

TO: Community Development Agency, Nevada County Planning Department
c/o Matt Kelley, Senior Planner

FROM: B & W Resorts, Inc. and Lee Auerbach

RE: Proposed General Plan Amendment and Proposed Rezone for APN 034-160-001

FILE NO: PLN21-0051; GPA21-0001; RZN21-0001; EIS21-0002

DATE: March 23, 2021

B & W Resorts, Inc., owner of the Harmony Ridge Resort (the “Resort”) and Lee Auerbach (“Auerbach”) (jointly, the “Concerned Parties”) respectfully submit comments to the Application of Dylan Murty and Dana Law (“Applicants”) for a General Plan Amendment and Rezone for the parcel designated APN 034-160-001 with a street address of 10460 Harmony Ridge Road (the “Murty Property” or “Property”).

As explained more fully below, the Applicants lack legitimate justification for the relief sought. The Application is based on false premises and omits material information. Applicants’ goal is not to minimize environmental impacts as they suggest, but rather to gain an opportunity to commercially cultivate cannabis on the Property, which will result in degradation of the environment. Even if taken at face value, the Application it is premature as the Applicants submit no tentative map or proposed development plan and state they have no present intention to do so. Should the County nevertheless determine to grant the Application, conditions should be imposed to remediate the effects of prior unlawful and detrimental conduct on the Murty Property and to prevent such conduct in the future.

The Concerned Parties

The Concerned Parties own and occupy properties that border on the Murty Property. (Exhibit 1) The Resort, at 10492 Harmony Ridge Road, consists of two parcels, APN 034-160-004, which lies immediately to the east of a portion of the Murty Property, and 034-160-006, which abuts the southeastern corner of the Murty Property. The Resort <http://harmonyridgeresort.com/> is a private, year-round family vacation facility with RV sites, tent sites and cabins. The Resort caters to families with children. Its amenities include a swimming pool, horseshoes, volleyball, children’s fishing, family spa, teen recreation room, picnic areas, a playground and basketball and shuffleboard courts. The Resort is designated and zoned REC.

The Murty and Resort properties are separated by a barbed wire fence along their approximately 1,085-foot common boundary. Several Resort facilities are situated close to the fence, which can be accessed by Resort guests along much of its length. The Murty Property is clearly visible through the fence, and it has several damaged sections which can be crossed easily from either side.

The Auerbach Property, at 10522 Harmony Ridge Rd and APN 034-160-028, abuts the northern boundary of the Resort parcel APN 034-160-004 and the eastern boundary of the Murty Property north of the Resort-Murty boundary. The Auerbach and Murty properties share a property line approximately 332 feet in length. The Auerbach property falls under General Plan designation RUR-10 and is zoned AG-10. It is developed as a single-family residence. The dirt road that traverses the Murty Property continues beyond a gate onto the Auerbach Property and from there to Harmony Ridge Road.

The Applicants

The Applicants purchased the Murty Property in early 2020. Shortly thereafter, on or about March 11, 2020, Applicants installed a solar water pump and large above-ground tank on a pre-existing well about 150 feet from the Auerbach property. They did so without a building permit. Applicants downed several large, mature trees to gain solar exposure. Applicants left these trees lying on the ground, near the boundary line with the Concerned Parties' properties. (Exhibit 2) These dead trees may fuel future wildfires, placing the Concerned Parties' and other nearby properties at risk.

On information and belief, the solar powered well and tank promptly were put to work to irrigate a very substantial, unpermitted and unlawful cannabis grow on the Murty Property. (Exhibit 3) There is no legally established (or any) residence on the Murty Property which, as noted in the Application, currently is zoned RA-5-PD, which does not allow outdoor cannabis cultivation. Even if these issues were addressed, a significant portion of the Murty Property is off-limits to cannabis cultivation as it lies within 1,000 feet of the Resort – a "Park" as defined in the Nevada County Cannabis Cultivation Ordinance (the "Ordinance").

The Concerned Parties lack information respecting the location or use of a second well installed by Applicants in late 2020 or early 2021. Given the lack of residential and other uses on the site, it is reasonable to assume the additional well also is intended for unlawful cannabis cultivation.

The Application is Based on a Flawed Premise

The stated justification for the general plan amendment and rezoning is that by reducing the number and size of permissible units on the Murty Property from 18, five-acre sites to 4, twenty-acre sites, the effect will be to "reduce environmental impacts." This is fiction. Given the "rough and steep terrain" described in the Application (with which the Concerned Parties are well familiar), no one could or would develop 18 home sites, even if clustered in a planned development. Indeed, it would be difficult to locate even four economically viable, development feasible and marketable home sites on the Murty Property. But even if 18 home sites could be developed, the environmental impact would be modest as the current Planned Development designation requires "[m]aximum conservation and efficient use of open space, protection of sensitive environmental resources, and sensitivity to environmental constraints."

Moreover, the extensive amount of excavation, grading and construction that will be necessary to bring the existing dirt and gravel road into code compliance from the off-site easement access from North Bloomfield Road to the hilltop – the most desirable portion of the Property for development – will be the virtually same whether one home site or 18 are developed. The same can be said with respect to construction necessary to bring in electrical utility service, which presently is absent on the site.

Nevertheless, Applicants’ emphasis on the number of units that could be developed is misplaced. Mr. Murty appears to have no intention to subdivide the Property. He informed Lee Auerbach and, on information and belief, several other individuals, that he intends to develop the Property with only one, single family residence. Applicants submit no tentative map or development proposal to pave the way for additional units and concede they have no “immediate plans to follow up with such an application.” Thus, the assertion that reducing the number of units will decrease environmental impacts is based on a false notion: that absent the proposed modifications a greater number of units will be developed.

The Application does, however, presage a significant change in the environmental impacts associated with the Murty Property: the negative environmental consequences that would stem from up to 40,000 cumulative square feet of cannabis cultivation (10,000 square feet for each of four potential units). As noted in the Application, no cultivation is permitted under the current designation and zoning. The undisguised, primary – if not sole – objective of the Application is to open the parcel to lawful commercial cannabis cultivation. This inevitably would result in detrimental impacts on groundwater use, depleting the groundwater supplies relied upon for domestic purposes by neighboring properties. As noted in the Planning Commission Staff Report prepared in connection with the adoption of the Ordinance, cannabis cultivation “could substantially deplete groundwater supplies such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level.” <https://www.mynevadacounty.com/DocumentCenter/View/27167/ORD18-2-EIR18-0001-Cannabis-PC-SR> at p. 20. This “could result in overdrafting of local groundwater aquifers,” with “significant and unavoidable” consequences. *Id.* at 21.¹ The “extreme drought” forecasted long-term for Nevada County, see <https://www.drought.gov/location/95959>, makes the potential consequences of groundwater depletion all the more severe, with the prospect of domestic wells running dry as occurred in 2014-15.

Cultivation also may result in groundwater contamination from the use of fertilizers and pesticides, strong odor, and the downing of perhaps hundreds of trees. These downed trees, if left in place like the trees Applicants felled in 2020 for their solar well pump, would increase the fire risk on a parcel which already has abundant fuel in the form of downed trees, limbs and extensive brush.

¹ The Concerned Parties have not had an opportunity to consult with a hydrologist respecting the potential impacts specific to their wells from Applicants’ potential groundwater use for commercial cannabis cultivation. Concerned Parties request an opportunity to obtain and submit a hydrology report in connection with any future Management Plan or application submitted by Applicants respecting cannabis cultivation.

The above-described negative impacts would be significant even under the most likely scenario, in which a single parcel is developed with the maximum allowable 10,000 square feet of cultivation.² If the Applicants' true goal is to reduce environmental impacts, the Application would seek a rezone from RA-5-PD to RA-20-PD, not AG-20.

Apart from the negative environmental consequences, commercial cannabis cultivation on the Murty Property could lead to trespassers entering the Property from the Auerbach property – simply by climbing over the boundary gate on the shared access road – the Resort or other adjoining parcels.

The potential for commercial cannabis cultivation – and the accompanying detrimental environmental impacts – is blunted in two respects. First, because the Resort fundamentally is a “Park” and thus a “Sensitive Site” for purposes of the Ordinance, no lawful cannabis cultivation can occur within 1,000 feet of the Resort boundary. The Ordinance defines “Parks” as “Private and public parks, playgrounds, play lots, athletic fields, tennis courts, public outdoor gathering area, recreational area, restrooms and similar facilities.” It is beyond legitimate dispute that the Resort meets these criteria. It is a large private park which, as noted above, includes play lots, sport courts, a swimming pool, family spa, picnic areas and an outdoor gathering area. The Ordinance defines “Sensitive Site” to include a Park. It prohibits cultivation of cannabis on “any Premises located within 1,000 feet of any Sensitive Site,” Ord. Sec. 5.a., hence, within 1,000 feet of the Resort. As depicted by the shaded portion on Exhibit 4, this restriction precludes cannabis cultivation on approximately one-half of the total area of the Murty Property. Significantly, the prohibited area includes most of the only open and relatively flat portion of the parcel, described in the Application as a “broad, prominent hilltop.”

Second, apart from the hilltop, the topography of the parcel does not lend itself to cultivation. Indeed, it is a far stretch to characterize the parcel as “agricultural,” as its steep and heavily treed terrain is not suited to “farming, ranching, agricultural support facilities and services, low intensity uses, [or] open spaces.”

Concerned Parties have no objection to lawful cannabis cultivation conducted in full compliance with the Ordinance, with sound stewardship of the natural environment and where groundwater supplies are sufficient to support it and the needs of surrounding domestic users. Applicants' desire to convert their grow from unlawful to compliant is laudable, if, indeed, that is their intention. However, there does not appear to be much, if any, genuine opportunity for lawful cultivation on the Murty Property and any such operation is years away. In the meantime, the unlawful cultivation on the Murty Property must cease, particularly within 1,000 feet of the Resort. As stated in paragraph 12 of section B of the Ordinance:

Cultivation of any amount of cannabis at locations or premises within 1,000 feet of a . . . park . . . creates unique risks that the cannabis plants may be observed

² Applicants not coincidentally seek modifications that would result in parcels of 20 acres, the smallest parcel size on which the largest canopy size (10,000 sq. ft.) may be cultivated pursuant to the Ordinance.

by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with cannabis cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any amount of cannabis in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the cannabis.

Conclusion

As demonstrated above, Applicants' suggestion that the proposed modifications will reduce environmental impacts is illusory. In reality, they threaten dramatic, increased impacts. Moreover, without a tentative map or development proposal, the Application is premature and, with regard to future cannabis cultivation, may be futile. At this point, and based on the information in the Application, there appears no good justification for the changes sought. Accordingly, the Concerned Parties submit that the Application should be denied.

Should the County nevertheless determine to grant the Application, the Concerned Parties propose that such action be predicated on the following conditions:

1. That there be no further unlawful cultivation of cannabis on the Murty Property;
2. That the existing solar well pump and tank, and any other well servicing cannabis cultivation, be decommissioned until and to the extent a legitimate and lawful use for the water is shown;
3. That Applicants remove all trees and limbs felled for their solar pump and any trees and limbs felled for cannabis cultivation;
4. That Applicants be permanently barred from cultivating cannabis within 1,000 feet of the Resort boundary or within any area visible from the Resort;
5. That Applicants be required to submit a Management Plan for any proposed cannabis cultivation on the Property; and
6. That owners of all adjoining properties, among others, receive notice and an opportunity to comment on any Management Plan, CCP and/or ADP application submitted by Applicants or on their behalf.

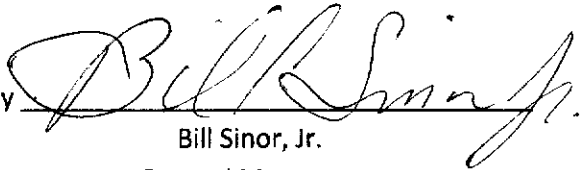
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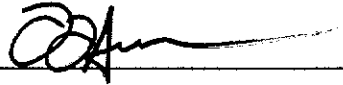
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Respectfully submitted,

B & W Resorts, Inc.

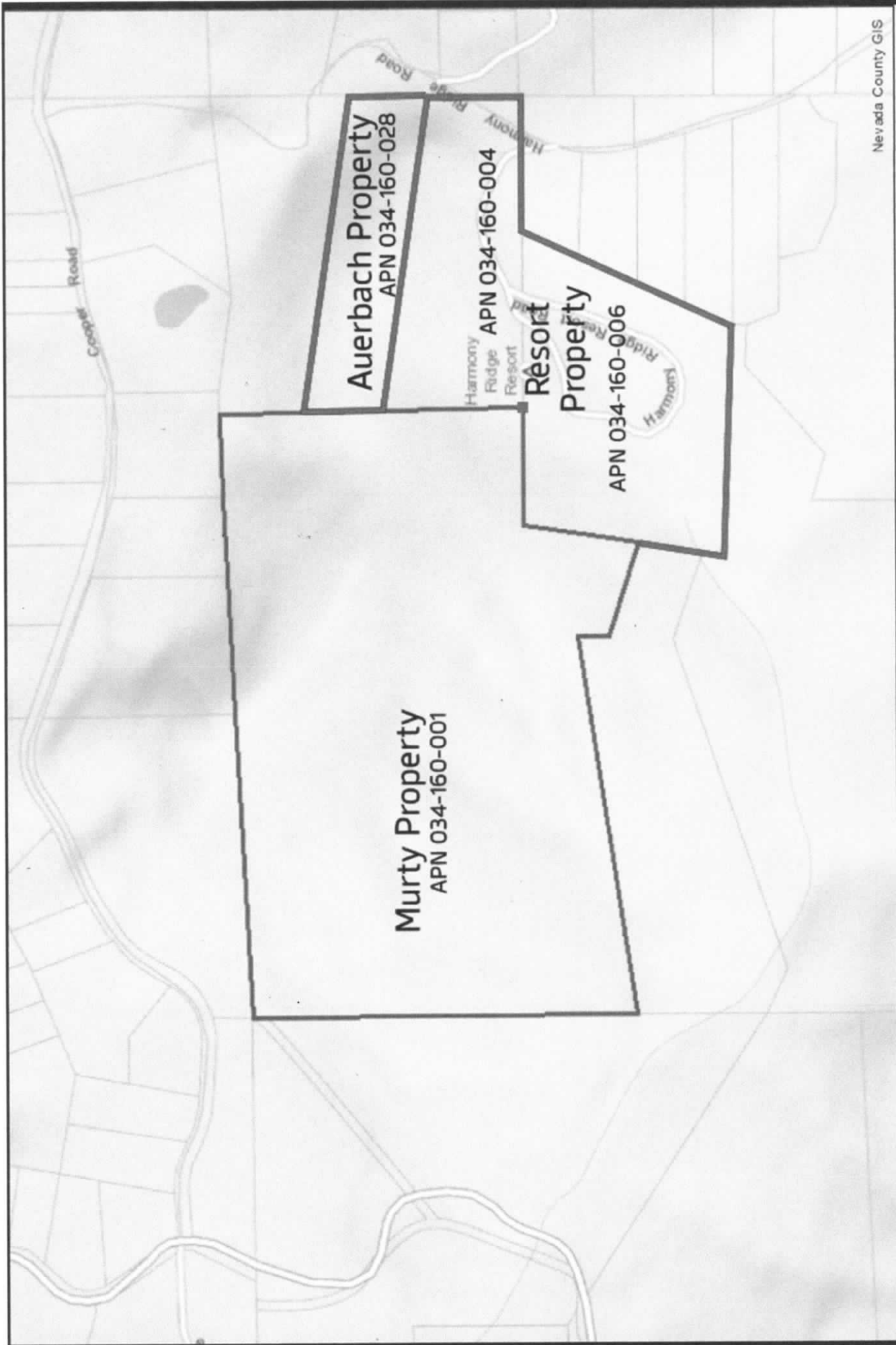
Lee Auerbach

By 



Bill Sinor, Jr.
General Manager
Harmony Ridge Resort

Lee Auerbach



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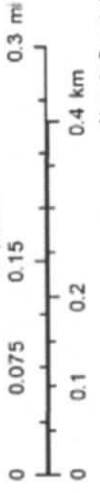
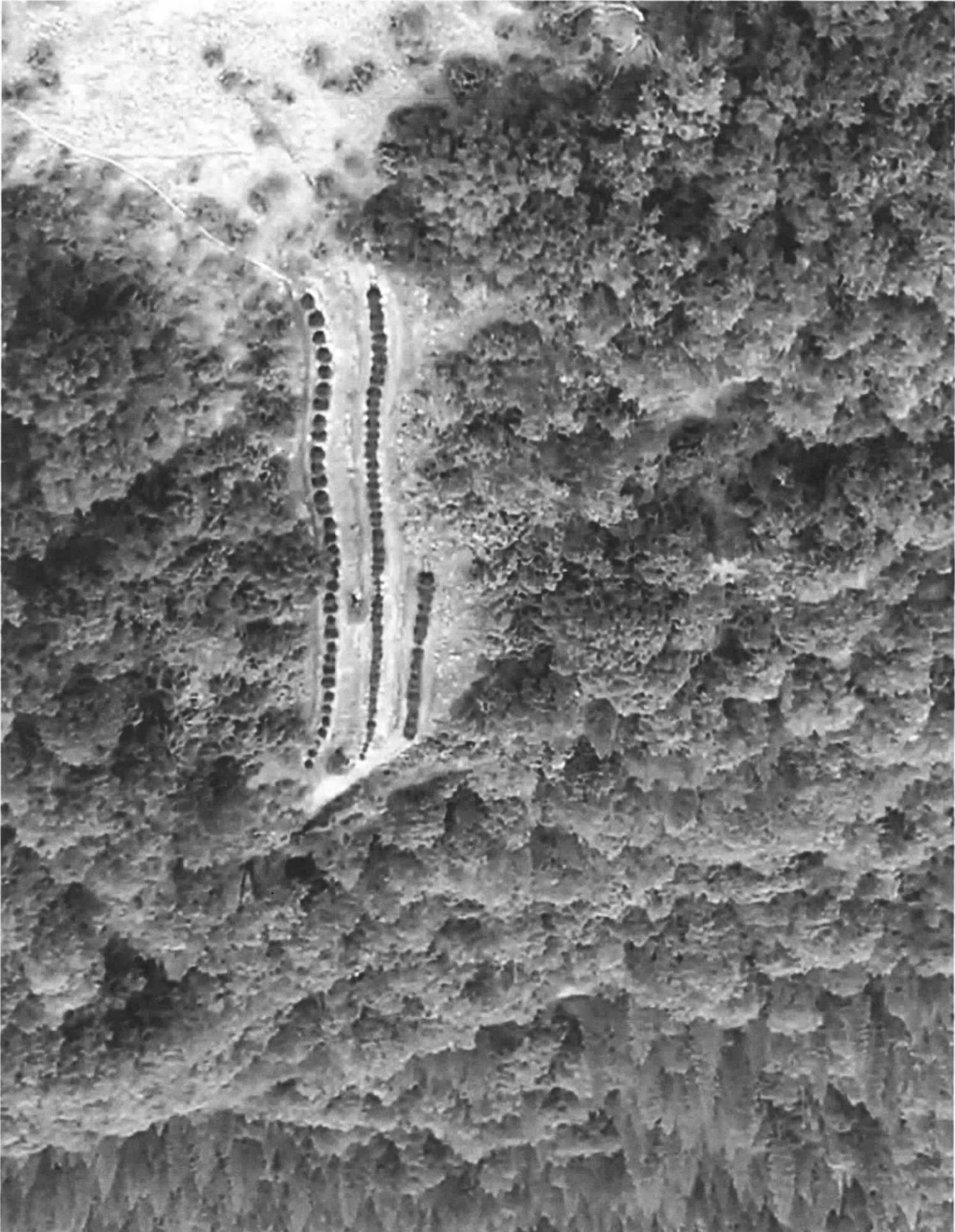


EXHIBIT 1



EXHIBIT 2

EXHIBIT 3



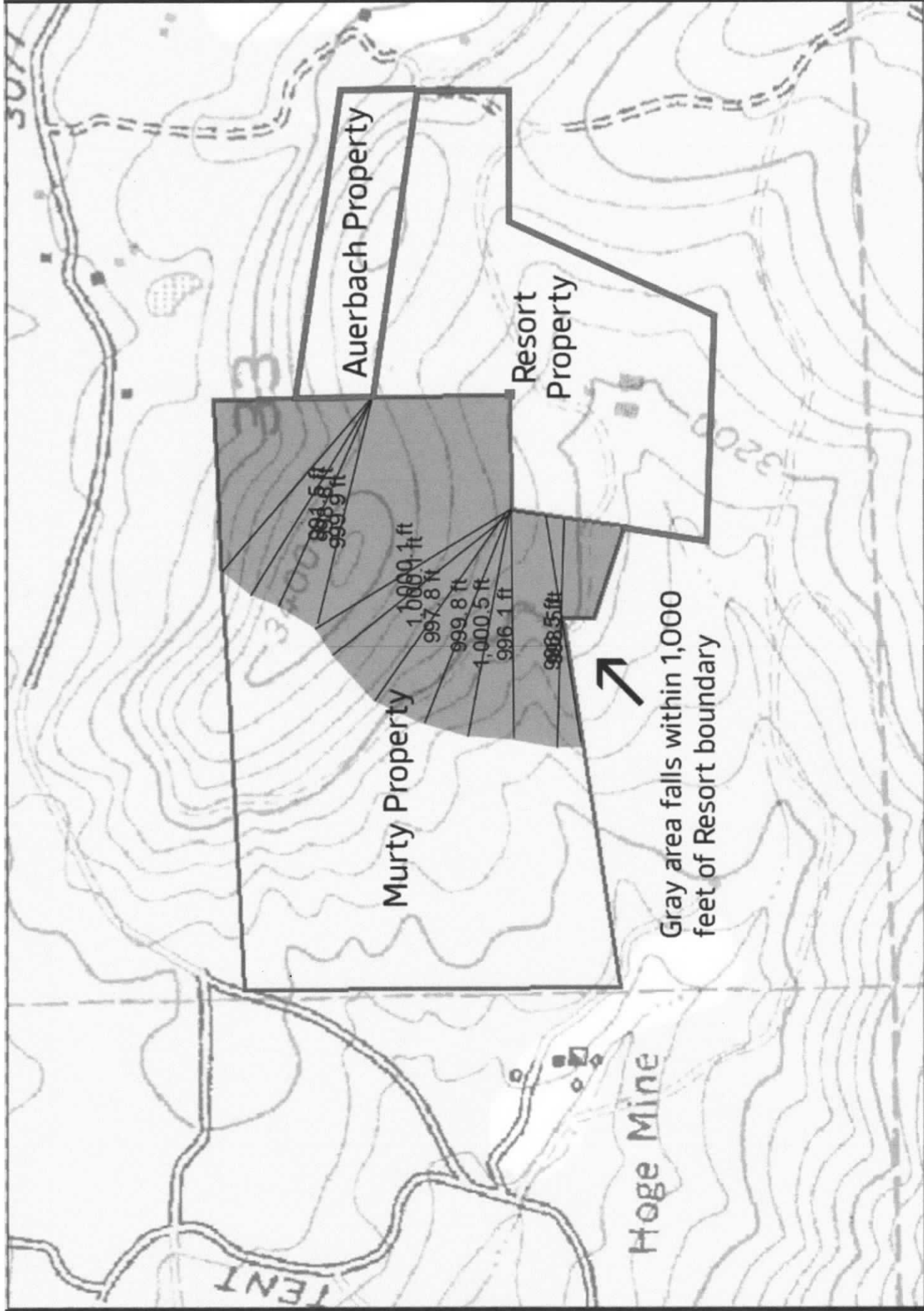


EXHIBIT 4