

SUMMARY ACTION MINUTES

BOARD OF SUPERVISORS

Regular Meeting

TUESDAY, DECEMBER 06, 2011

Closed Session – 8:30 a.m.

Regular Meeting – 10:00 a.m.

MERCED COUNTY
ADMINISTRATION BUILDING
2222 “M” STREET
BOARD ROOM, THIRD FLOOR
MERCED, CALIFORNIA 95340
(209) 385-7366

CHAIRMAN JOHN PEDROZO.....DISTRICT 1
HUBERT “HUB” WALSH, JR.....DISTRICT 2
LINN DAVIS.....DISTRICT 3
DEIDRE F. KELSEY....DISTRICT 4
JERRY O’BANION.....DISTRICT 5
Lydia A. Beiswanger, Chief Clerk

JAMES L. BROWN
COUNTY EXECUTIVE OFFICER

JAMES N. FINCHER
COUNTY COUNSEL

*All supporting documentation is available for public review in the Office of the Clerk of the Board of Supervisors located in the County Administration Building, Third Floor, 2222 “M” Street, Merced, California, 95340
During regular business hours, 8:00 a.m. – 5:00 p.m., Monday through Friday.*

The Agenda is available online at www.co.merced.ca.us

Any material related to an item on this Agenda submitted to the Clerk after distribution of the Agenda packet is available for public inspection in the Office of the Clerk of the Board

Members of the public are advised that all pagers, cellular telephones and any other communication devices are to be turned off upon entering the Board Chambers

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The Agenda is divided into three sections:

CONSENT CALENDAR – These matters include routine financial and administrative actions and are approved by a single majority vote.

SCHEDULED ITEMS – These items are noticed hearings, work sessions and public hearings.

REGULAR CALENDAR – These items include significant policy and administration actions. Immediately after approval of the CONSENT CALENDAR, if the time of the hearing of SCHEDULED ITEMS has not arrived, the REGULAR CALENDAR will be considered.

SCHEDULED ITEMS

8:30 A. M.

THE PUBLIC IS INVITED TO SPEAK ON ANY ITEM ON THE AGENDA- TESTIMONY IS LIMITED TO FIVE MINUTES PER PERSON

CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION: It is the intention of the Board to meet in Closed Session concerning Existing Litigation pursuant to Government Code Section 54956.9(a): Somach, Simmons & Dunn v. County of Merced, Merced Superior Court Case No. CV000529

CLOSED SESSION: It is the intention of the Board to meet in Closed Session pursuant to Government Code Section 54957: PUBLIC EMPLOYEE APPOINTMENT, Title: Public Defender

CLOSED SESSION: It is the intention of the Board to meet in Closed Session pursuant to Government Code Section 54957.6 concerning a Conference with County of Merced Staff Negotiators concerning negotiations with American Federation of State, County and Municipal Employees (AFSCME), Units 4, 5, 6 and 8; Independent Employees of Merced County (IEMC), Unit 3; Merced County Lawyers Association, Unit 7; Merced County Sheriff Employee Association (MCSEA), Unit 2; Merced County Law Enforcement Sergeants, Unit P; Deputy Sheriff Association, Unit 10; Non-Safety Corrections, Unit 12; and Probation Supervising Employees, Unit 11.

THE BOARD RECESSED AT 8:30 A.M. AND RECONVENED AT 10:00 A.M. WITH ALL MEMBERS PRESENT. COUNTY COUNSEL JAMES FINCHER ADVISED THE BOARD TOOK ACTION TO APPROVE A FINAL AGREEMENT SETTLING PENDING LITIGATION SOMACH, SIMMONS & DUNN V. COUNTY OF MERCED, MERCED SUPERIOR COURT CASE NO. CV000529. THE SUBSTANCE OF THE AGREEMENT IS A MONETARY SETTLEMENT WHEREBY THE PARTIES WILL SPLIT THE AMOUNT IN CONTROVERSY, \$30,000 TO PLAINTIFFS, WITH THE REMAINDER TO BE KEPT BY THE COUNTY, EACH PARTY TO BEAR THEIR OWN COSTS AND ATTORNEY'S FEES.

GOVERNMENT CODE SECTION 54950 COMPLIANCE (LATE AGENDA ITEMS)

ACTION WHICH AROSE SUBSEQUENT TO THE POSTING OF THE AGENDA (1) Find the need to consider an agreement with AFSCME and (2) Place the Item on the Agenda of December 6, 2011, for Board

consideration.

REVIEW BOARD ORDER – SEE PAGE 9 AND 16

10:00 A. M.

PLEDGE OF ALLEGIANCE

PUBLIC OPPORTUNITY TO SPEAK ON ANY MATTER OF PUBLIC INTEREST WITHIN THE BOARD'S JURISDICTION INCLUDING ITEMS ON THE BOARD'S AGENDA, EXCEPT FOR THOSE ITEMS SPECIFICALLY SCHEDULED AS PUBLIC HEARINGS (Testimony limited to five minutes per person)

REVIEW BOARD ORDER – SEE PAGE 9

APPROVAL OF CONSENT AGENDA CALENDAR (Items #1 - 17)

COMMERCE, AVIATION, AND ECONOMIC DEVELOPMENT - PUBLIC HEARING

To receive comments on the Castle Airport Master Plan and related environmental findings and determinations.

RECOMMENDATION: Determine the Castle Airport Master Plan requires no further Environmental Impact Review, adopt Resolution making findings and determinations in compliance with CEQA Section 21000 et seq., and adopt Resolution adopting the Castle Airport Master Plan.

REVIEW BOARD ORDER – SEE PAGE 9

COUNTY COUNSEL - PROPOSED ORDINANCE - FIRST READING, SET SECOND READING AND POSSIBLE ADOPTION FOR DECEMBER 20, 2011 AT 10:00 A.M.

To consider Proposed Ordinance: An Ordinance amending Section 1.08 of the Merced County Code, by codifying Ordinance No. 1887 which established New Supervisorial District Boundaries (Repeals and replaces Chapter 1.08; encodes Ordinance No. 1887)

RECOMMENDATION: Waive further reading and set Second Reading and possible adoption for December 20, 2011 at 10:00 a.m.

REVIEW BOARD ORDER – SEE PAGE 10

PLANNING - PUBLIC HEARING - CONTINUED FROM NOVEMBER 22, 2011

To consider Major Subdivision Application No. MAS11-001 requesting the Reversion of lots back to acreage in the "Fleming Hills" Subdivision originally approved as Application No. MAS04-006 approved by the Planning Commission on September 11, 2004. Said application, as modified, proposes to revert 24 recorded single-family residential lots and dedicated public roads into one single 26 acre parcel located at the southwest corner of Fleming Road and Herrod Avenue in the Atwater area.

RECOMMENDATION: Determine the application is exempt from CEQA review under Section 15305 - "Minor Alterations in Land Use Limitations" of the California Environmental Quality Act (CEQA) Guidelines based on the Two CEQA Findings, and Approve Major Subdivision Application No. MAS11-001

based on the 8 findings and subject to the 8 Conditions of Approval.
REVIEW BOARD ORDER – SEE PAGE 10 THROUGH 13

REPORTS/BOARD DIRECTION

County Executive Officer, County Counsel, Board of Supervisors Members

CONSENT CALENDAR (Items # 1 - 17)

APPROVED AS RECOMMENDED EXCEPT PULLING ITEMS 2, 6, AND 7 FOR SEPARATE DISCUSSION AYES: ALL

Public Works

1. Set Public Hearing for January 2012 at 10:00 a.m. (for a date to be determined upon adoption of the 2012 Board Meeting Calendar) to consider Proposed Ordinance setting refuse service fees and charges for County Solid Waste Franchise Areas (Amending Chapter 5.90 and Ordinance 1882).

REVIEW BOARD ORDER – SEE PAGE 13

2. Approve Budget Transfer in the amount of \$53,675 for parking lot security fencing and electric gates for Emergency Operations Center Project. (4/5 Vote Required)

REVIEW BOARD ORDER – SEE PAGE 13 AND 14

Planning

3. Approve and authorize Chairman to sign Amendment to Contract No. 2011138 with HCC Corporation for the consultant, ICF Jones & Stokes, Inc., to prepare biological resources and cultural resources evaluations as part of the Initial Study for the Hilmar Cheese Expansion Project (MM11-014).
4. Approve and authorize Chairman to sign Amendment to Contract No. 2011139 with ICF Jones & Stokes, Inc. to prepare biological resources and cultural resources evaluations as part of the Initial Study for the Hilmar Cheese Expansion project (MM11-014) and approve the related Budget Transfer. (4/5 Vote Required)

Dept. of Workforce Investment

5. Approve and authorize the Chairman to sign the required Subgrantee Information Change Form - Type 1 to provide the State with the updated Workforce Investment Act Subgrantee information for the Administrator Alternate Point of Contact.

Dept. of Admin. Services

6. Approve and authorize Chairman to sign Amendment to Contract No. 2009013 with Morse Partners to extend the lease of office space located at 1944 M Street, Merced, through December 31, 2012.

REVIEW BOARD ORDER – SEE PAGE 14

Ag. Commissioner

7. Approve and authorize Chairman to sign Amendment to Contract No. 2000138 with the California Department of Food and Agriculture to perform Glassy Winged Sharpshooter

inspection and survey activities and adopt Resolution.

ADOPTED RESOLUTION NO. 2011-189

Executive Office

8. Act on Claims for Damages received from George Garcia and Manuel and Josephine Martinez as recommended by Risk Management and County Counsel.
9. Approve travel requests received from Human Services Agency and Health as recommended by Executive Office.

Fire

10. Approve Budget Transfer in the amount of \$13,000 for additional repairs needed for the roof project at Station 81, 735 Martin Luther King Jr. Way, due to unanticipated damage.

Board of Supervisors

11. Approve and authorize Chairman to sign renewal Contract No. 2006293 with Nancy Lueder Misra for the loan of the "Merced County Courthouse Needlepoint" to Merced County for the purpose of display.

Board Recognition

12. Authorize Certificate of Recognition for Label Technology in celebration of 25 year anniversary.
13. Authorize Certificate of Recognition to Lisa Vaz for being selected by the Merced Business and Professional Women as 2011 Working Woman of the Year.
14. Authorize Certificate of Recognition for City of Merced in recognition of the "Going Green for Generations to Come" and in celebration of the City of Merced's \$7.2 million energy conservation project.
15. Authorize Certificate of Recognition to Hilmar Lumber in recognition of 60th Anniversary.
16. Authorize Certificate of Recognition to Don Morelli in recognition of dedication to Barmont Neighborhood Watch Program.
17. Authorize plaque for San Luis National Wildlife Refuge Complex Headquarters & Visitor Center in celebration of Grand Opening.

REGULAR CALENDAR

BOARD ACTION

PUBLIC WORKS

18. Authorize Request for Proposal for qualified consultants to provide materials testing and special inspection services and authorize Public Works to review proposals and negotiate a preliminary contract to be returned to the Board for approval.

APPROVED AS RECOMMENDED AYES: ALL

19. Resolution prohibiting parking on both the north and south side of River Road, between 1/4 mile west of State Highway 165 and 1/2 mile east of State Highway 165, in the Stevinson

Area and authorize Public Works to install signs informing motorists of the prohibition of parking.

ADOPTED RESOLUTION NO. 2011-190 AS RECOMMENDED AYES: ALL

20. Resolution authorizing the Director of Public Works to submit two grant applications through the Federal Assistance 2012 Discretionary Grant Programs: 1) Franklin Road Penitentiary access - Phase 2 project; and, 2) Wolfsen Road access to San Luis National Wildlife Refuge Visitors Center project.

ADOPTED RESOLUTION NO. 2011-191 AS RECOMMENDED AYES: ALL

21. Approve lease agreement with American Legion Post 83 for operation and maintenance of the Merced Veteran's Memorial Building. (4/5 Vote Required)

AUTHORIZED CONTRACT NO. 2011220 AS RECOMMENDED AYES: ALL
REVIEW BOARD ORDER – SEE PAGE 14

22. Contract with Cassel Malm Fagundes LLP for legal services for the Campus Parkway Project.

AUTHORIZED CONTRACT NO. 2011221 AS RECOMMENDED AYES: ALL

23. Rescind approval of Budget Transfer Consent Item #1 from November 22, 2011 Board Meeting and Approve new Budget Transfer in the amount of \$16,000 for the Water Treatment System. (4/5 Vote Required)

APPROVED AS RECOMMENDED AYES: ALL

COMMERCE, AVIATION, AND ECONOMIC DEVELOPMENT

24. Amendment to Contract No. 2010195 with Alfonse Peterson for Business Assistance Counseling, and authorize Request for Proposal for a Business Consultant and direct the department to return to the Board for approval of contract.

PULLED FROM THE AGENDA - NO ACTION TAKEN

25. (1) Adopt Resolution authorizing submittal of the CalHome grant application to be used for first-time homebuyer mortgage assistance and owner-occupied rehabilitation assistance. (2) Authorize Chairman to execute the CalHome grant application and any additional documents necessary to complete the CalHome application process; and upon successful award, to execute standard agreements and any subsequent amendments necessary to participate in the CalHome Program subject to approval by counsel. (3) CAED to return to the Board with an information item of all actions taken. (4) Authorize the Commerce, Aviation & Economic Development Director to transfer or modify budget amounts and activities as necessary to fully expend CalHome Program funds, and (5) Commerce, Aviation & Economic Development Director and/or the Business Operations Manager to execute loan documents, funds requests, and other required reporting forms necessary to participate in the CalHome program upon successful award.

APPROVED AS RECOMMENDED AYES: ALL

REVIEW BOARD ORDER – SEE PAGE 15

HUMAN SERVICES AGENCY

26. Approve relief of accountability for the fixed asset #60547 (computer) by allowing the Auditor's Office to remove the item from HSA's fixed asset inventory.

APPROVED AS RECOMMENDED AYES: ALL

PLANNING

27. Rescind existing Williamson Act Contracts and simultaneously enter into new Williamson Act Contracts as follows: Terry and Melony Reed Contract No. 2011-01WA; the Cordova 1994 Trust, Darrel and Norma Cordova Trustees Contract No. 2011-02WA; Drayer Trust, Fred and Carle Drayer Trustees Contract No. 2011-03WA; the De Jager 2002 Living Trust, Edward and Cobi De Jager Trustees Contract No. 2011-04WA, so as to reflect the new property line adjustments and making six findings in accordance with Section 51257 of the Land Conservation Act.

APPROVED AS RECOMMENDED AYES: ALL
REVIEW BOARD ORDER – SEE PAGE 15 AND 16

MENTAL HEALTH

28. Approve renewal application for the Project Home Start as part of the County's portion of the 2011 Merced County Continuum of Care Plan.

APPROVED AS RECOMMENDED AYES: ALL

FIRE

29. Authorize acceptance of Fireman's Fund Grant Program - Heritage Program grant funds in the amount of \$5,092, authorize purchase of 15 sets of proximity/structure boots from LN Curtis & Sons, and approve necessary budget transfer. (4/5 Vote Required)

AUTHORIZED CONTRACT NO. 2011222 AS RECOMMENDED AYES: ALL

ASSESSOR-RECORDER

30. Contract with Secretary of State in an amount not to exceed \$5,000 for reimbursement of costs related to the post-election audit program.

AUTHORIZED CONTRACT NO. 2011224 AS RECOMMENDED AYES: ALL

EXECUTIVE OFFICE

31. Adopt the recommended 2012 Board Meeting Calendar.

APPROVED AS RECOMMENDED AYES: ALL

BOARD OF SUPERVISORS

32. Authorize Special Board Project Funds - District Four up to \$650 to be reimbursed to Lifeline Community Development of Merced County for the purchase of gardening equipment.

APPROVED AS RECOMMENDED AYES: ALL

BOARD INFORMATION & POSSIBLE ACTION

ACCEPTED AND PLACED ON FILE AYES: ALL

33. Mental Health re: Update on the Mental Health Services Act Housing Program's Pacheco Place project in Los Banos.
34. Merced County Mosquito Abatement District re: Manager's Report of October 2011.
35. State Fish and Game Commission re: Notice of Findings regarding the Cedars buckwheat, published in the California Regulatory Notice Register on November 11, 2011.
36. State Fish and Game Commission re: Notice of Findings regarding American pika, published in the California Regulatory Notice Register on November 11, 2011.

37. Merced City Council Resolution No. 2011-68 redesignating the existing Willowbrook Court to Willowbrook Drive.
38. Federal Emergency Management Agency (FEMA) determination of whether property located at 3315 McKee Road in the Black Rascal Park, Inc. subdivision is located within an identified Special Flood Hazard Area based on the National Flood Insurance Program (NFIP) map.

ADOPTED RESOLUTION IN MEMORY OF MARILYN LAMONS, STEVE SILVA, AND BETTY LOU GEORGE AND ADJOURNED THE MEETING UNTIL DECEMBER 20, 2011 AT 10:00 A.M.

BOARD ORDERS – SUMMARY ACTION MINUTES – DECEMBER 6, 2011

10:00 A.M. LATE ITEM
2011-12-06 HUMAN RESOURCES

Upon motion of Supervisor Kelsey, seconded by Supervisor O'Banion, duly carried, the Board finds a need, subsequent to the posting of the agenda, to ratify the Memorandum of Understanding between the County and Bargaining Unit 11 represented by American Federation of State, County and Municipal Employees (AFSCME) and places the item on the agenda for consideration.

Ayes: Pedrozo, Walsh, Davis, Kelsey, O'Banion

10:00 A.M. SCHEDULED ITEM
2011-12-06 PUBLIC OPPORTUNITY

Mike Lynch, High Speed Rail representative, states the California High Speed Rail Authority meeting will be next Tuesday at 10:00 a.m. at Merced City Hall and submits a letter recommending "Hybrid" Route through Valley Train Stations in downtown Merced and Fresno.

Present: Pedrozo, Walsh, Davis, Kelsey, O'Banion

10:00 A.M. SCHEDULED ITEM
2011-12-06 COMMERCE, AVIATION AND ECONOMIC DEVELOPMENT– PUBLIC HEARING

The time and date previously set for a Public Hearing to receive comments on the Castle Airport Master Plan and related environmental findings and determinations submitted by Commerce, Aviation and Economic Development.

Director of Commerce, Aviation and Economic Development Mark Hendrickson reviews the staff report and gives background on the Castle Airport Master Plan.

The Chairman opens the public hearing and asks if there is anyone present wishing to speak. No one speaks. The Chairman closes the public hearing.

Upon motion of Supervisor O'Banion, seconded by Supervisor Davis, duly carried, the Board determines the Castle Airport Master Plan requires no further environmental impact review and makes findings and determinations in compliance with CEQA Section 21000 et seq., and adopts Resolution No. 2011-187.

Ayes: Pedrozo, Walsh, Davis, Kelsey, O'Banion

Upon motion of Supervisor O'Banion, seconded by Supervisor Kelsey, duly carried, the Board adopts the Castle Airport Master Plan Resolution No. 2011-188.

Ayes: Pedrozo, Walsh, Davis, Kelsey, O'Banion

10:00 A.M. SCHEDULED ITEM

2011-12-06 COUNTY COUNSEL – PROPOSED ORDINANCE – FIRST READING

The time and date previously set for a Public Hearing to conduct the First Reading of Proposed Ordinance titled: An Ordinance Establishing Boundaries of Supervisorial Districts (Repeals and replaces Chapter 1.08; encodes Ordinance 1887) submitted by County Counsel.

County Counsel James Fincher briefly reviews the recommendation before the Board and states this is the First Reading of the Proposed Ordinance.

The Chairman opens the public hearing and asks if there is anyone present that wishes to speak. No one speaks. The Chairman closes the public hearing.

Upon motion of Supervisor O'Banion, seconded by Supervisor Kelsey, duly carried, the Board waives further reading of the proposed ordinance and sets second reading for December 20, 2011 at 10:00 a.m.

Ayes: Pedrozo, Walsh, Davis, Kelsey, O'Banion

10:00 A.M. SCHEDULED ITEM

2011-12-06 PLANNING – PUBLIC HEARING – Continued from November 22, 2011

The time and date previously set for a continued Public Hearing to consider Major Subdivision Application No. MAS11-001 requesting the Reversion of lots back to acreage in the "Fleming Hills" Subdivision originally approved as Application No. MAS04-006 approved by the Planning Commission on September 11, 2004. Said application, as modified, proposes to revert 24 recorded single-family residential lots and dedicated public roads into one single 26 acre parcel located at the southwest corner of Fleming Road and Herrod Avenue in the Atwater area submitted by Planning.

Assistant Director of Planning Bill Nicholson reviews the staff report and states a late powerpoint has been added to the presentation.

Planner Dave Gilbert gives a powerpoint presentation and states the public hearing is continued from November 22, 2011. Mr. Gilbert also states one parcel was not part of the project to revert 24 lots and a condition has been added to exclude a 2.02 acre parcel not owned by Westamerica Bank.

Supervisor Davis questions if bonding money is required on the 2.2 acres and if any money is kept by the county.

Mr. Nicholson states all money is put up by Westamerica and no bonding money was necessary on the parcel.

The Chairman opens the public hearing and asks if there is anyone present that wishes to speak. No one speaks. The Chairman closes the public hearing.

Upon motion of Supervisor Davis, seconded by Supervisor O'Banion, duly carried, the Board determines the application is exempt from CEQA review under Section 15305 – "Minor Alterations in Land Use Limitations" of the California Environmental Quality Act (CEQA)

Guidelines based on the two CEQA Findings contained in the Staff Report dated November 22, 2011, and approves Major Subdivision Application No. MAS11-001 based on the 8 Findings and subject to the 8 Conditions of approval contained in the Board Agenda Item.

CEQA Findings

1. Staff finds that the application is exempt from CEQA review under Section 15305 – “Minor Alterations in Land Use Limitations” based on the following:
 - Reversion to acreage is allowed per the Subdivision Map Act.
 - The project site has a slope of less than 20% (relatively flat terrain).
 - The project is consistent with the Merced County General Plan.
2. The determination that the application is exempt from CEQA review reflects the independent judgment of the County.

Findings

1. Major Subdivision Application No. MAS11-001 as revised, proposes to revert to acreage a portion of the “Fleming Hills” subdivision by combining 24 single-family residential lots and vacate dedicated public roads into one single 26 acre parcel, and excludes Lot 24 from the reversion.
2. The project site is located at the southwest corner of Fleming Road and Herrod Avenue in the Atwater area.
3. The project is consistent with the Merced County General Plan and Development Standards contained in Section 18.08.03 of the Zoning Code.
4. The project has been reviewed by the Department of Public Works/Roads Division, Merced Irrigation District, McSwain Union Elementary School District, and Merced Union High School District.
5. The proposed reversion to acreage, as conditioned, is compatible with adjacent uses and properties and neighborhoods.
6. The reversion to acreage, if carried out in compliance with all conditions and requirements, will not be a nuisance or detrimental to the public health, safety or general welfare.
7. The public hearing has been adequately noticed and advertised.
8. The Board of Supervisors finds that the subdivided real property may be reverted to acreage based upon the following findings:
 - a. Dedications or offers of dedication to be vacated or abandoned by the reversion to acreage are unnecessary for present or prospective public purposes; and
 - b. All of the following conditions exist with respect to the “Fleming Hills” subdivision
 - All owners of an interest in the real property within the subdivision have consented to reversion; and
 - Only minor improvements (constructions gravel roads, curbs, and a portion of the storm drainage system) required to be installed have been made within two years from the date of the final or parcel map was filed for record, or within the time allowed by agreement for completion of the improvements, whichever is the later; and
 - No lots shown on the final or parcel map have been sold within five years from the date such map was filed for record.

Conditions of Approval
Planning and Community Development Department

1. A Final Map shall be recorded within two years of the Board of Supervisors approval date as required by the Merced County Subdivision Code.
2. The County shall retain a portion of the previously paid subdivision fees, and deposits necessary to accomplish any of the provisions of Section 17.04.060 of the Merced County Subdivision Code.
3. The applicant shall comply with all applicable local, state and federal standards and regulations.

County Counsel

4. INDEMNITY AND HOLD HARMLESS AGREEMENT: Westamerica Bank has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract, writ of mandamus, or otherwise. This duty shall include, but not be limited to, claims, petitions, or the like for bodily injury, property damage, personal injury, contractual damages, writ of mandamus, or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents, commission, boards, and officers of Applicant.

Westamerican Bank's liability for indemnity under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct or negligent conduct of any kind, on the part of Westamerica Bank, its agents, subcontractors, employees, boards, and commissions. The duty shall extend to any allegation, claim of liability, or petition, except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first claim, petition, or allegation of liability against County. Applicant will on request and its expense, defend any action or suit or proceeding arising hereunder. This clause and shall not be limited to any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, that may arise during the term of this Agreement but shall also apply to all such claims and the like after the term of this contract, for example, arising from land use and environmental law actions, or meeting notice law actions, brought against the County following Project approval, modification, or denial.

The clause for indemnification shall be interpreted to the broadest extent permitted by law.

Public Works/Road Division

5. Dedicate 20 feet of road right-of-way and an adjacent 10 foot public utility easement along both existing peripheral roadways, Fleming Road and Herrod Avenue, including a 20 foot radius at the southwest intersections of said roads.
6. Plug the outflow of the 15 inch storm drain pipe in the storm drain manhole located at the most southerly boundary of the subdivision.

7. Enter into a deferment of Construction Agreement for the future construction of Level 1 improvements, as described in Merced County Code Section 16.08.040, along the Fleming Road frontage and future road frontage of Lot 24.

Merced Irrigation District

8. Reflect the recorded MID easement through Document No. 2007-02717B, Merced County Official Records on the final map to call attention to the restrictions on the land where the easement is located.

Ayes: Pedrozo, Walsh, Davis, O'Banion

Not Present: Kelsey

CONSENT ITEM NO. 1

2011-12-06 PUBLIC WORKS

The Clerk announces the setting of a Public Hearing in January 2012 at 10:00 a.m. (for a date to be determined upon adoption of the 2012 Board Meeting Calendar) to consider Proposed Ordinance setting refuse service fees and charges for County Solid Waste Franchise Areas (Amending Chapter 5.90 and Ordinance 1882) is before the Board for consideration.

Assistance Public Works Director Richard Schwarz announces there is a modification to the recommendation stating the public hearing is to be for the second meeting in January 2012 at 10:00 a.m.

County Executive Office Jim Brown clarifies, Item #31 on today's agenda is to adopt the Board calendar and if it is adopted the public hearing could be set for the second meeting in January, 2012 at 10:00 a.m.

Upon motion of Supervisor Walsh, seconded by Supervisor Davis, duly carried, the Board sets the Public Hearing, once the Board calendar is adopted, for the second meeting in January 2012 at 10:00 a.m. to consider Proposed Ordinance setting refuse service fees and charges for County Solid Waste Franchise Areas (Amending Chapter 5.90 and Ordinance 1882).

Ayes: Pedrozo, Walsh, Davis, Kelsey, O'Banion

CONSENT ITEM NO. 2

2011-12-06 PUBLIC WORKS

The Clerk announces Budget Transfer in the amount of \$53,675 for parking lot security fencing and electric gates for Emergency Operations Center Project is before the Board for consideration. (4/5 Vote Required).

Supervisor Davis questions spending \$53,675 at this time and would like more information.

Assistant Public Works Director Richard Schwarz gives clarification and background on the project.

Following brief discussion and upon motion of Supervisor O'Banion, seconded by Supervisor Kelsey, the Board approves the Budget Transfer in the amount of \$53,675 for parking lot security fencing and electric gates for Emergency Operations Center Project.

The Chairman calls for the Vote on the Motion.

Supervisor Davis vote "no". Motion carries.

Ayes: Pedrozo, Walsh, Kelsey, O'Banion

Noes: Davis

CONSENT ITEM NO. 6

2011-12-06 DEPT. OF ADMIN. SERVICES

The Clerk announces Amendment Contract No. 2009013 with Morse Partners to extend the lease of office space located at 1944 M Street, Merced, through December 31, 2012 is before the Board for consideration.

Supervisor Davis questions how long the lease is for.

Mental Health Director Manuel Jimenez states contract is for 1 year.

Supervisor O'Banion states the lease is already a current lease.

Mr. Jimenez states the contract is for \$2,000 less a month.

Upon motion of Supervisor Davis, seconded by Supervisor O'Banion, duly carried, the Board approves and authorizes the Chairman to sign Amendment Contract No. 2009013 with Morse Partners to extend the lease of office space located at 1944 M Street, Merced, through December 31, 2012.

Ayes: Pedrozo, Walsh, Davis, Kelsey, O'Banion

ACTION ITEM NO. 21

2011-12-06 PUBLIC WORKS

The Clerk announces lease agreement with American Legion Post 83 for operation and maintenance of the Merced Veteran's Memorial Building is before the Board for consideration. (4/5 Vote Required)

The Clerk states there is a typographical error on the agenda and there is no Budget Transfer included in this item.

Upon motion of Supervisor Davis, seconded by Supervisor O'Banion, duly carried, the Board approves and authorizes the Chairman to sign Contract No. 2011220 with American Legion Post 83 for operation and maintenance of the Merced Veteran's Memorial Building.

Ayes: Pedrozo, Walsh, Davis, Kelsey, O'Banion

ACTION ITEM NO. 25

2011-12-06 COMMERCE, AVIATION AND ECONOMIC DEVELOPMENT

The Clerk announces Resolution authorizing submittal of the CalHome grant application to be used for first-time homebuyer mortgage assistance and owner-occupied rehabilitation assistance; execution of the CalHome grant application and any additional documents necessary to complete the CalHome application process, execution of standard agreements and any subsequent amendments necessary to participate in the CalHome Program subject to approval by counsel; authorization for the Commerce, Aviation & Economic Development (CAED) Director to transfer or modify budget amounts and activities as necessary to fully expend CalHome Program funds; and authorization for CAED Director and/or the Business Operations Manager to execute loan documents, funds requests, and other required reporting forms necessary to participate in the CalHome program is before the Board for consideration.

Supervisor Davis questions if we are getting away from the title of Commerce, Aviation and Economic Development and into Home programs and is concerned with staff being able to take on extra duties and working outside their scope.

Commerce, Aviation and Economic Development Director Mark Hendrickson states the Housing Program is doing their best and will be adding additional resources to keep the program in place and all demands will be met.

Upon motion of Supervisor Kelsey, seconded by Supervisor O'Banion, duly carried, the Board authorizes submittal of the CalHome grant application to be used for first-time homebuyer mortgage assistance and owner-occupied rehabilitation assistance; authorizes Chairman to execute the CalHome grant application and any additional documents necessary to complete the CalHome application process; and upon successful award, to execute standard agreements and any subsequent amendments necessary to participate in the CalHome Program subject to approval by counsel; approves CAED to return to the Board with an information item of all actions taken; authorizes the Commerce, Aviation & Economic Development Director to transfer or modify budget amounts and activities as necessary to fully expend CalHome Program funds; authorizes Commerce, Aviation & Economic Development Director and/or the Business Operations Manager to execute loan documents, funds requests, and other required reporting forms necessary to participate in the CalHome program upon successful award and adopts Resolution No. 2011-192.
Ayes: Pedrozo, Walsh, Davis, Kelsey, O'Banion

ACTION ITEM NO. 27

2011-12-06 PLANNING

The Clerk announces the Modifications to the Williamson Act Contracts with Terry and Melony Reed, Cordova 1994 Trust, Darrel and Norma Cordova Trustees, Drayer Trust, Fred and Carle Drayer Trustees, the De Jager 2002 Living Trust, Edward and Cobi De Jager Trustees for property line adjustments are before the Board of consideration.

Assistant Development Services Director Bill Nicholson reviews the Staff Report.

Following brief discussion and upon motion of Supervisor Kelsey, seconded by Supervisor O'Banion, duly carried, the Board makes the following Findings pursuant to Section 51257 of the Williamson Act:

1. These Williamson Act Contracts will enforceable restrict the adjusted parcels, for an initial term at least as long as the unexpired term of the rescinded contract, but for not less than 10 years, or 9 years as authorized under AB1265.
2. There is no net decrease of contracted lands as the amount of land being entered into the contracts is equal to or greater than the amount of land currently under the contract being rescinded.
3. Of the land placed under the original Williams Act Contracts, no less than 90% are retained in their original locations.
4. The parcels are large enough to sustain their agricultural use, as defined in Section 51222.
5. The property line adjustments do not compromise the long-term agricultural productivity of these of other agricultural lands subject to contract, nor are they likely result in the removal of adjacent land from agricultural use.
6. The property line adjustments do not result in a greater number of developable parcels than existed prior to the adjustment, or an adjusted lot that is inconsistent with the general plan agricultural land use.

Approves and authorizes the Chairman to sign the modifications to the Williamson Act Contract No. 2011-01WA with Terry and Melony Reed; Contract No. 2011-01WA with the Cordova 1994 Trust, Darrel and Norma Cordova Trustees; Contract No. 2011-03WA with Drayer Trust, Fred and Carle Drayer Trustees; and Contract No. 2011-04WA with the De Jager 2002 Living Trust, Edward and Cobi De Jager Trustees.

Ayes: Pedrozo, Walsh, Davis, Kelsey, O'Banion

ACTION ITEM NO. 31A

2011-12-06 LATE ITEM-HUMAN RESOURCES

Upon motion of Supervisor Walsh, seconded by Supervisor Davis, duly carried, the Board approves the Memorandum of Understanding between the County and American Federation of State, County and Municipal Employees (AFSCME) representing bargaining Unit 11; approves amendments to the Human Resources Rules and Regulations as outlined in the contract; approves amendments to the Salary Allocation Resolution as outlined in the contract and authorizes the Chairman to sign Contract No. 2011225.

Ayes: Pedrozo, Walsh, Davis, Kelsey, O'Banion