

CALIFORNIA ENVIRONMENTAL QUALITY ACT
FINDINGS OF FACT
and
STATEMENT OF OVERRIDING CONSIDERATIONS
OF THE
MERCED COUNTY PLANNING COMMISSION
FOR THE
VIERRA DAIRY EXPANSION PROJECT
ENVIRONMENTAL IMPACT REPORT

FEBRUARY 2024

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I. INTRODUCTION

The Environmental Impact Report (“EIR”) prepared for the Vierra Dairy Expansion project (the “Project”) addresses the potential environmental effects associated with constructing and operating the Project. These findings have been prepared to comply with requirements of the California Environmental Quality Act (“CEQA”) (Public Resources Code Section 21000 *et seq.*) and the CEQA Guidelines (Cal. Code Regs., tit. 14, Section 15000 *et seq.*). These findings refer to the Initial Study/Notice of Preparation (IS/NOP) or Final EIR (“FEIR”) where the material appears in either of those documents. Otherwise, references are to the Draft EIR (“DEIR”).

CEQA, Public Resources Code Section 21000 *et seq.*, generally requires that a lead agency must take reasonable efforts to mitigate or avoid significant environmental impacts when approving a project.

CEQA treats the approval of a Conditional Use Permit as a project that requires environmental review. The “Project” for purposes of CEQA is the issuance of a Conditional Use Permit by Merced County to permit the construction and operation of the Vierra Dairy Expansion project. If the Project can be defined as having significant impacts on the environment, then an EIR must be prepared. For the Vierra Dairy, an Initial Study (IS) was completed in October 2021 to assess the potential environmental effects resulting from the Project. On the basis of this IS, it was determined that preparation of an EIR was necessary pursuant to the requirements of CEQA.

In order to effectively evaluate any potentially significant environmental impacts of the proposed project, an EIR has been prepared. The EIR is an informational document that serves to inform the agency decision-making body and the public in general of any potentially significant environmental impacts. The preparation of an EIR also serves as a medium for identifying possible methods of minimizing any significant effects and assessing and describing reasonable alternatives to the project.

The EIR for this Project was prepared by the Merced County Community and Economic Development Department as the “lead agency” in accordance with CEQA and has been prepared to identify and assess the anticipated effects of the Project.

II. TERMINOLOGY OF FINDINGS

Section 15091 of the CEQA Guidelines requires that, for each significant environmental effect identified in an EIR for a proposed project, the approving agency must issue a written finding reaching one or more of three allowable conclusions. Once an EIR has been completed which identifies one or more potentially significant environmental impacts, the approving agency must make one or more of the following findings for each identified area of impact:

1. Changes or alterations which avoid or mitigate the significant environmental effects as identified in the EIR have been required or incorporated into the project; or,
2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency; or,

3. Specific economic, legal, social, technological, or other considerations, including consideration for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the EIR. (Public Resources Code Section 21081)

For purposes of these findings, the terms listed below will have the following definitions:

- The term “mitigation measures” shall constitute the “changes or alterations” discussed above.
- The term “avoid or substantially lessen” will refer to the effectiveness of one or more of the mitigation measures or alternatives to reduce the severity of an environmental effect.
- The term “feasible,” pursuant to the CEQA Guidelines, means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

In the event that the Merced County Planning Commission (“Planning Commission”) finds a measure not to be feasible, it will provide evidence for its decision and may adopt substitute mitigation that is feasible and designed to reduce the magnitude of the impact. In other cases, the Planning Commission may decide to modify the proposed mitigation. Modifications generally update, clarify, streamline, or revise the measure to comport with current engineering practices, budget conditions, market conditions or existing Merced County policies, practices, and/or goals. Modifications achieve the intent of the proposed mitigation without reducing the level of protection. In many instances, the modifications actually improve the effectiveness of the mitigation. Thus, the County may have modified the language of some of the mitigation measures set forth herein for purposes of clarification and consistency, to enhance enforceability, to defer more to the expertise of agencies with jurisdiction over the affected resources, to summarize or strengthen their provisions, and/or make the mitigation measures more precise and effective, all without making any substantive changes to the mitigation measures.

III. DEFINITIONS

“AAQA” means Ambient Air Quality Analysis

“AAQS” means Ambient Air Quality Standards

“ACO” means Merced County Animal Confinement Ordinance as adopted on October 22, 2002 and amended on February 8, 2005

“ADT” means average daily trips

“APN” means Assessor’s Parcel Number

“ARB” means California Air Resources Board

“ATC” means Authority to Construct

“BACT” means Best Available Control Technology

“BARCT” means Best Available Retrofit Control Technology

“BMP” means Best Management Practices

“Board of Supervisors” refers to the Merced County Board of Supervisors

“BPTC” means best practicable treatment or control

“CDFA” means California Department of Food and Agriculture

“CDFW” means California Department of Fish and Wildlife

“CEQA” means California Environmental Quality Act

“CESA” means California Endangered Species Act

“CHRIS” means California Historical Resources Information System

“CNDDDB” means California Natural Diversity Database

“Commission” or “Planning Commission” refers to the Merced County Planning Commission

“CO” means carbon monoxide

“CO₂” means carbon dioxide

“CUP” means Conditional Use Permit

“CVRWQCB” means Central Valley Regional Water Quality Control Board

“DEH” means Merced County Division of Environmental Health

“DEIR” means Draft Environmental Impact Report for the Vierra Dairy Expansion project, dated June 2023

“District” means San Joaquin Valley Air Pollution Control District

“EC” means Electrical Conductivity (a measure of salts present in a liquid)

“EIR” means Environmental Impact Report for the Vierra Dairy Expansion project, including the DEIR and the FEIR

“EPA” means U.S. Environmental Protection Agency

“FEIR” means Final Environmental Impact Report for the Vierra Dairy Expansion project, dated February 2024

“GHG” means Greenhouse Gas

“HMBP” means Hazardous Material Business Plan

“IS” means Initial Study

“LRP” means Legally Responsible Person

“MBTA” means Migratory Bird Treaty Act

“MCL” means Maximum Contaminant Level

“MID” means Merced Irrigation District

“MMRP” means Mitigation Monitoring and Reporting Program for the Vierra Dairy Expansion project, dated February 2024

“NAHC” means Native American Heritage Commission

“NMP” means Nutrient Management Plan

“NOP” means Notice of Preparation

“NO_x” means nitrogen oxides

“Planning Commission” or “Commission” means the Merced County Planning Commission

“PM₁₀” means particulate matter with a diameter of 10 microns or less

“PM_{2.5}” means particulate matter with a diameter of 2.5 microns or less

“PRD” means Permit Registration Documents

“PTO” means Permit to Operate

“ROG” means reactive organic gases

“ROWD” means Report of Waste Discharge

“SJVAPCD” means the San Joaquin Valley Air Pollution Control District

“SO₂” means sulfur dioxide

“SWPPP” means Storm Water Pollution Prevention Plan

“SWRCB” means State Water Resources Control Board

“SR” means State Route

“TCBB” means tricolored blackbird

“TDS” means Total Dissolved Solids

“TID” means Turlock Irrigation District

“USFWS” means U.S. Fish and Wildlife Service

“VERA” means Voluntary Emissions Reduction Agreement

“VOC” means Volatile Organic Compounds

“WDRs” means Waste Discharge Requirements

IV. PROJECT DESCRIPTION

A. PROJECT LOCATION

The existing Vierra Dairy is located on 72± acres of an existing farm totaling approximately 695 acres on 17 parcels in unincorporated Merced County. The dairy project site is located on the northwest corner of Williams Avenue and Washington Road in the Hilmar area of the County. The project's location is within the central California region (see DEIR Figures 3-1 and 3-2). The dairy project site is located in Section 19, Township 6 South, Range 10 East, Mount Diablo Base and Meridian; 37°23'25.00"N, 120°54'21.00"W.

B. EXISTING SITE CONDITIONS AND OPERATIONS

The existing Vierra Dairy is located on 72± acres of an existing farm totaling approximately 695 acres on 17 parcels in unincorporated Merced County. The dairy project site is located on the northwest corner of Williams Avenue and Washington Road in the Hilmar area of the County. The project's location is within the central California region (see DEIR Figures 3-1 and 3-2). The main project site is located on five parcels, identified as Merced County Assessor's Parcel Numbers (APN) 045-190-015 (39.4 acres), 045-190-052 (9.4 acres), 045-190-063 (9.7 acres), 045-190-077 (63.7 acres), and 045-190-017 (39.4 acres) (see DEIR Table 3-1 and Figure 3-3a). The project cropland application area consists of 582± acres located on portions of 12 additional parcels associated with the project (see DEIR Figure 3-2 for application areas, and Figure 3-3a, Figure 3-3b, and Table 3-1 for Merced County APNs). (DEIR, p. 3-1)

The project applicant recently purchased an additional 264± gross acres of surrounding farmland over nine additional parcels (included on DEIR Figure 3-2, Figure 3-3a, and Figure 3-3b), expanding the total dairy farm acreage to 949± acres. This additional cropland was purchased to be used for wastewater and manure application with the proposed dairy expansion. With the proposed expansion, net cropped acreage associated with the farm would increase from 582± acres to 770± acres.

As reported by the project applicant and established at the time of the Initial Study (October 2021), there are approximately 2,650 milk cows and 550 dry cows with 2,397 support stock, totaling 5,597 animals at the dairy. The predominant breed of cows housed at the dairy is Holstein and Jersey-Holstein cross.

The existing dairy facility consists of flush and scrape systems that are used to collect and process wastewater and solid manure. Operational details are described in DEIR pps. 3-8 to 3-9.

Surrounding Land Uses at the Vierra Dairy

There are off-site single-family residences associated with neighboring agricultural operations surrounding the project site to the north, west, and east. There are several off-site residences located within the windshed of the dairy (defined as an area of 1,320 feet upwind to 2,640 downwind of the periphery of the animal facility) (see DEIR Figure 3-5).

The community of Hilmar is located approximately 2.5 miles to the east-northeast of the existing active dairy facilities. The Merced River is located approximately 1.5 miles south of active dairy facilities, and immediately adjacent to several application area fields (see DEIR Figure 3-2).

C. PROJECT DESCRIPTION

The project sponsor has applied for a new Conditional Use Permit (CUP20-009) from Merced County to modify and expand the existing dairy to house 4,170 milk cows, 550 dry cows, and 2,397 support stock (see DEIR Table 3-3). Considering the existing animals at the dairy facility, the proposed expansion would represent an increase of 1,520 milk cows from existing numbers (DEIR, p. 3-11).

The proposed project would include the construction of supporting buildings and structures at the existing dairy, including:

- two (2) freestall barns of approximately 121,500 square feet each and associated corrals
- 10,000 square-foot hospital milking barn
- 15,160 square-foot commodity barn addition
- 195,200 square-foot heifer barn (covering existing corrals)
- 18,000 square-foot utility shop

See DEIR Figure 3-6 for the proposed dairy site plan. Further dairy modifications would include additional concrete and earthen manure drying areas, a mechanical manure separator, and a septic system near the proposed hospital milking barn. The existing calf pens, utility shop, modular office, and associated septic systems would be removed with construction of the proposed facilities.

Construction of the proposed facilities would result in the conversion of approximately 15 acres of cropland, and cropped acreage on Williams 3 would be reduced from 32 acres to 17 acres (see DEIR Table 3-4). With the recent purchase of surrounding farmland over nine additional parcels, there would be a total of approximately 770± acres of cropland available for wastewater and manure application with the proposed dairy expansion. All new cropped fields are already equipped with pipelines and tailwater return and/or retention systems. Crops grown on site, including double-cropped oats silage and corn silage, would be used for dairy feed crops and supplement imported grain and hay. Silage piles would remain the same as existing operations.

There are six off-site residences located within 1,000 feet of active areas of the dairy. With the proposed dairy expansion, distances to five of these residences would not be reduced (see DEIR Figure 3-8). The distance of active animal facilities to a residence located along Williams Avenue would be reduced from 900 feet to 750 feet with the proposed dairy expansion.

Animal wastes from freestall and other concrete-surfaced areas would continue to be flushed to an on-site waste management system, except for solid manure within corral areas, which would continue to be scraped. Liquid manure would continue to be directed to the wastewater storage ponds. Additional dairy operations are described in DEIR, pps. 3-16 to 3-21.

Circulation and Parking

The project site would continue to be served by heavy trucks (milk tankers, commodity deliveries), and other vehicles. Daily trips by all classes of vehicle are estimated to increase from approximately 77.8 to 109.1 average daily trips (an increase of 31.3 daily trips), including 4.3 heavy truck trips per day (see Table 3-5). The majority of trips would consist of auto and light truck trips. All trips would continue to be made via Williams Avenue. There would be adequate parking for 48 spaces, with 2 accessible parking spots (DEIR, p. 3-21).

Project Construction and Phasing

The proposed dairy expansion would be constructed in one phase over an approximate two (2) year construction period. There would be cut and fill with construction, but all soils would be balanced on site.

D. PROJECT OBJECTIVES

Project objectives as defined by CEQA Guidelines Section 15124(b) “will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary”. These alternatives should “feasibly attain most of the basic objectives of the project but ... avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives” (CEQA Guidelines Section 15126.6). The DEIR identifies six project objectives that include the underlying purpose of the project and the project benefits (DEIR p. 3-11).

- To maintain a modern, efficient, and competitive dairy operation that operates in full compliance with applicable county, state, and federal laws and regulations.
- To fully use land and facilities currently owned and operated by the project applicant.
- To use all available land (which is not otherwise used for the dairy) for the production of feed for the herd. This allows for the application, at appropriate agronomic rates, of dairy process water from dairy operations, which in turn reduces the need for imported fertilizers.
- To generate dry manure that can be land applied and/or sold as a commodity for use as fertilizer in the region.
- To construct improvements that could be permitted within a reasonable time frame and would represent commensurate benefit with cost.
- To provide year-round employment opportunities, at competitive wages, for Merced County residents. Unlike other agricultural operations, which provide only seasonal employment, dairies provide year-round employment (DEIR, p. 3-11).

Merced County finds that it is permissible for the underlying purpose of the project to efficiently use existing dairy facilities (instead of constructing an entirely new facility) and use all of the existing, available land owned by the applicant (instead of requiring purchase of adjacent lands, which is discussed in the alternatives considered and rejected and determined to be infeasible). Additional objectives include business and development goals, meeting applicable regulations and permitting requirements, and project benefits. The stated objectives do not preclude consideration of various

onsite alternatives that could potentially reduce significant impacts, including GHG emissions and water quality.

E. DISCRETIONARY ACTIONS

In order to approve the Vierra Dairy Expansion project, the Planning Commission must:

- Certify the Environmental Impact Report, including adoption of these findings; and,
- Approve Conditional Use Permit No. CUP20-009.

The Commission's actions are final unless appealed to the Merced County Board of Supervisors.

In order for the Vierra Dairy Expansion project to be constructed and operated, the State of California, Regional Water Quality Control Board, Central Valley Region must:

- Adopt findings on the Environmental Impact Report; and,
- Issue Individual Waste Discharge Requirements.

In order for the Vierra Dairy Expansion project to be constructed and operated, the San Joaquin Valley Air Pollution Control District must:

- Adopt findings on the Environmental Impact Report; and,
- Approve an Authority to Construct (ATC) and Permit to Operate (PTO) for the Vierra Dairy Expansion project.

F. MINISTERIAL ACTIONS

In order for the Vierra Dairy Expansion project to be constructed, the State Water Resources Control Board (SWRCB) must:

- Approve a General Construction Activity Storm Water Permit for the Vierra Dairy Expansion project.
- Issue a Public Water System Permit¹

In order for the Vierra Dairy Expansion project to be constructed and operated, the California Department of Fish and Wildlife must:

- Respond to consultation with the project applicant if threatened, endangered, or candidate species are discovered at the proposed project from the California Natural Diversity Database (CNDDDB) database, or other environmental study, or are discovered during the protocol survey and issue California Endangered Species Act (CESA) 2081

¹ Since the existing number of employees indicates that the Vierra Dairy requires a public water system, and no Public Water System (PWS) Permit has been submitted to date, the existing dairy may be in violation of regulatory requirements of the SWRCB. Therefore, the need for a public water system is not a result of the proposed dairy expansion project, and is not considered part of the project evaluated in the EIR. In order to come into compliance with the requirement to register as a PWS, the County will include a condition of approval of the dairy expansion project that the property owner immediately initiate the process to obtain a permit to operate a public water system facility

Management Authorization, if required, prior to the issuance of the first building permit and the start of construction-related activities.

In order for the Vierra Dairy Expansion project to be operated, the San Joaquin Valley Air Pollution Control District (SJVAPCD) must:

- Approve a modification to the existing Conservation Management Practices Plan for the Vierra Dairy Expansion project.

In order for the Vierra Dairy Expansion project to be operated, the Merced County Building and Safety Division must:

- Issue a building permit for the proposed dairy expansion project.

In order for the Vierra Dairy Expansion project to be operated, the Merced County Division of Environmental Health will require:

- Filing of a Hazardous Material Business Plan (HMBP), which is required for the storage of any hazardous material stored on site over threshold quantities (55 gallons; 200 cu. ft.; or 500 pounds). Any quantity of hazardous waste generated on site also requires that a HMBP be filed.
- Issue a Demolition Permit for each feature to be demolished

In order for the Vierra Dairy Expansion project to be operated, the Merced County Public Works Department must:

- Approve a Roadway Impact Evaluation or Roadway Impact Agreement for the proposed dairy expansion project.
- Issue an Encroachment Permit to allow the applicant to improve all driveways used by heavy truck operations associated with the dairy

V. BACKGROUND

PROJECT PERMITTING HISTORY

Merced County records indicate there are several old permits on file for the project site, including permits for additional dwellings, Williamson Act Contracts, and the original dairy and dairy lagoon. There is an existing use permit issued by the County (CUP12-005) on file for the dairy, which allowed for a dairy expansion in 2012 to 5,600 total animals. The NMP indicates that the facility has been in operation since 1967.

The existing dairy is operating in accordance with the Central Valley Regional Water Quality Control Board (CVRWQCB) Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies (Order R5-2013-0122). The General Order requires approval and implementation of a NMP for the application of waste to land application areas, and a Waste Management Plan (WMP) to ensure proper compliance with the General Order (see DEIR Appendix J for a copy of the proposed conditions WMP and NMP). As established by the Report of Waste Discharge (ROWD) submitted for the existing dairy to the CVRWQCB in October 2005, the State-permitted herd size for the dairy was 1,573 milk and dry cows combined², with regulatory review required for expansions of greater than 15 percent above this value. Following the 2012 expansion of the Vierra Dairy, the ROWD submitted to the CVRWQCB established a herd size of 3,200 milk and dry cows combined. Individual Waste Discharge Requirements (WDRs) were never issued by the CVRWQCB for the 2012 Vierra Dairy Expansion.

The Permit to Operate (PTO) on file for the dairy facility (expiration date 12/31/2023) issued by the San Joaquin Valley Air Pollution Control District (SJVAPCD) allows 2,650 milk cows (not to exceed a combined total of 3,200 mature cows) and 1,997 support stock, in addition to 400 calves.

To allow for the expansion of the dairy, the applicant has submitted an application for issuance of a new Conditional Use Permit (CUP20-009) from the County. It is this action that is the subject of the EIR. The CVRWQCB and the SJVAPCD both regulate the existing dairy. As responsible agencies, they will be required to use the County's environmental document in their consideration of the proposed dairy expansion (DEIR, p. 3-23).

In October 2021, an Initial Study was completed to assess the potential environmental effects resulting from the Vierra Dairy Expansion project. On the basis of this IS, it was determined that preparation of an EIR was necessary pursuant to the requirements of CEQA. On October 1, 2021, the Merced County Community and Economic Development Department, Planning Division issued a Notice of Preparation for the Vierra Dairy Expansion project EIR. The NOP, and subsequent comments on the NOP, identified the following issues to be evaluated in the environmental document:

² The CVRWQCB regulates only mature cows (milk and dry) and does not establish any limits on calves, heifers, and other support stock.

- Air Quality and Odors
- Biological Resources
- Cultural Resources and Tribal Cultural Resources
- Greenhouse Gas Emissions and Energy Efficiency
- Land Use Compatibility
- Nuisance Conditions from Insects
- Hydrology and Water Quality

The Draft Vierra Dairy Expansion project EIR (DEIR) was made available for public and agency review and comment for a 56-day review period from June 29, 2023 to August 24, 2023. During this time, the DEIR was also circulated to state agencies through the State Clearinghouse. Public review copies of the DEIR were made available to the public at the Merced County Community and Economic Development Department. The Community and Economic Development Department received comments on the DEIR during the review period from the following:

- Central Valley Regional Water Quality Control Board
- State Water Resources Control Board
- California Department of Fish and Wildlife
- San Joaquin Valley Air Pollution Control District
- Leadership Counsel for Justice & Accountability
- Advocates for the Environment
- Sean Brophy

Subsequent to completion of the comment period on the DEIR, the Merced County Community and Economic Development Department prepared a Final EIR. This FEIR, which incorporated all of the environmental analyses contained in the DEIR, was made available to interested agencies and the public in February 2024.

Together, the following documents compose the EIR for the Vierra Dairy Expansion project:

- DEIR (June 2023)
- FEIR (February 2024)

Section 15132 of the CEQA Guidelines governs the contents of a FEIR. As required by Section 15132, a FEIR shall consist of the DEIR or a revision to the draft; comments and recommendations received on the DEIR; a list of those commenting on the DEIR; and the responses of the lead agency to significant environmental points raised in the comments. For the Vierra Dairy Expansion project EIR, applicable requirements may be found in the following documents:

Guidelines Section 15132 Content Requirement	DEIR (06/2023)	FEIR (02/2024)
DEIR	X	
Revisions to DEIR		X
Comments Received on DEIR		X
List of Commentors		X
Responses to Comments		X

VI. RECORD OF PROCEEDINGS

For purposes of CEQA and these Findings, the Record of Proceedings for the Project consists of the following documents, at a minimum (full lists of references are provided at the end of each Chapter and in the References Chapter of the Draft EIR):

- The Initial Study prepared for the Vierra Dairy Expansion project;
- The Notice of Preparation (October 1, 2021) and all other public notices issued by the County in conjunction with the Project, including the Notices of Completion and of Availability issued on or about October 1, 2021, providing notice that the DEIR had been completed and was available for public review and comment;
- Comments received on the Notice of Preparation issued by the County;
- The EIR for the Vierra Dairy Expansion project, including the DEIR and the FEIR, and including all documents referred to or relied upon therein, and documents relied upon or referenced in these findings, which include, but are not limited to the following:
 - All timely comments received on the DEIR and responses to those comments;
 - Technical appendices;
- All comments submitted by agencies or members of the public during the 56-day public comment period on the DEIR;
- All comments and correspondence submitted to the County with respect to the Project, in addition to timely comments on the DEIR;
- The Mitigation Monitoring and Reporting Program for the Project;
- All applications for approvals and development entitlements related to the Project and submitted to the County;
- All findings and resolutions adopted by County decision makers in connection with the Project, and all documents cited or referred to therein;
- All reports, studies, memoranda, maps, staff reports, or other planning documents relating to the Project prepared by the County, consultants to the County, and responsible or trustee agencies with respect to the County's compliance with the requirements of CEQA and with respect to the County's actions on the Project;
- All documents submitted to the County by other public agencies or members of the public in connection with the Project, up through the close of the public hearing on February 28, 2024;
- Notice of Public Hearing issued in connection with Planning Commission hearing on the Project, which was issued in February 2024;
- Minutes and/or verbatim transcripts of all public meetings and public hearings held by the County in connection with the Project;
- Any documentary or other evidence submitted to the County at such public meetings and public hearings;
- The Merced County Animal Confinement Ordinance; the EIR prepared for the Revisions to the Animal Confinement Ordinance, including both the Draft EIR and Final EIR, certified October 22, 2002; and the Findings adopted by the Merced County Board of Supervisors on October 22, 2002 regarding the Animal Confinement Ordinance and its EIR;

- The Modifications to the Merced County Animal Confinement Ordinance; the Addendum to the EIR prepared for the Modifications to the Animal Confinement Ordinance, adopted by the Merced County Board of Supervisors on February 18, 2005, to the extent that the modifications and Addendum have not been set aside in part or in whole by a Court of competent jurisdiction;
- The 2030 Merced County General Plan; the EIR prepared for the 2030 General Plan, including the Background Report, the Draft EIR, and Final EIR, certified in December 2013; and the Findings adopted by the Merced County Board of Supervisors in December 2013 regarding the 2030 General Plan and its EIR;
- The relevant files of the County for the Project;
- Matters of common knowledge to the County, including, but not limited to federal, state, and local laws and regulations;
- Any documents expressly cited in these CEQA Findings, in addition to those cited above; and,
- Any other materials required for the record of proceedings by Public Resources Code Section 21167.6, subdivision (e).

The custodian of the documents comprising the record of proceedings is Tiffany Ho, Deputy Director, of the Merced County, Community and Economic Development Department, whose office is located at 2222 M Street, Merced, California, 95340.

The Planning Commission has relied on all of the documents listed above in reaching its decision on the Vierra Dairy Expansion project, even if not every document was formally presented to the Commission or County Staff as part of the County files generated in connection with the Project. Without exception, any documents set forth above not found in the Project files fall into one of two categories. Many of them reflect prior planning or legislative decisions with which the Planning Commission was aware in approving the Vierra Dairy Expansion project (see *City of Santa Cruz v. Local Agency Formation Commission* (1978) 76 Cal.App.3d 381, 391-392; *Dominey v. Department of Personnel Administration* (1988) 205 Cal.App.3d 729, 738, fn. 6). Other documents influenced the expert advice provided to County Staff or consultants, who then provided advice to the Commission. For that reason, such documents form part of the underlying factual basis for the Planning Commission's decisions relating to the approval of the Vierra Dairy Expansion project (see Public Resources Code Section 21167.6, subd. (e)(10); *Browning-Ferris Industries v. City Council of City of San Jose* (1986) 181 Cal.App.3d 852, 866; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 153, 155).

VII. FINDINGS REQUIRED UNDER CEQA

Public Resources Code Section 21002 provides that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would *substantially lessen* the significant environmental effects of such projects” (emphasis added). The procedures required by CEQA “are intended to assist public agencies in systematically identifying both the significant effects of projects and the feasible alternatives or feasible mitigation measures which will *avoid* or *substantially lessen* such significant effects” (emphasis added). Section 21002 goes on to state that “in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.”

The mandate and principles announced in Public Resources Code Section 21002 are implemented, in part, through the requirement that agencies must adopt findings before approving projects for which EIRs are required (see Public Resources Code Section 21081, subd. (a); CEQA Guidelines Section 15091, subd. (a)). For each significant environmental effect identified in an EIR for a proposed project, the approving agency must issue a written finding reaching one or more of three permissible conclusions. The first such finding is that “[c]hanges or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR” (CEQA Guidelines Section 15091, subd. (a)(1)). The second permissible finding is that “[s]uch changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency” (CEQA Guidelines Section 15091, subd. (a)(2)). The third potential conclusion is that “[s]pecific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR” (CEQA Guidelines Section 15091, subd. (a)(3)). Public Resources Code Section 21061.1 defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.” CEQA Guidelines Section 15364 adds another factor: “legal” considerations.

The concept of “feasibility” also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417). “[F]easibility” under CEQA encompasses “desirability” to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors” (*Ibid.*; see also *Sequoia Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715). Further, alternatives are to be selected based on the “rule of reason”, and there is not an established directive that dictates the scope or nature of the alternative.

The CEQA Guidelines do not define the difference between “avoiding” a significant environmental effect and merely “substantially lessening” such an effect. The County must therefore glean the meaning of these terms from the other contexts in which the terms are used. Public Resources Code Section 21081, on which CEQA Guidelines Section 15091 is based, uses the term “mitigate” rather than “substantially lessen.” The CEQA Guidelines therefore equate “mitigating” with “substantially lessening.” Such an understanding of the statutory term is consistent with the policies underlying CEQA, which include the policy that “public agencies should not approve projects as proposed if

there are feasible alternatives or feasible mitigation measures available which would *substantially lessen* the significant environmental effects of such projects” (Public Resources Code Section 21002, emphasis added).

For purposes of these findings, the term “avoid” refers to the effectiveness of one or more mitigation measures to reduce an otherwise significant effect to a less-than-significant level. In contrast, the term “substantially lessen” refers to the effectiveness of such measure or measures to substantially reduce the severity of a significant effect, but not to reduce that effect to a less-than-significant level.

Although CEQA Guidelines Section 15091 requires only that approving agencies specify that a particular significant effect is “avoid[ed] *or* substantially lessen[ed],” these findings, for purposes of clarity, in each case will specify whether the effect in question has been reduced to a less-than-significant level, or has simply been substantially lessened but remains significant.

Moreover, although Section 15091 of the CEQA Guidelines, read literally, does not require findings to address environmental effects that an EIR identifies as merely “potentially significant,” these findings will nevertheless fully account for all such effects identified in the EIR.

CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that would otherwise occur. Project modification or alternatives are not required, however, where such changes are infeasible or where the responsibility for modifying the project lies with some other agency (CEQA Guidelines Section 15091, subd. (a), (b)).

With respect to a project for which significant impacts are not avoided or substantially lessened either through the adoption of feasible mitigation measures or feasible environmentally superior alternative, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the project’s “benefits” rendered “acceptable” its “unavoidable adverse environmental effects” (CEQA Guidelines Sections 15093, 15043, subd. (b); see also Public Resources Code Section 21081, subd. (b)). The California Supreme Court has stated that, “[t]he wisdom of approving . . . any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced” (*Goleta II*, 52 Cal.3d 553, 576).

In seeking to effectuate the substantive policy of CEQA to substantially lessen or avoid significant environmental impacts to the extent feasible, a public agency, in adopting findings, need not necessarily address the feasibility of both mitigation measures and environmentally superior alternatives when contemplating approval of a project with significant impacts. Where a significant impact can be mitigated to an “acceptable” level solely by the adoption of feasible mitigation measures, the public agency, in drafting its findings, has no obligation to also consider the feasibility of any environmentally superior alternative that could also mitigate or substantially lessen that same impact – even if the alternative would render the impact less severe than would the proposed project as mitigated.

These findings reflect the independent judgment of the Planning Commission and constitute its best efforts to set forth the rationales and support for its decision under the requirements of CEQA.

B. FINDINGS ON ESTABLISHING THE PROPER “BASELINE” FOR THE PROPOSED DAIRY EXPANSION

To determine whether an impact is significant, a “baseline” set of environmental conditions is required against which agencies can assess the significance of project impacts. As established by CEQA Guidelines Section 15125(a), the existing environmental setting, usually established at the time a Notice of Preparation is issued, should normally constitute the baseline. In this case, “the impacts of a proposed project are ordinarily to be compared to the actual environmental conditions existing at the time of CEQA analysis, rather than to allowable conditions defined by a plan or regulatory framework” (*Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 158 Cal.App.4th 1336). Essentially, prior operating permits or permit levels do not in themselves establish a baseline for CEQA review of a new project.

The purpose of defining the environmental setting is to give decision-makers and the public an accurate picture of the project’s likely impacts, both near-term and long-term. In some cases, “[e]nvironmental conditions may vary from year to year and ... it is necessary to consider conditions over a range of time periods” (quoting *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125). However, as set forth by CEQA Guidelines Section 15125(a)(1), “where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project’s impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported with substantial evidence. Lead agencies should choose the baseline that most meaningfully informs decision-makers and the public of the project’s possible impacts.

As most recently set forth in *Communities for a Better Environment v. South Coast Air Quality Management District* (ibid), a long line of Court of Appeals decisions has upheld this line of reasoning, including cases where a plan or regulation allowed for greater development or more intense activity than had so far actually occurred, as well as cases where actual development or activity had, by the time CEQA analysis was begun, already exceeded that allowed under the existing regulations.

For projects involving ongoing operations and continuations of past activity, “the established levels of a particular use and the physical impacts thereof are considered to be part of the existing environmental baseline” (*North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App.4th 832). The existing operations at a dairy are a dynamic and varying set of physical conditions. CEQA allows the lead agency discretion and flexibility to determine what temporal “snapshot” provides the best representation of actual physical conditions (*Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 158 Cal.App.4th 310; *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439). In the case of the Vierra Dairy Expansion project, existing permits from both the SJVAPCD and CVRWQCB allow for 3,200 mature cows, and Merced County permits allow for 5,600 total animals. In accordance with CEQA, the baseline herd to be used in this environmental analysis is the herd count at the time that the NOP is circulated, which is the same as permitted of 3,200 mature cows. This herd size and dairy configuration accurately depicts the environmental baseline with which to identify the changes in the physical environment caused by the proposed project pursuant to Section 15064(d) of the State CEQA Guidelines. For this reason, the Planning Commission finds that the above baseline as established at the time NOP circulation is appropriate, and the Commission has been presented with no evidence to contradict its conclusion in this regard.

VIII. LEGAL EFFECTS OF FINDINGS

To the extent that these findings conclude that various proposed mitigation measures outlined in the FEIR are feasible and have not been modified, superseded or withdrawn, the County hereby commits itself to require their implementation by including these measures as conditions of approval. These findings, in other words, are not merely informational, but rather constitute a binding set of obligations that will come into effect when the Planning Commission approves the Project.

The mitigation measures are referred to in the Mitigation Monitoring and Reporting Program (MMRP) adopted concurrently with these findings, and will be effectuated through the process of constructing and implementing the Project. All of the feasible mitigation measures that will avoid or substantially lessen the significant effects of the Vierra Dairy Expansion project are binding upon the project applicant at the time of approval of the Vierra Dairy Expansion project.

A. ABSENCE OF SIGNIFICANT NEW INFORMATION

CEQA Guideline Section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR but before certification of the Final EIR. New information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project proponent declines to implement. The CEQA Guidelines provide examples of when significant new information is added, such as when a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented, or when a substantial increase in the severity of an environmental impact would result unless mitigation is adopted that reduces the impact to a level of insignificance. Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes an insignificant modification in an adequate EIR.

Merced County recognizes that the Final EIR incorporates information obtained since the Draft EIR was completed, and contains additions, clarifications, modifications, and other changes. Various changes and edits have been made to the text, tables, and figures of the Draft EIR and these changes are also noted in the findings. These changes include correcting typographical errors, making minor adjustments to the data, adding or changing language to improve readability and information, and modifying several mitigation measures to be more protective of the environment than the measures set forth in the DEIR. Because Merced County will impose these modified measures on the project upon approval of the Vierra Dairy Expansion, none of the conditions set forth in CEQA Guidelines Section 15088.5 are present, and no recirculation of the EIR would be necessary. The revised mitigation measures would be more effective than the previous versions, and there would be no change in the environmental conclusions presented in the DEIR as a result of these changes.

B. DIFFERENCES OF OPINION REGARDING THE IMPACTS OF THE PROJECT

In deciding to certify the Final EIR and to approve the project, the Planning Commission recognizes that the project addresses a number of controversial environmental issues and that a range of

technical and scientific opinion exists with respect to those issues. The Planning Commission has acquired an understanding of the range of this technical and scientific opinion by its review of the Draft EIR, the comments received on the Draft EIR, and the responses to those comments in the FEIR, as well as testimony, letters, and reports regarding the Final EIR and the merits of the project. The Planning Commission has reviewed and considered, as a whole, the evidence and analysis presented in the Draft EIR, the evidence and analysis presented in the comments on the Draft EIR, the evidence and analysis presented in the Final EIR, the information submitted on the Final EIR, and the reports prepared by the experts who prepared the EIR, the County's consultants, and staff, addressing these comments.

The Planning Commission has gained a comprehensive and well-rounded understanding of the environmental issues presented by the project. In turn, this understanding has enabled the Planning Commission to make its decisions after weighing and considering the various viewpoints on these important issues. The Planning Commission accordingly certifies that its findings are based on a full appraisal of all of the evidence contained in the Final EIR, as well as the evidence and other information in the record addressing the Final EIR.

IX. MITIGATION MONITORING AND REPORTING PROGRAM

A MMRP has been prepared for the Project and has been adopted in conjunction with these Findings (see Public Resources Code Section 21081.6, subd. (a)(1)). The County will use the MMRP to track compliance with Project mitigation measures.

X. LESS THAN SIGNIFICANT ENVIRONMENTAL IMPACTS

The Initial Study for the proposed project identified numerous environmental impacts that were found to be less than significant, and therefore do not require mitigation. These impacts were not analyzed in the EIR. The reasons for the determination of "less than significant" for these impacts are contained in the Initial Study for the Vierra Dairy Expansion project. Based on the Initial Study and the information contained in the record, the Planning Commission finds that the following impacts associated with the Project would be less than significant and therefore do not require mitigation. The Planning Commission has been presented with no evidence to contradict its conclusions regarding the significance of these impacts. The less than significant impacts of constructing and operating the proposed dairy expansion are:

- Have a substantial adverse effect on a scenic vista
- Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway
- In non-urban areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings
- Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area
- Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use

- Conflict with existing zoning for agricultural use, or a Williamson Act contract
- Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined in Public Resources Code section 4526), or timberland zoned Timberland Production (as defined in Public Resources Code section 51104(g))
- Result in the loss of forest land or conversion of forest land to non-forest use
- Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use
- Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:
 - Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42;
 - Strong seismic ground shaking;
 - Seismic-related ground failure, including liquefaction;
 - Landslides.
- Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse
- Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property
- Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water
- Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature
- Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials
- Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment
- Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school
- Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment
- For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area
- Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan

- Expose people or structures, either directly or indirectly, to a significant risk of loss, injury, or death involving wildland fires
- Physically divide an established community
- Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state
- Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan
- Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies
- Generation of excessive ground-borne vibration or ground-borne noise levels
- For a project located within the vicinity of a private airstrip or an airport land use plan, or where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels
- Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)
- Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere
- Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives of any of the public services
 - Fire protection
 - Police protection
 - Schools
 - Parks
 - Other public facilities
- Increase the use of existing neighborhood or regional parks or other recreational facilities such that substantial deterioration of the facility would occur or be accelerated
- Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment
- Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities
- Conflict with or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b)
- Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)
- Result in inadequate emergency access
- Require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects

- Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry, and multiple dry years
- Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments
- Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals
- Comply with federal, state, and local management and reduction statutes and regulations related to solid waste
- Substantially impair an adopted emergency response plan or emergency evaluation plan
- Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire
- Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment
- Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes

The issues identified below were analyzed in the EIR. Based on the EIR and the information contained in the record, the Planning Commission finds that the following impacts associated with the Project would be less than significant and therefore do not require mitigation. The Planning Commission has been presented with no evidence to contradict its conclusions regarding the significance of these impacts.

- Impact AQ-1: Construction-related emissions (DEIR, pps. 5-20 to 5-22)
- Impact AQ-2: Carbon monoxide emissions from operational equipment and increased traffic (DEIR, pps. 5-22 to 5-23)
- Impact AQ-3: Ozone precursor emissions from dairy operations, farm equipment, and increased traffic (DEIR, pps. 5-23 to 5-27; FEIR, pps. 4-2 to 4-6)
- Impact AQ-4: PM₁₀ and PM_{2.5} emissions from fugitive dust during project operations (DEIR, pps. 5-28 to 5-30)
- Impact AQ-6: Expose nearby residents to substantial pollutant concentrations from emissions of criteria air pollutants (DEIR, p. 5-34)
- Impact AQ-8: Health impacts due to Valley Fever (DEIR, pps. 5-39 to 5-40)
- Impact AQ-9: Health effects as a result of exposure to bioaerosols during dairy operations (DEIR, p. 5-41)
- Impact AQ-10: Conflict with or obstruct implementation of the applicable air quality plan (DEIR, p. 5-42)
- Impact BIO-5: Loss and/or degradation of special-status plant species (DEIR, p. 6-20)
- Impact BIO-6: Loss and/or degradation of riparian and vernal pool habitat or sensitive natural communities; loss or modification of wetlands (DEIR, p. 6-20)

- Impact BIO-7: Interference with on-site wildlife movement corridors or wildlife nursery sites (DEIR, p. 6-21)
- Impact BIO-8: Potential selenium and heavy metals effects to on-site biological resources (DEIR, pps. 6-21 to 6-22)
- Impact BIO-9: Conflict with local policies or ordinances protecting biological resources (DEIR, p. 6-23)
- Impact CUL-3: Cause a substantial adverse change in the significance of a tribal cultural resource (DEIR, p. 7-12)
- Impact GHG-2: Wasteful or inefficient consumption of energy (DEIR, pps. 8-22 to 8-24)
- Impact GHG-3: Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing GHG emissions, or conflict with or obstruct a state or local plan for renewable energy or energy efficiency (DEIR, pps. 8-24 to 8-25)
- Impact HAZ-2: Create significant nuisance conditions due to increased mosquito production (DEIR, pps. 9-11 to 9-12)
- Impact HYD-1: Degradation of water quality due to stormwater runoff during project construction (DEIR, pps. 10-26 to 10-27)
- Impact HYD-4: Decrease groundwater supplies (DEIR, pps. 10-36 to 10-38; FEIR, pps. 4-25 to 4-28)
- Impact HYD-5: Modification of surface water drainage patterns and an increase in runoff (DEIR, pps. 10-38 to 10-39; FEIR, pps. 4-28 to 4-29)
- Impact HYD-7: Water supply pathways for pollutant migration (DEIR, pps. 10-41 to 10-42)
- Impact LU-1: Consistency with Merced County Land Use Plans and policies adopted to protect the environment, including setback standards (DEIR, pps. 11-16 to 11-17)
- Growth Inducement (DEIR, pps. 12-15 to 12-16)
- Irreversible Commitment of Resources (DEIR, p. 12-19)
- Potential Environmental Damage from Accidents (DEIR, p. 12-20)

XI. FINDINGS ON THE SIGNIFICANT EFFECTS OF THE PROJECT MITIGATED TO A LESS-THAN-SIGNIFICANT LEVEL

The DEIR identified several significant environmental effects (or “impacts”) that approval and implementation of the Vierra Dairy Expansion project could cause. Many significant effects were avoided altogether because the proposed Project implements requirements or is situated in such a way that prevents the occurrence of significant effects in the first place. For other effects, additional mitigation is identified in the DEIR. This section presents in greater detail the Planning Commission’s findings with respect to the significant environmental effects of the Project.

The following identifies the pertinent mitigation measures by number and summary title. The full text of each of the mitigation measures cited below is found in the DEIR, or the FEIR in cases where a mitigation measure was amended, and that text is hereby incorporated by reference.

A. AIR QUALITY AND ODORS

Air Quality and Odors setting information for the Vierra Dairy Expansion project is set forth in pages 5-1 through 5-17 of the DEIR, and DEIR Appendices D, F, and G. The impact evaluation criteria used in assessing impacts on air quality as a result of implementing the Project are set forth in the DEIR on pages 5-18 through 5-19. This information is incorporated into these findings as though fully set forth herein. Considering the above information, and the potential impacts identified in the DEIR, the findings of the Planning Commission are as follows.

Impact AQ-5: *Expose nearby residents to substantial pollutant concentrations from the emissions of toxic air contaminants (including ammonia and hydrogen sulfide) from project construction and operations.*

The proposed dairy expansion would be a potential source of hazardous air pollutants from construction activities, animal movement, manure management, land application of wastewater, and on-site mobile sources. Without the application of SJVAPCD-approved control measures, and because of construction emissions, this project would exceed health risk thresholds. (DEIR, pps. 5-31 to 5-34; DEIR Appendix G)

Mitigation Measure AQ-5a: The onsite residence 13 shall not be occupied by children during construction periods, or operations at the dairy shall be modified to minimize toxic air contaminant emissions.

Mitigation Measure AQ-5b: Implement SJVAPCD-approved control measures to reduce PM₁₀ emissions.

The Planning Commission finds that the above-stated mitigation measures (as summarized) are made conditions of approval of the Vierra Dairy Expansion project. The Planning Commission further finds that the above measures are appropriate and feasible, and would substantially lessen the potential adverse environmental effects associated with the Vierra Dairy Expansion project by restricting use of the residence during construction, and by requiring implementation of SJVAPCD control measure requirements to reduce PM₁₀ emissions below SJVAPCD health risk thresholds to be included in the SJVAPCD permit process. Compliance with SJVAPCD rules would further minimize emissions and reduce the associated cancer risk. Even though the SJVAPCD will ultimately approve the control measures required as permit conditions, the project applicant will still need to meet health risk standards in order to pass the HRA. Because the proposed expansion would not exceed health risk thresholds with implementation of the above mitigation measures, the potential impact due to hazardous air pollutants from project construction and operations would be reduced to less than significant (Public Resources Code Section 21002; CEQA Guidelines Sections 15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

Impact AQ-7: Adverse odor from project operations.

Operations and manure management at the Vierra Dairy Expansion in Merced County may emit odors that may be bothersome to nearby sensitive persons and uses, including rural residences. Because there are several residences within the ACO setback area of 1,000 feet from active dairy facilities, an expansion of the proposed facilities and an increase in herd size would increase the potential for nuisance conditions. (DEIR, pps. 5-34 to 5-39; FEIR, pps. 3-66 to 3-70, 4-1 to 4-2, 4-6)

Mitigation Measure AQ-7a: Revise the Odor Control Plan to provide additional information to neighbors regarding point of contact for nuisance complaints.

Mitigation Measure AQ-7b: Implement the nuisance control measures set forth in Mitigation Measures HAZ-1a to control odors.

Mitigation Measure AQ-7c: Implement Mitigation Measure GHG-1 to ensure that the approved digester is operational and would reduce odors.

The Planning Commission finds that the above-stated mitigation measures as revised in the FEIR are made conditions of approval of the Vierra Dairy Expansion project. The Planning Commission finds that the modifications to Mitigation Measures AQ-7a, AQ-7b and the introduction of Measure AQ-7c would improve the effectiveness of the mitigation by requiring a point of contact for nuisance complaints, additional nuisance control measures, and operation of a dairy digester, which would reduce odors. The Planning Commission further finds that the above revised measures are appropriate and feasible, and would substantially lessen the potential adverse environmental effects associated with the Vierra Dairy Expansion project by requiring a point of contact for nuisance complaints, additional nuisance control measures, and operation of a dairy digester, which would reduce odors. While there may be an increased potential for nuisance conditions with the dairy expansion, the proposed expansion would not reduce the setback distances specified by the ACO. Therefore, with implementation of the above mitigation measures, the potential impact from odors would be reduced to less than significant (Public Resources Code Section 21002; CEQA Guidelines Sections 15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

B. BIOLOGICAL RESOURCES

Biological Resources setting information for the Vierra Dairy Expansion project is set forth in pages 6-1 through 6-10 of the DEIR and DEIR Appendix H. The impact evaluation criteria used in assessing biological resource impacts as a result of implementing the Project are set forth in the DEIR on pages 6-10 to 6-11. This information is incorporated into these findings as though fully set forth herein. Considering the above information, and the potential impacts identified in the DEIR, the findings of the Planning Commission are as follows.

Impact BIO-1: Nest Disturbance and loss of foraging habitat for Swainson's hawk.

Implementation of the proposed Vierra Dairy Expansion project would result in the loss of approximately 15 acres of potential foraging habitat for Swainson's hawk. The state-threatened Swainson's hawk is known to nest and forage in the project vicinity. (DEIR, pps. 6-11 to 6-14)

Mitigation Measure BIO-1a: Implement protocol surveys if work begins between March 1 and August 30.

Mitigation Measure BIO-1b: Nest avoidance: Implement measures to minimize potential impacts to Swainson's Hawk nests.

Mitigation Measure BIO-1c: Mitigate impacts to foraging habitat, if necessary.

The Planning Commission finds that the above-stated mitigation measures are made a condition of approval of the Vierra Dairy Expansion project. The Planning Commission finds that the above measures are appropriate and feasible, and would substantially lessen the potential adverse environmental effects associated with the Vierra Dairy Expansion project by requiring compliance with the CDFW permit requirements for Swainson's hawk foraging habitat. Mitigation Measures BIO-1a through BIO-1c rely on the CDFW permit process and generally applicable mitigation requirements to avoid "take" of special status species. Although the mitigation measure is within the jurisdiction of an agency other than Merced County, the required measures must be completed prior

to commencement of any activities that would result in these impacts, and compliance with the CDFW permit requirements would fully mitigate impacts to Swainson's hawk nesting and foraging habitat to reduce this impact to less than significant. (Public Resources Code Section 21002; CEQA Guidelines Sections 15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

Impact BIO-2: Loss of foraging and nesting habitat for sensitive and migratory bird species.

The proposed Vierra Dairy Expansion project would be constructed on land that has previously been cultivated in grain crops, and has provided foraging and nesting habitat for a variety of special-status and migratory bird species. Because 15 acres of cropland that provides potential foraging and nesting habitat for these birds would be converted to active dairy facilities with the proposed project, this would be a significant impact. (DEIR, pps. 6-14 to 6-15)

Mitigation Measure BIO-2a: Implement protocol surveys, nest avoidance, and mitigate impacts to foraging habitat, if necessary (Mitigation Measure BIO-1).

Mitigation Measure BIO-2b: Implement preconstruction surveys for construction during the breeding season, and implement buffers surrounding nests of migratory birds.

The Planning Commission finds that the above-stated mitigation measures are made a condition of approval of the Vierra Dairy Expansion project. The Planning Commission finds that the above measures are appropriate and feasible, and would substantially lessen the potential adverse environmental effects associated with the Vierra Dairy Expansion project by requiring dedication of mitigation lands for sensitive bird species foraging habitat (if determined necessary), and preconstruction surveys and generally applicable avoidance measures. The above-stated measures would reduce the magnitude of this impact to a less-than-significant level (Public Resources Code Section 21002; CEQA Guidelines Sections 15091, 15126.4, subd. (a)(2)). Further, while approximately 15 acres of cropland would be converted to a dairy operation, approximately 770 acres of the dairy operation would remain as cropland, and would continue to provide foraging and nesting habitat. The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

Impact BIO-3: Loss of nesting habitat for tricolored blackbird.

The Vierra Dairy Farm provides potential nesting habitat for tricolored blackbird, a threatened species under CESA. Because 15 acres of cropland that provides potential nesting habitat for these birds would be converted to active dairy facilities with the proposed project, this would be a significant impact. (DEIR, pps. 6-15 to 6-17)

Mitigation Measure BIO-3a: Implement protocol surveys, nest avoidance, and mitigate impacts to foraging habitat, if necessary (Mitigation Measure BIO-1).

Mitigation Measure BIO-3b: Implement preconstruction surveys for construction during the breeding season, and implement buffers surrounding nests of migratory birds (Mitigation Measure BIO-2b).

Mitigation Measure BIO-3c: If a TCBB nest colony is discovered during preconstruction surveys, CDFW will be consulted to determine the appropriate actions or required mitigation.

The Planning Commission finds that the above-stated mitigation measures are made a condition of approval of the Vierra Dairy Expansion project. The Planning Commission finds that the above measures are appropriate and feasible, and would substantially lessen the potential adverse environmental effects associated with the Vierra Dairy Expansion project by requiring dedication of

mitigation lands for sensitive bird species foraging habitat (if determined necessary), and preconstruction surveys and avoidance measures. The above-stated measures would reduce the magnitude of this impact to a less-than-significant level (Public Resources Code Section 21002; CEQA Guidelines Sections 15091, 15126.4, subd. (a)(2)). Further, surrounding cropland would continue to provide foraging and nesting habitat. The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

Impact BIO-4: Impacts to the San Joaquin kit fox and/or American badger.

Implementation of the proposed dairy expansion project could impact San Joaquin Kit fox or American badger that may occur on site as transient foragers or dispersing individuals. This would be a significant impact. (DEIR, pps. 6-17 to 6-19)

Mitigation Measure BIO-4: Implement Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance

The Planning Commission finds that the above-stated mitigation measure as revised in the FEIR is made a condition of approval of the Vierra Dairy Expansion project. The Planning Commission finds that the modifications to Mitigation Measure BIO-4 would remove outdated contact information and make minor corrections. The Planning Commission further finds that the above measure is appropriate and feasible, and would substantially lessen the potential adverse environmental effects associated with the Vierra Dairy Expansion project by requiring preconstruction surveys for the kit fox and badger, implementing generally applicable preventative measures to avoid potential impacts to these species, and compulsory action should any animal be encountered. The above-stated measure would reduce the magnitude of this impact to a less-than-significant level (Public Resources Code Section 21002; CEQA Guidelines Sections 15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

C. CULTURAL RESOURCES

Setting information regarding Cultural Resources for the Vierra Dairy Expansion project is set forth in pages 7-1 through 7-7 of the DEIR. The impact evaluation criteria used in assessing impacts to cultural resources as a result of implementing the Project are set forth in the DEIR on pages 7-8 to 7-9. This information is incorporated into these findings as though fully set forth herein. Considering the above information, and the potential impacts identified in the DEIR, the findings of the Planning Commission are as follows.

Impact CUL-1: Cause a substantial adverse change in the significance of a historical, archaeological, or paleontological resource, or a unique geological feature.

Construction of the proposed dairy facilities could result in substantial adverse changes to the significance of historical, archaeological, or paleontological resources within the project area. Because ground-disturbing activities could affect unidentified remains of subsurface archaeological or paleontological resources, this would be a significant impact. (DEIR, pps. 7-9 to 7-11)

Mitigation Measure CUL-1: Implement measures to address discovery of unanticipated buried cultural or paleontological resources.

The Planning Commission finds that the above-stated mitigation measure is made a condition of approval of the Vierra Dairy Expansion project. The Planning Commission further finds that the above measure is appropriate and feasible, and would substantially lessen the potential adverse environmental effects associated with the Vierra Dairy Expansion project by requiring the project applicant and construction contractor to implement measures that address the discovery of unanticipated buried cultural or paleontological resources. The above-stated measure would reduce the magnitude of this impact to a less-than-significant level (Public Resources Code Section 21002; CEQA Guidelines Sections 15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

Impact CUL-2: Result in the accidental discovery and disturbance of human remains.

Construction activities associated with the Vierra Dairy Expansion project could result in the accidental discovery of human remains. (DEIR, pps. 7-11 to 7-12)

Mitigation Measure CUL-2a: Implement measures to address discovery of unanticipated buried cultural or paleontological resources in Mitigation Measure CUL-1.

Mitigation Measure CUL-2b: Implement a plan to address discovery of human remains.

The Planning Commission finds that the above-stated mitigation measures are made conditions of approval of the Vierra Dairy Expansion project. The Planning Commission further finds that the above measures are appropriate and feasible, and would substantially lessen the potential adverse environmental effects associated with the Vierra Dairy Expansion project by requiring the project applicant and construction contractor to implement a protocol that addresses the discovery of human remains and that would ensure that these features are protected, handled according to state law, and treated with appropriate respect. The above-stated measures would reduce the magnitude of this impact to a less-than-significant level (Public Resources Code Section 21002; CEQA Guidelines Sections 15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

D. GREENHOUSE GAS EMISSIONS AND ENERGY USE

Setting information regarding greenhouse gas (GHG) emissions and energy use for the Vierra Dairy Expansion project is set forth in pages 8-1 through 8-15 of the DEIR, and DEIR Appendix F-3 and F-4. The impact evaluation criteria used in assessing impacts due to nuisance insects as a result of implementing the Project are set forth in the DEIR on pages 8-16 to 8-7. This information is incorporated into these findings as though fully set forth herein. Considering the above information, and the potential impacts identified in the DEIR, the findings of the Planning Commission are as follows.

Impact GHG-1: Greenhouse gas emissions from project construction and operation.

Construction and operation of the Vierra Dairy Expansion project would result in greenhouse gas emissions from direct and indirect sources. Because the proposed project would exceed established significance thresholds for GHG emissions, this would be a significant impact. (DEIR, pps. 8-17 to 8-22; FEIR, pps. 4-9 to 4-16)

Mitigation Measure GHG-1: The proposed herd expansion shall not occur until the approved manure digester is operational.

The Planning Commission finds that the above-stated mitigation measure as revised in the FEIR is made a condition of approval of the Vierra Dairy Expansion project. The Planning Commission finds that Mitigation Measure GHG-1 is modified to reflect the updated status of the approved manure digester. The Planning Commission further finds that the above measure is appropriate and feasible, and would substantially lessen the potential adverse environmental effects associated with the Vierra Dairy Expansion project by delaying expansion of the herd until the dairy digester is operational, which would ensure GHG emissions are reduced consistent with the Scoping Plan mitigation strategy, and the impact would be reduced to less than significant. (Public Resources Code Section 21002; CEQA Guidelines Sections 15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

E. NUISANCE CONDITIONS FROM INSECTS

Setting information regarding nuisance insects for the Vierra Dairy Expansion project is set forth in pages 9-1 through 9-6 of the DEIR, and DEIR Appendix E. The impact evaluation criteria used in assessing impacts due to nuisance insects as a result of implementing the Project are set forth in the DEIR on page 9-7. This information is incorporated into these findings as though fully set forth herein. Considering the above information, and the potential impacts identified in the DEIR, the findings of the Planning Commission are as follows.

Impact HAZ-1: Increased fly production and related nuisance effects.

Implementation of the proposed Vierra Dairy Expansion project could result in the generation of flies that can adversely affect animal and human health, and become a nuisance for other adjacent land uses. While there have been no nuisance fly complaints for the existing dairy facility, because there are off-site residences located less than 1,000 feet from existing and proposed active animal confinement facilities, there is an increased potential for nuisance conditions, and this would be a significant impact. (DEIR, pps. 9-8 to 9-11; FEIR, p. 4-16)

Mitigation Measure HAZ-1a: Continue to implement operational measures included in the Vector Control Plan.

Mitigation Measure HAZ-1b: Implement the odor control measures in MM AQ-7a.

The Planning Commission finds that the above-stated mitigation measures as revised in the FEIR are made conditions of approval of the Vierra Dairy Expansion project. The Planning Commission finds that the modifications to Mitigation Measure HAZ-1 would improve the effectiveness of the mitigation by requiring implementation of Mitigation Measure AQ-7a, which requires a point of contact for nuisance complaints and additional nuisance control measures. The Planning Commission further finds that the above measures are appropriate and feasible, and would substantially lessen the potential adverse environmental effects associated with the Vierra Dairy Expansion project by requiring housekeeping and management measures previously adopted by the County in the EIR for the ACO, and providing a point of contact for nuisance complaints at the dairy facility, both in English and in Spanish. Because the setback distance to the nearby off-site residences would not be reduced with project implementation, with implementation of the above mitigation measures, the potential impact from nuisance flies would be reduced to less than significant. (Public Resources Code Section 21002; CEQA Guidelines Sections 15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

E. HYDROLOGY AND WATER QUALITY

Hydrology and Water Quality setting information for the Vierra Dairy Expansion project is set forth in pages 10-1 through 10-21 of the DEIR, DEIR Appendix J, FEIR pages 4-16 to 4-19, and FEIR Appendix I. The impact evaluation criteria used in assessing impacts on hydrology and water quality as a result of implementing the Project are set forth in the DEIR on page 10-22. A summary of proposed project operations is included on DEIR pages 10-23 through 10-26. This information is incorporated into these findings as though fully set forth herein. Considering the above information, and the potential impacts identified in the DEIR, the findings of the Planning Commission are as follows.

Impact HYD-6: Risk release of pollutants due to project inundation in flood zones.

The project site could be subject to a flood event, during which dairy facilities could be damaged, or floodwaters could inundate dairy facilities and fields where wet or dry manure had been applied, causing impacts to surface water quality. (DEIR, pps. 10-39 to 10-40)

Mitigation Measure HYD-6: Implement flood protection report measures.

The Planning Commission finds that the above-stated mitigation measure is made a condition of approval of the Vierra Dairy Expansion project. The Planning Commission further finds that the above measure is appropriate and feasible, and would substantially lessen the potential adverse environmental effects associated with the Vierra Dairy Expansion project by ensuring that proposed facilities would be protected from inundation. Issuance of a flood proofing certificate would demonstrate that needed measures have been installed, or that such measures would be installed during construction of the proposed dairy. The above-stated measure would reduce the magnitude of this impact to a less-than-significant level (Public Resources Code Section 21002; CEQA Guidelines Sections 15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

F. LAND USE COMPATIBILITY

Setting information regarding Land Use Compatibility for the Vierra Dairy Expansion project is set forth in pages 11-1 through 11-5 of the DEIR. The impact evaluation criteria used in assessing impacts to land use compatibility as a result of implementing the Project are set forth in the DEIR on page 11-6. An evaluation of project consistency with adopted Merced County plans and policies is set forth in the DEIR on pages 11-6 through 11-16. This information is incorporated into these findings as though fully set forth herein. Considering the above information, and the potential impacts identified in the DEIR, the findings of the Planning Commission are as follows.

Impact LU-2: Land use compatibility with existing off-site residential uses adjacent to the project area.

Implementation of the proposed Vierra Dairy Expansion project could be incompatible with existing off-site residences due to the siting of active dairy facilities in close proximity to these uses. While there have been no nuisance complaints for the dairy, the proposed dairy expansion would not meet Merced County setback requirements for the control of nuisance conditions. (DEIR, pps. 11-17 to 11-19)

Mitigation Measure LU-2a: Implement the odor and dust control measures set forth in Mitigation Measure AQ-7a.

Mitigation Measure LU-2b: Implement the nuisance control measures set forth in Mitigation Measure HAZ-1a.

The Planning Commission finds that while there may be an increased potential for nuisance conditions with the dairy expansion, the proposed expansion would not reduce the setback distances specified by the ACO. The Planning Commission finds that the above-stated mitigation measures are made a condition of approval of the Vierra Dairy Expansion project. The Planning Commission further finds that the above measures are appropriate and feasible, and would substantially lessen the potential adverse environmental effects associated with the Vierra Dairy Expansion project by requiring housekeeping and management measures to minimize nuisance insect and odor conditions. The above-stated measures would reduce the magnitude of this impact to a less-than-significant level (Public Resources Code Section 21002; CEQA Guidelines Sections 15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

G. CUMULATIVE IMPACTS

The assessment of cumulative effects for the Vierra Dairy Expansion project is tiered from both the EIR for the *2030 Merced County General Plan* and the EIR for the *Merced County Animal Confinement Ordinance Revision*. The Merced County Board of Supervisors certified the EIR for the Merced County ACO Revision project on October 22, 2002 (SCH #2000072024). The environmental conclusions of the 2002 EIR were subsequently reconfirmed in an Addendum to the EIR prepared and certified by the County on February 8, 2005. The ACO EIR evaluated cumulative effects for new and expanding animal confinement facilities in Merced County using a list-based approach in addition to a forecast of the future dairy herd based on the size of the then-existing herd and growth factors at the time of analysis (ACO EIR 2002). The ACO EIR cumulative analysis included an estimated herd for Merced County and the San Joaquin Valley in 2001, in addition to an expected dairy herd forecast for 2003, 2005, and 2010. While the Vierra Dairy Expansion project is obviously well outside of the 2010 herd forecast timeframe, herd growth in Merced County and the San Joaquin Valley has not matched numbers projected in the ACO EIR. Due to feed costs increasing and with milk prices at record low levels in 2008 and 2009, many dairy operators found little to no profit margin and the industry growth stagnated. As shown in DEIR Tables 12-1 and 12-2, the 2017³ estimated herd count of 3,210,682 cows in the San Joaquin Valley is somewhere between the ACO EIR 2003 and 2005 herd forecasts of 3,101,445 and 3,392,981 cows, respectively (DEIR pages 12-1 through 12-3). The forecast of cumulative conditions, geography of cumulative effects, and assessment of cumulative effects set forth within pages 5-266 through 5-282 of the ACO DEIR and revised in pages 4-107 through 4-122 of the ACO FEIR are incorporated into this finding as though fully set forth herein. Similarly, herd growth in Merced County has not matched herd numbers projected in the ACO EIR. While Merced County has seen a greater fluctuation in the herd than the San Joaquin Valley between 2007-2017, the numbers are following the same trends, and are within ACO EIR cumulative dairy herd forecast. While the proposed dairy expansion project is obviously well outside of the 2010 herd forecast timeframe in ACO, the most recent estimated herd is well within ACO EIR cumulative herd forecast for both the San Joaquin Valley and Merced County, and the ACO EIR analysis of cumulative effects for new and expanding animal confinement facilities in Merced County is still applicable and relevant.

³ The 2017 Census of Agriculture is the most recent year available from the USDA. The 2022 Census of Agriculture (anticipated in mid February 2024) will be the next complete count of U.S. farms and ranches, as it is taken only once every five years.

As the Merced County Animal Confinement Ordinance EIR was completed in 2002, the 2030 Merced County General Plan updates conclusions on the cumulative condition for all project types, including proposed and expanding dairy facility projects such as the Vierra Dairy Expansion project. The Merced County Board of Supervisors certified the EIR and adopted the 2030 General Plan on December 10, 2013 (SCH #2011041067). Because of its importance relative to understanding the environmental analysis that has occurred to date with respect to the potential environmental impacts associated with the operation of developed land uses in Merced County, the 2030 General Plan EIR is hereby incorporated by reference into this finding as though fully set forth herein.

FINDING ON TIERING FROM THE EIR FOR THE MERCED COUNTY ANIMAL CONFINEMENT ORDINANCE REVISION AND THE 2030 MERCED COUNTY GENERAL PLAN EIR, AND USE OF AN ADOPTED FORECAST FOR SUBSEQUENT CUMULATIVE IMPACT ANALYSIS

“Tiering” refers to the relationship between a program-level EIR (where long-range programmatic cumulative impacts are the focus of the environmental analysis) and subsequent environmental analyses such as the Vierra Dairy Expansion project EIR, which focus primarily on issues unique to a smaller project within the larger program or plan pursuant to Section 15168 of the State CEQA Guidelines. Through tiering, a subsequent environmental analysis can incorporate, by reference, discussion that summarizes general environmental data found in the program EIR that establishes cumulative impacts and mitigation measures, the planning context, and/or the regulatory background. These broad-based issues need not be reevaluated subsequently, having been previously identified and evaluated at the program stage (DEIR, p. 1-6).

The 2030 General Plan EIR comprehensively evaluated the potential environmental effects of implementing the 2030 General Plan and from the approval of new or modified land uses. The 2030 General Plan EIR identified a number of mitigation measures that would reduce the magnitude of these potential effects. Those measures were subsequently adopted by the County in its approval of the 2030 General Plan, and a Mitigation Monitoring and Reporting Program was adopted. Because the Vierra Dairy Expansion project is consistent with, and implements, the 2030 General Plan, those previously adopted mitigation measures and conditions apply to the Vierra Dairy Expansion project, and would continue to apply after approval of the currently requested actions. Therefore, the Vierra Dairy Expansion project is related to the 2030 General Plan EIR and, pursuant to Section 15152(a) of the CEQA Guidelines, tiering of environmental documents is appropriate (DEIR, p. 1-6).

The ACO EIR comprehensively evaluated the potential environmental effects (including cumulative effects) of implementing the revisions to the ACO and from approval of new or expanding animal confinement facilities (ACO FEIR p. 4-118). The ACO EIR identified a number of mitigation measures that would reduce the magnitude of these potential effects. Those measures were subsequently adopted by the County as conditions of approval for the revisions to the ACO, and a Mitigation Monitoring Program was adopted. Because the Vierra Dairy Expansion project is subject to the requirements of the ACO for new and expanding animal confinement facilities, those previously adopted mitigation measures and conditions as set forth in Sections 5.1 through 5.16 of the ACO RDEIR apply to the Vierra Dairy Expansion project, and would continue to apply after approval of the currently requested actions. Mitigation measures adopted for cumulative effects of implementing the revisions to the ACO and from approval of new or expanding animal confinement facilities are more programmatic in nature and are not directly applicable to the Vierra Dairy Expansion project. Therefore, the Vierra Dairy Expansion project is related to the ACO EIR

and, pursuant to Section 15152(a) of the State CEQA Guidelines, the Merced County Planning Commission finds that tiering of environmental documents is appropriate (DEIR, p. 1-5). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

For use in the evaluation of cumulative impacts, the DEIR for the Vierra Dairy Expansion project stated that the County is using the tiering concept, incorporated the ACO EIR and 2030 General Plan EIR by reference, summarized the environmental effects contained in the ACO EIR and the 2030 General Plan EIR, and set forth a location for public review of the ACO EIR and 2030 General Plan EIR consistent with CEQA Guidelines Section 15152 (DEIR, pps. 1-3 to 1-8). The Planning Commission finds that the proper procedures for tiering were employed in the Vierra Dairy Expansion project EIR, consistent with the requirements of CEQA Guidelines Section 15152. The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

EVALUATION OF CUMULATIVE EFFECTS

The cumulative impacts identified below were analyzed in the Vierra Dairy Expansion project EIR. Based on the EIR and the information contained in the record, the Planning Commission finds that the following cumulative impacts associated with the Project would be less than significant and therefore do not require mitigation. The Planning Commission has been presented with no evidence to contradict its conclusions regarding the significance of these impacts.

1. **Cumulative Effects due to Greenhouse Gas Emissions.** Cumulative impacts due to GHG emissions are discussed in the DEIR under Impact GHG-1. While the proposed project would exceed established significance thresholds for GHG emissions, mitigation measures identified within the Vierra Dairy Expansion project EIR would reduce potential impacts due to GHG emissions to a less-than-significant level, and cumulative impacts due to GHG emissions were determined to be less than significant following mitigation. (DEIR, pps. 8-17 to 8-22; FEIR, pps. 4-9 to 4-16) The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.
2. **Cumulative Cultural Resources Effects.** Impacts to cultural resources are isolated incidents that are project-specific, and generally do not contribute to a cumulative condition. Therefore, the cumulative impacts to cultural resources in Merced County would be considered less than significant as identified in the ACO EIR and as modified to reflect current environmental conditions in the county. Because mitigation measures identified within the Vierra Dairy Expansion EIR would reduce potential impacts from the loss of unknown cultural resources, including tribal cultural resources, to a less-than-significant level, impacts to cultural resources were determined to be less than significant, and construction and operation of the dairy expansion would not make a cumulatively considerable contribution to this less-than-significant cumulative effect (DEIR, pps. 12-9 to 12-10; ACO RDEIR, pps. 5-149 to 5-151 and ACO FEIR, p. 4-131). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.
3. **Cumulative Hazards Effects.** The cumulative impacts from hazards in Merced County would be considered less than significant after mitigation as identified in the ACO EIR and as modified to reflect current environmental conditions in the county. Because

mitigation measures identified within the Vierra Dairy Expansion EIR would reduce potential impacts due to hazards to a less-than-significant level, impacts due to hazards were determined to be less than significant, and there would be no cumulatively considerable contribution to cumulative effects due to hazards (DEIR, pps. 12-10 to 12-11; ACO RDEIR, pps. 5-168 through 5-170 and ACO FEIR, pps. 4-33 to 4-34). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

4. **Cumulative Groundwater Effects.** The 2030 General Plan EIR found impacts related to groundwater overdraft would be a significant cumulative effect. Therefore, cumulative effects due to groundwater overdraft in the San Joaquin River Watershed would be considered significant and unavoidable as identified in the ACO EIR, the 2030 General Plan EIR, and as modified to reflect current environmental conditions in the county. While there may be a small increase in groundwater use with the Vierra Dairy Expansion project, the majority of the water would be used for irrigation and would contribute to groundwater recharge, and impacts to groundwater supplies were determined to be less-than-significant. There would be no cumulatively considerable contribution to cumulative groundwater overdraft effects, and the cumulative impact of the Vierra Dairy Expansion due to groundwater overdraft would be less than significant. (DEIR, pps. 12-11 to 12-12; ACO RDEIR, pps. 5-168 through 5-170 and ACO FEIR, pps. 4-33 to 4-34). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.
5. **Cumulative Land Use Effects.** Adverse effects to existing rural residences adjacent to existing animal confinement facilities were identified as significant and unavoidable as identified in the ACO EIR and as modified to reflect current environmental conditions in the county. Adverse effects to existing rural residences adjacent to the Vierra Dairy Expansion project were determined to be less than significant following implementation of mitigation measures identified in the Vierra Dairy Expansion project EIR. Because the land use effects of the Vierra Dairy Expansion project would be less than significant, construction and operation of the dairy expansion would not make a cumulatively considerable contribution to this significant cumulative effect. (DEIR, p. 12-12; ACO RDEIR, pps. 5-239 to 5-244 and ACO FEIR, p. 4-137). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.
6. **Cumulative Impacts to Aesthetics, Agricultural Resources, Geological Resources, Mineral Resources, Noise, Population and Housing, Public Services, Recreation, Transportation and Circulation, Utilities and Service Systems.** Construction and operation of the proposed dairy expansion would not make a cumulatively considerable contribution to these less-than-significant cumulative effects (DEIR, pps. 12-6 to 12-14; ACO RDEIR, pps. 5-14 to 5-15, 5-19, 5-158 through 5-163, 5-246 to 5-247, 5-250 to 5-251, 5-253, 5-255, 5-257, 5-260 to 5-261, 5-263 to 5-264, and ACO FEIR, pps. 4-123 through 4-139). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

XII. FINDINGS REGARDING SIGNIFICANT AND UNAVOIDABLE IMPACTS

The EIR also identified a number of significant or potentially significant environmental effects or impacts that the Project will or may cause, but the impacts cannot be avoided or substantially lessened by the adoption of feasible mitigation measures or alternatives, or there were no feasible or sufficient measures available. Therefore, these impacts are considered significant and unavoidable. To the extent that these adverse impacts will not be substantially lessened or eliminated, the Planning Commission finds that specific economic, social and other considerations identified in the Statement of Overriding Considerations support the approval of the proposed Project. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

A. HYDROLOGY AND WATER QUALITY

Impact HYD-2: Degradation of surface water quality from project operations.

The project would not result in the degradation of surface water quality during project operations. Crop fields associated with the existing and proposed expansion operations of the dairy are developed with an existing tailwater collection system, which would prevent discharge offsite. Wastewater is applied, and would continue to be applied, in accordance with ACO and CVRWQCB requirements. However, occasional discharge of tile drainage may provide a conduit for contamination of surface water. (DEIR, pps. 10-28 to 10-30)

Mitigation Measure HYD-2a: Provide written agreement with TID to complete annual testing.

Mitigation Measure HYD-2b: If testing results completed in HYD-2a do not meet standards, applicant will prepare and implement an Operational Plan to improve drain water quality.

The Planning Commission finds that the above-stated mitigation measures as revised in the FEIR are made conditions of approval of the Vierra Dairy Expansion project. The Planning Commission finds that the modifications to Mitigation Measures HYD-2a and HYD-2b would improve the effectiveness of the mitigation by requiring that the applicant annually measure and submit tile drain water quality data to the Turlock Irrigation District, and to prepare and implement an Operational Plan to improve tile drain water quality if testing results exceed standards. The Planning Commission further finds that the above measures are appropriate and feasible, and would substantially lessen, but not avoid the potential adverse environmental effects associated with the Vierra Dairy Expansion project by requiring compliance with ACO testing requirements for tile drainage. Even after imposition of the identified mitigation measures, this would be a significant and unavoidable impact because of the demonstrated history of shallow groundwater contamination in the project area, a project tile drainage system that may result in the eventual contact between project area groundwater and natural receiving waters via discharge from the end of TID's irrigation network, and the fact that above-stated Mitigation Measure HYD-2b is within the responsibility and jurisdiction of other public agencies and not the County of Merced. No additional feasible measures that could be successfully implemented by Merced County are available to reduce this impact below a level of significance (Public Resources Code Section 21002; CEQA Guidelines Sections 15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict its conclusion in this regard. To the extent that this adverse impact will not be substantially lessened or eliminated, the Planning Commission finds that specific economic, social, and other considerations identified in the Statement of Overriding Considerations support the approval of the

proposed project. The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

Impact HYD-3: Groundwater contamination from operation of the Vierra Dairy Expansion.

Expanded operations at the Vierra Dairy could result in degradation of groundwater resources. (DEIR, pps. 10-30 to 10-35; FEIR, pps. 4-20 to 4-25)

Mitigation Measure HYD-3a: Based on results of the CVDRMP study, the CVRWQCB should develop and implement a revised Dairy General Order. The revised Dairy General Order, individual WDRs, or similar discretionary entitlements shall be issued by the CVRWQCB prior to the proposed expansion of the herd.

Mitigation Measure HYD-3b: Implement Best Management Practices at the dairy facility to manage manure.

Mitigation Measure HYD-3c: The CVRWQCB should issue individual WDRs or other type of discretionary permit. Comply with requirements of the NMP/WMP, and implement CVRWQCB and Merced County ACO requirements.

Mitigation Measure HYD-3d: Implement nutrient management measures included in the NMP.

Mitigation Measure HYD-3e: Comply with CVRWQCB permit requirements to protect surface waters and groundwater from salts in wastewater.

Mitigation Measure HYD-3f: Comply with CVRWQCB groundwater monitoring requirements.

Mitigation Measure HYD-3g: Continue groundwater monitoring of the on-site domestic and irrigation wells as required under the General Order, and a well monitoring schedule shall be incorporated into the interim individual WDR issued for the facility.

Mitigation Measure HYD-3h: Implement corrective measures in the event of groundwater contamination.

Mitigation Measure HYD-3i: The County shall make a final inspection of the facility prior to the commencement of expanded operations.

Mitigation Measure HYD-3j: Maintain all soils that contain manure or process water residue on the project site during construction.

The Planning Commission finds that the above-stated mitigation measures as revised in the FEIR are made a condition of approval of the Vierra Dairy Expansion project. The Planning Commission finds that the modifications to Mitigation Measures HYD-3a through HYD-3j would improve the effectiveness of the mitigation by permitting a CAFO applicant to construct structures and processes necessary to support a herd, but would prohibit the actual expansion of the herd until Individual WDRs or similar approvals are obtained from the RWQCB. Implementation of HYD-3a would place the responsibility of evaluating and mitigating potential effects to groundwater and surface water quality on the CVRWQCB. The Planning Commission further finds that the above measures are appropriate and feasible, and would substantially lessen the potential adverse environmental effects associated with the Vierra Dairy Expansion project by reinforcing ACO and CVRWQCB requirements to quantify and evaluate water quality and determine necessary measures to remediate water quality conditions. It includes monitoring of the effectiveness of implemented measures, and modification or addition of measures if water quality problems persist. Compliance with applicable requirements would minimize project impacts to groundwater quality. While construction of the proposed dairy facilities would not increase the potential for impacts to groundwater quality, because of the demonstrated history of groundwater contamination as a result of animal confinement facilities, and the above-stated mitigation measures are within the responsibility and jurisdiction of other public agencies and not the County of Merced, potential impacts to groundwater quality would be significant and unavoidable. No additional feasible

measures that could be successfully implemented by Merced County are available to reduce this impact below a level of significance (Public Resources Code Section 21002; CEQA Guidelines Sections 15091, 15126.4, subd. (a)(2)). There is no doubt that the RWQCB is committed to mitigating impacts to water quality to the extent it feasibly can by adopting and implementing a revised Dairy General Order. Thus, requiring the RWQCB to adopt the revised Dairy General Order as a mitigation measure would not be an improper deferral of formulating mitigation (*Center for Biological Diversity v. Department of Fish and Wildlife* (3d Dist. 2015) 234 Cal.App.4th. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard. To the extent that this adverse impact will not be substantially lessened or eliminated, the Planning Commission finds that specific economic, social, and other considerations identified in the Statement of Overriding Considerations support the approval of the proposed project. The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

Impact HYD-8: Impacts to water quality at off-site locations as a result of project operations.

Implementation of the proposed Vierra Dairy Expansion project would result in increased export of dry manure, associated pathogens, and residual contaminants to off-site locations, potentially causing impacts to water quality at off-site locations. (DEIR, pps. 10-42 to 10-44)

Mitigation Measure HYD-8: Document recipient agreement with water quality measures for manure exported off site.

The Planning Commission finds that the above-stated mitigation measure is made a condition of approval of the Vierra Dairy Expansion project. The Planning Commission further finds that the above measure is appropriate and feasible, and would substantially lessen the potential adverse environmental effects associated with the Vierra Dairy Expansion project by requiring compliance with RWQCB requirements to minimize impacts to surface and ground water quality from manure applied to cropland offsite. However, the CVDRMP monitoring has found that shallow groundwater has been affected across the Central Valley due to historic or current dairy operations, especially beneath cropland. Because the proposed operations would result in increased solid manure exported for off-site application to cropland, and the County can't control where the manure is sold and how it is applied to cropland, potential impacts to groundwater quality from the off-site export of manure would be significant and unavoidable. No additional feasible measures that could be successfully implemented by Merced County are available to reduce this impact below a level of significance (Public Resources Code Section 21002; CEQA Guidelines Sections 15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict its conclusion in this regard. To the extent that this adverse impact will not be substantially lessened or eliminated, the Planning Commission finds that specific economic, social, and other considerations identified in the Statement of Overriding Considerations support the approval of the proposed project. The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

Impact HYD-9: Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan.

Implementation of the Vierra Dairy Expansion project could conflict with or obstruct implementation of the General Order for Existing Milk Cow Dairies WDRs or the Turlock Subbasin Groundwater Sustainability Plan. (DEIR, pps. 10-44 to 10-46)

Mitigation Measure HYD-9a: Implement Mitigation Measure HYD-3, which requires compliance with Merced County and RWQCB regulations to minimize impacts to surface and groundwater quality.
Mitigation Measure HYD-9b: Implement HYD-8, which requires compliance with Merced County and RWQCB regulations to minimize impacts to surface and groundwater quality from manure applied to cropland off site.

The Planning Commission finds that the above-stated mitigation measures are made a condition of approval of the Vierra Dairy Expansion project. The Planning Commission further finds that the above measures are appropriate and feasible, and would substantially lessen the potential adverse environmental effects associated with the Vierra Dairy Expansion project by ensuring compliance with regulatory requirements, and requiring written agreements from the recipients of manure exported off site to implement measures to protect surface and groundwater quality. However, the CVDRMP monitoring has found that shallow groundwater has been affected across the Central Valley due to historic or current dairy operations, especially beneath cropland. Because of the demonstrated history of groundwater contamination as a result of animal confinement facilities, and the above-stated mitigation measures are within the responsibility and jurisdiction of other public agencies and not the County of Merced, potential impacts to groundwater quality would be significant and unavoidable, and the project could conflict with implementation of the General Order for Existing Milk Cow Dairies WDRs or the Turlock Subbasin Groundwater Sustainability Plan. No additional feasible measures that could be successfully implemented by Merced County are available to reduce this impact below a level of significance (Public Resources Code Section 21002; CEQA Guidelines Sections 15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict its conclusion in this regard. To the extent that this adverse impact will not be substantially lessened or eliminated, the Planning Commission finds that specific economic, social, and other considerations identified in the Statement of Overriding Considerations support the approval of the proposed project. The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

B. CUMULATIVE IMPACTS

Cumulative Effects to Air Quality.

Based on the analysis contained within the Animal Confinement Ordinance Revisions RDEIR and FEIR, and other considerations in the record, the Merced County Board of Supervisors found that cumulative effects to air quality from confined animal facility development within the San Joaquin Valley Air Basin would be a cumulatively significant impact. Even with implementation of the 2030 General Plan goals and policies and mitigation measures identified in the 2030 General Plan EIR, the 2030 General Plan EIR found that operational emissions of PM₁₀ and PM_{2.5} associated with General Plan buildout would be a significant cumulative effect. Therefore, the cumulative impacts to air quality in the San Joaquin County Air Basin would be considered significant as identified in the ACO EIR, the 2030 General Plan EIR, and as modified to reflect current environmental conditions in the county. The findings of the Board of Supervisors regarding these cumulative impacts are hereby incorporated by reference as though fully set forth herein.

Findings on Contribution of Project to Cumulative Impact

Based on the analysis contained within the Vierra Dairy Expansion project DEIR and FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission specifically finds that while the project-level impact of implementing the Vierra Dairy Expansion

project from ozone precursors (VOC and NO_x) would not exceed the SJVAPCD significance thresholds, because of the magnitude of emissions from the project and pollutant concentrations in the San Joaquin Valley Air Basin, and because the Air Basin is in nonattainment for both federal and state ozone standards, the project's contribution to this effect would be cumulatively considerable. Thus, the cumulative impact of the Vierra Dairy Expansion project on air quality would be significant and unavoidable (Vierra Dairy Expansion project DEIR, p. 12-8; ACO RDEIR pps. 5-70 to 5-90 and ACO FEIR, pps. 4-123 to 4-129). The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

None available beyond Mitigation Measures as set forth in Section XI.A of these Findings.

Findings on Proposed Mitigation

For findings on the effectiveness of the air quality mitigation measures applicable to the Vierra Dairy Expansion project, see Section XI.A of these Findings. To the extent that this adverse impact will not be substantially lessened or eliminated, the Planning Commission finds that specific economic, social and other considerations identified in the Statement of Overriding Considerations support the approval of the proposed Project. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Cumulative Biological Resources Effects.

The 2030 General Plan EIR found that development under the 2030 General Plan in Merced County, in cities within the county, and in surrounding cities and counties would contribute to cumulative effects to biological resources would be significant and unavoidable within the San Joaquin Valley. Although 2030 General Plan goals and policies would reduce and partially offset Merced County's contribution to this impact, the potential impacts to habitat and protected species throughout Merced County, cities within Merced County, and surrounding counties and adjacent cities are expected to be cumulatively considerable. The cumulative impacts to habitats and protected species in Merced County, cities within Merced County, and surrounding counties and adjacent cities would be considered significant as identified in the 2030 General Plan EIR, and as modified to reflect current environmental conditions in the county. The findings of the Board of Supervisors regarding these cumulative impacts are hereby incorporated by reference as though fully set forth herein.

Findings on Contribution of Project to Cumulative Impact

Based on the analysis contained within the Vierra Dairy Expansion project DEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission specifically finds that because mitigation measures identified within the Vierra Dairy Expansion project EIR would reduce potential impacts to loss of biological resources to a less-than-significant level, and there is no riparian habitat on the project site, impacts to biological resources were determined to be less than significant. However, throughout Merced County, the conversion of cultivated farmland to dairies and other developments is resulting in a cumulative and significant loss of foraging and nesting habitat for some special-status and migratory birds. Conversion of 15 acres of the project site to a dairy facility would contribute to that cumulative loss. This loss of habitat is cumulatively significant, unavoidable, and unmitigable. Thus, the cumulative impact of the Vierra Dairy on biological resources would be significant and unavoidable (DEIR, pps. 12-8 to 12-9; ACO

RDEIR pps. 5-130 to 5-145 and ACO FEIR, pps. 4-9 to 4-12). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

Proposed Mitigation

None available beyond Mitigation Measures as set forth in Section XI.B of these Findings.

Findings on Proposed Mitigation

For findings on the effectiveness of the biological resource mitigation measures applicable to the Vierra Dairy Expansion project, see Section XI.B of these Findings. To the extent that this adverse impact will not be substantially lessened or eliminated, the Planning Commission finds that specific economic, social and other considerations identified in the Statement of Overriding Considerations support the approval of the proposed Project. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Cumulative Hydrology and Water Quality Effects.

Based on the analysis contained within the Animal Confinement Ordinance Revisions RDEIR and FEIR, other considerations in the record, and the impact evaluation criteria, the Board of Supervisors found that the potential cumulative impact on surface water and groundwater quality is expected to be significant in areas outside of Merced County. Confined animal facility development in Merced County was not expected to be cumulatively considerable because of the requirements of the Animal Confinement Ordinance and mitigation measures adopted by the Board of Supervisors in its certification of the Animal Confinement Ordinance Revisions EIR and approval of the revised Animal Confinement Ordinance. The 2030 General Plan EIR found impacts related to groundwater overdraft would be a significant cumulative effect. Therefore, cumulative effects due to the degradation of groundwater resources and groundwater overdraft in the San Joaquin River Watershed would be considered significant and unavoidable as identified in the ACO EIR, the 2030 General Plan EIR, and as modified to reflect current environmental conditions in the county. The findings of the Board of Supervisors regarding these cumulative impacts are hereby incorporated by reference as though fully set forth herein.

Findings on Contribution of Project to Cumulative Impact

Based on the analysis contained within the Vierra Dairy Expansion project DEIR and FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission specifically finds that with implementation of water quality mitigation measures, project-level groundwater quality effects of the Vierra Dairy were determined to be significant. Similarly, impacts to groundwater quality at off-site locations due to the export of manure were determined to be significant. Operation of the Vierra Dairy could continue to contribute to the cumulative effects due to the degradation of groundwater resources in the San Joaquin River Watershed, and the proposed project would make a cumulatively considerable contribution to these significant and unavoidable effects. Thus, the cumulative impact of the Vierra Dairy Expansion on groundwater quality would be significant and unavoidable (Vierra Dairy Expansion Project DEIR, pps. 12-11 to 12-12; ACO FEIR, p. 4-76 to 4-99). The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

None available beyond Mitigation Measures as set forth in Section XI.E of these Findings.

Findings on Proposed Mitigation

For findings on the effectiveness of the water quality mitigation measures applicable to the Vierra Dairy Expansion project, see Section XI.E of these Findings. To the extent that this adverse impact will not be substantially lessened or eliminated, the Planning Commission finds that specific economic, social and other considerations identified in the Statement of Overriding Considerations support the approval of the proposed Project. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

XIII. PROJECT ALTERNATIVES

Where a lead agency has determined that, even after the adoption of all feasible mitigation measures, a project as proposed will still cause one or more significant environmental effects that cannot be substantially lessened or avoided, the agency, prior to approving the project as mitigated, must first determine whether, with respect to such impacts, there remain any project alternatives that are both environmentally superior and feasible within the meaning of CEQA. As noted earlier, in Sections II and VII of these Findings, an alternative may be “infeasible” if it fails to promote the project applicant’s goals and objectives with respect to the project. Thus, “‘feasibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors” of a project (*City of Del Mar, supra*, 133 Cal.App.3d at 417; see also *Sequoyah Hills, supra*, 23 Cal.App.4th at 715).

CEQA Guidelines Section 15126.6 states that “an EIR need not consider every conceivable alternative to a project; [r]ather it must consider a reasonable range of potentially feasible alternatives.” “Absolute perfection” is not required in analyzing the alternatives (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376). The lead agencies selection of alternatives is generally considered adequate unless an opponent can “(1) demonstrate the alternatives are manifestly unreasonable and do not contribute to a reasonable range of alternatives and (2) identifies evidence of a potentially feasible alternative that meets most of the basic project objectives” (*Save Our Access-San Gabriel Mountains v. Watershed Conservation Authority* (2021) 68 Cal.App.5th 8).

This DEIR identified 21 significant impacts that would occur with implementation of the proposed Vierra Dairy Expansion project. The detailed discussion in Section XI demonstrates that many of these significant environmental effects of the Project have been either substantially lessened or avoided through the imposition of existing policies or regulations of the Merced County Animal Confinement Ordinance and Zoning Code, or by the adoption of additional, formal mitigation measures identified in the EIR. However, even with mitigation in the form of the application of existing policies and, where feasible, the addition of formal mitigation measures, the following significant effects remain significant and unavoidable, though they have been substantially lessened:

- Impact HYD-2: Surface water quality impacts from dairy expansion operations
- Impact HYD-3: Groundwater quality impacts from dairy project operations

- Impact HYD-8: Impacts to water quality at off-site locations that receive manure
- Impact HYD-9: Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan,
- Cumulative air quality impacts
- Cumulative impacts to biological resources
- Cumulative impacts due to GHG emissions⁴
- Cumulative hydrology and water quality impacts

The County can fully satisfy its CEQA obligations by determining whether any alternatives identified in the EIR are both feasible and environmentally superior with respect to these impacts (*Laurel Hills, supra*, 83 Cal.App.3d at pp. 520-521 and pp. 526-527); *Kings County Farm Bureau v. City of Hanford, supra*, 221 Cal.App.3d at pp. 730-731; and *Laurel Heights I, supra*, 47 Cal.3d at pp. 400-403; see also Public Resources Code Section 21002). As the succeeding discussion will show, Alternative 3 is both feasible and environmentally superior with respect to the environmental impacts of the proposed project.

To fully account for the significant effects identified in the EIR, whether they could be substantially reduced through the implementation of mitigation measures or not, and the extent to which particular alternatives might or might not be environmentally superior with respect to them, these Findings will not focus solely on these impacts, but instead will address the environmental merits of the alternatives with respect to all potentially significant impacts. The Findings will also assess whether each alternative is feasible in light of the project applicant's objectives for the Project.

The County's review of project alternatives is guided primarily by the need to reduce potential impacts associated with the Project, while still achieving the basic objectives of the Project. The specific Project objectives are set forth in Section IV.D above. Based on the identified impacts, the EIR identified and evaluated two development alternatives and also evaluated the environmental impacts of the No Project alternative.

ALTERNATIVES REJECTED FROM FURTHER CONSIDERATION

In accordance with CEQA Guidelines Section 15126.6(f), several alternatives were considered for the Vierra Dairy Expansion project, but rejected as infeasible. The potentially feasible alternatives were analyzed in relation to the objectives of the Project and in relation to their ability to avoid or substantially lessen environmental impacts. The alternatives rejected as infeasible included:

- Alternative Sites Outside the San Joaquin Valley - The relocation of dairy facilities to alternative sites outside the San Joaquin Valley was eliminated, despite the fact that siting outside of the San Joaquin Valley Air Basin might speculatively lessen the incremental effect of air emissions and potential air quality cumulative effects. Because these properties would be outside the jurisdiction of the County; the project applicant does not own, or cannot reasonably acquire an additional dairy site outside of the San Joaquin

⁴ Impacts due to GHG emissions are considered a cumulative impact, since the project would result in a cumulatively considerable contribution to this impact.

Valley; and relocation of existing facilities would be costly, this alternative was considered infeasible and rejected from further analysis (DEIR, p. 13-2).

- Organic Dairy Farm Management Alternative - Based on the potentially large amount of acreage required for pasture and the lack of available agricultural real estate in the project vicinity, the project applicant cannot reasonably acquire additional land. In addition, current federal farm policies could make organic farming difficult to implement. For each and every reason identified above, this alternative was considered infeasible and rejected from further analysis (DEIR, pps. 13-2 through 13-4).
- Solid-Scrape Manure Management Alternative - While dairy methane emissions may be significantly reduced under this alternative, converting to scrape systems at dairies may not yet be cost-effective, and solid manure management practices could lead to increased emissions of PM₁₀, ammonia, nitrous oxide, and VOCs. Further, additional data and supporting regulations are needed before switching to solid-scrape manure management. For each and every reason identified, this alternative was considered infeasible and rejected from further analysis (DEIR, pps. 13-4 through 13-5).

ALTERNATIVES TO THE PROPOSED PROJECT

A. ALTERNATIVE 1 – NO PROJECT ALTERNATIVE

Definition of Alternative 1

The CEQA Guidelines have clarified that, under a “No Project” alternative, an EIR must examine both the existing conditions, as well as a “buildout” scenario (i.e., what would occur if the site were developed as allowed under applicable County plans). The amended CEQA Guidelines Section 15126.6(e)(2) states:

The No Project analysis shall discuss the existing conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental review is commenced as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.

Therefore, the analysis of the No Project alternative in the EIR describes existing facility development at the Vierra Dairy, as well as expected agricultural development at the site under the current zoning requirements (DEIR, p. 13-5).

Under the No Project Alternative, construction of the Vierra Dairy Expansion would not occur. The existing dairy facility and agricultural operations currently developed on the project site would continue under the No Project Alternative. The existing herd size of 5,597 animals at the existing dairy facility would be maintained on the project sites in addition to continued use of the existing wastewater management system. Uses permitted under the General Agriculture zoning designation without discretionary approval by Merced County are limited to crop production, including orchards and vineyards. Thus, the agricultural activities permitted by Merced County zoning designations and the facilities currently developed on the project site would continue under the No Project Alternative (DEIR, p. 13-5).

Evaluation of Alternative 1

There are 21 significant impacts that would occur with implementation of the proposed Vierra Dairy project. Of these, seven impacts would remain significant and unavoidable after the implementation of all feasible mitigation measures - one for cumulative air quality, one for cumulative biological resource impacts, one for greenhouse gas emissions, and five for water quality. The No Project Alternative would reduce the magnitude of anticipated environmental impacts associated with the proposed project. The No Project Alternative would avoid the increment of increase for air quality and greenhouse gas emission impacts as a result of the proposed project. The No Project Alternative would not create any construction impacts or provide a source of additional odors. The No Project Alternative would reduce the magnitude of impacts related to air quality; biological and cultural resources; greenhouse gas emissions and energy; nuisance insects; hydrology and soil erosion; and land use compatibility. Based on the foregoing, the No Project Alternative would result in fewer environmental effects than the proposed Vierra Dairy project. DEIR Table 13-1 includes an evaluation of the relative impacts of implementing Alternative 1 - No Project Alternative compared to the proposed project (DEIR, pps. 13-6 to 13-8).

Implementation of the No Project Alternative would not fully meet the following goals of the project applicant in proposing the Vierra Dairy Expansion project since the project applicant would not develop the existing dairy to its full production potential and the economic return on investment could be diminished.

- *To maintain a modern, efficient, and competitive dairy operation that operates in full compliance with applicable county, state, and federal laws and regulations.* Under this alternative, no dairy expansion would be developed. Smaller dairy farms in the U.S. are observed to have higher costs per unit of milk produced than larger farms, largely due to farm inefficiencies and economies of size (Tauer and Mishra 2005)⁵. Larger farms realize lower production costs for a number of reasons, including fixed capital costs spread over more units of output, access to better technologies, specialization at larger farms, and volume discounts for input items such as feed. The cost advantages of a larger size allow large dairy farms to be more profitable than smaller operations (USDA 2007)⁶.
- *To generate dry manure and manure slurry that can be land applied and/or sold as a commodity for use as fertilizer in the region.* Since the dairy expansion would not occur, reduced amounts of dairy process water and manure would be generated and exported off site. Exported solid manure applied to off-site agricultural fields not owned by the project applicant would increase from 30,000 tons to 34,000 tons with the proposed expansion. (DEIR, Chapter 3, *Project Description*, page 3-17)
- *To provide year-round employment opportunities, at competitive wages, for Merced County residents. Unlike other agricultural operations, which provide only seasonal employment, dairies provide year-round employment.* The dairy under existing operations currently employs a staff of approximately 32 workers; with implementation of the proposed expansion, the number

⁵ Tauer, Loren W. and Ashok K. Mishra 2005. "Can the small dairy farm remain competitive in US agriculture?" Elsevier, *Food Policy* 31 (2006) 458-468.

⁶ USDA 2007. Profits, costs, and the changing structure of dairy farming. Economic Research Report No. 47, United States Department of Agriculture. Economic Research Service. James M. MacDonald, Erik J. O'Donoghue, William D. McBride, Richard F. Nehring, Carmen L. Sandretto, and Roberto Mosheim. September 2007.

of employees would increase to approximately 45 workers. Since the dairy expansion would not occur under this alternative, no additional employees beyond those existing would be required. (DEIR, Chapter 3, *Project Description*, page 3-17)

Finding of Feasibility on Alternative 1

The Merced County Planning Commission rejects Alternative 1, No Project Alternative, as infeasible for each and every reason listed, each reason being a separate and independent basis upon which the Planning Commission finds the alternative to be infeasible.

- The No Project Alternative is rejected as infeasible because it does not fully advance the adopted Project objectives of the project applicant for pursuing the Vierra Dairy Expansion project.

The basis for the foregoing determination can be found in Section IV of these Findings and Section 3.2 of the DEIR dated June 2023 regarding the applicant's Project objectives, pages 13-6 through 13-8 of the DEIR dated June 2023 regarding the environmental effects of the Alternative, and the information presented in Section XIV, Statement of Overriding Considerations, of these Findings, regarding County policy and factual determinations.

To the extent that any environmental impacts might be less significant under the No Project Alternative, the rejection of this alternative is appropriate for the reason stated above and in the statement of overriding considerations. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

B. ALTERNATIVE 2 – ON-SITE ANAEROBIC DIGESTER ALTERNATIVE

Definition of Alternative 2

Under the On-Site Anaerobic Digester Alternative, an anaerobic digester would be constructed at the existing dairy, or the proposed wastewater pond would be covered and constructed as an anaerobic digester. All other improvements and the herd size increase associated with the proposed dairy expansion project would also occur under the On-Site Anaerobic Digester Alternative. This alternative was selected to further reduce greenhouse gas emissions and to consider a strategy that may be adopted in the future as a result of the ARB's Climate Change Scoping Plan recommended actions for the agriculture sector (DEIR, p. 13-9).

In addition to generating renewable energy, anaerobic digestion leads to reduced odor pollution, fewer pathogens, and reduced greenhouse gas emissions. There is little change in the nutrient value of the manure and organic matter that passes through the process, which can then be used as fertilizer. Methane produced from the collected manure (termed "biogas") can be captured with an estimated effectiveness of 95 percent. It is estimated that combustion of biomethane for energy recovery will convert up to 99 percent of the methane into carbon dioxide. Taking the effect of the CO₂ produced from the combustion of CH₄ into account, an overall reduction of 63.5 percent of fugitive CH₄ emissions can be achieved by the use of properly designed and controlled anaerobic treatment (DEIR, p. 13-9).

The methane from a digester is destroyed through combustion in an engine, flare, or other devices. Burning biogas reduces greenhouse gas emissions in two ways. First, when manure is stored in a

conventional liquid handling system without a digester, it typically emits a certain amount of methane-containing biogas. When that methane is collected in a digester and burned, it then will not escape into the atmosphere and cause warming. Second, electricity generated from that digester biogas will typically replace fossil fuel-generated electricity, and there would be a reduction in CO₂ emissions from not burning that fossil fuel.

Despite the benefits of anaerobic digestion systems in relation to greenhouse gases and odors, these systems could result in increased nitrogen oxide emissions, and soil and groundwater contamination.⁷ The anaerobic treatment process creates intermediates such as ammonia, hydrogen sulfide, orthophosphates, and various salts, all of which must be properly controlled or captured. The ammonium level in the digester effluent is typically higher than raw manure, sometimes as much as two times higher. When digester effluent is field applied, much of the ammonium will be released as a gas (ammonia) unless it is incorporated into the soil. When incorporated, microorganisms can convert the ammonia to nitrite, which is then rapidly converted to nitrate, the nitrogen form most readily taken up by plants.

Atmospheric releases at locations off-site where biogas is shipped may negate or decrease the benefit of emissions controls on-site. Thus, while devices such as Selective Catalyst Reduction units can reduce NO_x emissions and proper treatment system operation can control intermediates, improper design or operation may lead to violations of federal, state, and local air quality regulations as well as the release of toxic air contaminants. With regard to water quality, it is critical that project developers and managers ensure digester integrity, and fully consider and address post-digestion management of the effluent in order to avoid contamination of local waterways and groundwater resources (de Boer 2008). Catastrophic digester failures, leakage from pipework and tanks, and lack of containment in waste storage areas are all examples of potential problems. Further, application of improperly treated digestate and/or improper application timing or rates of digestate to agricultural land may lead to increased nitrogen oxide emissions, soil contamination, and/or nutrient leaching, thus negating or reducing benefits of the project overall (DEIR, p. 13-10).

To facilitate the permitting of dairy digesters in the Central Valley, the Central Valley Regional Water Quality Control Board adopted the Waste Discharge Regulatory Program for Dairy Manure Digester and Co-Digester Facilities, and evaluated the potential environmental impacts of the program in the Dairy Manure Digester and Co-Digester Facilities Draft Program EIR (Dairy Digester Program EIR) (2010). In order to evaluate potential construction and operational emissions for the On-Site Anaerobic Digester Alternative, this EIR references the air quality analysis included in the Dairy Digester Program EIR. There are numerous uncertainties regarding details of the anaerobic digester that would be appropriate and preferable for the Vierra Dairy operation, including but not limited to location, size, engine type, and use of a co-digester, making project-specific quantification of air emissions and air toxics speculative and beyond the scope of this alternative. The emission estimates for a single digester included in the Dairy Digester Program EIR provide adequate information for a meaningful evaluation and comparison with the proposed project, and will be used in this analysis (DEIR, p. 13-10).

⁷ The combustion of biogas could result in increased nitrogen oxide emissions. While devices such as Selective Catalyst Reduction units can reduce NO_x emissions, uncontrolled emissions from combustion of biogas may contain between 200 to 300 ppm of NO_x (de Boer 2008).

As evaluated in Chapter 6, *Air Quality and Greenhouse Gas Emissions*, of the Dairy Digester Program EIR (2010), construction and operation of a dairy digester is not anticipated to exceed SJVAPCD thresholds of significance in most cases. Operational emissions of an individual digester would result in no net increase of ROG/VOC emissions⁸, and a net increase in NO_x, PM₁₀, PM_{2.5}, SO₂, and CO from vehicle and equipment emissions and biogas combustion emissions. While the digester itself would not result in an increase in criteria air pollutants that would exceed SJVAPCD criteria, the On-Site Anaerobic Digester Alternative would result in an increase in air pollutant emissions compared to the proposed project that could exceed SJVAPCD criteria (DEIR, p. 13-10).

Prior to implementation of this alternative, as required by the RWQCB Dairy Digester Program EIR, an air quality technical report would be prepared to determine if construction and operation related air pollutant emissions would exceed SJVAPCD thresholds, as well as whether any health risks associated with toxic air contaminants would result. The technical report would evaluate all project emissions according to CEQA, and would include mitigation measures designed to reduce emissions below levels of significance, if necessary. Additional permits would also be required for the digester depending on location and resources affected. An Authority to Construct and Permit to Operate would be required from the SJVAPCD.

Another important consideration in this alternative is the feasibility of installing manure digesters at dairies in the San Joaquin Valley. Several studies have examined the financial feasibility of installing different types of manure digester operations and determined that financial feasibility is highly dependent on state and federal government assistance. The installation of manure digesters to reduce methane emissions was included as a voluntary strategy for the agricultural sector in the ARB Scoping Plan, and will continue to be voluntary through the foreseeable future. Funds from the Cap-and-Trade Program are allocated to the Greenhouse Gas Reduction Fund to be administered by CDFA to support such projects. CDFA has awarded a total of \$195 million for 117 dairy digester projects from 2015 through 2021 through the Dairy Digester Research and Development Program (DDRDP), and over \$68.3 million for 116 manure management projects for that time period through the Alternative Manure Management Program (AMMP). Alternative projects could include installation of mechanical manure solids separation on dairies with flush systems, or conversion to dry manure management practices, such as scrape or vacuum systems, combined with composting or solar drying of manure. Dairy digesters installed with grant funding from CDFA are going to reduce 21 percent of the methane emissions from manure management in California, and 6.6 percent of total GHG emissions from all of California agriculture (DEIR, p. 13-12).

Despite the availability of both federal and state funding for digester construction, policies and initiatives to support the installation of digesters, and the existence of the ARB offset protocol for livestock projects, only a small fraction of California's roughly 1,500 dairy farms currently have working digesters (DEIR, p. 13-12).

Evaluation of Alternative 2

There are 21 significant impacts that would occur with implementation of the proposed Vierra Dairy project. Of these, seven impacts would remain significant and unavoidable after the implementation

⁸ While there would be an increase in VOC emissions as a result of vehicle and equipment emissions and biogas combustion, the digester would reduce VOC emissions from the lagoon.

of all feasible mitigation measures - one for cumulative air quality, one for cumulative biological resource impacts, one for greenhouse gas emissions, and five for water quality. The On-Site Anaerobic Digester Alternative would reduce the magnitude of anticipated environmental impacts associated with the proposed project. The On-Site Anaerobic Digester Alternative would reduce, but not avoid, odor impacts. Greenhouse gas emissions would also be reduced. There would be an increase in most criteria air pollutant emissions as described above, including an increase in toxic air emissions that could impact sensitive receptors. While the anaerobic digester would reduce pathogens in the liquid manure stored in the lagoon and applied to cropland off site, because the dry manure exported off site is separated from the waste stream and would not be processed in the manure digester, it would not minimize potential impacts from manure pathogen transport off site. The On-Site Anaerobic Digester Alternative would also reduce the magnitude of impacts related to energy use and water quality. Because the digester equipment could require additional area beyond the existing dairy footprint, this alternative could require conversion of cropland for the digester and potentially increased impacts to biological and cultural resources. Based on the foregoing, the On-Site Anaerobic Digester Alternative would result in fewer environmental effects than the proposed Vierra Dairy project (DEIR, pps. 13-12 to 13-15).

Implementation of the On-Site Anaerobic Digester Alternative would not fully meet the following goals of the project applicant in proposing the Vierra Dairy Expansion project since permitting difficulties for the digester could extend the time line for approval and the alternative would result in potentially greater water and air quality violations.

- *To maintain a modern, efficient, and competitive dairy operation that operates in full compliance with applicable county, state, and federal laws and regulations.* This alternative is ineffective in reducing impacts of the project compared to the other action alternative (see DEIR Table 13-4 for a relative comparison of alternatives). The dairy digester represents a large capital cost and requires proper management and maintenance to realize a financial return. Further, installation of manure digesters to reduce methane emissions is a voluntary strategy in the ARB Scoping Plan.
- *To construct improvements that can be permitted within a reasonable time frame and would represent commensurate benefit with cost.* This alternative may take additional time to permit with both the SJVAPCD and the CVRWQCB. In addition, studies have found installing dairy digesters are generally not financially feasible without the infusion of grant funds, which are competitive and uncertain. (DEIR, p. 13-16)

Finding of Feasibility on Alternative 2

The Merced County Planning Commission rejects Alternative 2, On-Site Anaerobic Digester Alternative, as infeasible for each and every reason listed, each reason being a separate and independent basis upon which the Planning Commission finds the alternative to be infeasible.

- The Anaerobic Digester Alternative is rejected as infeasible because it does not fully advance the adopted Project objectives of the project applicant for pursuing the Vierra Dairy Expansion project.

The basis for the foregoing determination can be found in Section IV of these Findings and Section 3.2 of the DEIR dated June 2023 regarding the applicant's Project objectives, pages 13-9 through 13-15 of the DEIR dated June 2023 regarding the environmental effects of the Alternative, and the

information presented in Section XIV, Statement of Overriding Considerations, of these Findings, regarding County policy and factual determinations.

To the extent that any environmental impacts might be less significant under the On-Site Anaerobic Digester Alternative, the rejection of this alternative is appropriate for the reason stated above and in the statement of overriding considerations. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

C. ALTERNATIVE 3 – DAIRY DIGESTER CLUSTER ALTERNATIVE

Definition of Alternative 3

The dairy digester cluster concept involves gathering raw dairy biogas from a cluster of existing dairy operations and transferring it to a centralized hub where gas cleaning and conditioning occurs. Under the Dairy Digester Cluster Alternative, an anaerobic digester would be constructed at the existing Vierra Dairy, or the existing wastewater lagoons would be covered and re-constructed as an anaerobic digester. Underground pipeline would be installed to transport the biogas from the dairy to a biogas upgrading facility. All other improvements and the herd size increase associated with the proposed dairy expansion project would also occur under the Dairy Digester Pipeline Cluster Alternative. This alternative was selected to further reduce greenhouse gas emissions and to consider a strategy that may be adopted in the future as a result of the ARB's Climate Change Scoping Plan recommended actions for the agriculture sector. The benefits of this alternative were such that the applicant has already moved to implement it. Since issuance of the Draft EIR in June 2023, Merced County received a permit application for the construction of an anaerobic manure digester on the Vierra Dairy to the north of the existing wastewater retention pond. The Merced County General Plan policy AQ-1.12 supports dairy digester permit streamlining and encourages staff to permit digesters using on-farm feedstocks with a staff-level Plot Plan Review. The digester project was approved on December 19, 2023 (FEIR, pps. 3-56 to 3-57). Once constructed, the approved dairy digester would be consistent with the voluntary Scoping Plan methane mitigation strategy for dairy and livestock operations.

Construction and operation of the approved manure digester would have similar effects to those identified in the Draft EIR in the evaluation of Alternative 3 – Dairy Digester Cluster Alternative. In addition to generating renewable energy, anaerobic digestion leads to reduced odor pollution, a decrease in manure pathogens, and reduced greenhouse gas emissions. However, this alternative could result in increased impacts to biological resources and/or unknown cultural resources during construction of the proposed pipeline. This alternative would not result in increased operational air criteria emissions associated with the combustion of biogas for energy recovery as described in Alternative 2. Rather, the biogas would be transported to a biogas upgrading facility, where it would be injected into a regional utility pipeline. In the case of the Vierra Dairy, there is an approved dairy digester cluster network in the Hilmar area.

In order to streamline the CVRWQCB's permitting process for dairy digester facilities and provide for the protection of the beneficial uses of surface and groundwater, the CVRWQCB issued the General Order for Dairies with Manure Anaerobic Digester or Co-Digester Facilities (R5-2010-0130) (Digester General Order) and certified its accompanying Program EIR. The manure digester would be covered by this General Order and required to comply with its Waste Discharge Requirements (FEIR, p. 3-57).

Evaluation of Alternative 3

There are 21 significant impacts that would occur with implementation of the proposed Vierra Dairy project. Of these, seven impacts would remain significant and unavoidable after the implementation of all feasible mitigation measures – one for cumulative air quality, one for cumulative biological resource impacts, one for greenhouse gas emissions, and five for water quality. The Dairy Digester Cluster Alternative would reduce the magnitude of anticipated environmental impacts associated with the proposed project. The Dairy Digester Cluster Alternative would reduce, but not avoid, odor impacts. Greenhouse gas emissions would also be reduced, though there would be an increase in greenhouse gas emissions during pipeline construction. While the anaerobic digester would reduce pathogens in the liquid manure stored in the lagoon and applied to cropland off site, because the dry manure exported off site is separated from the waste stream and would not be processed in the manure digester, it would not minimize potential impacts from manure pathogen transport off site. The Dairy Digester Cluster Alternative would also reduce the magnitude of impacts related to energy use and water quality. Because the digester equipment could require additional area beyond the existing dairy footprint, this alternative could require conversion of cropland for the digester and pipeline and potentially increased impacts to biological and cultural resources. Based on the foregoing, the Dairy Digester Cluster Alternative would result in fewer environmental effects than the proposed Vierra Dairy project. DEIR Table 13-3 includes an evaluation of the relative impacts of implementing Alternative 3 – Dairy Digester Cluster Alternative compared to the proposed project (DEIR, pps. 13-17 to 13-20). However, the approved manure digester is not a part of the project under review in this EIR prepared for the dairy expansion project. While dairy digester operations could result in increased environmental effects for some issue areas assessed in the DEIR, implementation of the digester wouldn't change the environmental conclusions of the DEIR. Further, the permitting process would ensure compliance with SJVAPCD and CVRWQCB requirements, which would ensure that all air and water emissions would meet the agency's standards and avoid adverse effects (FEIR, p. 3-58).

Since something similar to the Dairy Digester Cluster Alternative would occur with construction of the approved digester, but as a separate project, none of the goals of the project applicant in proposing the Vierra Dairy Expansion project would be affected.

Finding of Feasibility on Alternative 3

The Merced County Planning Commission finds that Alternative 3, Dairy Digester Cluster Alternative, is a feasible alternative. However, independent of the Vierra Dairy Expansion project, the applicant has already moved to implement something similar to Alternative 3 with a separately approved digester project. Therefore, Alternative 3 would effectively be satisfied by the applicant connecting the approved dairy digester to the dairy digester cluster, and adoption of this alternative does not need to be considered for this Vierra Dairy Expansion project.

The basis for the foregoing determination can be found in Section IV of these Findings and Section 3.2 of the DEIR dated June 2023 regarding the applicant's Project objectives, pages 13-17 through 13-20 of the DEIR dated June 2023 regarding the environmental effects of the Alternative, and the information presented in Section XIV, Statement of Overriding Considerations, of these Findings, regarding County policy and factual determinations.

The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

XIV. STATEMENT OF OVERRIDING CONSIDERATIONS

As set forth in the preceding sections, the County’s approval of the Project will result in significant adverse impacts that cannot be substantially lessened or avoided even with the adoption of all feasible mitigation measures or Project alternatives. Despite these impacts, however, the County chooses to approve the Project because, in its view, the economic, social, and other benefits that the Project will produce will render the significant effects acceptable. To do so, the County must first adopt this Statement of Overriding Considerations (Pub. Resources Code Section 21081; CEQA Guidelines Section 15093).

The following statement identifies the reasons why, in the County’s judgment, the benefits of the Project outweigh its unavoidable significant effects. Any one of the reasons for approval cited below is sufficient to justify approval of the Project. Thus, even if a Court were to conclude that not every reason is supported by substantial evidence, the County will stand by its determination that each individual reason is sufficient. The substantial evidence supporting the various benefits can be found in the preceding findings, which are incorporated by reference into this Section (XIV), and in the documents found in the Record of Proceedings, as defined in Section VI.

The County finds that the Project will have the following specific economic, legal, social, technological, or other benefits:

A. PRESERVATION AND PROMOTION OF SUSTAINABLE AGRICULTURE IN THE COUNTY

The Planning Commission finds that dairy industry is extremely important to agriculture in Merced County. In the Merced County 2022 Report on Agriculture, milk is the County’s number one agricultural commodity, with an overall gross value of \$1,500,840,000. Dairy facilities employ people seven days a week, twenty-four hours per day, all year long. Dairy facility employment yields good pay, good benefits, and in many cases, housing. Dairy facilities are also stable businesses. The proposed project presents a balance between retaining jobs in the dairy industry and protecting the environment and the public.

For the reasons set forth above, the Planning Commission finds that the ability of the Project to preserve and promote agriculture outweighs its other environmental impacts.

B. PRESERVATION OF OPEN SPACE AREAS

Approval and implementation of the Vierra Dairy Expansion project will help ensure preservation of the project site, an area of open space, as agricultural land that could otherwise be lost to non-agricultural development. Without substantial, long-term investment in state-of-the-art dairy facilities on existing agricultural land, the owners of agricultural land could eventually succumb to financial pressures to develop the land for housing or other non-agricultural uses. Approval of the Project will encourage investment in dairy facilities, which will result in preservation of agricultural uses.

For the reasons set forth above, the Planning Commission finds that the ability of the Project to preserve open space outweighs its other environmental impacts.

C. PROVIDE NEEDED ECONOMIC DEVELOPMENT FOR THE COUNTY

Approval of the Project will assist in the much-needed economic development in Merced County. According to the most recent figures from the California Employment Development Department, Merced County currently suffers from an 10.2 percent unemployment rate, compared to a rate of 5.1 percent for the state as a whole (<http://www.labormarketinfo.edd.ca.gov/> [January 2024]). Growth of the dairy industry, including at the Vierra Dairy Expansion project, will create much-needed new jobs at dairy facilities and related businesses. Unlike other agricultural endeavors, dairy facilities employ workers year-round.

The jobs maintained and created by the dairies and other confined animal facilities, including the Vierra Dairy Expansion, will reduce unemployment rates and bring economic benefits to the area through increases in purchasing power of dairy and related-industry employees and increased sales and property tax revenues.

For the reasons set forth above, the Planning Commission finds that the economic benefits of the Project outweigh its environmental impacts.

D. CONSISTENCY WITH THE COUNTY'S GENERAL PLAN POLICIES AND RIGHT-TO-FARM ORDINANCE

Approval of the Vierra Dairy Expansion project promotes the goals, objectives, and policies included in the 2030 Merced County General Plan. The Economic Development Element acknowledges that Merced County is largely dependent on agriculture, and Goal ED-2 seeks to *“Support the existing agricultural economy while expanding infrastructure and existing/new industries in order to increase employment opportunities and attract new investment.”*

The Land Use and Agricultural Elements seek to protect and preserve agricultural lands and uses. Goal 2 of the Land Use Element is *“Preserve, promote, and expand the agricultural industry in Merced County.”* Goals 1 through 3 of the Agricultural Element include:

Goal AG-1: Maintain the financial viability of the agricultural sector by encouraging expansion of commercial agriculture, attracting new agricultural support and value added industries, and promoting locally-grown commodity sales.

Goal AG-2: Ensure the long-term preservation and conservation of land used for productive agriculture, potentially-productive agricultural land, and agricultural-support facilities.

Goal AG-3: Minimize conflicts between productive agricultural areas and urban land uses, and discourage the parcelization and conversion of large agricultural holdings into rural residential parcels or urban uses.

This Project is consistent with these goals, thus encouraging continued agricultural use of land in the County.

The development of the Project on land in agricultural use will also further promote the intent of the Merced County Right-to-Farm Ordinance (Merced County Code, Chapters 17.08.080(H)) that encourages the County to minimize conflicts between urban and agricultural uses and protect agricultural uses from conversion due to the encroachment of urban uses in agricultural areas of the county.

For the reasons set forth above, the Planning Commission finds the ability of the Project to implement other elements of the General Plan and the County's Right-to-Farm Ordinance outweighs its environmental impacts.

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