



Amador County Recorder
Sheldon D. Johnson

DOC- 2006-0013627-00

REQD BY MESA DE ORO HOMEOWNERS ASSN
Friday, NOV 17, 2006 10:35:55
Ttl Pd \$0.00 Nbr-0000138388
SDJ/R1/1-17

RECORDING REQUESTED BY:

Mesa De Oro Homeowners Association
c/o Gene Noland, President
183 Mesa De Oro Circle
Sutter Creek, California 95685

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento California 95826
Attention: James L. Tjosvold, P.E., Chief
Northern California-Cleanup Operations Branch

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION**

**(RE: Parcel Numbers 018-343-001, 018-343-011 and 018-343-033;
Lots Numbers 1, 1A and 1B; Slopes below Mesa De Oro Subdivision)**

This Covenant and Agreement ("Covenant") is made by and between Mesa De Oro Homeowners Association (the "Covenantor"), the current owner of property situated in Sutter Creek, County of Amador, State of California, as described and shown in Exhibit "A", attached hereto and incorporated herein by this reference (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 ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 6 acres, is more particularly depicted in Exhibit A. The Property is generally known as Lots 1, 1A and 1B in the County of Amador, State of California, and is more specifically described as Amador County Assessor's Parcel Numbers 018-343-033, 018-343-001 and 018-343-011. The Property consists of the Mesa De Oro Circle roadway and the slopes and easements surrounding the Mesa De Oro Subdivision, and has no residential improvements. The Covenantor owns the Property.

1.02. U.S. Environmental Protection Agency (U.S. EPA) performed emergency removal actions before construction and design of a cap for the Mesa De Oro Subdivision and surrounding properties to contain the arsenic contaminated soil and prevent direct exposure to that soil in 1994 and 1995. U.S. EPA also oversaw emergency removal actions conducted by AlliedSignal, Inc. (AlliedSignal) in 1995, 1996 and 1997. AlliedSignal removed vegetation from the slopes, reshaped, added moisture, and compacted the slopes to a 2:1 slope, and placed a geotextile filter fabric and Geoweb™ cellular erosion control product on the slope face. The cellular erosion control product is an assembly of geocells made of polyethylene plastic, which were placed on top of the geotextile filter fabric and staked to the prepared slope surface with anchor straight pins, as more particularly described in the engineering specifications/drawings attached as Exhibit "B". AlliedSignal then filled the geocells with clean, imported soil (which together serve as a "Cap") and hydroseeded the area. No irrigation system exists on the slopes. The objectives of the emergency removal actions described above are to contain the contaminated soil on site and to provide a protective barrier between the public and the contaminated soil. In addition, a concrete-lined drainage ditch was constructed along the base of the slope to carry stormwater runoff from the slopes to the nearby storm drains. AlliedSignal also constructed a culvert to replace the local creek between Bryson Drive and Gold Strike Court. AlliedSignal's emergency removal actions are more fully described in the Completion Report-Slope and Top of the Mesa Emergency Removal Actions submitted to U.S. EPA by Erler & Kalinowski, Inc., dated November 27, 1996. AlliedSignal's emergency removal actions were approved by U.S. EPA as satisfactorily complete in its letter dated March 12, 1998. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, including arsenic, remain in the soil in and under portions of

the Property, a deed restriction is required to be placed on the Property. The Operation and Maintenance (O&M) of the Cap is pursuant to an O&M Plan incorporated into the O&M Agreement between Honeywell International (Honeywell) and the Department. Honeywell is AlliedSignal's corporate successor.

1.03. The Mesa De Oro Subdivision and surrounding slopes overlie approximately 30-40 feet of mine tailings and the surface soils contained hazardous substances, as defined in H&SC section 25316. Arsenic is the only contaminant of concern identified, which was found at an average concentration of 374 mg/kg with a maximum of 1,320 mg/kg. The Property was capped to control exposures determined necessary based on findings in risk assessment work completed by the Department and US EPA. The default Preliminary Remediation Goal (PRG) of 22 mg/kg was used as the surface soil cleanup goal for the Property. In the Department's Technical Memorandum dated March 3, 1995, the Department concurred with U.S. EPA's proposed PRG. As detailed in three risk assessment memoranda (DTSC, October 6, 1994; DTSC, October 7, 1994; U.S. EPA, December 1, 1994), the Department concluded that contact with the elevated arsenic concentrations in the soil could result in exposures to arsenic in excess of acceptable health-risk levels. The memoranda indicated that exposures associated with the following land uses: commercial/industrial, residential, hospital, school for persons under the age of 21 or day care center; would entail an unacceptable risk.

Following emergency removal actions and subject to the restrictions of this Covenant, the memoranda concluded that Property would not present an unacceptable threat to human health 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. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. 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.

ARTICLE III
GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5(a)(1)(C) 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 H&SC section 25355.5(a)(1)(C), 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. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). 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, by administrative order, or by a specific provision of this Covenant.

3.06 Costs of Administering the Deed Restriction to be paid by Owner. The terms of this deed restriction run with the land and will continue in perpetuity unless a variance is granted pursuant to section 6.01, or unless terminated pursuant to section 6.02. The Department has already incurred and will in the future incur costs associated with the administration of this deed restriction. Therefore, the Owner hereby covenants for himself and for all subsequent owners, that pursuant to Section 67391.1 of the California Code of Regulations Title 22 (22 CCR), Division 4.5, Chapter 39, the property owner agrees to pay the Department's costs in administering the deed restriction. Honeywell, Inc has entered into an Operations and Maintenance Agreement with the Department which obligates Honeywell to inspect and maintain the cap over the mine tailings and to pay for DTSC cost associated with providing oversight of the Operations and Maintenance requirements. The Covenantor's reporting obligations are generally limited to inspecting and reporting to assure land use remains consistent with the deed restriction. The attached deed restriction inspection checklist (Exhibit B) is provided to simplify the annual reporting requirements of the Covenantor.

ARTICLE IV RESTRICTIONS

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 or a senior center for seniors.

4.02. Soil Management, Drainage and Slope Stability.

- (a) No activities that will disturb the mine tailings below the Cap or cause instability of the slope or Cap material (e.g., excavation, grading, soil or

plant removal, trenching, filling, earth movement or mining, cutting of the geoweb, bike riding, or excessive watering) shall be allowed on the Property unless it is necessary to implement the O&M activities.

- (b) Any contaminated soils below the Cap that are brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of local, state and federal law.

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

- (a) Raising of food (cattle, food crops);
- (b) Drilling for water, oil, or gas;
- (c) Extraction of groundwater.

4.04. Non-Interference with Cap. Covenantor agrees:

- (a) Activities that may disturb the Cap (e.g. excavation, grading, soil or plant removal, trenching, filling, earth movement or mining, cutting of the geoweb, bike riding, excessive watering or loading of the top of the slope excavation, grading, soil disturbance, soil removal, trenching, filling, mining, loading of the top of the slope and/or excessive watering above or on the slope that may cause soil instability) shall not be permitted on the Property without prior review and approval by the Department.
- (b) All uses and development of the Property shall preserve the integrity and physical accessibility of the Cap.
- (c) The Cap shall not be altered without written approval by the Department.
- (d) Covenantor shall immediately (within 24 hours of discovery) verbally notify the Department's Project Manager and Honeywell's Project Manager of each of the following: (i) the type, cause, location and date of any damage to the Cap and/or incidents that may decrease slope stability (i.e., excessive watering, loading of top of slope, soil disturbance, etc.). The Project Managers' contact information is provided in Section 7.04. Within ten (10) working days of the discovery, Covenantor shall furnish a letter (via U.S. Mail or electronic mail with U.S. Mail delivery of the original

signature) to the Department and to Honeywell, signed by the Covenantor, describing the discovery of any disturbance.

4.05. 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.

4.06. Access for Implementing Operation and Maintenance. Honeywell shall have reasonable right of entry and access to the Property for the purpose of implementing the O&M Agreement until the Department determines that no further O&M is required.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements on any portion of the Property in violation of the Restrictions, repair any damage caused by a violation of the Restrictions and restore the Property to the condition existing prior to the violation of such Restrictions. ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas.) Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, 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. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other 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 the Termination paragraph above, 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. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor 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.

7.04. 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:

Mesa De Oro Homeowners Association
c/o Gene Noland, President
183 Mesa De Oro Circle
Sutter Creek, California 95685
Phone: (209) 267-1492

To Honeywell:

Tao Wu, Manager
Remediation and Evaluation
Honeywell International
P.O. Box 52181 -- Mail Stop: 158
Phoenix, Arizona 85072-2181
Phone: (602) 231-2015

To Department:

James L. Tjosvold, P.E., Chief
Northern California-Central Cleanup Operations Branch
California Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 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.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is 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.

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

7.07. Annual Reporting Requirements. Section 67391.1 of title 22, division 4.5, chapter 39 of the California Code of Regulation titled "Requirements for Land Use Covenants" (22 CCR 67391.1) requires an annual inspection of the land use and an annual report submitted to the Department to ensure prohibited uses are not occurring on the Property. After recording this Covenant, the annual report shall be provided to the Department by January 15th of each calendar year. The annual report shall describe how all the requirements outlined in this Covenant have been met. The annual report, filed under penalty of perjury by the then current owner(s), shall certify that the property is being used in a manner consistent with the terms of

this Covenant to ensure compliance with the deed restriction's terms. The annual report must include the dates, times, and names of those who conducted and reviewed the annual inspection. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual report (e.g., drive by, fly over, walk in, etc.) If violations are noted by the observer, the annual report must detail the steps taken to notify the Department in accordance with Section 4.04. Additionally, copies of any correspondence related to the enforcement of the deed restriction shall be sent to the Department within ten days of its original transmission.

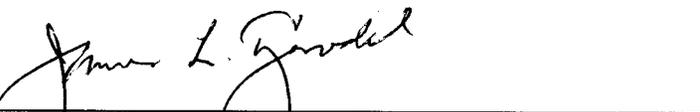
IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Mesa De Oro Homeowners Association

By: 
Gene Noland, President

Date: Oct. 10, 2006

Department of Toxic Substances Control:

By: 
James L. Tjosvold, P.E., Chief
Northern California-Central Cleanup Operations Branch

Date: 10/24/06

STATE OF CALIFORNIA)
)
COUNTY OF Sacramento)

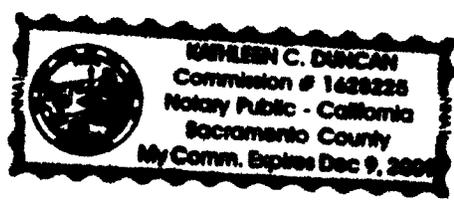
On this 24th day of October, in the year 2006,

before me Kathleen C. Duncan, Notary, personally appeared
James L. Tjosvold,

personally known to me (or ~~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.

WITNESS my hand and official seal.

Signature Kathleen C. Duncan



ILLEGIBLE NOTARY SEAL DECLARATION (GOVERNMENT CODE 27361.7)
I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:
Name of Notary: Kathleen C. Duncan
Date Commission Expires: 12/9/2009
County of Commission: Sacramento
Notary Commission Number: 1628225
Manufacturer Identification Number: NNA 1
Place of execution of this Declaration: Jackson, CA
Date: 11/17/06 Mesa De Oro Homeowners Assn
(Firm Name if Any)
Gene Roland
(Signature)

ALL-PURPOSE ACKNOWLEDGMENT-CALIFORNIA ONLY

State of California

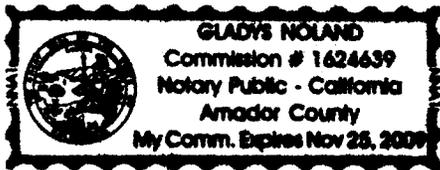
County of Amador

On 11-14-2006 before me, GLADYS NOLAND, Notary Public,

personally appeared GENE NOLAND
NAMES(S) OF SIGNER(S)

personally known to me - OR - 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.

(SEAL)



WITNESS my hand and official seal.

Gladys Noland
SIGNATURE OF NOTARY PUBLIC

Description of Attached Document (OPTIONAL)

Title or Type of Document: deed Restriction

Document Date: 10-24-2006 Number of Pages: 11

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer
- Title(s): _____
- Partner Limited General
- Attorney-In-Fact
- Trustee
- Guardian or Conservator
- Other: _____

TOP OF TRIMMED IMAGE

Signer is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer
- Title(s): _____
- Partner Limited General
- Attorney-In-Fact
- Trustee
- Guardian or Conservator
- Other: _____

TOP OF TRIMMED IMAGE

Signer is Representing: _____

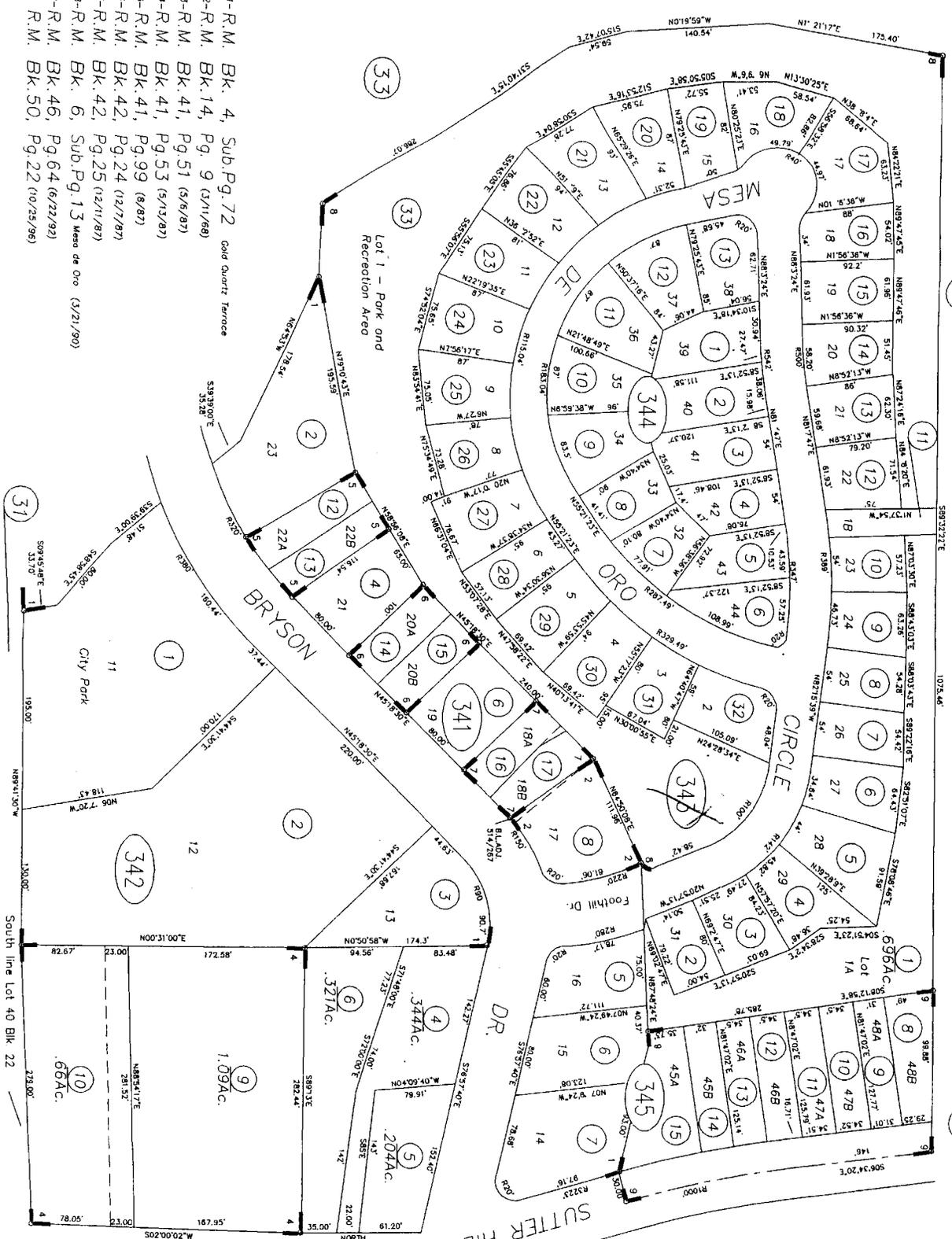
EXHIBIT A

Map

Covenant To Restrict Use of Property
Environmental Restriction, Mesa De Oro
Sutter Creek, California

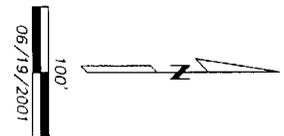
POR. SEC. 7, T.6N., R.11E., M.D.B. & M.

0 18-34



- 1-R.M. Bk. 4, Sub.Pg.72 Cold Quartz Terrace
- 2-R.M. Bk.14, Pg. 9 (3/11/88)
- 3-R.M. Bk.41, Pg.51 (5/6/87)
- 4-R.M. Bk.41, Pg.53 (5/13/87)
- 5-R.M. Bk.41, Pg.99 (8/87)
- 6-R.M. Bk.42, Pg.24 (12/7/87)
- 7-R.M. Bk.42, Pg.25 (12/11/87)
- 8-R.M. Bk. 6, Sub.Pg.13 Mesa de Oro (3/21/90)
- 9-R.M. Bk.46, Pg.64 (8/22/92)
- 10-R.M. Bk.50, Pg.22 (10/25/96)

Map changes become effective with the 2001-2002 roll year. Parcel numbers are subject to change prior to adoption of roll on each July 1.



44
02

IMPORTANT NOTE: This map was prepared for property tax assessment purposes only. It is assumed that the property, as described in it's deed, is the property being assessed. No liability is assumed for the accuracy of the data delineated hereon.

Assessor's Map Bk.18, Pg.34
County of Amador, Calif.

EXHIBIT B

Checklist

Covenant To Restrict Use of Property
Environmental Restriction, Mesa De Oro
Sutter Creek, California

From: Mesa De Oro Homeowners Association (Covenantor)

To: Department of Toxic Substances Control
Northern California Centralize Cleanup
Attn: Project Manager (100449)
8800 Cal Center Drive
Sacramento, CA 95826

Subject: _____ Annual Report for Deed Restriction on Mesa De Oro Development,
Amador County Assessor's Parcel Numbers 018-343-033, 018-343-001 and 018-343-011

This report is being sent to meet the requirements of the annual report required in the Deed Restriction for the Mesa De Oro development. This report is not a substitute for incident notification requirements in section 4.04 of the deed restriction.

This report is due to the Department by January 15th of each Calendar year.

Inspection date: _____ Time: _____ Inspector (print): _____

Land Use Restriction inspected for this report:

____ 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.

____ Activities that may disturb the mine tailings below the Cap or cause instability of the slope or cap material (e.g. excavation, grading, soil, or plant removal, trenching, filling, earth movement or mining, cutting of the geoweb, bike riding, or excessive watering) have been controlled. If applicable, specify events occurring in the reporting period, date of event, notifications and outcome on page two.

____ Containment soils below the cap brought to the surface by grading, excavation, trenching or backfilling were managed in accordance with all applicable provisions of local, state and federal law. If applicable, specify events occurring in the reporting period, date of event, notifications and outcome on page two.

____ 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 and physical accessibility of the Cap.

