

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

DEPT: Environmental Resources

BOARD AGENDA # \*B-4

Urgent  Routine

AGENDA DATE November 3, 2009

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval of an Agreement to Lease Real Property for Dry-land Farming on Approximately 700 Acres of Property Adjacent to the Fink Road Landfill

STAFF RECOMMENDATIONS:

1. Approve the sample Agreement to lease real property for dry-land farming on approximately 700 acres of property adjacent to the Fink Road Landfill in Crows Landing, California, for the period of November 6, 2009, to November 30, 2010.
2. Authorize the Director of the Department of Environmental Resources, or her designee, to award and execute the lease Agreement on or after November 6, 2009, at 4:30 p.m., to the party whose offer is most advantageous to Stanislaus County.

FISCAL IMPACT:

This lease will result in additional income to the Department of Environmental Resources Fink Road Landfill Enterprise Fund during its approximate 12-month term. The exact amount of income is yet to be determined, and is dependant upon adequate rainfall, but is estimated to be approximately \$50,000. A breakdown of the income levels proposed to be received are follows: One-half of the rent is proposed to be due upon planting, by November 30, 2009, and one-half is due by May 30, 2010, providing that a harvestable crop of at least 24" in height is received.

(Continue on next page)

BOARD ACTION AS FOLLOWS:

No. 2009-750

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

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

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 of an Agreement to Lease Real Property for Dry-land Farming on Approximately 700 acres of Property Adjacent to the Fink Road Landfill

**FISCAL IMPACT (CONTINUED):**

If the harvestable crop is between 12" and 24", an additional one-quarter will be due by May 30, 2010. If less than 12" in crop height is received because of inadequate rainfall, then no additional monies will be due.

**DISCUSSION:**

On November 3, 2003, Stanislaus County entered into a 1,040 acre farm lease with Lent-Burden Farming, Inc. (LBFI), for land adjacent to the Fink Road Landfill, commonly referred to by the County as the "I5 Ranch." Since 2005, LBFI has sub-leased approximately 700 of these acres for dry land farming purposes where oats and barley have been grown. Given that the lease with LBFI expires on November 3, 2009, the County wishes to continue farming this area so as not to lose the accompanying revenue. Because of the County's recent issuance of a Request for Qualifications for a potential solar farm ground lease on property inclusive of this area, a one-year term only is possible at this time. Staff has recently learned that the window of opportunity for planting oats/barley each year is generally October 15th to November 15<sup>th</sup>, with rainfall being a major factor. This leaves the timeline for planting and securing a crop for 2010 extremely short; too short to complete the standard bidding procedure.

Government Code (GC) Section 25537 requires a specific 15-day noticing procedure when public agencies enter into a lease outside the bidding process. Pursuant to these requirements, a Notice of Intent to lease real property for dry land farming was posted in the Office of the Clerk of the Board on October 22, 2009, in accordance with the aforementioned GC Section. The notice described the property proposed to be leased, the terms of the lease, the location where offers to lease the property will be accepted, the location where the lease will be executed, and any County officer authorized to execute the lease (see Attachments "A" and "B"). The location where the lease will be executed is: 3800 Cornucopia Way, Suite C, Modesto, CA.

If the Board of Supervisors approves staff recommendations, an award will be made to the party whose offer is most advantageous to the County, with price and all other factors considered, consistent with the sample lease Agreement included herein. The amount of rent being offered, although a consideration, will not be the sole determining factor. Other considerations may include experience, financial strength and capacity, and the ability to meet the County's insurance requirements.

**POLICY ISSUE:**

The Board of Supervisors should determine if approving an Agreement to lease real property for dry-land farming on approximately 700 acres of property adjacent to the Fink Road Landfill is consistent with its priorities of a strong agricultural community/heritage and a well-planned infrastructure system.

Approval of an Agreement to Lease Real Property for Dry-land Farming on Approximately 700 acres of Property Adjacent to the Fink Road Landfill

**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  
Administration

BOARD OF SUPERVISORS

Sonya K. Harrigfeld  
Director

Jami Aggers  
Assistant Director

2009 OCT 22 P 4: 54

3800 Cornucopia Way, Suite C, Modesto, CA 95358-9494  
Phone: 209.525.6700 Fax: 209.525.6773

**NOTICE OF INTENT TO LEASE AGRICULTURAL  
PROPERTY  
I5 and Fink Road  
Stanislaus County, CA  
October 22, 2009**

**STANISLAUS COUNTY HEREBY SERVES NOTICE OF ITS INTENT** to offer for lease real property described as follows: approximately 700 acres of unirrigated real farming property west of Interstate 5 near Fink Road, Crows Landing, California, on portions of the following Assessor's Parcel Numbers where the farm property is not currently planted in almond trees: 025-012-033, 025-012-031, 025-012-016, 025-012-017, and 027-033-012, in the State of California, more particularly depicted in Exhibit "A" attached hereto.

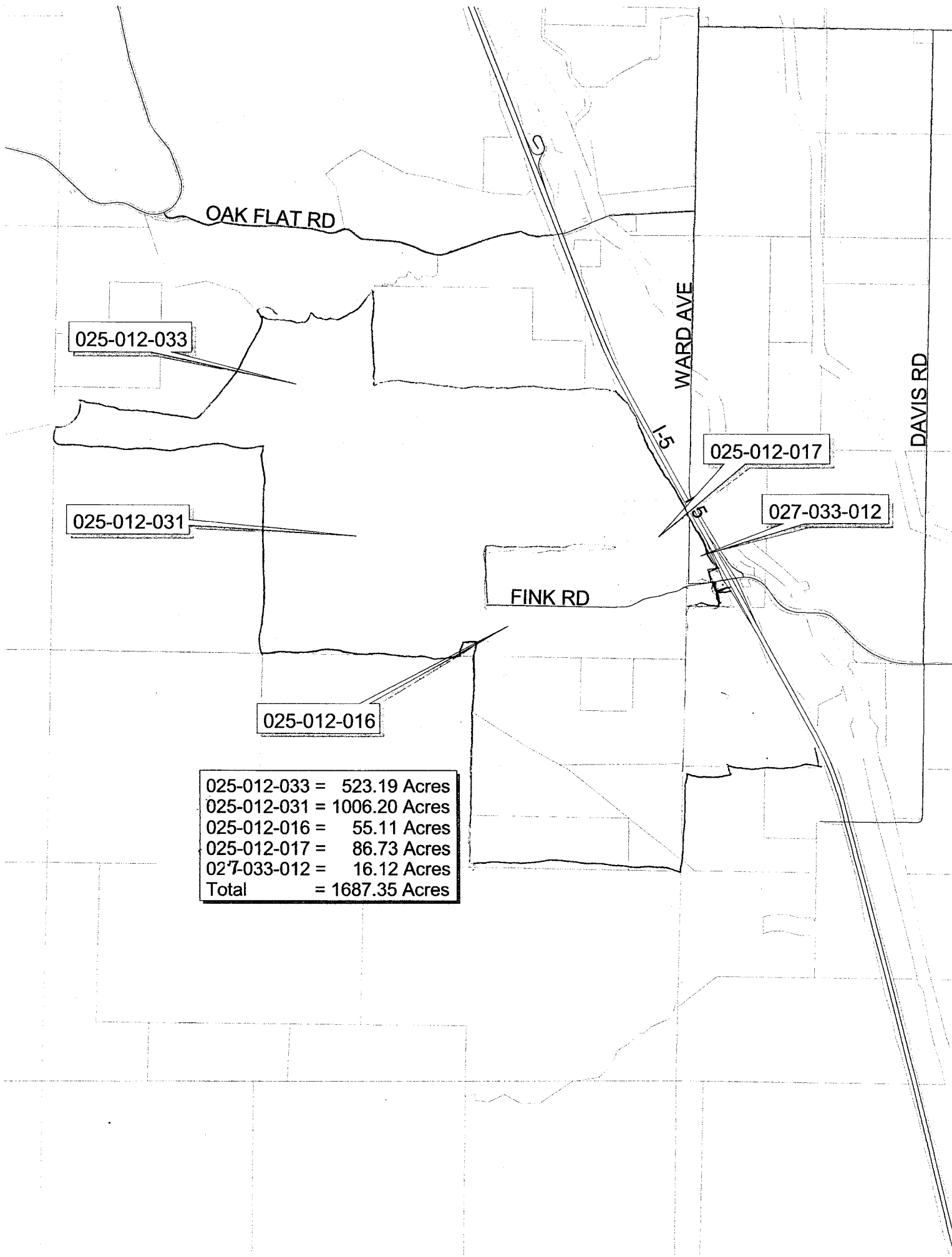
The terms of the lease would be as shown on Exhibit "B."

The location where offers to lease the property will be accepted: Stanislaus County Department of Environmental Resources, Attention: Jami Aggers, 3800 Cornucopia Way, Suite C, Modesto, CA, 95358, phone: (209) 525-6700, [jaggers@envres.org](mailto:jaggers@envres.org) no later than 4:30 p.m. on Friday, November 6, 2009.

The County officer authorized to execute the lease: Either the Stanislaus County Board of Supervisors Chairman, the Stanislaus County Chief Executive Officer, or the Stanislaus County Director of Environmental Resources or her designee, as determined by the Board of Supervisors.

Questions can be directed to Jami Aggers at the above mentioned address/phone/email

EXHIBIT A



025-012-033	=	523.19 Acres
025-012-031	=	1006.20 Acres
025-012-016	=	55.11 Acres
025-012-017	=	86.73 Acres
027-033-012	=	16.12 Acres
Total	=	1687.35 Acres



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

## FARM LEASE

The County of Stanislaus, a political subdivision of the State of California herein called "Landlord," hereby leases for agricultural purposes to Germano & Jacinta Soares Dairy, herein called "Tenant," approximately 700 acres of unirrigated real property west of Interstate 5 near Fink Road, Crows Landing, California, on portions of the following APNs where the property is not currently planted in almond trees: 025-012-033, 025-012-031, 025-012-016, 025-012-017, and 027-033-012, with all improvements thereon, herein called "Property", 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 commencing at 12:01 a.m. **November 9, 2009**, and terminating at 11:59 p.m. **November 30, 2010**.
2. **ADDITIONAL LEASE TERMS:** Provided that no material Default has occurred and is continuing under the Lease at the time the option is exercised, Tenant shall have the option to renew for the term of one (1) year 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. Amendments and alterations to this lease shall be in writing and signed by both parties.
3. **EARLY TERMINATION:** prior to the end of the lease term, the Landlord may terminate the lease on all or part of the Property. If the Landlord elects to terminate the lease on all or part of the Property, the Landlord shall reimburse Tenant all actual out of pocket costs relating to the Property subject to termination, plus 15% of said costs, for the crop year in which termination occurs.
4. **NO PARTNERSHIP:** This lease shall not be deemed nor is it intended to give rise to a partnership relationship between the Landlord and Tenant.
5. **PAYMENT:** Tenant agrees to pay the Landlord and Landlord agrees to accept as payment for the use and possession of the said Property the sum of \$40,000.00 per year, to be paid in advance and as outlined below, at the office of the Stanislaus County Department of Environmental Resources, 3800 Cornucopia Way, Suite C, Modesto, California 95358.

Payments shall be made as follows:

- A. The first Ten Thousand (\$10,000.00) of the annual payment shall be due November 30, 2009, the second Ten Thousand (\$10,000.00) of the annual payment shall be due on January 31, 2010.
- B. The remainder of the annual payment shall be due as follows:
  - If at the end of the growing season, the crop is above 24" tall, the remainder of the annual payment (\$20,000.00) shall be due, in full, when the crop is harvested, but no later than June 15, 2010.
  - If at the end of the growing season, the crop is 12" – 24" tall, one half of the remaining annual payment (\$10,000.00) is due when the crop is harvested but not later than June 15, 2010.

- If at the end of the growing season, the crop is less than 12" tall, no payment of the remaining annual payment is due to the Landlord, at the time the crop should have been harvested.

The above rent was calculated as follows:

Approx. 700 acres of flat and hilly ground at \$57.14 per acre per year

Total Lease Rate: \$57.14 per acre per year

6. **LATE RENT:** If rent is not paid when due, Tenant agrees to pay interest on the amount of unpaid rent at the rate of 10% per annum from the due date until paid.

7. **USE OF PREMISES.** The Property is leased to Tenant for the purpose of planting, growing and harvesting of crops and for no other purpose.

8. **CONDITION OF THE PROPERTY:** Tenant hereby accepts the property "as is" and in the condition existing as of the Commencement Date of the date that Tenant takes possession of the Property, whichever is earlier, and subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Property, and any covenants or restrictions of record. Tenant has determined that the property is acceptable for Tenant's use and Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Property; the condition of the property; the soil or the corps; the productivity of the corps; the cost of production; the number of acres in production; its suitability or fitness for the conduct of Tenant's business or for any other purpose.

9. **AGRICULTURAL PRACTICES:** Tenant shall follow the agricultural practices that are generally recommended for and that are the best adapted to this type of farm and appropriate for the locality. Throughout the lease term, Tenant shall keep and maintain the Property in approximately the same condition as it is at the commencement of the lease term, normal aging of the trees and wear and tear excepted. The Tenant shall perform weed abatement and erosion control on any un-farmed areas using commercially reasonable means, including but not limited to planting and harvesting dry land crops.

10. **COSTS OF OPERATIONS:** Tenant shall pay for all costs associated with the Property, including but not limited to labor, utilities, water, power, machinery, equipment, fertilizer, insecticides necessary and appropriate to operate and manage the Property.

11. **WEEDS:** Tenant shall manage weeds to prevent reseeding.

12. **INSECTICIDES; PESTICIDES:** Tenant shall store and use pesticides, fertilizers and other chemicals, and dispose of containers in accordance with state and federal laws and regulations. Tenant shall maintain and furnish to Landlord at Landlord's request a field-by-field record of the amount, kind and dates of applications, of fertilizers and pesticides.

13. **UTILITIES:** Tenant shall pay for all water, sewer, gas, electricity, telephone, and all other services supplied to the Property.

14. **MAINTENANCE AND REPAIRS:** Tenant shall keep in good order, condition and repair the Property, including all fencing, drains, and all other improvements to the Property. Tenant shall, at his own cost and expense, keep the Property in as safe and clean a condition as it was when received by him from the Landlord. Tenant expressly waives the benefits of any statute now or hereafter in effect that would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Property in good order, condition and repair. Notwithstanding the forgoing provisions, the Landlord may, in its discretion, approve reimbursements to Tenant, or offsets to any payment owed by Tenant to the Landlord under the Lease, for capital improvements made to the Property or facilities that are or would remain permanent fixtures to the Property. Prior to commencing any capital improvements, Tenant shall provide the Landlord with work plans and a detailed cost estimate for the work to be performed. The Tenant shall not undertake any

work on capital improvements until the Landlord has agreed to the work plan and agreed to reimburse the Tenant for the capital improvements.

15. **COMPLIANCE WITH LAWS AND REGULATIONS:** Tenant, at Tenant's expense shall comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements (including but not limited to any requirements of the Americans with Disabilities Act) in effect during the term or any part of the term hereof, regulating the use by Tenant of the Property.

16. **WASTE OR NUISANCE:** Tenant shall not commit or permit the commission by others of any waste on the Property; Tenant shall not maintain, commit or permit the maintenance or commission of any nuisance as defined in Section 3479 of the California Civil code; and Tenant shall not use or permit the use of the Property for any unlawful purpose.

17. **TAXES AND OTHER CHARGES:** It is understood that the property interest created by this lease may be subject to property taxation and that Tenant will be subject to the payment of property taxes levied on such interest. Tenant shall pay all taxes (including property taxes), assessments or other charges levied or made as a result of Tenant's possession or use of the Property without contribution by Landlord.

18. **GRAZING LEASE:** Tenant acknowledges that the Landlord leases land adjacent to the Property being farmed by Tenant, and Tenant agrees to cooperate with the grazing and/or farming lease tenant so that neither farming operations nor grazing operations interfere with the other. Tenant further agrees that the Landlord is not responsible for any damage to or interference with farming operations under this Lease.

19. **ENTRY BY OTHERS:** Tenant shall have the right to post signs forbidding trespass by persons other than Tenant or his employees upon the Property, and to deny entry upon the Property to unauthorized persons.

20. **INSURANCE:** Tenant shall obtain the following insurance:

a. **GENERAL LIABILITY:** \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project, or the general aggregate limit shall be twice the required occurrence limit.

b. **AUTO LIABILITY:** Owned/Nonowned automobile liability insurance providing combined single limits covering bodily injury liability with limits or no less than \$100,000 per accident, and providing property damage liability of no less than \$100,000 per accident.

c. **WORKERS COMPENSATION:** Workers' Compensation insurance as required by the Labor Code of the State of California.

d. **DEDUCTIBLES:** Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by Landlord. At the option of the Landlord, either: the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds; or the Tenant shall provide a bond, cash or letter of credit guaranteeing payment of the self-insured retention, deductible, or payment of any and all costs, losses, related investigations, claim administration and defense expenses.

e. **ENDORSEMENTS:** The insurance policies are to contain, or be endorsed to contain, the following provisions:

i. **GENERAL LIABILITY:** Tenant shall provide a separate endorsement naming Landlord and Landlord's officers, officials, employees, and volunteers as additional insureds. The coverage shall contain no special limitations on the scope of protection afforded to the Landlord or Landlord's officers, officials, employees, or volunteers.



ii. **PRIMARY COVERAGE:** The tenant's insurance coverage shall be primary insurance over and other insurance held by the Landlord and Landlord's officers, officials, employees and agents. Any insurance or self-insurance maintained by the Landlord or Landlord's officers, officials, employees, or agents shall be excess of the Tenant's insurance and shall not contribute with Tenant's insurance.

iii. **WORKERS COMPENSATION – SUBROGATION:** The Tenant's insurer shall agree to waiver all rights of subrogation against the Landlord and Landlord's officers, officials, employees, and volunteers for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Tenant.

f. **ALL INSURANCE:**

i. Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) day's prior written notice by certified mail, return receipt requested, has been given to Landlord.

ii. Insurance shall be placed with a California admitted insurers (licensed to do business in California) or other insurer as approved by the Landlord. All insurance policies shall have a Best's rating of no less than B+:VII or as approved by the Landlord.

iii. Prior to the effective date of the Lease, Tenant shall furnish Landlord with certificates of insurance and with original endorsements effecting coverage required by this section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements shall be received and in Landlord's sole and absolute discretion, approved by Landlord before any other term or condition of this Agreement is performed by Tenant. Landlord the right to require complete copies of all required insurance policies and endorsements, at any time.

21. **INDEMNIFICATION:** Tenant shall indemnify, defend and hold harmless the Landlord, its officers, employees and agents, from any claims liability, causes of action or costs arising from or related to the negligence or wrongful acts or omissions of Tenant, its officers, employees and agents.

22. **ALTERATIONS:** Tenant shall not make or permit any other person to make any alterations to the Property or any improvement thereon without the prior written consent of the Landlord. Tenant shall not erect or permit to be erected any permanent structure to the Property. Tenant shall not remove any trees or structures located on the Property without the prior written consent of Landlord.

23. **EROSION:** Tenant shall control soil erosion; keep in good repair all terraces, ditches, inlets and outlets of drains preserve all established watercourses and irrigation systems; and refrain from any practices which will injure such structures or systems.

24. **DAMAGES:** At the termination of the lease, Tenant shall pay to Landlord reasonable compensation for any damages to the property caused by Tenant or its invitees, agents, or employees, excepting ordinary wear and tear or depreciation.

25. **INSPECTION BY LANDLORD:** Tenant shall permit Landlord, its employees, agents, or representatives to enter the Property at all reasonable times for the purpose of inspecting the premises to determine whether Tenant is complying with the terms of the Lease and for Landlord purposes or doing other lawful acts that may be necessary to protect Landlord's interest.

Landlord may, after serving the Tenant 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 Landlord deems necessary to protect its interest in this Lease in the premises.

26. **ASSIGNMENT:** Tenant shall not assign, sublet, encumber or otherwise transfer this lease, or any right or interest in the Property, without the prior written consent of Landlord. Without the consent of Landlord, any attempted assignment or transfer of this lease or any interest therein, either by

voluntary or involuntary act of Tenant, or by operation of law or otherwise, shall, at the option of Landlord, terminate this lease. The Stanislaus County Department of Environmental Resources Director is authorized to grant the consent of Landlord, as required by this paragraph.

27. **DEFAULT BY TENANT:** All covenants and agreements contained in this lease are declared to be conditions to this lease. Should Tenant default in the performance of any condition or agreement contained in this lease, Landlord may terminate and re-enter and regain possession of the Property in the manner then provided by the laws of unlawful detainer of the State of California then in effect.

28. **NOTICES:** All notices required or permitted by this lease or by law to be served on or given to either party hereto by the other party, shall be in writing and personally delivered to the party to whom it is directed, or in lieu of personal service when deposited in the United States mail address as follows:

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

Tenant - Germano & Jacinta Soares Dairy  
9201 Hilmar Road  
Turlock, CA 95380

29. **FAILURE TO VACATE:** Tenant agrees to vacate Property at the expiration of the lease term or upon the termination of the lease agreement, whichever occurs first. If Tenant fails to vacate as herein provided, Tenant agrees that Landlord, or its authorized agents, may enter upon the leased Property and remove all personal property therefrom and in this event, Tenant waives any and all claims for damages against Landlord, its agents or employees. Nothing herein shall be deemed a waiver of any rights of Landlord to demand and obtain possession of said Property in accordance with law in the event of a violation of Tenant part of any of the terms or conditions hereof.

30. **TIME OF ESSENCE:** Time is expressly declared to be the essence of this lease.

31. **WAIVER:** The waiver of any breach of any of the provisions of this lease by Landlord shall not constitute continuing waiver or a waiver of any subsequent breach by Tenant either of the same or of another provision of this lease.

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

33. **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, Landlord or Tenant, 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.

34. **GOVERNING LAW AND VENUE.** This Lease shall be deemed to be made under, and shall be governed by the 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.

35. **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 Landlord to any assignment of this Lease or any interest therein by Tenant except as provided in **ASSIGNMENT.**

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

37. **STEWARDS OF THE LAND.**

- a. Being good stewards of the land would include, but not be limited to, issues such as farm management and landfill needs that successfully co-exist with the agricultural lands.
- b. Tenant shall exercise good farming practices.

38. **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 and farm management practices.

EXECUTED ON November 9, 2009 at Modesto, California.

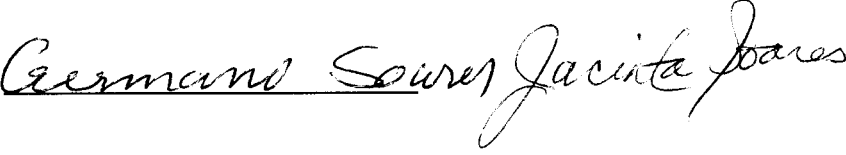
STANISLAUS COUNTY:

GERMANO & JACINTA SOARES DAIRY

LANDLORD:

TENANT:

  
 \_\_\_\_\_  
 Sonya K. Harrigfeld  
 Department of Environmental Resources

  
 \_\_\_\_\_  
 Germano Soares Jacinta Soares

\_\_\_\_\_  
Date

11-9-09  
 \_\_\_\_\_  
 Date

APPROVED AS TO FORM:

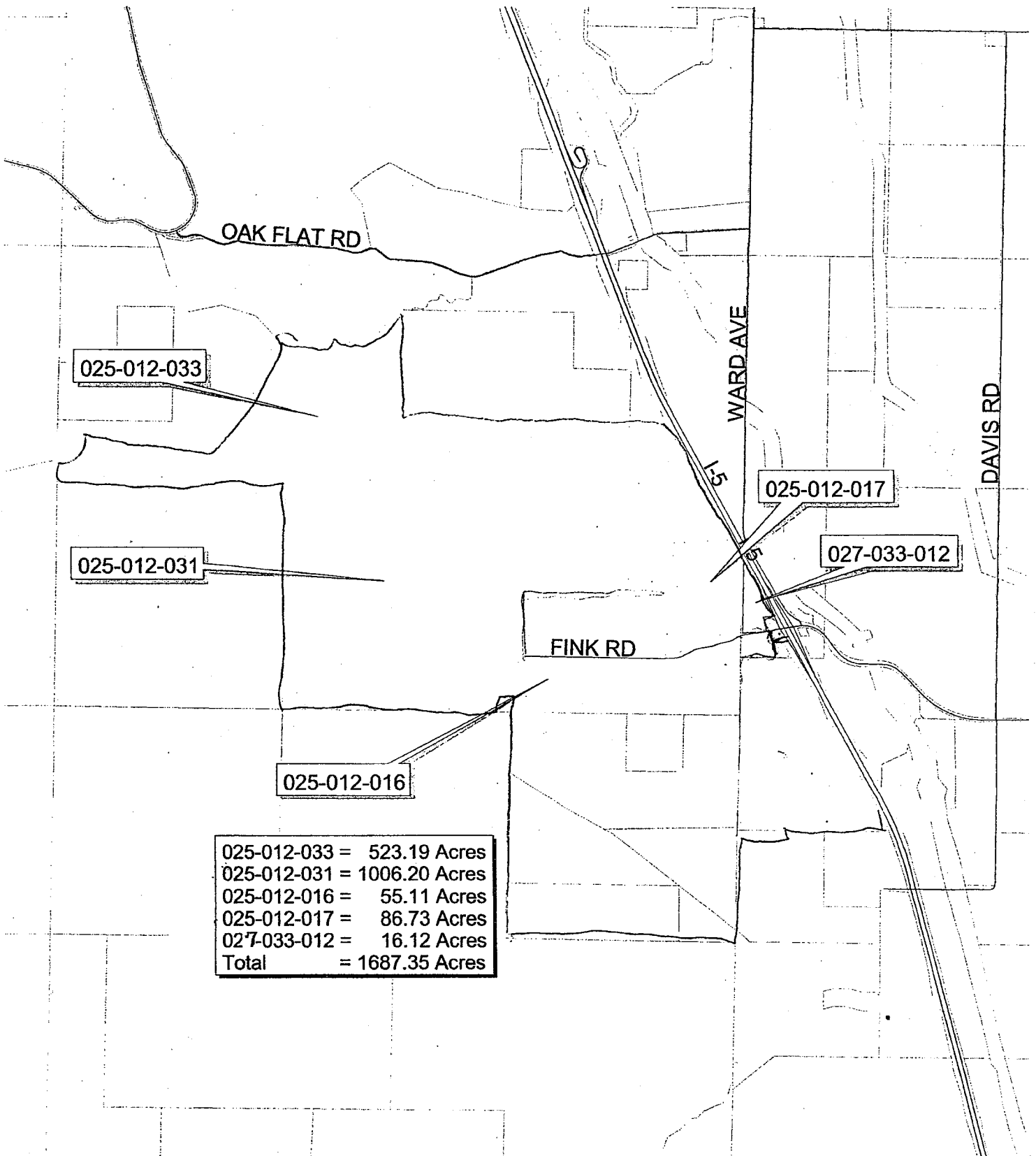
John P. Doering  
County Counsel

  
 \_\_\_\_\_  
 Thomas E. Boze  
 Deputy County Counsel

\_\_\_\_\_  
Date

EXHIBIT A

MAP





BOARD OF SUPERVISORS

2010 DEC 15 A 11: 39

AMENDMENT NO. 1  
TO  
FARM LEASE

Agreement No. A102109

DEPARTMENT OF ENVIRONMENTAL RESOURCES  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358  
Phone: (209) 525-6770  
Fax: (209) 525-6773

This Amendment No. 1 to Farm Lease Agreement ("Amendment No. 1") by and between the County of Stanislaus ("Landlord") and Germano & Jacinta Soares Dairy ("Tenant") is made and entered into on December 6, 2010.

Whereas, the Lessor and Germano & Jacinta Soares Dairy entered into a farming Lease Agreement dated November 9, 2009, (the Lease"), a copy of which is attached as Exhibit A; and

Whereas, the initial term of this lease shall be for the period commencing at 12:01 a.m. on November 9, 2009, and terminating at 11:59 p.m. on November 30, 2010; and

Whereas, section 2 provides for this agreement to be renewed at the option of the Parties for a period of one (1) year from the expiration of the original term and on the same terms and conditions; and

Whereas, this amendment is for the mutual benefit of Landlord and Tenant;

Whereas, on or about December 8, 2009, the Landlord and JKB Development, Inc. entered into an exclusive right to negotiate for the purpose of entering into a long-term ground lease for approximately 1,687 acres of land located adjacent to the Fink Road Landfill, which includes the subject premises, for the construction of solar energy farm and other traditional farming operations.

Whereas, Tenant acknowledges that Landlord and JKB Development, Inc., anticipate entering into a traditional farming lease for the entire approximately 1,687 acres of land, including the subject premises, within the next month.

Now, therefore, the Landlord and Tenant agree as follows:

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

"**TERM OF LEASE:** The initial term of this lease shall be for the period, commencing at 12:01 a.m. on November 9, 2009, and terminating at 11:59 p.m. on November 30, 2010. An extended term of the Lease shall be for a period commencing at 12:01 a.m. on December 1, 2010 and terminating at 11:59 p.m. on November 30, 2011."

- 2. The parties hereby waive any requirement to exercise the renewal provision "if at all, in writing at least two (2) months prior to the termination of the existing Lease period."

- 3. Section 5 of the Lease is amended to read as follows:

"**PAYMENT:** Tenant agrees to pay the Landlord and Landlord agrees to accept as payment for the use and possession of the said Property the sum of \$30,000 per year, to be paid in advance as outlined below, at the office of the Stanislaus County Department of Environmental Resources, 3800 Cornucopia Way, Suite C, Modesto, California 95358.

Payments shall be made as follows:

A. The first Five Thousand (\$5,000) of the annual payment shall be due November 30, 2010, the second Five Thousand (\$5,000) of the annual payment shall be due on January 31, 2011.

B. The remainder of the annual payment shall be due as follows:

1. If at the end of the growing season, the crop is above 24 inches tall the remainder of the annual payment equaling \$20,000 shall be due, in full when the crop is harvested, but no later than June 15, 2011.

2. If at the end of the growing season, the crop is 12 inches to 24 inches tall, one half of the remaining annual payment equaling \$10,000 shall be due, in full when the crop is harvested, but no later than June 15, 2011.

3. If at the end of the growing season, the crop is less than 12 inches tall, the remaining annual payment shall equal zero (\$0)."

4. 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>                  Department of Environmental Resources</p> <p>By: <u><i>Sonya K. Harrigfeld</i></u>                  Sonya K. Harrigfeld                  Director</p> <p>Date: <u>12/16/10</u> <u>12/6/10</u> "Landlord"</p>	<p><b>GERMANO &amp; JACINTA SOARES DAIRY</b></p> <p>By: <u><i>Jacinta Soares Germano Soares</i></u>                  Name                  Title</p> <p>Date: <u>12-3-10</u> "Tenant"</p>
<p>APPROVED AS TO FORM:                  John P. Doering                  County Counsel</p> <p>By: <u><i>Thomas Boze for</i></u>                  Thomas Boze                  Deputy County Counsel</p>	