

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

Regular Session

Tuesday

June 5, 2007

All Supervisors Present

Pledge of Allegiance to the Flag

The Chairman presented a commendation to Dale Butler for his many years of service to the Hispanic Leadership Council.

Mayfield/Grover unan. Adopted the consent calendar after removing from consent item ***C3** Approval of the Subdivision Improvement Agreement, an Additional Agreement with Stanislaus Development, LLC, and the Filing and Recording of the Final Map for Vesting Tentative Map No. 2001-04 - Hillsborough Estates Subdivision Unit No. 2 (in East Oakdale Area)

***A1** Approved the minutes of 05/22/07

***A2a** Adopted and waived the second reading of Ordinance C.S. 997 to amend §11.04.060 of the Stanislaus County Code by adding a Speed Zone on Cogswell Road in the Hickman area

***A2b** Adopted and waived the second reading of Ordinance C.S. 998 adding Chapter 9.86 to the Stanislaus County Code to regulate Medical Marijuana Dispensaries

***A3a** Accepted the resignation of Lee Means, James Enochs, Tom Changnon, Martin Peterson, A. R. Rich Chubon and John Patrick O'Brien from the Stanislaus County Children's Council

***A3b** Accepted the resignation of Steve Prevostini from the Patterson Irrigation District Board of Directors

***A4** Approved the update to the roster of the IHSS Advisory Committee

***A5a** Appointed Colleen McSorley to the Stanislaus County Free Library Advisory Board

***A5b** Appointed Margaret Randazza, Jeff Foster, Brad Hawn, Steve Ward and James Aja to the Stanislaus Economic Development and Workforce Alliance Board

***A5c** Appointed Niamh Harrington, M.D. to the Emergency Medical Services Committee

***A6a** Approved a commendation for Kenneth Willmarth upon his retirement from the University of California Cooperative Extension in Stanislaus County

***A6b** Approved a commendation for Chief Michael Brady Upon his Retirement from the City of Newman Police Department

***A7** Adopted the Conflict of Interest Code for the Modesto-Ceres Fire Protection Agency Joint Powers Authority

***A8** Proclaimed the week of 6/25/07 as Family Services Specialist Recognition Week

***A9** Approved request from the Mid-Valley Water Ski Club for exclusive use of the Modesto Reservoir back dam area on Monday and Wednesdays from 6/25/07 through 8/1/07 for Junior Development Team Program

***A10** Approved request from the Mid-Valley Water Ski Club for exclusive use of the Modesto Reservoir back dam area for Disabled Clinics, Police Activities League Learn to Ski Clinic and National Ski League Tournament

***A11** Approved request from the Rotary Club of Salida for use of Salida Park for a music concert in the park on 8/02/07 and 9/06/07

***A12** Authorized the Chairman of the Stanislaus County Board of Supervisors to sign in support the Property Owner Assessment Ballots for the Hughson Fire Protection District for those properties owned by Stanislaus County

- *A13 Set a public hearing on 6/26/07, at 9:25 a.m., to consider an appeal of the Planning Commission's denial of Variance Application No. 2006-03 and Lot Line Adjustment Application No. 2006-47 – Hardister
- *A14 Proclaimed 7/18/07 as Motorcycle and Scooter Ride to Work Day
- *B1 Approved the purchase of a used forklift for use at the Stanislaus County Agricultural Center; and, authorized the Auditor-Controller to transfer funds in the amount of \$17,000 to a fixed asset account per the Budget Journal form – Ag Commissioner
- *B2 Approved the multi-year agreement between Behavioral Health and Recovery Services and the State Department of Alcohol and Drug Programs for the provision of alcohol and drug services for FY 2007/08 through FY 2009/10; authorized the BHRS Director, or her Designee, to sign the multi-year agreement; and, authorized the BHRS Director, or her Designee, to sign amendments throughout FY 2007/08 through FY 2009/10 - BHRS
- *B3 Approved the renovations to the kitchen in Building 4 at BHRS, 800 Scenic Drive, Modesto for use as part of the Consumer and Family Member Employment and Empowerment Center; authorized BHRS to proceed with renovations necessary to ensure that the kitchen meets commercial standards with regard to safety and operation; and, approved the operation and use of the kitchen in Building 4 at BHRS, 800 Scenic Drive, Modesto, by Turning Point Community Programs for the Consumer and Family Member Employment and Empowerment Center, a Mental Health Services Act program - BHRS
- *B4 Directed the Auditor-Controller to increase the appropriations and estimated revenues in the amount of \$42,149 for BHRS and \$10,748 for Probation for the Substance Abuse and Crime Prevention Act (SACPA) Program; and, directed the Auditor-Controller to increase estimated appropriations and revenue in the amount of \$55,000 for the BHRS Adult Drug Court program - BHRS
- *B5 Authorized the CEO to submit a grant application to the Bureau of Justice Assistance for 2007 Edward Byrne Memorial Justice Assistance Grant funding to enhance criminal justice processes; directed the Auditor-Controller to establish a budget unit with estimated revenue and appropriations accounts in the amount of \$99,865 when grant is approved according to the budget journal; and, approved the recommendations of the CEO for use of the 2007 Edward Byrne Memorial Justice Assistance Grant to continue funding for existing Sheriff and Probation Department staff - CEO
- *B6 Approved an amended agreement with AASK America, dba Adopt A Special Kid for providing a specialty camp for post adoption families; and, authorized the CSA Director, or his Assistant Director Designee, to sign the amended agreement not to exceed the total agreement amount of \$34,365 for the period of 7/01/06 through 6/30/07 - CSA
- *B7 Authorized the Director of the Department of Parks and Recreation to enter into an agreement with the Yahi Bowmen (Archery Club) for the purpose of using and maintaining the field archery range at Modesto Reservoir; and, approved waiving the daily entrance fee to Modesto Reservoir for participants of youth archery activity events, up to three annual public archery tournaments, and 10 Saturday shoots conducted by the Archery Club pursuant to paragraph 3.3 of the agreement - Parks and Recreation
- *B8 Authorized BHRS Director to appoint Ann McGuire, RN, to an extra-help Psychiatric Nurse II position at an hourly rate of \$32.73, which is the fifth step of the salary range - BHRS
- *C1 Adopted a Resolution of Necessity to acquire real property by Eminent Domain, or interest in real property for the State Route 219 widening project, parcel owner Ronald J. Malik, et ux, for APN: 078-013-006, and made the findings contained therein - PW
- *C2 Approved the Subdivision Improvement Agreement for Schutz Subdivision; finds that the final map is in substantial compliance with the previously approved tentative map; finds that the final map, together with the provisions for its design and improvement, is consistent with the specific plan for the area; rejected all roads, highways, avenues, alleys, courts, ways, lanes,

places, and all other street dedications; authorized the Chairman of the Board to sign the final map for TM 2002-04 and the Subdivision Improvement Agreement for Schutz Subdivision; and, authorized the final map to be filed and recorded as presented - PW

***C4** Finds that the Stanislaus County Intersection Improvements at Geer Road and Whitmore Avenue Project is consistent with the overall goals and policies of the Stanislaus County General Plan; adopted the Mitigated Negative Declaration pursuant to CEQA Guidelines §15074(B), by finding on the basis of the whole record, including the Initial Study and any comments received, that there is no substantial evidence the project will have a significant effect on the environment and that the Mitigated Negative Declaration reflects Stanislaus County's independent judgment and analysis; and, ordered the filing of a Notice of Determination with the Stanislaus County Clerk-Recorder's Office pursuant to Public Resources Code §21125 and CEQA Guidelines §15075 - PW

***D1** Authorized Stanislaus County to continue its partnership with City of Turlock in a HOME Investment Partnership Consortium; and, directed the CEO to sign the HOME Consortium Agreement between the City of Turlock and the County of Stanislaus - Planning

Mayfield/Monteith (4-0)(Grover abstained). ***C3** Approved the Subdivision Improvement Agreement for Hillsborough Estates Subdivision Unit No. 2; approved the additional Agreement with Stanislaus Development LLC; finds that the final map is in substantial compliance with the previously approved tentative map; finds that the final map, together with the provisions for its design and improvement, is consistent with the specific plan for the area; rejected all roads, highways, avenues, alleys, courts, ways, lanes, places, and all other street dedications; authorized the Chairman to sign the final map for TM 2001-04, Subdivision Improvement Agreement for the Hillsborough Estates Subdivision Unit No. 2, and the additional Agreement with Stanislaus Development, LLC; and, authorized the final map to be filed and recorded as presented - PW

Monteith/Grover unan. **B9** Accepted the Crows Landing Exclusive Negotiation Ad Hoc Committee First Quarter Status Report and Project Update; reviewed and accepted the exclusive negotiation time line and deliverables including Quarterly Milestones and full Board reporting dates; reviewed and approved the project area boundary map of 4,800 total acres, which includes the 1,521-acre Crows Landing Air Facility property as the Phase I development objective; and, approved and authorized the Chairman of the Board to sign a Pre-Development Agreement that outlines project managers, key staff participants, information exchange, and identifies PCCP West Park as the responsible fiscal party for all consultant analysis that may be necessary during the Exclusive Negotiation timeline - CEO

Mayfield/Monteith unan. **9:15am** Based on the public testimony, the staff report, comments by staff and other written materials in the record and presented at the hearing, the Board denied the appeal of the Planning Commission's decision to deny the appeal of Staff Approval Application No. 2007-09 and Lot Line Adjustment Application No. 2006-45, Cilion, Inc. Ethanol Facility; and, finds and determines the following to be true and correct: 1) On April 19, 2007, the Stanislaus County Planning Commission, by 6-0 vote, denied the appeal of a staff determination to complete Lot Line Adjustment 2006-45 and to issue Staff Approval Permit 2007-09. The Board finds that based upon staff reports, documents received and testimony provided at the Planning Commission hearing that the Planning Commission properly determined that the staff determination and approval are ministerial and categorically exempt under CEQA, and that there is no substantial evidence on the record that the Project may cause a significant effect on the environment; 2) The Project consists of two separate, but related, staff approvals, namely approval for construction of two storm drain basins in the Industrial and Planned Development zoning districts, and approval of a lot line adjustment; 3) The lot line adjustment portion of the Project is categorically exempt under §15305 of the CEQA Guidelines in that it is a minor alteration in land use in an area with less than 20 percent slope, it does not change the land use from industrial types of uses, and it does not result in the

creation of a new parcel; 4) The staff approval of storm drain basins for the Project is categorically exempt under §15304 of the CEQA Guidelines in that construction of the storm drains will require minor grading on land that does exceed 10 percent slope, and that does not involve removal of healthy, mature, scenic trees; 5) Discretionary permits such as Use Permits or Staff Approvals are not required when a use is specifically permitted within a zoning district; 6) The Cilion Ethanol Facility is located entirely within a pre-existing Industrial zoning district, and ethanol manufacturing is an industrial use that is specifically permitted in an Industrial zone pursuant to §21.60.020 B of the Stanislaus County Code; 7) Ethanol manufacturing is not one of the specifically listed uses under §21.60.030 that require a Use Permit as alleged by the Appellant. The Board specifically finds and determines that: (a) Subdivision A of §21.60.030 refers to solid waste disposal facilities, and that distillation of alcohol during the Cilion ethanol manufacturing process is not the same as or included within the term “Distillation of bones” under that provision, (b) Subdivision B of §21.60.030 includes manufacturing of compressed gasses, however, it is not economically feasible to capture and compress CO₂ produced as an incidental by-product of ethanol manufacturing by the Cilion facility and, therefore, the Cilion facility will not manufacture compressed gasses, (c) Subdivision E of §21.60.030 refers to refining of petroleum products, however, the manufacture of ethanol is not a petroleum product that requires refining; 8) The 75-foot height limitation under Subdivision A of §21.60.040 of the Stanislaus County Code is not applicable in that: (a) Neither a paper lot line adjustment, nor two storm drainage basins would exceed the height limitation, (b) By memo dated September 11, 2006, the Fire Marshall’s Office determined that the ethanol manufacturing facility would be non-combustible or fireproof, and not intended for human occupancy, and (c) Subdivision B of §21.60.040 provides that there is no height limitation for fireproof structures that are not used for human occupancy; 9) Staff approval of the lot line adjustment and issuance of a staff approval permit for two storm drainage basins in an industrial area for an industrial project is consistent with the development density established by existing zoning, community plan, and general plan policies for which an EIR was certified, and there are no project-specific significant effects which are peculiar to the project or its site; 10) The San Joaquin Valley Air Pollution Control District received Authority to Construct Applications for the Cilion Ethanol Plant, and, in accordance with CEQA Guidelines, the Air District assumed the role as lead agency under CEQA, and prepared an Initial Study and Proposed Mitigated Negative Declaration for the ethanol manufacturing project; 11) The Air District is a regulatory agency with resource matter expertise on air quality issues, and granted Authority to Construct Applications with substantial conditions to mitigate potential air quality impacts; 12) The County of Stanislaus, as a Responsible Agency reviewed and commented on the Air District’s draft Negative Declaration for the Cilion project; 13) The Board of Supervisors, as a responsible agency, has independently reviewed and considered the information contained in the Mitigated Negative Declaration on the Cilion Ethanol Plant project adopted by the Air District, including the responses to comments; 14) All potentially significant impacts identified in the Air District’s Mitigated Negative Declaration have been avoided or reduced to a level of non-significance with mitigation as identified in the Mitigated Negative Declaration, the Mitigation Monitoring Plan, and the Conditions of Approval; 15) The Cilion Ethanol Plant Project with the mitigation measures set forth in the Air District’s Mitigated Negative Declaration will not have a substantial impact on the Environment; 16) The County adopted an Environmental Impact Report for the Keyes Community Plan, which considered the potential environmental impacts of land uses including industrial uses in the area of the project. The Keyes Community Plan EIR adopted mitigation measures relating to all types of land uses designated in the Community Plan, including measures to reduce traffic impacts to a level of non-significance. The Project does not have a substantial or significant effect on the roads within Stanislaus County or the surrounding road system in that: (a) A lot line adjustment and construction of two storm drainage basins will not result in increased traffic, and (b) the Cilion Ethanol Plant project will pay impact fees that, in combination with other impact fees, will fund traffic improvements in the area; 17) After considering the comments from all interested parties, including the San Joaquin Valley Air Pollution Control District, and the testimony at the

Public Hearing, the Board finds that there is no substantial evidence in light of the whole record that the Project will have a significant effect on the environment, including air resources; 18) Considering that all potentially significant effects have been avoided or reduced to a level of insignificance, and considering other projects including industrial projects in the past, present and future, the Board finds that the Project does not have a considerable incremental effect on the environment and thus there are no significant cumulative effects on the environment; 19) The Board finds the persons opposing the Project have only raised an issue that there may be a cumulative effect, but have not specified what the cumulative effects are or explained how or why the Project may have a considerable incremental effect on the environment; 20) Considering the entire record, including comments from all interested parties, testimony at the Public Hearing, and the mitigated negative declaration adopted by the San Joaquin Air Pollution Control District, the Board finds that the Project approvals issued by the Department of Planning and Community Development are ministerial actions that are consistent with existing uses in the Industrial Zoning District where the Project is located; 21) The County correctly and timely followed all procedural steps as required by CEQA for the issuance of the requested lot line adjustment and staff approval, including but not limited to the following actions: (a) Initiating early consultation with responsible agencies through the CEQA referral to the Environmental Review Committee, (b) Determination of exemption, (c) Publication, mailing and posting of Notice of Hearing for public hearings conducted by both the Planning Commission and the Board of Supervisors, (d) Conducting a public hearing by the Planning Commission, and (e) Conducting a public hearing by the Board of Supervisors; 22) The public was adequately notified of the intent to approve a lot line adjustment and issue a staff approval for project storm drains, and that a number of comments and letters about the Project were received from affected and interested persons and companies; 23) In reliance on the information contained in the record of proceedings, including but not limited to the Mitigated Negative Declaration adopted by the San Joaquin Air Pollution Control District, the Keyes Community Plan, and the Stanislaus County General Plan, the Board finds that the Project has been designed and located so as to avoid any significant environmental effects: (a) The Project is required to comply with traffic mitigation requirements set forth in the Keyes Community Plan, (b) There are no natural water features or wetlands located on the site, (c) The Project is located in an area zoned for industrial uses and is surrounded by similar industrial uses, and (d) The San Joaquin Valley Air Pollution Control District has issued permits with substantial conditions to minimize or avoid impacts to air quality; 24) The Board finds that a public controversy does not exist solely because the appellant objects to the Project, and the Board further finds that even if the relatively few objections raised does constitute a public controversy, the existence of such a public controversy over the environmental effects of the Project shall not require preparation of an environmental impact report in that there is no substantial evidence before the agency that the Project may have a significant effect on the environment; 25) The Board finds that no evidence has been produced on the record to show that Mr. Richard Harriman possesses the qualifications of an expert on air quality, traffic, or other environmental resource topics, and that his statements are merely unsubstantiated opinions. The Board specifically finds that Mr. Harriman failed to comply with CEQA Guidelines §15204 (b) in that he did not identify a specific environmental effect, explain why the effect would occur, or explain why the effect would be significant; 26) Mr. Harriman's testimony reflects narrative, anecdotal observations about generalized environmental effects, and did not explain the basis for his comments, did not submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments; 27) Mr. Harriman's testimony and letters are lay opinion without qualified technical expertise, and do not constitute substantial evidence supporting a fair argument that the lot line adjustment or construction of the storm drainage basins could result in a significant impact on the environment; 28) The Board has read and considered the written and oral comments of Mr. Richard Harriman and finds that the contentions set forth by him and his client have been adequately addressed by staff or by the applicants' representatives or have been controverted or countered

with contrary evidence; 29) The Board considered contrary evidence to the points raised by Mr. Harriman in assessing the weight of the evidence supporting the asserted environmental impact, and the Board concludes that no substantial evidence was presented or exists in the record that the Project will have a significant effect on the environment. In reviewing the information presented by the appellant including the letter by Mr. Harriman, the Board further finds that for the following individual and collective facts that there is no substantial evidence contained in the record that the Project will have a significant effect on the environment: (a) There is no evidence of legal significance, reasonable in nature, credible, and of solid value that the Project will have a significant effect on the environment, (b) In accordance with Public Resources Code §21080 (e) the record contains evidence submitted by the appellants that does not constitute substantial evidence as it is argument, speculation, unsubstantiated opinion or narrative, or evidence which is clearly erroneous or inaccurate, (c) There is no substantial evidence in the record which include facts, reasonable assumptions predicated upon facts and expert opinion supported by facts that the Project will have a significant effect on the environment, (d) There are no opinions contained in the record that the Project will have a significant effect on the environment that constitute substantial evidence which have been provided by a witness who is qualified to render such an opinion, (e) There is no information contained in the record that constitutes substantial evidence that the Project will have a significant effect on the environment which has been demonstrated to have an adequate foundation in the witness's personal knowledge, (f) The record contains evidence submitted by the appellants that does not constitute substantial evidence as it consists entirely of expressions of subjective concerns, personal beliefs, unfounded conclusions, inherently improbable or not credible, (g) When considering the review of the entire record the information presented by the appellant is incorrect; 30) The Board finds that there was no evidence placed on the record that Mr. Harriman actually visited the site in question; 31) The Board finds that Mr. Harriman's letter did not provide substantial data or evidence but only made a vague unsubstantiated reference to potential environmental impacts; 32) The Board further finds that Mr. Harriman's letter offered no quantitative information; 33) The Board finds that while Mr. Harriman does not agree with the conclusion of the Planning staff that environmental impacts, including traffic and air quality impacts, would be less than significant, he does not support his opinion with substantial evidence and offers unsubstantiated opinion about environmental concerns. Mr. Harriman does not attempt to provide quantitative data to support his assertions. Accordingly, the Board does not give much weight to Mr. Harriman's opinion and conclusion; 34) The Board finds that certain statements provided by Mr. Harriman on behalf of his client were either in the form of an argument, speculation or unsubstantiated opinion or narrative that was either not credible or adequately addressed by applicant and does not overall constitute substantial evidence that there was any significant effect on the environment that would not be reduced through the mitigation measures of the negative declaration negative declaration adopted by the San Joaquin Air Pollution Control District; 35) The Board finds that County staff and representatives for Cilion presented sufficient evidence of no significant environmental impacts and the showing has not been countered with any contrary substantial evidence; 36) The Board finds that traffic impacts resulting from the Project are insignificant in that a lot line adjustment does not result in any physical impact on the environment and that construction of a storm drain basin is a minor grading project with minimal impact on the environment; 37) The Board finds that the proposed Project involves no substantial conflict with the General Plan designations or zoning applicable to the Project site or General Plan policies related to the location and development of an industrial use in an Industrial Zoning District; 38) The Board finds that there is neither an individual nor cumulative impact associated with the loss of farmland in that the area already is zoned Industrial; 39) The Board finds that based on the whole record of proceedings that there are no environmental effects that reach the level of being significant; 40) This Board has reviewed the entire record of the proceedings and makes a determination and finding that there is no substantial evidence

in the record that supports a fair argument that there is a reasonable probability that the Project will result in a significant effect on the environment; and, 41) The Board finds that its decision is based both independently (individually) and collectively on the above findings

Corr 1 Referred to the CEO-Office of Emergency Services and the Agricultural Commissioner and Sealer of Weights and Measures, three letters from the Governor's Office of Emergency Services regarding the U.S. Department of Agriculture's granting of a Secretarial disaster designation for Stanislaus County and other counties due to agriculture losses caused by the combined effects of drought and freezing temperatures that began on 10/15/06 and continuing.

Corr 2 Referred to the CEO-Office of Emergency Services and the Agricultural Commissioner and Sealer of Weights and Measures, three letters from the Governor's Office of Emergency Services regarding the U.S. Small Business Administration declaration of Stanislaus County and other contiguous counties as disaster areas as a result of the USDA disaster designation due to agriculture losses caused by the combined effects of drought and freezing temperatures that began on 10/15/06 and continuing.

Corr 3 Referred to the Department of Planning and Community Services and the CEO, a letter from the U.S. Department of Housing and Urban Development regarding the disposal of the Riverbank Army Ammunition Plant.

Corr 4 Referred to the Department of Parks and Recreation and the Fish and Wildlife Committee, a letter from the State of California Fish and Game Commission regarding a notice of public hearing on the proposed regulatory action relating to the Upland Game Bird Hunting.

Corr 5 Referred to the CEO-Office of Emergency Services, a letter from the California Department of Forestry and Fire Protection regarding public hearings on the proposed rulemaking for Fire Hazard Severity Zones, 2007.

Corr 6 Referred to the Department of Public Works and the CEO-Office of Emergency Services, a letter from the U.S. Department of Homeland Security FEMA regarding levees that are accredited on the effective Flood Insurance Rate Map (FIRM) and in the effective Flood Insurance Study (FIS) report for the unincorporated areas of Stanislaus County.

Corr 7 Acknowledged receipt of claims and referred to the CEO-Risk Management Division the following claims: Hector Revuelta; Diane Rodrigues; Carl Thompson; Marie Lee Armstrong; Gale Sawyer; and, Ludmila Grokholsky.

Supervisor Monteith reported that he attended the California First 5 Conference held in Garden Grove. He noted that County Counsel, the Director of the Children and Families Commission, the Director of BHRS, Director of CSA, and the Public Health Officer also attended this conference. They attended various workshops and found the conference to be very informative and beneficial.

The CEO gave an update regarding the Williamson Act funding from the State and noted that \$1.6 million is in jeopardy for Stanislaus County this fiscal year. He noted that the County's legislative lobbyist is working diligently on this issue, and that he will keep the Board updated.

Adjourned to closed session at 10:36 a.m. for conference with Labor Negotiator - Agency Negotiator: Richard Robinson. Labor Organization: Stanislaus County Sheriffs' Management Association. Government Code §54957.6.