

**Attachment 1 – Draft Environmental Covenant**



**This Property is subject to an Environmental Covenant  
approved by the Alaska Department of Environmental Conservation**

**ENVIRONMENTAL COVENANT**

Grantor(s): State of Alaska, Department of Natural Resources, 550 W 7<sup>th</sup> Ave., Ste 640 Anchorage, AK 99501

Grantee(s): State of Alaska, Department of Natural Resources, 550 W 7<sup>th</sup> Ave., Ste 640 Anchorage, AK 99501

Check the following:

Original Covenant

Amendment of Covenant

RECITALS

- I. This document is an environmental covenant (hereafter “Covenant”) executed pursuant to Alaska Statute (AS) 46.04.300–46.04.390, the Alaska Uniform Environmental Covenants Act (hereafter, “the Act”), and Title 18 of the Alaska Administrative Code (AAC) 75.325–390, (the “Site Cleanup Rules”).
- II. The Property that is the subject of this Covenant is situated in Latouche Passage Prince William Sound, Alaska, is shown on the map attached as Appendix A, and is legally described as follows:

A portion of submerged land located seaward of Sections 28 and 33, Township 1 South, Range 9 East, Seward Meridian, Alaska. Being more particularly described as follows:

**Beginning** on the mean high-water line of Latouche Passage and the Northwest corner of Lot 7, Block 1, Latouche Island Townsite Subdivision, recorded as Plat No. 76-5 in the Valdez Recording District on July 30<sup>th</sup>, 1976;

**Thence**, West a distance of 2,082 feet to a point located within Latouche Passage;

**Thence**, North a distance of 5,787 feet to a point located within Latouche Passage;

**Thence**, East a distance of 3,286 feet to a point located within Latouche Passage;

**Thence**, South a distance of approximately 3,500 feet to a point located on the mean high water line of Latouche Passage and the northerly boundary of Lot 2, Block 2, Latouche Island Townsite Subdivision;

**Thence**, in a southwesterly direction along the mean high water line of Latouche Passage and the westerly boundary of Latouche Island Townsite Subdivision to the **Point of Beginning**, containing 389.4 acres more or less.

The **Basis of Bearing** is coincident with the Latouche Island Townsite Subdivision, recorded as Plat No. 76-5 in the Valdez Recording District on July 30<sup>th</sup>, 1976. Distances

are horizontal field distances in U.S. Survey Feet. (the “Property”).

- III. Hazardous substances, pollutants, and/or contaminants are present on or within the Property. As a result, all or part of the Property is a DEC-listed contaminated site. The contaminated site here is commonly known as follows:

DEC Site Name: Beatson Mine-Submarine Tailings  
DEC Hazard ID: 27938  
Site Address: NW Shore of Latouche Island, ~3.8 Miles ESE of Chenega Bay, Chenega Bay, AK 99574

The current boundaries of the contaminated site are shown in the map attached as Appendix A (the “Site”). In the event the contamination moves, the Site boundaries will shift as needed to encompass the contamination in accordance with the definition of “site” in 18 AAC 75.990(115) or 18 AAC 78.995(134), as applicable.

- IV. This Covenant subjects the Property to certain activity and use limitations and requires the owner (for purposes of this covenant, “owner” means the current owner) to comply with those limitations as set forth herein and in accordance with the Act. The applicable activity and use limitations described in this Covenant are necessary to protect human health, safety, welfare, or the environment and to ensure the integrity of the cleanup remedy conducted at the Property. Environmental documents pertaining to the cleanup are available from the Alaska Department of Environmental Conservation (DEC or “Department”) at the Contaminated Sites Program Website at <http://dec.alaska.gov/spar/csp/>.
- V. The Site is the subject of an environmental response project under the Site Cleanup Rules (18 AAC 75.325–18 AAC 75.390), Underground Storage Tank regulations (18 AAC 78), the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA), and/or the federal Resource Conservation and Recovery Act (RCRA). This Covenant is required because contamination remains on the Property, which is safe for some, but not all, activities and uses. Contamination remaining at the Property includes the following hazardous substances, pollutants, or contaminants (Contaminants):

| <u>Media</u> | <u>Contaminants</u>            |
|--------------|--------------------------------|
| Sediment     | Arsenic, Copper, Cadmium, Zinc |

- VI. The Department enters into this Covenant as a “department” under the Act, with all attendant rights of a “department” under the Act, which include but are not limited to the right to enforce this Covenant. This is not an ownership interest and the rights of DEC under the Act are not an interest in real property.
- VII. Unless otherwise indicated in this covenant, the holder of this covenant at any given time is the current owner of the Property.
- VIII. For purposes of indexing in the Alaska Department of Natural Resources (DNR) Recorder’s office Grantor-Grantee index only, Alaska Department of Natural Resources shall be considered the **Grantor**, and Alaska Department of Natural Resources shall be considered the **Grantee**.

## COVENANT

Grantor hereby grants to the Grantee and its successors and assignees, the following requirements and restrictions and declares that the Property described in the legal description above shall hereinafter be bound by, held, sold, and conveyed subject to the activity and use limitations set forth in paragraphs 1 through 4, below, which shall run with the Property in perpetuity and be binding on the Owner and all parties now or subsequently having any right, title or interest in the Property, or any part thereof, and any persons using the land, as described herein. Furthermore, it is the intent of the Grantor that such requirements and restrictions shall supersede any prior interests in the Property.

### **Summary of Environmental Actions** –

In 1915-1930, operators of the former Beatson Mine used a flume to dispose of tailings in the marine waters of Prince William Sound. As part of the environmental response at the Beatson Mine site, investigation and characterization of historical submarine tailings was conducted. A tailings deposition of approximately 2 million tons was located. The tailings deposit covers approximately 97 acres located at -33 to -230 feet mean lower low water. Characterization of the tailings found sediment exceedances for arsenic, copper, cadmium, and zinc. Absent Alaska regulatory cleanup levels for sediment, Washington Department of Ecology's Sediment Management Standards, Sediment Cleanup Objectives were used as the benchmarks for determining the exceedances. Potential human exposure pathways evaluated include direct contact with submarine tailings and consumption of fish and shellfish that are directly or indirectly exposed to submarine tailings. Risk to ecological receptors from direct exposure and bioaccumulation and to humans from consumption of subsistence resources and direct contact were determined to be low as long as the tailings remain undisturbed. No remedial actions were taken.

**Activity and Use Limitations** - By acceptance and recordation of this Covenant, the Property is hereby subject to the following requirements and restrictions, now or at any time in the future:

1. The owner shall not take any action that may increase the risks to human health, safety, welfare, or of the environment at the Property without prior written approval from DEC. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as part of the remedial action or that creates a new exposure pathway for residual contamination.
2. Excavation, drilling, dredging, and other intrusive activities which could disturb the tailings are prohibited within the Property, without prior review and approval from DEC.
3. DEC approval is required prior to moving sediment where contamination remains above the State of Washington Sediment Management Standards, Sediment Cleanup Objectives. If DEC approval for movement is granted, any moved sediment must still be characterized and managed following regulations applicable at that time.
4. Movement or use of contaminated material in a manner that results in a violation of 18 AAC 70 Water Quality Standards is prohibited.

Included in Appendix A is a Property Diagram drawn to scale that shows the Property boundaries and the location and extent of remaining sediment contamination which is subject to the activity and use limitations described in this Covenant.

**Conveyance of Interest** - The owner, when conveying any interest in any part of the Property, including but not limited to title, easement, leases, or other interests must notify DEC at least 30 days prior to conveyance, and must include in any conveyance document a complete copy of this Covenant and Appendices.

**Successors** - The requirements, terms, conditions, and restrictions of this Covenant shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns. The rights of the Grantee under this instrument are freely assignable, subject to the notice provisions contained in this Covenant.

**Prior Notification for Changes in Land Use, including Proposed Construction** - No less than 30 days before taking action on the Property, the owner shall notify DEC of the following:

- Its intent to propose changes in use of the Property that may affect exposure to contaminants, and what those changes will be.
- Its intent to propose any work affecting the contamination on the Property, and what that work will be.

**Notification of Foreclosure Proceedings** - If, during ownership of the Property, any third party notifies the owner of the Property of the initiation of foreclosure proceedings on the Property, either orally or in writing, the owner of the Property shall immediately notify DEC so that DEC can take actions to preserve this Covenant.

**Notices and Reporting** – The owner shall report to DEC every 5 years to document the status of compliance with the activity and use limitations described in this Covenant. Such notice and the accompanying reports should be mailed to the DEC at:

Alaska Department of Environmental Conservation  
Division of Spill Prevention and Response  
Contaminated Sites Program  
Attention: Institutional Controls Unit  
P.O. Box 111800  
Juneau, AK 99811-1800

Or be submitted electronically to [CS.Submittals@alaska.gov](mailto:CS.Submittals@alaska.gov).

**Authorizations** – The owner shall restrict authorizations, including leases, for any portion of the Property to only those uses and activities consistent with this Covenant. Further, the owner shall notify all authorized users of the Property of all requirements and restrictions on the use of the Property.

**Access** - The Department, including its authorized employees, agents, representatives and independent contractors, shall have the right of access to the Property granted in connection with the implementation or enforcement of this Covenant.

**Enforcement** - The Department and other parties, including parties to the Covenant, described in AS 46.04.335 are empowered to administer and enforce the terms of this Covenant using civil authority granted to them in AS 46.03. In addition, the Department may use administrative authority granted by AS 46.03.

**Waiver of Certain Defenses** - This Covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, acquiescence, or any similar doctrine as set forth in AS 46.04.325(f).

**Representations and Warranties** - Grantor hereby represents and warrants to DEC, holder(s), Grantor(s), Grantee(s), and any other signatories to this Covenant that, at the time of execution of this Covenant, the Grantor lawfully owns the Property in fee simple; that Grantor has a good and lawful right and power to sell and convey it or any interest therein; and that the Property is free and clear of encumbrances, except those noted in Appendix B.

**Amendment or Termination** - This Covenant runs with the land and is perpetual, unless amended or terminated pursuant to AS 46.04.325 or 46.04.330.

**Subsurface Rights** - The activity and use limitations required by this environmental covenant apply to the Property shown in Attachment A. They are not intended to affect the rights of the subsurface estate under applicable state and federal law.

**Controlling Law** - This Covenant shall be construed according to and governed by the laws of the State of Alaska.

**Liberal Construction** - Any general rule of construction to the contrary notwithstanding, this Covenant shall be liberally construed in favor of the establishment of activity and use limitations that run with the land to effectuate the purpose of this Covenant and the policy and purpose of the environmental response project and its authorizing legislation. If any provision of this Covenant is found to be ambiguous, an interpretation consistent with the purpose of this Covenant that would render the provision valid shall be favored over any interpretation that would render it invalid.

**Joint Obligation** - If there are two or more parties identified as Grantor herein, the obligations imposed by this Covenant upon them shall be joint and several.

**Effective Date** - This Covenant is effective on the date it is recorded with the appropriate recorders' office.

**List of Appendices:**

**Appendix A – Property and Diagram Showing Location of the Contamination**

**Appendix B – List of Recorded Encumbrances**

GRANTOR(S) SIGNATURE BLOCK

The undersigned Grantor warrants she/he holds the title to \_\_\_\_\_ [property] \_\_\_\_\_  
OR \_\_\_\_\_ [easement, right-of-way or other on the property] \_\_\_\_\_ and has  
authority to execute this instrument.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ the undersigned personally  
appeared before me, acknowledged that she/he is the \_\_\_\_\_ [type of representative] \_\_\_\_\_ of  
\_\_\_\_\_ [name of Grantor] \_\_\_\_\_ described herein and who signed and executed the within  
and foregoing instrument to be the free and voluntary act and deed of the Grantor pursuant to AS  
46.04.300-46.04.390 for the uses and purposes therein.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ at  
\_\_\_\_\_, Alaska.

\_\_\_\_\_  
Notary Public in and for the State of Alaska

My Commission Expires: \_\_\_\_\_

**DEC SIGNATURE BLOCK**

\_\_\_\_\_  
Notice Approved by Authorized DEC Representative

\_\_\_\_\_  
Date

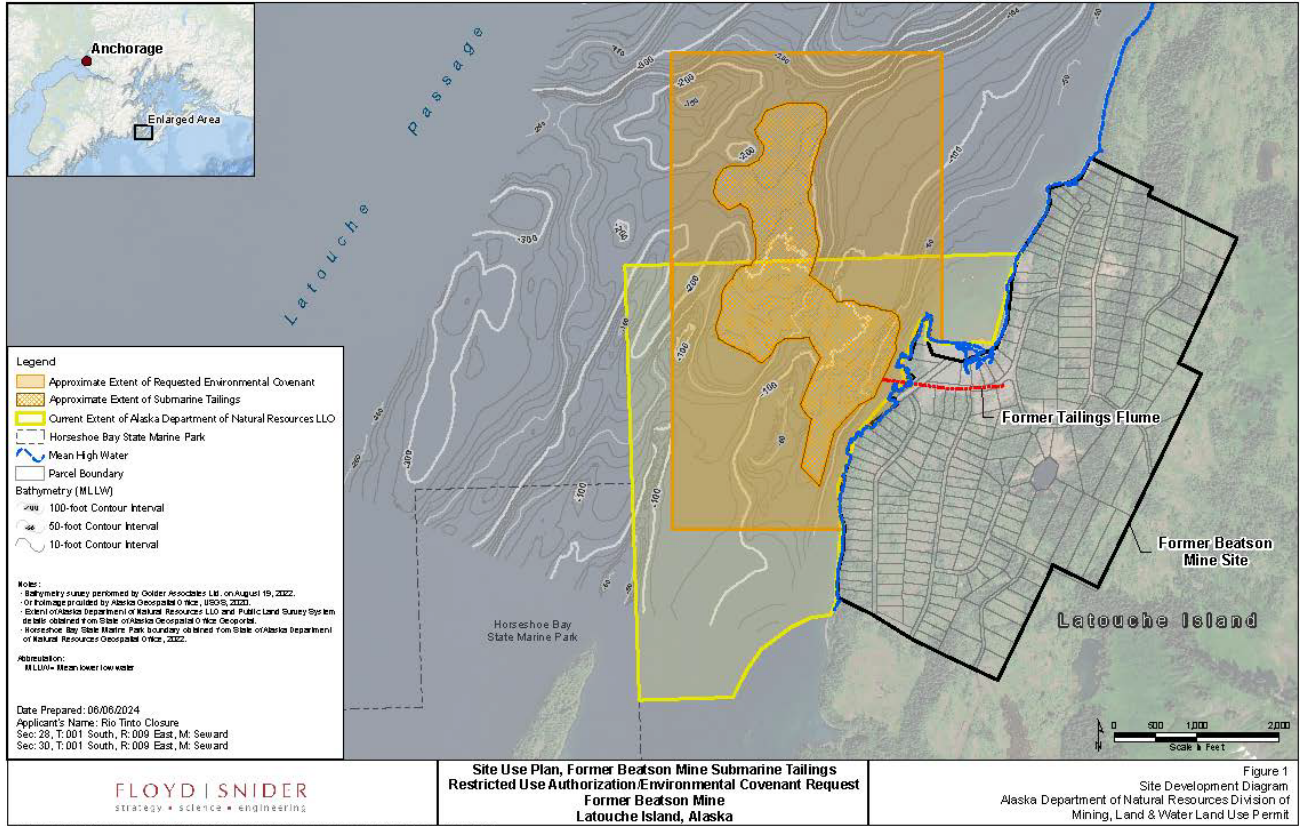
\_\_\_\_\_  
Printed Name of Authorized DEC Representative

\_\_\_\_\_  
Title

DRAFT



# Appendix A – Property and Diagram Showing Location of the Contamination



**Appendix B**  
**List of Recorded Encumbrances**

ADL 233787 – Department of Natural Resources administered lease to a private individual for a small harbor and dock.

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