”), during that person’s period of ownership.

5. Holder. Kennecott Utah Copper LLC is the Holder of this Environmental Covenant. The Holder may enforce this Environmental Covenant. The Holder shall not incur liability under state law or otherwise solely by virtue of being a Holder under this Environmental Covenant. Pursuant to the Utah Act, a Holder may also be an Owner.

6. Agency. The EPA and the DEQ each enter into this Environmental Covenant as an Agency as defined in Section 57-25-102(2) of the Utah Act. EPA and DEQ may be referred to herein collectively as the “Agencies”. The Agencies may enforce this Environmental Covenant. The Agencies assume no affirmative duties through the execution of this Environmental Covenant.

7. Administrative Record. The administrative record for this environmental response project is available in the files for environmental response actions taken at Bingham Creek (Operable Unit 1), Kennecott (South Zone), EPA ID: UTD000826404 by appointment for public inspection at the following information repository:

EPA Superfund Records Center – Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
(303) 312-7273

Some records are also available by appointment for public inspection at:

Utah Department of Environmental Quality
Division of Environmental Response and Remediation
195 North 1950 West

P O Box 144840
Salt Lake City, UT 84114-4840
(801) 536-4100

8. Activity and Use Limitations. As part of the Environmental Response Project described above, the Owner agrees to implement, administer, and maintain all of the following activity and use limitations on the Property. The purpose of this Environmental Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to any Hazardous Substances that remain on the Property. In the event the Owner conveys or transfers an interest in the Property or any portion thereof to another party, the Transferee will implement, administer, maintain and be subject to the following activity and use limitations. Failure of the Owner to comply with these activity and use limitations shall be considered interference with the Environmental Response Project constituting a release or threatened release of a Hazardous Substance for which the Owner is liable under CERCLA § 107(a), 42 U.S.C. § 9607(a).

8.1 Groundwater Limitations. Owner shall not drill any well that would extract, or is capable of extracting, water on or in the Property without prior written consent from the Agencies and the Holder. Also, Owner shall comply with any well restriction covenants identified in Paragraph 10 of Exhibit B to that certain Deed dated October 16, 2002 from Kennecott Utah Copper Corporation, as grantor, to OM Enterprises Company, as grantee, recorded in the Official Records of Salt Lake County on December 2, 2002 as Entry No. 8442505 in Book 8695 at Page 7730, prohibiting drilling of any well that would extract, or is capable of extracting, water on that portion of the Property because it is located within Township 3 South, Range 1 West, SLB&M and Township 3 South, Range 2 West, SLB&M. This provision shall not apply to shallow construction dewatering so long as such shallow construction dewatering does not interfere with or contradict the well restrictions contained within the well restriction covenants.

8.2 Land Use and Construction Limitations. The Property shall only be used for commercial (including office, retail, hotel, and health club), industrial, stormwater retention, or open space purposes. The property shall not be developed for residential purposes. Within the allowable uses, any excavation which will result in excess soils that cannot be managed within the boundaries of the Property, must be performed in accordance with a work plan approved by the Agencies in addition to all applicable laws, regulations and requirements of Salt Lake County, DEQ, EPA and any other governmental entity having jurisdiction over the Property and the Environmental Response Project. Except as otherwise approved by the Agencies, the work plan shall include:

- A summary of readily available site characterization data and any limitations of the data,
- A sampling and analysis plan & quality assurance project plan for characterizing the site before (if no data is available) and after the pending response action to delineate contamination,
- A description of the soil management procedures to be implemented based on the proposed change in land use and/or excavation,
- A description of environmental controls to be employed during the project, and
- A list of submittals which at a minimum will include a post response action report for the Agencies' review.

Owner shall be solely responsible, in all respects, for implementing the work plan and complying with applicable laws, regulations, and requirements associated with such development or change of land use as set forth in this Environmental Covenant.

9. Running with the Land. This Environmental Covenant shall run with the land, pursuant to and subject to the Utah Act and Utah Code Ann. Section 57-25-105.

10. Compliance Enforcement. This Environmental Covenant may be enforced pursuant to the Utah Act or CERCLA § 107, 42 U.S.C. § 9607. Failure to timely enforce compliance with this Environmental Covenant or the Activity and Use Limitations contained herein by any party shall not bar subsequent enforcement by such party, and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Agencies from exercising any authority under applicable law.

11. Rights of Access. The right of access to the Property is granted to the Holder, the Agencies, and their representatives for necessary response actions, inspections, implementation and enforcement of this Environmental Covenant.

12. Notice upon Conveyance. The Owner shall notify the Agencies and the Holder within thirty days after each conveyance of an interest in any portion of the Property to another Owner. Owner's notice to the Agencies and the Holder shall include the name, address and telephone number of the new Owner, a copy of the deed or other documentation evidencing the conveyance, and an un-surveyed plat that shows the boundaries of the property being transferred. Instruments that convey any interest in the Property (fee, easement, etc.,) shall include a notification to the person or entity who acquires the interest that the Property is subject to this Environmental Covenant and shall identify the date, entry number, book and page number at which this document is recorded in the records of the Salt Lake County Recorder, in the State of Utah.

13. Compliance Reporting. Upon request by the Agencies or the Holder, Owner shall submit written documentation to the Agencies and the Holder verifying that the activity and use limitations remain in place and are being followed.

14. Representations and Warranties. Grantor hereby represents and warrants to the other signatories hereto:

- a. that the Grantor is the sole owner of the Property;
- b. that the Grantor holds fee simple title to the Property free, clear and unencumbered except for those interests of record existing at the time of execution by Grantor;
- c. that the Grantor has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- d. that the Grantor has identified all other persons that own an interest in or hold an encumbrance on the Property, and notified such persons of the Owner's intention to enter into this Environmental Covenant; and

e. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document, or instrument to which Grantor is a party or by which Grantor may be bound or affected;

15. Amendment or Termination. This Environmental Covenant may be amended or terminated pursuant to provisions of the Utah Act as in effect on January 1, 2016. Pursuant to this Paragraph, Holder may assign its interest in this Environmental Covenant with the written consent of the Agencies, which consent shall not be unreasonably conditioned or withheld, and the Agencies waive consent as to all other parties pursuant to sections 57-25-110(1)(b) and 57-25-110(4) of the Utah Act as in effect on January 1, 2016.

16. Effective Date, Severability and Governing Law. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant is recorded as a document of record for the Property with the Salt Lake County Recorder. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

17. Recordation and Distribution of Environmental Covenant. Within *thirty (30)* days after the date of the final required signature upon this Environmental Covenant, Grantor shall file this Environmental Covenant for recording in the same manner as a deed to the Property, with the Salt Lake County Recorder's Office. The Grantor shall distribute a file and date stamped copy of the recorded Environmental Covenant to the Agencies.

18. Notice. Unless otherwise notified in writing by or on behalf of any of the Agencies, the Grantor, the Owner, or the Holder, any document or communication required by this Environmental Covenant shall be submitted to:

EPA:

U.S. EPA – Region 8
Attn: Regional Institutional Control Coordinator & Kennecott Remedial Project Manager
Mail Code: 8EPR-SR
1595 Wynkoop Street
Denver, CO 80202

DEQ:

Utah Department of Environmental Quality
Division of Environmental Response and Remediation
Attn: Kennecott Project Manager
195 North 1950 West
P O Box 144840
Salt Lake City, UT 84114-4840

GRANTOR AND OWNER:

Kennecott Land Company
Attn: Environmental Manager
4700 West Daybreak Parkway
South Jordan, UT 84009

4848-3421-3939.v3

HOLDER:

Kennecott Utah Copper LLC
Attn: Environmental Manager
4700 West Daybreak Parkway
South Jordan, UT 84009

19. Governmental Immunity. In executing this covenant, the DEQ and EPA do not waive governmental immunity afforded by law. The Grantor, for itself and its successors, assigns, and Transferees, hereby fully and irrevocably releases and covenants not to sue the State of Utah (State) or EPA, its agencies, successors, departments, agents, and employees from any and all claims, damages, or causes of action arising from, or on account of the activities carried out pursuant to this Environmental Covenant except for an action to amend or terminate the Environmental Covenant pursuant to Utah Code Ann. Sections 57-25-109 and 57-25-110 or for a claim against the State arising directly or indirectly from or out of actions of employees of the State that would result in (i) liability to the State of Utah under Section 63G-7-301 of the Governmental Immunity Act of Utah, Utah Code Ann. Section 63G-7-101 et seq. or (ii) individual liability for actions not covered by the Governmental Immunity Act as indicated in Utah Code Ann. Sections 63G-7-202 and -902, as determined in a court of law.

20. Payment of Costs. Owner shall reimburse the Agencies and the Holder for technical reviews, inspections and other actions, performed by the DEQ, EPA or Holder pursuant to the enforcement of this Environmental Covenant or performed at the request of the Owner.

[signatures on following pages]

The undersigned representative of Kennecott Land Company, a Delaware Corporation, Grantor and Owner herein represents and certifies that it is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

Kennecott Land Company

By: *Ty McCutcheon*
Name: Ty McCutcheon
Title: Vice President Daybreak

22 June 2016
Date

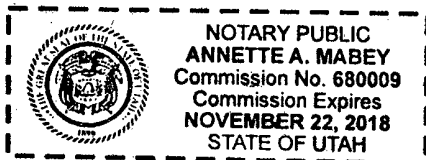
AM

STATE OF UTAH)

: ss.

COUNTY OF SALT LAKE)

On this 22nd day of June, 2016, appeared before me, *Ty McCutcheon* of Kennecott Land Company, the Grantor and Owner herein, who, his/her identity and position having been satisfactorily established to me, affirmed to me upon oath that the governing body of Kennecott Land Company, has authorized him/her to execute the foregoing Environmental Covenant, and did duly acknowledge before me having executed the same for the purposes stated herein.



Annette A. Mabey
NOTARY PUBLIC

The undersigned representative of Kennecott Utah Copper LLC, Holder, herein represents and certifies that it is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

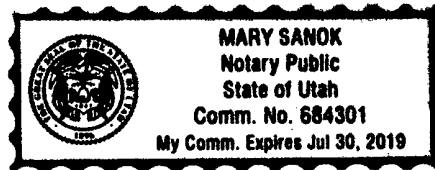
Kennecott Utah Copper LLC

By: [Signature]
Name: Nigel Steward
Title: Managing Director

22 June 2016
Date

[Handwritten initials]

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)



On this 22 day of JUNE, 2016, appeared before me, NIGEL STEWARD of Kennecott Utah Copper LLC, the Holder herein, who, his/her identity and position having been satisfactorily established to me, affirmed to me upon oath that the governing body of Kennecott Utah Copper LLC, has authorized him/her to execute the foregoing Environmental Covenant, and did duly acknowledge before me having executed the same for the purposes stated herein.

[Signature]
NOTARY PUBLIC

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

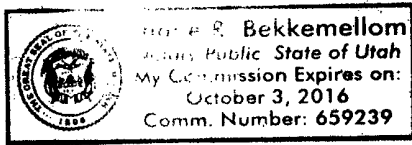
The Utah Department of Environmental Quality authorized representative identified below hereby approves the foregoing Environmental Covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).

Brent H. Everett
Brent H. Everett, Director
Division of Environmental Response and Remediation
Utah Department of Environmental Quality

23 June 2016
Date


State of Utah)
: ss.
County of Salt Lake)

On this 23rd day of June, 2016 appeared before me Brent H. Everett, an authorized representative of the Utah Department of Environmental Quality, personally known to me, or whose identity has been satisfactorily established to me, who acknowledged before me that he executed the foregoing Environmental Covenant.



Shane R. Bekkemellom
Notary Public


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY


Bill Murray, Director
Superfund Remedial Program
U.S. EPA Region 8

7/7/16
Date

STATE OF COLORADO)
: ss.
COUNTY OF DENVER)

On this 7th day of July, 2016 appeared before me Bill Murray, an authorized representative of the United States Environmental Protection Agency, personally known to me, or whose identity has been satisfactorily established to me, who acknowledged before me that he executed the foregoing Environmental Covenant.


Notary Public

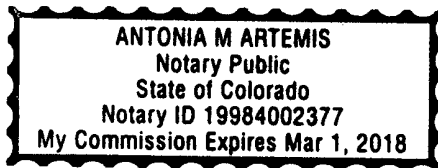


EXHIBIT A

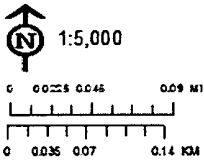
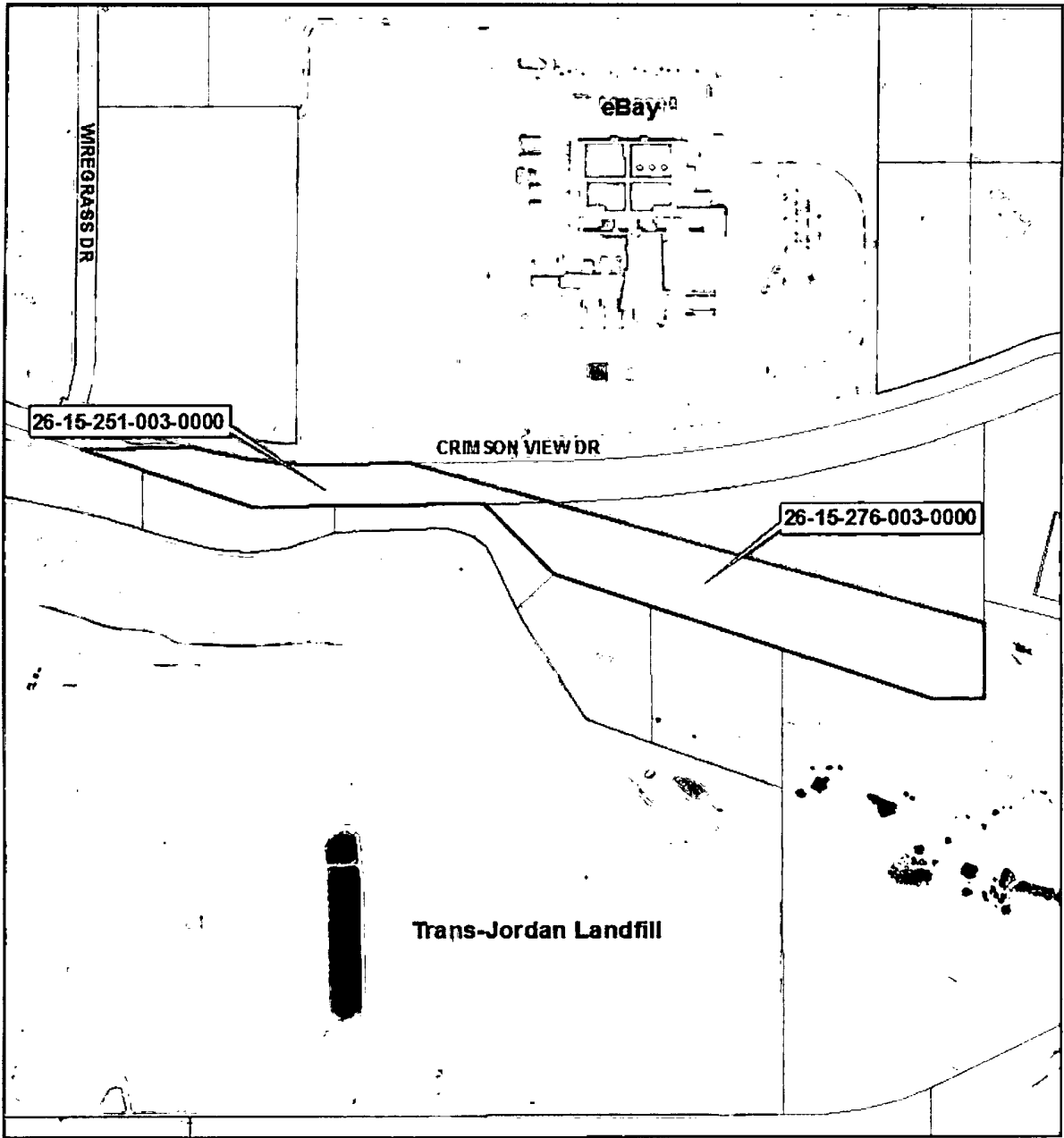
LEGAL DESCRIPTION OF PROPERTY

THAT LAND WITHIN TAX PARCEL NOS. 26-15-251-003-0000 AND 26-15-276-003-0000,
DESCRIBED AS:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF THE KENNECOTT DAYBREAK BINGHAM CREEK PLAT, SAID POINT LIES NORTH 89°56'42" WEST 304.330 FEET ALONG THE SECTION LINE AND SOUTH 1572.400 FEET FROM THE NORTH QUARTER CORNER OF SECTION 15, TOWNSHIP 3 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 89°07'05" EAST 371.061 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF CRIMSON VIEW DRIVE; THENCE ALONG SAID RIGHT-OF-WAY THE FOLLOWING (2) COURSES: 1) SOUTH 77°23'02" EAST 96.683 FEET TO A POINT ON A 1500.000 FOOT RADIUS TANGENT CURVE TO THE LEFT, (RADIUS BEARS NORTH 12°36'58" EAST); 2) ALONG THE ARC OF SAID CURVE 353.378 FEET THROUGH A CENTRAL ANGLE OF 13°29'53"; THENCE NORTH 89°07'05" EAST 262.949 FEET; THENCE SOUTH 74°21'24" EAST 1951.416 FEET; THENCE SOUTH 00°02'24" EAST 246.754 FEET; THENCE SOUTH 89°57'35" WEST 168.010 FEET; THENCE ALONG THE NORTHERLY LINE OF THE SAID BINGHAM CREEK PLAT AND THE BINGHAM CREEK PLAT EXTENDED THE FOLLOWING (4) COURSES: 1) NORTH 71°47'05" WEST 1305.397 FEET; 2) NORTH 43°52'57" WEST 323.001 FEET; 3) SOUTH 89°07'05" WEST 764.730 FEET; 4) NORTH 71°11'16" WEST 593.476 FEET TO THE POINT OF BEGINNING.

PROPERTY CONTAINS 12.717 ACRES.

**DAYBREAK DEVELOPMENT
 TAILWATER DITCH ENVIRONMENTAL COVENANT**



-  Tailwater Ditch Environmental Covenant (12.717 acres)
-  Parcel Boundary

The information on this map is based on the most current information available to the issuer and should be used for planning purposes only. No warranty, expressed or implied, is made regarding the accuracy or utility of the data for general or specific purposes, nor shall the act of using the information constitute any such warranty.

EXHIBIT B



State of Utah

Department of
Environmental Quality

Dianne R. Nielson Ph.D.
Executive Director

DIVISION OF ENVIRONMENTAL
RESPONSE AND REMEDIATION
Brad T. Johnson
Director

JON M. HUNTSMAN JR.
Governor

GARY HERBERT
Lieutenant Governor

ERRC-241-06

November 17, 2006

Mr. Francisco Benavides, Manager - Sustainable Development and Environment
Kennecott Land
5295 South 300 West, Suite 475
Murray, Utah, 84107

RE Request (October 18, 2006) to clarify the use of the previously accepted residential standard for lead and arsenic in soils

Dear Mr. Benavides:

The Division of Environmental Response and Remediation (DERR) and the US Environmental Protection Agency, Region VIII (EPA) (respectively referenced as the Agencies) received your request to clarify the interpretation of and use of the September 2006 accepted residential lead and arsenic standards for certain lands within the Daybreak community. Based upon your inquiry, the Agencies provide the following information:

Institutional controls or environmental covenants are typically required when there are environmental contaminants at concentrations that do not allow for unlimited land use and unrestricted exposures. As previously noted in the Agencies' letter dated September 22, 2006, institutional controls were requested for those certain lands (designated by Kennecott Land) intended to be remediated to the accepted commercial land use standard (2000 ppm and 450 ppm for lead and arsenic, respectively) established for the Daybreak Development. Since September 22, 2006, Kennecott Land has notified the Agencies that the designated lands intended to be remediated to the commercial land use standards have been remediated to the accepted residential land use standard (700 ppm and 100 ppm for lead and arsenic, respectively) established for the Daybreak Development. Lands cleaned up to the residential land use standard (at Daybreak) do not require the incorporation of institutional controls because such concentrations (for lead and arsenic) allow for unlimited land use and unrestricted exposure.

Please note that the Agencies still await the submission of a revised Operation & Maintenance Plan (O&M Plan). The O&M Plan needs to make reference to the September 2006 accepted residential and commercial land use standards and to depict (graphically) the designated lands which will be cleaned up to those standards.

168 North 1950 West PO Box 144840 Salt Lake City UT 84114-4840 phone (801) 536 4100 fax (801) 359 8853
TDD (801) 536-4414 www.deq.utah.gov

Page 2

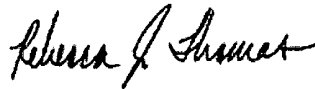
Currently, the Agencies understand that Kennecott Land still intends to comply with the EPA, Region VIII previously accepted unrestricted land use standard (500 ppm and 50 ppm for lead and arsenic, respectively) during the clean-up of the two South Jordan Evaporation Ponds consolidation areas and the Bastian sink. Please be advised of the Agencies desire to have these two areas depicted graphically in the revised O&M Plan.

If you have any questions regarding this letter, please do not hesitate to contact either Mr Douglas Bacon (801-536-4282) or Ms Rebecca Thomas (303-312-6552)

Sincerely



Douglas Bacon
Project Manager
Division of Environmental Response and
Remediation



Rebecca Thomas
Remedial Project Manager
U S Environmental Protection Agency,
Region VIII

DB/RT/eds

cc Gary L. Edwards M S Director, Salt Lake Valley Health Department
Mary Pat Buckman, Salt Lake Valley Health Department