



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

For the meeting of: 01/06/2015

Date: December 15, 2014

To: Board of Supervisors

From: *TM* Thomas K. Mattson, Public Works Director

Subject: **LICENSE AGREEMENT WITH HUMBOLDT REDWOOD COMPANY, LLC FOR A SURFACE MINING, EQUIPMENT STORAGE AND STOCKPILE SITE – MONUMENT BORROW SITE, APN 205-031-049 AND APN 205-031-051**

RECOMMENDATION(S):

That the Board of Supervisors:

1. Grant a waiver of the Nuclear Free Ordinance.
2. Authorize the Chairperson to execute, in duplicate, the License Agreement between the County of Humboldt and Humboldt Redwood Company, LLC.
3. Direct the Clerk of the Board to return both executed License Agreements to the Department of Public Works Land Use Division for further processing.

RA Prepared by Doug Dinsmore/Deb Vining

CAO Approval *Cheryl Dillingham*

REVIEW: Auditor _____ County Counsel *gs* Human Resources _____ Other _____

TYPE OF ITEM:

Consent

Departmental

Public Hearing

Other _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor _____ Seconded by Supervisor _____

Ayes _____

Nays _____

Abstain _____

Absent _____

PREVIOUS ACTION/REFERRAL:

Board Order No. C-24

Meeting of: 07-27-2010

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: _____
By: _____

Kathy Hayes, Clerk of the Board

SOURCE OF FUNDING:

Roads Maintenance – 1200325-2121

DISCUSSION:

The License Agreement with Humboldt Redwood Company (HRC) is for the use of a portion of HRC's property on Monument Road in the Rio Dell area, for the purposes of a surface mining operation, for stockpiling aggregate material for road maintenance and repair projects, and for temporary equipment storage appurtenant to surface mining activities, stockpiling activities, and maintenance and repair projects of County roads in the general area. The previous License Agreement for this site expired on June 30, 2014. Although the Department began negotiations with HRC well in advance of the termination date, said negotiations for a new agreement have just been concluded.

Humboldt Redwood Company, LLC is requesting a waiver from the provisions of the Nuclear Free Ordinance. The waiver is requested because the Nuclear Free Ordinance does not apply to the proposed license agreement, as it does not provide for any services or products, but simply allows the County to quarry, process, and store a natural commodity from owner's land. Section 2: Purpose of the Nuclear Free Ordinance states that purpose of the ordinance is to prohibit the County from contracting for services or products with, or investing County funds in, any business which is a nuclear weapons contractor. Section A-3b of Amendment A to the Ordinance states that an exception to the Nuclear Free Ordinance can be made if there are no viable alternatives meeting the specifications of the proposed exception requested. The County has a need for permitted aggregate processing and storage sites strategically located throughout the County. Where the County does not have an alternative site in the Monument area with a readily available, nearby aggregate source, and the expense associated with importing needed construction materials from outside areas is an added burden on the County's operations budget, the continued use of said site will allow the County to maintain local roads at costs within established budget parameters.

The proposed License Agreement includes Humboldt Redwood Company, LLC Special Compliance Provisions clause which calls for the County's observation and compliance with the terms and provisions of (a) that certain Final Environmental Impact Statement/Environmental Impact Report and Habitat Conservation Plan/Sustained Yield Plan for the Headwaters Forest Project, dated January 1999; (b) any Implementation Agreement with regard to Habitat Conservation Plan(s) for the properties of Humboldt Redwood Company, LLC by and among the United States Fish and Wildlife Service, the National Marine Fisheries Service, the California Department of Fish and Wildlife (CDFW), the California Department of Forestry and Fire Protection (CAL FIRE) and Humboldt Redwood Company, LLC including those agreements assumed by Humboldt Redwood Company, LLC in the reorganization of the Pacific Lumber Company, Scotia Pacific Lumber Company and Salmon Creek Corporation dated February 1999; (c) any Habitat Conservation Plan for the properties of Humboldt Redwood Company, LLC, including that certain Habitat Conservation Plan(s) of February 1999 that was assumed by Humboldt Redwood Company, LLC in the reorganization of Pacific Lumber Company, Scotia Pacific Lumber Company and Salmon Creek Corporation; (d) any Streambed Alteration

Agreement with regard to Humboldt Redwood Company, LLC including that certain Streambed Alteration Agreement with Regard to the Pacific Lumber Company, Habitat Conservation Plan, by and among CDFW and Pacific Lumber and Salmon Creek dated February 1999 that was assumed by Humboldt Redwood Company, LLC in the reorganization of Pacific Lumber Company and Salmon Creek Corporation, to the extent any of the above documents bind the premises and other lands of Humboldt Redwood Company, LLC and are applicable to County's activities on the premises or other lands of Humboldt Redwood Company, LLC. The County is committed to observing and complying with the terms and provisions of the aforementioned documents.

The new License Agreement (Attachment 1) shall commence upon the date of execution, and shall terminate on June 30, 2019. The County shall have six (6) months beyond this Agreement's termination date to remove equipment and stockpiled aggregate material from the site.

This Agreement is consistent with similar agreements given that the standard rental rate of Fifty Dollars (\$50.00) per month shall be paid in advance on an annual basis, at the sum of Six Hundred Dollars (\$600.00) per year. The proposed License Agreement stipulates that annual site payments shall be made payable prior to June 30 of each fiscal year.

The County shall pay to the owner, a royalty rate of One Dollar (\$1.00) per cubic yard for mined material, which is consistent with royalty rates at other similar sites rented by the County.

The Monument Quarry surface mining operation has been reviewed and permitted in accordance with CEQA. A Mitigated Negative Declaration was adopted by the Planning Commission for the approval of Conditional Use, Surface Mining, and Reclamation Plan permits on March 3, 2011 (Planning Commission Resolution No. 11-11). The proposed agreement requires the County to remain in compliance with all applicable laws, regulations, and permit conditions at all times.

FINANCIAL IMPACT:

The new License Agreement provides for royalty payments when surface mining occurs as well as annual site rental payments to Humboldt Redwood Company, LLC. The Roads Maintenance budget 1200325-2121 shall bear the cost of all payments. There is no impact to the General Fund.

This item conforms to the Board of Supervisors' Core Role of providing for and maintaining infrastructure.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose not to execute the new License Agreement. The Department of Public Works recommends executing the new License Agreement, because of the County's need for aggregate resource sites strategically located throughout the County's road system. By executing this new Agreement, the continued utilization of this aggregate source shall offset expenses associated with importing road construction materials from more distant locations.

ATTACHMENTS:

Attachment 1: License Agreement in duplicate

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, hereinafter referred to as AGREEMENT, made and entered into this ___ day of _____, 2014, by and between HUMBOLDT REDWOOD COMPANY, LLC., a Delaware limited liability company hereinafter referred to as OWNER, and the COUNTY OF HUMBOLDT, a political subdivision of the State of California, hereinafter referred to as COUNTY.

WITNESSETH:

WHEREAS, OWNER represents and warrants that it is the owner in fee of a parcel of land in Section 13, T. 1N., R. 1W., H.B. & M., also identified at this point in time by Assessor's Parcel Nos. 205-031-049 and 205-031-051, hereafter referred to as SITE, and as such has the exclusive right to enter into this AGREEMENT; and

WHEREAS, COUNTY desires to enter upon and use a portion of OWNER'S real property for the purposes of a surface mining operation, stockpile site, and equipment storage, hereinafter referred to as SITE, as shown on aerial photograph attached hereto Exhibit A and incorporated herein by reference; and

WHEREAS, COUNTY shall perform a surface mining operation consisting of extracting, crushing, and stockpiling of rock on said portion of OWNER'S real property for the purpose of maintenance and repairs on County roads;

NOW THEREFORE, in consideration of the mutual covenants and promises contained below, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the parties hereto, COUNTY and OWNER agree as follows:

1. LICENSE

OWNER grants permission, subject to all terms and conditions of this AGREEMENT, for COUNTY and COUNTY'S officers, agents, employees, contractors, and volunteers to enter and use a portion of OWNER'S property identified by Assessor's Parcel Numbers 205-031-049 and 205-031-051 for purposes described above. The approximate SITE location is shown on the Assessor's Parcel map attached hereto as Exhibit B which is incorporated herein by reference.

2. LICENSE NOT A LEASE

This AGREEMENT does not constitute a lease, but constitutes a mere license agreement and COUNTY is limited to the use of the premises expressly and specifically described in Sections 1 and 4 herein.

3. TERM

The term of this AGREEMENT shall commence on the effective date shown above and shall terminate June 30, 2019.

COUNTY shall have six (6) months beyond this AGREEMENT'S termination date to remove equipment and stockpiled aggregate material from SITE.

4. USE OF PREMISES

OWNER grants to COUNTY the right of ingress and egress over a portion of OWNER'S real property described in Section 1 for access to COUNTY'S surface mining operation.

OWNER grants to COUNTY the right to use a portion of OWNER'S real property described in Section 1 for COUNTY'S surface mining operation.

COUNTY shall have the right of stockpiling/storage of extracted and crushed aggregate produced from COUNTY'S surface mining operation.

COUNTY shall have the right of temporary storage for all equipment necessary for the extraction, crushing, and stockpiling activities associated with the surface mining operation.

COUNTY shall have the right of access to and use of stockpiled material as deemed necessary by COUNTY.

Use of said SITE by COUNTY shall be in compliance with all applicable laws including laws governing the use of hazardous materials. COUNTY shall not store hazardous materials on SITE. For purposes of this Section, hazardous materials are defined as any noxious or hazardous substance the use of which is regulated by Federal or State Laws.

Upon the completion or abandonment of the surface mining operation, COUNTY shall reclaim the SITE in accordance with the Reclamation Plan filed with the County of Humboldt, Department of Planning and Building pursuant to the Surface Mining and Reclamation Act of 1975, Public Resources Code §2710 et seq.

Special Compliance Provisions: COUNTY shall, at all times, observe and comply with the terms and provisions of (a) that certain Final Environmental Impact Statement/Environmental Impact Report and Habitat Conservation Plan/Sustained Yield Plan for the Headwaters Forest Project, dated January 1999; (b) any Implementation Agreement with regard to Habitat Conservation Plan(s) for the properties of OWNER by and among the United States Fish and Wildlife Service, the National Marine Fisheries Service, the California Department of Fish and Game ("CDFG"), the California Department of Forestry and Fire Protection ("CAL FIRE") and OWNER including those agreements assumed by OWNER in the reorganization of the Pacific Lumber Company, Scotia Pacific Lumber Company and Salmon Creek Corporation dated February 1999; (c) any Habitat Conservation Plan for the properties of OWNER, including that certain Habitat Conservation plan of February 1999 that was assumed by OWNER in the reorganization of Pacific Lumber Company, Scotia Pacific Lumber Company and Salmon Creek Corporation; (d) any Streambed Alteration Agreement with Regard to the Pacific Lumber Company, Habitat Conservation Plan, by and among CDFG and Pacific Lumber and Salmon Creek dated February 1999 that was assumed by OWNER in the reorganization of Pacific Lumber Company and Salmon Creek Corporation, to the extent any of the above documents bind the Premises and other lands of OWNER and are applicable to COUNTY'S activities on the Premises or other lands of OWNER, and copies of which OWNER agrees to provide COUNTY upon request. OWNER acknowledges and agrees that to best of OWNER'S knowledge, as of the Execution Date, the OWNER has not been notified that the COUNTY is in violation of any aforementioned Special Compliance Provision and if during the term of the Agreement the OWNER is notified of any violation of such provisions, as it relates to the COUNTY'S occupancy or use of the Premises, the OWNER shall promptly notify the COUNTY of such violation.

5. COMPENSATION**A. Rental**

COUNTY shall pay OWNER the sum of Fifty Dollars (\$50.00) per month as rent for use of the SITE referred to in Section 1 herein for an annual rate of Six Hundred Dollars (\$600.00), payable in advance prior to July 1 of each fiscal year.

B. Royalty

In addition to the rent set forth in the previous paragraph COUNTY shall pay to OWNER a royalty rate of One Dollar (\$1.00) per cubic yard for mined material. OWNER agrees that all crushed material currently stockpiled on SITE on the date of execution is the property of COUNTY and was purchased under separate Agreement between the COUNTY and Pacific Lumber Company encumbered under the previously executed Agreement allowing the COUNTY to mine, crush, and stockpile material on the SITE until it is needed for road maintenance and repair.

C. Payment

Payments herein required shall be made to:

Humboldt Redwood Company, LLC.
PO Box 712
Scotia, CA 95565

COUNTY'S mined material and crushed aggregate on SITE shall become property of COUNTY upon OWNER receiving royalty payment.

6. OWNER'S ACCESS TO PREMISES

OWNER shall retain the right of access and use of the SITE, including surface mining operations, at all times and COUNTY shall not restrict OWNER'S use thereof. OWNER shall operate under authority separate from COUNTY'S Mining Permit at all times.

7. COMPLIANCE WITH LAWS

COUNTY shall conduct all its operations in accordance with all federal/state/county safety, health, fire, sanitary codes and ordinances, and shall comply with all permits required for said use of SITE.

8. PERMITS

OWNER grants to COUNTY the right to use the portion of said land described in Section 1 for the extraction of up to 20,000 cubic yards of aggregate every three to five years, in accordance with the terms of the mining permit for California Mine ID 91-12-0025. COUNTY shall acquire all permits necessary to extract up to approximately 20,000 cubic yards of aggregate material every three to five years. COUNTY is limited to mining up to 20,000 cubic yards every three to five years.

9. HOLD HARMLESS/INDEMNIFICATION

A. OWNER shall indemnify, defend and hold harmless COUNTY and its officers, officials,

employees, and volunteers from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorneys' fees, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents or employees) in connection with OWNER'S duties and obligations under this Agreement and any amendments hereto.

B. COUNTY shall indemnify, defend and hold harmless OWNER and its officers, officials, employees, and volunteers, from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorneys' fees, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents, or employees) in connection with COUNTY'S duties and obligations under this Agreement and any amendments hereto.

C. Notwithstanding Sections (A) and (B), in the event that OWNER and COUNTY are both held to be negligently or willfully responsible, OWNER and COUNTY will bear their proportionate share of liability as determined in any such proceeding. Each side will bear their own costs and attorneys' fees.

D. Acceptance of insurance, if required by this Agreement, does not relieve OWNER from liability under this indemnification clause. This indemnification clause shall apply to all damages or claims for damages suffered by OWNER'S operations regardless if any insurance is applicable or not.

10. NOTICE

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail to the respective addresses set forth below. Notice shall be deemed communicated five (5) business days from time of mailing if mailed as provided herein.

OWNER: Humboldt Redwood Company, LLC
PO Box 712
Scotia, CA 95565

COUNTY: County of Humboldt
Department of Public Works
1106 Second Street
Eureka, CA 95501-0531

Each party may at any time change its address for notice by giving written notice of such change to the other party in the manner provided in this Section.

11. COUNTY'S INSURANCE

Without limiting COUNTY'S indemnification provided herein, COUNTY shall take out and maintain, throughout the period of this AGREEMENT, the following policies of insurance placed with insurers with a current A.M. Bests rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of COUNTY, its agents, employees, or sub-licensees:

A. Comprehensive/Liability Insurance

Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office commercial General Liability coverage (occurrence form CG 0001), in an amount of \$2,000,000 per occurrence. If a general aggregate limit is used, either the general aggregate limit shall apply

separately to this project or the general aggregate shall be twice the required occurrence limit. Said policy shall contain, or be endorsed with, the following provisions:

(1) The OWNER, its officers, employees and agents, are covered as additional insured for liability arising out of the operations performed by or on behalf of COUNTY. The coverage shall contain no special limitations on the scope of protection afforded to OWNER, its officers, agents, and employees.

(2) The policy shall not be canceled or materially reduced in coverage without thirty (30) days prior written notice (10 days for non-payment of the premium) to OWNER by certified mail.

(3) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.

(4) For claims related to this project, the COUNTY'S insurance is primary coverage to the OWNER and any insurance or self-insurance programs maintained by OWNER are excess to COUNTY'S insurance and will not be called upon to contribute with it.

(5) Any failure to comply with reporting or other provisions of the parties, including breach of warranties, shall not affect coverage provided to OWNER, its officers, employees, and agents.

B. By its signature hereunder, COUNTY certifies that COUNTY is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and COUNTY will comply with such provisions in connection with any work performed on the premises. Any persons providing services with or on behalf of COUNTY shall be covered by workers' compensation (or qualified self-insurance).

12. LICENSE IS PERSONAL

The license herein granted is personal to COUNTY and no right hereunder may be assigned, sublet or otherwise transferred in whole or in part without prior written consent of OWNER and any attempt to assign, sublet, or transfer shall be of no force or effect whatsoever unless and until OWNER shall have given its written consent.

13. JURISDICTION AND APPLICABLE LAWS

This AGREEMENT shall be construed under the laws of the State of California. Any dispute arising hereunder or relating to this AGREEMENT shall be litigated in the State of California and venue shall lie in the County of Humboldt.

14. TERMINATION

COUNTY and OWNER reserve the right to terminate this AGREEMENT on seven (7) days notice for any cause or reason provided by the AGREEMENT itself, or by law, or upon the happening of one or more of the following:

- A. The making by COUNTY or OWNER of any general assignment for the benefit of creditors.
- B. The failure of COUNTY or OWNER to remedy any default, breach, or violation of

federal/state/county laws, or regulations by COUNTY or OWNER or its employees.

- C. The violation of any of the provisions of this AGREEMENT.
- D. Said SITE becomes damaged due to fire, flood, earthquake, or any other natural disaster.
- E. Intentionally supplying COUNTY or OWNER with false or misleading information or misrepresenting any material fact on its application or documents or in its statement to or before COUNTY or OWNER, or intentional failure to make full disclosure on its financial statement or other documents.

15. LICENSE MODIFICATION

This Agreement may be modified only by subsequent written agreement signed by COUNTY and OWNER.

16. OWNER NOT OFFICER, EMPLOYEE, OR AGENT OF THE COUNTY

While engaged in carrying out and complying with the terms and conditions of this AGREEMENT, OWNER is an independent contractor and not an officer, employee, or agent of COUNTY.

17. ATTORNEYS' FEES

If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this AGREEMENT to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees (including reasonable value of services rendered by County Counsel) to be fixed by the court, and such recovery shall include court costs and attorneys' fees (including reasonable value of services rendered by County Counsel) on appeal, if any. As used herein, "the party prevailing" means the party who dismisses an action or proceeding in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

18. REAL PROPERTY TAXES

OWNER shall pay all real property taxes and general and special assessments levied and assessed against the property. Any improvements created by COUNTY, by action of this AGREEMENT that may create any assessments, shall be the responsibility of the OWNER.

19. WAIVER OF BREACH

The waiver by COUNTY or OWNER of any breach of any provision of this AGREEMENT shall not constitute a continuing waiver of any subsequent breach of the same or a different provision of this AGREEMENT.

20. BREACH, REMEDY FOR

In the event of breach of this AGREEMENT by COUNTY or OWNER, COUNTY and/or OWNER shall have all rights and remedies provided by law.

21. SURRENDER OF PREMISES

Upon termination of this AGREEMENT, COUNTY shall surrender the premises to OWNER in good condition and repair, except for normal wear and tear. COUNTY shall be under no obligation to repair or restore the whole or any portion of the SITE, which may be damaged by reason of fire, earthquake, the elements, or other casualty.

22. BINDING EFFECT

All provisions of this AGREEMENT shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, successors, and assigns.

IN WITNESS WHEREOF, this AGREEMENT has been executed in duplicate by the parties hereto upon the date first above written.

(SEAL)
ATTEST:
CLERK OF THE BOARD

BY: _____

APPROVED AS TO FORM:
COUNTY COUNSEL

BY: Joyce Mista
TITLE Deputy County Counsel

OWNER:
HUMBOLDT REDWOOD COMPANY, LLC
A DELEWARE LIMITED LIABILITY COMPANY

BY: Dennis Thibeault

Dennis Thibeault
TITLE: Vice President, Forestry

BY: Charles Jeffries

Charles Jeffries
TITLE: Agent for HRC

COUNTY: Humboldt

BY: _____
CHAIRPERSON,
BOARD OF SUPERVISORS,
COUNTY OF HUMBOLDT,
STATE OF CALIFORNIA

Exhibit A
SITE - Aerial Photograph

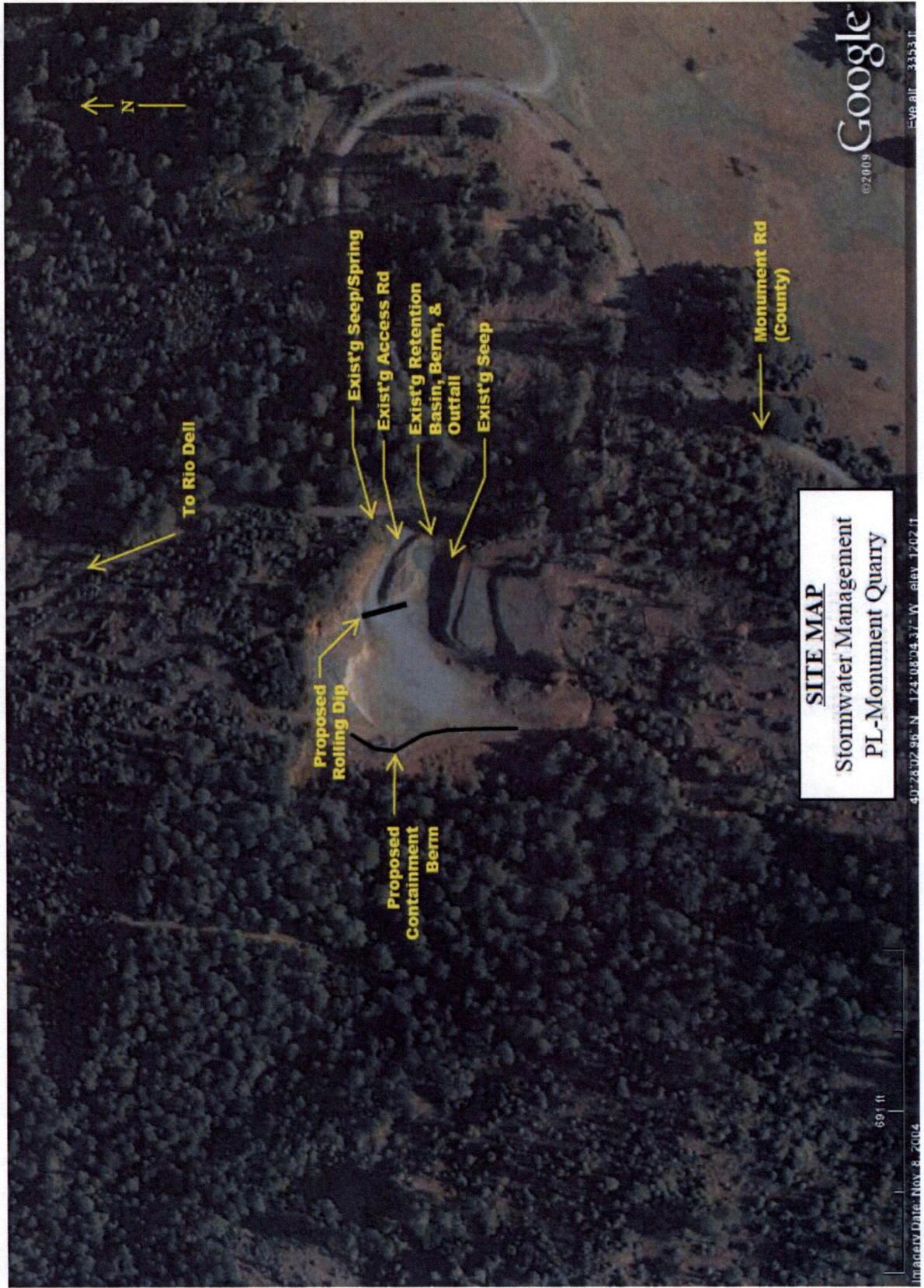
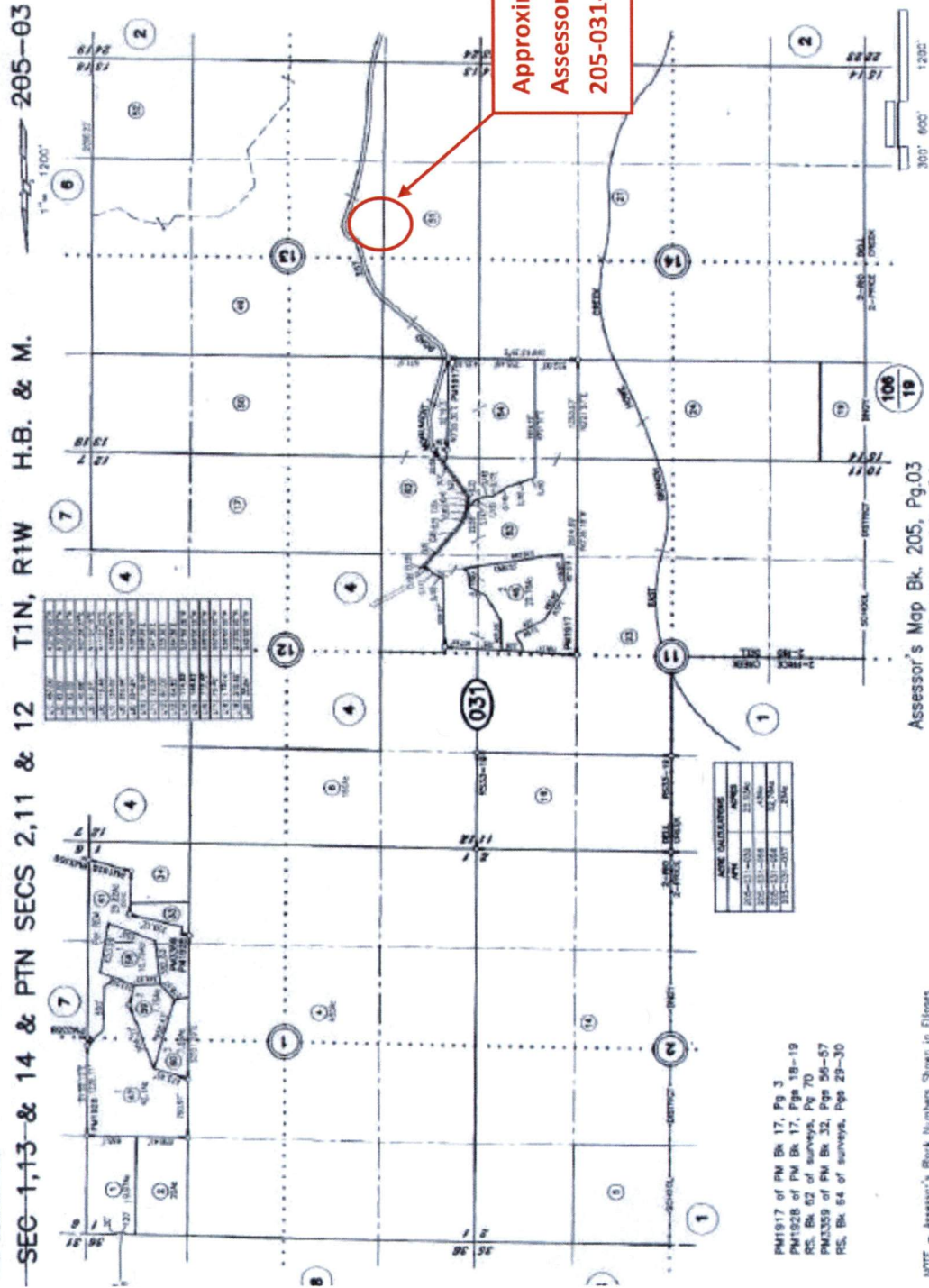


Exhibit B

Approximate Site Location - Assessor Parcel Map



Assessor's Map Bk. 205, Pg.03
County of Humboldt, CA.

NOTE - Assessor's Block Numbers Shown in Ellipses
Assessor's Parcel Numbers Shown in Circles.

PM1917 of PM Bk 17, Pg 3
PM1928 of PM Bk 17, Pgs 18-19
RS Bk 63 of surveys, Pg 70
PM3359 of PM Bk 32, Pgs 56-57
RS Bk 54 of surveys, Pgs 29-30