

THE BOARD OF SUPERVISORS
OF THE COUNTY OF STANISLAUS
STATE OF CALIFORNIA

Regular Session

Tuesday

June 8, 1999

All Supervisors Present

Pledge of Allegiance to the Flag

Jeanne Hardin was presented with 1999 Dispatcher of the Year award

Miguel Donoso spoke regarding an upcoming protest march by the Shackelford Neighborhood Committee on 6/25/99

C/P unan. Adopted the consent calendar

Approved minutes for 5/25/99

Accepted the resignation of Cynthia L. Juarez from the Hazardous Waste Advisory Board

1999-411

Appointed Ted Rupert and Kristina Zanker to the Animal Advisory Committee 1999-412

Appointed Ward N. Burroughs to the Eastside Water District 1999-413

Appointed Arlene Stevens to the Earl Pride Scholarship Committee 1999-414

Approved use of the Courthouse lawn for the Mayor's Downtown Nights on Tuesday evenings from 6/17 - 9/1/99 1999-415

Authorized the Chairman of the Board of Supervisors to vote on Proposition 218 Ballots regarding increased assessment of County properties in various Lighting Districts and in the formation of the Shackelford Lighting District 1999-416

Approved and authorized the Director of Aging and Veterans Services to sign the Older Californians Act Community-Based Services Foster Grandparent and Senior Companion Programs Contracts for FY 1998-1999 and FY 1999-2000 with Valley Mountain Regional Center 1999-417

Approved agreement #MS-9900-14 with the California Department of Aging for administration of the Multipurpose Senior Services Program (MSSP) FY 1999-2000 for Frail Elderly Residents of our County and authorized the Director of CSA, or his Assistant Director, to sign contract MS-9900-14 and any amendments not to exceed the contract amount of \$698,708 - Community Services Agency 1999-418

Awarded the Multipurpose Senior Services Program Services contracts for the Period 7/1/99 - 6/30/00 as follows: Addus Healthcare, Inc.; Interim Assisted Care, Inc.; Memorial Hospital Association dba Visiting Nurse Association of the Central Valley; Kelly Assisted Living Services, Inc.; Catholic Charities Diocese of Stockton; Doctors Medical Center Foundation dba Miller's Place and authorized the CSA Director, or his Assistant Director Designee, to sign the contracts and any amendments - Community Services Agency 1999-419

Authorized Stanislaus County Emergency Dispatch to submit a grant application for a "Community Enrichment Program" Grant through the Pacific Bell Foundation - Emergency Dispatch

- 1999-420
- Accepted the Annual Report of Substandard Housing and Code Requirement Activities pursuant to Section 17274 of the State of California Revenue and Taxation Code for 1998 - DER
- 1999-421
- Chief Deputy Probation Officer Candidate Wanda Flood Authorized the Chief Probation Officer to compensate Chief Deputy Probation Officer Candidate Wanda Flood above the Mid-Point of Management Pay Band E – Probation
- 1999-422
- Approved the delegation of the authority to the CEO to sign the extension of lease agreement with the City of Modesto for hanger space at the City/County Airport – Sheriff
- 1999-423
- Authorized the Sheriff to apply for a officer in the Schools Cops Grant through the Federal Cops Office and authorized the Sheriff to enter into a partnership agreement with various School Districts
- 1999-424
- Approved the discharge of the accountability of the Treasurer/Tax Collector for County Departmental Accounts which are uncollectible and been previously charged to the Collections Division in the amount of \$557,497.97
- 1999-425
- Approved the renewal of the agreement with Leifer Capital for Financial Advisory Services and authorized the CEO to sign the agreement on behalf of the Board
- 1999-426
- Approved and executed the MOU between Stanislaus County and City of Turlock regarding the transfer of Public Facilities Fees and approved a resolution eliminating the City/County Road Fees from Countywide Facilities Fees Program for Turlock City/County Road Projects
- 1999-427
- Approved Project Agreement 99-01 with Kleinfelder, Inc. for Groundwater Monitoring at the Fink Road Landfill and Amendment No. 1 to the Master Agreement for Professional Services
- 1999-428
- Approved the STP Asphalt Concrete Overlay Program, Phase 9, as a Public Works Project; approved an Environmental Finding of Categorically Exempt for the project under the CEQA Guidelines and authorized the Auditor-Controller to increase appropriations and estimated Federal Revenue in the project account by \$50.00 to cover the recording fee required by the Clerk
- 1999-429
- Approved a funding agreement for railroad crossing improvements on the California Northern Railroad at Hamilton Road, Olive Avenue, and Stuhr Road and authorized Chairman to execute the agreements
- 1999-430
- Adopted a resolution to summarily vacate a 15-Foot-Wide Public Utility Easement lying east of Spyres Way
- 1999-431
- Approved Salida Road Account expenditures to Kencor Development; approved Salida Road and Storm Drain Account expenditure to Ross F. Carroll, Inc.; authorized the Auditor-Controller to issue a warrant in the amount of \$88,612 payable to Kencor Development; and, authorized the Auditor-Controller to issue a warrant in the amount of \$134,296.18 payable to Ross F. Carroll, Inc.
- 1999-432
- B/M unan. Adopted and waived the second reading of Ordinance C.S. 697 relating to cardroom regulations pursuant to Business and Professions Code Section 19851
- 1999-433 ORD-54-C-11(1-501)
- B/M unan. Approved the approach and plan for exploring the possibility of sharing on a Countywide Basis Sales and Use Tax Revenue and authorized the City/County Liaison Committee to represent the Board on the Sales and Use Tax Steering Committee
- 1999-434 (3-2482)
- /P unan. Awarded the Community-Based Services (CBS) - Welfare to Work Programs, contracts as follows:

CSUS "The Bridge" for \$55,000; Catholic Charities-Samaritan House for \$15,375; Center for Human Services-MJC for \$35,461; Children's Crisis Center for \$62,808; Christ Unity Baptist Church for \$30,739; West Modesto/King Kennedy Neighborhood Collaborative for \$22,000; Community Housing & Shelter Services (Renters' Assistance) for \$44,617; Haven Women's Center for \$15,054; Modesto City Schools for \$20,000; Modesto Riverbank Stanislaus County Food Bank for \$23,946; Patterson Unified School District (Westside Community Resource Center) for \$50,000; and Stanislaus Literacy Center for \$25,000 for a total of \$400,000; and, authorized the Director of CSA, or his Assistant Director Designee, to sign the agreements and any amendments not to exceed the contract amounts detailed above – CSA 1999-435 (3-2706)

C/M unan. Approved modification of Disbursement Plan for the Emergency Medical Services Fund (SB 612); approved the transfer of interest earned to the EMS Trust Fund; authorized the Auditor-Controller to disburse the accumulated funds (including interest earnings) for the period ending 6/30/98 according to the existing allocation formula; authorized the Auditor-Controller to disburse the funds for 1998/99 according to the new allocation formula; authorized the Managing Director, or her authorized representative, to sign contracts with institutions receiving funds; and, authorized the one time allocation of \$700 to the Mountain Valley Emergency Medical Services Agency to support the purchase of a new VHF radio for the Westside Community Ambulance and Patterson District Ambulance Area - Health Services Agency 1999-436 (4-2707)

B/M unan. Approved the Department of Mental Health Service Provider agreement for FY 1999/2000 for Child/Adolescent, Adult/Older Adult, Alcohol/Drug Recovery, Managed Care, Stanislaus Behavioral Health Services and authorized the Mental Health Director, or his Designee, to sign agreements with service providers for FY 1999/2000 1999-437 (4-2300)

B/C (4-0) (Mayfield abstained-conflict of interest, owns property in area of proposed project) This matter originally came before the Board of Supervisors on Tuesday, May 25, 1999. Testimony was received, both oral and documentary, by the Board on that date. The matter was continued until today, 6/8/99, at 9:25 a.m. for the specific purpose of hearing proponents' rebuttal, staff comments, Board deliberation, and announcement of a decision. Based on the testimony at both hearings on this matter, the oral and documentary evidence received, and staff reports and comments, the Board approves Rezone Application #99-03 and Parcel Map Application #99-05 for Sierra Grain Terminal, LLC, and adopts a mitigated negative declaration with mitigation measures. The Board, in making the finding set forth below, considered and reviewed the staff reports and comments by the Planning Department staff, Public Works Department staff, and all oral and documentary evidence, including testimony and documents received by the Board at the 5/25/99, date and today's date, 6/8/99.; The Board hereby makes the following findings in support of the approval of the Rezone and Parcel Map of Sierra Grain and approved Ordinance C.S. 698 for Rezone Application #99-03: The Board finds: 1. That the Project is consistent with the Stanislaus County General Plan in that it is compatible with the plan's purpose and policies. 2. That this Project is consistent and promotes the primary goals of the General Plan even if it does not precisely match each and every General Plan element. 3. That the subject site is designated as Agriculture on the Land Use Element diagram of the General Plan (p.1-34). 4. That the use is consistent with the designation of Agriculture in the General Plan which states in part: This designation establishes agriculture as a primary use in land so designated, but allows dwelling units, limited agriculturally related commercial services, agriculturally related light industrial uses and other uses which by their unique nature are not compatible with urban uses provided they do not conflict with the primary use (p. 1-24). In addition, the Zoning designation for Agriculture provides: "The Planned Development (PD) zone may also be consistent with this designation when it is used

for agriculturally related uses or for uses of demonstrably unique character (p. 1-25). This use can be classified as both servicing and related to agriculture and is of a unique character. 5. That proposed use is consistent with the Agricultural Element of the General Plan which has three main goals: 1) Strengthen the agriculture sector of our economy (p.7); 2) Preserve our agricultural lands for agricultural uses (p. 27); and 3) Protect the natural resources that sustain agricultural industry (p. 49). "These policies are intended to express the County's commitment to specific programs and strategies that will ensure the continued success of our agricultural industries and productivity of our agricultural land" (p.2). 6. That the Project is consistent with Policy 1.9 of the Agricultural Element of the General Plan which encourages the vertical integration of agriculture and states that: A...the County shall allow research, production, processing, distribution, marketing, and wholesale and limited retail sales of agricultural products in agricultural areas, provided such uses do not interfere with existing agricultural operations (p. 11). 7. That the Project is consistent with Policy 1.7 of the Agriculture Element of the General Plan which states: Processing facilities and storage facilities for agricultural products either grown or processed on the site shall be permissible in agricultural areas (p. 11). 8. That the Project is consistent with Goal One of the Land Use Element of the General Plan which states that the County will: Provide for diverse land use needs by designating patterns which are responsive to the physical characteristics of the land as well as to environmental, economic and social concerns of the residents of Stanislaus County (p. 1-2). 9. That the Project is consistent with Goal Two of the Land Use Element of the General Plan which requires the County to: Ensure compatibility between land uses (p. 1-7). 10. That the Project is consistent with Goal Three of the Land Use Element of the General Plan which maintains that the County will: Foster stable economic growth through appropriate land use policies (p. 1-9). 11. That the Project is consistent with Goal Three, Policy Sixteen, of the Land Use Element of the General Plan which states: Agriculture, as the primary industry of the County, shall be promoted and protected (p. 1-9). 12. That the Project is consistent with Goal Three, Policy Seventeen, of the Land Use Element of the General Plan which states: Promote diversification and growth of the local economy (p. 1-9). 13. That the Project is consistent with Goal Three, Policy Eighteen, of the Land Use Element of the General Plan which states: Accommodate the siting of industries with unique requirements (p. 1-10). 14. That the Project is consistent with Goal One of the Circulation Element of the General Plan which states: Provide a system of streets and roads throughout the County which meet land use needs. The proposed project furthers this Goal through the implementation of proposed traffic and road mitigation measures and development standards (p. 2-3). 15. That this Project will not inhibit or obstruct the attainment of the Stanislaus County General Plan. In making this finding, the Board independently reviewed the evidence and accepted the professional opinion of the Stanislaus County Planning Department that this Project was consistent with the General Plan. 16. That Stanislaus County has placed a great emphasis on protecting its agricultural economic base. Stanislaus County is one of the few counties that have enacted a permissive Agricultural Element for its General Plan. A major feature of the Agricultural Element is the County's commitment to preserve and protect the agricultural economy. The Board notes that milk, chickens and eggs were three of the top four commodities with the highest farm value in Stanislaus County in 1998. The multiplier economic benefit of just these three commodities exceeds \$1.5 Billion. Substantial testimony was received that the poultry and dairy industries face severe economic pressures that have caused these agricultural industries to decline, and unless a Project such as this is approved this decline will continue. The continued decline of the poultry and dairy industry would have severe economic consequences to Stanislaus County and adversely impact the viability of agriculture within the County. 17. That the proposed use is an agricultural-related use that compliments agriculture and will not conflict with agriculture at this proposed location. It is a unique use that must have access to rail. This site is uniquely suited to accommodate the 110 car trains that are needed to reduce feed costs for the livestock and poultry operations located within the region. 18. That the Board independently reviewed the testimony and

written evidence and agrees with the conclusion of the County Planning Department staff that the Project is consistent with the Stanislaus County General Plan. 19. That Planned Development (PD) Zone is uniquely suited for agriculturally related uses of a unique character that are necessary to serve agriculture. 20. That the Project is allowed in the Stanislaus County A-2 (General Agriculture) zoning classification. The Project Site is zoned A-2 (General Agriculture). Tier I of this zone authorizes this type of use if conditional use permit findings can be made. In the opinion, the County Planning Department stated in the Staff Report that the proposed use could qualify as a Tier I use. The Stanislaus County Farm Bureau, an organization that was intimately involved in drafting the Agricultural Element of the General Plan and the Agricultural Zoning Ordinance, agrees with the Planning Department. According to the testimony of the Stanislaus County Farm Bureau, the Planning Department's conclusion that this activity constitutes a Tier I use is fully consistent with the legislative intent of both the Agricultural Element and the Agricultural Zoning Ordinance. 21. That the Project use is for the production of feed for poultry and dairy animals. Since 1997, California has fallen from first to second in egg production and is expected to fall to fourth by the end of this year. In the last twenty years, California has fallen from first in turkey production to sixth. In 1998, milk, chicken, and eggs were the three of the top four commodities with the highest farm value in Stanislaus County. The multiplier economic benefit of just these three commodities exceeds \$1.5 Billion. 22. That according to the testimony of the Project applicant, the Stanislaus county Farm Bureau and state representatives of the poultry and dairy industries, the cost of feed is a major component to the continued viability of these sectors of the agricultural industry. If these sectors of the agricultural economy continue to face economically uncompetitive feed costs, the declining trend is expected to continue with significant negative consequences to the County economy. 23. That the General Plan in preserving and promoting agriculture, recognizes that there are agriculturally related use which because of their unique nature, are not compatible until with urban uses and provided that they do not conflict with agriculture are appropriately allowed to locate in agricultural zones. The (PD) zone is appropriate in the agricultural zone when it is used for agriculturally related uses of a demonstrable unique character. The Board finds that this Project is such a use. 24. The argument that the use proposed by this Project has only been approved in industrial zones is not accurate or relevant. 25. That other feed mills are found in the agricultural zone (see for instances Zoning Use Permit 83-13, Use Permit 76-63, and the present Swanson facility near Turlock and other facility sites cited by the opponents experienced zoning reclassifications from Agriculture to Industrial after the facility started operation. 26. That the Project will not have a significant impact in the form of traffic. The Planning Department concluded that the project would not cause a significant unmitigated impact in the form of traffic and also concluded that the Project would not result in any new off-site impacts. Furthermore a qualified traffic engineer prepared a traffic study. This traffic study was prepared using the methodology used by Stanislaus County and was thoroughly reviewed by the Stanislaus County Public Works Department. The independent traffic engineer stated that this study was conducted in the same manner as other traffic studies that he has conducted for Stanislaus County. The Public Works Department concurred in the traffic study's methodology and conclusions. 27. That the traffic study concluded that the merger of the various grain operations at this site would result in a reduction of approximately 469,500 truck miles per year. The proposed facility will add approximately 156 truck trips and 108 vehicle trips per day. This is an approximate increase of three percent in the Average Daily Trips (ADT). (Without the Project the amount of traffic on Geer Road is expected to increase from 8,410 ADT today to 22,500 ADT by 2020.) In peak months of summer and fall harvest the Project's trucks will equal approximately three percent of the total truck traffic on Geer Road. The traffic study proposed mitigation measures that will assure that the traffic level of service remains at Level of Service "C."

28. That according to the testimony before the Board, Stanislaus County like other counties reviews the

significance of traffic impacts against the nationally accepted level of service standards. 29. That according to the Stanislaus County Public Works Director, if the level of service remains unchanged, then there is not a significant traffic impact. The Public Works Director did not believe that the Stanislaus County should dramatically change the generally accepted method of evaluating traffic impacts from new construction. According to the Planning Department, the independent traffic engineer consultant and the County's Director of Public Works, after this Project is fully built out, and the mitigation measures proposed in the traffic study are constructed, the level of service for traffic will remain as Level of Service C. Thus, the traffic report, as reviewed and confirmed by the Public Works Department, constitutes substantial evidence that the Project will not have an individually or cumulatively significant traffic impact. 30. That the Board independently reviewed the traffic report, the testimony of the Public Works Department and the other testimony and accepted the conclusions of the traffic report as confirmed by the Public Works Department. 31. That the impact to water is less than significant. The Board notes that the Project will have a water use of ten to twelve gallons per minute with approximately twenty percent recovery, during the time that the Associated Feed portion of the processing plant is in operation. A hydrology report was prepared and concluded that this water use would be less than significant. After reviewing this report, the County Planning and Public Works staff agree with the method used to prepare it and the conclusion. 32. That the Project includes a storm drain basin that, in the opinion of the County Planning and Public Works Departments, is designed to handle excess run off. 33. That concerning the discharge of water, according to the application's testimony the NuWest component of the operation is a dry operation. The Associated Feed component uses pure water in the form of steam. The only discharge is of condensed steam. The Board independently reviewed the hydrology report, the testimony and written evidence, and concluded that the Project would result in a less than significant impact to water. 34. That the Project's impact to air quality is less than significant. The Planning Department staff concluded in the Initial Study that the impact to air quality is less than significant. This is because the Project would employ state of the art, Best Available Control Technology. In addition, the Project would annually reduce the number of truck miles traveled by approximately 469,500. Moreover, the San Joaquin Unified Air Pollution Control District, a government agency with special expertise in the area of air quality, provided a 5/3/99 letter stating that the Project would have a less than significant impact to air quality and approved the Project from an air quality standpoint on a mitigated negative declaration. Specifically, the San Joaquin Unified Air Pollution District wrote, "this project will result in a less-than-significant impact on the ambient air quality. Therefore, a mitigated negative declaration is appropriate from an air quality perspective." 35. That the Board independently reviewed the evidence and accepted the conclusion of the Planning Department's Initial Study and the conclusion of the SJUAPD. 36. That the Project's impact to noise is less than significant. According to the Initial Study, "this project will not generate significant noise impacts." A qualified independent noise consultant performed a noise study. This noise study was reviewed by the County to determine its consistency with methodology for performing such studies and the accuracy of the results. The County staff agreed that the noise study was properly performed and that the conclusions of the study were accurate. According to the independent noise consultant, who testified that he had performed approximately one thousand of such studies, the noise study was performed in the same manner as other studies had been performed for public agencies. The Board notes that the Project must comply with the County's noise standards, and, according to testimony provided by the independent noise consultant, present technology will allow the Project to operate in compliance with the Stanislaus County Noise standards. The Project is expected to add approximately seven rail car coupling noise events per month. These events produce a lower noise event than the approximately thirty two trains that pass on the BN&SF tracks daily. Noise generated by vehicular traffic was not found to be significant by either the Planning Department or the noise consultant. Noise generated by construction activities

was not found to be significant by either the Planning Department or the noise consultant. The Project will also be eliminating an agricultural airplane crop dusting business currently operating from the site. The Board notes that In order to assure that the noise model found in the Noise Study is accurate, the County is requiring additional noise studies after the facility is operating. If these subsequent studies indicate that the facility is not attaining the County's Noise Standards then the facility will be required to install additional noise mitigation equipment or otherwise cease operation. These additional noise mitigation measures, if needed, may include silencers on all air inlets and outlets, erection of local noise barriers or relocation of major noise production equipment. This additional requirement is imposed to assure the County and the nearby residents that the facility will comply with the County's Noise Standards. In the opinion of the County Planning Department and the independent noise consultant, testing for noise after the facility is operating provides the neighboring properties with the greatest protection that the noise mitigation measures mean that facility will not have a significant noise impact. 37. That the Board independently reviewed the noise study, testimony and other written evidence and accepted the analysis and conclusions of the noise study and the Planning Department that the Project would have a less than significant impact on noise. 38. That the Project will have a less than significant impact to aesthetics. The Planning Department staff members are educated and trained to review and evaluate the architectural and aesthetic features of development. According to the Planning Department staff, "it does not appear that there will be a demonstrable negative aesthetic effect with the inclusion of the landscaping conditions in the proposed Development Standards." In addition, the Planning Commission added an additional landscaping requirement to the Project that was intended to further reduce potential impact to aesthetics. In evaluating the aesthetic impact, the Board considered the physical and environmental setting. The Board notes that both the land use designations and actual use demonstrate that the area is devoted to agricultural uses. The area is dominated by agricultural uses, including almond hullers and other intensive agricultural uses. There is also a four hundred foot radio tower approximately one hundred yards from the Project's northern boundary. A PD zone is immediately northwest of the Project across Geer Road and includes commercial agricultural uses. The Board also observes that the aesthetic sensibilities of many agricultural uses are different and distinct from the aesthetic sensibilities of other areas, such as residential zones within city limits. The Board additionally notes that the Stanislaus County Agricultural Zoning Ordinance authorizes a variety of traditional and typical agricultural uses that may be considered by some to be aesthetically displeasing. These authorized agricultural uses include dairies, turkey and chicken farms, hog farms, almond hullers, lagoons or ponds for animal waste, agricultural service airports, fuel alcohol stills, the cleaning of toxic soils, and spreading of whey, treated sludge or biosolids. 39. That the Project does not create a significant environmental impact in the form of aesthetics given the zoning classification and the environmental setting. 40. That there was no substantial evidence presented concerning what view shed or scenic vista, if any view shed or scenic vista exists, was partially or total blocked as a result of the Project. Nor was there evidence that the site was within a state scenic highway. The visual character or quality of the surrounding area is generally flat and there was no evidence presented that the area overlooks any natural or unique physical settings. 41. That the Board independently reviewed the testimony and written evidence, and accepted the conclusion of the Planning Department that the Project will have a less than significant impact to aesthetics. Individuals claiming that the Project would cause a significant aesthetic environmental impact did not disclose that they were surveyors, contractors, landscape architects or possessed relevant expertise in the area of evaluating aesthetics. No testimony was offered that any of the individuals had been on the lots and examined and measured the view and the line of sight from the building sites. 42. That the Board finds that statements concerning the aesthetic impact, although speculation and not based upon facts, nevertheless apply only to adjoining properties, not to the community at large. In enacting the Agricultural General Plan Element and the Agricultural Zoning

Classification for the area, the Board determined that this type of Project is permitted with either a Planned Development overlay zone or a use permit, and consequently recognized the phenomenon that a grain silo could be sited next to other property within the Agricultural Zone. 43. That the Board finds that, under the "fair argument" test, it does not perceive an argument that there may be a potential aesthetic impact on the neighborhood as a whole. 44. That the appearance of a structure to such a degree is a matter of taste. A person's subjective opinion on whether a structure is beautiful or ugly should not be the basis for finding a significant physical environmental impact. There is no reason that the grain mill with the proposed landscaping won't be found to be satisfactory in appearance. 45. That the Project site's unique qualities lessen potential environmental impacts. According to the testimony of one of the applicants and the representative of the railroad, the site has nearly 8,000 feet of rail frontage. This is an extremely unique amount of rail frontage for one property, and neither the applicant nor the railroad representative were aware of similarly situated real property. Without this frontage the facility would need to use a railroad loop configuration (to remove the feed train from the main track) that would result in approximately one hundred and sixty to two hundred acres of farmland being removed from production. Because of the extensive rail frontage the actual net acreage of agricultural land removed from production is approximately six acres. Additional unique site location attributes include a transportation gas line that does not continue further down Santa Fe, a nearby connection to freeway and appropriate truck access to a major County arterial road, and the absence of a water table problem which would create problems of stability for railroad siding and facility footing. 46. That the Board independently reviewed the testimony and written evidence, and finds that the Project site possesses unique attributes that should lessen environmental impacts. 47. That the Project's impact to the loss of agricultural land is less than significant. According to the testimony, the Project is sited on property that has significant rail frontage. This rail frontage dispenses with the need for a rail loop track. If a rail loop track is required, an additional one hundred and sixty to two hundred acres of agricultural land would be taken out of production. The Project will also restore to agricultural production the approximately twelve acres which are presently used for the agricultural air strip and related uses. As a result of the restoring this acreage to production, the net loss of agricultural land is approximately six acres. 48. That the Board received testimony that this land is marginal quality agricultural land and is not the most productive. Also, if feed prices are not more competitive, poultry and dairy operations will receive additional economic pressures to convert their agricultural operations to urban uses, such as residential subdivisions. This will result in a more severe loss of agricultural land. 49. That the Board independently reviewed the testimony and written evidence, and accepted the conclusion of the Planning Department's Initial Study that the Project would have less than significant impact to the loss of agricultural land. 50. That the Project's impact due to additional rail traffic is less than significant. Rail traffic will exit the main line and will rest on tracks located on site during the unloading process. This reduces the potential for conflicts with vehicular traffic. According to the railroad representative and the applicant: there are approximately 244 trains per week presently using the rail road tracks; this Project will add approximately two trains per week; the trains will enter and exit from the south except in rare occasions; and, according to PUC regulations, trains may not delay road intersections for more than ten minutes. 51. That based upon testimony and written evidence, the Board finds that train traffic will not result in a significant traffic impact. 52. That the Project's impact to risk of accidental explosion is less than significant. The Initial Study concluded that this impact was less than significant. Moreover the Board received testimony that the four applicants have operated grain mills cumulatively for over two hundred years without an explosion. The materials that the opponents claim may explode are water, grain, minerals and vitamins. None of these items are classified as hazardous. 53. That the Board received testimony that grain explosions tend to occur in the Midwest because of humid conditions, enclosed facilities, and the fact that those are storage facilities. The weather conditions are much

different in California, and the Project is a "pass through" rather than storage facility. In addition, the facility will incorporate the operating procedures recommended by the California Grain and Feed Association's Environmental and Safety Services Division. Specifically, the inclusion of dust collection systems removes one of the four elements that must be in existence in order for a grain explosion to be possible. 54. That the Board independently reviewed the testimony and written evidence, and concluded that the Project will have a less than significant impact in terms of a potential grain explosion. 55. That the Opponents of the Project did not provide a fair argument under the "fair argument" test that a project may have a significant environmental effect. This Project resulted in public controversy. Many of the nearby residents oppose the project. However, the Board notes that public controversy alone is not a sufficient basis to require an environmental impact report. 56. That the opponents' statements did not constitute substantial evidence. The opponents did not establish their qualifications by education or training to render conclusions of a scientific or technical nature on the potential environmental impacts of the Project. In this case the studies were thoroughly reviewed by the County's planning and public works staffs. The County's planning and public works staffs concluded that the studies were conducted correctly and that the conclusions and proposed mitigation measures were accurate and appropriate. 57. That the Project was sent to the State Clearinghouse for circulation to state agencies and the State Clearinghouse did not receive a single comment from any state agency concerning the County's treatment of the potential environmental impacts of the Project. 58. That the opponents did not produce studies from qualified independent consultants. Instead, the opponents, who are not educated or trained in such technical or scientific areas, criticized the studies that were reviewed by the County staff for appropriateness and accuracy. However, the County Planning and Public Works staffs independently reviewed the accuracy of these studies, and the Board independently reviewed the testimony and written evidence, and accepts the staff's evaluation of these studies. 59. That in the opinion of the Board, the opponents did not provide the Board with substantial evidence that the studies incorrectly underestimated the potential environmental impacts or, alternatively, that the County staff incorrectly evaluated the studies. 60. That the Board finds that the Project opponents' statements are argument, speculation, unsubstantiated opinion or narrative, and do not constitute substantial evidence. 61. That the opponents of the Project did not provide a fair argument under the "fair argument" test that the Project may have a growth inducing impact. Several opponents asserted but did not provide facts that the Project would be growth inducing. Thus the Board finds that these statements were unsubstantiated opinion. The County Planning Department evaluated this potential environmental impact and concluded that it was not significant. Also, the Project applicant stated that it did not have plans to expand the Project beyond the Project description provided in the land use application. The remaining land is to be replanted into almonds. Almond orchards are capital intensive ventures, requiring significant financial expenditures for both the trees and the modern sprinkler irrigation system. Almond trees have life expectancy of twenty-five years and do not come into full production until five to seven years after the trees are originally planted. 62. That the Board notes that any expansion of the Project will require formal review and approval of an amended Planned Development by the County. This formal review will require full compliance with CEQA, the state and County Planning and Zoning laws and ordinances, and properly noticed public hearings. 63 . That the opponents did not present a fair argument, under the "fair argument" test, that the Project would have a significant environmental impact to school bus stops. Geer Road presently experiences 8,410 average daily trips and this number of average daily trips is expected to increase to 22,500 by the year 2020. This Project is expected to add approximately six truck trips per hour and the opponents did not present any facts that these additional truck trips (or the additional car trips) related to the Project would cause an impact to the school bus stops. The Board finds that the County Planning Department contacted the affected school districts and asked each school district to comment if the school district had any comments about the Project. The County did not receive any comments from the school

districts concerning this Project. The Board finds that it is reasonable for the Board to infer by the lack of response that the school districts do not perceive that this Project may impact the school bus stops. In addition, the Project applicants have agreed to offer the school districts an on-site school bus stop upon demand by the school districts. 64. That the Board does not perceive a disagreement between expert opinion supported by facts over the significant effect of noise to the environment. A noise study analyzing the Project and proposing mitigation measures was prepared. According to the noise engineer who prepared the study and the County Planning and Public Works Departments, this study used the standard research method recommended by national noise engineering groups and the County Noise Element, and the research method used in preparing the noise study was the same as has been consistently used by Stanislaus County and other public agencies. This noise study concludes that the Project, with mitigation, would not have a significant environmental impact in the form of increased noise. The County staff independently reviewed the analysis, conclusions and recommended noise mitigation measures contained in the noise study and concurred with the noise study. According to the noise study and the County staff, the Project, with mitigation, would not have a significant impact in the form of noise.65. That at approximately 4:30 P.M. on the evening before the Board hearing, the opponents' attorney delivered a three page memorandum from a noise engineer (Towers memorandum) commenting on the traffic study. The Towers memorandum suggested that noise measurement tests were conducted, but did not present this data in a comprehensive form. The Board continued the public hearing in order for the Board and County staff to independently review these belatedly received comments. After reviewing the Towers memorandum and considering the comments of the County staff, the applicant's representative, and the noise engineer who prepared the noise study, the Board concludes that the Shields memorandum does not constitute a disagreement between expert opinion. In particular, the Board notes the Towers memorandum did not contain new or different noise facts, data or information disputing the analysis and conclusions of the noise report. At no time did the Towers memorandum contain an expert opinion based upon facts that the Project may result in a significant increase in noise. Instead the Towers memorandum raised questions about the noise study. The Towers memorandum contains speculation and unsubstantiated opinion and narrative that alternative research methods should have been used in preparing the noise report or, if certain undocumented assertions were treated as true, that traffic impact stemming from these speculative assertions was not studied. The Board further notes that the Towers memorandum does not contain facts to demonstrate the truth of these assertions. The Board notes that even if the Towers memorandum provided facts supporting these assertions, it did not contain facts that by treating these assertions as true, or by using the alternative research methods, that previously undisclosed significant traffic impacts may be disclosed. As a consequence of the Towers memorandum providing questions and speculation but not proving facts directly disputing the noise study, the Board finds that this is not a marginal case where it is unclear whether there may be substantial evidence that this Project will have a significant effect on the environment in the form of noise. 66. That if it is determined that this is a marginal case, the Board independently finds that there is not a disagreement between expert opinion supported by facts of the significant effect on the environment. In reaching this conclusion, the Board carefully reviewed the Towers memorandum and the comments from the County staff, the applicant's representatives, and the noise engineer. Specifically, an opinion on the ultimate issue of whether the Project's impact should be classified as significant (the Towers memorandum suggests that "an Environmental Impact Report [EIR] is required") is unsubstantiated opinion and speculative. The Towers memorandum did not provide facts that, after the mitigation measures were implemented that the Project may result in a significant noise impact. 67. That the Board finds that the Towers memorandum represents the opinion of one David A. Towers, a mechanical engineer located in Burlington, Massachusetts. Mr. Towers did not personally visit in the site in question. The Towers memorandum does state that a Mr. Eugene Reindel did visit the site and did take noise measurements.

However, except for disclosing one specific measurement taken at an unidentified location none of the Reindel noise measurements were presented in either the Towers memorandum, or other testimony or documentation. No explanation is provided as to why the Reindel noise measurements were omitted from the Towers memorandum. (Concerning the only measurement included in the Towers memorandum, the Board finds that the Towers memorandum does not state the location, the relationship of the point of measurement to the Project, time or duration of this one measurement. The omission of this supporting data renders it impossible to analyze this fact and therefore diminishes the probative value of this fact. The Board also finds that this one measurement is consistent with the measurement collected by the noise engineer in preparing the noise report.) It is reasonable to infer that had these noise measurements supported the Towers memorandum's conclusion then these measurements would have been included. 68. That the opinions expressed in the Towers memorandum are not the opinion of Mr. Reindel, but the opinion of Mr. Towers, who never visited the site. Moreover, Mr. Reindel's area of expertise rests in airplane and airport noise. All of the "Representative Projects" that Mr. Reindel has been associated with involves airports and airplanes and his previous employment was with the Boeing Airplane Company. Neither Mr. Towers or Mr. Reindel spoke at the Board's hearing to explain the Towers memorandum or answer questions. 69. That the Towers memorandum states that because the noise study's measurement locations were very close to the airstrip "it is likely" that the measurement data is skewed. The Towers memorandum's use of the phrase "it is likely" supports the Board's conclusion that this opinion is speculation and not founded on facts or data. In addition, the noise engineer stated that the aircraft was not flying during the test and he had to ask the pilot to fly to cropduster in order to include aircraft noise into the base line ambient noise level. Thus the Towers memorandum concerning noise from the airstrip exaggerating the ambient noise base line is speculation and answered by the noise study. 70. That the Towers memorandum alleges that the measurement data is only reported in terms of Lmax, Leq, and Ldn. According to the County staff and the noise engineer, the County's exterior noise level standards are written in terms of these descriptors and these noise level standards are consistent with the State Guidelines and generally followed by public agencies in California. The Towers memorandum did not conduct any measurements using different standards and did not provide any facts or data that by using the different standards there may be a significant noise impact. Thus, the Towers memorandum's assertion concerning measurement standards is speculative. 71. The Board notes that the Towers memorandum asserts that the noise study failed to recognize "pure tone" noise sources, claiming that this is significant because in the Towers memorandum's opinion "there is clear potential" for pure tone noise. The use of the term "clear potential" rather than providing facts suggests that this claim is speculative. However, the noise engineer stated that the pure tone 5 dB penalty was considered but there are no pure tone sources within the Project against which to apply the penalty. The Board finds, however, that the County's nighttime noise standard of 45 dBA operates to ensure that the pure tone penalty is incorporated into the noise standard, whether or not there are pure tone noise sources at the Project. Any mechanical functions that may cause "pure tone" will be located within fully enclosed buildings which will further mitigate the significance of such noise sources. 72. The Board notes that the Project must satisfy the County noise standards. If pure tone noise sources at the Project operates to reduce the noise standard by an additional 5 dB, then the Project must mitigate to this revised noise standard or otherwise cease operating, and the noise engineer has stated that technology exists to mitigate the potential noise impact to less than significant. 73. The Board finds that the Towers memorandum's assertion concerning pure tone noise is speculation and answered by the noise study and the County's noise standards. 74. That the Towers memorandum asserts that "it is clear that great noise exposure will result from switcher locomotive operations." The Board notes that no facts are presented to support this assertion and the use of the phrase "it is clear" suggests that this assertion is speculative. The noise engineer stated that the car switching was the only new railroad noise source introduced by the Project.

Concerning locomotive operations, the Project increases the number of locomotive operations by less than one percent. The Towers memorandum provided no facts to support a conclusion that a one percent increase in the number of locomotive operations may cause a significant noise impact. This assertion is not supported by facts and is speculation. 75. That the Towers memorandum asserts that trucks “are likely” to travel at slower speeds and if trucks travel at a rate of speed fifty percent less than assumed in the noise report then the noise will increase by three dBA. The noise engineer stated that the noise study took into account that fact that trucks presently decelerate and accelerate from the Geer Road/Santa Fe road intersection. The Project is expected to generate six additional truck trips per hour. This impact was considered by the noise report and did not cause a significant noise impact. The Tower memorandum did not provide facts that the rate of speed for trucks will be fifty percent slower or that a three dBA increase resulting from a fifty percent reduction in truck speed and the increased duration of noise may be a significant environmental impact. This assertion is not supported by facts and is speculation, and is answered by the noise study. 76. That the Towers memorandum asserts that a noise assessment should include noise predictions based on the planned equipment and design of the facility. The Towers memorandum did not perform such an assessment nor does it provide facts that such an assessment may contradict the noise study. The Board finds that the noise study projected the level of noise from the facility. To determine if the noise study’s projections are accurate, the Board also requires the operators to conduct noise measurements after the facility is in operation and to comply with the County noise standard by implementing additional mitigation, if needed, or otherwise cease operation. The Board finds that requiring additional noise measurements after the facility is in operation and requiring the operator to meet the County noise standard based upon these new measurements provides the greatest assurance and protection for the environment. The potential mitigation measures are identified at page 16 of the noise study. The Board finds that the Towers memorandum’s assertion that additional studies are needed is speculation. 77. That the Board does not perceive a disagreement between expert opinion supported by facts over the significant effect of traffic to the environment. A traffic report analyzing the Project and proposing mitigation measures was prepared. According to the traffic engineer who prepared the report and the County’s Public Works Department, this study used the standard research method recommended by national traffic engineering organizations and the research method that has been used in connection with traffic reports commissioned by Stanislaus County. The traffic engineer who prepared the traffic report is familiar with the County’s standard research method since he has been retained on previous occasions by the County to prepare traffic reports for the County. This report concluded that the Project, with mitigation, would not have a significant environmental impact in the form of increased traffic. In fact, the Project would have the positive effect of reducing the total number of truck miles traveled. The County Public Works Department independently reviewed the traffic report’s conclusions, and the County Public Works Department concurred with the traffic report’s analysis, proposed mitigation and conclusions. The County Public Works Department also concurred in the research method used by the traffic engineer. The Public Works Director explained that Stanislaus County uses the nationally recognized Level of Service standard to determine if a proposed project will have a significant environmental impact. According to the traffic study and the Public Works Department, the Level of Service would remain unchanged by this Project. 78. That at approximately 4:30 P.M. on the evening before the Board hearing, the opponents’ attorney delivered a five page memorandum from a traffic engineer (Shields memorandum) commenting on the traffic report. The Shields memorandum did not include an alternative traffic study. The Board continued the public hearing in order for the Board and the County staff to independently review these belatedly received comments. After reviewing the Shields memorandum and considering the comments of the Public Works Department, the applicant’s representative and the traffic engineer who prepared the traffic report, the Board concludes that the Shields memorandum does not constitute a disagreement between expert opinion. In particular, the Shields memorandum did not contain a new

or different traffic facts, data or information disputing the analysis and conclusions of the traffic report. Instead the Shields memorandum raised questions about the traffic study. At no time did the Shields memorandum contain an expert opinion based on facts that the Project would degrade traffic to a lower Level of Service or otherwise substantially increase traffic in exceed of the traffic increases portrayed in the traffic report. Instead the Shields memorandum contains speculation and unsubstantiated opinion and narrative that alternative research methods should have been used in preparing the traffic report or, if certain undocumented assertions were treated as true, that traffic impacts stemming from these speculative assertions were not studied. The Shields memorandum does not contain facts to demonstrate that these suppositions were true. Even if the Shields memorandum provided facts supporting these suppositions, it did not contain facts that by studying these suppositions, or by using the alternative research methods, that previously undisclosed significant traffic impacts may be disclosed. As a consequence of the Shields memorandum providing questions and speculation but not providing facts directly disputing the traffic study, the Board finds that this is not a marginal case where it is unclear whether there may be substantial evidence that this Project will have a significant effect on the environment. 79. That if it is determined that this is a marginal case, the Board independently finds that there is not a disagreement between expert opinion supported by facts of the significant effect on the environment. In reaching this conclusion, the Board carefully reviewed the Shields memorandum and the comments from the County staff, applicant's representative, and the traffic engineer. Specifically, an opinion on the ultimate issue of whether the Project's impact should be classified as significant (the Shields memorandum suggests that a "full EIR is required") is unsubstantiated opinion and speculative. The Shields memorandum did not provide facts that, after the mitigation measures were implemented, that the Project would degrade the current Level of Service. 80. That the Shields memorandum asserts that the truck trips were not verified. However, the truck trips were based upon information of actual truck trips at operating feed mill operations. The truck trip information is consistent with the application filed with the County. The Shields memorandum speculates that the truck trips may be different, but it does not provide any facts that the truck trips may be greater and that the increase in truck trips, supported by facts, may result in different and more severe environmental impacts. In fact, as the traffic engineer reported, increasing the data provided by the mill operators by one-third would add only one additional truck trip each hour. The addition of one additional truck trip per hour would not alter the Level of Service. The Board finds that the Shields memorandum's assertion concerning the verification of truck trips is speculative. 81. That the Shields memorandum asserts, but does not provide any facts, that the traffic study did not include ingredient trucks by failing to "identify the source of these deliveries and any increased miles these trucks must travel." According to the traffic engineer, this assertion is untrue. The traffic report did identify these sources and the increased miles. The Board finds that the Shields memorandum's assertion is speculative and untrue. 82. That the Shields memorandum asserts that truck turning in and out of the Project site will travel at slow speeds. The Shields memorandum provides no facts that slow truck turn movements materially changes the analysis or the conclusions of the traffic report, or that such slow truck turn movements, if based upon facts, makes the traffic impact significant. In fact, the Shields memorandum does not speculate that this assertion, if supported by facts, would contradict the analysis and conclusions of the traffic report. 83. That slow truck movements were considered in the traffic report. According to the traffic engineer, the 1994 Highway Capacity Manual procedure was used to calculate the average delay for traffic during peak hours. The Shields memorandum does not contain any facts that delays caused by slow truck turn movements is not reasonably and accurately forecast by the procedure and directives provided by the nationally accepted Highway Capacity Manual or that it was improper to use this standard method to evaluate slow truck turn movements. 84. Thus, the Board finds that the Shields memorandum's assertion is speculation and answered by the Highway Capacity Manual.85. That the Shields memorandum asserts that trucks will use alternate or ancillary routes to

reach Interstate Highway 99. This statement is not founded on any facts contained in the Shields memorandum is therefore speculation. However, according to the traffic engineer, this assertion ignores the benefits to of the southbound acceleration lane, which provides the opportunity for trucks to safely access southbound Geer Road. Thus, according to the traffic engineer, the access to southbound Geer Road will not be substantially different than the access that is available for trucks to turn northbound on to Geer Road. Moreover, according to the mill operators' representative, there will be an operational policy requiring operators of the mill's trucks and operators of vendors' trucks to follow designated truck routes. 86. That even if this speculative possibility is based upon facts, the Shields memorandum does not contain any facts suggesting that such alternate or ancillary routes would be significantly impacted. Thus, the Shields memorandum's assertion is speculative. 87. That the Shields memorandum asserts that there will be a significant traffic impact due to delays at railroad crossings. This assertion is not based on facts contained in the Shields memorandum. In addition, the Shields memorandum does not provide facts that, even if this speculative possibility is true, that there will be a significant traffic impact. Moreover, the testimony from the representative of the railroad, Mr. Guthrie, states that there would be only two additional trains per week. Since there are currently approximately 244 trains crossing the intersection, this represents an increase in train crossing of less than one percent. Except for unusual situations these two additional trains would cross the intersection at night, when there is substantially less traffic. Also, current Public Utilities Commission regulations prohibit train crossing from exceeding ten minutes. According to the traffic engineer "the additional delays once or twice is not expected to produce a significant impact to the area circulation system." Thus, the Shields memorandum's assertion is speculative. 88. That the Shields memorandum asserts, but does not provide any facts, that the traffic report did not study future growth or increased plant capacity. The Shields memorandum does not provide any facts that the facility will expand. Moreover, the Shields memorandum does not provide any facts that, if this speculative assertion is supported by facts, then the traffic impact may be substantially greater. The Project Description provides that the facility would operate twenty-four hours a day, 312 days per year. Any additional expansion would occur during weekends and national holidays when there would not be commuter traffic and the total amount of traffic using the designated truck routes would be less than the use during weekdays. According to the Planning Department, the Project is subject to the more intensive Planned Development Zone that provides the County with greater land use regulatory control than is available under a use permit. Before any expansion would be authorized, the landowner would be required to file an amendment to the Planned Development Zone, comply with the requirements of the California Environmental Quality Act, and receive approval for the amended Planned Development Zone by the Board of Supervisors after a notice public hearing. Thus, the Shields memorandum's assertion is speculative. 89. That all significant impacts which have been raised have been mitigated to a level of insignificance by the mitigated negative declaration. 90. That the Project opponents have not demonstrated by substantive evidence that the proposed mitigation measures are inadequate and that the Project, as mitigated, may have a significant adverse effect on the environment. 91. That the revised mitigation measures on noise that were adopted by the Planning Commission are more effective in mitigating or avoiding potential significant effects and that it in itself will not cause any potentially significant effect on the environment.; and, all Board Members voting in favor of the parcel map and rezone approve and adopt each of the above findings and that said findings are incorporated by reference into the record as the basis and support for the Board's action

1999-438 1999-439 ORD-54-C-12 (2-0871

Recessed at 11:10 a.m.

Reconvened at 11:20 a.m.

Adjourned to sit as the Stanislaus County Redevelopment Agency at 11:20 a.m.

B/P unan. Approved the Consent Calendar

(3-2449

Set a public hearing regarding the purchase of property for the purpose of storm water retention
for 6/22/99 at 9:30 a.m. 1999-440

Reconvened to sit as the Stanislaus County Board of Supervisors at 11:21 a.m.

Referred to the Sheriff Department a letter from Rick Maisel regarding Ordinance C.S. 696 Requiring the Wearing of Personal Flotation Devices While Boating in the Knights Ferry Special Use Areas of Stanislaus County

Referred to the CEO a letter from James Brazelton, District Attorney, requesting opposition to SB 542 and AB 196 relating to child support enforcement

Referred to the Chief Executive Officer a letter from the California Regional Water Quality Control Board regarding the Tartaric Manufacturing Corporation

Accepted report of the San Joaquin Valley Air Pollution Control District's 1998 Annual Air Toxics Report

Referred to the Chief Probation Officer a letter from the Board of Corrections regarding the funding award for Challenge Grant II Demonstration Projects, Stanislaus County was awarded \$2,807,298

Accepted a copy of the 1998-99 Grand Jury Final Report Part Six regarding the Stanislaus County Election Office

Referred to the CEO a Minute Order from the Los Angeles County Board of Supervisors regarding their request to the Governor and State Assembly and Senate to return the local property tax monies taken during the recession of the early 1990's as one of their highest priorities for the upcoming year

Referred to the DER a letter from the CALFED Bay-Delta Program verifying that 23 proposals have been submitted for work within Stanislaus County for fund from the Restoration Coordination Program

Referred to the Department of Employment and Training a letter from the Employment Development Department regarding the Local Workforce Investment Act

Referred to the Department of Employment and Training a letter from Butterball Turkey Company regarding the selling of their Turlock turkey processing facilities to Foster Farms

Acknowledged receipt of claims and referred to the CEO-Risk Management the following claims: Spencer Yasana; Joseph Jimenez; Jason C. Lauderdale; Ram P. Saini; and, Pacific Bell

P/M unan. Approved the adoption of a new County logo and directed all County Departments use the new logo on all promotional and educational materials 1999-441 (5-350

Supervisor Caruso noted that today the Modesto Bee's Kids Day paper came out. He recently met with the Governor, Congressman Condit regarding issues in Stanislaus County.
Supervisor Mayfield spoke regarding an article on the County's building project costs.

Adjourned to Closed Session at 12:30 p.m. Public Employment Appointment: Librarian. Government Code Section 54954.5(e)

Adjourned at 1:30 p.m.

ATTESTED: REAGAN M. WILSON, Clerk
of the Board of Supervisors
of the County of Stanislaus
State of California

BY: CHRISTINE FERRARO TALLMAN, Clerk to the Board of Supervisors
(The above is a summary of the minutes of the Board of Supervisors. Complete minutes are available from the Clerk of the Board's Office.)