

Rico Soils VCUP

DRAFT Institutional Controls [Town of Rico – January 24, 2006]

For adoption and inclusion in the Rico Land Use Code by Ordinance

880. ENVIRONMENTAL REMEDIATION REGULATIONS

880.1 Findings of Fact

- A. Background. The Environmental Remediation Zone District (“ERZ”) and the Rico Soils Overlay Zone District (“RSOZ”) designate certain areas in Town where elevated levels of lead and other heavy metals in the soils may present health risks to property owners and the general public. Elevated levels of lead and heavy metals in the Rico area are present from past mining activities and such elevated levels occur naturally due to local geologic conditions. The presence of elevated levels of lead and other heavy metals were identified as part of the 1996 Atlantic Richfield Corporation Voluntary Clean-up Application to remediate several mine tailings piles in and around Rico, the 1995 Walsh Report commissioned by Rico Renaissance, the 2003 Colorado Department of Public Health and Environment Brownfields Assessment, the START2 ANALYTICAL RESULTS REPORT for FOCUSED SITE INSPECT, TDD No. 0308-0013 soil date study conducted by the Environmental Protection Agency, dated January 16, 2004, and the 2004 soil assessment conducted by Atlantic Richfield Corporation pursuant to the Rico Soils VCUP.
- B. Not Areas of State Interest. The Environmental Remediation Zone District and Rico Soils Overlay Zone Districts are not Areas of State Interest as defined in **802.** and C.R.S. §24-65.1-101 *et.seq.* Unless the boundaries of the ERZ or the RSOZ overlap with an Area of State Interest designated in **802,** they shall not be considered Areas of State Interest and the provisions of this Article relating to Areas of State Interest only shall be applicable to the extent specifically incorporated in this **880.**
- C. Environmental Remediation Regulations are Additional. These regulations are in addition to any other applicable requirements of the RLUC.

880.2 Methods of Reducing Health Risks. In order to accomplish the purpose of minimizing the potential for exposure to elevated levels of lead and other heavy metals in soils, **880** through **887** include methods and provisions for:

- A. Restricting or prohibiting uses, construction and development activities in the ERZ which are inconsistent with the Remediation Standards and the Remediation Plans approved by the Town (see **886**), Voluntary Clean-Up Plans approved by the Colorado Department of Public Health and Environment, and/or environmental remediation plans approved by the Environmental Protection Agency.

- B. Establishing a process to review any new uses, construction and development activities in the ERZ to insure such activities do not damage past reclamation activities or increase health risks.
- C. Establishing a review process and regulations for new uses, construction and development activities in the RSOZ to insure such activities do not pose a potential health risk to property owners and residents, adjacent property owners and residents, and the general public or the environment.

881. GENERAL PROVISIONS

881.1 Lands To Which Environmental Remediation Regulations Apply. The Environmental Remediation Regulations shall apply to all lands situated in the ERZ and the RSOZ as depicted on the Official Zone District Maps and Hazard Maps of the Town of Rico, as such maps may be amended.

881.2 Activities Exempt from Regulation. The following activities are hereby exempt from review and application of the Environmental Remediation Regulations **880** through **887**:

- A. Excavation of less than 2 cubic yards, but not including: excavation for the purpose of installing or relocating underground electric service line, phone service line, propane service line, water service line, sewer service line, or any other below ground utility line, or installation, repair or relocation of septic tanks and/or leach fields;
- B. Installation, repair or relocation of fences; and,
- C. Excavation for the purpose of conducting soil sampling and other soils testing.

881.3 Town Approval. Any new use, excavation, construction or development activity in the ERZ or RSOZ shall require prior approval by the Town of a Remediation Plan or Finding of No Remediation Action Required.

881.4 Failure to Obtain Prior Approval is a Violation. The commencement of any new use, excavation, construction or development activity in the ERZ or RSOZ prior to review and approval by the Town is hereby deemed a violation of this Rico Land Use Code and shall be punishable in accordance with **740**.

882. REVIEW PROCEDURES

882.1 Reviewing Entity. The Building Official shall review and act to approve, approve with conditions or deny applications for building permits and excavation activities in the RSOZ. The Planning Commission and Town Board shall review any proposed new uses, construction or development activities in the ERZ and any subdivisions or planned unit developments in the ERZ or RSOZ. For any activities reviewed by the Planning Commission and Town Board, the Planning Commission shall provide a recommendation and the Town Board shall act to approve, approve with conditions or deny the application.

- 882.2** Notice Requirements. No public notice is required for any uses, building permits or excavation activities which are reviewed by the Building Official. For proposed new uses, excavation, construction or development activities which are reviewed by the Planning Commission and Town Board, the Planning Commission and Town Board shall each utilize the required public hearing and notice requirements for the excavation, construction or development activity (including but not limited to: subdivisions, Planned Unit Developments, development activities in Areas of State Interest). Town shall refer Remediation Plans prepared pursuant to **886** to Atlantic Richfield for review and comment. Atlantic Richfield shall have five (5) business days from the date of receipt to review and comment on Remediation Plans to be reviewed by the Building Official and shall have ten (10) days from the date of receipt to review and comment on Remediation Plans to be reviewed by the Planning Commission and Board of Trustees.
- 882.3** Continuance for Additional Information. The reviewing entity may continue the review of an application under these Environmental Remediation Regulations in order to receive additional information necessary to review such application.
- 882.4** Soil Sampling Plan. When additional soils sampling is required by Town as provided herein, the Applicant must submit a Soil Sampling Plan that meets the standards in **885** to the Town which shall be reviewed and approved by the Building Official, Planner, or other designee of the Town, prior to conducting such soils sampling. The soils sampling shall be conducted in accordance with the approved Soil Sampling Plan. Additional soils sampling data shall be required for properties that do not have existing data that meets **885 STANDARDS FOR SOIL SAMPLING** or if conditions on a site have changed such that the prior soils sampling data is no longer deemed representative of the soils condition, as determined by Town.

883. SUBMITTAL INFORMATION

The following information must be submitted in addition to the general submittal requirements in **805**.

- 883.1** Soil data from existing tests. The source of soil data shall be identified. Available data may be obtained from the Town.
- 883.2** A Soil Sampling Plan if additional soil testing data is necessary to assess soil conditions of the property for the proposed use. (*See **882.4 SOIL SAMPLING PLAN** and **885 SOIL SAMPLING STANDARDS***)
- 883.3** Description of proposed use, excavation, construction or development activity, including a narrative statement, site plan, description of area and depth of excavation, and time frame for the use or activity.
- 883.4** Proposed Remediation Plan that describes how any potential health risk identified by soil sampling data are to be addressed. (*See **886 REMEDIATION PLAN STANDARDS***).
- 883.5** Proposed financial performance assurances for any new uses or proposed activities in the ERZ. (*See **886.5 Financial Assurance Standards***).

883.6 For proposed new uses, excavation, construction, or development in the ERZ where a prior Voluntary Clean-Up Plan was performed under the Colorado Department of Public Health and Environment (“CDPHE”) Voluntary Clean-Up Program authority, an application submitted to CDPHE for approval of said uses, excavation, construction or development under a Voluntary Clean-Up Plan.

884. DETERMINATION

After review of soils data which meets the Standards for Soil Sampling set forth in **885** and consideration of Atlantic Richfield’s and other public comments, if notice is required under **882.2**, the Building Official or the Town Board may determine that no Remediation Plan or other action is required if the soil conditions and proposed use, excavation, construction or development activity does not present a potential health risk to Rico residents or general public, in which case, the Town shall issue a Finding of No Remediation Action Required to the property owner and/or the Applicant. In all other cases, the Building Official or the Town Board shall approve, approve with conditions or deny a proposed Remediation Plan based on the submittal requirements and remediation standards contained in these Environmental Remediation Regulations and other provisions of this Rico Land Use Code.

885. STANDARDS FOR SOIL SAMPLING

The following requirements and guidelines shall govern all environmental testing and sampling performed under these Environmental Remediation Regulations:

- 885.1** Accurate Representation. The number and types of samples collected shall provide a reasonable and accurate representation of the entire property. By way of clarification, samples shall not be collected at the visually cleanest portion of property and be presented as being representative. The reviewing official on behalf of the Town shall have the authority to waive certain sampling requirements or approved a site specific sampling plan for properties based on the unique conditions of a specific property.
- 885.2** Approved Sampling Contractors. All sampling and analysis must be performed by a non-biased third party who is on CHPHE’s or EPA’s list of approved firms available to the public. The proper chain of custody shall be maintained and documented for all samples collected for the property. All samples shall be submitted to a CDPHE or EPA approved laboratory that has experience and is qualified to perform metals analysis in a solid matrix.
- 885.3** Analytical Procedures. All samples to be analyzed will be sieved through the U.S. Standard No. 10 sieve per standard protocols for preparation of samples for metals testing whether by laboratory grade x-ray fluorescence (XRF) or using inductively coupled plasma (ICP). If any sample has less than 5 percent passing the No. 10 sieve it will be archived and not processed further for metals analysis. Analytical methods shall conform to the procedures outlined in EPA field and laboratory methods, SW. 849, 3rd Edition, as amended, November of 1986, or an approved equivalent method. For acid based potential, tests should conform to the methods outlined in report no. EPA-670/2-74-070, Mine Spoil Potential for Soil and Water Quality or an equivalent method.

Analyses to be performed include the following:

- A. Lead – Soil samples from any property or site where Mine Waste is not visible, identifiable or discovered shall be analyzed for lead using laboratory-grade x-ray fluorescence (XRF) or using inductively coupled plasma (ICP).
- B. Mine Waste – Soil Samples from any property or site where Mine Waste is present or a mine is located must be analyzed for lead, zinc, arsenic, mercury, acid-based potential and soil ph using laboratory-grade x-ray fluorescence (XRF) or using inductively coupled plasma (ICP).

885.4 Minimum Surface Samples: Within each sampling section, surface soil samples will be collected from 0” to 2” inches (below the base of any sod or root mat that may be present) at five randomly selected locations, not including obvious imported mine waste material (mine waste piles are sampled separately, see **885.6** below) or the drip zone of buildings (four feet from the edge of a building) to avoid lead paint contamination. The five yard samples in each section or quadrant will be composited into a single sample for analysis. The minimum surface samples shall be required as follows:

- A. Residential lots: The property must be divided into multiple sampling sections, depending upon the size of the property. For properties less than or equal to approximately 5,000 sq.ft., the property must be divided into two sections, typically a front yard section and a back or side yard section. For properties greater than 5,000 sq.ft., the property must be divided into four quadrants of approximately equal size and the samples must be collected within a 75’ radius of and existing or proposed primary residential structure. For each sampling section, five (5) samples shall be collected and composited into a single sample for analysis.
- B. Mixed Use, Commercial PUD, Historic Commercial, Commercial, and Public Facilities: Five (5) samples per 10,000 sq.ft. The five surface samples may be composited into a single sample for analysis. A separate surface sample (not to be composited) shall be collected for existing driveways, gardens and bare play areas.
- C. Residential PUD: Five (5) samples per proposed building site or existing residential structure. Such samples must be collected within a 75’ radius of a proposed primary residential building site or existing residential structure. The five surface samples may be composited into a single sample for analysis.
- D. Open Space: Five (5) samples per acre. Such samples shall occur within 50’ of proposed excavation or development activities. The five surface samples may be composited into a single sample for analysis.

885.5 Minimum Depth Samples: Depth samples shall be 12” to 18”. The minimum number of depth samples shall be required as follows:

- A. Residential lots: One (1) sample per potential single family residence (i.e. 1 sample for 2 historic lots/5,000 sq.ft., 2 samples for 4 historic lots/10,000 sq.ft.)
- B. Mixed Use, Commercial PUD, Historic Commercial, Commercial and Public Facilities: One (1) sample per 10,000 sq.ft.
- C. Residential PUD: One (1) sample per 22,000 sq.ft. Such sample must be collected within a 25’ radius of a proposed residential building site or existing primary residential structure.
- D. Open Space: One (1) sample per acre.

885.6 Minimum Samples for Mine Waste Material: Properties with any visible, identifiable, or discovered mine waste shall include one (1) surface sub-sample of 0” to 2” depth for each 1,000 sq.ft. with a minimum of two sub-samples per area and one depth (1) depth sample 4’ (four feet) per 5,000 sq.ft. of such tailings or waste rock. Mine Waste shall be sampled separately from and in addition to **885.4** Minimum Surface Samples and **885.5** Minimum Depth Samples.

885.7 Additional Sampling: Additional soil sampling shall be required if required by the Colorado Department of Public Health and Environment or Environmental Protection Agency. Additional sampling may be required by the reviewing entity if deemed necessary for accurate analysis of potential health risks posed by soil conditions considering the proposed development activity, excavation, and/or use of the property.

885.8 Alternative Sampling Plans: The reviewing entity shall have the discretion to approve alternative sampling plans that do not strictly follow the minimum requirements set forth above after considering available soil data, site specific conditions unique to the property, the proposed development activity, proposed excavation, proposed use of the property, and existing and planned uses in the surrounding area.

885.9 Soil Sampling Plan. The Applicant shall propose a Soil Sampling Plan that includes a diagram of the site indicating property boundaries, adjacent rights-of-way, existing structures, and proposed sectioned areas for sampling, specific sampling areas, number of samples, and depth of samples. The Soil Sampling Plan diagram shall be legible, shall be at scale and shall indicate the scale, shall indicate north, shall indicate the property for sampling by lot and block number or other designation accepted and recognized by the Town, and shall indicate the date of the latest revision.

886. REMEDIATION STANDARDS

If the results of soil sampling indicate that a proposed use, excavation, construction or development activity could pose a potential health risk to residents of Rico, the general public, or the environment through disturbance of, or potential exposure to, Action Level Soils (set forth in **886.1** below), then the Applicant must include a plan for remediation (“Remediation Plan”) of those risks. The Remediation Plan must consist of text supplemented with drawings, as appropriate, that describe how the proposed excavation, construction, and/or development activity would address the Remediation Standards described herein.

- 886.1** Action Level Soils: Action Level Soils are soils which have concentrations of lead that exceed the Minimum Guidelines set forth below in **886.2**.
- 886.2** Minimum Guidelines: Any proposed use, excavation, construction or development activity should achieve a level of lead concentration in soils to a depth of 12” (twelve inches) that is less than _____ ppm for all property in the Residential, Residential PUD, Historic Commercial, Commercial, Commercial PUD, Mixed Use, and Public Facility Zone Districts. Any proposed use, excavation, construction or development activity shall achieve a level of lead concentration in soils to a depth of 12” (twelve inches) that is less than _____ ppm for any property in the Light Industrial and Open Space Zone Districts. These Minimum Guidelines are not applicable to public streets.
- 886.3** Removal Preferred: Complete removal shall be preferred when the total volume of Action Level Soils is 10 cubic yards or less per Residential, Residential PUD, Public Facilities, Historic Commercial, Commercial, Commercial PUD, and Mixed Use. Where contiguous lots are in the same ownership, “property” shall be defined as the smallest platted lot that meets the minimum lot size requirements for the particular zone district. If complete removal of Action Level Soils is completed, then such Remediation Plan shall be recorded in the Town and County records and all future excavations, development activities and uses which would otherwise be subject to these Environmental Remediation Regulations shall automatically be granted a Finding of No Remediation Action Required determination (see **884**.)
- 886.4** Remediation Standards: Where a property contains Action Level Soils, a Remediation Plan shall include a site plan that complies with the minimum design standards set forth below. The site plan shall be legible, shall indicate the property boundaries, and shall show the 2’ topographic contour lines of the pre-construction grade, in addition to specific information of the Remediation Plan.
- A. Residential Yards: A minimum of 12” of top soil with less than ____ ppm lead concentrations and a plan for vegetation to prevent erosion of the topsoil. Where mature trees are present, soil beneath the canopy must have a lead concentration less than ____ ppm to a depth of 12” at the edge of the canopy, and to a depth of 0” at the base of the tree trunk. For soil beneath mature Aspen trees, the depth of soil with less than ____ ppm lead may be reduced to a uniform 4” depth beneath the canopy.
 - B. Driveways and Walks: An impervious surface such as concrete or asphalt, or a minimum 6” of top soil or gravel below a 6” pervious surface.
 - C. Buildings and Structures: The construction of a building or structure that prohibits access to soils with elevated concentrations of lead below the building or structure is generally considered as adequate remediation.
 - D. Backfill. Where circumstances permit appropriate containment onsite, excavated soils exceeding Action Levels can be used for backfill if such soils can be contained by a cap that complies with the Minimum Guidelines as set forth in sub-sections **886.2**. Such excavated soils shall be placed within the excavated area in the same profile or cross-section in which it was removed. Soils which cannot be replaced within the excavated area must be removed to the North Rico Repository or other

approved repository. Excavated soils which are used for backfill or removed to an approved repository shall not require further testing. Excavated soils which are not used for backfill on that same property must have lead concentrations less than 400 ppm to be used as fill material at another location within the Town of Rico. Excavated soils that will be used for backfill must be stored on-site separately from other fill materials.

- E.** Imported Backfill: Soil needed for backfill which is imported to the property shall not contain lead in concentrations that exceed 400 ppm. This must be demonstrated by providing soil samples for the imported backfill of one representative sample per 10 cubic yards of soil.
- F.** Removal of Action Level Soils: Action Level Soils that can not be used for backfill on site are required to be removed from the Town of Rico and deposited either in the North Rico Repository or approved solid waste disposal facility. Removal shall occur immediately upon excavation of Action Level Soils.
- G.** Environmental Remediation Zone District: For proposed uses, excavation, construction and development activities in the ERZ, the Applicant shall submit to and obtain approval of a cleanup plan in accordance with the Colorado Department of Public Health and Environment's Voluntary Clean-up Program and/or applicable federal law requirements.

886.5 Alternative Remediation Plans: The Town entity reviewing a Remediation Plan is authorized and has the discretion to approve a Remediation Plan that does not meet the strict requirements of the Remediation Standards in **886.4** where the Town makes the following finding:

- A.** Exceptional and extraordinary conditions unique to the property exist; and,
- B.** The Applicant and/or property owner has not created the conditions; and,
- C.** Strict compliance with the Remediation Standards would create an unreasonable hardship upon the Applicant; and,
- D.** The Town determines that the alternative Remediation Plan would otherwise protect the environment and the Rico community from health risks posed by potential exposure to Action Level Soils; and,
- E.** The Applicant and property owner agrees to indemnify the Town for any liability arising from Town's approval of an alternative Remediation Plan in a form acceptable to the Town.

886.6 Financial Assurance. The Applicant shall provide financial assurance to complete any Remediation Plan. The method for commitment of financial assurance shall comply with section 1.8 of the State Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2). For applications reviewed by the Building Official, the financial assurance for a Remediation Plan shall require a minimum performance bond of \$1,000.00, paid to the Town, which shall be returned upon completion of the Remediation Plan, except that no performance bond shall be required for activities which only include installation, repair, or relocation of utilities. For applications reviewed by the Planning Commission and the Board of Trustees, the Applicant shall

provide security in the amount of 125% of the estimated cost of the Remediation Plan, which may be included in a Site Improvements Agreement.

886.7 Environmental Report: All excavation, construction and development activities in either the ERZ or the RSOZ shall require the filing of the approved Environmental Report in the Dolores County Clerk and Recorder's office real property records with a copy of same filed with the Town of Rico, which report shall set forth a legal description of the site; describe the nature of site, soil conditions, and date of soils testing; the location, quantity and date that soils with elevated lead concentrations were removed from the site; the Remediation Plan approved by the Town; and any required maintenance of the site to protect the integrity of any Remediation Plan activity. The Environmental Report shall be recorded / filed within five (5) business days after Town approval of the Remediation Plan. The Applicant and property owner shall sign an agreement with the Town to perform the Remediation Plan as approved by the Town.

887. Maintenance of Remediation Plan

Property owners are responsible for maintaining their property in accordance with the approved Remediation Plan in perpetuity. Recording of the Remediation Plan in the Office of the County Clerk and Recorder is intended to advise transferees and future owners of past remediation activities and on-going maintenance requirements. In the event that a Remediation Plan is not maintained, the Town shall issue a written notice of violation to the property owner describing the conditions present on the property that constitute a failure to maintain the Remediation Plan, which notice shall be posted on the property in a conspicuous place and mailed via registered mail to the last known address of the property owner according to the Dolores County Assessor's records. The property owner shall have thirty (30) days after the posting and mailing of such notice to remedy all conditions on the property related to the described violation. A property owner can request an extension of time to remedy any violation under this section **887**, which request shall be in writing, shall indicate good cause reasons for requesting an extension, and shall propose a definite date to remedy all impaired property conditions and restore the integrity of the approved Remediation Plan. The Building Official on behalf of the Town shall have authority to grant an extension of up to sixty (60) days. The Town Board shall have the authority to grant greater extensions. Any grant of extension shall be in writing and mailed to the property owner at the last known address according to the Dolores County Assessor's records. The failure to remedy any violation under this section **887** within thirty (30) days after receiving notice, or after a definite date approved in an extension, shall be deemed a violation of the Rico Land Use Code and each day shall be deemed a separate violation, and such violation shall be punishable in accordance with section **740** of this Rico Land Use Code.