

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

DEPT: Chief Executive Office

BOARD AGENDA # *B-5

Urgent

Routine

AGENDA DATE December 21, 2010

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval to Extend the Twelve Month Exclusive Right to Negotiate Agreement with JKB Energy for a Long-term Farming and Potential Solar Lease on County Owned Land Adjacent to the Fink Road Landfill and Approval of a One Year Agricultural Lease with JKB Energy

STAFF RECOMMENDATIONS:

1. Authorize the Chairman of the Board to enter into a 12-month extension for the Exclusive Right to Negotiate Agreement with JKB Energy for a potential solar farm ground lease for County owned property adjacent to the Fink Road Landfill.
2. Authorize the Director of Environmental Resources to sign and execute the one year farming lease with JKB Energy.

FISCAL IMPACT:

Under the proposed one year farming lease the County will receive a guaranteed base rent of \$106,000 from JKB Energy, plus any revenue received from the Germano & Jacinta Soares dry farm lease, estimated at \$30,000. In addition, JKB Energy agrees to pay the County 20% of any almond harvest revenue over the agreed upon base amount of \$1,055,700. The County will assume liability for up to \$40,000 in agricultural pump repairs, should they become necessary, and if deemed appropriate by the Director of Environmental Resources. The County will front the payment for the electricity and water costs associated with the farming operation, the costs of which will be first call on reimbursement from the almond harvest.

BOARD ACTION AS FOLLOWS:

No. 2010-770

On motion of Supervisor Chiesa, Seconded by Supervisor O'Brien

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) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Extend the Twelve Month Exclusive Right to Negotiate Agreement with JKB Energy for a Long-term Farming and Potential Solar Lease on County Owned Land Adjacent to the Fink Road Landfill and Approval of a One Year Agricultural Lease with JKB Energy
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DISCUSSION:

On September 29, 2009 the Board of Supervisors authorized staff to issue a Request for Qualifications (RFQ) to select the most qualified candidate interested in entering into a long-term ground lease for 1,678 acres of County owned property adjacent to the Fink Road Landfill. On December 8, 2009, the County entered into a 12-month Exclusive Right to Negotiate Agreement with JKB Energy, Inc. (JKB Energy) for a long-term farming and potential solar farm lease for this location. The Board also authorized the Director of Environmental Resources to negotiate and enter into a contract with M.A. Garcia Agrilabor, Inc. for farm management services for the 345 acre almond orchard during the negotiation period.

As part of the Exclusive Right to Negotiate Agreement, JKB Energy submitted a schedule of key milestones and deliverables to guide JKB Energy and County staff through the twelve month negotiation period. County staff has met regularly with JKB Energy and several milestones have been met, including the submission of a conditional use permit which is scheduled to go before the Planning Commission on January 20, 2011. However, challenges with finalizing a Power Purchase Agreement (PPA) with the utility company have delayed the completion of the remaining proposed milestones. JKB energy has requested an extension of the Exclusive Right to Negotiate Agreement in order to complete the PPA negotiations with Pacific Gas and Electric (PG&E).

The original Exclusive Right to Negotiate Agreement allows for a 6 month extension of the agreement, subject to the approval of the Board of Supervisors. However, staff is requesting a twelve month extension of the Exclusive Right to Negotiate Agreement to allow JKB Energy time to complete the PPA negotiations. The extension, if approved, would be for the period of December 24, 2010 to December 28, 2011.

Staff is also requesting the Board approve the one year farming lease with JKB Energy to continue farming operations on the property until solar project construction begins. The 1,678 acres include approximately 345 acres of almond orchard, 979 acres of dry farming land, and 354 acres of grazing land. Due to the complexity of establishing the highest and best use of the property, the proposed one year farming lease (Attachment B) was negotiated using appraisal research provided by an independent professional real estate appraiser, Cogdill and Giomi, to ensure the County receives the appropriate property rental rate.

Under the proposed one year farming lease the County will receive a guaranteed base rent of \$106,000 from JKB Energy, plus any revenue received from the Germano & Jacinta Soares dry farm lease, estimated at \$30,000. In addition, JKB Energy agrees to pay the County 20% of any almond harvest revenue over the agreed upon base amount of \$1,055,700. The County will assume liability for up to \$40,000 in agricultural pump

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repairs, should they become necessary, and if deemed appropriate by the Director of Environmental Resources. The County will front the payment for the electricity and water costs associated with the farming operation, the costs of which will be first call on reimbursement from the almond harvest.

While the projected lease revenue is considerably less than the approximately \$180,000 revenue typically received in the past, several factors had to be considered in establishing the lease rate for the coming year. First, the cost of water and electricity for this ranch are considerably above the norm, at approximately \$775 an acre. Secondly, orchard production this past year is estimated at just under 1,500 lbs/acre, well below typical almond orchard production levels. These two factors have resulted in a significant risk exposure of an operating loss from farming operations which is reflected in the lower lease rate.

POLICY ISSUES:

The Board of Supervisors should determine if approval of the twelve month extension of the Exclusive Right to Negotiate Agreement for a long-term farming and potential solar lease on County owned land adjacent to the Fink Road Landfill and the one year agricultural lease with JKB Energy is consistent with the priorities of Efficient Delivery of Public Services and A Well Planned Infrastructure System.

STAFFING IMPACTS:

There are no staffing issues associated with this item. If approved, staff from the Chief Executive Office, County Counsel, Environmental Resources, General Services Agency and Planning and Community Development will be involved in the review and evaluation of submittals and contract negotiations.

CONTACT PERSON:

Stan Risen, Chief Executive Office, (209)525-7635

REVIVAL AND AMENDMENT 1
TO
EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT
(Fink Road Landfill)

This Amendment No. 1 to Exclusive Right to Negotiate Agreement ("Amendment No. 1") by and between the County of Stanislaus ("County") and ~~JKB Energy, Inc.~~ (JKB Energy) is made and entered into on Dec. 21, 2010. *JKB Development, Inc.*

Whereas, the County and JKB Energy entered into an Exclusive Right to Negotiate Agreement dated December 8, 2009, (the "Agreement"), a copy of which is attached hereto as Exhibit A; and

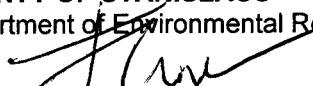
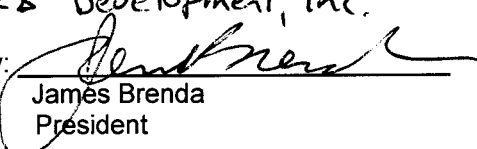
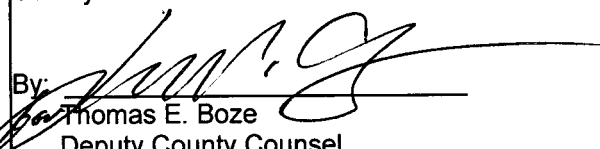
Whereas, in Section 2 the initial term of the Agreement was stated to be for a period of 360 days from the effective date of the Agreement, December 8, 2009, and terminating on December 3, 2010, or until termination of as otherwise provided in the Agreement; and

Whereas, this Amendment No. 1 is for the mutual benefit of County and JKB Energy;

Now, therefore, the County and JKB Energy agree as follows:

1. The Agreement is hereby revised and reinstated.
2. Notwithstanding the limitation stated paragraph 2 "Period of Negotiation", limiting an additional term period to six months, the parties herby agree to extend the term of the Agreement from December 24, 2010 to December 28, 2011.
3. Except as provided in this Amendment, all other terms and conditions of the Agreement 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>COUNTY OF STANISLAUS Department of Environmental Resources</p> <p>By:  Jeff Grover Chairman</p> <p>Date: <u>DEC 21 2010</u></p>	<p>JKB Energy, Inc. <i>JKB Development, Inc.</i></p> <p>By:  James Brenda President</p> <p>Date: <u>12.21.10</u></p>
<p>APPROVED AS TO FORM: John P. Doering County Counsel</p> <p>By:  Thomas E. Boze Deputy County Counsel</p>	

Exclusive Right to Negotiate Agreement

This AGREEMENT is made and entered into this date of December 8, 2009 ("Effective Date") by and among JKB Development, Inc., a California corporation doing business as JKB Energy ("JKB") and Stanislaus County ("COUNTY").

RECITALS

- A. COUNTY owns approximately 1,687 acres of land located adjacent to the Fink Road Landfill in Stanislaus County depicted in Exhibit A (the "Site"). The County is interested in entering into a long-term ground lease for the Site with allowable uses to include almond production, farming and solar energy production.
- B. On September 30, 2009, COUNTY issued a Request for Qualifications (RFQ NO. 09-39-CEN) and associated Addendum, hereinafter RFQ, requesting submission of a statement of qualifications from firms interested in entering into the long-term ground lease.
- C. Upon completion of the evaluation process, JKB, a private development company specializing in the development of renewable energy power plants, was selected as the candidate to be given the opportunity to enter into an "Exclusive Right to Negotiate" agreement for a twelve (12) month period.
- D. At the December 8, 2009 Board of Supervisors meeting, COUNTY authorized the Chairman of the Board of Supervisors to enter into an "Exclusive Right to Negotiate" agreement with JKB.
- E. JKB has determined that approximately 600-700 acres of the Site are suitable for the development of a solar energy farm(s).
- F. JKB intends to immediately begin due diligence associated with the development of a 20MW solar energy plant ("Project"), which is consistent with the draft Power Purchase Agreement ("PPA") currently being negotiated by JKB with PG&E.
- G. JKB has prepared for COUNTY a preliminary milestone schedule outlining key deliverables and expected completion dates during the 12-month due diligence period (Exhibit B).
- H. The parties acknowledge that the effectiveness of any definitive agreements will be contingent upon the approval of such definitive agreements and related documents by the COUNTY Board of Supervisors and by JKB.

The Parties agree to negotiate exclusively and in good faith to enter into a Ground Lease upon the following terms and conditions:

1. Agreement to Negotiate Exclusively: Good Faith Negotiations.

COUNTY agrees that, during the Negotiation Period (as defined in Section 2 below), and provided that JKB is not in default of its obligations under this Agreement, COUNTY shall negotiate exclusively and in good faith with JKB with respect to the Ground Lease to be entered into between COUNTY and JKB concerning the rights and obligations of the Parties respecting the Site. During the negotiation period, COUNTY shall not solicit or entertain offers or proposals from other parties concerning similar Projects at the Site.

The Parties agree, in consideration of this Agreement, to negotiate in good faith with each other with respect to the proposed Ground Lease, and to cooperate in the preparation of necessary government approvals and environmental review under the California Environmental Quality Act ("CEQA"). The Parties shall provide each other with any available information regarding the Site that may be reasonably requested by the other Party.

2. Period of Negotiation.

The Parties agree to negotiate in good faith for a period of three-hundred and sixty days (360) days from the Effective Date of this Agreement ("Negotiation Period"). If the Parties have not executed the Ground lease by the end of the Negotiation Period, then this Agreement shall automatically terminate, provided, however, that the Parties may mutually agree to extend the term of this Agreement for an additional period of up to six months, subject to approval by the County Board of Supervisors. If the Parties cannot agree upon such an extension, this Agreement shall automatically terminate upon the conclusion of the Negotiation Period.

This Agreement may be terminated at any time upon the mutual consent of both parties. COUNTY further retains the right to terminate this Agreement if JKB has not met to the satisfaction of COUNTY key deliverables as outlined in Exhibit B within ninety (90) days following the expected completion date.

Upon termination of this Agreement, any interest that JKB may have hereunder shall cease.

3. Access to Site and Premises Liability.

In consideration for the County hereby granting to JKB and its employees, agents, or contractors, a limited right of access to enter upon County owned property on reasonable notice for the purpose of conducting work or studies related to the project, JKB agrees that (1) any entry upon County property by JKB, or its employees, agents or contractors, shall be at JKB's sole risk and expense; (2) JKB shall assume responsibility for damages resulting from negligence or improper actions by JKB, or its employees, agents or contractors occurring on the property and arising out of JKB's use of the property for the above stated purposes; (3) JKB agrees to return the property to its condition prior to such entry and to keep the property free of liens and encumbrances, including, but not limited to, mechanic's liens, arising out of the activities and conduct of JKB and its agents, employees and contractors thereon; and (4) without limiting any other indemnity provisions set forth in this Agreement, to the fullest extent permitted by law, JKB agrees to indemnify, defend and hold the County and the property harmless from and

against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with JKB's use of the property resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use; and (5) JKB agrees not to interfere with the farming and grazing operations on Site.

4. Ground Lease Negotiations.

The Ground Lease shall include, without limitation, all of the obligations and restrictions outlined in RFQ including, but not limited to:

- a. Provisions to ensure that all land not directly used for solar energy production will be actively farmed.
- b. The tenant shall be required to pay all costs and expenses related to farming the property, including all operation and maintenance costs, repair costs, water, utilities, taxes, labor, equipment costs, fencing, no trespassing signs, etc...
- c. The tenant shall be a good steward of the land including using accepted farming practices, herd management and landfill needs that co-exist with the farm lands.
- d. The tenant shall be a good neighbor.
- e. The tenant will exercise appropriate due diligence to ensure the protection, and maximization, of water allocations to the Site.
- f. Transfer or assignment of rights and interests in the Ground Lease will be subject to County approval.

5. Costs incurred during Negotiation Period.

All costs associated with due diligence during the Negotiation Period including, but not limited to, all normal costs associated with environmental review and land use approvals, will be borne by the selected candidate.

JKB shall bear all costs that may arise associated with making COUNTY's third party consultants and engineers available to JKB. Any studies, plans, or other documents made available to JKB by COUNTY shall be held in confidence, may not be disclosed to third parties without the consent of COUNTY, and shall be returned to COUNTY upon expiration or termination of this Agreement.

JKB shall bear all costs to be incurred as a result of compliance with the California Environmental Quality Act and the National Environmental Protection Act, including, but not limited to, preparation of an environmental impact report, if required, or any other required studies or documents. JKB shall also indemnify COUNTY and bear all costs, expenses, and attorneys fees associated with responding to or defending against claims that may be filed against

itself, or COUNTY in connection with defending such environmental studies or documents from challenge by third parties.

6. **Topics for Negotiation.**

The topics for negotiation shall include, among other things: (i) JKB's right to lease the site; (ii) method of calculating and paying Ground Lease rents or equivalent payments; (iii) the terms of the proposed Ground Lease including necessary covenants, conditions and restrictions affecting the Site; (iv) air rights use; (v) availability of the Site to the JKB; (vi) proposed land uses; (vii) Site layout; (viii) aesthetic considerations; (ix) environmental responsibilities; (x) the JKB's responsibility to obtain environmental clearances, licenses and other entitlements, and project financing; and (xi) any other considerations necessary to fully meet the objectives of COUNTY and JKB.

7. **Broker's Fees.**

The Parties represent and warrant to each other that no broker or finder has been engaged or is in anyway connected with the transactions contemplated by this Agreement. In the event any claim for brokers' or finders' fees is made in connection with the transactions contemplated by this Agreement, the Party upon whose statement, representation or agreement the claim is made shall indemnify, save harmless and defend the other Party from and against such claims.

8. **Assignment.**

JKB shall not assign any interest in this Agreement without the express written consent of COUNTY, which consent shall not be unreasonably withheld, and any purported transfer or assignment without prior consent of the COUNTY shall be null and void. As a condition to any proposed assignment of this Agreement, JKB shall be required to make full disclosure to COUNTY of the principals, officers, stockholders, partners, etc., and all other pertinent information concerning the assignee of JKB and its associates. Subject to the immediately preceding sentence, this Agreement is not intended to benefit and shall not run to the benefit of or be enforceable by any other person or entity other than the parties and their permitted successors and assigns.

Nothing contained herein shall prohibit or in any way limit JKB's selection, and/or replacement, of such consultants and other third parties as JKB shall designate from time to time to perform services relating to the Project.

9. **Mutual Rights and Responsibilities.**

COUNTY and JKB each expressly reserve the right to decline to enter into a Ground Lease in the event the Parties fail to negotiate an agreement to the mutual satisfaction of COUNTY and JKB. Except as expressly provided in this Agreement, COUNTY and JKB shall have no obligations or duties hereunder and shall have no liability whatsoever in the event the Parties fail to timely execute a Ground Lease.

By its execution of this Agreement, COUNTY is not committing to or agreeing to undertake: (i) disposition of land to JKB; (ii) any other acts or activities requiring the subsequent independent exercise of discretion by COUNTY; or (iii) approval of the Project as submitted to the COUNTY for approval. The Parties recognize that one or more of the conditions to JKB's proposal set forth herein may fail to be met as a result of subsequent studies, reviews and proceedings invoking the exercise of discretion by COUNTY or any public agency having regulatory jurisdiction.

JKB shall be responsible for obtaining all approvals required by the COUNTY or any other public agency for the Project in accordance with the COUNTY's standard application process for discretionary land use entitlements, including payment for all of County's costs of processing such approvals. Nothing set forth herein shall be construed as a grant of any such approvals, or as an obligation on the part of the County to grant such approvals.

Any approval by the COUNTY shall be subject to and in full compliance with the California Environmental Quality Act, Sections 21000 et seq. of the Public Resources Code and the CEQA Guidelines set forth in Sections 15000 et seq. of Title 14 of the California Code of Regulations.

During the Term of this Agreement, the Parties agree to make good faith efforts to ensure the timely review and revision of all documents, reports, schedules or plans.

JKB acknowledges and agrees that COUNTY has not agreed to fund, subsidize or otherwise financially contribute in any manner toward the development of the Project.

10. No Liability.

JKB shall defend, indemnify and hold harmless the County and its agents, officers and employees from any claim, action, or proceeding by third parties against the County or its agents, officers or employees to attack, set aside, void, or annul the project, ground lease or approvals regarding the project or project condition imposed by the County or any of its agencies, departments, commissions, agents, officers or employees concerning the said project, or to impose personal liability against such agents, officers or employees resulting from their involvement in the project, including any claim for private attorney general fees claimed by or awarded to any party from County. The County will promptly notify JKB of any such claim, action, or proceeding that is or may be subject to this indemnification and will cooperate fully in the defense.

The County may, within its unlimited discretion, participate in the defense of any such claim, action, or proceeding if the County defends the claim, actions, or proceeding in good faith. To the extent that County uses any of its resources responding to such claim, action, or proceeding, JKB will reimburse County its reasonable expenses upon demand. Such resources include, but are not limited to, staff time, court costs, County Counsel's time at their regular rate for external or non-County agencies, and any other direct or indirect cost associated with responding to the claim, action, or proceedings. Managerial staff time shall not be reimbursable.

11. Entire Agreement: Attorneys' fees.

This Agreement represents the entire agreement of the Parties with respect to the matters set forth herein. This Agreement may not be amended except in writing signed by all of the Parties hereunder. If any Party brings an action or files a proceeding in connection with the enforcement of its respective rights or as a consequence of any breach by another Party of its obligations hereunder, then the prevailing Party in such action or proceeding shall be entitled to have its reasonable attorney's fees and costs paid by the losing Party.

12. Notices.

All notices required or permitted hereunder shall be delivered in person, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested to such Party at its address shown below, or to any other place designated in writing by such Party.

COUNTY: Stan Risen
Assistant Executive Officer
1010 10th Street, Suite 6800
Modesto, CA 95354

JKB:

Any such notice shall be deemed received upon delivery, if delivered personally, the next business day after delivery by a courier, if delivered by courier, and three (3) days after deposit into the United States Mail, if delivered by registered or certified mail.

13. CEQA Documentation and Review.

JKB shall prepare and submit to the COUNTY such plans, specifications, drawings, and other information as specified by the COUNTY as are reasonably necessary for the COUNTY to perform the environmental review process required by CEQA.

JKB acknowledges that the environmental review process under CEQA will involve preparation and consideration of additional information as well as consideration of input from interested organizations and individuals; that approval or disapproval of the Project following completion of the environmental review process is within the sole, complete, unfettered and absolute discretion of the COUNTY without limitation by or consideration of the terms of this Agreement; and that the COUNTY makes no representation regarding the ability or willingness of the COUNTY to approve development of the Project at the conclusion of the environmental review process required by CEQA, or regarding the imposition of any mitigation measures as conditions of any approval that may be imposed on the Project. The parties recognize that if as a result of the environmental review process, the Project is not approved for development, both the COUNTY and JKB each have an independent right to terminate this Agreement. In addition, JKB acknowledges that any required approvals by any other local, state or federal agency may require additional environmental review, and that any approval by the COUNTY shall not bind any other local, state or federal agency to approve the Project or to impose mitigation measures which may or may not be consistent with the terms of this Agreement.

Nothing in this Agreement or otherwise shall bind or otherwise affect the COUNTY's discretion in (1) requiring the preparation of any CEQA review document in accordance with CEQA and normal COUNTY land use entitlement procedures; (2) approving or rejecting such CEQA review in accordance with CEQA standards; (3) making or declining to make any findings necessary under CEQA to grant the land use approvals and the proposed development of the Project contemplated by this Agreement and JKB's application for the land use approvals; or (4) imposing such mitigation measure(s) as condition(s) of the land use approvals as COUNTY deems appropriate under CEQA as a result of its consideration of the CEQA review documents.

14. Relationship of Parties.

The parties agree that nothing in this Agreement is intended to or shall be deemed or interpreted to create among them the relationship of buyer and seller, or of partners or joint venturers.

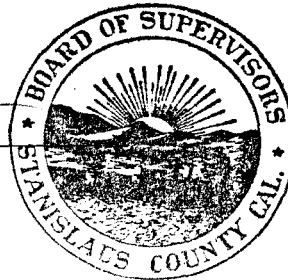
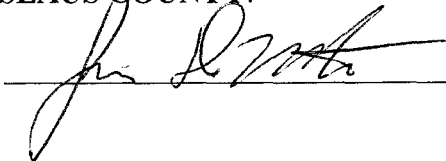
15. Governing Law and Venue.

This Agreement 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 Agreement shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, COUNTY and JKB have signed this Agreement as of the dates set forth below.

STANISLAUS COUNTY:

By:



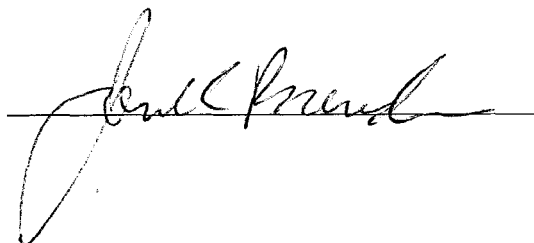
APPROVED AS TO FORM:

By:



JKB:

By:



**FARM LEASE
(Fink Road)**

BOARD OF SUPERVISORS

2011 FEB -21 P 4: 48

This lease is entered into on December 21, 2010 by and between the County of Stanislaus, a political subdivision of the State of California, referred to in this lease as "Landlord," and JKB Development, Inc. a California corporation referred to in this lease as "Tenant."

Recitals

A. Landlord is the owner of certain real property in the County of Stanislaus, State of California, described on Exhibit "A" which is attached and made a part of this lease (referred to in this lease as "the Premises").

B. Tenant desires to lease the Premises (together with certain appurtenant rights and easements) for the purpose and maintaining farming operations ("Farming") on the Premises in accordance with the agreement of the parties as set forth in this lease.

ARTICLE 1 LEASE OF PREMISES AND TERM OF LEASE

Agreement to Lease

Section 1.01. For and in consideration of the rents to be paid and covenants to be performed by Tenant under this lease, Landlord agrees to lease the Premises to Tenant, and Tenant agrees to lease the Premises from Landlord, on the terms and conditions set forth in this lease. Except as expressly otherwise provided in this lease, "the Premises" includes the real property plus any appurtenances and easements.

Term of Lease

Section 1.02. The term of this lease shall be for a period of one year commencing from the date of execution by Landlord.

ARTICLE 2 RENT

Minimum Rent

Section 2.01. The Rent for one year shall be comprised of \$106,000.00, payable not later than February 1, 2012, and all proceeds from that certain dry land farming lease as received from Germano & Jacinta Soares Dairy.

Section 2.02. Tenant shall also pay to Landlord as additional rent the sum of 20% of all gross revenue received by Tenant in excess of \$1,055,700.00 from the sale of the almond crop.

No Partnership or Joint Venture

Section 2.02. Nothing in this lease shall be construed to render Landlord in any way or for any purpose a partner, joint venturer, or associate in any relationship with Tenant other than that of Landlord and Tenant, nor shall this lease be construed to authorize either to act as agent for the other.

ARTICLE 3 USE OF PREMISES

Permitted Use

Section 3.01. Tenant shall use the Premises solely for farming consistent with the farming uses of the preceding year. Tenant shall use its best efforts to use and permit use of the Premises for purposes permitted by this Section 3.01, which in Tenant's reasonable opinion will maximize gross income, provided that Landlord and Tenant understand that cultural practices relating to pruning and winter sanitation shall be performed as needed in Tenant's sole discretion.

Compliance With Laws

Section 3.02. Tenant shall, at Tenant's own cost and expense, comply with all statutes, ordinances, regulations, and requirements of all governmental entities, both federal and state and county or municipal, including those requiring capital improvements to the Premises or Improvements, relating to any use and occupancy of the Premises (and specifically not limited to any particular use or occupancy by Tenant), whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. If any license, permit, or other governmental authorization is required for the lawful use or occupancy of the Premises or any portion of the Premises, Tenant shall procure and maintain it throughout the term of this lease. The judgment of any court of competent jurisdiction, or the admission by Tenant in a proceeding brought against Tenant by any government entity, that Tenant has violated any such statute, ordinance, regulation, or requirement shall be conclusive as between Landlord and Tenant and shall constitute grounds for termination of this lease by Landlord.

Prohibited Uses

Section 3.03. Tenant shall not use or permit the Premises or any portion of the Premises to be improved, developed, used, or occupied in any manner or for any purpose that is in any way in violation of any valid law, ordinance, or regulation of any federal, state, county, or local governmental agency, body, or entity. Furthermore, Tenant shall not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the Premises or any part of the Premises. Finally, Tenant shall maintain its operations (i.e. continued farming operations) and refrain from any other activity that place in jeopardy the land use designation of the Premises as agricultural reserve.

Agricultural Practices

Section 3.04. Tenant shall follow the agricultural practices that are generally recommended for and that are best adapted to this type of farm and appropriate for the locality. Throughout the lease term, Tenant shall keep and maintain the Premises 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.

Costs of Operations

Section 3.05. Tenant shall pay for the all costs associated with the Premises, including but not limited to labor, utilities, water, power, machinery, equipment, fertilizer, insecticides necessary and appropriate to operate and manage the Property. Notwithstanding the foregoing, Landlord

shall be responsible to either pay or reimburse Tenant for any costs associated with the repair or replacement of irrigation pumps and ancillary equipment not exceeding \$40,000.00. Tenant shall obtain Landlord's approval for all non-emergency pump repairs.

Insecticides; Pesticides:

Section 3.06. 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, kinds and dates of applications of fertilizers and pesticides.

Grazing Lease

Section 3.07. Tenant acknowledges that the Landlord leases 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 the farming operations under this Lease.

ARTICLE 4 TAXES AND UTILITIES

Possessor Interest And Personal Property Taxes

Section 4.01.

A. Tenant understands and acknowledges that its leasehold interest hereunder may be subject to a possessory interest tax or property tax that may be levied on Tenant by County of Stanislaus pursuant to Section 107 of the Revenue and Taxation Code, or other provision of state or local law. The Tenant is required to pay any such tax directly to County.

B. Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises or elsewhere. Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of County.

Utilities

Section 4.02. Tenant shall pay or cause to be paid, and hold Landlord and Landlord's property including the Premises free and harmless from, all charges for the furnishing of gas, telephone service, and other public utilities to the Premises during the lease's term and for the removal of garbage and rubbish from the Premises during the term of this lease, except that Landlord shall advance all costs associated with the purchase of irrigation water and electricity. Landlord and Tenant acknowledge that there are substantial costs associated with the purchase of irrigation water and electricity required for the irrigation of the almond orchards located on the Premises. Tenant covenants that it shall reimburse to Landlord a sum equal to the advances paid by Landlord for irrigation water and electricity. Further, Tenant covenants that it shall pay such reimbursement from the first payment(s) received from any third party as payment for the almond crop harvested from the Premises but in no event no later than January 31, 2012. Landlord shall promptly forward all bills for water and electricity to Tenant.

ARTICLE 5 REPAIRS AND RESTORATION

Maintenance by Tenant

Section 5.01. At all times during the term of this lease Tenant shall, at Tenant's own cost and expense, keep and maintain the Premises, all Improvements, and all appurtenances (including landscaped and parking areas) now or hereafter on the Premises in a first-class condition, in good order and repair, and in a safe and clean condition.

Condition of the Property

Section 5.02. 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 crops; the productivity of the crops; the cost of the production; the number of acres in production; its suitability or fitness for the conduct of Tenant's business or for any other purpose.

ARTICLE 6 INDEMNITY AND INSURANCE

Indemnity Agreement

Section 6.01. Tenant shall indemnify and hold Landlord and Landlord's property, including the Premises and Improvements now or hereafter on the Premises, free and harmless from any and all liability, claims, loss, damages, or expenses resulting from Tenant's occupation and use of the Premises, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of the following:

- (a) The death or injury of any person, including Tenant or any person who is an employee or agent of Tenant, or by reason of the damage to or destruction of any property, including property owned by Tenant or by any person who is an employee or agent of Tenant, from any cause whatever while that person or property is in or on the Premises or in any way connected with the Premises or with any of the Improvements or personal property on the Premises;
- (b) The death or injury of any person, including Tenant or any person who is an employee or agent of Tenant, or by reason of the damage to or destruction of any property, including property owned by Tenant or any person who is an employee or agent of Tenant, caused or allegedly caused by either (1) the condition of the Premises or some building or improvement on the Premises, or (2) some act or omission on the Premises of Tenant or any person in, on, or about the Premises with the permission and consent of Tenant;
- (c) Any work performed on the Premises or materials furnished to the Premises at the instance or request of Tenant or any person or entity acting for or on behalf of Tenant; or
- (d) Tenant's failure to perform any provision of this lease or to comply with any requirement of law or any requirement imposed on Tenant or the Premises by any duly authorized governmental

agency or political subdivision.

Insurance. Tenant shall obtain the following insurance:

General Liability

Section 6.02. \$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.

Liability Insurance

Section 6.03. Tenant shall, at Tenant's own cost and expense, procure and maintain during the entire term of this lease a broad form comprehensive coverage policy of public liability insurance and workers compensation insurance that complies with the Stanislaus County requirements.

Auto Liability

Section 6.04. Owned/Non-owned automobile liability insurance providing combined single limits covering bodily injury liability with limits or no less that \$100,000 per accident, and providing property damage liability of no less that \$100,000 per accident.

Workers Compensation

Section 6.05. Workers' Compensation insurance as required by the Labor Code of the State of California.

Deductibles

Section 6.06. 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 retentions deductible or payment of any and all costs, losses, related investigations, claims administration and defense expenses.

Endorsements

Section 6.07. The insurance policies are to contain, or be endorsed to contain the following provisions:

(a) General Liability: Tenant shall provide a separate endorsement naming Landlord and Landlords 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.

(b) **Primary Coverage:** the Tenant's insurance shall be primary insurance over and above any 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.

(c) **Workers Compensation – Subrogation:** The Tenant's insurer shall agree to waive 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.

All Insurance

Section 6.08. 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.

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 shall have a Best's rating of no less than B+:VII or as approved by the Landlord.

Prior to the effective date of the Lease, Tenant shall furnish to 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 has the right to require complete copies of all required insurance policies and endorsements, at any time.

ARTICLE 7 ASSIGNMENTS AND SUBLEASING

No Assignment Without Landlord's Consent

Section 7.01. Tenant may assign this lease or any interest in this lease, subject to the prior written consent of Landlord. Landlord hereby consents to a sublease to Germino & Jacinta Soares Dairy

ARTICLE 8 DEFAULT AND REMEDIES

Continuation of Lease in Effect

Section 8.01. Should Tenant breach this lease and abandon the Premises before the natural expiration of the lease's term, Landlord may continue this lease in effect by not terminating Tenant's right to possession of the Premises, in which event Landlord shall be entitled to enforce all Landlord's rights and remedies

under this lease, including the right to recover the rent specified in this lease as it becomes due under this lease.

Termination and Unlawful Detainer

Section 8.02. In the event of a tenant default under this lease, Landlord may terminate this lease by written notice to Tenant and may also do the following:

(a) Bring an action to recover the following from Tenant:

(1) The worth at the time of award of the unpaid rent that had been earned at the time of termination of the lease;

(2) The worth at the time of award of the amount by which the unpaid rent that would have been earned after termination of the lease until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided;

(3) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss that Tenant proves could be reasonably avoided; and

(4) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform Tenant's obligations under this lease; and

(b) Bring an action, in addition to or in lieu of the action described in subsection (a) of this section, to reenter and regain possession of the Premises in the manner provided by the laws of unlawful detainer of the State of California then in effect.

Breach and Default by Tenant

Section 8.03. All covenants and agreements contained in this lease are declared to be conditions to this lease and to the term hereby leased to Tenant. Should Tenant fail to perform any covenant, condition, or agreement contained in this lease and the default is not be cured within 30 days after written notice of the default is served on Tenant by Landlord, then Tenant shall be in default under this lease. In addition to Tenant's failure to perform any covenant, condition, or agreement contained in this lease within the cure period permitted by this section, the following shall constitute a default by Tenant under this lease:

(a) The appointment of a receiver to take possession of the Premises or Improvements, or of Tenant's interest in, to, and under this lease, the leasehold estate or of Tenant's operations on the Premises for any reason, including, without limitation, assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings, when not released within 60 days;

(b) An assignment by Tenant for the benefit of creditors; or the voluntary filing by Tenant or the involuntary filing against Tenant of a petition, other court action, or suit under any law for the purpose of (1) adjudicating Tenant a bankrupt, (2) extending time for payment, (3) satisfaction of Tenant's liabilities, or (4) reorganization, dissolution, or arrangement on account of, or to prevent, bankruptcy or insolvency; provided, however, that in the case of an involuntary proceeding, if all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise permanently stayed or terminated within 90 days after the filing or other initial event, then Tenant shall not be in default under this Section; and

(c) The subjection of any right or interest of Tenant to or under this lease to attachment, execution, or

other levy, or to seizure under legal process when the claim against Tenant is not released within 90 days.

Cumulative Remedies

Section 8.04. The remedies given to Landlord in this Article shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law and elsewhere provided in this lease.

Waiver of Breach

Section 8.05. The waiver by Landlord of any breach by Tenant of any of the provisions of this lease shall not constitute a continuing waiver or a waiver of any subsequent breach by Tenant of either the same or a different provision of this lease.

Surrender of Premises

Section 8.06. On expiration or earlier termination of this lease, Tenant shall surrender the Premises and all Improvements in or on the Premises to Landlord in as good, safe, and clean condition as practicable, reasonable wear and tear excepted.

ARTICLE 9 OTHER PROVISIONS

Force Majeure

Section 9.01. Except as otherwise expressly provided in this lease, if the performance of any act required by this lease to be performed by either Landlord or Tenant is prevented or delayed by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, or any other cause (except financial inability) not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused. However, nothing contained in this section shall excuse the prompt payment of rent by Tenant as required by this lease or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

Attorneys' Fees

Section 9.02. Should any litigation be commenced between the parties to this lease concerning the Premises, this lease, or the rights and duties of either in relation thereto, the party prevailing in that litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to a reasonable sum as and for that party's attorneys' fees in that litigation that shall be determined by the court in that litigation or in a separate action brought for that purpose.

Notices to Landlord

Section 9.03. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to Landlord by Tenant or any Lender described in Article 6 of this lease shall be in writing and shall be deemed duly served and given when personally delivered to Landlord, to any managing employee of Landlord, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to Landlord:

Stanislaus County
Department of Environmental Resources
3800 Cornucopia Way
Modesto, CA 95358
Attn: Sonya Harrigfield

Landlord may change Landlord's address for the purpose of this Section by giving written notice of that change to Tenant in the manner provided in Section 9.04; Tenant shall then transmit a copy of that notice to any Lender described in Article 6 of this lease.

Notices to Tenant

Section 9.04. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to Tenant by Landlord shall be in writing and shall be deemed duly served and given when personally delivered to Tenant, any managing employee of Tenant, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to Tenant:

JKB Development, Inc.
941 E. Monte Vista
Turlock, CA 95382
Attn: James Brenda

Tenant may change its address for the purpose of this section by giving written notice of that change to Landlord in the manner provided in Section 12.03 of this lease.

Governing Law

Section 9.05. This lease, and all matters relating to this lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this lease or any decision or holding concerning this lease arises.

Binding on Heirs and Successors

Section 9.06. This lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing in this section shall be construed as a consent by Landlord to any assignment of this lease or any interest in the lease by Tenant except as provided in Article 10 of this lease.

Partial Invalidity

Section 9.07. If any provision of this lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this lease shall remain in full force and effect unimpaired by the holding.

Sole and Only Agreement

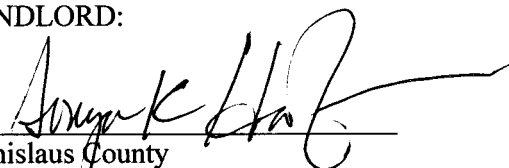
Section 9.08. This instrument constitutes the sole and only agreement between Landlord and Tenant relating to the one year lease for farming of the Premises. The Landlord and Tenant may have other agreements relating to the leasing of the Premises to Tenant, the construction of the Solar Farm described in this lease on the Premises.

Time of Essence

Section 9.09. Time is expressly declared to be of the essence of this lease.

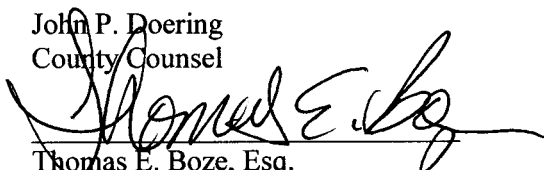
EXECUTED on December 21, 2010, at Modesto, California.

LANDLORD:



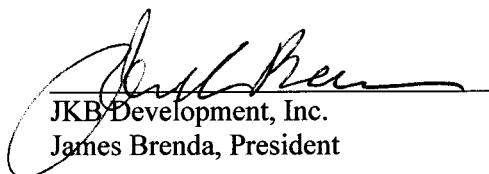
Stanislaus County
Sonya Harrigeld, Director
Department of Environmental Resources

APPROVED AS TO FORM:

John P. Doering
County Counsel


Thomas E. Boze, Esq.
Deputy County Counsel


TENANT:



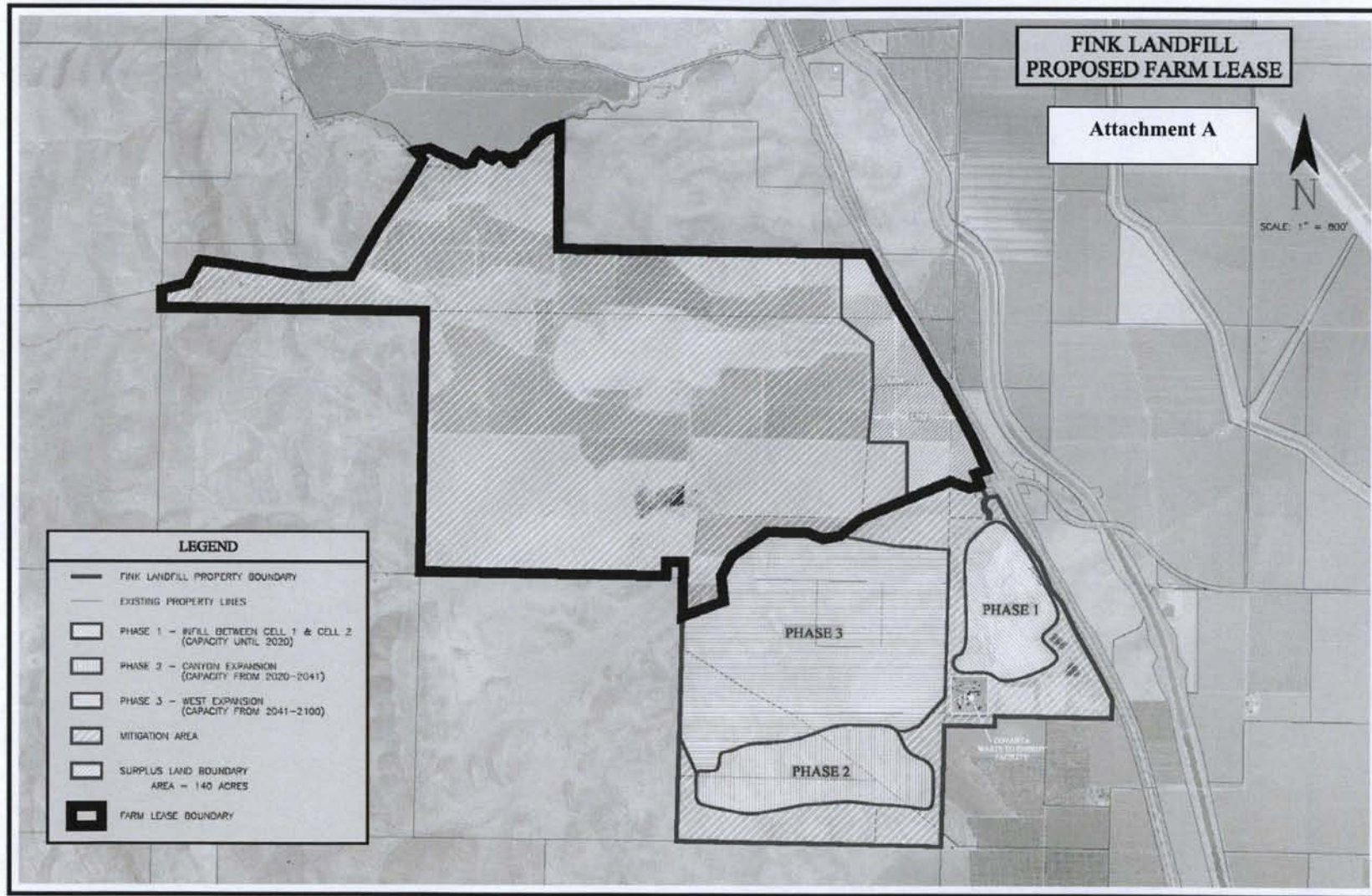
JKB Development, Inc.
James Brenda, President

APPROVED AS TO FORM:

WARDA & YONANO, LLP



Michael S. Warda, Esq.



Attachment "A" Land Use Map