



2015-0036440

Recorded	REC FEE	49.00
Official Records		
County of		
Butte		
CANDACE J. GRUBBS		
County Clerk-Recorder		
11:00AM 05-Oct-2015	SA	Page 1 of 12

RECORDING REQUESTED BY:
 Department of Toxic Substances Control
 and
 George W. Scott, Sr.
 Individual, and Trustee of the
 George W. Scott, Sr. Revocable Inter Vivos
 Trust
 Chico Scrap Metal, Inc.
 2600 Fair Street
 Chico, California 95928

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
 8800 Cal Center Drive
 Sacramento, California 95826
 Attention: Steven R. Becker, P.G.
 Supervising Senior Engineering Geologist
 Brownfields and Environmental Restoration
 Program

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

12/4

COVENANT TO RESTRICT USE OF PROPERTY
 ENVIRONMENTAL RESTRICTION

County of Butte APN(s) 078-090-002 and 078-090-003, Chico Scrap Metal, Inc.
 (DBA NorCal Recyclers) located at 1855 Kusel Road Oroville;
 Project Identification Number: DTSC101938

This Covenant and Agreement ("Covenant") is made by and between George W. Scott, Sr. Individual and Trustee of the George W. Scott, Sr. Revocable Inter Vivos Trust, and Chico Scrap Metal (the "Covenantor"), the current owner of property situated in Oroville, County of Butte, State of California, described in Exhibit "A" and "B" and depicted in Exhibit "C," 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 use as defined in H&SC section 25260. The Covenantor and Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code (H&SC) 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.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling 4.87 acres, is more particularly described and depicted in the attached Exhibits "A", "B", and "C". The Property is located in the area now generally bounded on the north, east, and south by commercial/industrial land and on the west by agricultural land. The Property is also generally described as Butte County Assessor's Parcel No(s): 078-090-002, and 078-090-003.

1.02. The Property has been assessed in accordance with H&SC, division 20, chapter 6.8 under the oversight of the Department pursuant to an Imminent and Substantial Endangerment Determination and Remedial Action Consent Order. The Remedial Investigation and Baseline Risk Assessment requires a Covenant as part of the site remediation, because polychlorinated biphenyls (PCB), which is a hazardous substance, as defined in H&SC section 25316, and a hazardous material as defined in H&SC section 25260, remain in soil (at 0.053-6.3 milligrams per kilograms) above unrestricted cleanup goals at depths of 0.5 feet or more below the surface of the Property. There is also a portion of the property that did not undergo an investigation in order to keep the secondary containment intact.

1.03. Basis for the Environmental Restrictions. As a result of the presence of the hazardous substance indicated above, which is also a hazardous material as defined in H&SC section 25260, at the Property, the Department has concluded that it is reasonably necessary to restrict the use of the property in order to protect present or future human health or safety or the environment, and that this Covenant is required as part of the Department-approved remedy for the Property. 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 has also concluded that the Property, in its current condition and when used in compliance with the Environmental Restrictions of this Covenant, does not present an unacceptable risk to present and future health or safety or the environment.

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 Covenantor, 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 H&SC section 25221 and Civil Code section 1471 and H&SC section 25355.5; (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 H&SC, 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 30 days after any conveyance of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). 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 Covenantor hereby covenants for the Covenantor 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 (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 Owner shall provide the Department written notice at least 14 days prior to any building, filling, grading, mining or excavating on the Property.

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

- a) Raising of food (e.g., cattle, food crops).
- b) Drilling for water, oil, or gas without prior written approval by the Department.
- c) Use of groundwater as drinking water or other beneficial uses without compliance with Regional Water Quality Control Board requirements.

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. **Access for Implementing Operation and Maintenance.** The entity or person responsible for implementing the operation and maintenance activities, if any,

shall have reasonable right of entry and access to the Property for the purpose of implementing such operation and maintenance activities until the Department determines that no further operation and maintenance activity is required.

4.06. 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 June 30 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 that were the basis for the statements and conclusions in the annual inspection report were performed (e.g., drive by, fly over, walk in, etc.). If any violation is noted, the annual inspection report must detail the steps taken to correct the violation and return to compliance. If the Owner identifies any violations of this Covenant during the annual inspection or at any other time, the Owner must within 10 calendar days of identifying the violation: (a) determine the identity of the party in violation; (b) send a letter advising the party of the violation of the Covenant; and (c) demand that the violation cease immediately. Additionally, a copy of any correspondence related to the violation of this Covenant shall be sent to the Department within 10 calendar days of its original transmission.

4.07. Five-Year Review. In addition to the annual reviews noted above, after a period of five (5) years from **June 30, 2016** and every five (5) years thereafter, Owner shall submit a Five-Year Review report documenting its review and remedy implemented and its evaluation to determine if human health and the environment are being adequately protected by the remedy as implemented. The report shall describe her results of all inspections, sampling analyses, tests and other data generated or received by Owner and evaluate the adequacy of the implemented remedy in protecting human health and the environment. As a result of any review work performed, DTSC may require Owner to perform additional review work or modify the review work previously performed by Owner.

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 H&SC 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 (1) 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 H&SC 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 Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Butte within 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 Current Owner:

George W. Scott, Sr.
Individual, and Trustee of the
George W. Scott, Sr. Revocable Inter Vivos Trust
Chico Scrap Metal, Inc.
2600 Fair Street
Chico, California 95928

And

To Department:

Department of Toxic Substances Control
Brownfields and Environmental Restoration Program
Site Evaluation and Remediation Unit
8800 Cal Center Drive
Sacramento, California 95826
Attention: Steven R. Becker, P.G.
Supervising Senior Engineering Geologist

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.

Covenantor: Chico Scrap Metal, Inc.

By: George W. Scott Sr.
Title: George W. Scott, Sr.
Individual, and Trustee of the
George W. Scott, Sr. Revocable Inter Vivos Trust

Date: 9-29-15

Department of Toxic Substances Control:

By: Steven R. Becker
Title: Steven R. Becker, P.G.
Supervising Senior Engineering Geologist
Site Evaluation and Remediation Unit
Brownfields and Environmental Restoration Program

Date: 10/1/2015

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of BUTTE

On 9/29/2015 before me,

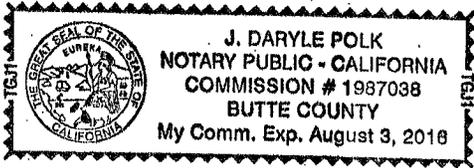
J. Daryle Polk, Notary Public

(space above this line is for name and title of the officer/notary),

personally appeared George W. Scott, Sr., 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,



J. Daryle Polk (seal)
Signature of Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Sacramento

On October 1, 2015 before me,

Theresa M. Vigil, Notary Public

(space above this line is for name and title of the officer/notary),

personally appeared Steven R. Becker, 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,

Theresa M. Vigil
Signature of Notary Public

(seal)



EXHIBIT A

95-40635

Exhibit A

Being a portion of the Southwest quarter of the Northwest quarter of Section 32, Township 19 North, Range 4 East, and a portion of the Southeast quarter of the Northeast quarter of Section 31, Township 19 North, Range 4 East, M.D.B.M., more particularly described as follows:

BEGINNING at the Southwest quarter of the property described in Deed from Irving Forstad, et ux, to Walsh Construction Co., a corporation, dated April 5, 1954 and recorded April 14, 1954 in Book 715 of Official Records, at page 183, records of Butte County, California; thence Easterly along the southerly boundary of said Walsh Construction Co. property, a distance of 325 feet; thence South a distance of 325 feet; thence West and parallel with the southerly boundary of said Walsh Construction Co. property, to a point on the Easterly line of Kussel Road; thence Northwest along the Easterly boundary of said Kussel Road, a distance of 325.0 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM the North 115 feet as measured along the East line thereof.

(A.P. No. 036-270-039)

EXHIBIT B

96-00829



BARNHART BROWN & ASSOCIATES
CIVIL ENGINEERS • LAND SURVEYORS

Alan G. Brown, R.E.
Richard Barnhart, P.L.S.

95073

December 27, 1993

Description of Area Adjusted to Parcel 2

All that certain real property situated in Section 32, T19N, R4E, MDM, being a portion of Parcel 4 as shown on that certain Parcel Map filed Book 73 of Maps at Page 100 and being more particularly described as follows:

Beginning at the Southwest corner of said parcel 4 as shown on that certain Parcel Map filed Book 73 of Maps at Page 100; *thence* Northwestely along the West line of said Parcel 4, N 08°14'05" W a distance of 198.38' to the beginning of a 20.00 tangent curve, concave to the South-east; *thence* Northeastely, along said curve through a central angle of 97°07'51" an arc distance of 33.91 feet; *thence* N 88°53'46" E a distance of 519.33'; *thence* S 00°04'07" E a distance of 220.04' to the South line of said Parcel 4; *thence* Westely along said South line S 88°53'46" W a distance of 453.68'; *thence* S 89°34'44" W a distance of 56.90' to the point of beginning.

The purpose of this deed is to effect a boundary line modification as approved by the City of Oroville Public Works Director on November 28, 1995. The above described lands are to become a part of those lands as described in deeds to George Scott Sr. filed for record under Serial Number 92-057734 and Serial Number 92-056430. No new parcels are hereby created. The scope of review of said boundary line modification was limited as specified Government Code Section 66412 (d), and approval of it does not constitute assurance that future applications for building permits or other land use entitlements on the modified lots or parcels will be approved by the City of Oroville.

Containing 2.65 acres, more or less.

950731gl.doc



2060 Park Ave.
P.O. Box 1578
Oroville, CA 95968

(916) 534-1911
(916) 533-6467
FAX (916) 534-0908

EXHIBIT C



LAWRENCE & ASSOCIATES
 2001 MARKET STREET, RM. 523