



# COUNTY OF HUMBOLDT

For the meeting of: 5/7/2019

File #: 18-1674

**To:** Board of Supervisors

**From:** Public Works

**Agenda Section:** Consent

**SUBJECT:**

License Agreement With Humboldt Redwood Company, LLC for the Van Duzen Gravel Bar Surface Mining Site, APN 209-201-010, Highway 36, Carlotta

**RECOMMENDATION(S):**

That the Board of Supervisors:

1. Grant a waiver of the Nuclear Free Ordinance;
2. Authorize the Chair of the Board to sign, in duplicate, the license agreement between the County of Humboldt and Humboldt Redwood Company, LLC (Attachment 1); and
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.

**SOURCE OF FUNDING:**

Roads Maintenance 1200325

**DISCUSSION:**

The county first entered into a license agreement with Pacific Lumber Company for the subject property, APN 209-201-010, in 1986, and has continuously used the site. The parcel is now under ownership of Humboldt Redwood Company, LLC.

The Sept. 27, 2013 license agreement has expired and the Department of Public Works recommends executing a new License Agreement that is consistent with the county's current compensation rates for similar agreements and that includes standard agreement provisions.

The proposed License Agreement includes Humboldt Redwood Company, LLC's "special compliance provisions" (in Section 5(i)), which states that the county shall observe and comply with the terms and provision 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 plans for the properties of Humboldt Redwood Company, LLC by and among the United States Fish and Wildlife Service, the



# COUNTY OF HUMBOLDT

## Master

**File Number: 18-1674**

<b>File ID:</b> 18-1674	<b>Type:</b> Informational Report	<b>Status:</b> Passed
<b>Version:</b> 1	<b>Agenda Section:</b> Consent	<b>Department:</b> Public Works
<b>Subject:</b>		<b>File Created:</b> 12/20/2018
		<b>Final Action:</b> 05/07/2019
<b>Title:</b> License Agreement with Humboldt Redwood Company, LLC for the Van Duzen Gravel Bar Surface Mining Site, APN 209-201-010, Highway 36, Carlotta		

### Internal Notes:

**Agenda Date:** 05/07/2019

**Agenda Number:** 33.

### Sponsors:

**Enactment Date:**

**Attachments:** Staff Report, Van Duzen License Agreement 2019 from HRC 03292019, Executed Van Duzen License Agreement 2019 from HRC 03292019

**Enactment Number:**

### Recommendation:

**Public Notice Date:**

**Drafter:** dvining@co.humboldt.ca.us

**Effective Date:**

### History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Board of Supervisors	05/07/2019	approved				Pass
	<b>Action Text:</b> A motion was made by Supervisor Bass, seconded by Supervisor Fennell, that the recommendations be approved. The motion carried by the following vote: Aye: 5 Supervisor Bohn, Supervisor Fennell, Supervisor Bass, Supervisor Wilson and Supervisor Madrone						

### Text of Legislative File 18-1674

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The proposed License Agreement includes Humboldt Redwood Company, LLC's "special compliance provisions" (in Section 5(i)), which states that the county shall observe and comply with the terms and provision 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 plans 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 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 logging road and other lands of Humboldt Redwood Company, LLC and are applicable to county's activities on the logging road 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 expire on Dec. 31, 2021. The county shall have 60 days beyond the final termination date to remove equipment and stockpiled river-run aggregate from the site.

The new license agreement shall increase the royalty rate of \$1 per cubic yard to \$1.25 per cubic yard for mined material. Royalty payments shall be made in lump sum payment at the conclusion of each annual extraction. Payment shall be based on truck capacity and truck count and verified by copies of truck trip

and capacity documentation.

The county-operated surface mining operation has been reviewed and permitted in accordance with the California Environmental Quality Act (CEQA). A Negative Declaration was originally adopted by the Planning Commission, for the approval of the Conditional Use, Surface Mining and Reclamation Plans permits in 1986 and extended in 1997. On August 5, 2010, the Planning Commission adopted a Subsequent Mitigated Negative Declaration pursuant to the provisions of CEQA, extending the existing county-operated surface mining permits for an additional fifteen (15) years. The License Agreement requires the county to obtain, maintain, and comply with all permits and conditions of approval relative to said parcel of land. Furthermore, the License Agreement allows for an annual extraction of Three Thousand (3,000) cubic yards, which is consistent with the current permit.

**FINANCIAL IMPACT:**

The new license agreement provides for royalty payments to be made payable to Humboldt Redwood Company, LLC. The Roads Maintenance budget 1200325-2121 Rents & Leases - Structures shall bear the cost of all payments. Average royalty payments per year are estimated to be \$3,750. There is no impact to the General Fund.

**STRATEGIC FRAMEWORK:**

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

**OTHER AGENCY INVOLVEMENT:**

N/A

**ALTERNATIVES TO STAFF RECOMMENDATIONS:**

The Board could choose not to execute a new License Agreement. The Department of Public Works recommends executing the new License Agreement because of the county's need for aggregate resource sites 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 necessary road construction materials from distant locations.

**ATTACHMENTS:**

New License Agreement in duplicate

**PREVIOUS ACTION/REFERRAL:**

Board Order No.: C-7

Meeting of: October 8, 2013

File No.: N/A

1

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT, hereinafter referred to as AGREEMENT, made and entered into this 7 day of May 2019, 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.

This AGREEMENT supersedes any previous Borrow Agreement between COUNTY and The OWNER regarding SITE.

### WITNESSETH:

WHEREAS, OWNER represents and warrants that it is the owner in fee of a parcel of land in Section 16, T. 1N., R.2E., H.B. & M., also identified by Assessor's Parcel No. 209-201010, 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, hereinafter referred to as SITE, for the purposes of a surface mining operation; and

WHEREAS, COUNTY shall perform a surface mining operation consisting of extracting river-run aggregate from said portion of OWNER'S real property and removing the material solely for the COUNTY'S use, processing or storage at another location; and

WHEREAS, COUNTY shall curtail said mining operation and reclaim said SITE by November 1 of each year.

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. SUMMARY OF TERMS

- a. Purpose of License Agreement: Extraction of up to 3,000 cubic yards of river-run gravel annually, or 9,000 cubic yards of river-run gravel once every three years.
- b. Site Location (Tract): Van Duzen River Tract more specifically known as the Van Duzen River gravel Extraction Site accessed by Road L66, located along State Highway 36, as shown on Exhibit A.
- c. Payment Rate: One dollar twenty five cents (\$1.25) per cubic yard for mined material.
- d. Payment Forwarded to:  
Humboldt Redwood Company  
Attention: Accounts Receivable  
Post Office Box 712  
Scotia, CA 95565
- e. Licensor's Designated Representative: \_\_\_\_\_
- f. Term of License Agreement: from Execution Date through December 31, 2021.

- g. Licensee's Address for Noticing: County of Humboldt  
Department of Public Works  
1106 Second Street  
Eureka, CA 95501-0531
- h. Licensee's Designated Representative: \_\_\_\_\_

2. **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 Number 209-201-010 for purposes described above. The approximate SITE location is referenced on the map and aerial photographs attached hereto as Exhibit A and further shown on the Assessor's Parcel Map attached hereto as Exhibit B, which are incorporated herein by reference.

3. **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, 2, and 5 herein.

4. **TERM**

- a. The term of this AGREEMENT as per Section l. Summary of Terms f. Term of License Agreement, shall commence upon date of execution by the County of Humboldt Board of Supervisors and shall expire December 31, 2021.
- b. COUNTY shall have sixty (60) days beyond termination date above to remove equipment and stockpiled aggregate material from SITE.

5. **USE OF PREMISES**

- a. OWNER grants to COUNTY the right to use a portion of OWNER'S real property described in Sections 1 and 2 and as depicted in Exhibit A, Page 3 as those areas within the Extraction Boundary Area, the Equipment Staging Area, and the Haul Road for COUNTY'S surface mining operation, while adhering to the activities, restrictions, limitations, and requirements described in the associated permits listed in Exhibit C.
- b. OWNER grants to COUNTY the right to use in common with OWNER and other easement holders, the roads for ingress and egress over a portion of OWNERS real property described in Sections 1 and 2, known as Road L66 and depicted on Exhibit A for access to COUNTYS surface mining operation, and only for the purpose of exercising the rights herein granted with respect to this Tract.
- c. COUNTY shall have the right of temporary storage for all equipment necessary for the extraction and loading activities associated with the surface mining operation. Equipment storage is limited to the Equipment Staging Area depicted on Exhibit A. Parking of equipment and storage of materials used after curtailment of operations will

be conducted in a manner that does interfere or impede access or use of the area by OWNER. No processing or long-term storage of river run gravel is allowed under this AGREEMENT. It is the intent of said AGREEMENT to provide for excavation of river run gravel loading on-site and hauling to an off-site location for COUNTY'S use or for further processing and storage.

- d. COUNTY shall conclude its surface mining operation and reclaim said SITE by November 1 of each year.
- e. Use of said SITE by COUNTY shall comply with all applicable permits and laws including laws governing the use of hazardous materials and the management and discharge of storm water. 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 Law.
- f. 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 Community Development Services pursuant to the Surface Mining and Reclamation Act of 1975, Public Resources Code 52710 et. seq.
- g. COUNTY agrees to provide and pay for all labor, equipment, materials, and supplies for its activities under AGREEMENT unless otherwise specified herein.
- h. COUNTY agrees to access SITE using only roads and entryways approved by OWNER.
- i. **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 Wildlife (CDFW), 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 OWNER 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 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, OWNER has not been notified that COUNTY is in violation of any aforementioned Special Compliance Provision

and if during the term of the Agreement OWNER is notified of any violation of such provisions, as it relates to COUNTY'S occupancy or use of the Premises, OWNER shall promptly notify COUNTY of such violation.

- j. COUNTY shall provide pre and post mining surveys to the OWNER annually.

6. **COMPENSATION**

- a. Royalty: COUNTY shall pay to OWNER a royalty rate of One Dollar Twenty Five Cents (\$1.25) per cubic yard for mined material. Said material shall be measured by truck capacity and said total shall be paid in lump sum at the conclusion of each annual extraction, accompanied by copies of truck trip and capacity documentation.
- b. Payments herein required shall be made to: Humboldt Redwood Company, LLC  
Attn: Accounts Receivable  
PO Box 712  
Scotia, CA 95565
- c. COUNTY'S mined material derived from said SITE shall become property of COUNTY upon OWNER'S receipt of royalty payment.

7. **OWNER'S ACCESS TO PREMISES**

OWNER shall retain the right of access and use of 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 Surface Mining Permit at all times.

8. **ROADS AND TRANSPORTATION**

COUNTY shall enter the Tract by using OWNER'S established road system. COUNTY acknowledges that a thorough inspection of the road system has been conducted and agrees to accept the road in its current condition. OWNER from time to time may improve or alter certain roads as a function of OWNER'S operations and may require that certain roads or the entire system not be used due to interference with OWNER'S operations or due to adverse weather conditions resulting from wet winters or extreme fire danger. Any road use in done so at COUNTY'S risk or at the risk of individuals having COUNTY'S consent to enter the Tract and the indemnity provisions of Section 15 apply.

9. **ASSIGNMENT AND SUBLETTING**

COUNTY shall not assign this AGREEMENT, or any interest therein, and shall not sublet the Tract or Site or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents and servants of COUNTY excepted) to occupy or use the Site, or any portion thereof, without first obtaining the written consent of OWNER, which consent is at the sole discretion of OWNER and may be denied for any reason or no reason at all. If OWNER does consent, that consent may, among other things, be conditioned on reimbursement to OWNER of all expenses incurred by OWNER, payment to OWNER of all rents or fees received by COUNTY that exceed the Rent paid hereunder, and any other commercial terms deemed appropriate to the OWNER. OWNER'S consent to one assignment, subletting, occupation, or use by another person



shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of OWNER, terminate this Agreement. This AGREEMENT shall not, nor shall any interest therein, be assignable, as to the interest of COUNTY, by operation of law, without the written consent of OWNER, which consent is at the sole discretion of OWNER and may be denied for any reason or no reason at all. No assignment, whether or not with OWNER'S consent, shall relieve COUNTY of any liability hereunder. OWNER shall have the right to inspect the Tract from time to time to determine compliance by the COUNTY with this Paragraph 9 and any other provision of the Agreement. Notwithstanding anything to the contrary contained herein, COUNTY may make an assignment to an entity it controls, that controls it, or that is under common control with it, or in connection with a merger, consolidation or sale of all or substantially all of COUNTY'S assets, provided COUNTY gives written notice to the OWNER at least ten (10) days prior to the date of the transfer.

10. **COMPLIANCE WITH LAWS**

COUNTY shall comply with regulations applicable to gravel extraction, forestry practices, water quality, the protection of flora and fauna, fire prevention, environmental protection and safety, and any other conditions or restrictions imposed by any governmental or quasigovernmental body. OWNER does not warrant its authority to permit COUNTY'S surface mining operation, hereinafter referred to as "ACTIVITIES". COUNTY shall be solely responsible for acquiring, at its sole cost and expense, (a) all permits, licenses, variances, and the like requisite to conduct said ACTIVITIES and (b) shall conform to and comply or cause compliance in all material respect with all federal, state, county, city, or local laws, statutes, ordinances, regulations, rules, orders, approvals, consents, authorizations and other requirements of any government or regulatory agencies or authorities with respect to the use and operation of the Tract, including without limitation all pollution, environmental protection, fire prevention, safety, and zoning laws applicable to the Tract, (c) not commit any waste of the Tract nor cause or permit any use of the Tract which would be unreasonably offensive to owners or users of neighboring properties or which would tend to create a nuisance or damage the reputation of OWNER or its property, (d) comply with all reasonable rules and regulations adopted by OWNER with respect to the Tract, (e) comply with the terms and provisions of The Pacific Lumber Company Habitat Conservation Plan/Sustained Yield Plan for the Headwaters Forest Project (HCP) binding Humboldt Redwood Company, LLC as successor to Scotia Pacific Company, LLC its subsidiaries and affiliates and (f) comply with all agency permits applicable to the gravel extraction project. The required permits are listed as Exhibit C.

11. **REPRESENTATIONS**

- a. OWNER makes no representations as to the present or future conditions, natural or man-made, of SITE, the character of the traffic on any of its roads, the condition of access roads, or risks associated with or arising from other persons on SITE. COUNTY has entered into this AGREEMENT at its own risk and assumes all risk of personal injury and property damage to itself, its agents, servants, employees, contractors, successors, and assigns in connection with ACTIVITIES under AGREEMENT. Nothing in this AGREEMENT shall be construed as a guarantee of the type of work or quantity or quality of any products located in or on SITE.

- b. COUNTY represents that it, or its contractor(s), is experienced and competent in performing the ACTIVITIES herein described and further represents it is familiar with and will comply with all the applicable statutes, rules and regulations promulgated by federal, state, county, local and other governmental agencies having control over, or an interest in, the ACTIVITIES hereunder.
- c. COUNTY agrees to conduct its ACTIVITIES in a diligent and workmanlike manner in accordance with the highest standards and practices recognized in the industry. COUNTY shall not unnecessarily damage trees while conducting its ACTIVITIES.

12. **RESPONSIBILITIES OF COUNTY**

- a. COUNTY shall promptly report to OWNER any violations of any laws, regulations, or permits of which COUNTY has knowledge and promptly send to OWNER a copy of any notice of violation received by COUNTY. A copy of all citations or other written documents COUNTY receives from any agency shall accompany the notice of violation.
- b. SITE access shall be limited to COUNTY'S normal business hours unless otherwise directed by OWNER. COUNTY shall maintain SITE used by COUNTY in an orderly, clean, and sanitary manner as required by OWNER.
- c. In the event of any violation of this AGREEMENT, or the occurrence of dangerous fire weather, or of possible damage to roads by their use in wet weather, or of the interference of OWNER'S operations, OWNER shall notify COUNTY'S representative in charge in the field, and COUNTY shall immediately suspend the ACTIVITIES or take steps to address the situation as OWNER may direct.
- d. COUNTY shall strictly limit the ACTIVITIES to those described above, and shall not construct or erect any buildings, structures, equipment, or improvements on the SITE without the prior written consent of OWNER.
- e. COUNTY shall acquaint itself with and confine the ACTIVITIES within the property boundaries, and shall be responsible and liable for any trespass outside such boundaries as a result of the ACTIVITIES.
- f. COUNTY may prune encroaching vegetation but shall not cut or remove trees without prior written consent from OWNER.
- g. COUNTY shall return any and all keys that have been issued by OWNER for access to SITE at the expiration or termination of this AGREEMENT.
- h. COUNTY shall promptly pay and discharge all liabilities to vendors and contractors for all labor and material employed in the ACTIVITIES. COUNTY shall indemnify, defend, and hold harmless OWNER from any losses, costs, and expenses, including attorneys' fees, incurred to remove any construction, mechanics, or materialman's liens filed against OWNER'S property by any vendors or contractors supplying goods or services.

13. **FIRE AND FIRE PREVENTION**

- a. COUNTY shall not undertake any burning of debris.

- b. COUNTY assumes full responsibility for personal injury or property damage resulting from the ACTIVITIES by fire or otherwise, including without limitation damage to any timber, logs, logging works, or equipment, and agrees to conform to all laws of the State of California pertaining to forest fires and their prevention and to all rules and regulations of the various departments and subdivisions thereof, as well as those of OWNER.

14. **PERMITS**

OWNER grants to COUNTY the right to use the portion of said land described in Sections 1 and 2 for the extraction of up to three thousand (3,000) cubic yards of aggregate annually or nine thousand (9,000) cubic yards of aggregate once every three years, in accordance with the terms of the mining permit for California Mine ID 91-12-0061. COUNTY shall acquire all permits necessary to mine and remove said extractable volumes. COUNTY is limited to mining no more than nine thousand (9,000) cubic yards annually.

15. **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.
- e. COUNTY shall maintain with OWNER'S designated representative as listed in Section I.e., a current list of names of all persons having COUNTY'S consent to be on the Tract. Prior to entering upon the Tract, OWNER may require that non-county employees (i.e. contractors) having COUNTY'S consent to enter the Tract execute a release and indemnity agreement in a form satisfactory to OWNER. This indemnity obligation would include actual attorney's fees and costs (including consultant and expert witness expenses) reasonably incurred in the enforcement of this Agreement. This indemnity

obligation shall not apply to the extent any such liabilities and expenses are directly caused by OWNER'S sole and active negligence.

16. **NOTICE**

- a. 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 certified U.S. mail, return receipt requested, with postage fully prepaid to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.
- b. 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.
  - i. If mailed to COUNTY:           Attn: County of Humboldt  
  Department of Public Works  
  1106 Second Street  
  Eureka, CA 95501-0531
  - ii. If mailed to OWNER:           Attn: Humboldt Redwood Company, LLC  
  P.O. Box 712  
  Scotia, CA 95565

17. **COUNTY'S INSURANCE**

- a. 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:
  - iii. 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 COUNTY, its officers, employees, and agents.
  6. If COUNTY chooses to hire a contractor to perform work which may be allowed under this AGREEMENT, prior written approval must be issued by OWNER and the contractor shall be required to provide the same insurance coverage and comply with the notice procedures as described in this entire section.
- 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).

**18. 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, which consent is to the sole discretion of OWNER and may be denied for any reason or no reason at all.

**19. JURISDICTION AND APPLICABLE LAWS**

This AGREEMENT shall be governed by the laws of the State of California and shall be deemed to have been entered into in the City of Eureka, County of Humboldt, 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, unless transferred by court order pursuant to Code of Civil Procedure Sections 394 and 395.

20. **TERMINATION**

- a. COUNTY and OWNER reserve the right to terminate this AGREEMENT upon 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:
- i. The making by COUNTY or OWNER of any general assignment for the benefit of creditors.
  - ii. 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.
  - iii. The violation of any of the provisions of this AGREEMENT.
  - iv. Said SITE becomes damaged due to fire, flood, earthquake, or any other natural disaster.
  - v. 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.

21. **LICENSE MODIFICATION**

Any modifications, changes, additions, or deletions to this AGREEMENT or the Exhibits attached hereto shall first be approved by and between OWNER and COUNTY in writing.

22. **LICENSOR NOT OFFICER EMPLOYEE OR AGENT OF 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.

23. **COUNTY'S EMPLOYEES**

COUNTY'S employees shall be deemed employees of COUNTY and will not for any purpose be considered employees or agents of OWNER. OWNER shall exercise no control or supervision over the employees of COUNTY hereunder. It is understood and agreed that no relationship of employer and employee is or shall be deemed to exist either between OWNER and COUNTY or between OWNER and any other person(s) performing labor or services on behalf of COUNTY. COUNTY shall furnish and be responsible for its own employees, agents and equipment. It is expressly understood that OWNER has no authority over COUNTY'S agents or employees, and any complaint by OWNER about COUNTY'S agents or employees will be brought by OWNER to COUNTY'S attention for resolution by COUNTY.

24. **SAFETY**

COUNTY shall comply with all federal, state, and local safety and health laws, regulations, and standards, including California Labor Code Sections 6400 et seq., related provisions of the

California Code of Regulations and standards of the California Occupational Safety and Health Board, all as amended from time to time, and if applicable shall operate under a current Injury and Illness Prevention Plan that complies with Section 3203 of Title 8 of the California Code of Regulations. Failure of COUNTY to comply with all federal, state, and local health and safety laws, rules and regulations is grounds for immediate termination of this AGREEMENT.

25. **HAZARDOUS MATERIALS**

COUNTY shall indemnify OWNER and hold OWNER harmless from and against any and all loss, cost, damage, expense, or claim of any kind and nature (including without limitation, court costs, expenses, and attorneys' fees) paid, incurred, or suffered by, or asserted against OWNER, as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, or release from SITE, of any Hazardous Materials arising out of, in connection with, or in any manner related to ACTIVITIES or of any actions or omissions of COUNTY. The provisions of this Section shall survive the expiration or termination of this AGREEMENT.

26. **HAZARDOUS MATERIALS • SPILL NOTIFICATION AND RESPONSE**

- a. In the event of a spill or release of Hazardous Materials, COUNTY shall promptly comply with all federal, state, and local spill notification and response requirements. COUNTY shall, at a minimum:
  - i. Prevent further spilling or release;
  - ii. Take appropriate corrective actions to mitigate the spill; and
  - iii. Specifically comply with federal, state, and local spill notification and reporting requirements, and notify OWNER of any spill event.
- b. COUNTY shall be responsible for the response and restoration costs of any release of Hazardous Materials in connection with this AGREEMENT.

27. **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.

28. **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.

29. **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.

30. **SURRENDER OF PREMISES**

Upon expiration of this term, or upon any sooner termination of this AGREEMENT, COUNTY shall quit and surrender the premises to OWNER and the keys to the Tract, and any personal property or appurtenances belonging to OWNER, peaceably, quietly, and in good condition and repair, except for reasonable use and normal wear and tear thereof. Any personal property not belonging to OWNER left on the Tract after expiration or earlier termination of this Agreement shall be deemed to be abandoned and OWNER may, without notice, at COUNTY'S sole expense, and without liability to OWNER for injury or damage to the personal property, store, or dispose of the personal property as permitted by law. Any excavated aggregate material stored on-site during mining operations and remaining on site after termination of operations shall revert to OWNER. 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.

31. **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.

32. **MISCELLANEOUS PROVISIONS**

- a. The ACTIVITIES under this AGREEMENT shall in no way interfere with the land management and logging activities conducted by OWNER, its contractors, or assigns. COUNTY shall supervise all persons connected with COUNTY under this AGREEMENT to assure that its ACTIVITIES are within the boundaries specified in this AGREEMENT
- b. Section headings and sub-headings in this AGREEMENT are for convenience only and shall not be considered part of this AGREEMENT or used in its interpretation.
- c. This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument, which may be sufficiently evidenced by one counterpart.
- d. If any provision contained herein is declared by a court of competent jurisdiction to be void or unenforceable as written, the parties intend and desire that such provision be enforced and enforceable to the fullest extent permitted by law and that the invalidity



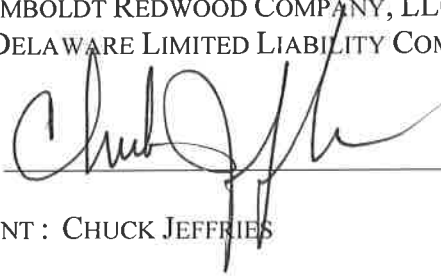
or unenforceability of such provision shall not affect the validity or enforceability of the balance of this AGREEMENT.

- e. Each of the parties hereto has been or has had the opportunity to be represented, to the extent desired, by legal counsel of its choice in respect to this transaction.
- f. Portions of this AGREEMENT are intended to survive any expiration or termination of this AGREEMENT. Accordingly, all provisions hereof which contemplated performance after any such event shall so survive, as shall all indemnity and restoration obligations of COUNTY, and the right to exercise remedies for default.

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

AGENT FOR:  
HUMBOLDT REDWOOD COMPANY, LLC  
A DELAWARE LIMITED LIABILITY COMPANY

BY

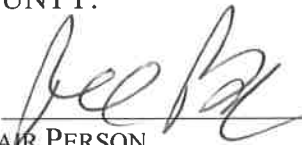


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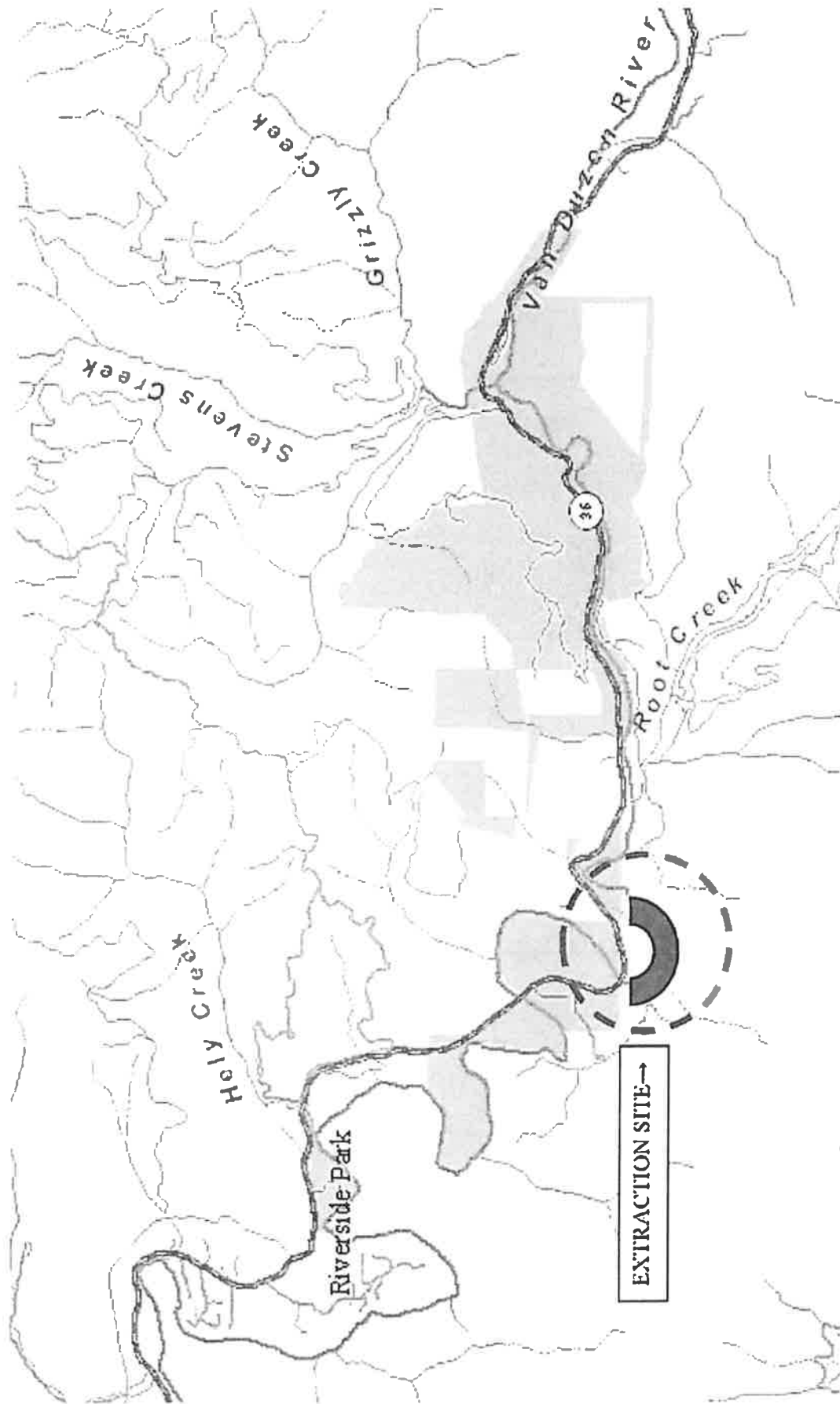
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COUNTY:

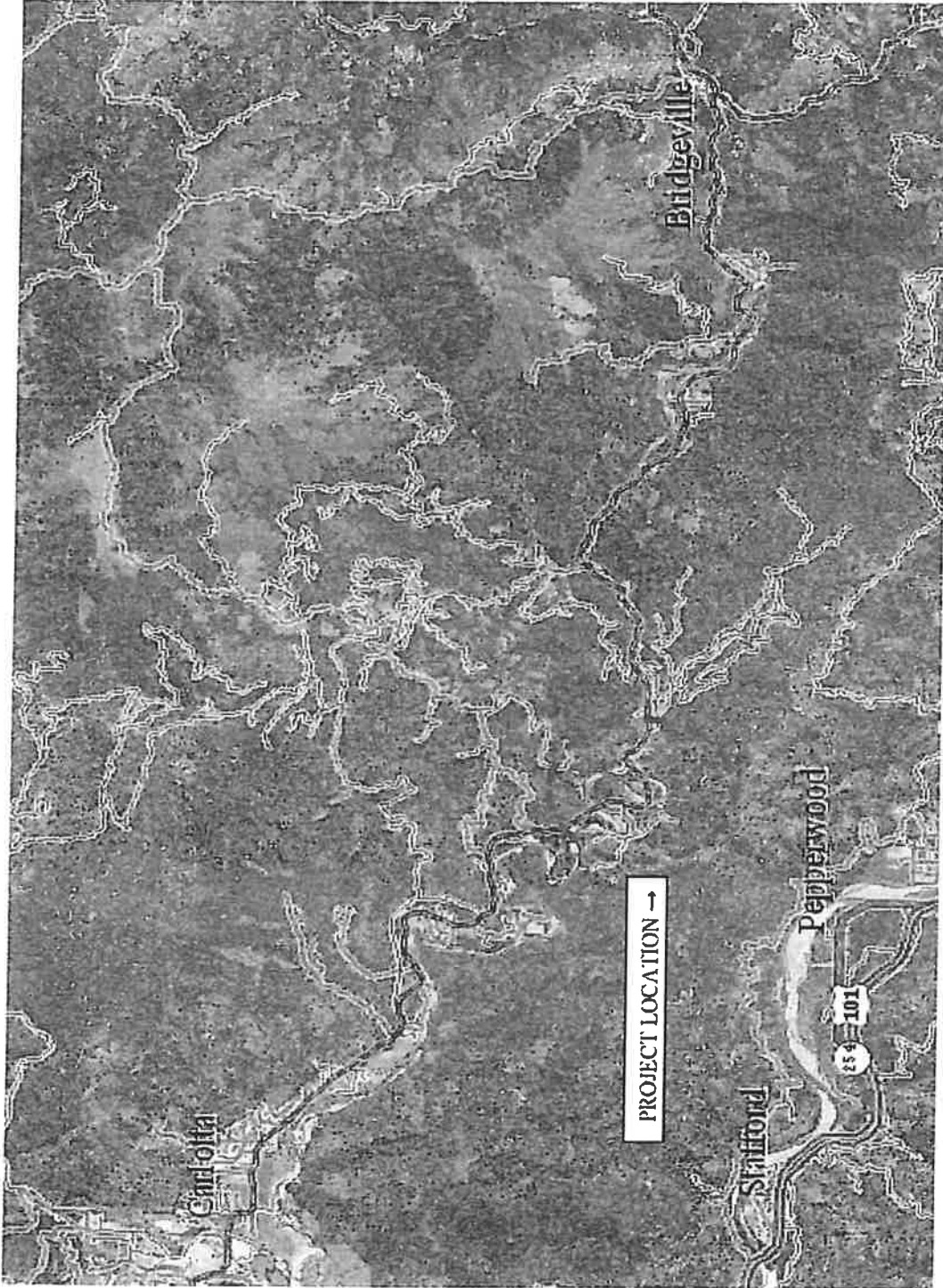
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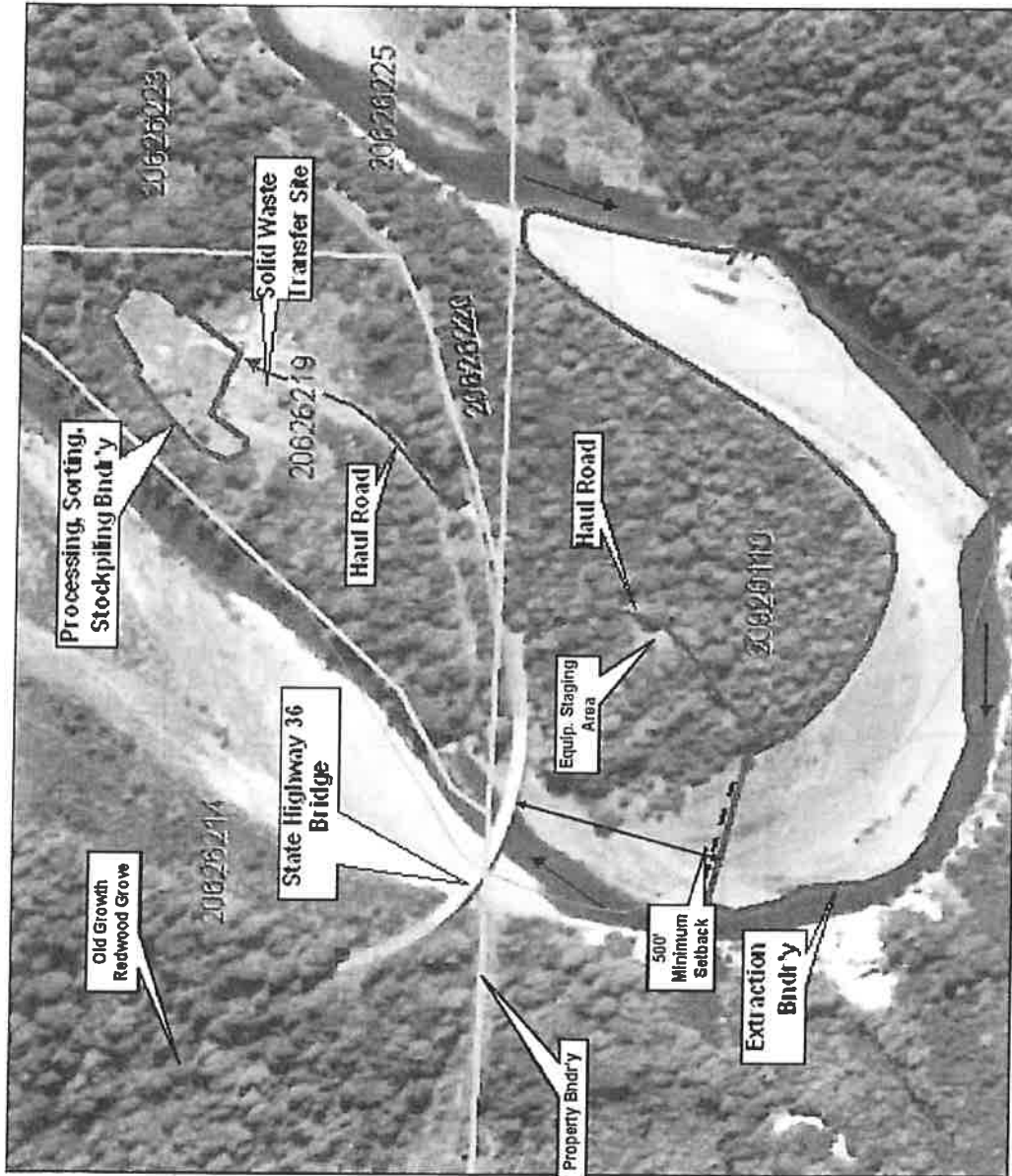
CHAIR PERSON,  
BOARD OF SUPERVISORS,  
COUNTY OF HUMBOLDT,  
STATE OF CALIFORNIA



HUMBOLDT REDWOOD COMPANY, LLC. LICENSE AGREEMENT  
VAN DUZEN GRAVEL BAR SITE  
EXHIBIT A - PAGE 1 OF 3



HUMBOLDT REDWOOD COMPANY, LLC. LICENSE AGREEMENT  
VAN DUZEN GRAVEL BAR SITE  
EXHIBIT A - PAGE 2 OF 3



HUMBOLDT REDWOOD COMPANY, LLC. LICENSE AGREEMENT  
VAN DUZEN GRAVEL BAR SITE  
EXHIBIT A - PAGE 3 OF 3

## **EXHIBIT C**

### Surface Mining Permits

- Department of the Army – Letter of Permission File No. 2013-00134N
- California Department of Fish and Wildlife – Streambed Alteration Agreement Notification No. 1600-2013-0091-RI
- North Coast Regional Water Quality Control Board – Water Quality Certification WDID No. IB13045WNHU