

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Environmental Resources

BOARD AGENDA # \*B-3

Urgent

Routine

AGENDA DATE November 15, 2011

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval to Authorize the Director of Environmental Resources to Amend the Long-term Grazing Lease with Paul Clarot for approximately 753 Acres of County Owned Land Adjacent to the Fink Road Landfill

STAFF RECOMMENDATIONS:

Authorize the Director of Environmental Resources to amend the long-term grazing lease with Paul Clarot for approximately 753 Acres of County owned land adjacent to the Fink Road Landfill to allow for additional acreage withdrawals as deemed necessary and/or beneficial to Stanislaus County.

FISCAL IMPACT:

The Grazing Lease Agreement with Paul Clarot requires annual payments of \$9,036. Existing language in the Agreement allows specific acreage withdrawals, and upon the effective date of the withdrawal, the payment shall be proportionately reduced on the basis of the number of acres withdrawn compared to the number of acres leased. The proposed amendment provides broader language for future acreage removals, but in this case envisions potentially removing an area of approximately 50' x 50' (2,500 square feet, or 0.06 acres) for the possible construction of a cellular tower.

(continued on next page)

BOARD ACTION AS FOLLOWS:

No. 2011-703

On motion of Supervisor Chiesa, Seconded by Supervisor Withrow

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, De Martini, and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

**Approval to Authorize the Director of Environmental Resources to Amend the Long-term Grazing Lease with Paul Clarot for approximately 753 Acres of County Owned Land Adjacent to the Fink Road Landfill**

**FISCAL IMPACT (Continued):**

At the current lease rate of \$12 per acre, removing 0.06 acres would make a negligible difference in the \$9,036 annual lease payment. In contrast, the lease payment for a cellular tower site could potentially be as high as \$10,000 per year for a minimum of five years which would more than off-set any lost revenue from the grazing lease.

**DISCUSSION:**

On November 10, 2009, the Board of Supervisors authorized staff to issue a Request for Proposals (RFP) to select a lessee interested in entering into a long-term grazing lease for approximately 753 acres of County owned land adjacent to the Fink Road Landfill (Landfill). The prior lease arrangement expired on November 3, 2009. The Department of Environmental Resources (Department) in partnership with the General Services Agency (GSA) issued the RFP for this project on November 10, 2009. The RFP period closed on January 5, 2010, and the GSA Purchasing Division conducted the opening of the proposals on the closing date.

Five (5) responses to the RFP were received; one, however, was disqualified due to incompleteness. The RFP evaluation criteria encompassed the following five (5) criteria: Proposal Quality, Financial Information, Extent and Proximity of Bidder's Base Property Resource, Qualifications and Experience in Grazing and the Beef/Dairy Cattle Industry, and Approach and Understanding including a Detailed Work/Grazing Plan. A total of three (3) evaluators from diverse areas within the Department reviewed and analyzed the RFP responses. Paul Clarot, the previous lessee, was the highest scoring bidder out of the four (4) responses that were deemed complete, and the Board of Supervisors awarded the lease to Mr. Clarot on February 16, 2010.

In April 2011, the Department was contacted by an interested cellular tower provider regarding the general area surrounding the Landfill as a possible location for improving its wireless service coverage. After canvassing the area, a portion of the grazing lease area immediately adjacent to the entrance road to the Landfill was identified as a potential candidate.

On May 4, 2011, the Department received a Letter of Intent from Complete Wireless Consulting, Inc. (Complete), representing Verizon Wireless, expressing interest in leasing land space of approximately 50' x 50' for a possible new wireless telecommunications facility. Department staff conversed with the project manager for Complete and explained that the County would be required to utilize a competitive bidding process should it decide to move forward with a project of this type. The Complete representative was aware of the necessary procurement process.

The grazing lease with Paul Clarot has a term of 15 years which expires on February 21, 2025. Also included, however, are two optional extensions for five (5) years each. Included within the existing lease, the County has the option to withdraw land as follows: 1) 175 acres per year from the North Pasture for the purpose of Landfill expansion; and/or 2) up to seven (7) acres from the North Pasture along the Landfill boundary for the purpose of constructing a Landfill access road.

**Approval to Authorize the Director of Environmental Resources to Amend the Long-term Grazing Lease with Paul Clarot for approximately 753 Acres of County Owned Land Adjacent to the Fink Road Landfill**

Following the receipt of the Letter of Intent from Complete, Department staff consulted County Counsel regarding a recommended approach for potentially leasing an area for a cellular tower at this location. County Counsel opined that the ideal first step would be to amend the existing grazing lease to allow the County to generally withdraw additional acreage as deemed necessary and/or beneficial. Currently, in each case that acreage is withdrawn, the County is required to give the lessee 90 days prior written notice, and upon the effective date of the withdrawal, the lease payment shall be proportionately reduced on the basis of the number of acres withdrawn compared to the number of acres leased. The proposed amended lease continues these same conditions if additional acreage is withdrawn (Attachment A).

Department staff spoke with Paul Clarot and he indicated that he is agreeable to the recommended change. His only request was that any construction activities be coordinated and scheduled so as to cause minimal interference with the peak grazing season of December through May. Department staff assured Mr. Clarot that this was a condition that could be stipulated in both an RFP and a cellular tower site lease if these were to occur.

**POLICY ISSUE:**

Approval of this agenda item to authorize the Director of Environmental Resources to amend the long-term grazing lease with Paul Clarot for approximately 753 acres of County owned land adjacent to the Fink Road Landfill is consistent with the Board's priorities of A Well Planned Infrastructure System and the Efficient Delivery of Public Services by creating the opportunity to increase revenue to the Fink Road Landfill Enterprise Fund through the potential establishment of a cellular tower site.

**STAFFING IMPACTS:**

There are no staffing impacts associated with this item.

**CONTACT PERSON:**

Sonya K. Harrigfeld, Director of Environmental Resources Telephone: 209-525-6770



**Department of Environmental Resources**  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358  
Phone: (209) 525-6770  
Fax: (209) 525-6773

**AMENDMENT NO. 1  
TO  
GRAZING LEASE**

This Amendment No. 1 to Grazing Lease Agreement ("Amendment No. 1") by and between the County of Stanislaus ("Lessor") and Paul Clarot ("Lessee") is made and entered into on November 15, 2011.

Whereas, the Lessor and Paul Clarot entered into a Grazing Lease Agreement dated February 22, 2010, (the Lease"), a copy of which is attached as Exhibit A; and

Whereas, this amendment is for the mutual benefit of Lessor and Lessee;

Now, therefore, the Lessor and Lessee agree as follows:

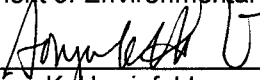

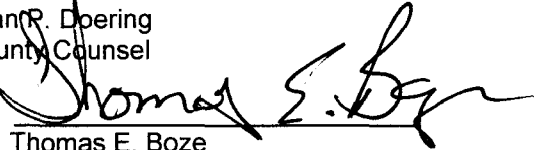
1. Section 4 of the Lease is amended to read as follows:

**"WITHDRAWAL OF LAND FROM LEASED PREMISES:** Lessor may during the term of this Lease, withdraw up to one (1) acre from the leased premises acreage that Lessor deems necessary and/or beneficial. In the instance that Lessor exercises this option, Lessor shall give Lessee ninety (90) days prior written notice of such withdrawal. Upon the effective date of the withdrawal, the payment shall be proportionately reduced on the basis of the number of acres withdrawn compared to the number of acres leased. In addition, Lessor may, in each year during the term of this Lease, withdraw from the leased premises up to one hundred seventy five (175) acres from the North Pasture for the purpose of landfill expansion. Lessor shall give Lessee ninety (90) days prior written notice of such withdrawal. Upon the effective date of the withdrawal, the payment shall be proportionately reduced on the basis of the number of acres withdrawn compared to the number of acres leased. Lessor may also, during the term of the lease, withdraw up to seven (7) acres from the North Pasture along the Fink Road Landfill boundary for the purpose of constructing a landfill access road. Lessor shall give Lessee ninety (90) days prior written notice of such withdrawal. Upon the effective date of the withdrawal, the payment shall be proportionately reduced on the basis of the number of acres withdrawn compared to the number of acres leased.

Any acreage, and up to the 175 and/or the 7 acres allowed for withdrawal, that is not withdrawn in any year, may be withdrawn, in Lessor's sole discretion, in any subsequent year, in addition to the acres that are withdrawn for that current year."

2. Except as provided in this Amendment, all other terms and conditions of the Lease remain unchanged.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, on the date and year first above written.

|   |  |
|---|--|
| <p><b>COUNTY OF STANISLAUS</b><br/>Department of Environmental Resources</p> <p>By: <br/>Sonya K. Harrigfeld<br/>Director</p> <p>"Lessor"</p> <p>Date: _____</p> | <p><b>PAUL CLAROT</b></p> <p>By: <br/>Name<br/>Title "Lessee"</p> <p>Date: <u>10-28-11</u></p> |
| <p>APPROVED AS TO FORM:<br/>John R. Doering<br/>County Counsel</p> <p>By: <br/>Thomas E. Boze<br/>Deputy County Counsel</p>                                      |  |



DEPARTMENT OF ENVIRONMENTAL RESOURCES  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358  
(209) 525-6700  
(209) 525-6773

### GRAZING LEASE

The County of Stanislaus, a political subdivision of the State of California herein called "Lessor," hereby leases to Clarot Farms, Inc., herein called "Lessee," approximately 753 acres (APN's 027-033-012, 025-012-015, 025-017-002, 025-017-013, 025-017-014, 025-017-015, 025-017-016, and 025-017-020) of rolling hills adjacent to the west of the active Fink Road Landfill, 4000 Fink Road, Crows Landing, California 95313, Salado Creek Panel, Patterson Quadrant B, herein called "the Premises," in the County of Stanislaus, State of California, more particularly depicted in Exhibit "A" attached hereto and by this reference made a part hereof, on the following terms and conditions:

1. **TERM OF LEASE.** The term of this Lease shall be for the period of fifteen (15) years, commencing at 12:01 a.m. February 22, 2010, and terminating at 11:59 p.m. February 21, 2025.
2. **PAYMENT.** Lessee agrees to pay to Lessor and Lessor agrees to accept as payment of \$12.00 per acre for the use and possession of the premises, the sum of \$9,036.00 per year, payable to the "County of Stanislaus" in advance on the first day of July of each lease year, commencing February 22, 2010 at the office of the Department of Environmental Resources - Landfill, 3800 Cornucopia Way, Suite C, Modesto, California 95358-9494.
3. **USE OF PREMISES.** The premises shall, during the term of this Lease, be used for grazing, pasturing, maintenance and production of livestock, and for uses normally incident to such purpose, and for no other purposes.

That area of the leased premises designated on Exhibit "A" as the "South Pasture" shall be available for use by the Lessee year round. Due to the stockpiling of soils from the active landfill site onto the portion of the premises designated as the "North Pasture" on Exhibit "A," the North Pasture may only be used for grazing purposes during the period of November 1 through April 30 of each year. Lessee shall remove all livestock from the North Pasture before May 1<sup>st</sup> of each year. In the event that the North Pasture becomes inaccessible to the Lessor due to inclement weather prior to November 1<sup>st</sup>, Lessor may, at its sole discretion, permit Lessee's livestock to be placed in the North Pasture prior to November 1<sup>st</sup> of any year. Grazing is subject to all easements in force.

4. **WITHDRAWAL OF LAND FROM LEASED PREMISES.** Lessor may, in each year during the term of this Lease, withdraw from the leased premises up to one hundred seventy five (175) acres from the North Pasture for the purpose of landfill expansion. Lessor shall give Lessee ninety (90) days prior written notice of such withdrawal. Upon the effective date of the withdrawal, the payment shall be proportionately reduced on the basis of the number of acres withdrawn compared to the number of acres leased. Lessor may also, during the term of the lease, withdraw up to seven (7) acres from the North Pasture along the Fink Road Landfill boundary for the purpose of constructing a landfill access road. Lessor shall give Lessee ninety (90) days prior written notice of such withdrawal. Upon the effective date of the withdrawal, the payment shall be proportionately reduced on the basis of the number of acres withdrawn compared to the number of acres leased.

Any acreage, up to the 175 and/or the 7 acres allowed for withdrawal, that is not withdrawn in any year, may be withdrawn, in Lessor's sole discretion, in any subsequent year, in addition to the acres that are withdrawn for that current year.

5. **OPERATIONS.** All operations on the premises shall be conducted by Lessee in accordance with the best course of husbandry practiced in the neighborhood. Should Lessee fail to take any action required by the best course of husbandry practiced in the vicinity of the premises or should Lessee fail to conduct any operation undertaken by him on the premises in accordance with the best course of husbandry practiced in the vicinity, Lessor may, after serving ten (10) days prior written notice of such failure on Lessee in the manner provided for service of notices in this Lease, enter the premises and take such action as Lessor deems necessary to protect its interest in this Lease in the premises.

6. **WASTE OR NUISANCE.** Lessee shall not commit or permit the commission by others of any waste on the premises; Lessee shall not maintain, commit or permit the maintenance or commission of any nuisance as defined in Section 3479, et. seq. of the California Civil Code; and Lessee shall not use or permit the use of the premises for any unlawful purposes.

7. **MAINTENANCE.** Lessee shall, at his own cost and expenses, keep and maintain the premises and improvements on the premises, in good order and repair and in as safe and clean a condition as they were when received by him from Lessor. Lessee shall keep and maintain at his sole cost and expense, all fences now upon the premises in good order and repair. Any new fences required will be at the sole expense of Lessee. All fencing repairs and new fences made by Lessee shall be in accordance with County standards and be approved by Lessor.

If the County elects to relocate its Fink Road Landfill access road onto the Premises, the County at the County's expense, shall replace fencing that is removed for the purpose of maintaining site security at the landfill.

8. **TAXES AND OTHER CHARGES.** It is understood that the property interest created by this Lease may be subject to property taxation and that Lessee shall pay all taxes, assessments or other charges levied or made as a result of Lessee's possession or use of the premises without contribution by Lessor.

9. **ENTRY BY OTHERS.** Lessor shall have the right to post signs forbidding trespass by persons other than Lessee or his employees upon the premises, and to deny entry upon the premises to unauthorized persons.

10. **ALTERATIONS.** Lessee shall not make or permit any other person to make any alterations to the premises or any improvement thereon without the prior written consent of Lessor.

11. **INSPECTIONS BY LESSOR.** Lessee shall permit Lessor's agents, representatives or employees to enter the premises at all reasonable times for the purpose of inspecting the premises to determine whether Lessee is complying with the terms of the Lease and for landfill purposes or doing other lawful acts that may be necessary to protect Lessor's interest.

Lessor may, after serving the Lessee ten (10) days prior written notice of failure to comply with the terms of the Lease in the manner provided for service of notices in this Lease, enter the premises and take such action, as Lessor deems necessary to protect its interest in this Lease in the premises.

12. **HOLD HARMLESS.** Lessee agrees to defend and indemnify and hold Lessor harmless from any and all claims, liability, loss, damage or expense resulting from Lessee's occupation and use of the premises.

13. **ASSIGNMENT.** Lessee shall not assign, sublet, encumber or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the premises without the prior written consent of Lessor. Without the consent of Lessor, any attempted assignment or transfer of this Lease or any interest therein, either by voluntary or involuntary act of Lessee or by operation of law or otherwise, shall, at the option of Lessor, terminate this Lease. The Stanislaus County Department of Environmental Resources Director is authorized to grant the consent of Lessor, as required by this paragraph.

14. **DEFAULT BY LESSEE.** All covenants and agreements contained in this Lease are declared to be conditions to this Lease. Should Lessee default in the performance of any condition or agreement contained in this Lease, Lessor may terminate and re-enter and regain possession of the premises in the manner then provided by the laws of unlawful detainer in the State of California then in effect.

15. **ATTORNEY'S FEES.** Should any litigation be commenced between the parties to this Lease concerning the premises, this Lease or the rights and duties in relation thereto, the party, Lessor or Lessee, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for the attorney's fees in such litigation which shall be determined by the court in such litigation or in separate action brought for that purpose.

16. **GOVERNING LAW AND VENUE.** This Lease shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Lease shall have venue in the County of Stanislaus, State of California.

17. **NOTICES.** Notices desired or required to be given by this Lease, or by any law now or hereinafter in effect, may be given by enclosing the same in a sealed envelope, addressed to the party for whom intended and by depositing such envelope, with postage prepaid, in the United States Post Office or any substation thereof, or any public letter box. Any such notice and the envelope containing the same shall be addressed to Lessee as follows:

Clarot Farms, Inc.  
7260 Carpenter Road  
Modesto, CA 95358  
Attn: Paul Clarot

Or such other place as may hereinafter be designated in writing by Lessee and the notices and envelopes containing the same to Lessor shall be addressed as follows:

Stanislaus County  
Department of Environmental Resources  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358  
Attn: Susan M. Garcia

or such other place as may hereinafter be designated in writing by Lessor.

18. **BINDING ON HEIRS.** This Lease shall be binding on and shall enure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, but nothing in this paragraph shall be construed as a consent by Lessor to any assignment of this Lease or any interest therein by Lessee except as provided in **ASSIGNMENT.**

19. **RENEWAL.** Provided that no material Default has occurred and is continuing under the Lease at the time the option is exercised, Lessee shall have **two (2)** options to renew this Lease for an additional period of five (5) years each (respectively, the "First Extension Term," and the "Second Extension Term" collectively, the "Extension Terms") from the expiration of the term of this Lease on the same terms, covenants and conditions as herein contained or any other terms mutually agreed to by both parties. If the renewal of this Lease is agreeable to both parties, the parties must exercise this renewal provision, if at all, in writing at least two (2) months prior to the termination of the existing Lease period.

20. **MODIFICATION.** Lessor may modify the method, amount, or rate of consideration effective on each fifth year anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth year anniversary it may do so effective any one (1) of the next five (5) year anniversaries following such fifth year anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth year anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days notice prior to the effective date.

21. **TERMINATION.** Lessor may terminate this Lease for any reason at their sole discretion with 30-day notice.

22. **TIME OF ESSENCE.** Time is expressly declared to be the essence of this Lease.

23. **WAIVER.** The waiver of any breach of any of the provisions of this Lease by Lessor shall not constitute a continuing waiver or a waiver of any subsequent breach by Lessee either of the same or of another provision of this Lease.

24. **COMMUNICATION.** Lessee shall work and communicate closely with the owner or managers of leased land. This would include, but is not limited to emergency responses concerning cattle, public concerns, contract needs, damage control and continuing good relations with staff.

25. **STEWARDS OF THE LAND.**

- a. Being good stewards of the land would include, but not be limited to, issues such as not overgrazing, herd management and landfill needs that successfully co-exist with the grazing lands.
- b. Lessee shall exercise good grazing practices to avoid overgrazing of the Lease Premises. Of primary importance to the County is the long-term health of the grazing pastures and that no overgrazing occurs. Lessor may at any time during the Lease term, make an analysis of forage conditions utilizing accepted range management practices. Such analysis shall indicate grazing conditions and may include a determination of forage levels, at various times, during the year. Lessor shall have the right to require Lessee to move cattle to or from any area of the Lease Premises where any overgrazing situation may exist for a period of time consistent with the grazing analysis. If supplemental feeding is utilized, distribution of feed will be such that livestock are not concentrated so as to cause damage to vegetation and soil and Lessee shall only allow supplemental feeding of certified weed-free feed.



- c. Lessee must abide by all easements.
- d. Lessee must properly dispose of dead animals within 48 hours of discovery or notification.
- e. The County is not responsible for any animal escapes from property or any subsequent loss of animals or incidents and damages that occur due to the escape.
- f. Lessee shall not keep trailers for caretaker(s) of livestock on Premises.
- g. Lessee shall perform rodent control on the Premises at their own cost. Lessee shall consult with the Stanislaus County Department of Agriculture for proper rodent abatement procedure/materials.

26. **GOOD NEIGHBOR.** Being a good neighbor with adjacent land owners and/or lease holders would include, but not be limited to, frequency of fence line inspection and repairs, the frequency of herd counts and inspections, and herd management practices.

27. **LESSEE'S REPSONSIBILITY.** The Lessee shall be required to pay all costs and expenses relating to grazing the property, pasturing, maintenance and production of livestock, and for uses normally incident to such purpose, including all operation and maintenance costs, repair costs, water, utilities, taxes, labor, equipment costs, fencing, no trespassing signs, etc. Lessee at his own expense may set up a portable corral on the Premises, with proper approval from the County.

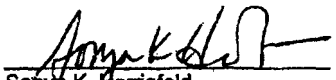
28. **WATER.** Lessee at his own expense may drill a well for water or develop a water system with proper approval from the County. Any well drawn is to be used only for the purposes of watering livestock consistent with the grazing purposes of the lease. No water drawn from the well is to be sold, leased or assigned. Any well drawn belongs to the County and any water rights remain the property of the County.

EXECUTED ON \_\_\_\_\_ at Modesto, California.

**STANISLAUS COUNTY:**

LESSOR:

LESSEE:

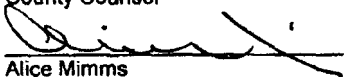
  
 Sonya K. Harrigfeld  
 Department of Parks and Recreation



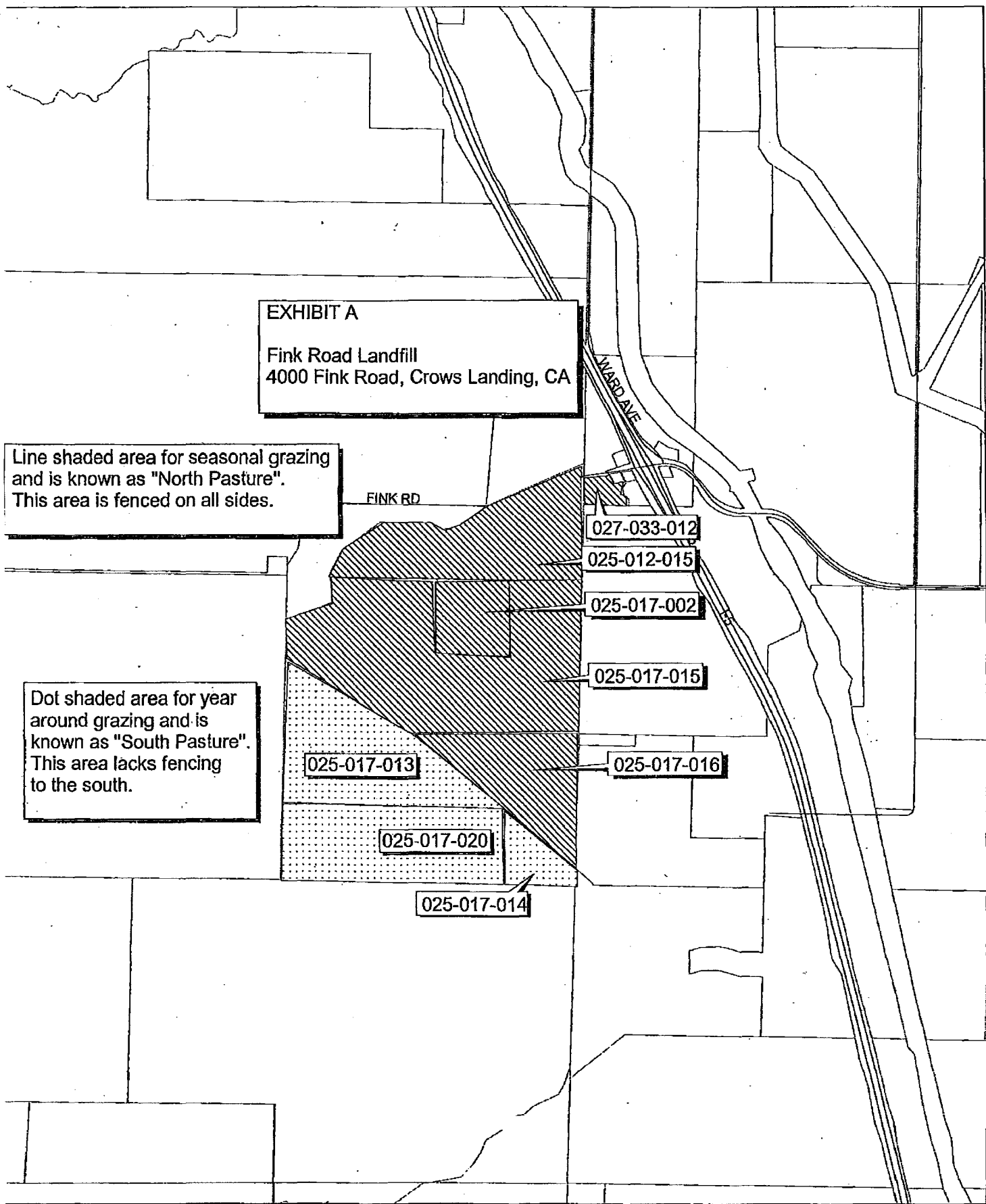
2-19-10  
 Date

2-3-10  
 Date

**APPROVED AS TO FORM:**

John P. Doering  
 County Counsel  


Alice Mimms  
 Deputy County Counsel  
2/2/10  
 Date



**EXHIBIT A**  
 Fink Road Landfill  
 4000 Fink Road, Crows Landing, CA

Line shaded area for seasonal grazing and is known as "North Pasture". This area is fenced on all sides.

Dot shaded area for year around grazing and is known as "South Pasture". This area lacks fencing to the south.



# Fink Road Landfill Grazing Map

1088 0 1088 2176 Feet

This map is for display purposes only.



Map printed: 2/2/2010

