Amador County Recorder
Sheldon D. Johnson
DOC- 2009-0009193-00
REQD BY STATE OF CALIFORNIA
Monday, NOV 16, 2009 09:47:55
Ttl Pd $0.00 Nbr-0000187231
CT1/R1/1-21

RECORDING REQUESTED BY:
Sandra Trevaskis, Dean Trevaskis, Brian E. Drake, Brian J. Drake, Michael Glavenich c/o TPDDG Jackson Associates, L.L.C.
21550 Highway 88
Pine Grove, California 95665

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
8800 California Center Drive
Sacramento, California 95826
Attention: Anthony J. Landis,
Performance Manager
Brownfields and Environmental
Restoration Program

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

County of Amador APN: 044-020-106
South Eureka Mine, 101765

This Covenant and Agreement ("Covenant") is made by and between TPDDG Jackson Associates, L.L.C. (the "Covenantors"), the current owner of property situated in Sutter Creek, County of Amador, State of California, depicted in Exhibit "A," and described in Exhibit "B" attached, (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantors and Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25355.5 that the use of the Property be restricted as set forth in this Covenant; and the Parties further agree that the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

Recd 2/4/2010

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 3.46 acres, is depicted in Exhibit "A" and described in Exhibit "B". The Property is located within the unincorporated area of Amador County close to the Sutter Creek City Limits. The parcel is generally bounded by Ridge Road to the north, the county airport to the south, Old Airport Road to the west and dirt road to the east. The Property is also generally described as Amador County Assessor's Parcel No.: 044-020-106.

1.02. Mine waste tailings at the Property are the product of the gold mining activities at the historic Central Eureka Mine Site, located approximately one mile northeast of the Property. Eureka Mine is a former underground gold mine that operated from the 1870's until post World War II. A Phase I and II Environmental Assessment dated May 2005 was completed for the site and identified approximately 14,500 cubic yards of mine waste rock and mine tailings.

The site has been remediated pursuant to a Remedial Action Workplan developed in accordance with Health and Safety Code, division 20, chapter 6.8 under the oversight of the Department. The Removal Action Workplan and a Notice of Exemption pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq. were released for public review and comment and subsequently approved by the Department on February 7, 2007.

The Covenantors have remediated the Property under the supervision and authority of the Department. Because hazardous substances, as defined in Health and Safety Code section 25316, which are also hazardous materials as defined in Health and Safety Code section 25260, including arsenic, remain in soil above unrestricted cleanup goals at depths of three feet or more below the surface of the Property, the Removal Action Workplan provides that a Covenant be required as part of the site remediation.

The Removal Action Workplan provides that a Covenant be required as part of the site remediation. Remediation included moving the impacted soil to low lying areas on the property and covering with clean fill from higher areas of the property to make the property level. This action fits in with the intended use of the property to be used for

commercial purposes.

1.03 As detailed in the Final Health Risk Assessment approved by the Department on February 7, 2007 a portion of the subsurface soils greater than 10 feet below the surface of the property contain a hazardous substance, as defined in Health and Safety Code section 25316. There are approximately 8900 cubic yards of tailings on site covered by a minimum of 10 feet of clean soil. The contaminant of concern in the tailings is arsenic. The average concentration of arsenic in the tailings is 123 parts per million (ppm) with a low of <2.5 ppm and high of 1200 ppm. The average arsenic background in the vicinity of this site is 11 ppm. The California Human Health Screening Level for arsenic is 0.7 ppm, a level that is considered to not have an adverse effect human health. Based on the Final Risk Assessment the Department concluded that use of the Property as a residence, hospital, school for persons under the age of 21 or day care center would entail an unacceptable human health risk. The Department further concluded that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human health or safety or the environment, if limited to commercial or industrial use.

ARTICLE II
DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.03. Improvements. "Improvements" includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.04. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.05. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.06. Owner. "Owner" means the Covenantors, and all successors in interest including heirs and assigns, who at any time hold title to all or any portion of the Property.

ARTICLE III
GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Health and Safety Code section 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.04. Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property. The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page

one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law or by administrative order.

3.05. Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantors hereby covenants for the Covenantors and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's costs in administering the Covenant.

ARTICLE IV
RESTRICTIONS AND REQUIREMENTS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

(a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.

(b) A hospital for humans.

(c) A public or private school for persons under 21 years of age.

(d) A day care center for children.

4.02. Soil Management

(a) No activities that will disturb the soil below 10 feet below grade (e.g., excavation, grading, removal, trenching, filling, earth movement, mining, or drilling) shall be allowed on the Property without a Soil Management Plan approved by the Department in advance.

(b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in

accordance with all applicable provisions of state and federal law.

(c) The existing soil cover shall be maintained over the Property, unless otherwise authorized by the Department.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property:

(a) Drilling for any water, oil, or gas without prior written approval by the Department.

4.04. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.05. Inspection and Reporting Requirements. The Owner shall conduct an annual inspection of the Property verifying compliance with this Covenant, and shall submit an annual inspection report to the Department for its approval by January 15th of each year. The annual inspection report must include the dates, times, and names of those who conducted the inspection and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual inspection report (e.g., drive by, fly over, walk in, etc.). A sample inspection report is attached as exhibit C. If violations are noted, the annual inspection report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within 10 days of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant, and demand that the violation ceases immediately. Additionally, copies of any correspondence related to the violation of this Covenant shall be sent to the Department within 10 days of its original transmission.

ARTICLE V
ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil, or criminal actions, as provided by law.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Owner, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02 Termination or Partial Termination. Owner, or any other aggrieved person, may apply to the Department for a termination or partial termination of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03 Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Recordation. The Covenantors shall record this Covenant, with all referenced Exhibits, in the County of Amador within ten (10) days of the Covenantor's

receipt of a fully executed original.

7.03. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Sandra Trevaskis, Dean Trevaskis, Brian E. Drake, Brian J. Drake and Michael Glavenich
c/o TPDDG Jackson Associates, L.L.C.
21550 Highway 88
Pine Grove, California 95665

And

To Department: Project Manager (Site Code 101765)
Brownfields and Environmental Restoration Program
8800 California Center Drive
Sacramento, CA 95826

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.04. Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.05. Statutory References. All statutory references include successor provisions.

7.06. Incorporation of Attachments. All attachments and exhibits to this Covenant are incorporated herein by reference.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantors: TPDDG Jackson Associates, LLC

By: _____ Date: 10-30-09

Sandra Trevaskis, member

By: _____ Date: 10-30-09

Dean Trevaskis, member

By: _____ Date: 10-30-09

Brian J. Drake, member

By: _____ Date: 10-30-09

Brian E. Drake, member

By: _____ Date: 10-30-09

Michael Glavenich, member

Department of Toxic Substances Control:

By: _____

Tami Trearse

Title: Engineering Geologist

Date: 11-5-09

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of California)

)ss.

County of Calaveras)

On 10-30-09 before me, J. Littman, Notary Public, personally appeared, Sandra Trevaskis & Dean Trevaskis and Brian J. Drake & Brian E. Drake who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature _____ (Seal)

J. LITTMAN
COMM. #1637505
NOTARY PUBLIC • CALIFORNIA
CALAVERAS COUNTY
Comm. Exp. FEB. 9, 2010

MGC1

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of California)

)ss.

County of Calaveras)

On 10-30-09 before me, J. Littman, Notary Public, personally appeared,

Michael Glevenich

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature _____ (Seal)

J. LITTMAN
COMM. #1637505
NOTARY PUBLIC • CALIFORNIA
CALAVERAS COUNTY
Comm. Exp. FEB. 9, 2010

MGC1

2008ack.doc

State of California
County of Sacramento

On November 5, 2009, before me, Kathleen C. Duncan, Notary Public, personally appeared, Jami Treanee, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within (attached) instrument and acknowledged to me that ~~he~~/she executed the same in his/her authorized capacity, and that by ~~his~~/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

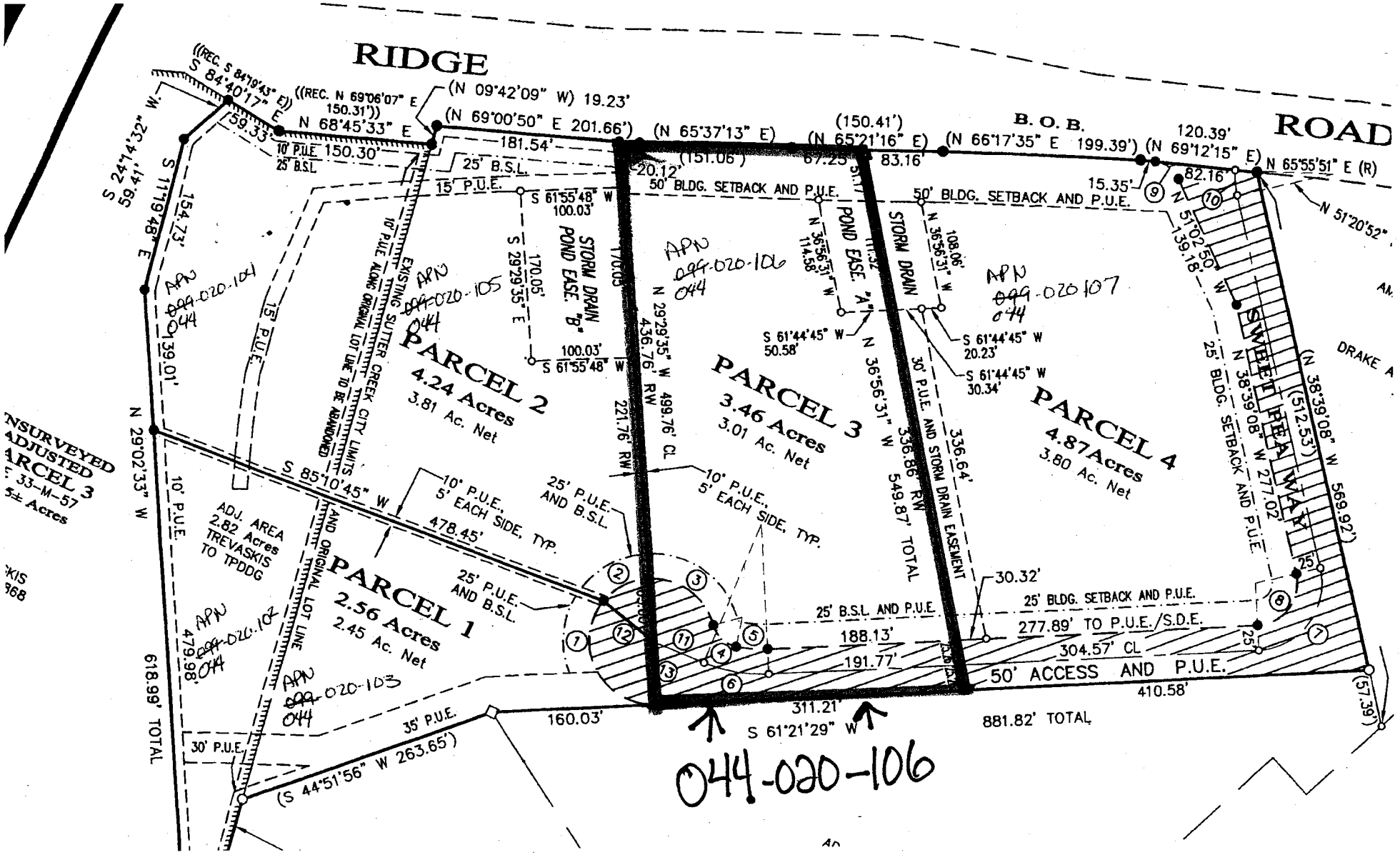
I certify under PENALTY OF PREJURY under the laws of the State of California that the foregoing paragraph is true and correct.

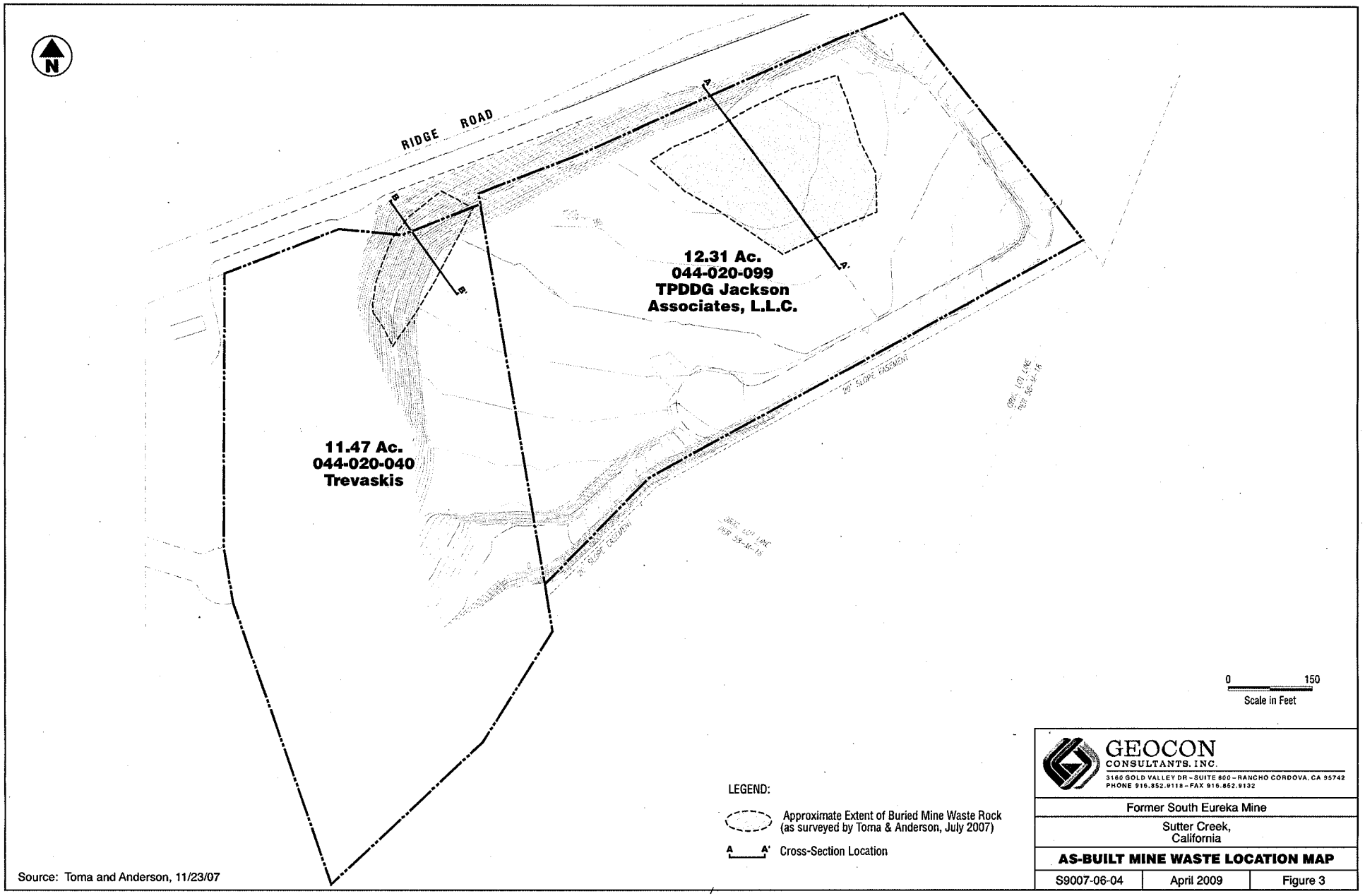
WITNESS my hand and official seal.

Signature Kathleen C. Duncan

KATHLEEN C. DUNCAN
Commission # 1628225
Notary Public - California
Sacramento County
My Comm. Expires Dec 9, 2009

EXHIBIT A


RIDGE
ROAD
B. O. B.
PARCEL 1
2.56 Acres
2.45 Ac. Net
PARCEL 2
4.24 Acres
3.81 Ac. Net
PARCEL 3
3.46 Acres
3.01 Ac. Net
PARCEL 4
4.87 Acres
3.80 Ac. Net
ADJ. AREA
2.82 Acres
TREVASKIS
TO TPDDG
STORM DRAIN
POND EASE. "B"
POND EASE. "A"
STORM DRAIN
SWEET PEA WAY
EXISTING SUTTER CREEK CITY LIMITS
AND ORIGINAL LOT LINE
10' P.U.E. ALONG ORIGINAL LOT LINE TO BE ABANDONED
50' BLDG. SETBACK AND P.U.E.
25' BLDG. SETBACK AND P.U.E.
25' B.S.L. AND P.U.E.
30' P.U.E. AND STORM DRAIN EASEMENT
50' ACCESS AND P.U.E.
10' P.U.E., 5' EACH SIDE, TYP.
25' P.U.E. AND B.S.L.
15' P.U.E.
35' P.U.E.
30' P.U.E.
10' P.U.E.
(N 09°42'09" W) 19.23'
(N 69°00'50" E 201.66')
(N 65°37'13" E)
(N 65°21'16" E)
(N 66°17'35" E 199.39')
(N 69°12'15" E)
N 65°55'51" E (R)
N 68°45'33" E
S 84°40'17" E
S 24°14'32" W
S 11°19'48" E
N 29°02'33" W
S 85°10'45" W
S 61°21'29" W
S 61°55'48" W
S 61°44'45" W
N 29°29'35" W
N 36°56'31" W
N 51°02'50" W
N 38°39'08" W
(S 44°51'56" W 263.65')
(N 38°39'08" W 569.92')
(512.53')
(57.39')
618.99' TOTAL
881.82' TOTAL
549.87' TOTAL
436.76' RW
221.76' RW
499.76' CL
304.57' CL
277.89' TO P.U.E./S.D.E.
188.13'
191.77'
311.21'
410.58'
160.03'
478.45'
479.98'
139.01'
154.73'
59.41'
59.33'
150.30'
181.54'
20.12'
(151.06')
67.25'
83.16'
(150.41')
120.39'
15.35'
82.16'
30.32'
336.64'
336.86' RW
170.05'
100.03'
20.23'
30.34'
50.58'
114.58'
108.06'
277.02'
DRAKE A
APN 099-020-104 044
APN 099-020-105 044
APN 099-020-106 044
APN 099-020-107 044
APN 099-020-102 044
APN 099-020-103 044
044-020-106



Source: Toma and Anderson, 11/23/07

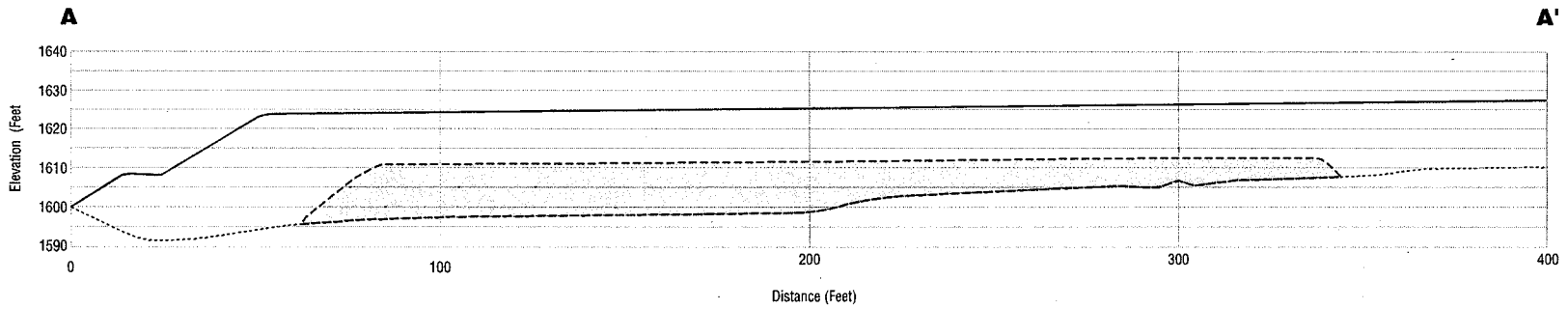
GEOCON
CONSULTANTS, INC.
3160 GOLD VALLEY DR – SUITE 800 – RANCHO CORDOVA, CA 95742
PHONE 916.852.9118 – FAX 916.852.9132

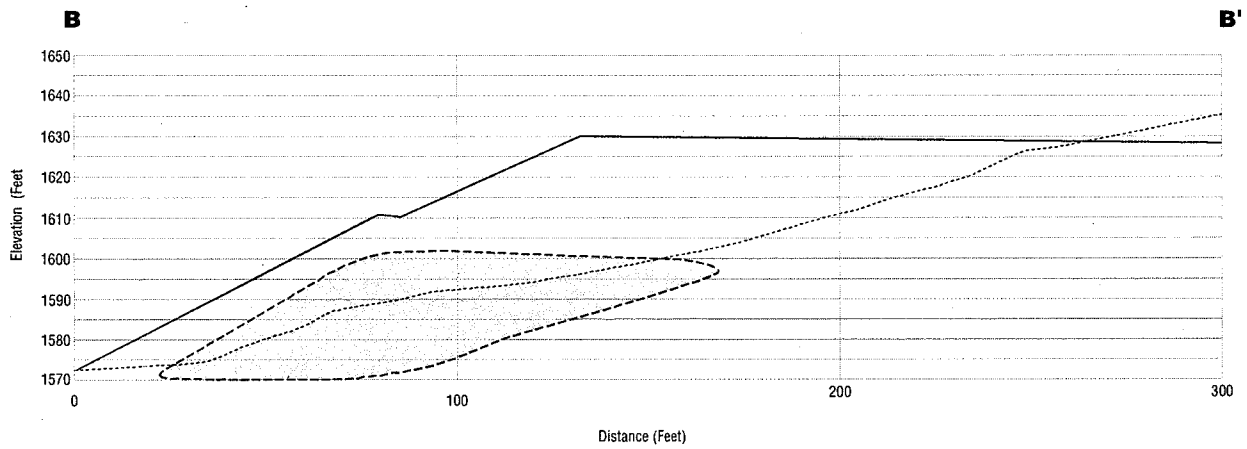
Former South Eureka Mine

Sutter Creek,
California

AS-BUILT MINE WASTE LOCATION MAP

S9007-06-04	April 2009	Figure 3





LEGEND:

- Approximate Extent of Buried Mine Waste Rock (as surveyed by Toma & Anderson, July 3 & 31, 2007)
- Finish Grade
- Original Grade

GEOCON
CONSULTANTS, INC.
3180 GOLD VALLEY DR - SUITE 800 - RANCHO CORDOVA, CA 95742
PHONE 916.852.9116 - FAX 916.852.9132

Former South Eureka Mine

Sutter Creek, California

CROSS-SECTIONS A – A' & B – B'

S9007-06-04	April 2009	Figure 4

EXHIBIT B

Parcel 3 – 044-020-106

DESCRIPTION FOR TPDDG JACKSON ASSOCIATES, LLC, et al

Parcel 3

A parcel of land situated in the County of Amador, State of California, and being "PARCEL 3 3.46 Acres", as shown and so designated upon that certain official map entitled "PARCEL MAP No. 2722 for TPDDG JACKSON ASSOCIATES, LLC, a California Limited Liability Company and DEAN TREVASKIS and SANDRA TREVASKIS", and recorded in the office of the Recorder of Amador County in Book 60 of Maps and Plats at Page 98.

PLS 3570

Ciro L. Toma PLS 3570 License expires 06/30/10

PROFESSIONAL LAND SURVEYOR
CIRO L. TOMA
Exp. 6/30/10
L.S. 3570
STATE OF CALIFORNIA

EXHIBIT C

SAMPLE INSPECTION FORM

From: Ms. Sandra Trevaskis (or Current Property Owner)

To: Department of Toxic Substances Control
Northern California Centralize Cleanup
Attn: Project Manager (101765)
8800 Cal Center Drive
Sacramento, CA 95826

Subject: 2010 Annual Report for Land Use Covenant on the Site known as South Eureka Mine (APN#: 044-020-104), Ridge Road, Sutter Creek, California

This report is being sent to meet the requirements of the annual report required in the Land Use Covenant for South Eureka Mine site.

This report is due to the Department within 30 days of receipt of this letter.

Inspection date:_____ Time:_____

Inspector (print):_____

(sign)_____

Land Use Restriction inspected for this report:

Non- Compliance = Non-C Compliance = C

_____ No residences, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.

_____ No hospital for humans.

_____ No public or private Schools for persons under 21 years of age.

_____ No Day Care Center for children or a senior center for seniors.

_____ No containment soils below the cap were brought to the surface by grading, excavation, trenching or backfilling.

_____ No raising of food (cattle, food crops).

_____ No Drilling for water, oil or gas.

_____ No extraction of groundwater.

_____ Uses or development of the Property preserve the integrity of the cover..

_____ The soil cover appears to be intact and in good condition with no visible

cracks or ruptures.

Operations and Maintenance:

_____ No indications of soil erosion on the North and West boundaries of the site.

_____ Provide picture of cover over tailings.

Any change in condition of the cover needs was reported to the Department within 24 hours of discovery (916) 255-3747.

Provide additional descriptions of any indication or of any violations of the above restrictions. Please provide photos of the current use of the property and the condition of the cover.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

This annual report is submitted under penalty of perjury by the current owner(s), and shall certify that the property is being used in a manner consistent with the terms of the Covenant to ensure compliance with the deed restriction's terms.

_____
Signature

_____
Print Name

END OF DOCUMENT