

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

DEPT: Environmental Resources *SJA*

BOARD AGENDA # *B-1

Urgent Routine

AGENDA DATE February 16, 2010

CEO Concur with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

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

STAFF RECOMMENDATIONS:

Approval to authorize the Director of Environmental Resources, or her designee, to execute a long-term grazing Lease with Paul Clarot for approximately 753 acres of County owned land adjacent to the Fink Road Landfill.

FISCAL IMPACT:

This lease will result in additional income in the amount of \$9,036 annually for this 15-year term. This amount could be adjusted downward should the County exercise its option to remove some portions of the available land from grazing if needed for landfill operations.

BOARD ACTION AS FOLLOWS:

No. 2010-079

On motion of Supervisor DeMartini, Seconded by Supervisor Monteith
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, DeMartini, and Chairman Grover

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

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

Page 2

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. 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. GSA Purchasing Division issued a letter of intent to award to Mr. Clarot, and contract terms have been agreed upon. The lease Agreement has been reviewed and approved by County Counsel and is included as Attachment "A."

Paul Clarot has demonstrated experience with Stanislaus County as the prior lease holder from March 15, 2003, until its recent expiration. The RFP stipulated that the minimum amount of rent to be offered would be \$5,000 annually and Mr. Clarot offered \$12 per acre or \$9,036 annually should the full 753 acres remain available. This lease was intended to be a long-term lease, therefore, it will have a 15-year term expiring in February 2025, and has the option of two five-year extensions at the end of this period.

POLICY ISSUE:

The Board of Supervisors should determine if awarding this long-term grazing lease for County owned land adjacent to the Fink Road Landfill is consistent with its priorities of a strong agricultural community/heritage and a well-planned infrastructure system.

STAFFING IMPACTS:

There are no staffing impacts associated with this item.

CONTACT PERSON:

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



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 1st of each year. In the event that the North Pasture becomes inaccessible to the Lessor due to inclement weather prior to November 1st, Lessor may, at its sole discretion, permit Lessee's livestock to be placed in the North Pasture prior to November 1st 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

 Date

 Date

APPROVED AS TO FORM:

John P. Doering
 County Counsel


 Alice Mimms
 Deputy County Counsel

2/2/10
 Date

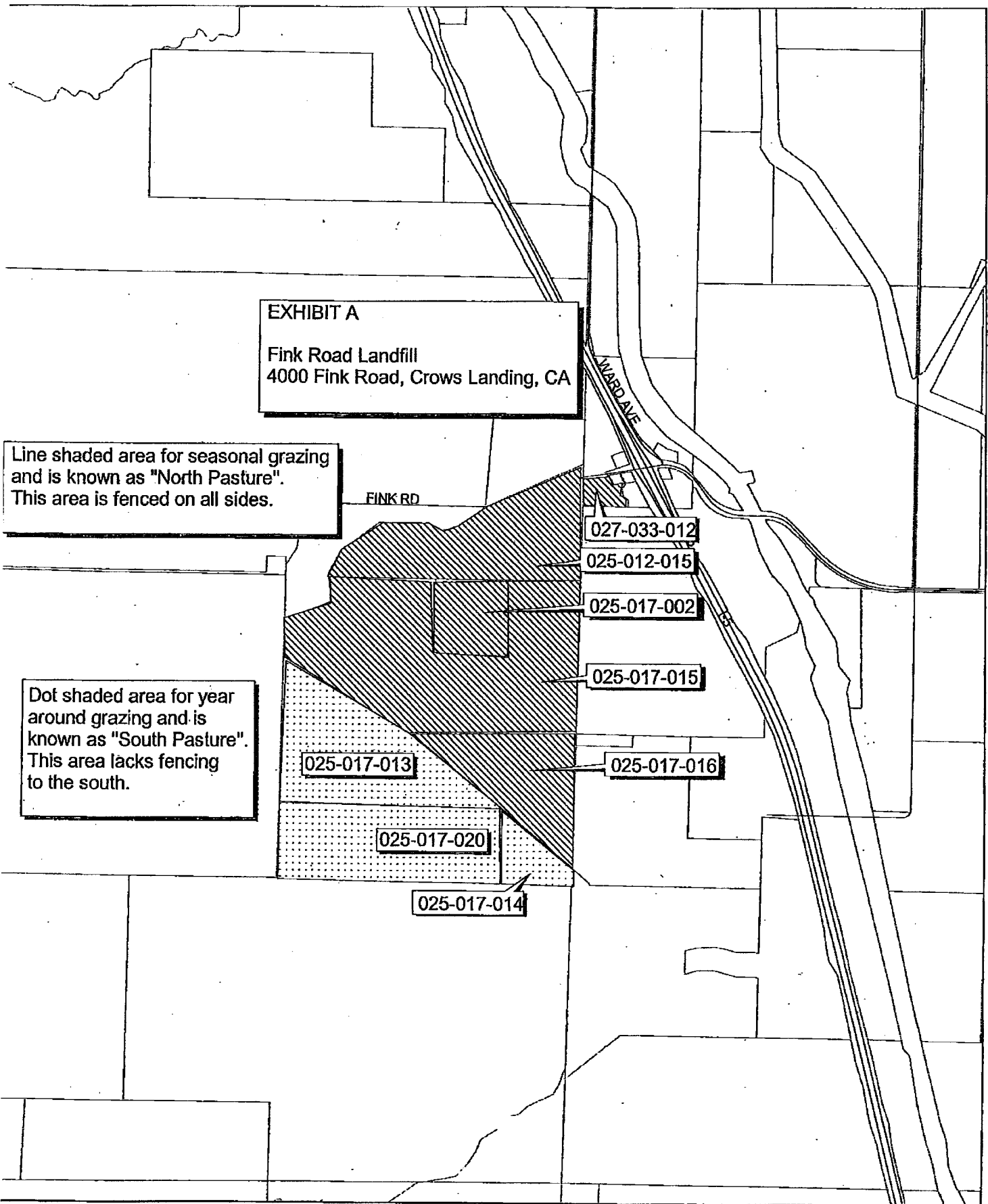


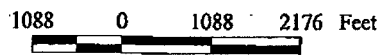
EXHIBIT A
 Fink Road Landfill
 4000 Fink Road, Crows Landing, CA

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



This map is for display purposes only.



Map printed: 2/2/2010



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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.
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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.

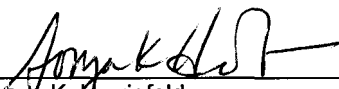
27. **LESSEE'S REPSONSIBILITY.** The Lessee shall be required to pay all costs and expenses relating to grazing the property, pasturing, maintenance and production of livestock, and for uses normally incident to such purpose, including all operation and maintenance costs, repair costs, water, utilities, 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:




 Sonya K. Harrigfeld
 Department of Parks and Recreation

 2-19-10

 Date

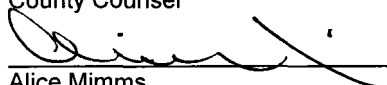
LESSEE:



 2-3-10

 Date

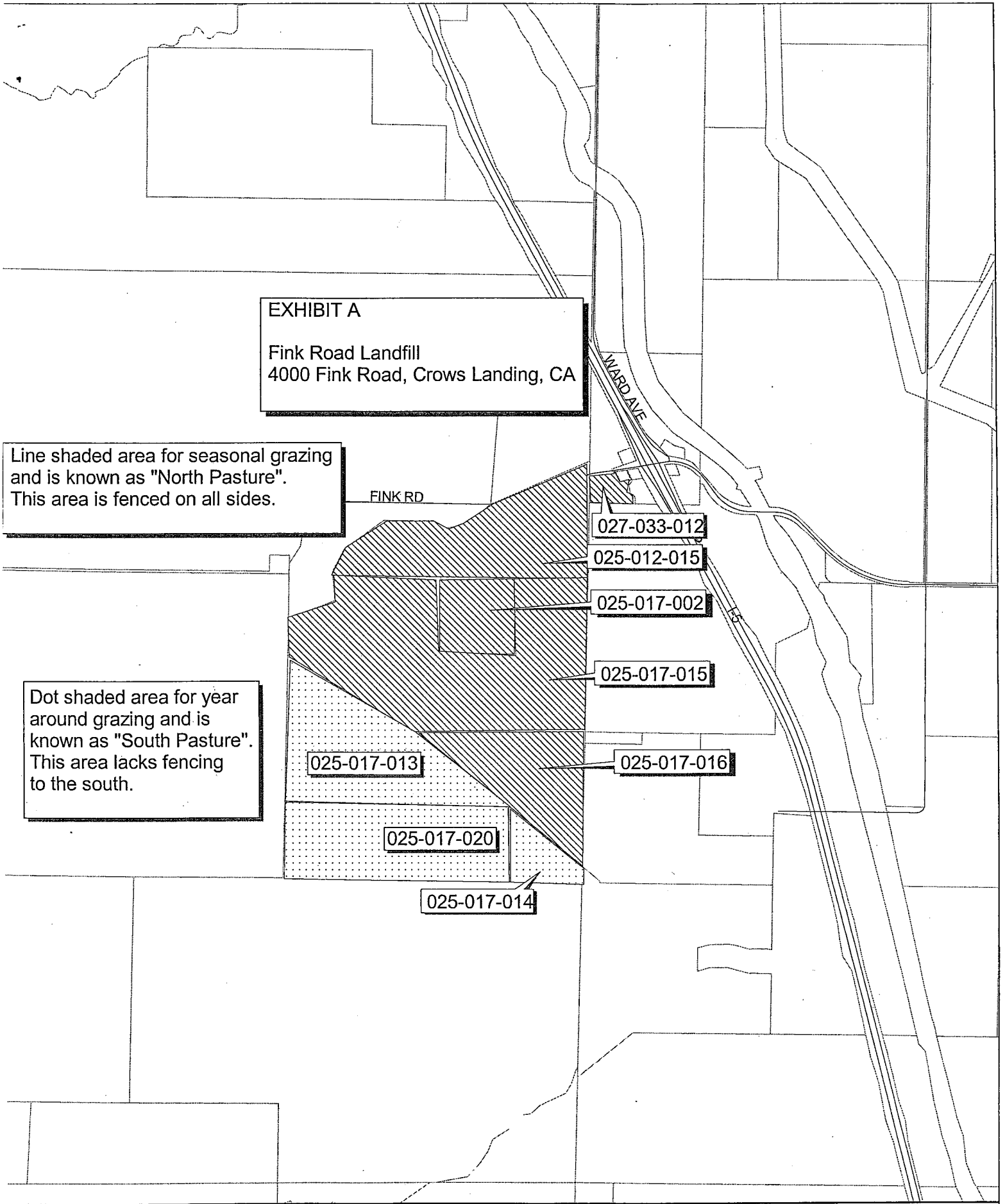
APPROVED AS TO FORM:

John P. Doering
 County Counsel


 Alice Mimms
 Deputy County Counsel

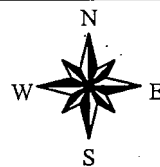
 2/2/10

 Date



Fink Road Landfill Grazing Map

1088 0 1088 2176 Feet



Public Works
Stanislaus County



This map is for display purposes only.

Map printed: 2/2/2010