

**TOWN OF RICO ORDINANCE NO. 2024-04**  
**ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF RICO,**  
**COLORADO ADOPTING TOWN SOILS OVERLAY ZONE REGULATIONS**  
**AND ADOPTING BY REFERENCE APPENDIX D OF THE RICO LAND USE**  
**CODE (LEAD SOILS MANAGEMENT REGULATIONS)**

**WHEREAS**, the Town of Rico, Colorado (the “Town”) is a Colorado home rule municipality organized pursuant to Article XX of the Colorado Constitution and with the authority of the Rico Home Rule Charter (the “Charter”); and

**WHEREAS**, pursuant to C.R.S. §§ 29-20-101 et seq., 31-15-101 et seq., and 31-23-101 et seq., the Town has broad authority to ensure the health, safety and welfare of the community and its residents; and

**WHEREAS**, the Board of Trustees (the “Board”) is authorized to act on behalf of the Town pursuant to and in accordance with the Charter to adopt such regulations as are necessary to protect the health, welfare and safety of residents and visitors of the Town; and

**WHEREAS**, the Board recognizes that soil located within the Town and the surrounding areas may contain elevated levels of lead from past mining activities, as well as local geologic conditions that may lead to naturally-occurring elevated lead levels, which has been documented in the Rico Townsite Soils Voluntary Cleanup Program (“VCUP”) application submitted by the Town and Atlantic Richfield Company (“AR”) and approved by the Colorado Department of Public Health and Environment (“CDPHE”) on May 16, 2023 (the “VCUP Application”), pursuant to the Colorado Voluntary Cleanup and Redevelopment Act, C.R.S. § 25-16-301; and

**WHEREAS**, the Rico Land Use Code (“RLUC”) establishes the regulations and standards governing the use and development of land within the Town for the purpose of promoting the public health, safety and general welfare of the citizens of the Town; and

**WHEREAS**, adoption of the RLUC amendments contained in Appendix D of the RLUC, attached as Exhibit A and incorporated by this reference, will create two overlay zoning districts within the current Town boundaries as defined areas of environmental concern and will provide local land use controls specifying requirements for soil testing, handling, stockpiling, remediation, and disposal to promote the public health, safety and general welfare of the citizens of the Town; and

**WHEREAS**, adoption of the proposed RLUC amendments is a condition of the VCUP; and

**WHEREAS**, the Rico Planning Commission may propose changes and amendments to the RLUC which are in the public interest pursuant to RLUC § 412; and

**WHEREAS**, the Rico Planning Commission may recommend amendment of the RLUC to the Board after the Planning Commission conducts a public hearing on the amendment; and

**WHEREAS**, the Rico Planning Commission has considered the RLUC amendments contained in this Ordinance, and conducted a duly noticed public hearing regarding the amendments at its June 14, 2023 meeting, and recommended the Board adopt the amendments; and

**WHEREAS**, the Board has determined that the RLUC amendments contained in this Ordinance meet the standards for review contained in RLUC § 418 as the amendments are compatible with the land uses in the Town; and will serve a community need and promote the public health, safety, or welfare of the Rico community and the public services and infrastructure are adequate to meet the needs of the proposed amendments; and the proposed amendments are consistent with the purposes of the RLUC and the goals and objectives of the Rico Regional Master Plan; and

**WHEREAS**, the Board has considered the increased administration activities associated with complying with the proposed RLUC amendments and finds that any increased administrative duties are justified by the assurance that the amendments will protect the public health, safety, and welfare of the citizens of the Town; and

**WHEREAS**, a public hearing was held on September 18, 2024 at a regular meeting of the Board of Trustees of the Town of Rico prior to the adoption of this Ordinance for the purpose of taking public comment on the advisability of adoption of proposed Appendix D of the RLUC.

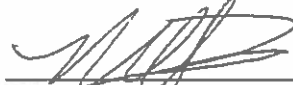
**NOW THEREFORE**, the Board of Trustees of the Town of Rico does hereby ORDAIN as follows:

1. The recitals above are hereby adopted as findings and incorporated herein.
2. There is hereby adopted for the purposes of providing minimum standards to safeguard life, health, property and public welfare, Appendix D of the RLUC as incorporated in the RLUC. The subject matter of Appendix D is regulations governing management of soil in the Town of Rico to ensure that soil with elevated lead concentrations has been properly removed or capped to protect public health, safety, and welfare.
3. The adopted Appendix D shall be effective beginning January 1, 2025.
4. The adopted Appendix D shall be applied to all areas within the Rico Soils Overlay Zone District and the Environmental Remediation Overlay Zone District, a map of which is attached to this Ordinance in Exhibit A.

5. Any development permit application pending but not issued as of January 1, 2025, shall be issued subject to the requirements of this Ordinance and the adopted Appendix D.
6. It shall be unlawful to commence any development activity covered by Appendix D without an approved Soil Remediation Permit as defined by Appendix D.
7. It shall be unlawful to violate any provision of this Ordinance, or any provision of the adopted Appendix D, or applicable state laws and regulations.
8. Violations of this Ordinance, or any provision of the adopted Appendix D, shall be enforced as provided in Appendix D, as a violation of the RLUC, or as otherwise provided by law.
9. Town staff is directed to take necessary actions to immediately implement this Ordinance, including without limitation, preparing necessary forms and procedures to implement Appendix D.

THIS ORDINANCE WAS, FOLLOWING PUBLIC NOTICE, INTRODUCED, READ, AND APPROVED ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY ON September 18, 2024.

TOWN OF RICO, COLORADO



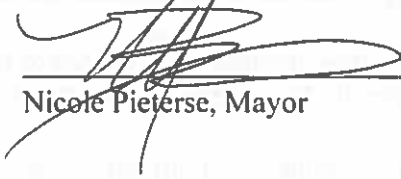
Nicole Pieterse, Mayor

ATTEST:

  
\_\_\_\_\_  
Anna Wolf, Town Clerk

THIS ORDINANCE WAS, FOLLOWING PUBLIC NOTICE, INTRODUCED, READ ON SECOND READING, PASSED AND ORDERED PUBLISHED BY TITLE ONLY TO BE EFFECTIVE IMMEDIATELY THIS 16th DAY OF OCTOBER 2024.

TOWN OF RICO, COLORADO



Nicole Pieterse, Mayor

ATTEST:



Anna Wolf, Town Clerk

Effective Date: October 16, 2024

Exhibit A  
to Town of Rico Ordinance No. 2024-04

## **Rico Land Use Code Appendix D Section D.1 Findings of Fact**

- A. **Background.** In the Town of Rico (the “Town”) and the surrounding area, elevated levels of lead are present in the soil due to solid waste from past mining activities, as well as local geologic conditions that may lead to naturally-occurring elevated lead levels. The presence of elevated levels of lead has been described in a number of documents, including the Rico Townsite Soils Voluntary Cleanup Program (“VCUP”) application submitted by the Town and Atlantic Richfield Company and approved by the Colorado Department of Public Health and Environment (“CDPHE”) on May 16, 2023 (the “VCUP Application”), pursuant to the Colorado Voluntary Cleanup and Redevelopment Act, § 25-16-301, C.R.S. There are two designated areas in the Town where elevated levels of lead and potentially other metals in soil may be present: the Rico Soils Overlay Zone District (“RSOZ”) and the Environmental Remediation Overlay Zone District (“EROZ”). These Environmental Overlay Zone Regulations (alternatively referred to hereinafter as the “Regulations”) primarily pertain to the RSOZ and remediation of lead soils contamination. The EROZ covers several non-contiguous areas within the Town boundaries, as listed in Section D.2.B.10, that were subject to previous VCUP remediation efforts.
- B. **Not Areas of State Interest.** Except to the extent the boundaries of the RSOZ or EROZ overlap with properties of an area designated as an Area of State Interest in Article VIII of the Rico Land Use Code (“RLUC”), properties within the RSOZ or EROZ shall not be considered Areas of State Interest. To the extent a development activity covered by these Regulations is proposed for properties within an area designated as an Area of State Interest, the provisions in the RLUC relating to Areas of State Interest shall be separate from, and apply in addition to, the requirements provided for in these Regulations.
- C. **Environmental Overlay Zone Regulations Are Additional.** These Regulations are in addition to any other applicable requirements of the RLUC.
- D. **Non-Liability of the Town of Rico.** These Regulations shall not be construed to hold the Town or any of its employees, officials, or designees, acting within the scope of their employment, responsible or liable for any damages to persons or property resulting from: any inspection, enforcement, or review, or failure to inspect, enforce, or review as required by these Regulations; the issuance or denial of any permit pursuant to or in accordance with these Regulations; or the institution or failure to institute any court action as authorized or required by these Regulations. In enacting these Regulations, the Town intends to preserve all rights of the Town, its agencies and departments, and its elected and appointed officials, employees, and designees to immunity from liability as set forth in the Colorado Governmental Immunity Act, §§ 24-10-101, C.R.S., *et seq.*, and any other applicable law, regulation, or standard.

## **Rico Land Use Code Appendix D Section D.2 General Provisions**

- A. Lands to Which Environmental Overlay Zone Regulations Apply. Sections D.1 – D.9 of these Regulations shall apply to all lands situated in the overlay zone known as RSOZ. For lands located within the overlay zone known as EROZ, Sections D.1, D.2, and D.9 shall apply.
- B. Definitions. The following terms, as used throughout these Environmental Overlay Zone Regulations, shall have the meanings set forth below. Where there is a conflict between the definitions set forth below and the definitions set forth in Article IX of the RLUC, the definitions below shall prevail for purposes of these Regulations only.
1. Action Level(s). Action Level(s) shall mean the site-specific, human health risk-based, concentration levels of lead in soil approved by CDPHE, with concurrence from the U.S. Environmental Protection Agency, in 2022 for soil remediation performed as part of Rico Townsite Soils VCUP project. The Action Levels are set at 761 mg/kg for Residential Use properties (the “Residential Action Level”), 967 mg/kg for Public Facilities properties (the “Public Facilities Action Level”), and 4,010 mg/kg for Open Space properties (the “Open Space Action Level”). On portions of Public Facilities and Open Space properties where active play areas frequented by young children (as identified by the Town) are present, the Residential Action Level will apply. On portions of Town-owned properties where recreational trails are constructed for public use, the Open Space Action Level will apply.
  2. Application. Application shall mean an application submitted under these Regulations requesting a Soil Remediation Permit, as that term is defined below.
  3. CDPHE. CDPHE shall mean the Colorado Department of Public Health and Environment.
  4. Cleanup Completion Certification. Cleanup Completion Certification shall mean a determination by the Town issued pursuant to Section D.5.C of these Regulations.
  5. Cleanup Completion Report. Cleanup Completion Report shall mean a report prepared and submitted by a Developer as required by Section D.5.B of these Regulations.
  6. Development Activity. Development Activity shall mean any manmade change in the use or character of land that involves or results in construction, grading, excavation, digging, demolition, drilling, planting, placing Non-Native Fill, landscaping, or other similar activities that disturb or move soils.
  7. Developer. Developer refers to the property owner, or other person or entity acting on the property owner’s behalf, engaged in a Development Activity.
  8. Disturbed Native Soils. Disturbed Native Soils are Native Soils that have been significantly disturbed by prior activities (e.g., regrading).

9. Environmental Officer. Environmental Officer refers to the Town Manager or the Town Manager's designee for the purposes of administering these Regulations and issuing Soil Remediation Permits.
10. Environmental Remediation Overlay Zone District ("EROZ"). Environmental Remediation Overlay Zone District means the sites listed below within Town boundaries that (i) received a VCUP No Further Action Determination on December 10, 1999, from CDPHE pursuant to the state VCUP program, (ii) were otherwise remediated under CDPHE oversight, or (iii) nonetheless warrant inclusion within the EROZ due to unique environmental conditions on the property. These properties are depicted in Figure 1 and are defined as follows:
  - a. Columbia Tailings Site, CDPHE VCUP Site No. 30, located on the east side of the Dolores River corridor west of Highway 145 and Rico townsite Blocks 11 and 39, in portions of E1/2 of the NE1/4 of the SE1/4 of Section 35, and the NW1/4 of the NW1/4 of the SW1/4 of Section 36, T40N, R11W, NMPM, Dolores County, within portions of the following land tracts: Tremble Tract, Winkfield Tract East, and Town of Rico tracts (bounded on west by Winkfield Tract East and Tremble Tract, and on the east by Blocks 11 and 39). Approximately 3.3 acres.
  - b. Grand View Smelter Site, CDPHE VCUP Site No. 40, located on the east side of State Highway 145 at the north end of the Town of Rico in the middle of the SW1/4 of the SW1/4 of Section 25, T40N, R11W, NMPM, Dolores County, comprising portions of the following patented mine claims: Columbia Millsite (Patent No. 10202, Mineral Survey No. 365B), and Homestake & Little Cora Consolidated Placer (Patent No. 14903, Mineral Survey No. 410). Approximately 1.7 acres.
  - c. Santa Cruz, Iron Clad, and Rico Boy Mines Site, CDPHE VCUP Site No. 36, located on the west side of the Dolores River Corridor, south of west Rico townsite Blocks 34 and 36, in a portion of N1/2 of the NE1/4 of the SE1/4, and the NW1/4 of the SE1/4 of the SE1/4 of Section 35, T40N, R11W, NMPM, Dolores County, comprising portions of the San Juan Nation Forest, R.G.S. "Y" Tract, Winkfield Tract, Winkfield Tract West, A.E. Arms Tract North, and Max Boehmer Tract, and portions of the following patented mine claims: Iron Clad (Mineral Survey No. 865), Santa Cruz (Patent No. 25864, Mineral Survey No. 6132), Hardscrabble (Patent No. 27326, Mineral Survey No. 8070), and Burchard (Patent No. 27326, Mineral Survey No. 8070). Approximately 5 acres.
  - d. Silver Swan Mine Site, CDPHE VCUP Site No. 22, located on the west side of the Dolores River corridor in the southwest portion of the Rico townsite in a portion of the S1/2 of the SE1/4 of the SE1/4 of Section 35, T40N, R11W, NMPM, Dolores County, comprising portions of the A.E. Arms Tract North,



- A. E. Arms Tract, F.G. Day Tract, A.E. Arms Tract South, and R.G.S. R.O.W. South. Approximately 4 acres.
- e. Silver Swan Mine East Wasterock Pile Site, located on the east side of the Dolores River corridor west of the historic Rio Grande Southern railroad grade, in portions of the SE1/4 of the SE1/4 of the SE1/4 of Section 35, T40N, R11W, NMPM, Dolores County, within portions of the following land tracts: F.G. Day Tract and R.G.S. R.O.W. South; materials from the site were consolidated to the Columbia Tailings Site, CDPHE VCUP Site No. 30. Approximately 0.1 acre.
  - f. Pro Patria Mill Tailings Site, located on the east side of the Dolores River corridor east of the historic Rio Grande Southern railroad grade, west of River Street, and southwest of the west end of Mantz Avenue (where the historic Pro Patria mill was located), in portions of the E1/2 of the E1/2 of the NE1/4 of Section 35 and SW1/4 of the NW1/4 of the NW1/4 of Section 36, T40N, R11W, NMPM, Dolores County, within portions of the following land tracts: R.G.S. Tract, Roy's Tract, and Block 28, Lots 3-4 and west 80 feet of Lots 5-20; materials from the site were consolidated to the Columbia Tailings Site, CDPHE VCUP Site No. 30. Approximately 2 acres.
  - g. Van Winkle Mine Site, Van Winkle Subdivision (recorded plat at Reception No. 157374), Lot 2 and Lot 3, Rico, Dolores County.
  - h. East Shamrock Mine Wasterock Pile Site, located north of the Pro Patria Mill Tailings Site on the east bank of the Dolores River, approximately ½ mile north of the Columbia Tailings Site; materials from the site were consolidated to the Columbia Tailings Site, CDPHE VCUP Site No. 30.
11. Excavated Soils. Excavated Soils shall mean soils (including Surface Soils and underlying soils) disturbed at, or excavated from, the property during a Development Activity.
12. Existing Soils Cover. Existing Soils Cover shall mean a Soils Cover that has been installed over a geotextile fabric or other cover that meets the requirements of Section D.7.D, the placement of which is documented in soil remediation records maintained by the Town under these Regulations.
13. Mine Waste. Mine Waste shall mean solid waste materials resulting from mining, milling, smelting or processing operations, including, without limitation, waste rock, ore, and tailings, which are visibly distinctive in appearance (color and texture) as compared to the surrounding Native Soil, unless testing shows the material does not contain lead at a concentration greater than the Residential Action Level using the analytical procedures set forth in Section D.6.C.
14. Native Soils. Native Soils shall mean naturally occurring soils (not imported fill or landscaping materials) that exist at the property subject to the Development Activity

prior to the Development Activity that have not been significantly disturbed in the past (e.g., regraded).

15. Non-Native Fill. Non-Native Fill shall mean soils from a location other than the property subject to the Development Activity.
16. Open Space. Open Space shall mean an area of one or more parcels that is zoned as an Open Space District as defined in the RLUC, Article II § 290. The Open Space Action Level applies to soil on Open Space properties, except on those portions of Open Space properties where active play areas frequented by young children (as identified by the Town) are present, in which case the Residential Action Level will apply.
17. Open Space No Action Confirmation: Open Space No Action Confirmation shall mean a determination by the Town issued pursuant to Section D.2.D of these Regulations for an Open Space property with lead soil concentrations below the Open Space Action Level. An Open Space No Action Confirmation issued pursuant to Section D.2.D is separate and independent from a VCUP No Action Determination as defined in Section D.2.B.29.
18. Planned Unit Development. Planned Unit Development shall have the meaning stated in § 24-67-103(3), C.R.S., and shall include, without limitation, any Development (as defined in Article IX, Section 910 of the RLUC) within a Residential Planned Unit Development District or a Commercial Planned Unit Development District in the Town of Rico, as such terms are used and defined in Articles II, III, and VIII of the RLUC.
19. Public Facilities. Public Facilities shall mean an area of one or more parcels that is zoned as a Public Facilities Zone District as defined in the RLUC, Article II § 290. The Public Facilities Action Level applies to soil on Public Facilities properties, except on those portions of Public Facilities properties where active play areas frequented by young children as identified by the Town are present, in which case the Residential Action Level will apply.
20. Public Facilities No Action Confirmation: Public Facilities No Action Confirmation shall mean a determination by the Town issued pursuant to Section D.2.D of these Regulations for Public Facilities property with lead soil concentrations below the Public Facilities Action Level. A Public Facilities No Action Confirmation issued pursuant to Section D.2.D is separate and independent from a VCUP No Action Determination as defined in Section D.2.B.29.
21. Residential No Action Confirmation. Residential No Action Confirmation shall mean a determination by the Town issued pursuant to Section D.2.D of these Regulations for a Residential Use property with lead soil concentrations below the Residential Action Level. A Residential No Action Confirmation issued pursuant to Section

- D.2.D is separate and independent from a VCUP No Action Determination as defined in Section D.2.B.29.
22. Residential Use. Residential Use shall mean use of a property where zoning allows for residential use, as provided in the RLUC. Residential Use is allowed in all zoning districts except for “Public Facilities” and “Open Space.” The Residential Action Level applies to soil on Residential Use properties and those portions of Public Facilities and Open Space properties where active play areas frequented by young children as identified by the Town are present.
  23. Rico Soils Lead Repository or Repository. Rico Soils Lead Repository or Repository shall mean the soil lead repository located approximately 0.75 miles north of Rico and adjacent to the St. Louis Tunnel portal in the NW114, NW1/4 of Section 25, T40N, R11W in Dolores County, and operated under the Certificate of Designation issued by Dolores County on October 24, 2005.
  24. Rico Soils Overlay Zone District (“RSOZ”). Rico Soils Overlay Zone District shall mean the area delineated on Figure 1 as the RSOZ but excluding the area delineated as the EROZ.
  25. Soil Remediation Permit. Soil Remediation Permit shall mean a soils excavation and grading permit approved by the Environmental Officer pursuant to these Regulations.
  26. Soils Cover. Soils Cover shall mean a cover consisting of natural earthen or other material that meets the requirements of Section D.7.D placed over contaminated soils or material to encapsulate, immobilize, and eliminate surface exposure of such soils and material.
  27. Subdivision. Subdivision shall mean the subdivision activities listed in Article V, Section 506.1 of the RLUC, and any other division of land within the Town of Rico into two or more lots, tracts, sites, parcels, separate interests, interests in common, or other division that is subject to the Rico Subdivision Regulations, as defined in Article V, Section 506.1 of the RLUC.
  28. Surface Soils. Surface Soils shall mean earthen material found in the top twelve (12) inch soil layer. Where Surface Soils are either Native Soils or Disturbed Native Soils or Non-Native Fill comprising a depth of at least twelve (12) inches, soil samples collected from the top two (2) inches of the soil layer shall be considered representative of Surface Soils for the purpose of characterizing the soil lead concentrations. Where Surface Soils are Disturbed Native Soils or Non-Native Fill comprising a depth of less than twelve (12) inches, soil samples collected from the top two (2) inches of the soil layer may be considered representative of Surface Soils on a case-by-case basis in consultation with the Environmental Officer.
  29. VCUP No Action Determination (“VCUP NAD”). VCUP NAD shall mean a property-specific determination made by CDPHE pursuant to the Colorado Voluntary Cleanup and Redevelopment Act, § 25-16-307, C.R.S., that remediation of the

property is not necessary to protect human health and the environment in light of the current or proposed use of the property, because sampling performed in accordance with these Regulations demonstrates that lead in soil does not exceed the applicable Action Level. A VCUP NAD also means CDPHE written concurrence with a Residential, Public Facilities, or Open Space No Action Confirmation obtained from the Town pursuant to Section D.2.D of these regulations, when the property owner (or property owner's designated representative) submits a no action petition to CDPHE pursuant to § 25-16-307, C.R.S. Consistent with Section D.2.F.6 of these Regulations, Development Activities on properties for which a prior VCUP NAD has been made are exempt from these Regulations, provided that, (i) no exposed Mine Waste is encountered on the property; and (ii) for Public Facilities properties, there has not been a change in the zoning of the property to Residential Use, and for Open Space properties, there has not been a change in the zoning of the property to Public Facilities or Residential Use since issuance of the VCUP NAD.

30. VCUP No Further Action Determination ("VCUP NFA"). VCUP NFA shall mean a property-specific determination made by CDPHE pursuant to the Colorado Voluntary Cleanup and Redevelopment Act, § 25-16-307, C.R.S., that soil remediation performed and maintained in accordance with a Soil Remediation Permit issued by the Town pursuant to these Regulations is adequate to protect human health and the environment in light of the current or proposed use of the property, where the surface soil-lead concentrations were above the applicable Action Level before the Development Activity, and the property owner (or property owner's designated representative) has requested, and received, the determination after the Effective Date of these Regulations. VCUP NFA shall also mean a property-specific determination by CDPHE issued pursuant to § 25-16-307, C.R.S., prior to the Effective Date of these Regulations for soil remediation performed on a property in accordance with a CDPHE-approved VCUP application that resulted in a prior VCUP NFA. Development Activities on properties for which a prior VCUP NFA has been made remain subject to these Regulations.

31. CDPHE VCUP Project Manager. CDPHE VCUP Project Manager shall mean the current CDPHE individual(s) overseeing any existing and prospective VCUP projects in and around Rico, CO, whose office is located at 4300 Cherry Creek Drive South, Denver, CO 80246.

C. Town Approval. Unless exempt under these Regulations, any Development Activity within the RSOZ shall require (a) prior approval by the Town of a Soil Remediation Permit; or (b) a Residential, Public Facilities, or Open Space No Action Confirmation issued by the Town pursuant to Section D.2.D of these Regulations. A Residential, Public Facilities, or Open Space No Action Confirmation under these Regulations will apply to subsequent development activities at the property, unless the provisions of Section D.2.D provide otherwise.

D. Residential, Public Facilities, or Open Space No Action Confirmations. A Residential, Public Facilities, or Open Space No Action Confirmation under these Regulations shall mean that the property or portion of the property for which the Confirmation is obtained is exempt from the requirement to obtain a Soil Remediation Permit. However, a Public Facilities No Action Confirmation will no longer apply if the zoning on the property changes to allow Residential Use, and an Open Space No Action Confirmation will no longer apply if the zoning on the property changes to allow Residential Use or Public Facilities (subject to applying for and receiving a Residential or Public Facilities No Action Confirmation following the change in use). Additionally, properties that receive Residential, Public Facilities, and Open Space No Action Confirmations shall remain subject to the Mine Waste management provisions of Section D.7.E of these Regulations if exposed Mine Waste is encountered on the property during a Development Activity. A Residential, Public Facilities, or Open Space No Action Confirmation under these Regulations may be obtained under the following circumstances and with the following conditions:

1. **For Developments on Residential Use or Public Facilities Property Less than 5,000 Square Feet:** If the lead concentration in each composite sample collected from Surface Soils at the property is below the applicable Action Level based on soil sampling conducted pursuant to the procedures established in Section D.6, then the Developer may apply for a Residential or Public Facilities No Action Confirmation, as applicable based on the zoning of the property. However, a Public Facilities No Action Confirmation will no longer apply if there has been a change in zoning of the property to allow Residential Use (subject to applying for and receiving a Residential No Action Confirmation following the change in use).
2. **For Developments on Residential Use or Public Facilities Properties Greater than 5,000 Square Feet:** If the lead concentration in each composite sample collected from Surface Soils at the property is below the applicable Action Level based on soil sampling conducted pursuant to the procedures established in Section D.6, then the Developer may apply for a Residential or Public Facilities No Action Confirmation, as applicable based on the zoning of the property. If sampling has been or is conducted on only the portion of the property that is developed or is to be developed, and the lead concentration in each composite sample collected from Surface Soils in that portion of the property is below the applicable Action Level based on soil sampling conducted pursuant to the procedures established in Section D.6, then the Developer may apply for a Residential or Public Facilities No Action Confirmation for that portion of the property, as applicable based on the zoning of the property. The Residential or Public Facilities No Action Confirmation will not apply to any other portion of the property. Additionally, a Public Facilities No Action Confirmation will no longer apply if there has been a change in zoning of the property to allow Residential Use (subject to applying for and receiving a Residential No Action Confirmation following the change in use).

3. **For Developments on Open Space Areas:** If the lead concentration in each composite sample collected from Surface Soils in the portion of the property to be developed is below the Open Space Action Level based on soil sampling conducted pursuant to the procedures established in Section D.6, then the Developer may apply for an Open Space No Action Confirmation for that portion of the property. The Open Space No Action Confirmation will not apply to any other portion of the property. Additionally, the Open Space No Action Confirmation will no longer apply if there has been a change in zoning of the property to allow Residential Use or Public Facilities (subject to applying for and receiving a Residential or Public Facilities No Action Confirmation following the change in use).
  4. **Recording:** A Residential, Public Facilities, or Open Space No Action Confirmation shall be signed by the Environmental Officer and filed with the Town within five (5) business days after the Environmental Officer's issuance of the Residential, Public Facilities, or Open Space No Action Confirmation. The Developer may elect to record the Residential, Public Facilities, or Open Space No Action Confirmation in the Dolores County Clerk and Recorder's Office.
- E. Activities Not Entitled to Certain VCUP Benefits. A Development Activity proposed for the sole purpose of covering, capping, removing, or reducing the concentration of or potential for exposure to contamination or contaminants in the soil, *e.g.*, where there is no current or planned use of the property for residential, commercial, or recreational purposes, or need for the Development Activity for utility maintenance or repair, shall not be eligible for certain benefits of the Rico Soils Management Program, as described in the VCUP Application, including reimbursement for incremental costs, use of the Repository, and the provision of materials.
- F. Activities Exempt from Regulations. The following Development Activities are hereby exempt from review and application of these Regulations, except that if Mine Waste is encountered in the course of a Development Activity in the RSOZ, the Developer shall comply with Section D.7.E:
1. A discrete event of excavation/grading/digging/filling, not associated with a larger plan for development, resulting in a disturbance of less than a total of **one cubic yard** of soil associated with the Development Activity, provided that this exemption does not apply to any excavation the purpose of which is to install, relocate, or repair underground utilities;
  2. Installation, repair or relocation of fences and porches;
  3. Excavation for the sole purpose of conducting soil sampling and other soils testing, provided that this exemption does not apply to test pitting for the purposes of soil sampling if the excavation disturbs greater than one cubic yard of soil;
  4. Excavation for the sole purpose of conducting soil testing for septic tanks on undeveloped properties;

5. Excavation/grading/digging/filling required to address an emergency situation, including, without limitation, broken or frozen plumbing fixtures, provided that the Environmental Officer confirms the emergency nature of the situation, that the Developer complies with these Regulations to the maximum extent practicable under the circumstances, and that the Developer complies fully as soon as the emergency has passed, including by complying with the remedial standards in Section D.7; and
  6. Development Activities on properties where testing has confirmed that lead concentrations in Surface Soils do not exceed the applicable Action Level, and either (i) the Town has issued a Residential, Public Facilities, or Open Space No Action Confirmation consistent with Section D.2.D of these Regulations, or (ii) a prior VCUP NAD has been made and remains in effect.
- G. Phase 1 VCUP Remediation Exempt from Regulations and Article IV, Section 494 of the RLUC. The Phase 1 VCUP soil remediation work performed by Atlantic Richfield Company, pursuant to Section 6 and Appendix B of the VCUP Application, shall be exempt from review and application of these Regulations because Section 6 and Appendix B of the VCUP Application satisfy the requirements of these Regulations. For the same reason, Phase 1 VCUP soil remediation work performed by Atlantic Richfield Company on property owned by the Town, pursuant to Section 6 and Appendix B of the VCUP Application, shall be exempt from the requirements of Article IV, Section 494 of the RLUC.
- H. Exemption for Town Development Activities Along Road and Alley Segments Prior to Phase 1 VCUP Road Remediation. At the Environmental Officer's discretion, the Environmental Officer may exempt from these Regulations Development Activities involving excavation of Town road and alley segments for the purpose of installing utility infrastructure prior to the commencement of the Phase 1 road remediation described in Appendix B of the VCUP Application, provided that excavated material is returned to the excavation or otherwise managed consistent with these Regulations. A decision by the Environmental Officer to grant or deny an exemption pursuant to this Section D.2.H may be appealed to the Board of Trustees, which appeal shall proceed in accordance with the provisions set forth in Article V, Section 516 of the RLUC.
- I. Failure to Obtain Prior Approval. The following are deemed a violation of this RLUC and shall be punishable in accordance with Article VII: (a) the commencement of any Development Activity not exempted by Section D.2.F within the RSOZ prior to review and approval by the Town; and (b) the failure to comply with Section D.9 for any property within the EROZ.
- J. Failure to Obtain or Comply with Soil Remediation Permit or File Required Cleanup Completion Report. Any failure to obtain a Soil Remediation Permit when so required, to comply with a Soil Remediation Permit that has been obtained, or to file a Cleanup Completion Report required pursuant to Section D.5.B is hereby deemed a violation of this RLUC and shall be subject to the enforcement provisions of the RLUC, including but not limited to provisions in Article VII.

- K. Prohibition on Creation of Nuisance. Partial completion of work covered by an approved Soil Remediation Permit can in some instances create a nuisance pursuant to Ordinance Number 277. The creation of such nuisance is hereby prohibited.
- L. Failure to Perform and Report Required Testing. It is illegal and a violation of these Regulations to falsify or fail to disclose to the Town any test results required by these Regulations.
- M. Persons Liable. The owner, tenant, or occupant of any building or land or part thereof and any builder, agent, or other person who participates in, assists, directs, creates, or performs any Development Activity without first performing the requirements of these Regulations may be held responsible for the violation of these Regulations and subject to the enforcement provisions of the RLUC.
- N. Duration of Soil Remediation Permit. Soil Remediation Permits issued under these Regulations shall be valid for a period not to exceed one year, unless renewed by the Environmental Officer.
- O. Transfer of Soil Remediation Permit. A Soil Remediation Permit is not transferable to a subsequent owner unless the subsequent owner expressly agrees to transfer of the permit into his or her name in writing and obtains written consent of the Environmental Officer for such transfer.
- P. Effective Date of Regulations. These Regulations shall take effect on January 1, 2025, which shall be the “Effective Date,” and shall only apply to Applications filed pursuant to Section D.4 after the Effective Date.
- Q. Consultation to Amend. Prior to the Town considering any amendment to these Regulations in this Appendix D of the RLUC, the Town shall consult with CDPHE and shall incorporate such requirements as CDPHE may recommend to ensure these Regulations continue to protect human health and the environment.
- R. Lack of Third-Party Enforcement Rights. The enforcement of these Regulations is within the discretionary police power of the Town of Rico, and these Regulations are not intended to, nor do they, create a third-party right of enforcement; provided, however, that these Regulations are directly enforceable by CDPHE, pursuant to the Intergovernmental Agreement between CDPHE and the Town of Rico.
- S. Water Quality Issues Not Addressed. These Regulations do not address water quality issues, and it remains the responsibility of the Developer to comply with state and federal requirements with respect thereto.

#### **Rico Land Use Code Appendix D Section D.3 Reviewing Entity**

- A. Environmental Officer. The Town Manager is the representative of the Town for purposes of administering these Regulations and shall be responsible for issuing Soil Remediation Permits under these Regulations. The Town Manager shall be referred to as the “Environmental Officer” in this capacity. The Town Manager may, with consent of the



Board of Trustees, designate another person to serve as the Environmental Officer for purposes of these Regulations or to fulfill certain tasks for which the Environmental Officer is responsible under these Regulations. Such designation shall remain in effect until revoked by the Town Manager or Board of Trustees, with or without cause.

#### **Rico Land Use Code Appendix D Section D.4 Application Requirements**

Before commencing any non-exempt (with exempt activities being those specified in Section D.2.F) Development Activity within the RSOZ, the Developer shall prepare and submit an application in hard copy and in electronic format to the Town, for review by the Environmental Officer. The application shall contain the following information unless, in consultation with CDPHE, the Environmental Officer determines that the required information is not applicable to the scope of work to be performed under the application, or that the Environmental Officer already has the required information on file, and waives the requirement for the Developer to include that specific information:

- A. Existing Soil Sampling Data. The Developer shall submit with the application all existing soil sampling data reasonably available to the Developer for the subject property and/or any information regarding the presence of Disturbed Native Soils, Non-Native Fill materials, and/or an Existing Soils Cover at the subject property. The source of soil data shall be identified. The Developer shall consult with the Environmental Officer regarding the availability of existing data before submitting an application, so that all existing data, including soil data collected to support VCUP projects within the Town of Rico, is provided in the application.
- B. New Soil Sampling Data. If the existing soil sampling data for the property do not meet the standards for soil sampling set forth in Section D.6, or conditions on a site have changed such that existing soil sampling data are no longer representative, then the Developer shall submit new soil sampling data that meet the standards of Section D.6. The Environmental Officer may also determine upon review of the application that more data are desired to assess soil or fill conditions or to facilitate the development of the property for the proposed use, in which case the Developer shall resubmit the application with the required soil sampling data.
- C. Soil Sampling Data Must Be Submitted with Application. The Developer shall submit the required sampling data, whether existing or new, with the Application, regardless of whether the Developer proposes to place Non-Native Fill, use Disturbed Native Soils, or retain the Native Soils following the Development Activity. Submission of sampling data for an Existing Soils Cover is not required.
- D. Description of Property Zoning. The Developer shall identify whether the property qualifies as Residential Use, Public Facilities, or Open Space pursuant to these Regulations and the zoning provisions of the RLUC.
- E. Description of Proposed Development Activity. The Developer shall describe the proposed Development Activity, including a narrative statement, site plan, description of area and depth of any excavation or fill placement, extent of any grading, and the time frame for the

Development Activity. To the extent stockpiling of soils is planned during the Development Activity, the Developer shall specify the means of protecting the stockpile and the planned duration of the proposed stockpiling. If placement of a Soils Cover is an element of the Development Activity, the Developer shall specify the source of the Soils Cover material to be used and the means by which that cap shall be placed and maintained.

- F. Authorization for VCUP Representation. In an application submitted pursuant to these Regulations, the Developer may, if it has not already done so, authorize the Town and Atlantic Richfield Company to act as its VCUP representative for purposes of obtaining a VCUP NFA from CDPHE upon completion of a Development Activity performed in accordance with these Regulations.

#### **Rico Land Use Code Appendix D Section D.5 Application Review and Determinations**

- A. Application Review. The Environmental Officer shall review the application to determine: (1) whether the required information is contained in the application, taking into account any waiver granted by the Environmental Officer pursuant to Section D.4; (2) whether a Soil Remediation Permit is in fact required for the specific property and Development Activity at issue; (3) if soil sampling data is required for the specific property and Development Activity, whether sufficient data that meets the standards for soil sampling set forth in Section D.6 has been submitted; (4) whether the Developer has requested a conditional Cleanup Completion Certification for the Development Activity pursuant to Section D.5.D; and (5) whether the Developer has requested a Residential, Public Facilities, or Open Space No Action Confirmation pursuant to Section D.2.D. If the required information has been submitted, the Environmental Officer may: (1) approve the application and issue the Soil Remediation Permit; (2) issue a conditional Cleanup Completion Certification; (3) issue a Residential, Public Facilities, or Open Space No Action Confirmation; or (4) deny the application. If the application is denied, the Environmental Officer shall state in writing the reason(s) for the denial.
- B. Cleanup Completion Report. For any Development Activity subject to an approved Soil Remediation Permit, the Developer shall prepare and submit a Cleanup Completion Report to the Town once the work as described in the approved Soil Remediation Permit is complete. The Cleanup Completion Report shall set forth: a legal description of the site; a description of the nature of the site, lead concentrations in Surface Soils, and date of soil sample collection and analysis for lead; documentation of the location, quantity and date that soils with elevated lead concentrations were removed from the site; and shall include as an attachment the Soil Remediation Permit approved by the Town. If the Developer has removed soil from the property, the Developer shall provide documentation that the soil was properly disposed of pursuant to this Appendix D of the RLUC.
- C. Cleanup Completion Certification. Based on the information provided in the Cleanup Completion Report, the Environmental Officer shall either issue a Cleanup Completion Certification for the Development Activity or decline to issue a Cleanup Completion Certification and provide conditions that need to be met to obtain a Cleanup Completion

Certification. At its sole discretion, the Environmental Officer may require an inspection of the property to determine whether the information provided in the Cleanup Completion Report is accurate before issuing or declining to issue a Cleaning Completion Certification. The Cleanup Completion Report shall be signed by the Environmental Officer and filed with the Town within five (5) business days after the Environmental Officer's issuance of a Cleanup Completion Certification. The Developer may also record the Cleanup Completion Report and Cleanup Completion Certification in the Dolores County Clerk and Recorder's Office.

- D. Conditional Cleanup Completion Certification. A Cleanup Completion Certification may be issued conditionally when the conditions outlined in Section D.7.A.1 of these Regulations are met. The Environmental Officer may include appropriate conditions in a conditional Cleanup Completion Certification, including but not limited to the conditions that the Development Activity not disturb soils below an Existing Soils Cover and the Existing Soils Cover will be repaired as part of the Development Activity. After completion of the Development Activity and a successful inspection by the Environmental Officer to ensure that the requirements of Section D.7.D are met, the Environmental Officer shall make the conditional Cleanup Completion Certification final rather than conditional, and the Cleanup Completion Certification may be recorded in the Dolores County Clerk and Recorder's Office.
- E. Appeals. A Developer may appeal any final decision by the Environmental Officer as to the issuance or denial of a Soil Remediation Permit, Residential, Public Facilities or Open Space No Action Confirmation, or Cleanup Completion Certification. The Developer may appeal the decision of the Environmental Officer to the Board of Trustees by filing a notice of appeal with the Town Clerk within thirty (30) days of the Developer's receipt of the final decision by the Environmental Officer. The appeal to the Board of Trustees shall proceed in accordance with the provisions set forth in Article V, Section 516 of the RLUC.

#### **Rico Land Use Code Appendix D Section D.6 Standards for Soil Sampling**

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

- A. Existing Soil Sampling Data. A Developer may use existing soil sampling data to satisfy Soil Remediation Permit requirements if the number and types of samples collected and the laboratory analyses conducted meet the standards in this Section D.6.
- B. Approved Sampling Contractors. All sampling and analysis must be performed by a qualified contractor, and the conformance of all sampling and analysis with the standards set forth in this Section D.6 must be certified by a Professional Engineer ("P.E.") registered and licensed in the State of Colorado or a Professional Geologist ("P.G.") meeting the requirements of § 23-41-208(1)(b), C.R.S. The proper chain of custody shall be maintained and documented for all samples collected for the property. All samples undergoing laboratory analysis shall be submitted to a CDPHE-approved or EPA-certified laboratory qualified to perform metals analysis in a solid matrix.

- C. Analytical Procedures. All samples to be analyzed for lead content will be sieved through a U.S. Standard No. 10 mesh sieve. If any sample has less than 5 percent passing the No. 10 sieve it should be discarded and not processed further for metals analysis. Soil samples shall be analyzed for lead using laboratory-grade x-ray fluorescence (XRF) or using inductively coupled plasma (ICP). Analytical methods shall conform to the then-current procedures prescribed in EPA's Test Methods for Evaluating Solid Waste, Physical / Chemical Methods, SW-846, as amended, or an equivalent method approved by the Environmental Officer.
- D. Minimum Number of Samples. Within each sampling sector established pursuant to Section D.6.E, soil samples will be collected from a depth of 0 inches to 2 inches (below the base of any sod or root mat that may be present) at five randomly selected locations. The five surface samples collected from within each sector should be of similar size and composited into a single sample for analysis for that sector. Soil samples should not be collected from locations where Mine Waste material is observed or from the drip zone of buildings (four feet from the edge of a building) to avoid lead paint contamination. If any areas of the sampling sector include areas from which Mine Waste has been removed, one of the samples should be collected from that area.
- E. Number and Division of Sampling Sectors. When soil sampling data are collected, whether before or after development, adherence to the following sampling plans is required:
1. **For Properties Less than 5,000 Square Feet**: Properties less than or equal to 5,000 square feet in total area will be divided into at least two sampling areas, excluding buildings, pavement, or other permanent caps over the soil. A minimum of two composite samples (comprised of five subsamples each), one each from the front yard and back yard (and side yard if substantial), plus a separate sample for each distinct driveway, vegetable garden, and play area, if present, will be collected.
  2. **For Public Facilities Properties Greater than 5,000 Square Feet and Less than 0.5 Acre**: The property shall be divided into a minimum of four (4) sampling sectors not to exceed 5,000 square feet in size (excluding buildings, pavement, or other permanent caps over the soil that cannot be removed by hand to expose the underlying soil). If only a portion of such property is to be developed, the Developer may: (i) subdivide the property subject to provisions in the RLUC and complete the sampling only on the portion of the property that will be developed; or (ii) sample a 100-foot radius ("Sampling Radius") around the area affected by the Development Activity and, when submitting a Cleanup Completion Report to the Town per Section D.5.B, provide clear documentation of the portions of the property that have and have not been sampled and remediated. If the resulting Subdivision or Sampling Radius results in an area greater than 5,000 square feet, it shall be divided into sampling sectors as described in this sub-paragraph. If the resulting Subdivision or Sampling Radius results in an area less than 5,000 square feet in size, it shall be divided into two (2) sampling sectors based on the criteria in Section D.6.E.1. Once the sampling sectors have been defined, the procedures established in Section D.6.D shall be followed for each sampling sector. A separate sample will also be collected for each

distinct driveway, vegetable garden, and play area, if present. This section does not create any additional rights for creating a Subdivision, and any Subdivision must comply with all other applicable requirements of the RLUC for obtaining the Subdivision approval.

3. **For Residential Use Properties Greater than 5,000 Square Feet and Less than 0.5 Acre:** The property shall be divided into a minimum of four (4) sampling sectors not to exceed 5,000 square feet in size (excluding buildings, pavement, or other permanent caps over the soil that cannot be removed by hand to expose the underlying soil). If only a portion of such property is to be developed, the Developer may (i) subdivide the property subject to provisions in the RLUC; or (ii) establish and document a Sampling Radius as provided for in Section D.6.E.2, and complete the sampling only on the portion of the property to be developed and, if necessary, remediated, so long as the development area sampled includes the greater of: (a) a total area of 3,000 square feet adjacent to and surrounding the residence, not including areas covered by pavement or other permanent caps over the soil; (b) the portion of the property to be developed that will not be covered by buildings, pavement, or other permanent caps over the soil; or (c) all areas to be developed as lawns (sod or seeded), play areas, gardens, and other landscaped features around any structures. If the sampling area based on the above criteria is greater than 5,000 square feet, it shall be divided into sampling sectors as described in this subparagraph. If the sampling area based on the above criteria is less than 5,000 square feet in size, it shall be further divided into two (2) sampling sectors based on the criteria in Section D.6.E.1. Once the sampling sectors have been defined, the procedures established in Section D.6.D shall be followed for each sampling sector. A separate sample will also be collected for each distinct driveway, vegetable garden, and play area, if present. This section does not create any additional rights for creating a Subdivision, and any such Subdivision must comply with all other applicable requirements of the RLUC for obtaining the Subdivision approval.
4. **For Residential Use and Public Facilities Properties Greater than 0.5 Acres:** The property to be sampled shall consist of a 100-foot radius around the area affected by the Development Activity. The procedures of Section D.6.E.1 through D.6.E.3 shall apply depending on the size and zoning designation – Residential Use or Public Facilities – of the portion of the property subject to sampling. On portions of such property outside the 100-foot radius around the area affected by the Development Activity, no specific standard or requirement applies, except that if Mine Waste is encountered, the provisions for management of Mine Waste in Section D.7.E shall apply.
5. **For Open Space Areas:** The area to be sampled shall consist of the area affected by the Development Activity (e.g., only the area impacted by a utility easement, road, or trail), and not the full area of the individual lot or lots. The procedures of Section D.6.E.1, D.6.E.2, and D.6.E.4 shall apply depending on the size of the portion of the

property subject to sampling. On undisturbed portions of such property where the use is to remain Open Space, no specific standard or requirement applies, except that if Mine Waste is encountered, the provisions for management of Mine Waste in Section D.7.E shall apply.

- F. Placement of Non-Native Fill. The Developer shall identify the source of any Non-Native Fill transported to the property as part of the Development Activity, whether for use as a Soils Cover or any other purpose, and shall: (1) show that the source has been approved by the Town pursuant to Section D.7.D; or (2) show, using sampling data or other information acceptable to the Environmental Officer, that the Non-Native Fill contains less than 100 mg/kg lead.
- G. Additional Sampling. Additional sampling may be required if deemed necessary by the Environmental Officer for accurate analysis of potential health risks posed by soil conditions considering the proposed Development Activity and/or use of the property.
- H. Failure to Certify Soil Testing. The Developer's failure to provide to the Town soil sampling data that has been certified by a registered and licensed P.E. or a P.G. meeting Colorado statutory requirements shall result in denial of the Soil Remediation Permit.
- I. Provision of All Soil Sampling Results. Developers shall promptly provide all soil sampling results to the Town.

#### **Rico Land Use Code Appendix D Section D.7 Remediation Standards**

The objective of these Remediation Standards is to ensure that the average lead concentration in exposed soil in each sector of the property, whether Native Soils, Disturbed Native Soils, or Non-Native Fill, based on soil samples collected according to or in a manner consistent with Section D.6, do not exceed applicable Action Levels. If the lead concentration of one or more composited Surface Soil samples collected within a sampling sector exceeds the applicable Action Level for the property in question, then the average lead concentration for Surface Soils in that sector is deemed to exceed the Action Level.

- A. Requirements Applicable to Development Activities on Properties or Property Sectors with an Existing Soils Cover.
  - 1. If the Development Activity will not disturb soils below the Existing Soils Cover or any disturbance to the Existing Soils Cover is limited to the depth of that soil cover, which is typically no more than twelve (12) inches below the ground surface, and the Existing Soils Cover will be repaired as part of the Development Activity, the Developer may seek a conditional Cleanup Completion Certification from the Town, based on the existing conditions meeting the requirements of Section D.7.D. The purpose of the conditional Cleanup Completion Certification is to allow the Development Activity to proceed with minimal administrative requirements, while ensuring the Environmental Officer is aware of the Development Activity. Upon completion of the Development Activity, the Developer shall schedule and complete

an inspection by the Environmental Officer to ensure that the requirements of Section D.7.D are met.

2. If the Development Activity will disturb an Existing Soils Cover and underlying soils, then:
  - a. The Existing Soils Cover material (above the geotextile fabric) shall, to the extent practicable, be removed and stockpiled on a clean surface (e.g., pavement or plastic sheets) and later reused for repairing the Soils Cover (or at other locations at the site), provided the Existing Soils Cover material does not become contaminated with underlying soils or Mine Waste and provided further that such Existing Soils Cover material is stockpiled onsite at the property that is subject to the Development Activity. If contamination of the Existing Soils Cover material occurs during the course of a Development Activity, the Developer shall notify the Environmental Officer, who will address such situations on a case-by-case basis to ensure proper management and disposal of the contaminated Existing Soils Cover material. In the Environmental Officer's discretion, and on a case-by-case basis, contamination of the Existing Soils Cover material may lead to the Developer's exclusion from certain benefits of the Rico Soils Management Program, as described in the VCUP Application, up to and including loss of reimbursement for the incremental costs of handling the contaminated Existing Soils Cover material.
  - b. Excavated Soils shall (i) to the extent space is available in the excavation, be returned to the excavation to a depth up to twelve (12) inches below the final surface grade and placed below a Soils Cover pursuant to Section D.7.D; or (ii) demonstrated to have lead levels below the applicable Action Level using the sampling procedures established in Section D.6. Any Excavated Soils that remain after backfilling to a depth up to twelve (12) inches below the final surface grade shall be managed in accordance with Section D.7.C. If Excavated Soils are stockpiled onsite at the property that is subject to the Development Activity, they must be stockpiled in an area to be capped or on a surface that will be cleaned after the stockpile is removed.
  - c. Stockpiled Excavated Soils shall be protected from erosion, covered with plastic sheets, or managed using other appropriate controls if left on site for more than 24 hours. Any soil that does erode or blow from a stockpile shall be promptly collected and returned to the stockpile. Using best management practices, the Developer must also control generation and dispersal of fugitive dust from any soil or Mine Waste that is exposed by the Development Activities. It is not permissible to stockpile soils that will be sent to the Repository, except as provided in Section D.7.C.

- d. The final grade in the area disturbed by the Development Activities must consist of a Soils Cover meeting the requirements of Section D.7.D.
- e. Confirmation soil samples must be collected according to the procedures established in Section D.6 in any areas where the upper 2 inches of the exposed final grade consists of Native Soils that were not previously tested (for example, deeper soils exposed by excavation and grading activities or Surface Soils that remained in place but were potentially contaminated by Development Activities), to demonstrate that these materials are below the applicable Action Level. Confirmation sampling is not required for caps consisting of imported fill from a location pre-approved by the Town pursuant to Section D.7.D.

**B. Requirements Applicable to Development Activities on Properties or Property Sectors Without an Existing Soils Cover.**

- 1. If the lead concentration in each composite sample collected from Surface Soils at the property is below the applicable Action Level based on soil sampling conducted pursuant to the procedures established in Section D.6, then no further testing or remedial action will be required under these Regulations (other than compliance with the requirement for placement of clean Non-Native Fill), and the Developer may apply for a Residential, Public Facilities, or Open Space No Action Confirmation pursuant to Section D.2.D. However, if exposed Mine Waste is encountered on the property, the procedures of Section D.7.E shall apply.
- 2. For each sector where one or more composite samples in existing Surface Soils at the property is above the applicable Action Level based on soil sampling conducted pursuant to the procedures established in Section D.6, Excavated Soils shall be managed as follows:
  - a. Excavated Soils shall, to the extent space is available in the excavation, be returned to the excavation to a depth up to twelve (12) inches below the final surface grade and placed below a Soils Cover pursuant to Section D.7.D. Excavated Soils that remain after backfilling to a depth up to twelve (12) inches below the final surface grade shall be managed in accordance with Section D.7.C. Stockpiled Excavated Soils must be placed in an area to be capped or on a clean surface (e.g., pavement or plastic sheets) that will be cleaned after the stockpile is removed.
  - b. In a sampling sector where the average lead concentration of Surface Soils is below the applicable Action Level, the Applicant can elect to remove and temporarily stockpile the Excavated Soils and later reuse such soils for the Soils Cover, provided that such soils do not become contaminated with underlying soils or Mine Waste, and provided further that such materials are stockpiled onsite. Stockpiled Excavated Soils must be placed in an area to be capped or on a clean surface (e.g., pavement or plastic sheets or clean sector).



- c. Stockpiled Excavated Soils shall be protected from erosion, covered with plastic sheets, or managed using other appropriate controls if left on site for more than 24 hours. Any soil that does erode or blow from a stockpile shall be promptly collected and returned to the stockpile. The Developer must also control fugitive dust using best management practices. The Soil Remediation Permit Application shall specify appropriate time limits for temporary stockpiling of soil disturbed during the Development Activities, to be approved by the Environmental Officer.
- d. The final grade in the area disturbed by the Development Activities must consist of Soils Cover materials meeting the requirements of Section D.7.D.
- e. Confirmation soil samples must be collected pursuant to the procedures established in Section D.6 in any areas where the upper 2 inches of the final grade consists of soils that were not previously tested (for example, deeper soils exposed by excavation and grading activities or Surface Soils that remained in place but were potentially contaminated by Development Activities) to demonstrate that the average lead concentrations of these materials are below the applicable Action Level. Confirmation sampling is not required for caps consisting of imported fill from a location pre-approved by the Town pursuant to Section D.7.D.

C. Management and Disposal of Excavated Soils.

1. **For Development Activities Involving a Single Lot:** For Development Activities on a property that is not within or associated with a Planned Unit Development or Subdivision consisting of six (6) or more total lots created after the Effective Date, or at any lot subject to a Development Activity following the initial remediation of such lot pursuant to these Regulations, soils meet the criteria for disposal at the Repository if they are: (1) Excavated Soils from sectors that exceed the applicable Action Level and that remain as excess after Excavated Soils are used as backfill in the excavation; or (2) Mine Waste identified and managed in accordance with Section D.7.E. If the amount of excess Excavated Soil from a Development Activity that cannot be used as backfill is three (3) cubic yards or less, it may be transported by the Developer to the Repository for disposal without further testing to determine the concentration of lead in the soil. If the amount of excess Excavated Soil from a Development Activity that cannot be used as backfill is greater than three (3) cubic yards, excluding any soil removed to accommodate the twelve (12)-inch cap, the Developer must contact the Environmental Officer to request confirmation testing of the Excavated Soil. If such confirmation testing confirms that the excess Excavated Soil exceeds the Action Level, it may be transported by the Developer to the Repository for disposal. If such confirmation testing determines that the excess Excavated Soil does not exceed the Action Level, it shall not be transported to the Repository for disposal, and the Developer shall manage it in accordance with Article VIII of the RLUC or otherwise to prevent a nuisance. In all instances, the soil removed to accommodate the twelve

(12)-inch cap may be transported to the Repository without confirmation testing. In general, materials such as tree roots, large boulders, trash, and other non-soil debris may not be disposed of at the Repository, and must be removed from Excavated Soils before transport by the Developer to the Repository; provided however that materials removed from the top 12 inches of a property to make room for a clean Soils Cover will be accepted at the Repository, including when such materials contain rocks and vegetation. Soils to be disposed of at the Repository must be placed directly into trucks or roll-off containers at the time of excavation, or stockpiled pursuant to the procedures described in Sections D.7.A and D.7.B. The Developer shall ensure that all soils and Mine Waste transported to the Repository are covered during transport to the Repository. The Developer shall obtain a certificate from the operator of the Repository to demonstrate that soils excavated pursuant to these Regulations were in fact disposed of at the Repository, and shall submit this certificate with its Cleanup Completion Report.

2. **For Development Activities Involving a Planned Unit Development or Subdivision Consisting of Six (6) or More Total Lots Created After the Effective Date:** Excavated Soils and Mine Waste from a Development Activity within or associated with a Planned Unit Development or Subdivision consisting of six (6) or more total lots created after the Effective Date are not eligible for disposal at the Repository. Such Excavated Soils and Mine Waste shall be managed and disposed of as follows: Any Developer who generates Excavated Soils or Mine Waste in connection with a Development Activity within or associated with a Planned Unit Development or Subdivision consisting of six (6) or more total lots created after the Effective Date shall submit a soils management and disposal plan to the CDPHE VCUP Project Manager and the Environmental Officer for review and approval. The soils management and disposal plan shall describe the methods and procedures to be used by the Developer to ensure that all Excavated Soils and Mine Waste that cannot be returned to the excavation to a depth up to twelve (12) inches below the final surface grade and/or placed below a Soils Cover are managed and disposed of in accordance with applicable federal, state, and local requirements. Excavated Soils and Mine Waste from a Development Activity within or associated with such Planned Unit Developments or Subdivisions shall not be transported from the property that is subject to the Development Activity except in accordance with the soils management and disposal plan after approval in writing by CDPHE, with concurrence from the Environmental Officer. The restrictions in this paragraph do not apply where a Development Activity occurs on a lot following the initial remediation of such lot pursuant to these Regulations.

D. Installation of Soils Covers. The following materials may be used as a cap to cover soils exceeding the Action Level.

1. Soils Cover. A minimum of 12 inches of soil from the property subject to the Development Activity may be used as the Soils Cover if it has an average lead

concentration below the applicable Action Level, provided the soils are adequately protected against erosion (e.g., by appropriate grading and/or vegetation).

Alternatively, the Soils Cover may consist of soils imported from off-site (e.g., from a location other than the property subject to the Development Activity), provided the imported soils contain less than 100 mg/kg lead and otherwise are suitable for use as a Soils Cover. Such clean soils must come from a source approved by the Environmental Officer, or be shown to be clean fill by soil sampling data obtained pursuant to the procedures set forth in Section D.6. The Environmental Officer may pre-approve soil borrow areas based on analytical testing from geographic areas demonstrating the soils from such areas are below 100 mg/kg lead and otherwise suitable for use as fill due to the absence of contamination. A commercial-grade geotextile fabric or other marker material, as approved by the Environmental Officer, shall be installed directly beneath the clean soil layer to mark the boundary between the Soils Cover and underlying Native Soils.

2. Mature Trees. Where mature trees are present and will remain after the Development Activity, soil beneath the canopy must have a lead concentration less than the applicable Action Level (or 100 mg/kg lead concentrations if imported soils are used) to a depth of 12 inches at the edge of the canopy, and to a depth of 0 inches at the base of the tree trunk. For soil beneath mature Aspen trees, the depth of soil may be reduced to a uniform 4 inches depth beneath the canopy.
  3. Pavement. An impervious surface such as 4 inches of concrete or 2 inches of asphalt over a minimum 4 inches of clean granular fill (e.g., driveways, patios, walks) may be used to cover soils with concentrations of lead above the applicable Action Level.
  4. Buildings and Structures. Where construction of a permanent building or structure is part of the Development Activity, the footprint of the building or structure may be used to cover soils with lead concentrations above the applicable Action Level.
- E. Identification, Management, and Disposal of Mine Waste. Notwithstanding other terms of these Regulations, in the event that Mine Waste is encountered during any Development Activity, the Developer shall (i) presume that such materials exceed the applicable Action Level; (ii) contact the Environmental Officer to confirm the presence or absence of Mine Waste through a visual inspection and/or testing; and (iii) upon such confirmation, manage such waste pursuant to Section D.7 by removing Mine Waste from a depth of 0 to 12 inches below the ground surface for disposal at the Repository and installing a Soils Cover meeting the requirements of Section D.7.D. Alternatively, the Developer may choose to leave the Mine Waste in place on the property and cap the Mine Waste by installing a Soils Cover meeting the requirements of Section D.7.D that fully covers the Mine Waste to prevent exposure. The Mine Waste may be contoured as needed. Additionally, Mine Waste present at depths greater than 12 inches shall be left in place below a Soils Cover. If Mine Waste is excavated from a depth greater than 12 inches during the Development Activity, it shall be managed the same as other Excavated Soils in accordance with the provisions of this Section.

**Rico Land Use Code Appendix D Section D.8 Maintenance of Remedial Features**

- A. To the extent a Soils Cover exists on a property, the current owner of that property is required to maintain the integrity of that Soils Cover in a manner that minimizes the risk of human exposure to soils with elevated levels of lead that may exist below the Soils Cover. Filing of the Cleanup Completion Certification, Soil Remediation Permit, and related documents with the Town (and optional recording the same in the Office of the Dolores County Clerk and Recorder) is intended to advise transferees and future owners of past remediation activities and on-going maintenance requirements with respect to the Soils Cover.
- B. In the event that a Soils Cover is not maintained as required by this Appendix D, the Town Manager may issue a written notice of violation to the then-current property owner describing the conditions present on the property that constitute a failure to maintain the Soils Cover. If such a notice is issued, the 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.
- C. A property owner can request an extension of time to remedy any violation under this Section D.8, which request shall be in writing, shall indicate good cause for requesting an extension, and shall propose a definite date to remedy all impaired property conditions and restore the integrity of the Soils Cover consistent with the approved Soil Remediation Permit. The Town Manager on behalf of the Town shall have authority to grant a single extension of up to one hundred eighty (180) days. The Rico Board of Trustees 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.
- D. The failure to remedy any violation under this Section D.8 within thirty (30) days after receiving notice, or after a definite date approved in an extension, shall be deemed a violation of the RLUC and each day shall be deemed a separate violation, and such violation shall be punishable in accordance with Article I of this RLUC.

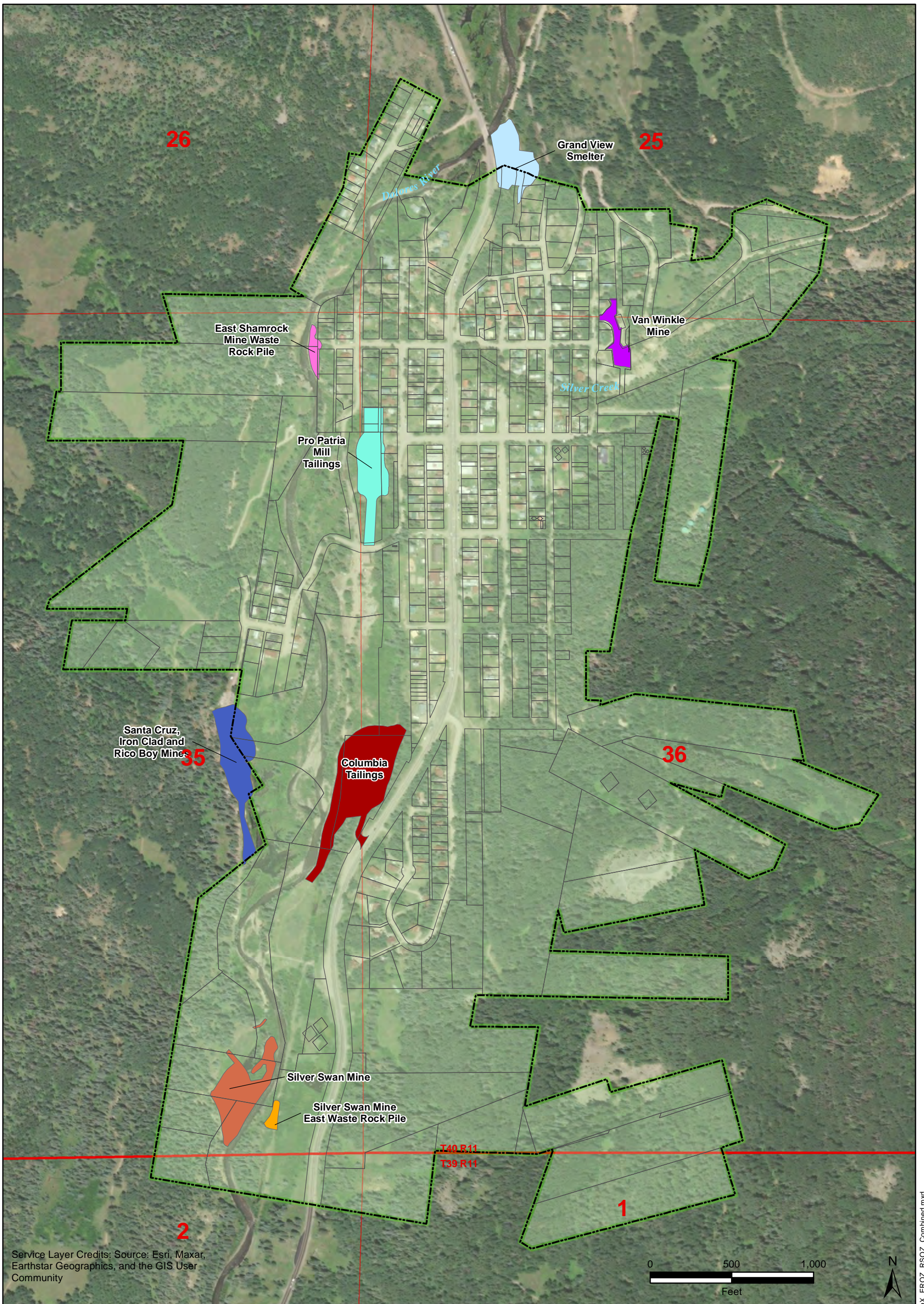
**Rico Land Use Code Appendix D Section D.9 Development Activities Within the EROZ Overlay**

- A. Properties within the EROZ. Properties within the EROZ were subject to previous remedial efforts pursuant to the State VCUP program or otherwise have unique environmental conditions that warrant inclusion within the EROZ. Substantial Development Activities on such lands could pose the risk of contaminating other nearby lands within the Town through erosion, wind-blown dust, changes to erosion controls, or other damage to existing remedial features. As a result of these conditions and the involvement of CDPHE, Development Activities within the EROZ are prohibited unless the Developer obtains approval from the CDPHE VCUP Project Manager pursuant to a separate VCUP or other written approval from

CDPHE for the Development Activity. Certain EROZ properties contain erosion control features, soil caps, surface grading, and passive water treatment features. It is the responsibility of the owner of the property to maintain those features and protect them against damage resulting from any proposed Development Activity.

- B. Developer Submittals. At the same time the Developer submits materials related to the Development Activity to the CDPHE VCUP Project Manager, the Developer shall provide copies of documents to the Environmental Officer.
- C. Approvals from CDPHE. If the Developer obtains approval from the CDPHE VCUP Project Manager, the Developer shall provide written documentation of the approval to the Town prior to initiating the Development Activity. Upon completion of the Development Activity, the Developer shall provide notice to the Town that the work has been completed to the satisfaction of the CDPHE VCUP Project Manager, including but not limited to any documentation from CDPHE with respect to same. A written approval from the CDPHE VCUP Project Manager obtained pursuant to this Section D.9 does not relieve the Developer from any other required approvals or requirements that may apply to the Development Activity.
- D. Restrictive Covenants or Notices. To the extent a property within the EROZ contains a land use covenant or restrictive notice that is more restrictive than these Regulations, the more restrictive covenant or notice requirement shall apply in addition to these Regulations, including additional notice or approval requirements that may be imposed by virtue of the land use covenant. Development Activities inconsistent with the more restrictive land use covenant or notice shall not be permitted.
- E. EROZ and RSOZ Overlaps. To the extent a legal parcel lies within both the EROZ and RSOZ, only the portion of parcel that is within the EROZ is subject to this Section D.9, with the balance of the parcel being subject to the other provisions of these Regulations; however, in such situations, a Developer may elect to manage an entire parcel under this Section D.9 at its option.





Service Layer Credits: Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

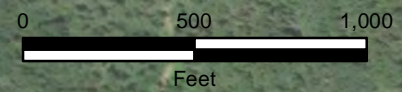
**Legend**

**EROZ Sites**

- Columbia Tailings
- Grand View Smelter
- Santa Cruz, Iron Clad and Rico Boy Mines
- Silver Swan Mine
- Silver Swan Mine East Waste Rock Pile
- Pro Patria Mill Tailings
- Van Winkle Mine
- East Shamrock Mine Waste Rock Pile

**Rico Soils Overlay Zone Boundary (RSOZ)**

- Rico Soils Overlay Zone Boundary (RSOZ)
- Town of Rico Boundary
- Parcels
- Section
- Township/Range



RICO, COLORADO	
FIGURE 1	
<b>ENVIRONMENTAL REMEDIATION OVERLAY ZONE (EROZ) AND RICO SOILS OVERLAY ZONE (RSOZ)</b>	
DATE: September 2024	<b>FORMATION</b>
BY: DKG	<b>ENVIRONMENTAL</b>
FOR: BGH	

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