

Central Valley Regional Water Quality Control Board

30 January 2020

SENT VIA EMAIL

Terra Saxton
tearth80@hotmail.com

RESPONSE TO INQUIRY ABOUT PROPOSED CONSTRUCTION ACTIVITY, FORMER PIONEER REDUCTION WORKS SITE, 375 HOLLOW WAY, NEVADA CITY, NEVADA COUNTY

California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) staff have reviewed the preliminary plans received on 28 January 2020 for the proposed construction of a coffee shop/café at 375 Hollow Way Nevada City, California.

The former Pioneer Reduction Works processed gold ore near the intersection of Highway 49 and Gold Flat Road in Nevada City. The wastes from the mineral processing work were disposed of on the southern portion of the property with addresses 351 and 375 Hollow Way (Property). In 2002, excavation work for construction of a hotel at the Property uncovered buried ore waste. Investigations showed that soil and groundwater at the Property were contaminated with metals, primarily arsenic.

In 2014, remedial action was implemented at the Property and included excavation of the contaminated soil and encapsulating it in a low permeable polyethylene membrane in a containment cell to isolate it from the environment, prevent future contaminant releases to groundwater, and promote attenuation of residual arsenic in groundwater through natural processes. The encapsulated soil was covered with clean compacted soil. The extents of the containment cell were surveyed before covering with clean soil and are shown on the attached as-built drawing.

The portion of the Property that is outside the boundaries of the containment cell and excavation area as shown on the attached as-built drawing may be used for the proposed construction activity. However, use of the portion of the Property that contains the containment cell is restricted as described in the attached Covenant and Agreement to Restrict Use of Property. The submitted preliminary plans appear to show the proposed construction encroaching over the restricted use area (over the containment cell). Therefore, prior to commencement of any construction activity, drawings stamped by a licensed civil engineer and certifying that the proposed construction will not affect

KARL E. LONGLEY SCD, P.E., CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

the containment cell need to be submitted to this office for our review and concurrence. In addition, this office needs to be notified at least 72 hours prior to initiation of any field work that involves digging or excavation so that staff can be present to observe the work.

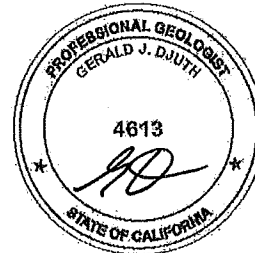
If you have any questions regarding this letter, you may contact me at (916) 464-4746 or by email at aimee.phiri@waterboards.ca.gov.



AIMEE PHIRI, P.E.
Water Resources Control Engineer
Federal/Private Site Cleanup Unit



GERALD DJUTH, P.G.
Senior Engineering Geologist
Federal/Private Site Cleanup Unit



Attachments:

- As-Built Drawing
- Covenant and Agreement to Restrict Use of Property

14
Nevada County Recorder
Gregory J. Diaz
Document#: 20150024747
Friday October 23 2015, at 11:34:16 AM
Rec Fee:\$53.00 CCF:\$1.00
Paid: \$54.00 CP

RECORDING REQUESTED BY:

Barton W. Riebe
The Hollow Way, LLC
Post Office Box 628
Grass Valley, CA 95945

WHEN RECORDED, MAIL TO:

Space Above for Recorder's Use

Pamela C. Creedon, Executive Officer
California Regional Water Quality Control Board, Central Valley Region
11020 Sun Center Drive, #200
Rancho Cordova, California 95670-6114

COVENANT AND AGREEMENT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

**(Re: 351 and 375 Hollow Way, City of Nevada City, Nevada County, California,
Assessor's Parcels 05-300-19 and 20)**

This Covenant and Agreement ("Covenant") is made by and between The Hollow Way, LLC (the "Covenantor"), and the California Regional Water Quality Control Board, Central Valley Region ("Regional Water Board"). Collectively the Covenantor and the Regional Water Board are referred to as the "Parties." The Property, which is situated in the City of Nevada City and the County of Nevada, State of California and described in Exhibit C attached hereto and incorporated herein by this reference (the "Property"), is property subject to the control of the Covenantor. The Covenantor is authorized to enter into this Covenant.

Pursuant to Civil Code Section 1471 and Water Code Section 13307.1, the Regional Water Board has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of potential risk related to the possible presence on the land of hazardous materials, as

defined in Health & Safety Code ("H&SC") Section 25260, and, pursuant to Civil Code Section 1471 and Water Code Sections 13304 and 13307.1, use of the Property shall be restricted as set forth in this Covenant.

ARTICLE I

STATEMENT OF FACTS

1.01 Property Description. The Property, totaling approximately 1.67 acres, is unpaved with improvements consisting of a small wood frame single story building. The Property is depicted in Exhibit B and described in Exhibit C, respectively. The Property is a currently unoccupied irregularly shaped parcel of land bordered by commercial use properties to the north, a residential property to the east, and Gold Run Creek tributary to the south. The west side of the Property is bordered by Hollow Way, a City street. The Property address is 351 and 375 Hollow Way, Nevada City, California and is located in a commercial zone of the City of Nevada City. The Property has not been recently occupied.

1.02 Soil and Groundwater Conditions. Investigations at the Property have shown that soil contains elevated concentrations of inorganic elements, including arsenic and lead. Groundwater beneath the Property contains arsenic, cadmium, cobalt, iron, and manganese at concentrations above drinking water standards. These conditions are the result of the historical use of the Property as a disposal area for mining waste by the Pioneer Reduction Works.

The Pioneer Reduction Works roasted and chlorinated sulfide rich ore bearing rocks, i.e., sulphurets, from gold mines in the Grass Valley and Nevada City area. The sulphurets contained arsenopyrite (AsFeS) and galena (PbS). The waste product from the reduction works included "chlorinizing tailings" which contained arsenic and lead from the sulphurets. The wastes from the mineral processing were disposed of on the southern portion of the Property.

Contaminated soil at the Property was excavated and contained within a low permeable polyethylene membrane above the water table and then covered with clean soil. The containment area extents were surveyed before backfill and the containment

area is now defined as the restricted area described in Exhibits A and B. In addition, a French drain was installed to divert groundwater around the containment area.

ARTICLE II

DEFINITIONS

2.01 Regional Water Board or RWQCB. "Regional Water Board" shall mean the Regional Water Quality Control Board, Central Valley Region, and shall include its successor agencies, if any.

2.02 Owner. "Owner" means The Hollow Way, LLC, its successors in interest, including heirs and assigns, who at any time hold title to or an ownership interest in all or any portion of the Property, during the time of such ownership.

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

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

ARTICLE III

GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively, "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 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 Regional Water Board; 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. This Covenant binds all Owners/Occupants of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the Owners/Occupants, heirs, successors, and assignees. Pursuant to Civil Code Section 1471(b), all successive Owners/Occupants of the Property are expressly bound hereby for the benefit of the State.

3.03 Written Notification of Hazardous Substance Release. Written notice of the existence of this Covenant shall be given to the buyer, lessee, or sublessee of the Property prior to the sale, lease or sublease of the Property.

3.04 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.

3.05 Conveyance of Property. The Covenantor and thereafter Owner shall, no later than thirty (30) days after any conveyance, provide written notice to the Regional Water Board of any change in ownership of 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 or, if the APN has changed, the APN assigned at the time of transfer. If the new owner's Property has been assigned a different APN, each such APN that covers the Property must be provided. The Regional Water Board does not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect any proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV

RESTRICTIONS

4.01 Restrictions. The Property may not be put to any of the following uses by Owners/Occupants:

- (1) A residence, including any mobile home or factory built housing, used as residential human habitation.

- (2) A hospital or urgent care center for humans.
- (3) A public or private school for persons under 18 years of age.
- (4) A day care center for children.
- (5) Construction of other buildings that are not listed in subsections (1) through (4), above, within the area defined in Exhibits A and B.
- (6) Any groundwater development or use of the Property that causes alteration of groundwater conditions within the property through activities such as construction of any well; extraction, use, or consumption of groundwater from wells within the boundary of the Property.
- (7) Any use of the Property that would cause disturbance of, or limit access to, any equipment or systems associated with groundwater or soil monitoring or remediation.

4.02 Soil Management. The following restrictions apply to soils on the Property:

(1) No activities that will disturb the soil (e.g., digging, excavation, grading, removal, trenching, filling, earth movement or mining), shall be allowed within the area defined in Exhibits A and B without prior written approval from the Regional Water Board. A soils management plan shall first be prepared for Regional Water Board review and concurrence before conducting any intrusive activities in the area defined in Exhibits A and B.

(2) Any soils brought to the surface by digging, grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law, and in accordance with the soil management plan required in 4.02(1), above.

4.03 Access for the Regional Water Board. The Regional Water Board shall have reasonable right of entry and access to the Property defined for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Regional Water Board to protect the public health or safety or the environment, including access to all monitoring wells if any, until such time as those wells are abandoned. Such access shall be during normal business hours and shall not unduly disrupt ongoing operations at the Property. The Regional Water Board shall to

the extent possible provide advance notice to, and coordinate with, the Owner, lessee, or sublessee of the Property, as appropriate, regarding access requirements.

ARTICLE V
ENFORCEMENT

5.01 Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Regional Water Board 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 Regional Water Board, shall be grounds for the Regional Water Board to pursue administrative, civil or criminal actions, as provided by law.

5.02 Nothing in this Covenant is intended to preempt the State's authority to implement and enforce applicable laws.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01 Variance. The Owner, or any other aggrieved person, may apply to Regional Water Board for a written variance from the provisions of this Covenant. The Regional Water Board will grant the variance only after finding that such a variance would be protective of human health, safety and the environment.

6.02 Termination or Modification. The Owner, or any other aggrieved person, may apply to the Regional Water Board for a termination or modification of one or more terms of this Covenant as they apply to all or any portion of the Property.

6.03 Term. This Covenant shall continue in effect in perpetuity unless ended in accordance with the Termination paragraph above, by law, or by the State in the exercise of its discretion. The parties agree that the State shall terminate this Covenant if and when the vadose zone contamination and the groundwater pollution, as defined above, have been fully remediated, as determined by the Regional Water Board, so

long as this Covenant is no longer reasonably necessary to protect present or future human health or safety or the environment as a result of potential risk related to the possible presence on the land of hazardous materials. This Covenant may also be terminated at an earlier point in time in accordance with the provisions of Section 6.02, above.

ARTICLE VII

MISCELLANEOUS

7.01 No Dedication or Taking. 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. Further, nothing set forth in this Covenant shall be construed to affect a taking under state or federal law.

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

To Regional Water Board: Executive Officer
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

And, for so long as Covenantor continues as receiver under the Order and has not been discharged:

To Covenantor: Barton W. Riebe
The Hollow Way, LLC
Post Office Box 628
Grass Valley, CA 95945

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.

7.03 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.

7.04 Exhibits. All exhibits referenced in this Covenant are deemed incorporated into this Covenant by reference.

7.05 Statutory References. All statutory references include successor provisions.

7.06 Monitoring Wells. All monitoring wells located on the Property, if any, shall be maintained for Regional Water Board access until such time as the Regional Water Board determines that the wells are no longer necessary. Upon concurrence of the Regional Water Board, the Owner shall be responsible to destroy the wells according to Nevada County Environmental Health Department standards.

7.07 French Drain Outlets. The French drain outlets shall be cleared to facilitate inspection and to provide unimpeded drainage.

7.08 Inspection and Reporting Requirements. The Owner shall conduct an annual inspection of the Property during the second quarter of each year and an Annual Inspection Report shall be submitted to the Regional Water Board for its approval by August 1st of each year. The inspection shall entail evaluation of compliance with Sections 4.01 and 4.02. The annual report must include the dates, times, and names of those who conducted 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 report. The Annual Inspection Report shall also evaluate compliance with Section 4.03. If violations are noted, the annual report must detail the steps taken to return to compliance. If the Covenantor or Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Covenantor or Owner shall within 10 days of identifying any such violation, determine the identity of the party in violation, and if a violator is identified, send a letter advising the party of the violation of the Covenant and demand that the violation cease immediately. Additionally, copies of any correspondence related to the enforcement of this Covenant shall be sent to the Regional Water Board within ten (10) days of its original transmission.

7.09 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Nevada within ten (10) days of the Covenantor's receipt of a fully executed original.

7.10 Approvals. Where the approval or concurrence of the Regional Water Board is required under this Covenant, such approval shall not be unreasonably withheld.

Covenantor Re: 351 and 375 Hollow Way, City of Nevada City, Nevada County, California, Assessor's Parcels 05-300-19 and 20

By: *B.W. Riebe*

Barton W. Riebe

Title: Manager, The Hollow Way, LLC

Date: 9/25/15

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 Nevada

On September 25, 2015 before me, Cheryl Benso, Notary Public personally appeared
(here insert name and title of the officer)

Barton W Riebe

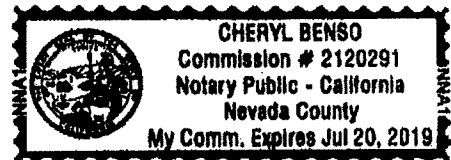
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),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

Notary Public Seal

WITNESS my hand and official seal.

Cheryl Benso
Notary Public Signature



REGIONAL WATER QUALITY CONTROL BOARD,
CENTRAL VALLEY REGION

By: Andrew Altevoigt

Andrew Altevoigt

Title: Assistant Executive Officer

Date: 10/9/15

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 9, 2015 before me, Lyda Huynh, Notary Public
(here insert name and title of the officer)

personally appeared

Andrew Altevoigt

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.

Notary Public Seal

WITNESS my hand and official seal.

Lyda Huynh
Notary Public Signature

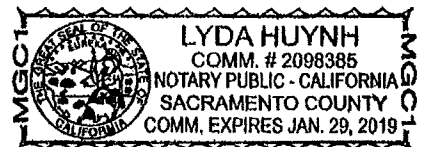


EXHIBIT "A"

Legal Description of Waste Containment Area

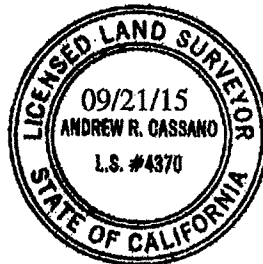
ALL THAT PORTION of the lands of The Hollow Way, LLC as described in Document Number 2008-030996, Nevada County Records, being situate within a portion of the East half of Section 13, Township 16 North, Range 8 East, M.D.M., Nevada County, California, **BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

BEGINNING at a point from which the Northeast Corner of the above described property bears the following two successive courses: South 56°48'00" East 39.92 feet and North 33°12'00" East 127.74 feet; **THENCE FROM SAID POINT OF BEGINNING** South 25°45'00" West 92.33 feet; thence South 53°38'00" West 24.55 feet; thence South 84°25'00" West 29.23 feet; thence North 68°20'00" West 54.36 feet; thence North 60°30'00" West 33.72 feet; thence North 05°50'00" East 97.64 feet to a point on the easterly sideline of Hollow Way, said point being the beginning of a non-tangent curve to the right, concave easterly, having a radius of 1069 feet and an initial radial bearing of South 71°51'03" East; thence following said curve in a northeasterly direction through an interior angle of 02°58'09" for an arc distance of 55.40 feet; thence leaving said sideline of Hollow Way South 58°40'00" East 164.26 feet **TO THE POINT OF BEGINNING.**

This legal description was prepared by me in August, 2015.

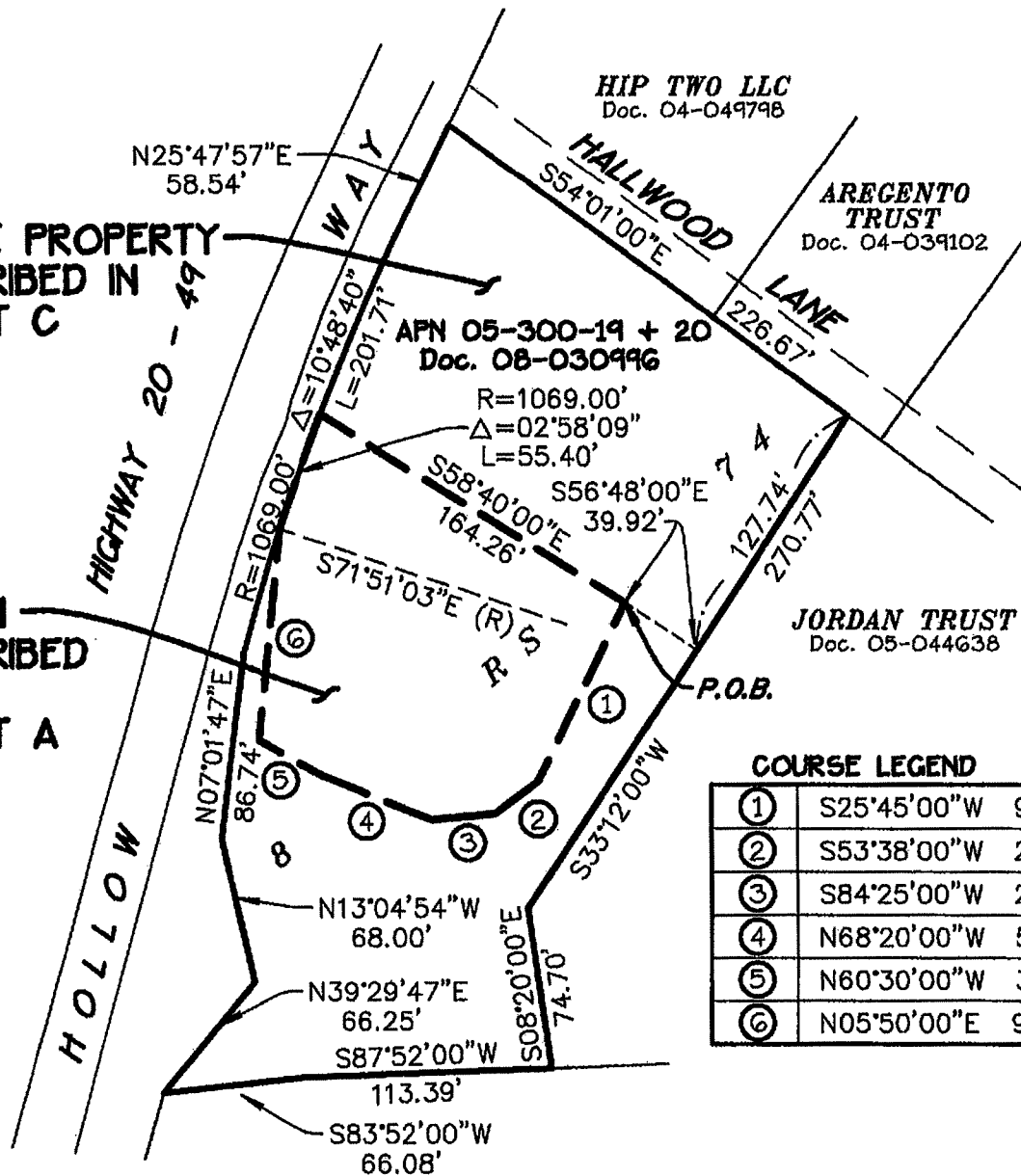


Andrew R. Cassano, LS 4370
Professional Land Surveyor
Nevada City Engineering, Inc.



ENTIRE PROPERTY
DESCRIBED IN
EXHIBIT C

HEREIN
DESCRIBED
AREA
EXHIBIT A



COURSE LEGEND

①	S25°45'00"W	92.33'
②	S53°38'00"W	24.55'
③	S84°25'00"W	29.23'
④	N68°20'00"W	54.36'
⑤	N60°30'00"W	33.72'
⑥	N05°50'00"E	97.64'

EXHIBIT "B"
THE HOLLOW WAY LLC
RESTRICTED AREA

BEING A PORTION OF
EAST 1/2 OF SECTION 13
T. 16 N., R. 8 E., M.D.M.

WITHIN THE INCORPORATED AREA OF THE CITY OF NEVADA CITY
NEVADA COUNTY CALIFORNIA

SCALE: 1"=80'

AUGUST, 2015

NEVADA CITY ENGINEERING, INC.
505 COYOTE STREET * P.O. BOX 1437 * NEVADA CITY * CALIFORNIA

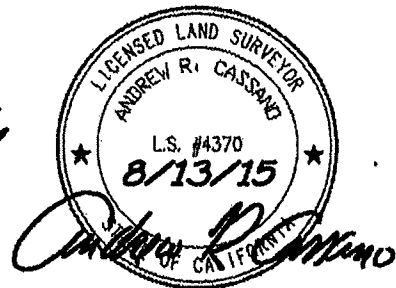


EXHIBIT C
Legal Description of
Entire Subject Property

ALL THAT PORTION OF the east half of Section 13, Township 16 North, Range 8 East, M.D.M., being all that land shown within the boundaries as shown on that certain record of survey map filed in Book 8 of Surveys at Page 74, Nevada County, California; **BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

COMMENCING AT the northeasterly corner of the subject property from which the East quarter corner of said Section 13 bears South 85°40'21" East 936.75 feet; **THENCE FROM SAID POINT OF COMMENCEMENT** South 33°06'00" West 270.77 feet; thence South 08°26'00" East 74.70 feet; thence South 87°46'00" West 113.39 feet; thence South 83°46'00" West 66.08 feet to Hollow Way, a City street; thence along Hollow Way North 39°23'47" East 66.25 feet; thence North 13°10'54" West 68.00 feet; thence North 06°55'47" East 86.74 feet to the beginning of a non-tangent curve, concave to the east, having a radius of 1069.00 feet, from which the radius point bears North 74°00'43" West; thence along said curve in a northerly direction through a central angel 10°48'40" for an arc length of 201.71 feet; thence North 25°41'57" East 58.54 feet; thence leaving Hollow Way and following the southerly line of Hallwood Lane, a private road, South 54°07'00" East 226.67 feet to the point of commencement and containing 1.67 acres more or less.

THIS LEGAL DESCRIPTION was prepared by me based on record data in August 2015.



Andrew R. Cassano, LS 4370
Professional Land Surveyor
Nevada City Engineering, Inc.

