

COUNTY OF PLACER
Community Development Resource Agency

**ENGINEERING AND
SURVEYING DIVISION**

Michael Johnson, AICP
Agency Director

MEMORANDUM

TO: Honorable Board of Supervisors
FROM: Michael Johnson, AICP
Agency Director
DATE: December 11, 2012
SUBJECT: GONDOLA NORTH SUBDIVISION, TRACT # 997, PN 8656

ACTION REQUESTED

1. Approve recording the Subdivision Improvement Replacement Agreement (SIRA).

There is no net County cost associated with this action.

BACKGROUND

The Final Map for the Gondola North Subdivision created 25 single-family residential lots ranging in size from 9,000 to 17,000 square feet, and three non-residential lots as shown on the attached Exhibit "B." This subdivision is located on Mule Ears Drive in the Sugarbowl Ski Resort as shown on the attached Exhibit "C".

The improvements required to be constructed with this subdivision consist of private subdivision streets, drainage, survey monuments, public utility infrastructure and miscellaneous items. The subdivider has completed a majority of the required construction. With the exception of the public utility infrastructure, all the improvements constructed with this subdivision will be private, with maintenance provided by the property owner's association.

Security sufficient to cover labor / materials and faithful performance was posted with the County at the time of Final Map approval in conformance with the then-current County Code. The Subdivision Improvement Agreement (SIA) identifies the amounts of security to be retained and certain obligations of the subdivider. An Amendment to Placer County Code Article 16.16.050 has since altered the amount of subdivision security required for Final Map approval. A Subdivision Improvement Replacement Agreement (SIRA) has been prepared to reflect these amounts and includes security adjustments based upon work that has been completed. Upon recordation, the SIRA will supersede the SIA. Other than the updated amounts of security, this SIRA binds the subdivider to the same obligations as the SIA.

Approval of this SIRA will enable staff to adjust the amounts of security to achieve conformance with current County Code.

ENVIRONMENTAL CLEARANCE

A Mitigated Negative Declaration has been found adequate to satisfy the requirements of CEQA and was certified by the Planning Commission on February 11, 2010. Mitigation measures have been addressed by the Conditions of Approval for this subdivision.

FISCAL IMPACT

Approval of the SIRA will have no fiscal impact on the County's General fund.

RECOMMENDATION

1. Approve recording the Subdivision Improvement Replacement Agreement (SIRA) for the Gondola North Subdivision.
 - a. Authorize the Chairperson to sign the SIRA.
 - b. Instruct the Clerk of the Board to prepare the SIRA for recording.

Attachment: Exhibit A – SIRA
Exhibit B - Map of Subdivision
Exhibit C – Vicinity Map

EXHIBIT "A"

Recording Requested by
and Return to:

Placer County
Community Development Resource Agency
Engineering and Surveying Department
3091 County Center Drive, Suite 120
Auburn, California 95603

Subdivision Name: GONDOLA NORTH SUBDIVISION
Subdivision No. PSUB 20080310
Recorded at: Book CC of Maps, at Page 26,
Official Records of Placer County.
Tract No.: 997
Subdivider: MT. LINCOLN, LLC.
Effective Date: DECEMBER 11, 2012.

SUBDIVISION IMPROVEMENT REPLACEMENT AGREEMENT

This Subdivision Improvement Replacement Agreement is entered into by and between the County of Placer, hereinafter called "County," and MT. LINCOLN, LLC. hereinafter called "Subdivider," on the 11TH day of December, 2012.

RECITALS

1. Subdivider has received approval from County of a tentative subdivision map commonly known as the Gondola North Subdivision ("the Subdivision"). A copy of the Subdivision is on file with the Placer County Community Development Resource Agency and by this reference incorporated herein.
2. Subdivider has filed for record a final subdivision map on October 14, 2012 entitled Gondola North Subdivision in Book CC, of Maps at Page 26 Official Records of Placer County, ("the Map"), in substantial conformity with the Subdivision.
3. County approved the Map, subject to the execution of a Subdivision Improvement Agreement recorded as Document No. 2011-0080840 Official Records of Placer County, (the "SIA").
4. Subdivider has provided security to the County in conjunction with the SIA in conformance with the then current County Code.

5. An Amendment to Placer County Code Article 16.16.050 altering the amount and purpose of subdivision security has since been adopted by the Board of Supervisors.
6. Subdivider has requested, and the County has agreed, to execute this Subdivision Improvement Replacement Agreement (the "Agreement") to adjust the amount and purpose of the existing security to achieve conformance with the current Placer County Code.
7. County and Subdivider wish to memorialize their voluntary agreement to record this Agreement, and upon doing so, the SIA will be superseded by this Agreement and the SIA will no longer be a covenant running with the land.
8. The authority for this Agreement is set forth in the Subdivision Map Act ("the Map Act") (Government Code section 66410 et seq.)

AGREEMENT

9. **Improvements.** Subdivider agrees to complete all the works of improvement ("the Improvements") required for the Map as shown on the final improvement plans for Gondola-North at Sugar Bowl / PN8656 submitted to, approved by, and filed with the Community Development Resource Agency, in accordance with the requirements of the Map Act, Title 16, the Standard Specifications of County improvement plans, and such other requirements as are included herein. Such work will be completed within 12 months, of the date of this Agreement. The Improvements include both public and private improvements.
10. **Additional Requirements.** Subdivider further agrees to perform all additional work as specified in Exhibit 1 attached hereto and in the conditions of approval of the Subdivision incorporated herein by reference.
11. **Acceptance of Improvements upon Completion.** Upon satisfactory completion of the Improvements in accordance with the approved improvement plans, the Standard Specifications and the conditions of approval of the Subdivision, County agrees to accept the Improvements as complete, subject to the provisions of Paragraph 13 hereof.
12. **Notice Regarding Construction.** Subdivider shall notify the Community Development Resource Agency 48 hours prior to commencement of construction of the Improvements.
13. **Warranty.** Subdivider agrees to remedy any defects in the Improvements to be owned or maintained by Placer County or other public agency or utility ("the Public Improvements") arising from faulty or defective design or construction of the Public Improvements occurring within twelve (12) months after acceptance thereof has been given in writing by the Board of Supervisors.

14. **Indemnity and Hold Harmless.**

A. The Subdivider hereby agrees to protect, defend, indemnify, and hold County free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by County arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the County) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the contract or agreement. Subdivider agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the Subdivider. Subdivider also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against Subdivider or the County or to enlarge in any way the Subdivider's liability but is intended solely to provide for indemnification of County from liability for damages or injuries to third persons or property arising from Subdivider's performance pursuant to this contract or agreement.

As used above, the term County means Placer County or its officers, agents, employees, and volunteers.

B. Subdivider agrees to identify all existing utilities on the Plans and Specifications, and pay all costs and expenses for relocation of utilities, whether shown on such Plans and Specifications or not, and to defend and hold harmless County from any claims arising out of failure to show or relocate such utilities.

C. It is mutually understood that Subdivider will bear the full responsibility for losses incurred by destruction or damage to the Improvements, from any cause whatsoever, and shall bear full responsibility for costs incurred or reasonably necessary, until the Improvements are accepted by the County or other appropriate public agency.

15. **Delay.** If the construction of the Improvements is delayed without fault of Subdivider, the time for completion thereof may be extended by the Director of the Community Development Resource Agency for such period of time as County may deem reasonable.

16. **Existing Security.** Subdivider has furnished to County security in conjunction with the SIA to ensure the obligations of Subdivider contained therein in the amounts of One Million, One Hundred Seventy Four Thousand, Eight Hundred Eighty dollars (\$1,174,880.00) for Faithful Performance and One Million, One Hundred Seventy Four Thousand, Eight Hundred Eighty dollars (\$1,174,880.00) for Labor and Materials.

17. **Required Security** In accordance with Government Code Section 66499 and current Placer County Code Article 16.16.050, security in the following amounts for the following purposes is required for this Agreement.

A. **Faithful Performance:** Fifty percent (50%) of the estimated cost of the Public Improvements securing performance of this Agreement, which estimated cost is in the amount of: Three Hundred Seventy One Thousand, Nine Hundred Eighty One dollars (\$ 371,981.00).

B. **Labor and Materials:** Fifty percent (50%) of the estimated cost of the Public Improvements, as set forth in Paragraph A immediately preceding, securing payment to the contractor of improvements, to his subcontractors, and to persons furnishing labor, materials, or equipment to them.

For reference: The cost to complete the Improvements is estimated to be \$ 1,174,880.00 and includes the Public Improvements, estimated to cost \$743,962.

Due to the completion of a majority of the Improvements, the amount of security required with this SIRA is equivalent to 50% of the Public Improvements.

18. **Reduction of Security.** The Director of the Community Development Resource Agency is hereby authorized to accept a reduction of existing security, or accept replacement security, in the amounts identified in paragraph 17 above.

19. **Irrevocability of Security.** The improvement security furnished pursuant to Paragraph 17 shall be irrevocable, shall not be limited as to time (except as to the 12 month period specified in Paragraph 13), and shall provide that it shall be released, in whole or in part, only upon the written approval of the Director of the Community Development Resource Agency.

20. **Legal Jurisdiction.** This contract is subject to the laws and jurisdiction of the State of California. In the event that any court action should be brought in conjunction with this Contract it shall be subject to the interpretation under the laws of the State of California and any legal proceedings shall be brought under the jurisdiction of the Superior Court of the County of Placer, State of California. Each party waives any federal court removal and/or original jurisdiction rights it may have.

21. **Release of Remaining Security.** At the conclusion of the construction of the Improvements, and upon written acceptance of them by the Board of Supervisors and approval of a Notice of Completion, the Director of the Community Development Resource Agency shall authorize the release of the security provided pursuant to Paragraph 17 as provided by Government Code Section 66499.7.

22. **Insurance.** Subdivider has satisfactorily filed with County a Certificate of Insurance, in companies acceptable to County, with a Best's Rating of no less than A-:VII showing.

A. **WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:**

Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not

less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to Subdivider's employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer".

Waiver of Subrogation - The workers' compensation policy shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the County, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this agreement by the Subdivider.

Subdivider shall require all Subcontractors to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

B. GENERAL LIABILITY INSURANCE:

a. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of Subdivider, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

(1) Contractual liability insuring the obligations assumed by Subdivider in this Agreement.

b. One of the following forms is required:

- (1) Comprehensive General Liability;
- (2) Commercial General Liability (Occurrence); or
- (3) Commercial General Liability (Claims Made).

c. If SUBDIVIDER carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

- One million dollars (\$1,000,000) each occurrence
- Two million dollars (\$2,000,000) aggregate

d. If SUBDIVIDER carries a Commercial General Liability (Occurrence) policy:

(1) The limits of liability shall not be less than:

- One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
- One million dollars (\$1,000,000) for Products-Completed Operations
- Two million dollars (\$2,000,000) General Aggregate

(2) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

e. Special Claims Made Policy Form Provisions:

Subdivider shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of County, which consent, if given, shall be subject to the following conditions:

(1) The limits of liability shall not be less than:

- One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
- One million dollars (\$1,000,000) aggregate for Products Completed Operations
- Two million dollars (\$2,000,000) General Aggregate

(2) The insurance coverage provided by Subdivider shall contain language providing coverage up to one (1) year following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

Conformity of Coverages - If more than one policy is used to meet the required coverages, such as a separate umbrella policy, such policies shall be consistent with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies or all shall be Claims Made Liability policies, if approved by the County as noted above. In no cases shall the types of polices be different.

C. ENDORSEMENTS:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- a. "The County of Placer, its officers, agents, employees, and volunteers are to be covered as insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."
- b. "The insurance provided by the Consultant, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."
- c. "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer"

D. AUTOMOBILE LIABILITY INSURANCE:

Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

Covered vehicles shall include owned, non-owned, and hired automobiles/trucks.

E. ADDITIONAL REQUIREMENTS:

Premium Payments - The insurance companies shall have no recourse against the County and funding agencies, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.

Policy Deductibles - The Subdivider shall be responsible for all deductibles in all of the Subdivider's insurance policies. The maximum amount of allowable deductible for insurance coverage required herein shall be \$25,000.

Subdivider's Obligations - Subdivider's indemnity and other obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this agreement.

Verification of Coverage - Subdivider shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and

endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Subdivider's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Material Breach - Failure of the Subdivider to maintain the insurance required by this agreement, or to comply with any of the requirements of this section, shall constitute a material breach of the entire agreement.

18. **Monuments.** Subdivider agrees to install such survey monuments as depicted on the Map filed as a condition of this approval.

19. **Failure of Performance.** In the event Subdivider fails to perform one or more of the conditions herein, County shall have recourse to the security given to guarantee the performance of such acts. County shall have recourse against so much of the security as is necessary to discharge the responsibility of Subdivider hereunder. County shall have recourse against Subdivider for any and all amounts necessary to complete the obligations of Subdivider in the event the security therefore is insufficient to pay such amounts. All administrative costs incurred by the County, in addition to the costs of the Improvements, shall be a proper charge against the security and/or Subdivider.

20. **Attorney's Fees.** In the event it becomes necessary for either party to bring an action with respect to enforcement of the provisions of this Agreement, or the security therefore, the prevailing party in such action shall be awarded a reasonable attorney's fee, as may be determined by the court.

21. **Agreement Binding on Successors, Etc.** This Agreement shall be binding upon all the heirs, successors, and assigns of either party, and the same shall be recorded in the office of the Recorder of Placer County upon its execution, and shall be a covenant running with the land and equitable servitude upon the parcel or parcels of real property subdivided by the Map.

22. **Subdivision Map Act Controlling.** To the extent any provision of this Agreement conflicts with any provision of the Map Act, the applicable provision of such Act shall control, and no action taken pursuant to this Agreement which conflicts with any provision of the Map Act shall relieve the person taking such action from compliance with the provisions of the Map Act.

23. **Other Provisions: NONE**

WHEREFORE, the parties hereto have executed this Agreement on the day and in the year first above written.

Dated: _____

COUNTY OF PLACER

By: _____
CHAIR OF THE PLACER COUNTY
BOARD OF SUPERVISORS

Dated: _____

SUBDIVIDER:
MT. LINCOLN LLC,
A CALIFORNIA LIMITED LIABILITY COMPANY

By: SUGAR BOWL CORPORATION,
A CALIFORNIA CORPORATION, MANAGER

By: _____
ROBERT H. KAUTZ, PRESIDENT/CEO

APPROVED AS TO FORM

PLACER COUNTY COUNSEL'S OFFICE

Dated: _____

By: _____
COUNTY COUNSEL

State of California)
County of Placer)

On this _____ day of _____, 20____, before me
NOTARY PUBLIC,

(Notary Name and Title)

personally appeared _____,
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.

My Commission Expires: _____

WITNESS my hand and official seal (SEAL)

Notary Public in and for said county and state

State of California)
County of Placer)

On this _____ day of _____, 20____, before me
NOTARY PUBLIC,

(Notary Name and Title)

personally appeared _____,
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.

My Commission Expires: _____

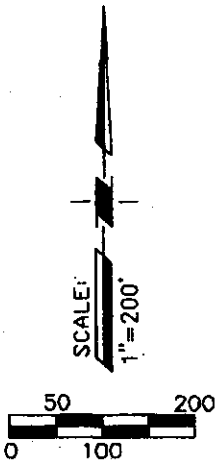
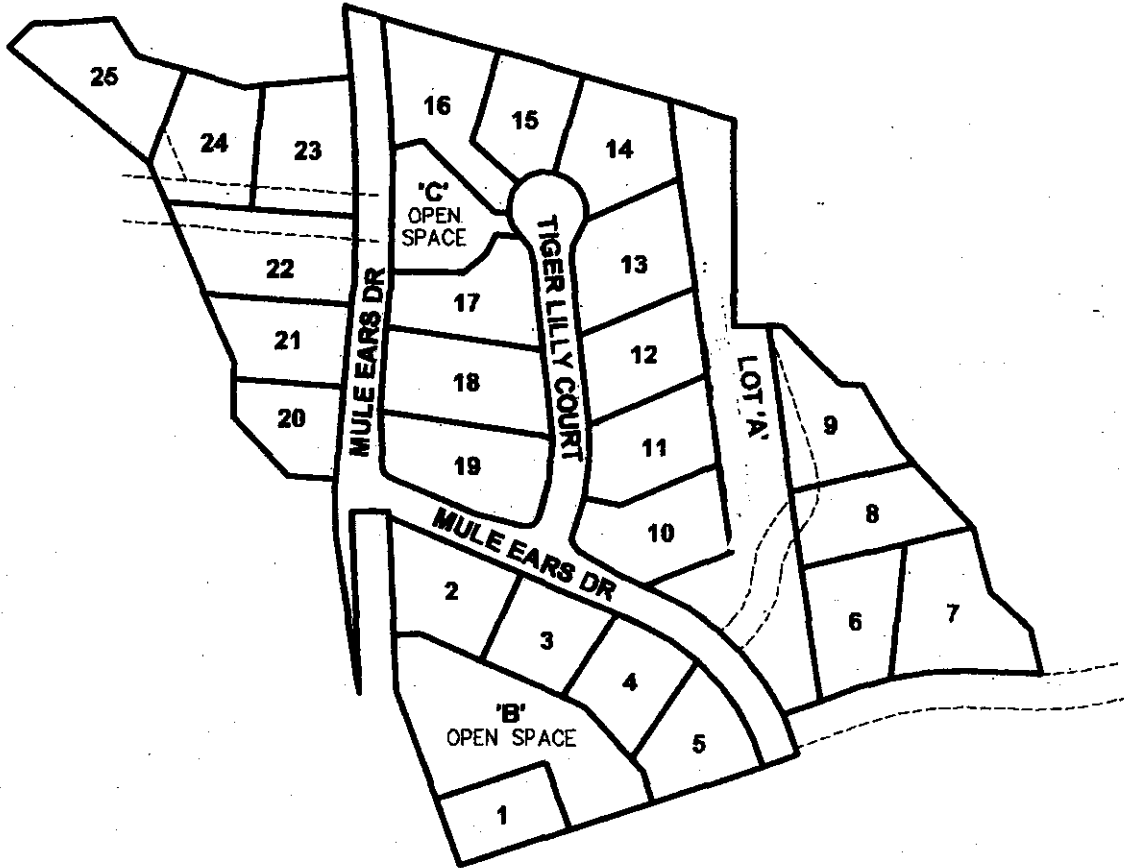
WITNESS my hand and official seal (SEAL)

Notary Public in and for said county and state

ADDITIONAL REQUIREMENTS - EXHIBIT 1

NONE

EXHIBIT "B"



GONDOLA NORTH

A PORTION OF
SECTION 20, T.15 N., R.15 E., M.D.M.
PLACER COUNTY, CALIFORNIA

SCALE: 1"=200'

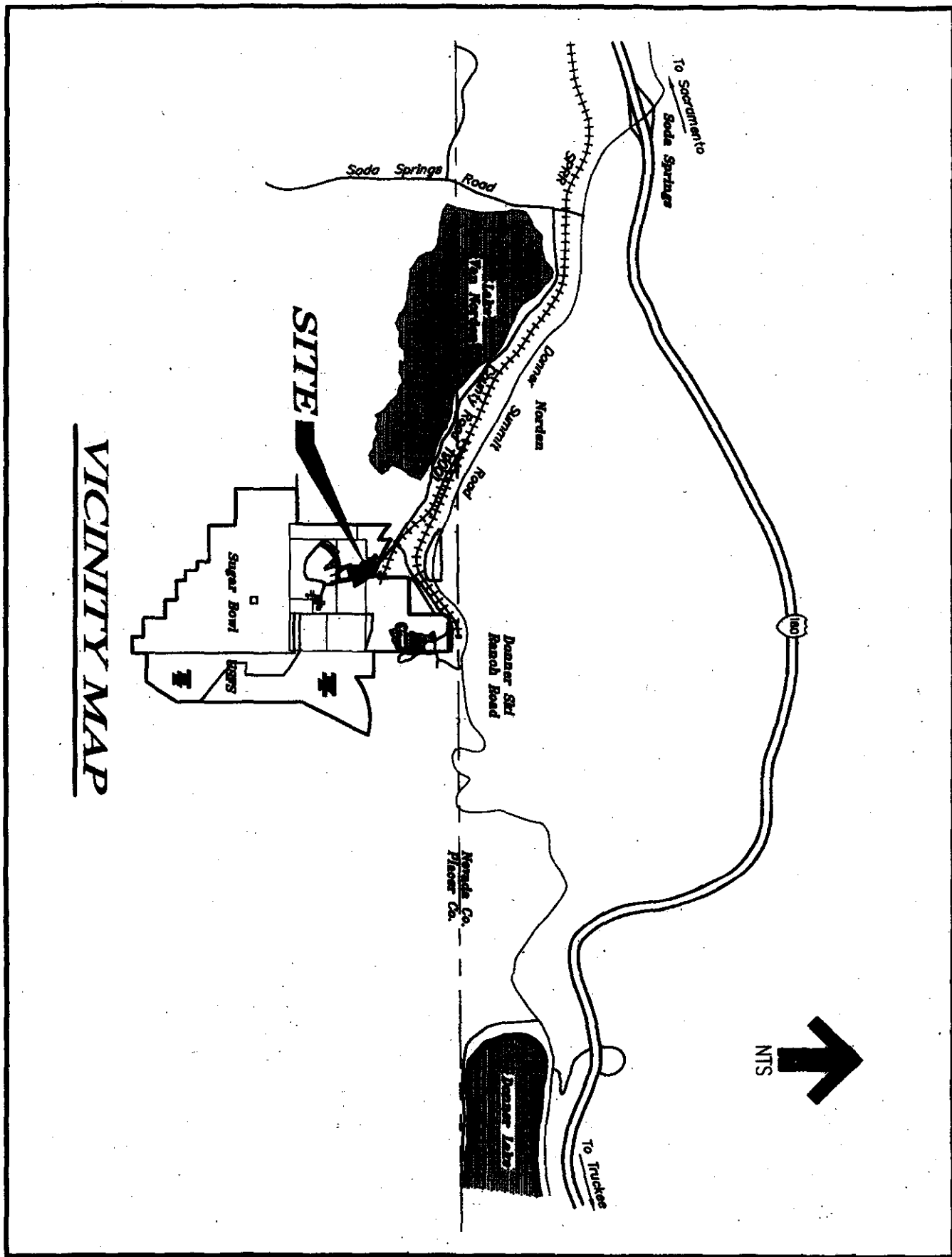
ANDREGG
GEOMATICS

www.andregg.com

800-400-7072

306

EXHIBIT "C"



VICINITY MAP

