

**MEMORANDUM OF UNDERSTANDING**  
**Between The**  
**ALASKA DEPARTMENT OF NATURAL RESOURCES,**  
**THE ALASKA DEPARTMENT OF ENVIRONMENTAL**  
**CONSERVATION**  
**And The**  
**USDA, FOREST SERVICE**  
**CONCERNING RECLAMATION/CLOSURE/POST-CLOSURE**  
**BONDING<sup>1</sup> FOR THE KENSINGTON GOLD MINE**

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

**I. BACKGROUND:**

- A. The U.S. 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 Section I F and G of this MOU.
- C. Coeur Alaska Inc. (Coeur) operates the Kensington Mine, located approximately 45 air miles north of Juneau and 35 air miles south of Haines, Alaska, on the east side of Lynn Canal.
- D. The mine operations are authorized, and are carried out in accordance with a Plan of Operations (POO) approved by the U.S. Forest Service. Certain mine operations may also be subject to other federal and state permits, approvals, and authorizations.
- E. U.S. 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 U.S. 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 POO modifications and to release amounts corresponding to completed reclamation activities. (FSM §§ 2843 & 2846.)

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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 actually be satisfied by a surety bond, as opposed to some other allowed mechanism.

Kensington Bonding MOU

- F. ADNR has issued certain land and water use authorizations, and dam safety and construction certificates covering some of the tailings facility infrastructure, for the Kensington 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 issued by ADEC for the Kensington Mine is an Alaska Pollutant Discharge Elimination System (APDES), Multi-Sector General Permit authorizing storm water discharges associated with an industrial activity, an APDES Permit for discharge of mine-related wastewater, and an integrated waste management permit under AS 46.03.100(d) for disposal of solid and liquid wastes at the facility. Proof of financial responsibility for Coeur's operations at the Kensington Mine is required by ADEC under AS 46.03.100(t) and 18 AAC 60.265. ADEC may enter into agreements with federal and state agencies concerning the proof of financial responsibility required.
- H. Coeur must obtain approval for each modification of the POO, and must maintain an updated and approved Reclamation and Closure Plan (RCP) on file within the Company, and with the U.S. Forest Service, ADNR, and ADEC.
- I. In accordance with the federal and state laws referenced above, the State and the U.S. Forest Service must review updated RCP documents and financial assurance calculations. Coeur 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 Kensington Mine in accordance with the following provisions.

**III. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:**

The agreements and arrangements described in this MOU will avoid overly burdensome, duplicative reclamation, closure and post-closure bonding requirements which otherwise would result due to the overlapping jurisdiction of the State and U.S. Forest Service (collectively, Agency or Agencies), and achieve efficiencies among the Agencies regarding the oversight of bond administration for the Kensington Mine.

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 Agencies:

## Kensington Bonding MOU

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

### B. Bond Requirements.

- 1) Holder of Bond. The parties agree that the U.S. Forest Service, as the primary land management agency, shall hold any bond already posted or to be posted by Coeur with regards to the Kensington Mine.
- 2) Release of Bond. Permanent reclamation must be implemented and completed in accordance with the conditions of the POO approved by the U.S. Forest Service, ADNR Reclamation Plan Approval, and ADEC Waste Management Permit prior to any bond release. Permanent reclamation of a facility will be complete when the following conditions are met:
  - All terms of the current Kensington Gold Mine Closure and Reclamation Plan and conditions of the approved POO, ADNR Reclamation Plan Approval, and ADEC Waste Management Permit are met; and,
  - All performance standards under federal and state regulations have been achieved.
- 3) Revising Bond Amount. With concurrence from the State and the U.S. Forest Service, the amount of the bond may be increased or decreased, to reflect changes in the cost of required reclamation/closure/post-closure work.
- 4) Accessing Bond Funds in the Event of Default. If Coeur 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 one or more of the Agencies as follows:
  - The Agency or Agencies declaring a default in obligations shall give written notice of the alleged default to Coeur, by confirmed delivery means, with a copy of such notice to the other parties to this MOU.
  - If Coeur fails to cure a default, the Agencies may agree to have the U.S. Forest Service draw funds from the bond for the purpose of performing, or paying a contractor to perform, the obligation in default.
  - 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 IX.
  - In the event of an unresolved dispute between or among the Agencies as a result of the processes described in this Section IV-B, the dispute shall be referred for resolution pursuant to Section IV-C of this MOU.

Kensington Bonding MOU

C. Process for Resolving Disputes.

The parties agree to make reasonable efforts to informally resolve all disputes related to this MOU. 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 are unable to resolve a dispute by means of the process described above, any party with jurisdiction over the disputed issue may make a final decision, and all other parties will have the opportunity to exercise their appeal rights under applicable state or federal laws.

D. Principle Contacts. Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

ADNR Cooperator Program Contact	ADNR Cooperator Administrative Contact
Marty Lentz Alaska Department of Natural Division of Mining, Land & Water 550 West 7th Avenue, Suite 900b Anchorage, AK 99501-3577 Telephone: (907) 269-8621 FAX: (907) 269-8930 Email: marty.lentz@alaska.gov	Kyle Moselle Alaska Department of Natural Resources Office of Project Management & 400 Willoughby Ave. 4th Floor Juneau, AK, 99801 Telephone: (907) 465-6849 FAX: (907) 465-3886 Email: kyle.moselle@alaska.gov

ADEC Cooperator Program Contact	U.S. Forest Service Program Contact
Allan Nakanishi Alaska Department of Environmental Conservation Division of Water 555 Cordova Street Anchorage, AK, 99501 Telephone: (907) 269-4028 FAX: (907) 334-2415 Email: allan.nakanishi@alaska.gov	Matthew Reece U.S. Forest Service Tongass National Forest 8510 Mendenhall Loop Road Juneau, AK 99801 Telephone: 907-789-6274 FAX: 907-586-8808 Email: matthewareece@fs.fed.us

V. **NON-LIABILITY.** The U.S. Forest Service does not assume liability for any third party claims for damages arising out of this agreement.

VI. **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

Kensington Bonding MOU

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.

- VII. PARTICIPATION IN SIMILAR ACTIVITIES.** This MOU in no way restricts the U.S. Forest Service or the State from participating in similar activities with other public or private agencies, organizations, and individuals.
- VIII. ENDORSEMENT.** Any of the State's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of the State's products or activities.
- IX. 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 U.S. Forest Service 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 law.

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

- X. 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.

- XI. 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.
- XII. 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 regulations (5 U.S.C. 552).
- XIII. TEXT MESSAGING WHILE DRIVING.** In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All cooperators, their employees, volunteers, and contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- XIV. 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.
- XV. 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."*

- XVI. TERMINATION.** Any of the parties, in writing, may terminate this MOU in

whole, or in part, at any time.

**XVII. 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, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.

**XVIII. 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.

**XIX. COMMENCEMENT.** This MOU is executed as of the date of the last signature and is effective until terminated in accordance with Section XVI.

**XX. 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.



Brent Goodrum, Director  
State of Alaska Department of Natural Resources  
Division of Mining, Land, and Water

16 MARCH 2017

Date



Michelle Hale, Director  
State of Alaska Department of Environmental  
Conservation  
Division of Water

3-24-17

Date



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

30 Apr 2017

Date