

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

DEPT: Environmental Resources *Call*

BOARD AGENDA # \*B-2

Urgent  Routine

AGENDA DATE November 15, 2011

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.
2. Approve the lease award to (tenant) for the period of December 1, 2011, through September 30, 2012, or mutually agreeable termination date.
3. Authorize the Director of the Department of Environmental Resources, or her designee, to sign the lease Agreement on or after December 1, 2011, at 3800 Cornucopia Way, Suite C, Modesto, C, Modesto, CA, 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 (amount yet to be determined) during its approximate 12-month term. A breakdown of the income levels proposed to be received are as follows: One-half of the rent is due upon planting, by December 31, 2011, and one-half is due by June 15, 2012, providing that a harvestable crop of at least 24" in height is received.

(continued on next page)

BOARD ACTION AS FOLLOWS:

No. 2011-702

On motion of Supervisor Chiesa, Seconded by Supervisor Withrow

and approved by the following vote,

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

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

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

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

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

MOTION:

*Christine Ferraro*

ATTEST:

CHRISTINE FERRARO TALLMAN, Clerk

File No.

FISCAL IMPACT (Continued):

If the harvestable crop is between 12” and 24”, an additional one-quarter of the rent will be due by June 15, 2012. If less than 12” in crop height is received because of inadequate rainfall, then no additional rent will be due. For the 2010 growing season, the Department received \$40,000 in rental income, and for 2011, \$30,000.

DISCUSSION:

Stanislaus County owns a 1,678 acre farm adjacent to the Fink Road Landfill, known as the “Interstate 5 (I-5) Ranch,” 1,040 of which is considered to be farmable. The County entered into a lease for the 1,040 acres with Lent-Burden Farming, Inc. (LBFI), on November 4, 2003, primarily for the purpose of farming the 345 acres of producing almond trees. Beginning in 2005, LBFI sub-leased roughly 700 of these acres for dry land farming purposes where oats and barley were grown. The lease with LBFI expired on November 3, 2009.

The County desired to continue dry land farming the 700 acres so as to potentially capture this revenue, and on November 3, 2009, the Board of Supervisors authorized the Director of Environmental Resources to sign a lease Agreement to the party whose offer was most advantageous to the County, following a 15-day noticing procedure as outlined by Government Code Section 25537. A one-year lease Agreement was awarded to Germano and Jacinta Soares (Soares Dairy) which expired on November 30, 2010, however, the lease provided for a possible one-year extension.

During roughly this same time frame, on September 29, 2009, the Board authorized staff to issue a Request for Qualifications to select the most qualified candidate interested in entering into a long-term lease of the acreage, including the potential evaluation of a solar farm operation at the site. The selected candidate, JKB Energy (JKB), was awarded a 12-month Exclusive Right to Negotiate Agreement for a long-term farming and potential solar farm lease for the 1,040 acres on December 8, 2009. Also on December 8, 2009, the Board authorized the Director of Environmental Resources to negotiate and sign a contract with M.A. Garcia Agrilabor, Inc., for farm management services for the 345 acre almond orchard during the 12-month negotiation period.

On December 21, 2010, the Board authorized a 12-month extension of the Exclusive Right to Negotiate Agreement with JKB and authorized the Director of Environmental Resources to sign and execute a one-year farming lease directly with JKB. Both the Exclusive Right to Negotiate Agreement and the farming lease expire on December 28, 2011. Through the mutual agreement of the County, JKB, and the Soares Dairy, the County chose to exercise the one-year extension option allowing the Soares Dairy to continue the dry land farming through the 2011 growing season by signing Amendment No. 1 to the Farm Lease on December 6, 2010.

Approval of an Agreement to Lease Real Property for Dry-land Farming on  
Approximately 700 acres of Property Adjacent to the Fink Road Landfill  
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Staff is currently in discussion with JKB about the possibility of an additional extension of the Exclusive Right to Negotiate Agreement, yet we are rapidly approaching the window of opportunity for planting oats/barley again this year leaving the timeline for planting and securing a crop for 2012 extremely short; too short to complete the standard bidding procedure and the existing lease Agreement was limited to a single year extension. JKB, however, has indicated that they are agreeable to the continued dry-land farming activities.

Government Code (GC) Section 25537 (a) and County Code Section 4.24.10 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 November 15, 2011, 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 leases will be executed, and any County officer authorized to execute the lease (see Attachment A and Exhibits A and B).

If the Board of Supervisors approves the sample lease Agreement included herein, an award will be made to the party whose offer is most advantageous to the County, with price and all other factors considered. The amount of rent being offered, although a consideration, will not be the sole determining factor.

**POLICY ISSUE:**

Approval of this agenda item to lease real property for dry-land farming on approximately 700 acres of property adjacent to the Fink Road Landfill is consistent with the Board's priorities of A Strong Agricultural Community/Heritage and A Well Planned Infrastructure System by helping to reduce the cost associated with maintaining the I-5 Ranch.

**STAFFING IMPACTS:**

There are no staffing impacts associated with this item.

**CONTACT PERSON:**

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



**DEPARTMENT OF ENVIRONMENTAL RESOURCES  
Administration**

**Sonya K. Harrigfeld**  
Director

**Jami Aggers**  
Assistant Director

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

**NOTICE OF INTENT TO LEASE AGRICULTURAL  
PROPERTY  
Interstate 5 and Fink Road  
Stanislaus County, CA**

**STANISLAUS COUNTY HEREBY SERVES NOTICE OF ITS INTENT** to offer for lease real property described as follows: approximately 700 acres of dry land farming property west of Interstate 5 near Fink Road, near Crows Landing, on portions of the following Assessor's Parcel Numbers: 025-012-033, 025-012-031, 025-012-016, 025-012-017, and 027-033-012. Areas not available for dry land farming include areas which are planted in almond trees and areas containing structures or roads, etc.

The lease term is from December 1, 2011 to September 30, 2012, or as mutually agreed. Rental income for 2010 was \$40,000 and in 2011 was \$30,000. A sample lease agreement is available at the address below.

Offers will be accepted at 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 Wednesday, November 30, 2011.

The County officer authorized to execute the lease is the Stanislaus County Director of Environmental Resources, or her designee, located at the address above.

Attachment A

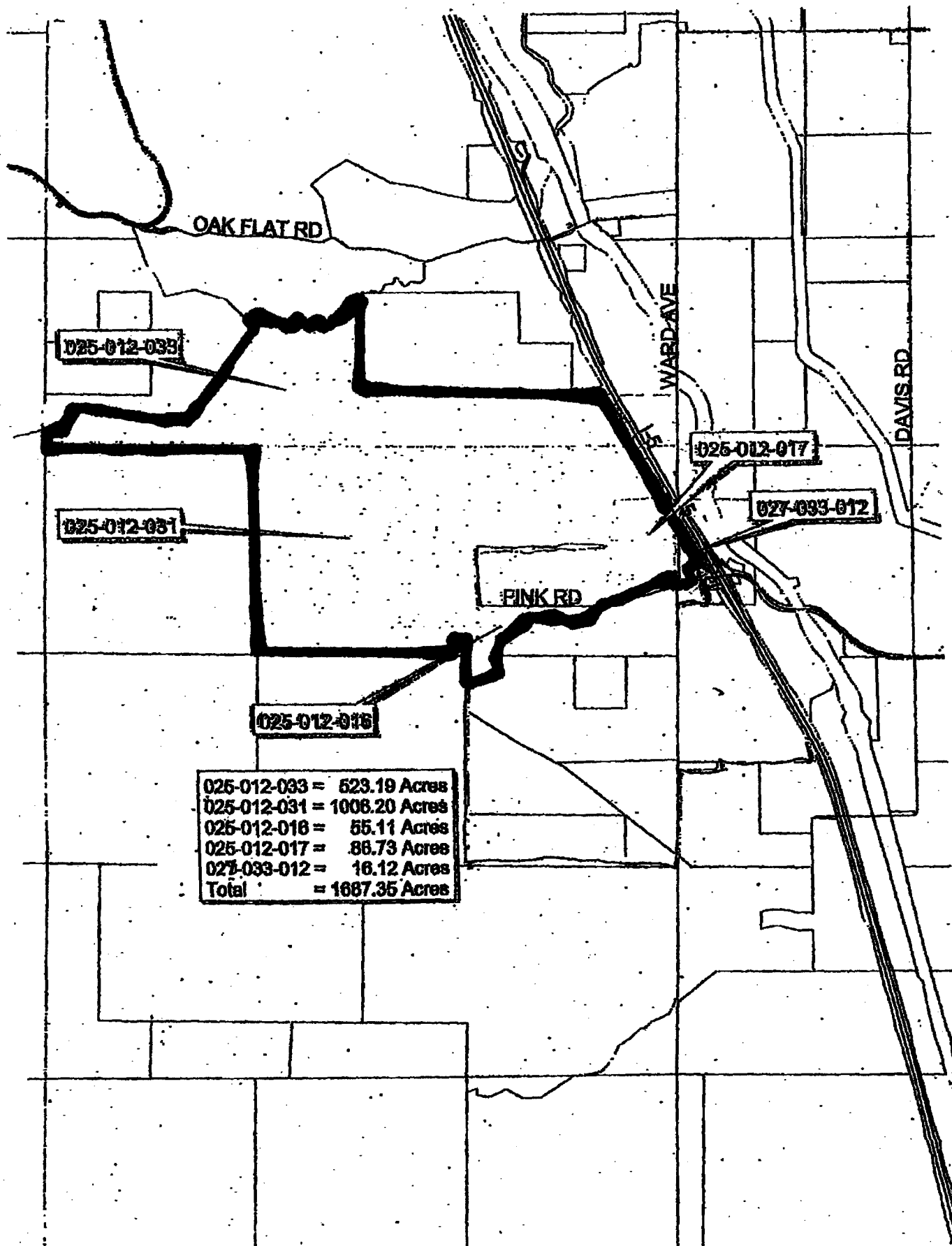


EXHIBIT A



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 \_\_\_\_\_, 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. \_\_\_\_\_, and terminating at 11:59 p.m. \_\_\_\_\_.
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 \$\_\_\_\_\_ 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. One half of the annual payment shall be due December 31, 2011.
- 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 (\$\_\_\_\_\_) shall be due, in full, when the crop is harvested, but no later than June 15, 2012.
  - If at the end of the growing season, the crop is 12" – 24" tall, one half of the remaining annual payment (\$\_\_\_\_\_) is due when the crop is harvested but not later than June 15, 2012.

- 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 \$\_\_\_\_\_ per acre per year

Total Lease Rate: \$\_\_\_\_\_ 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 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.

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 - \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 \_\_\_\_\_ at Modesto, California.

**STANISLAUS COUNTY:**

LANDLORD:

TENANT:

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

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

John P. Doering  
County Counsel

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

\_\_\_\_\_  
Date

*SAMPLE*

**EXHIBIT A**

**MAP**

Agreement No. \_\_\_\_\_



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. **December 1, 2011**, and terminating at 11:59 p.m. **August 31, 2012**.
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 barley and/or oat 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 \$30,000.00 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 Five Thousand (\$5,000.00) of the annual payment shall be due January 3, 2012, the second Five Thousand (\$5,000.00) of the annual payment shall be due on February 3, 2012.
- B. The remainder of the annual payment shall be due as follows:
  - If at the end of the growing season, the barley and/or oat 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, 2012.
  - If at the end of the growing season, the barley and/or oat 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, 2012.

- 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 \$42.86 per acre per year\*

Total Lease Rate: \$42.86 per acre per year\*

\*Note: This per acre per year rate is based on a crop above 24" tall. If crop is 12" – 24" tall the per acre per year rate shall be \$28.57.

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 barley and/or oat 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 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.

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.

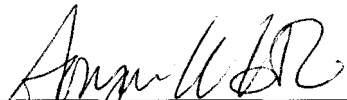
EXECUTED ON December 12, 2011 at Modesto, California.

STANISLAUS COUNTY:

GERMANO & JACINTA SOARES DAIRY

LANDLORD:

TENANT:

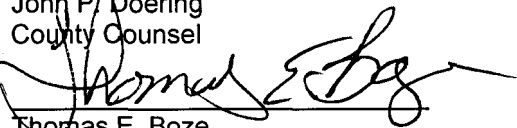
  
Sonya K. Harrigfeld  
Department of Environmental Resources

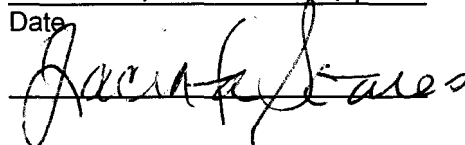


12/02/11  
Date

12-1-2011  
Date

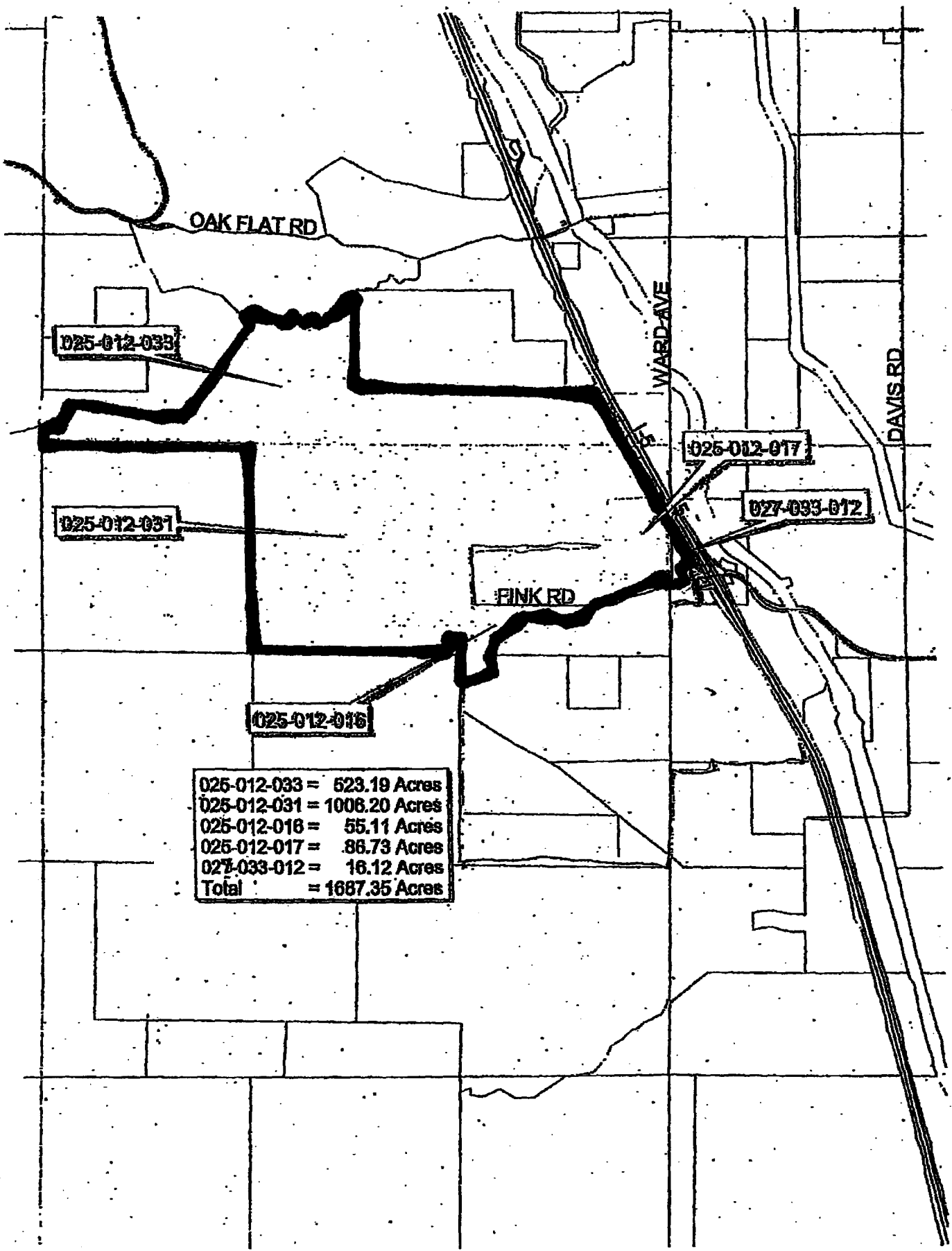
APPROVED AS TO FORM:

John P. Doering  
County Counsel  
  
Thomas E. Boze  
Deputy County Counsel



12-3-2011  
Date

\_\_\_\_\_  
Date



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

**DECLARATION OF PUBLICATION  
(C.C.P. S2015.5)**

**COUNTY OF STANISLAUS  
STATE OF CALIFORNIA**

I am a citizen of the United States and a resident Of the County aforesaid; I am over the age of Eighteen years, and not a party to or interested In the above entitle matter. I am a printer and Principal clerk of the publisher of **THE MODESTO BEE**, printed in the City of **MODESTO**, County of **STANISLAUS**, State of California, daily, for which said newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of **STANISLAUS**, State of California, Under the date of **February 25, 1951, Action No. 46453**; that the notice of which the annexed is a printed copy, has been published in each issue there of on the following dates, to wit:

Nov 15, 2011, Nov 16, 2011, Nov 17, 2011, Nov 18, 2011, Nov 19, 2011, Nov 20, 2011, Nov 21, 2011, Nov 22, 2011, Nov 23, 2011, Nov 24, 2011, Nov 25, 2011, Nov 26, 2011, Nov 27, 2011, Nov 28, 2011

NOTICE OF INTENT TO LEASE AGRICULTURAL PROPERTY  
Interstate 5 and Fink Road  
Stanislaus County, CA

STANISLAUS COUNTY HEREBY SERVES NOTICE OF ITS INTENT to offer for lease real property described as follows: approximately 700 acres of dry land farming property west of Interstate 5 near Fink Road, near Crows Landing, on portions of the following Assessor's Parcel Numbers: 025-012-033, 025-012-031, 025-012-016, 025-012-017, and 027-033-012. Areas not available for dry land farming include areas which are planted in almond trees and areas containing structures or roads, etc.  
The lease term is from December 1, 2011 to September 30, 2012, or as mutually agreed. Rental income for 2010 was \$40,000 and in 2011 was \$30,000. A sample lease agreement is available at the address below.  
Offers will be accepted at Stanislaus County Department of Environmental Resources, Attention: Jami Aggers, 3800 Cornucopia Way, Suite C, Modesto, CA, 95358, phone: (209) 525-6700, jagggers@envres.org no later than 4:30 p.m. on Wednesday, November 30, 2011.  
The County officer authorized to execute the lease is the Stanislaus County Director of Environmental Resources, or her designee, located at the address above.  
Pub Dates Nov. 15 - 28, 2011

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I certify (or declare) under penalty of perjury That the foregoing is true and correct and that This declaration was executed at

**MODESTO, California** on  
November 30th, 2011  
(By Electronic Facsimile Signature)

*Marie Hickman*

11/15/11 B2