



COUNTY OF HUMBOLDT

AGENDA ITEM NO.
C-24

For the meeting of: March 7, 2017

Date: February 7, 2017
To: Board of Supervisors
From:  Thomas K. Mattson, Public Works Director

Subject: **LICENSE AGREEMENT FOR THE MOORE QUARRY SURFACE MINING OPERATION, STOCKPILE SITE, AND TEMPORARY EQUIPMENT STORAGE AREA, APN 314-225-007 AND 214-242-001, SHOWERS PASS ROAD, KNEELAND**

RECOMMENDATION(S):

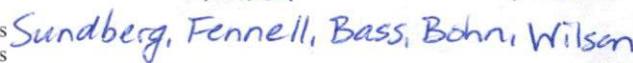
That the Board of Supervisors:

1. Authorize the Chairperson to sign, in duplicate, the License Agreement between the County of Humboldt and Mark V. Moore for the surface mining operation, stockpile site, and temporary equipment storage area located at the Moore Quarry property (APN 314-225-007 and 214-242-001).
2. Direct the Clerk of the Board to return both executed License Agreements to the Department of Public Works Land Use Division for further processing.

Prepared by  Deb Vining, Senior Real Property Agent
CAO Approval  Karen Clower

REVIEW: Auditor  County Counsel  Personnel _____ Risk Manager _____ 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-34
Meeting of: 07/17/2001

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

Dated: Mar 7, 2017
By: 
Kathy Hayes, Clerk of the Board

SOURCE OF FUNDING:

Roads Maintenance – 1200325-2121

DISCUSSION:

The County has had a License Agreement with the Moore Family for this site since 2001. The 2001 Agreement has expired. The new proposed Agreement reflects a recent change in ownership and includes the current royalty rate and standard agreement provisions.

The Department of Public Works recommends executing a new Agreement that is consistent with the County's current compensation rates for similar agreements, reflects current ownership, and includes standard agreement provisions.

The proposed License Agreement (Attachment 1) establishes a royalty rate for pit-run aggregate at one-dollar (\$1.00) per cubic yard. The License Agreement also states the standard rental rate of fifty-dollars (\$50.00) per month will be paid to the landowner for use of said site. Use of the site shall further include temporary onsite staging of equipment and construction materials for use on county roads projects in the Kneeland Ridge/Showers Pass area.

The License Agreement shall commence upon the date of execution, with the first term extending from the date of execution through June 30, 2017. It shall renew automatically for a maximum of five (5) 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, 2017 of the current term or March 31 of any successive term.

The County's Moore Quarry 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 March 5, 2009. The Conditional Use, Surface Mining, and Reclamation Plan permit term will expire on March 20, 2022. The License Agreement requires that the County remain in compliance with all permit conditions at all times.

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 and annual site rental payments to be made payable to Mark V. Moore. 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 License Agreement. The Department of Public Works recommends executing the License Agreement because of the County's need for aggregate resource sites strategically located throughout the County's road system. This License Agreement will offset expenses resulting from the importation of construction materials from distant locations.

ATTACHMENTS:

1. New License Agreement in duplicate

MOORE ROCK QUARRY
SHOWERS PASS ROAD
APN 314-225-007 & 314-242-001

**MOORE ROCK QUARRY
and
STOCKPILE SITE**

LICENSE AGREEMENT

This License Agreement, hereinafter referred to as AGREEMENT, made and entered into this 7th day of March, 2017, by and between MARK V. MOORE, a married man as his sole and separate property, hereinafter called OWNER, and the COUNTY OF HUMBOLDT, a political subdivision of the State of California, hereinafter called COUNTY.

WITNESSETH:

WHEREAS, OWNER represents and warrants that he is the owner in fee of certain parcels of land in the Southwest Quarter of the Southeast Quarter of Section 17, in Township 3 North, Range 3 East, Humboldt Base Meridian, 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, as shown on aerial photograph attached hereto as Exhibit A and incorporated herein by reference, for the purposes of a surface mining operation, aggregate storage, and temporary equipment storage; and

WHEREAS, COUNTY shall perform a surface mining operation consisting of the removal of pit-run aggregate, crushing of said aggregate, and stockpiling of processed aggregates on said SITE for the purpose of maintenance and repairs on COUNTY roads;

NOW, THEREFORE, it is mutually agreed as follows:

1. **AGREEMENT**

OWNER grants to COUNTY, subject to the terms and conditions set forth in this AGREEMENT, the use of said SITE situated on and identified by Assessor's Parcel Nos. (APN) 314-225-007 and 314-242-001 located on Showers Pass Road in the Kneeland Ridge area of Humboldt County, as shown on Exhibits B and C, 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 expressly and specifically as described in Clause 4.

3. **TERM**

The AGREEMENT shall commence upon Board approval, with the first term extending from the date of Board approval through June 30, 2017.

The AGREEMENT shall renew automatically for five (5) 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, 2017 of the current term or March 31 of any successive term.

4. **USE OF SITE**

OWNER grants COUNTY the right to use said SITE together with the right of ingress and egress over said portion of OWNER'S real property for access to COUNTY'S surface mining operation, processing/stockpiling activities, and temporary equipment storage area.

COUNTY shall have the right to conduct surface mining activities, crushing, and stockpiling of extracted and crushed aggregate produced from said surface mining operation, and temporary equipment storage necessary for COUNTY'S surface mining operation, stockpiling, and road maintenance activities.

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

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 LICENSOR shall not allow any third party to conduct mining operations within the 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 OWNER 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 under this AGREEMENT.

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

COUNTY agrees to curtail use of roads during inclement weather as a means of preserving said roads.

COUNTY shall have six (6) months after the AGREEMENT termination date to remove mined and stockpiled aggregate and equipment from SITE.

5. **COMPENSATION**

A. **Rental**

COUNTY agrees to pay OWNER a SITE rental fee of Fifty Dollars (\$50.00) per month for use of said SITE. COUNTY shall pay monthly SITE rental payment in advance on an annual basis, at the sum of Six Hundred Dollars (\$600.00) per year. Annual SITE rental payment shall be made payable before July 1 of each fiscal year, with the exception of fiscal year 2016-2017, where payment shall be prorated and paid within thirty (30) days of the commencement date of this AGREEMENT.

B. **Royalty**

In addition to the rent set forth in the previous paragraph, COUNTY agrees to pay OWNER a royalty for the aggregate mined by COUNTY at the rate of one-dollar (\$1.00) per cubic yard as measured per loaded capacity of dump trucks or loader's bucket (in cubic yards) multiplied by the number of truckloads or bucket loads offloaded in COUNTY'S stockpile.

In lieu of such royalty, OWNER may agree to accept as compensation from COUNTY, crushed aggregate valued at Nine Dollars (\$9.00) per cubic yard.

OWNER and COUNTY agree said compensation in lieu of royalty payment shall not exceed the total dollar amount of the royalty generated by COUNTY'S surface mining operation, in any one (1) term.

OWNER and COUNTY agree said crushed aggregate yardage, in lieu of royalty payment, shall be calculated (measured) by truckload capacity.

COUNTY shall place said crushed aggregate in lieu of royalty payment on OWNER'S property at a location determined through mutual agreement between OWNER and COUNTY.

COUNTY'S mined material and crushed aggregate shall become COUNTY'S personal property upon OWNER'S receipt of payment thereof, or upon OWNER receiving crushed material as compensation in lieu of royalty payment.

Royalty and SITE rental payments shall be made payable to:

Mark V. Moore
480 Butte Creek Road
Kneeland, CA 95549

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

OWNER shall have the right of access to said SITE.

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

7. **MAINTENANCE**

COUNTY, at COUNTY'S expense, agrees to maintain SITE and SITE haul road, from Showers Pass Road to the quarry proper during COUNTY'S surface mining and crushing operations.

COUNTY shall be under no obligation to repair or restore the whole or any portion of road or SITE, which may be damaged resulting from 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 required for COUNTY'S surface mining operation.

9. **PERMITS**

In consideration of COUNTY'S surface mining operation on OWNER'S 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, processing, and storage of aggregates and construction related equipment. 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 operation 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. Best's 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) 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, COUNTY'S insurance is primary coverage to the OWNER'S, 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.

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 OWNER 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.

OWNER agrees to indemnify and hold harmless and, at its 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 OWNER'S 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:

Mark V. Moore
480 Butte Creek Road
Kneeland, CA 95549

COUNTY:

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

13. **LICENSE IS PERSONAL**

The license herein granted to COUNTY is personal, and COUNTY has no right hereunder for said license to 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.

14. **NUCLEAR FREE CLAUSE**

OWNER certifies by its signature below that OWNER is not a nuclear weapons contractor, in that OWNER is 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. OWNER agrees to notify COUNTY immediately if it becomes a nuclear weapons contractor, as defined above. COUNTY may immediately terminate this AGREEMENT if it determines that the foregoing certification is false or if OWNER becomes 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 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 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 OWNER with false or misleading information or misrepresenting any material fact on their applications or documents or in their statements to or before COUNTY or OWNER, 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 OWNER.

18. **OWNER NOT AN OFFICER, EMPLOYEE, OR AGENT OF COUNTY**

While engaged in carrying out and complying with the terms and conditions set forth in this AGREEMENT, OWNER is 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**

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

21. **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.

22. **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.

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.

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

(SEAL)
ATTEST:
CLERK OF THE BOARD

In Huntwell, Deputy

OWNER:

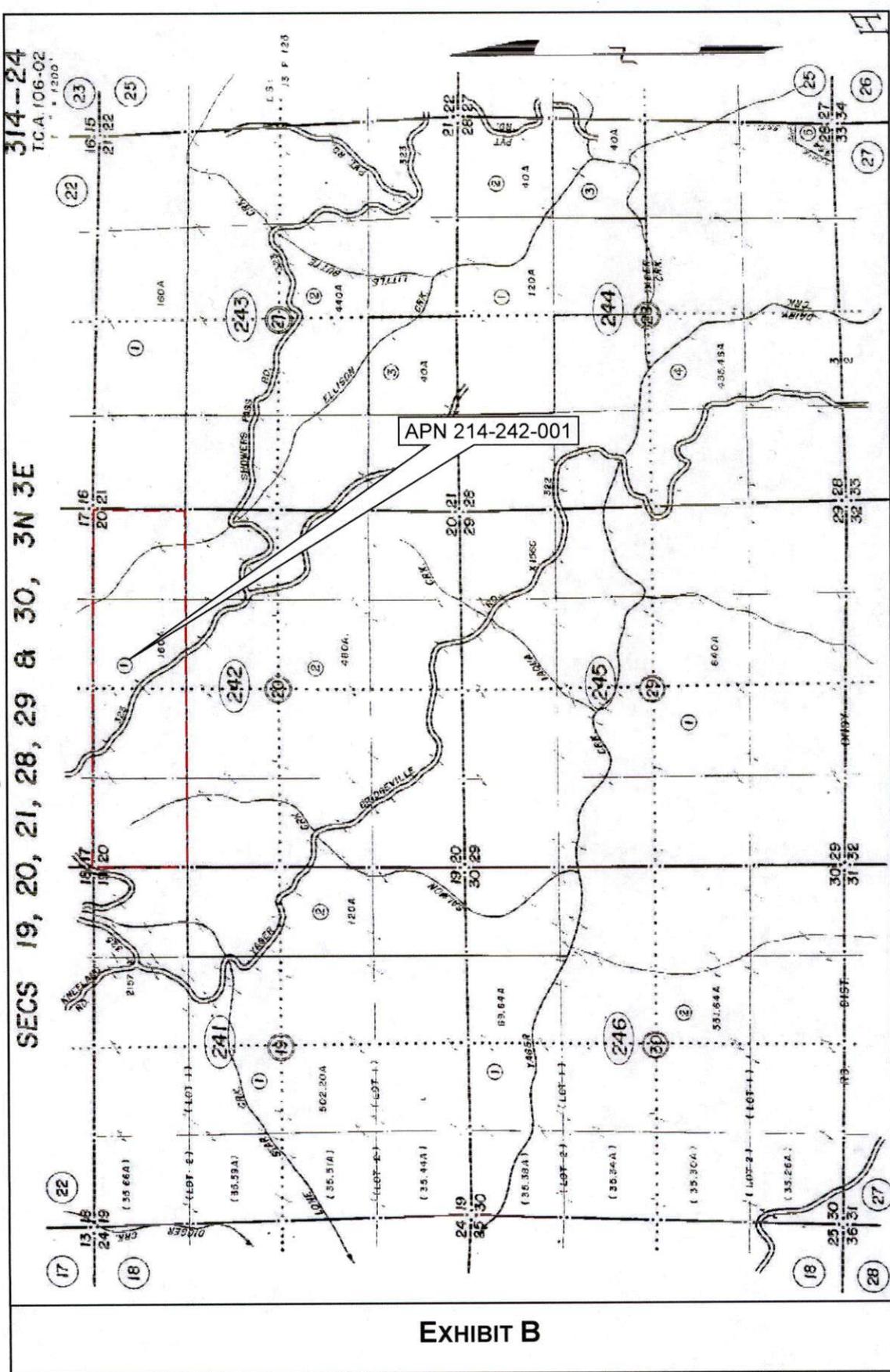
BY *MMV MCV 2-1-17*
MARK V. MOORE

COUNTY:

BY *Yvonne Barr*
CHAIRPERSON,
BOARD OF SUPERVISORS,
COUNTY OF HUMBOLDT,
STATE OF CALIFORNIA

314-24
T.C.A. 106-02
1200'

SECS 19, 20, 21, 28, 29 & 30, 3N 3E



APN 214-242-001

EXHIBIT B

EXHIBIT C

