

COUNTY OF HUMBOLDT

AGENDA ITEM NO.

C-17

For the meeting of: December 8, 2015

Date: November 4, 2015

To: Board of Supervisors

From: Thomas K. Mattson, Public Works Director

SUBJECT: LICENSE AGREEMENT FOR THE COOK BAR SURFACE MINING AND PROCESSING OPERATION, APN 105-022-006, MATTOLE ROAD, PETROLIA, CALIFORNIA.

RECOMMENDATION(S): That the Board of Supervisors:

1. Authorizes the Chairperson to sign in duplicate, the License Agreement between the County of Humboldt and Leonard D. Cook and Mary Jo Cook, trustees for the Cook Family Trust, for a surface mining and aggregate processing operation located on the North Fork of the Mattole River near Petrolia, California.
2. Directs 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 – 1200325-2121

DISCUSSION:

The County has had a License Agreement with the Cook Family for the purpose of extracting, processing, and storing aggregate in the Petrolia area since at least August 1991. The most recent Agreement with Mayme M. Cook, Leonard D. Cook, and Mary Jo Cook (Attachment 1)

Prepared by Deb Vining, Sr. Real Property Agent

CAO Approval

Cheryl D. [Signature]

REVIEW:

Auditor _____ County Counsel *JS* Human Resources _____ Other _____

TYPE OF ITEM:

☒ Consent
☐ Departmental
☐ Public Hearing
☐ Other _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor *Lovelace* Seconded by Supervisor *Bass*
Ayes *Sundberg, Lovelace, Fennell, Bohn, Bass*
Nays _____
Abstain _____
Absent _____

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

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

Dated: _____
By: _____

Dec. 8, 2015
Kathy Hayes
Kathy Hayes, Clerk of the Board

does not include an expiration date, or many of the standard provisions found in more recent agreements, nor does it include the appropriate rental rate currently paid to landowners. The proposed new License Agreement reflects recent changes in ownership, updates the current royalty rate, and includes standard agreement provisions necessary for agreements of this type.

Public Works has utilized this resource site since the early 1990's or before. It is strategically located within the County's road system, and is a viable source of aggregate for county road maintenance and repair projects between Ferndale and Honeydew. The Department of Public Works recommends executing a new License Agreement that is consistent with the County's current rate of compensation, reflects current ownership, and includes standard agreement provisions.

The proposed new License Agreement (Attachment 2) establishes a royalty rate for river-run aggregate at one-dollar (\$1.00) per cubic yard. Said Agreement does not include the standard rental rate of fifty-dollars (\$50.00) per month, because gravel will no longer be stored on property owned by the Cook Family. Use of the site shall further include temporary setup of a crushing (processing) plant and temporary storage of processed aggregate. Said aggregate shall be removed to an offsite location before October 1 each year an instream extraction event takes place.

The License Agreement shall commence upon the date of execution, with the first term extending from the date of execution through June 30, 2016. Said Agreement shall renew automatically for a maximum of seven (7) successive one (1) year terms based upon the same terms and conditions therein, unless either party provides written notice of non-renewal to the other party by March 31, 2016 of the current term or March 31 of any successive term. There shall be no more than seven (7) automatic renewals except by written amendment.

The County's Cook Bar surface mining operation was reviewed and permitted in accordance with the California Environmental Quality Act (CEQA). A Mitigated Negative Declaration was adopted by the Planning Commission, for the approval of Conditional Use, Surface Mining, and Reclamation Plan permits on August 6, 2009. The Conditional Use, Surface Mining, and Reclamation Plan permit term shall expire on January 3, 2023. The License Agreement requires that the County remain in compliance with all permit conditions during the term of said permits.

If at any time during the term of the Agreement it is determined that the site is no longer of value to Public Works, the County will exercise its right not to renew the License Agreement.

FINANCIAL IMPACT:

The new License Agreement provides for royalty payments to be made payable to Leonard D. Cook and Mary Jo Cook. The new License Agreement does not provide for site rental payments.

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 License Agreement because of the County's need for aggregate resource and storage sites strategically located throughout the County. This License Agreement will offset expenses resulting from the importation of construction materials from distant locations.

ATTACHMENTS:

1. Old License Agreement
2. New License Agreement in duplicate

u:\pwrk_rightofway\roads\cook borrow site_board letter 11-4-15.doc

ATTACHMENT 1

Old License Agreement

RE: PETROLIA BORROW SITE
AP# 105-022-06
SOURCE CODE ~~P-57~~
MATERIAL CODE ~~8804~~

BORROW AGREEMENT

THIS AGREEMENT, dated this 27th day of August, 1991, between MAYME M. COOK, LEONARD D. COOK and MARY J. COOK, hereinafter called "OWNERS", and the COUNTY OF HUMBOLDT, a political subdivision of the State of California, hereinafter called "COUNTY".

WITNESSETH:

WHEREAS, OWNERS represent and warrant that they are the owners in fee of a parcel of land in the southeast quarter of Section 4, T.2S, R.2W, H.B.&M., and as such have the exclusive right to enter into this Agreement; and

WHEREAS, COUNTY desires to enter upon said land at a location shown as "Borrow Area" on the map attached hereto as Exhibit "A" and incorporated herein by reference for the purpose of removing river run aggregate. Said aggregate to be used in repairing and maintenance of County roads.

NOW, THEREFORE, it is mutually agreed as follows:

- (1) OWNERS hereby grant to COUNTY the non-exclusive right to enter upon said parcel of land and remove therefrom river run aggregate in such quantities as required for road repair and maintenance purposes.
- (2) COUNTY shall pay to OWNERS a royalty of Fifty Cents (\$0.50) per cubic yard for river run aggregate removed from OWNERS' property. Aggregate shall be measured by truck capacity.
- (3) The initial term of this Agreement shall be from the date COUNTY executes the Agreement until July 1, 1992, and shall be renewable for one year terms thereafter, extending from July 1 of the year involved through June 30 of the year following.

Unless either party gives written notice of cancellation not less than 60 days prior to the expiration of any agreement period, this Agreement shall automatically be renewed for an additional one year period under the same terms and conditions of the previous agreement period.

(4) COUNTY shall hold and save OWNERS harmless and free from any claims or demands of any person which might result from or be related to COUNTY'S entry or borrow operation on OWNERS' land.

OWNERS shall hold and save COUNTY harmless and free from any claims or demands of any person which might result from or be related to OWNERS use of the property.

(5) It is understood that any and all payments made pursuant to this Agreement shall be made to Mayme M. Cook, 2135 D Street, Eureka CA 95501.

ATTEST:
(SEAL)
CLERK OF THE BOARD

OWNERS

BY *Doris L. Smith*
DEPUTY

APPROVED AS TO FORM:
COUNTY COUNSEL

BY *R. Zuber*
DEPUTY

Mayme M. Cook
MAYME M. COOK

Leonard D. Cook
LEONARD D. COOK

Mary J. Cook
MARY J. COOK

COUNTY OF HUMBOLDT

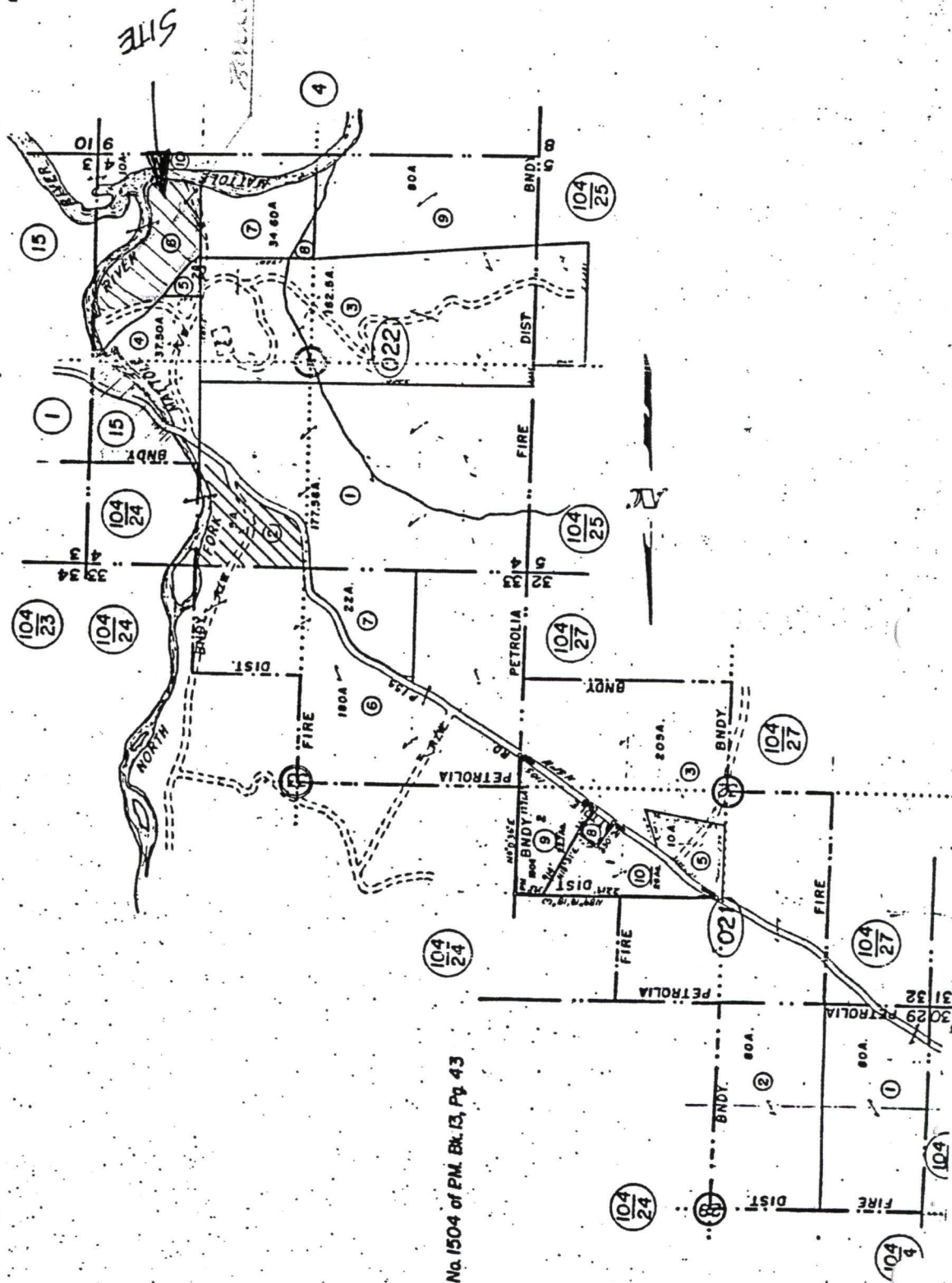
Paul Sparks
CHAIRMAN
BOARD OF SUPERVISORS
COUNTY OF HUMBOLDT
STATE OF CALIFORNIA

PETROLIA FIRE DIST. PTN SECS 29, 32 & 33 1S-2W & SEC 4 2S-2W

105-02

T.C.A.

1" = 1200'



PM No. 1504 of PM. Bd. 13, Pg. 43

"Exhibit A"

ATTACHMENT 2

New License Agreement in Duplicate

MATTOLE ROAD/CLARK ROAD
PETROLIA, APN 105-022-006

COOK GRAVEL BAR

LICENSE AGREEMENT

This License Agreement, hereinafter referred to as AGREEMENT, made and entered into this 8th day of December, 2015, by and between LEONARD D. COOK and MARY JO COOK, husband and wife, and as Trustees for the Cook Family Trust dated September 29, 1981, hereinafter referred to as OWNERS, and the COUNTY OF HUMBOLDT, a political subdivision of the State of California, hereinafter referred to as COUNTY.

WITNESSETH:

WHEREAS, OWNERS represent and warrant that they are the owners in fee of a certain parcel of land within Section 4, Township 2 South, Range 2 West, Humboldt Base Meridian, and as such, have the exclusive right to enter into this AGREEMENT; and

WHEREAS, COUNTY desires to enter upon and use a portion of OWNERS' real property, hereinafter referred to as SITE, as shown on aerial photograph attached hereto as Exhibit A and incorporated herein by reference, for the purpose of a surface mining and gravel processing operation, and temporary storage of processed aggregate; and

WHEREAS, COUNTY'S use of said SITE shall be for the specific purpose of maintaining and repairing COUNTY roads;

NOW, THEREFORE, it is mutually agreed as follows:

1. **AGREEMENT**

OWNERS grant to COUNTY, subject to the terms and conditions set forth in this AGREEMENT, the right to use said SITE situated on and identified by Assessor's Parcel No. (APN) 105-022-006, located near Mattole Road and Clark Road, at the confluence of the North Fork Mattole and Mainstem Mattole Rivers, in the area known as Petrolia, Humboldt County, California, as shown on Exhibit B, attached hereto and incorporated herein by reference.

2. **LICENSE IS NOT A LEASE**

This license is not a lease, but constitutes a mere license agreement and COUNTY is limited to the use of SITE as expressly and specifically described in Clause 4.

3. **TERM**

The AGREEMENT shall commence upon Board approval, with the initial term extending from the date of Board approval through June 30, 2016. The AGREEMENT shall renew automatically for seven (7) successive one (1)-year terms upon the same terms and conditions herein, unless either party provides written notice of non-renewal to the other party by March 31,

2016 of the initial term or March 31 of any successive term. There shall be no more than seven (7) automatic renewals except by written amendment.

4. **USE OF SITE**

OWNERS grant COUNTY the right of ingress and egress over OWNERS' real property described in Clause 1, for access to COUNTY'S surface mining, processing, and temporary gravel storage area.

COUNTY shall have the right to stockpile extracted and crushed aggregate produced from COUNTY'S surface mining operation together with right of temporary storage for all equipment necessary for those activities associated with COUNTY'S surface mining operation.

COUNTY shall remove stockpiled aggregate from SITE by October 1 of each year surface mining and processing activity occurs.

COUNTY'S license to use SITE as a surface mining operation is exclusive to COUNTY. All mining permits for SITE are held by COUNTY and OWNERS shall not allow any third party to conduct mining operations within COUNTY'S permitted "limits of operation" or to interfere with COUNTY'S activities.

Use of SITE by COUNTY shall be in compliance with all applicable laws including those governing the use of hazardous materials and the management and discharge of stormwater. 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, state, or local laws. Prior to commencement of use of SITE, COUNTY shall provide OWNERS with written notice demonstrating that COUNTY has obtained National Pollutant Discharge Elimination System (NPDES) permit coverage for any stormwater discharge from SITE, or has established that no stormwater discharge to waters of the United States will originate from SITE used by COUNTY. If an NPDES permit is required for SITE, COUNTY shall maintain NPDES permit coverage during all periods of SITE use.

COUNTY agrees to provide and pay for all labor, equipment, materials, and supplies for its activities as described under this AGREEMENT.

COUNTY agrees to access SITE using only roads and entryways approved by OWNERS.

5. **COMPENSATION**

COUNTY agrees to pay Leonard D. Cook and Mary Jo Cook a royalty for materials mined by COUNTY, at the rate of one-dollar (\$1.00) per cubic yard. It is agreed that royalty payments shall be computed as per number of truckloads of material multiplied by the cubic yard load capacity of the truck. Totals shall be computed based on driver trip tickets logged by Public Works dispatch personnel. Said royalty payments shall be made payable annually once said material is removed from SITE.

All royalty payments shall be made payable to:

Leonard D. and Mary Jo Cook
2750 St Giles Lane
Mountain View, CA 94040

It is agreed and understood, that said mined material shall become COUNTY'S personal property upon OWNERS' receipt of payment thereof.

6. **OWNERS' ACCESS TO PREMISES**

OWNERS shall have access to said SITE at all times.

7. **MAINTENANCE**

COUNTY, at COUNTY'S expense, agrees to maintain SITE and SITE haul road during COUNTY'S surface mining and aggregate processing operations.

COUNTY shall be under no obligation to repair or restore the whole or any portion of road to SITE, which may be damaged by fire, earthquake, or other casualty.

8. **COMPLIANCE WITH LAWS**

COUNTY shall conduct its operations in accordance with all federal/state/county safety, health, fire, sanitary codes and ordinances, and the terms and conditions of all permits acquired by COUNTY for COUNTY'S surface mining operations.

9. **PERMITS**

In consideration of COUNTY'S surface mining operation on OWNERS' real property, COUNTY shall acquire and maintain all permits necessary for the extraction and processing of aggregate from SITE. Existing permits are specific to surface mining activities and do not allow for activities unrelated to surface mining or processing of aggregate. COUNTY shall remain in compliance with all permits, including any permit extensions, renewals, and expirations. Should any permit condition change, COUNTY shall modify, suspend, or terminate its operations to conform to such change so as to remain in compliance with all permits at all times.

10. **COUNTY'S INSURANCE**

Without limiting COUNTY'S indemnification provided herein, COUNTY shall take out and maintain, throughout the term 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 \$1,000,000 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) OWNERS, their 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 OWNERS, their 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 OWNERS 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, COUNTY'S insurance is primary coverage to OWNERS, and any insurance or self-insurance programs maintained by OWNERS 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.

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).

11. **HOLD HARMLESS INDEMNIFICATION**

COUNTY agrees to indemnify and hold harmless and, at its own risk, cost, and expense, defend OWNERS from and against any and all liability expense, including defense costs, legal fees, and claims for damages arising from COUNTY'S negligence, intentional acts, or breaches of this AGREEMENT.

OWNERS agree to indemnify and hold harmless and, at their own risk, cost, and expense, defend COUNTY, its Board of Supervisors, officers, agents, employees, and volunteers from and against any and all liability expense, including defense costs, legal fees, and claims for damages arising from OWNERS' negligence, intentional acts, or breaches of this AGREEMENT.

12. **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

Leonard D. & Mary Jo Cook
2750 St Giles Lane
Mountain View, CA 94040

COUNTY

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

13. **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 OWNERS and any attempt to assign, sublet, or transfer shall be of no force or effect whatsoever unless and until OWNERS shall have given their written consent.

14. **NUCLEAR FREE CLAUSE**

OWNERS certify by their signature below that OWNERS are not a Nuclear Weapons contractor, in that OWNERS are not knowingly or intentionally engaged in the research, development, production, or testing of nuclear warheads, nuclear weapons systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. OWNERS agree to notify COUNTY immediately if they become a nuclear weapons contractor, as defined above. COUNTY may immediately terminate this AGREEMENT if it determines that the foregoing certification is false or if OWNERS become a nuclear weapons contractor.

15. **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 unless transferred by court order pursuant to Code of Civil Procedure Sections 394 and 395.

16. **TERMINATION**

COUNTY and OWNERS 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 OWNERS of any general assignment for the benefit of creditors.
- B. The failure of COUNTY or OWNERS to remedy any default, breach, or violation of Federal/State/County laws or regulations by COUNTY or OWNERS or their employees.
- C. The violation of any of the provisions of this AGREEMENT.
- D. The SITE becomes damaged due to fire, flood, earthquake, or any other natural disaster.
- E. Intentionally supplying COUNTY or OWNERS with false or misleading information or misrepresenting any material fact on their applications or documents or in their statements to or before COUNTY or OWNERS, or intentional failure to make full disclosure on their financial statements or other documents.

17. **AGREEMENT MODIFICATION**

This AGREEMENT may be modified only by subsequent written amendment signed by COUNTY and OWNERS.

18. **OWNERS NOT OFFICER, EMPLOYEE, OR AGENT OF COUNTY**

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

19. **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.

20. **REAL PROPERTY TAXES**

OWNERS 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 COUNTY.

21. **WAIVER OF BREACH**

The waiver by COUNTY or OWNERS 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.

22. **BREACH, REMEDY FOR**

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

23. **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.

24. **PRIOR AGREEMENT TERMINATED AND SUPERSEDED**

This AGREEMENT terminates and supersedes the August 27, 1991 Borrow Agreement between COUNTY and Mayme M. Cook (deceased), Leonard D. Cook and Mary J. Cook regarding SITE.

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

COUNTY OF HUMBOLDT

BY: Estelle D. Jennell
CHAIR, BOARD OF SUPERVISORS

(SEAL)
ATTEST: KATHY HAYES
CLERK OF THE BOARD

BY: Ann Hawthell, Deputy

DATE: 12/8/2015

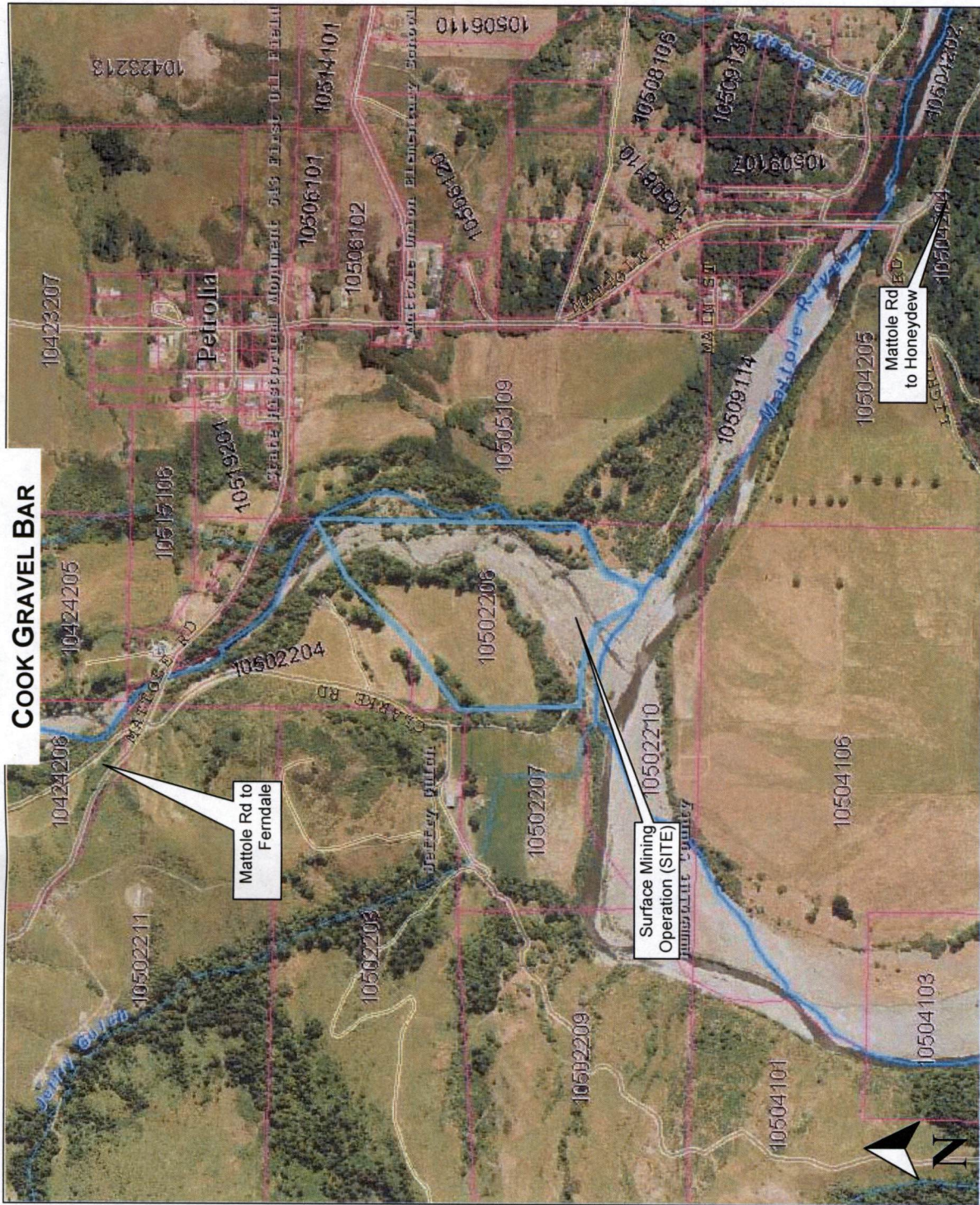
OWNERS

BY: Leonard D. Cook
LEONARD D. COOK, TRUSTEE for Cook
Family Trust dated September 29, 1981

DATE: 10/31/2015

BY: Mary Jo Cook
MARY JO COOK, TRUSTEE for Cook
Family Trust dated September 29, 1981

DATE: 10/31/2015



COOK GRAVEL BAR

Humboldt County
Department of Public Works

EXHIBIT A

105-02

