

CEQA FINDINGS OF FACT
and
STATEMENT OF OVERRIDING CONSIDERATIONS
OF THE
MERCED COUNTY PLANNING COMMISSION
FOR THE
MICHAEL BRASIL DAIRY EXPANSION PROJECT
ENVIRONMENTAL IMPACT REPORT

DECEMBER 2010

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I. INTRODUCTION

The Environmental Impact Report (“EIR”) prepared for the Michael Brasil 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”) (Pub. Resources Code, § 21000 *et seq.*) and the CEQA Guidelines (Cal. Code Regs., tit. 14, § 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 §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 Michael Brasil Dairy Expansion project. If the Project can be defined as having significant impacts on the environment, then an EIR must be prepared.

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 Department of Planning and Community Development (Planning 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 §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.

When the Merced County Planning Commission (“Planning Commission”) finds a measure is not 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

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

“APN” means Assessor’s Parcel Number

“ATC” means Authority to Construct

“BACT” means Best Available Control Technology

“BMP” means best management practices

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

“BPTC” means best practicable treatment or control

“CARB” means California Air Resources Board

“CEQA” means California Environmental Quality Act

“CMP” means Conservation Management Practices

“CNMP” means Comprehensive Nutrient Management Plan

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

“CO” means carbon monoxide

“CO₂” means carbon dioxide

“CUP” means Conditional Use Permit

“DEH” means Merced County Division of Environmental Health

“DEIR” means Draft Environmental Impact Report for the Michael Brasil Dairy Expansion project, dated September 2010

“DFG” means California Department of Fish and Game

“District” means San Joaquin Valley Air Pollution Control District

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

“EPA” means U.S. Environmental Protection Agency

“FEIR” means Final Environmental Impact Report for the Michael Brasil Dairy Expansion project, dated November 2010

“GHG” means Greenhouse Gas

“IS” means Initial Study

“MMP” means Mitigation Monitoring Program for the Michael Brasil Dairy Expansion project, dated November 2010

“NOP” means Notice of Preparation

“NO_x” means nitrogen oxides

“NRCS” means California Natural Resource Conservation Service

“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

“RWQCB” means Regional Water Quality Control Board

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

“SWPPP” means Storm Water Pollution Prevention Plan

“SWRCB” means State Water Resources Control Board

“TDS” means Total Dissolved Solids

“USFWS” means United States Fish and Wildlife Service

“VOC” means Volatile Organic Compounds

“WDRs” means Waste Discharge Requirements

IV. PROJECT DESCRIPTION

A. PROJECT DESCRIPTION

The project sponsor has applied for a Conditional Use Permit to bring the existing dairy facility into compliance with Merced County's permit requirements, and to expand the existing dairy so that the modified dairy would house a total of 2,400 animals (2,000 milk cows and 400 support stock). This would represent an increase of 1,015 animals from existing numbers (1,385 existing animals). The proposed project would include construction of a new freestall barn. Construction of the proposed dairy barn would occur north of existing facilities and would convert approximately 7 acres of existing cropland (130 acres) to active dairy facilities. With the proposed expansion, the dairy operator would crop adjacent fields currently rented out for sweet potato production (155 acres) with corn silage, sudan silage, and oat silage, and these fields would be used to apply wastewater; therefore, the acreage of cropland receiving wastewater would increase from 130 acres (existing) to 278 acres (proposed: 155 acres sweet potato converted to forage crops + 130 existing acres – 7 acres cropland converted to active dairy facilities) (DEIR, p. 3-7).

B. PROJECT LOCATION

The existing Michael Brasil Dairy and the proposed expansion are located on an approximate 30-acre portion of a 315-acre site in an unincorporated area of Merced County on the north side of First Avenue, west of Griffith Avenue, and east of Van Clief Road, approximately 2 miles northeast of the community of Stevinson. The project's location is within the central California region (see DEIR Figure 3-1). The project site is located on several parcels, identified as Merced County Assessor's Parcel Numbers (APN) 055-131-001, 002, 003, and 055-080-023 (operated by the dairy owner); and APN 055-080-020 (leased by dairy owner) (see DEIR Figure 3-2). Approximately 130 acres of the project site are currently used for the production of forage crops and application of manure process water. The remaining 155 acres is leased out for sweet potato production. The project site is located in Section 12, Township 7 South, Range 10 East, Mount Diablo Base and Meridian; 37°20'30.65"N, 120°49'08.60"W (DEIR, p. 3-1).

C. EXISTING SITE CONDITIONS

The existing animal confinement facility is located on an approximately 30-acre portion of the 315-acre project site. The existing facilities include the following: milk house, 2 freestall barns, parlor and holding/sprinkler pen, 1 hay barn, 1 all purpose bldg. w/4 open pens, silage slab and commodity barn, 1 wastewater storage pond, 1 settling pond, 7 residences occupied by employees, 1 residence occupied by the owner, 1 diesel generator at milk barn, calf hutches under roof, 1 shop.

Approximately 130 acres of the project site are currently used for the production of forage crops and application of manure process water. An additional 80 acres of the project site owned by the project applicant/dairy operator is leased out for sweet potato production, and the remaining 75 acres (leased by dairy operator) is also rented out for sweet potato production.

Current animal numbers include 1,385 animals (745 milk cows and 640 support stock), a total herd size that exceeds the maximum herd originally permitted by CUP 03-001. Because existing cow numbers exceed those permitted, the applicant has submitted an application for CUP 07-004 to bring the dairy into compliance as well as allowing the future expansion of the dairy herd.

There are several off-site single-family residences associated with a poultry ranch to the south and other agricultural operations located on parcels to the northeast, east, and west of the project site (see DEIR Table 3-1). There are more than five offsite 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). As described in the 2003 EIR, all offsite residences are more than 1,000 feet from the existing active dairy facilities of the Michael Brasil Dairy (see DEIR Figure 3-3) (DEIR, p. 3-4).

D. PROJECT OBJECTIVES

The objectives of the project sponsor are:

- 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 sponsor without the need to purchase additional land.
- To use all available land (which is not otherwise used for the dairy) for the production of feed for the herd. This also 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 can 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. 3-7).

E. DISCRETIONARY ACTIONS

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

- Certify the Environmental Impact Report; and,
- Approve Conditional Use Permit No. CUP 07-004.

The Commission's actions are final unless appealed to the Board of Supervisors (Board).

In order for the Michael Brasil Dairy Expansion project to be constructed and operated, the State of California, Regional Water Quality Control Board must:

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

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

- Adopt findings on the Environmental Impact Report; and,

- Approve an Authority to Construct (ATC) and Permit to Operate (PTO) for the Michael Brasil Dairy Expansion project.

F. MINISTERIAL ACTIONS

In order for the Michael Brasil Dairy Expansion project to be constructed, the State Water Resources Control Board must:

- Approve a General Construction Activity Storm Water Permit for the Michael Brasil Dairy Expansion project.

In order for the Michael Brasil Dairy Expansion project to be constructed and operated, the SJVAPCD must:

- Approve a modification to the existing Conservation Management Practices (CMP) Plan for the Michael Brasil Dairy Expansion project.

In order for the Michael Brasil Dairy Expansion project to be constructed and operated, the Merced County Department of Planning & Community Development must:

- Issue a building permit for the proposed dairy expansion.

In order for the Michael Brasil Dairy Expansion project to be constructed and operated, the Merced County Department of Public Works, Road Division must:

- Issue a Roadway Impact Agreement for the proposed dairy expansion.

V. BACKGROUND

PROJECT HISTORY

In December of 2003, the Merced County Board of Supervisors certified the Supplemental Environmental Impact Report (SEIR) (State Clearinghouse No. 20030510002) for the Michael Brasil Dairy and approved the Michael Brasil Dairy Conditional Use Permit (CUP) 03-001. This approval allowed for the development of the existing dairy facilities and a total herd size of 1,010 animals (550 milk cows and 460 support stock). Construction and establishment of the dairy herd approved under the Michael Brasil Dairy project occurred in 2004.

Since approval of the Michael Brasil Dairy in 2003, Michael Brasil (the project developer/applicant) has developed the dairy and established the permitted dairy herd, with all of the previously approved uses being constructed in 2004. The County and Michael Brasil have implemented all applicable mitigation measures identified in the 2003 EIR as development has occurred.

In March 2007, Michael Brasil submitted application for CUP 07-004 to allow for the expansion of his dairy herd, but did not take the CUP application or the expansion to completion. In October 2009, the CUP application and expansion project was re-initiated with the County. It is the application for the Conditional Use Permit that has triggered the need for compliance with CEQA, and preparation of the EIR (DEIR, p. 3-1).

In February 2010, an Initial Study (IS) was completed to assess the potential environmental effects resulting from the Michael Brasil 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 February 9, 2010, Merced County Department of Planning and Community Development issued a Notice of Preparation (NOP) for the Michael Brasil Dairy Expansion project EIR. The NOP, and subsequent comments on the NOP, identified the following issues to be evaluated in the environmental document:

- Air Quality and Greenhouse Gases
- Hydrology and Water Quality
- Project Alternatives
- Cumulative Impacts

The Draft Michael Brasil Dairy Expansion project EIR (DEIR) was made available for public and agency review and comment for a 46-day review period from September 20, 2010 to November 5, 2010. 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 Planning and Community Development Department. The Planning and Community Development Department received three written comments on the DEIR during the review period (FEIR, pps. 3-1 to 3-2).

Subsequent to the receipt of comments on DEIR, the Planning and Community Development Department prepared a Final EIR that responded to all comments received on the DEIR. This FEIR, which incorporates all of the environmental analyses contained in the DEIR (as modified in response to comments) was circulated for public and agency review in November 2010.

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

- DEIR (September 2010)
- FEIR (November 2010)

Section 15132 of the CEQA Guidelines governs the contents of a FEIR. As required by §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 Michael Brasil Dairy Expansion project EIR, these requirements may be found in the following documents:

Guidelines §15132 Content Requirement	DEIR (9/2010)	FEIR (11/2010)
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:

- The Initial Study prepared for the Michael Brasil Dairy Expansion project;
- The Notice of Preparation (February 9, 2010), 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 September 20, 2010, 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 Michael Brasil Dairy Expansion project, including both 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 46-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 January 12, 2011;
- Notice of Public Hearing issued in connection with Planning Commission hearing on the Project, which was issued in December 2010;
- 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 Draft Supplemental EIR prepared for the Michael Brasil Dairy Conditional Use Permit #CUP 03001 (SCH# 2003051002), certified by the Board of Supervisors on December 23, 2003; and the related Findings, mitigation measures, and the statement of overriding considerations adopted on December 23, 2003.
- 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 findings, in addition to those cited above; and,
- Any other materials required to be in the record of proceedings by Public Resources Code section 21167.6, subdivision (e).

The custodian of the documents comprising the record of proceedings is David Gilbert, Senior Planner, of the Merced County, Department of Planning & Community Development, 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 Michael Brasil 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 Michael Brasil 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 Michael Brasil Dairy Expansion project (see Pub. Resources Code, § 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. City of Stanislaus (1995) 33 Cal.App.4th 144, 153, 155).

VII. FINDINGS REQUIRED UNDER CEQA

A. FINDINGS ACCORDING TO CEQA GUIDELINES SECTION 15091

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 Pub. Resources Code, § 21081, subd. (a); CEQA Guidelines, § 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, § 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, § 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, § 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 (see also Citizens of Goleta Valley v. Board of Supervisors (“Goleta II”) (1990) 52 Cal.3d 553, 565).

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 Sequoyah Hills Homeowners Assn. v. City of Oakland (1993) 23 Cal.App.4th 704, 715).

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” (Pub. Resources Code, § 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. These interpretations appear to be mandated by the holding in Laurel Hills Homeowners Association v. City Council (1978) 83 Cal.App.3d 515, 519-527, in which the Court of Appeal held that an agency had satisfied its obligation to substantially lessen or avoid significant

effects by adopting numerous mitigation measures, not all of which rendered the significant impacts in question less than significant.

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, § 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, §§ 15093, 15043, subd. (b); see also Pub. Resources Code, § 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).

The findings set forth herein 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. Therefore, “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.

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.

In the case of the Michael Brasil Dairy Expansion project, the current permitted limit for the dairy established by the County is 1,010 total animals. However, while the existing herd exceeds these numbers, in accordance with CEQA, the baseline herd to be used in this environmental analysis is the herd count at the time of NOP preparation, comprising a total of 1,385 animals, including 745 milk cows.

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 Program (MMP) 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 Michael Brasil Dairy Expansion project are binding upon the project applicant at the time of approval of the Michael Brasil Dairy Expansion project.

IX. MITIGATION MONITORING PROGRAM

A MMP has been prepared for the Project and has been adopted concurrently with these Findings (see Pub. Resources Code, § 21081.6, subd. (a)(1)). The County will use the MMP 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 Michael Brasil Dairy Expansion project, and summarized in the DEIR on pages 10-8 and 10-9.

The issues identified below were analyzed in the EIR. Based on the FEIR 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:

1. Less-than-Significant Impact HYD-2: Degradation of surface water quality from operation of the Michael Brasil Dairy Expansion. The proposed project would not result in the degradation of surface water quality during project operations because no surface water discharge is proposed (DEIR, p. 6-23).
2. Less-than-Significant Impact HYD-5: Modification of surface water drainage patterns and an increase in runoff. Because implementation of the proposed dairy expansion project would not modify surface water drainage patterns, it would not cause localized off-site migration of runoff, erosion, and/or flooding (DEIR, pps. 6-29 to 6-30).
3. Less-than-Significant Impact HYD-6: Exposure to flood risks. Because the project site would not 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 recently applied, project implementation would not cause impacts to surface water quality during flood events (DEIR, pps. 6-30 to 6-31).
4. Less-than-Significant Impact HYD-8: Violation of regulations related to the handling of waste. Because the project would be consistent with all applicable regulations, implementation of the proposed Michael Brasil Dairy Expansion project would not result in the violation of adopted regulations related to waste discharge (DEIR, pps. 6-32 to 6-33).
5. Less-than-Significant Impact AQ-1: Construction-related emissions (ROG, NO_x, CO, and Fugitive Dust). Construction activities associated with the Michael Brasil Dairy Expansion project would result in short-term air emissions including ROG, CO, NO_x, and fugitive dust. Because emissions of construction-related ozone precursors and fugitive dust would not exceed the threshold values used by the SJVAPCD for stationary sources, this would be a less-than-significant impact (DEIR, pps. 7-21 to 7-23).
6. Less-than-Significant Impact AQ-2: Carbon monoxide (CO) emissions from operational equipment and increased traffic. Operation of equipment used at the Michael Brasil Dairy Expansion for processing and farming would result in the emissions of carbon monoxide. Because the magnitude of emissions from the Michael Brasil Dairy Expansion would not exceed SJVAPCD significance criteria, this would be a less-than-significant impact (DEIR, pps. 7-23 to 7-24).
7. Less-than-Significant Impact AQ-4: PM₁₀ and PM_{2.5} emissions from fugitive dust during project operations. Operations from the Michael Brasil Dairy Expansion would result in fugitive dust (PM₁₀ and PM_{2.5}) emissions from wind erosion, farming operations, animal movement in unpaved corrals, vehicle use along unpaved driveways and access roads, and equipment operation. Because pollutant concentrations would not exceed SJVAPCD emissions thresholds, this would be a less-than-significant impact (DEIR, pps. 7-30 to 7-32).
8. Less-than-Significant Impact AQ-5: Hazardous pollutant emissions from project operations (ammonia and hydrogen sulfide). The proposed dairy would be a potential source of hazardous air pollutants from animal movement, manure management, and on-site mobile sources. As proposed, this project would not exceed the thresholds for health risks, and the project would not generate a potentially significant hazardous air pollutant impact (DEIR, pps. 7-32 to 7-33).

9. Less-than-Significant Impact AQ-7: Adverse odor from project operations. Operations and manure management at the Michael Brasil Dairy Expansion in Merced County may emit odors that may be bothersome to isolated rural residents, the only nearby sensitive receptors. However, because the nearest residence is located greater than 1,000 feet from proposed active dairy facilities and is compliant with Merced County setback requirements for the presumptive control of nuisance conditions in agricultural areas, and there is no history of complaints, this would be a less-than-significant impact (DEIR, pps. 7-38 to 7-42).
10. Less-than-Significant Impact AQ-8: Ambient Air Quality. Operations from the Michael Brasil Dairy Expansion would result in emissions of criteria air pollutants that would not impact ambient air quality through a violation of air quality standards. Because air emissions would not exceed ambient air quality standards for areas adjacent to the dairy, this would be a less-than-significant impact (DEIR, pps. 7-42 to 7-44).
11. Less-than-Significant Impact: Irreversible Commitment of Resources. The demand for renewable and non-renewable resources is expected to increase regardless of whether or not the project is developed. As discussed in the ACO EIR, the number of dairy facilities in the San Joaquin Valley is expected to increase under the cumulative herd forecast. Therefore, if not consumed by this project, these resources would likely be committed to other projects in the region intended to meet this anticipated growth. The investment of additional resources in the project would be typical of the level of investment normally required for dairies of this scale. Mitigation measures have been included in this EIR to reduce and minimize the impact to renewable and non-renewable resources (DEIR, p. 10-11). Because implementation of the project would not use resources in a wasteful manner, and because the use of such resources has been minimized, this would be a less-than-significant impact.
12. Less-than-Significant Impact: Potential Environmental Damage from Accidents. Because the project proposes no uniquely hazardous uses, and its operation would not be expected to cause environmental accidents that would affect other areas (DEIR, p. 10-12), implementation of the project would result in a less-than-significant impact.

XI. SIGNIFICANT EFFECTS AND MITIGATION MEASURES

The IS and DEIR identified several significant environmental effects (or “impacts”) that approval and implementation of the Michael Brasil Dairy Expansion project could cause. Many significant effects were avoided altogether because the proposed Project contains 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 IS, DEIR, and the FEIR. Some significant impacts of implementation of the Project, however, cannot be avoided by the adoption of feasible mitigation measures or feasible alternatives; these effects are outweighed by overriding considerations set forth in Section XIII below. This Section XI presents in greater detail the Planning Commission’s findings with respect to the environmental effects of the Project.

A. BIOLOGICAL RESOURCES

Biological Resources setting information for the Michael Brasil Dairy Expansion project is set forth in pages 24 through 26 of the IS. The impact evaluation criteria used in assessing biological resource impacts as a result of implementing the Project are set forth in the IS on pages 23-24. This information is incorporated into these findings as though fully set forth herein. Considering the above information, and the potential impacts identified in the IS, the findings of the Planning Commission are as follows.

Impact BIO-3: Loss of wildlife habitat - Impacts to raptors during breeding season (IS, p. 24)

Finding: This would be a less-than-significant impact after mitigation

Explanation:

The dairy expansion would be constructed on land that has been previously cultivated in forage crops. The cropland provides potential foraging habitat for a variety of special-status and migratory bird species as well as for small ground dwelling mammals, which are prey species for special status raptors. Conversion of 7-acres of low quality raptor foraging habitat does not constitute a significant adverse impact to Swainson's Hawk because over 45,000 acres of high quality nesting and foraging habitat is present within the nearby San Luis National Wildlife Refuge Complex. While no suitable habitat for tree-nesting raptors exists on the site, potential nest trees exist immediately south along the south side of First Avenue. Construction activities could adversely affect future raptor nesting activity (even off-site), or result in the mortality of individual birds. Further, burrowing owls could potentially colonize the site (IS, p. 24).

Finding on Significance of Impact

Based on the analysis contained within the DEIR and the FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission finds that the potential impact due to loss of wildlife habitat is expected to be significant since construction activities during the raptor breeding season (February through August) could result in the abandonment of active nests or direct mortality to these birds. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

Implementation of the following previously adopted measure would ensure that raptors (hawks and owls) are not disturbed during the breeding season.

Previously Adopted Mitigation Measure BIO-3 (2003 Michael Brasil Dairy EIR):

Implementation of the following measures is to ensure that raptors (hawks and owls) are not disturbed during the breeding season.

1. A qualified ornithologist shall conduct a pre-construction survey for nesting raptors (including both tree and ground nesting raptors) on site within 30 days of the onset of ground disturbance, if ground disturbance is to occur during the breeding season (February 1 to August 31). These

surveys shall be based on the accepted protocols (e.g., as for the burrowing owl) for the target species. If a nesting raptor is detected, an appropriate construction buffer would be needed (up to 250 feet). The actual size of the buffer would depend on species, topography, and type of construction activity that would occur in the vicinity of the nest. A qualified ornithologist shall conduct pre-construction surveys for burrowing owls during the non-breeding season.

Preconstruction surveys during the non-breeding season are not necessary for tree nesting raptors, as they are expected to abandon their roosts during construction.

2. If burrowing owls are detected on site during the non-breeding season, they can be passively relocated by placing one-way doors in the burrows and leaving them in place for a minimum of three days. Once it has been determined that owls have vacated the site, the burrows can be collapsed and ground disturbance can proceed.

Findings on Proposed Mitigation

The Planning Commission finds that the above-stated previously adopted mitigation measures are made conditions of approval of the Michael Brasil 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 Michael Brasil Dairy Expansion project by requiring pre-construction surveys and protective measures. The above-stated measures would reduce the magnitude of this impact to a less-than-significant level (Pub. Resources Code, §21002; CEQA Guidelines, §§15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

Impact BIO-2S: Loss of special status species - Impacts to kit fox during construction (IS, p. 25)

Finding: This would be a less-than-significant impact after mitigation

Explanation:

Due to the intense management of the site in order to control weeds and small mammals, the proposed expansion is expected to result in a less-than-significant impact to habitat for the San Joaquin kit fox. It is extremely unlikely that kit fox are currently resident on site and the site itself appears to be only meagerly suitable. However, kit fox are known to occur less than 10 miles south of the site at Kesterson Wildlife Refuge and at the San Luis Wildlife Refuge (IS, p. 24).

Finding on Significance of Impact

Based on the analysis contained within the DEIR and the FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission finds that the potential impact due to loss of special status species is expected to be significant since it is possible individual kit fox could move onto the site prior to construction due to suitable habitat in the vicinity, and, if so, result in harm or injury to that kit fox. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

The following previously adopted mitigation (2003 Michael Brasil Dairy EIR) as standardized by the County would be applied to the proposed Michael Brasil Dairy Expansion project.

Previously Adopted Mitigation Measure BIO-2S (2003 Michael Brasil Dairy EIR):

- a. Prior to issuance of a permit to construct, and no less than 14 days and no more than 30 days prior to ground disturbance or commencement of construction, a qualified biologist shall conduct a protocol level survey to determine the presence of the San Joaquin Kit Fox. In the event that this species is detected during protocol-level surveys, consultation with the California Department of Fish and Game (DFG) and the United States Fish and Wildlife Service (USFWS) shall be required to discuss how to implement the project and avoid “take”. If “take” cannot be avoided, acquisition of a State Incidental Take Permit and corresponding federal take permit will be required prior to project implementation. If the survey identifies potential dens (defined as burrows at least four inches in diameter that open up within two feet), potential den entrances shall be dusted for three calendar days to register track of any San Joaquin kit fox present. If no kit fox activity is identified, potential dens may be destroyed.
- b. If San Joaquin kit fox is identified, then dens shall be monitored to determine if occupation is by an adult fox only or is a natal den (natal dens usually have multiple openings). If the den is occupied by an adult only, the den may be destroyed when the adult fox has moved or is temporarily absent. If the den is a natal den, in coordination with the USFWS, a buffer zone of 250-feet shall be maintained around the den until the biologist determines that the den has been vacated. Where San Joaquin kit fox is identified, the provisions of the USFWS’s published Standardized Recommendations for Protection of the San Joaquin kit fox Prior to or During Ground Disturbance (June 1999) shall apply (except that preconstruction survey protocols shall remain as established in this paragraph). These standards include provisions for educating construction workers regarding the kit fox, keeping heavy equipment operating at safe speeds, checking construction pipes for kit fox occupation during construction, and similar low or no-cost activities.

Findings on Proposed Mitigation

The Planning Commission finds that the above-stated previously adopted mitigation measures are made conditions of approval of the Michael Brasil 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 Michael Brasil Dairy Expansion project by requiring pre-construction surveys and protective measures for kit fox. The above-stated measures would reduce the magnitude of this impact to a less-than-significant level (Pub. Resources Code, §21002; CEQA Guidelines, §§15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

Impact BIO-5: Interference with animal migratory routes or night-active wildlife (IS, p. 26)

Finding: This would be a less-than-significant impact after mitigation

Explanation:

As established in the 2003 DEIR, construction of new dairies could result in increased artificial lighting that can disrupt foraging activities of night-active species (IS, p. 26).

Finding on Significance of Impact

Based on the analysis contained within the DEIR and the FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission finds that the potential impact to night-active wildlife is expected to be significant since the project could result in increased artificial night-lighting that could disrupt foraging activities of night-active species. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

The following previously adopted mitigation (Mitigation Measure BIO-5 from the ACO EIR) would be applied to the proposed Michael Brasil Dairy Expansion project for any new lighting as a result of the proposed expansion.

Previously Adopted Mitigation Measure BIO-5 (2002 ACO EIR):

Project-related lighting shall be minimized and directed away or shielded from sensitive areas. Minimizing and/or directing/shielding lighting away from sensitive areas will ensure that disruption of night-active species will not occur. This will help reduce or minimize any accelerated nighttime predation rates on the dairy and adjacent agricultural fields. Around residences and other areas where it may be appropriate, landscaping shall be used to shield the agricultural fields from additional lighting.

Findings on Proposed Mitigation

The Planning Commission finds that the above-stated previously adopted mitigation measure is made a condition of approval of the Michael Brasil 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 Michael Brasil Dairy Expansion project by requiring new lighting to be shielded from sensitive areas. The above-stated measure would reduce the magnitude of this impact to a less-than-significant level (Pub. Resources Code, §21002; CEQA Guidelines, §§15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

B. HAZARDS (NUISANCE INSECTS)

Setting information for Hazards from Nuisance Insects for the Michael Brasil Dairy Expansion project is set forth in pages 31 through 37 of the IS. The impact evaluation criteria used in assessing impacts from nuisance insects as a result of implementing the Project are set forth in the IS on page 31. This information is incorporated into these findings as though fully set forth herein. Considering the above information, and the potential impacts identified in the IS, the findings of the Planning Commission are as follows.

Impact HAZ-1: Nuisance impacts from mosquitoes (IS, pps. 33-35)

Finding: This would be a less-than-significant impact after mitigation

Explanation:

While the existing agricultural character of the project vicinity tends to minimize incompatibility to existing uses, implementation of the Michael Brasil Dairy Expansion project could introduce an additional source of flies and other insects in the area of the adjacent residences. In efforts to minimize these conflicts, there is a required minimum setback between new or expanded confined animal facilities and individual offsite rural residents to 1,000 feet, and the construction of new offsite dwellings is prohibited within 1,000 feet of an existing animal confinement facility. For the Michael Brasil Dairy Expansion project, the nearest offsite residence is located approximately 1,000 feet south of existing facilities. Construction of the dairy barn would not reduce distances to any offsite facilities to less than 1,000 feet, compliant with the Merced County ACO.

Potential habitat for mosquitoes at the Michael Brasil Dairy Expansion project includes the existing wastewater storage pond and settling basin. Undesirable numbers of mosquitoes could occur if these facilities are improperly managed so that weeds build up along the sides of basins, mats of solids float within lagoons, or if water levels of “beach areas” of lagoons are not fluctuated to alternately flood or dry out areas where insects lay eggs. Lagoons that become mosquito breeding grounds are those with less than two (2) feet of free bank space (freeboard) from surface to top of levee, that have “dead” corners where little wind action can occur, or where floating solids are not mechanically corralled to one end of the lagoon and removed (IS, p. 33).

The ACO contains the following provisions related to mosquitoes: 18.48.050 A, 18.48.060 B, C, J, K, and S. The Merced County Mosquito Abatement District provides guidelines (see p. 34 of the IS) for the construction and management of dairy wastewater systems to prevent significant mosquito production. The proposed project facilities are in compliance with all provisions of the Mosquito Abatement District and the ACO related to site design to control mosquitoes, except one. The existing wastewater storage pond and settling basin both exceed the dimensions outlined in the ACO (Chapter 18.48.060 J) and recommended by the Mosquito Abatement District. These guidelines state that wastewater holding ponds should not exceed 100 feet in width and settling basins should not exceed 60 feet in width. The existing wastewater holding pond for the project is approximately 315 feet wide by 490 feet long, and the settling basin is 85 feet wide by 395 feet long, and 80 feet wide by 575 feet long (the settling basin is an “L” shape). However, the existing wastewater pond and proposed settling basin are located greater than 1,000 feet from any surrounding residence, which would reduce the potential for nuisance conditions due to mosquitoes for sensitive receptors in the vicinity of the project. The oversized settling basin and holding pond may incur increased treatment costs for the District. Adherence to the guidelines of the Merced County Mosquito Abatement District and correct design and management of the dairy wastewater containment systems are required to comply with the Merced County ACO and would prevent significant mosquito production (IS, p. 34).

Finding on Significance of Impact

Based on the analysis contained within the DEIR and the FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission finds that the potential impact due to

nuisances from mosquitoes is expected to be significant since the existing wastewater storage pond and settling basin both exceed the dimensions outlined in the ACO and recommended by the Mosquito Abatement District and could result in an increase in mosquitoes. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

To minimize potential adverse effects from mosquitoes, the following measures would be required as adopted by the County in the 2002 Animal Confinement Ordinance EIR and applicable to all dairies within the County.

Previously Adopted Mitigation Measure (2002 ACO EIR):

The Vector Control Plan for mosquitoes required by the Merced County ACO, shall contain, but not be limited to, the following operational measures to be implemented during project operations as identified by University of California Cooperative Extension:

- Owners are responsible for weed and floatage control.
- Separator bypass drains must be equipped to prevent pond floatage.
- Solids floating on the surface of ponds and lagoons shall be removed no less frequently than weekly.
- Lagoon/Pond-to-field discharges shall not stand more than 4 days.

Previously Adopted Mitigation Measure (2002 ACO EIR):

If requested, the project proponent will pay any excess treatment cost expended by the Mosquito Abatement District.

Findings on Proposed Mitigation

The Planning Commission finds that the above-stated previously adopted mitigation measures are made conditions of approval of the Michael Brasil 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 Michael Brasil Dairy Expansion project by requiring operational measures to reduce mosquito production and payment of excess treatment costs expended by the Mosquito Abatement District, if requested. The above-stated measures would reduce the magnitude of this impact to a less-than-significant level (Pub. Resources Code, §21002; CEQA Guidelines, §§15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

Impact HAZ-2: Nuisance impacts from flies (IS, pps. 33-35)

Finding: *This would be a less-than-significant impact after mitigation*

Explanation:

Existing land uses on the project site include an existing dairy facility and irrigated crops. Adjacent properties are also in agricultural uses such as field crops and a poultry ranch. The dairy facility and proposed expansion is surrounded on all sides by low-growing forage crops. The presence of low-

growing forage crops, and other uses with few heterogeneous vertical structures, surrounding the dairy (areas) is likely to result in greater dispersal of house and stable flies from the dairy operation. The operators of the Michael Brasil Dairy Expansion currently apply pest spray control as necessary to reduce the incidence of insect pests, and would continue to do so with implementation of the proposed expansion project.

Merced County has sought to prevent agricultural nuisances by the use of setbacks between potential sources of nuisance insects and adjoining sensitive land uses. Under existing regulations, Merced County enforces a setback of 1,000 feet between animal confinement facilities (ponds, corrals, barns) and rural residences. For the Michael Brasil Dairy Expansion project, the nearest offsite residence is located approximately 1,000 feet south of existing facilities. Construction of the dairy barn would not reduce the statutory 1,000-foot setback distance. No nuisance complaints have been filed with the County regarding the Michael Brasil Dairy (Jess Sittre Pers. Comm. February 4, 2010).

As required by the ACO, the DEH must implement procedures found on p. 35 of the IS if additional nuisance insect conditions are reported at, or adjacent to, the animal confinement facility. Management measures previously adopted by the County in the EIR for the ACO and applicable to all dairies within the County would be required of the proposed project (IS, pps 35-36).

Finding on Significance of Impact

Based on the analysis contained within the DEIR and the FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission finds that the potential impact due to nuisances from flies is expected to be significant since the the proposed expansion could result in an increase in flies. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

Previously Adopted Mitigation Measure HAZ-2 (2002 ACO EIR):

The following operational measures identified in the EIR for the ACO shall be implemented.

1. All confined animal facilities shall implement the following Best Management Practices to address potential fly problems:
 - a. Daily inspection of manure flushing systems to ensure that manure is being effectively removed from flushed areas with particular attention paid to corners and isolated areas;
 - b. Daily inspections of water supply and circulation systems to ensure that any leaks are promptly repaired. These inspections shall include all watering troughs to ensure that mechanisms for controlling water level are operating effectively and are protected from damage;
 - c. Regular blading of feeding lanes in freestall barns and corrals to ensure that spilled feed is promptly removed and disposed;
 - d. Daily removal of manure and spilled feed from stalls in freestall barns;
 - e. Regular scraping of corrals to minimize the potential for development of fly populations on manure;

- f. Weekly inspection of silage storage areas to ensure proper covering, drainage, and removal of any spoiled silage;
 - g. Weekly inspection of fence lines of corrals and other “edge” areas and removal of any accumulated manure;
 - h. Periodic monitoring of stable flies by direct observation and counting of the number of stable flies on the legs of a representative number, minimum of two percent, of the support stock herd;
 - i. All exterior doors and windows in milk rooms have screens that are inspected monthly to determine if they are working properly and to identify rips in the screening. Ripped or otherwise damaged screens are repaired or replaced immediately;
 - j. If necessary, flytraps are set throughout barns at strategic locations. The traps are inspected monthly, or more frequently if necessary, and replaced when saturated with captured flies.
2. In addition to fly management practices in the cattle housing and milking areas of dairy facilities, the following sanitation practices shall be implemented at animal confinement facilities to control fly populations:
- a. Dead animals are stored in a secured area at the dairy facility and off-site rendering plant operators are immediately notified for pickup of carcasses;
 - b. Residual feed is removed from infrequently used feeding areas;
 - c. All garbage is disposed of in closed dumpsters that are regularly emptied by a contracted waste management service for off-site disposal;
 - d. Grass and other landscape clippings are removed from the site for off-site disposal or reuse (as feed or soil amendment).

Findings on Proposed Mitigation

The Planning Commission finds that the above-stated previously adopted mitigation measures are made conditions of approval of the Michael Brasil 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 Michael Brasil Dairy Expansion project since the nearest residence is located greater than 1,000 feet from proposed active dairy facilities and is compliant with Merced County setback requirements for the presumptive control of nuisance conditions in agricultural areas, and with implementation of previously adopted measures. The above-stated measures would reduce the magnitude of this impact to a less-than-significant level (Pub. Resources Code, §21002; CEQA Guidelines, §§15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

C. TRANSPORTATION/TRAFFIC

Setting information for Transportation/Traffic for the Michael Brasil Dairy Expansion project is set forth in pages 47 through 48 of the IS and DEIR page 3-13. The impact evaluation criteria used in assessing impacts from traffic as a result of implementing the Project are set forth in the IS on page 47. This information is incorporated into these findings as though fully set forth herein. Considering

the above information, and the potential impacts identified in the IS, the findings of the Planning Commission are as follows.

Impact TR-1: Roadway impacts from heavy truck traffic (IS, pps. 47-48)

Finding: This would be a less-than-significant impact

Explanation:

The Merced County Public Works Department has instituted roadway improvement conditions for new or expanding projects that would impact the County's road system. A roadway impact agreement, issued by the Merced County Department of Public Works, Road Division to mitigate potential effects to roadway integrity from heavy truck traffic, is generally required prior to issuance of a building permit. As part of the fulfillment of the Conditions of Approval and mitigation requirements for CUP 03-001, the applicant entered into a Roadway Impact, Dedication, and Improvement Agreement (Contract No. 850-031) with the Merced County Public Works Department, which included specified improvements, right-of-way dedication, and the payment of impact fees. The County Road Division has determined that additional impacts to the roadway system would occur with implementation of the proposed expansion, and a roadway impact evaluation or Roadway Impact Agreement with the County would be required, along with payment of fees to maintain the County roadways impacted by the project (see DEIR Appendix B for letter from Department of Public Works, Road Division) (IS, p. 48; DEIR, p. 3-14 and Appendix B).

As required by the ACO, the following measures would be included as conditions of approval:

The Applicant shall improve the existing access from First Avenue to the hay barn and commodity storage area with a paved, rural agriculture driveway approach, in accordance with Chapter 7 of the Merced County Department of Public Works Improvement Standards and Specifications; and, install pole-mounted, 100-Watt, street lights at both truck access driveway entrances to the dairy. Applicant shall be required to obtain an Encroachment Permit from the County to perform said driveway improvements.

- a. The applicant shall provide a roadway impact evaluation, prepared by a registered Geotechnical Engineer or Civil Engineer, to assess the potential impact that the project may have on Merced County roadways. This evaluation shall include both an analysis of the traffic characteristics of the roadways most impacted by the project, and a geotechnical analysis of the existing structural section of those roadways. The traffic analysis will require classification counts to determine the existing and projected Traffic Indices of said roadways; and, the geotechnical analysis will require road corings to determine their structural integrity. Based upon said evaluation, the Applicant shall pay to the Merced County Road Fund an amount equivalent to improving said roadways sufficient to sustain the truck load impacts for the future 20 years;

or,

- b. In lieu of performing a roadway impact evaluation, the Applicant may opt to enter into a Roadway Impact Agreement with Merced County Department of Public Works - Road Division. The Roadway Impact Agreement will stipulate that the Applicant shall pay a Road Impact Fee to the Merced County Road Fund to compensate the County for the increased cost of maintaining the County roadways impacted by the Applicant's project. The amount of the Road Impact Fee

shall be \$30,000, which is based upon the projected increase in annual heavy truck trips generated by the project (600 trucks/yr x 20 yrs x \$2.50/truck), which shall be paid in five (5) annual payments of \$6,000 each, beginning the second January following activation of this Permit. The Applicant shall also pay a fee of \$200.00 for processing said Roadway Impact Agreement.

Finding on Significance of Impact

Based on the analysis contained within the DEIR and the FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission finds that the potential impact due to roadway impacts from truck traffic is expected to be less than significant since conditions of approval would ensure improvements to the roadway access and lighting, and payment of roadway impact fees. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

None required.

Findings on Proposed Mitigation

The Planning Commission finds that because the roadway impacts are expected to be less than significant, no mitigation measures are required. Under CEQA, no mitigation measures are required for impacts that are less than significant (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15091, 15126.4, subd. (a)(3)). The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

D. HYDROLOGY AND WATER QUALITY

Hydrology and Water Quality setting information for the Michael Brasil Dairy Expansion project is set forth in pages 6-1 through 6-20 of the DEIR and DEIR Appendices H and 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 6-20. This information is incorporated into these findings as though fully set forth herein. Considering the above information, and the potential impacts identified in the Final EIR, the findings of the Planning Commission are as follows.

Impact HYD-1: Degradation of water quality due to stormwater runoff during project construction (DEIR, p. 6-22)

Finding: *This would be a less-than-significant impact after mitigation*

Explanation:

The proposed project entails the construction of active dairy facilities over approximately 7 acres of existing cropland. Stormwater runoff during the construction period could result in siltation and sedimentation of waterways draining the site. Construction activities disturbing one or more acres are required by the State Water Resources Control Board (SWRCB) to obtain a General Construction Activity Stormwater Permit. Effective July 1, 2010 all dischargers are required to

obtain coverage under the Construction General Permit Order 2009-0009-DWQ adopted on September 2, 2009. This General Permit has developed specific Best Management Practices (BMP) as well as numeric action levels and numeric effluent limitations in order to achieve minimum federal standards. In addition, the General Permit requires a Storm Water Pollution Prevention Plan (SWPPP) and Rain Event Action Plan (another dynamic, site-specific plan) to be developed but has removed all language requiring the discharger to implement these plans – instead, the discharger is required to comply with specific requirements. For new projects commencing on or after July 1, 2010, the applicant must electronically submit Permit Registration Documents prior to commencement of construction activities in the Storm water Multi-Application Report Tracking System (DEIR, p. 6-22).

Finding on Significance of Impact

Based on the analysis contained within the DEIR and the FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission finds that the potential for degradation of water quality due to stormwater runoff during project construction is expected to be significant since construction of the proposed project could result in the erosion of on-site soils or loss of topsoil, which could cause the degradation of water quality in waterways draining the site by reducing the quality of stormwater runoff during project construction. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

Mitigation Measure HYD-1:

The project applicant shall submit permit registration documents for the Construction General Permit Order 2009-0009-DWQ to the SWRCB and comply with all requirements of the permit. The annual fees are based on total disturbed area of the construction project in acres. A Legally Responsible Person (as defined in the Order) shall electronically submit Permit Registration Documents (PRD) prior to commencement of construction activities in the Storm water Multi-Application Report Tracking System. PRDs consist of the Notice of Intent, Risk Assessment, Post-Construction Calculations, a Site Map, the SWPPP, a signed certification statement by the LRP, and the first annual fee. All requirements of the site specific SWPPP shall be included in construction documents for the project.

Findings on Proposed Mitigation

The Planning Commission finds that the above-stated mitigation measure is made a condition of approval of the Michael Brasil 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 Michael Brasil Dairy Expansion project by requiring project compliance with State Water Resources Control Board regulations to avoid siltation effects. The above-stated measure would reduce the magnitude of this impact to a less-than-significant level (Pub. Resources Code, §21002; CEQA Guidelines, §§15091, 15126.4, subd. (a)(2)). 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 Michael Brasil Dairy Expansion (DEIR, pps. 6-23 to 6-27)

Finding: This would be a less-than-significant impact after mitigation

Explanation:

The proposed dairy expansion has the potential to impact the underlying groundwater quality with nutrients, salts, and other compounds. Based on the existing water quality data, elevated concentrations related to nitrates and salts have been observed in groundwater in the monitoring wells and the on-site dairy wells. Total Dissolved Solids (TDS) and nitrate as nitrogen (up to 877 mg/L TDS and 71 mg/L nitrogen observed) are the constituents of concern that exceed the primary and secondary MCLs per State and Federal Regulations (see Table 2 in DEIR Appendix H). Due to the proposed project location in the groundwater basin, the number of nearby domestic and agricultural users, and the fact that elevated levels of pollutants already exist prior to development of the proposed expansion, additional impacts from the proposed dairy expansion are considered possible (DEIR, p. 6-23).

Despite attempts to apply pond wastewater at agronomic rates, groundwater quality beneath crop fields may be impacted further above the MCL levels already observed for nitrate (10 mg/L as N and 45 mg/l as NO₃) and beyond agricultural groundwater quality standards (500 mg/L TDS). The NMP allows application of nitrogen at greater rates than the plant crops actually need with a 1.37 nutrient balance ratio, and coupled with potential inefficiencies in application and variations in weather, over-application of nitrogen and other nutrients could occur. Also, applying manure with high organic nitrogen content may not meet a crop's nitrogen need during the most rapid growth stage, while exceeding the crop nitrogen uptake during the remainder of the crop's growing season, when the nitrogen may be subject to leaching. The existing on-site monitoring system would be used to assess future changes in water quality and to determine if further degradation occurs (DEIR, p. 6-24).

Finding on Significance of Impact

Based on the analysis contained within the DEIR and the FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission finds that because of the existing groundwater conditions of contamination, the proposed dairy expansion may result in additional groundwater impacts despite operational improvements and best management practices required by the NMP and WMP. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

To minimize degradation of groundwater, the following mitigation measures shall be implemented by the applicant or incorporated into the Regional Water Quality Control Board's (RWQCB) individual Waste Discharge Requirements (WDR) permit requirements for the Michael Brasil Dairy Expansion. The following mitigation protocol mirrors RWQCB 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.

Mitigation Measure HYD-3a:

The applicant shall comply with requirements of the NMP/WMP, and implement applicable RWQCB requirements as required by an individual WDR for the proposed expansion, and with all Merced County ACO requirements not superseded the conditions of the individual WDR.

Mitigation Measure HYD-3b:

As set forth in the NMP, proposed application rates of liquid and/or solid manure shall meet agronomic rates for best management farming practice. Nutrient samples shall be collected prior to and during application periods to confirm agronomic rates and protect water supplies. Soil testing frequency for nitrogen, potassium, phosphorus and salts are described in the NMP. Modifications to the NMP may be required as outlined in the individual WDR for the proposed expansion to be issued by the RWQCB.

Mitigation Measure HYD-3c:

A best practicable treatment or control (BPTC) evaluation to be submitted to the RWQCB shall be completed for the existing ponds prior to operation or final inspection. The evaluation shall meet the applicable requirements of the RWQCB and the approved WDR. The BPTC shall set forth a schedule (as short as practicable) for a systematic and comprehensive technical evaluation of the wastewater storage pond and settling pond to determine if the existing construction is protective of groundwater. Should the BPTC determine that additional nutrients are leaking underneath the pond than previously assumed in the WMP, alterations to the WMP shall be completed to account for the difference in nutrient loading and avoid potential violations. Increased pond sizing or additional ponds to increase treatment surface area may be necessary. Prior to the enlargement of any of the existing storage lagoons or settling ponds; construction of any new lagoon or settling pond; or in the event that the design, construction, operation and/or maintenance of the lagoons and/or ponds is not protective of water quality, the project applicant shall submit a design for review and approval. The design shall conform to either of the options described below:

- Tier 1: A pond designed to consist of a double liner constructed with 60-mil high density polyethylene or material of equivalent durability with a leachate collection and removal system (constructed in accordance with Section 20340 of Title 27) between the two liners would be considered to be consistent with Resolution 68-16.
- Tier 2: A pond designed in accordance with California Natural Resource Conservation Service (NRCS) Conservation Practice Standard 313 or equivalent and must demonstrate through submittal of technical reports that the alternative design is protective of groundwater quality as required in the WDR specifications.

Any necessary measures shall be incorporated into the WDR issued for the facility.

Mitigation Measure HYD-3d:

If required by the RWQCB, an industry wide or site-specific salinity report shall be submitted to the RWQCB for review and approval prior to operation or final inspection. The salinity report shall identify sources of salt in waste generated at the dairy, evaluate measures that can be taken to minimize salt in the dairy waste, and include an affirmative commitment by the applicant to implement measures identified to minimize salt in the dairy waste to meet Basin Plan requirements. Any necessary measures shall be incorporated into the WDR issued for the facility or become a required deliverable of the WDR.

Mitigation Measure HYD-3e:

Prior to the issuance of any building permit, additional monitoring wells within the shallow groundwater and the regional groundwater system will be warranted to assess water table gradients and water quality variation over time. A monitoring well installation work plan will be submitted to the RWQCB. The work plan will provide the rationale for the completion of a minimum of two additional monitoring wells within the shallow and regional groundwater system. Monitoring well requirements and a monitoring schedule shall be incorporated into the WDR issued for the facility.

Mitigation Measure HYD-3f:

At a minimum, annual groundwater monitoring of on-site monitoring wells and soil monitoring on the project site shall be completed. A monitoring plan shall be prepared by the project applicant and approved by the RWQCB, which will detail the sampling elements. Surrounding properties with a domestic water supply well within 500 feet of the land application property should be sampled for Nitrate and EC at a minimum. A well monitoring schedule shall be incorporated into the WDR issued for the facility.

Mitigation Measure HYD-3g:

After project implementation and subsequent groundwater monitoring, if groundwater contamination is shown, a reduction in herd size may be necessary, or additional crop acres may be necessary to accommodate the proposed herd size. A new Report of Waste Discharge (ROWD) shall be prepared. The ROWD shall clearly demonstrate that the herd size will not constitute a threat to water quality. If necessary, the RWQCB shall revise the WDR issued to the facility.

Mitigation Measure HYD-3h:

The Department of Planning and Community Development shall make a final inspection of the facility prior to the commencement of operations to confirm the dairy meets all local and state requirements.

Findings on Proposed Mitigation

The Planning Commission finds that the above-stated mitigation measures are made conditions of approval of the Michael Brasil 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 Michael Brasil Dairy Expansion project because the mitigation measures and any corrective actions deemed necessary by the RWQCB will allow ongoing monitoring of any operational changes which may impact the nutrient balance on the Michael Brasil Dairy facility. The above-stated measures would reduce the magnitude of this impact to a less-than-significant level (Pub. Resources Code, §21002; CEQA Guidelines, §§15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

Impact HYD-4: Depletion of groundwater resources (DEIR, pps. 6-28 to 6-29)

Finding: *This would be a less-than-significant impact after mitigation*

Explanation:

The Michael Brasil Dairy does not have access to surface water rights and no surface water access is planned for the foreseeable future; thus, groundwater is the primary source of water for on-site activities. The proposed dairy project would continue to obtain irrigation water from on-site wells. The proposed dairy expansion would result in an increase in animals from 1,385 head to 2,400 head, and an associated increase in groundwater use. Groundwater would be used in the milkhouse and sprinkling at a rate of approximately 45,278 gallons/day. The use of groundwater for animal consumption, milk cooling, and milkhouse wash down would be approximately 16.5 million gallons per year compared to 8.8 million gallons per year for the existing milkbarn use, or an increase of 7.7 million gallons per year. Most of the water used at the dairy barn is and would continue to be reused for irrigating crops. As established in the project setting, based on the cropping pattern used at the time of preparation of this EIR, groundwater withdrawal for irrigation is estimated at 1,112 acre-feet (362 million gallons) per year. Implementation of the proposed project would result in an increase in land application of manure area from 130 acres to 278 acres. The additional 148 acres that will be available for manure application would be converted from the existing sweet potato production to corn silage/ sudan silage/ oat silage crop rotation. This would not represent a net increase in irrigation water usage over existing cropping patterns. Water use by the milk barn represents less than 5 percent of the overall water used on the dairy. However, groundwater overdraft conditions have been documented extensively within Merced County, and specifically within the Merced Ground Water Basin, located approximately one mile north of the project site (DEIR, p. 6-28).

Finding on Significance of Impact

Based on the analysis contained within the DEIR and the FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission finds that the potential impact from depletion of groundwater resources is expected to be significant due to existing groundwater overdraft in the area, even though the proposed increased use of groundwater as a result of the expansion is relatively small. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

Mitigation Measure HYD-4:

Annual groundwater monitoring of on-site monitoring wells shall be completed, including measurement of groundwater levels. In the event groundwater levels under the project site show “critical overdraft conditions” which are attributable predominantly to the site-specific activities of the dairy project in excess of any regional overdraft conditions, the project applicant shall, as required by the County or any applicable groundwater management authority, implement reasonable water conservation measures (e.g. recycling of wash water or similar measures), or shall, if available and legally permitted, substitute dairy barn groundwater use with surface water.

Findings on Proposed Mitigation

The Planning Commission finds that the above-stated mitigation measure is made a condition of approval of the Michael Brasil 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 Michael Brasil Dairy Expansion project by requiring annual groundwater monitoring and the implementation of measures to reduce water use if groundwater depletion is evident. The above-stated measures would reduce the magnitude of this impact to a less-than-significant level (Pub. Resources Code, §21002; CEQA Guidelines, §§15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

Impact HYD-7: Water supply pathways for pollutant migration (DEIR, pps. 6-31 to 6-32)

Finding: *This would be a less-than-significant impact after mitigation*

Explanation:

Existing irrigation and water supply wells (either active or abandoned) in site proximity that do not meet current wells standards of construction may act as conduits for pollutant migration to the subsurface. The Merced County ACO, together with the Merced County Well Ordinance, recognizes the importance of protecting water quality from the release of animal pathogens. One ACO requirement addresses the specific issue of potential pollutant migration into wells. Chapter 18.48.050 establishes a minimum setback of 100 feet between any manured areas and water wells. However, application of manure (liquid or dry) may be closer than 100 feet to a surface water body or irrigation well if adequate protection to the surface water body or irrigation well is provided. The Ordinance requires that all wastewater be maintained on site and discharged into the manure management system, and that it does not create a nuisance or pollution condition (Chapter 18.48.050 E, K, LL). In the event of groundwater pollution, the project applicant must submit a plan to abate the groundwater impacts to the DEH (Chapter 18.48.050 T). In addition, the RWQCB requires that all process water that comes into contact with wastewater be collected and stored in the ponds with low permeability liners, reducing the potential release of pathogens to water supplies (DEIR, p. 6-31).

Finding on Significance of Impact

Based on the analysis contained within the Michael Brasil Dairy DEIR and the FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission finds that the potential impact due to water supply pathways for pollutant migration is expected to be significant despite regulations set forth above because existing wells at the project site may not meet current Merced County standards for well protection, and thereby may be a potential conduit for groundwater contamination. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

Mitigation Measure HYD-7:

Prior to issuance of any building permit, all existing water supply wells at the facility site and property shall be inspected by the Merced County Division of Environmental Health to ensure that each well is properly sealed at the surface to prevent infiltration of waterborne contaminants into the well casing or surrounding gravel pack. If any of the wells are found not to comply with the Merced County Well Ordinance standards, the project applicant shall retain a qualified professional as described in the respective Ordinance to install the required seal or functional equivalent including setbacks distances of 100 feet from manured areas as required by the RWQCB General Order. Documentation of the inspections and seal installations, if any, shall be provided to the County Division of Environmental Health prior to commencement of dairy expansion operations.

Findings on Proposed Mitigation

The Planning Commission finds that the above-stated mitigation measure is made a condition of approval of the Michael Brasil 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 Michael Brasil Dairy Expansion project by requiring inspection of on site water supply wells to ensure that each well is properly sealed, and installation of a well seal if required. The above-stated measure would reduce the magnitude of this impact to a less-than-significant level (Pub. Resources Code, §21002; CEQA Guidelines, §§15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

E. AIR QUALITY AND GREENHOUSE GASES

Air Quality and Greenhouse Gases setting information for the Michael Brasil Dairy Expansion project is set forth in pages 7-1 through 7-18 of the DEIR and DEIR Appendices E, 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 7-18 through 7-20. This information is incorporated into these findings as though fully set forth herein. Considering the above information, and the potential impacts identified in the FEIR, the findings of the Planning Commission are as follows.

Impact AQ-3: Ozone precursor emissions (Volatile Organic Compounds (VOC)/Reactive Organic Gases and Nitrogen Oxides) emissions from dairy operations, farm equipment, and increased traffic (DEIR, pps. 7-24 to 7-29)

Finding: This would be a significant and unavoidable impact

Explanation:

Dairies that exceed the threshold of 5 tons/year of VOCs must obtain a Permit to Operate from the SJVAPCD as well as undergo New Source Review (Rule 2201) requirements to determine if new emission sources trigger Best Available Control Technology (BACT). Farming equipment exhaust, increased vehicle exhaust, and manure management and feed are sources of ozone precursor emissions. Aggregated VOC emissions for all activities associated with the Michael Brasil Dairy Expansion are presented in DEIR Table 7-5. Total VOC emissions from the existing dairy would be

approximately 14.09 tons per year. VOC Emissions from manure management for the expanded project operations would be 17.75 tons/year, and 8.92 tons/year from feed, for a total of 27.08 tons/year. The increment of increase with proposed operations would be 12.99 tons/year VOC emissions (DEIR, p. 7-27).

A dairy consists of many sources of emissions, including the milking center, lagoons, cow housing, feeding areas, manure storage piles, and on-field manure-handling activities. Dairy cows generate anywhere from 80 to 120 pounds of manure per day. How the manure is collected, stored, and treated depends directly on the manure management techniques of a dairy. The District has preliminarily identified BACT applicable to each of these emissions sources on a dairy, and is requiring the implementation of BACT as appropriate as a condition of all District permits.

The proposed dairy expansion would exceed SJVAPCD permit criteria of 5 tons/year of VOC and would trigger New Source Review, BACT, and an Authority to Construct/Permit to Operate would be required prior to the initiation of construction. As stated above, VOC/ROG emissions for the dairy expansion project would increase by 12.99 tons/year, for a total of 27.08 tons/year. The estimated total NO_x emissions from expanded project operations would be 2.42 tons/year, or a net increase of 0.01 tons/year of NO_x emissions. The increment of increase of NO_x emissions would not exceed the SJVAPCD significance thresholds. However, because the increase of 12.99 tons/year of VOCs would exceed the SJVAPCD significance threshold, the project-level impact would be significant (DEIR, p. 7-24 to 7-29).

Finding on Significance of Impact

Based on the analysis contained within the DEIR and the FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission finds that the potential impact from ozone precursor emissions during project operations is expected to be significant because the project would exceed SJVAPCD emissions criteria with establishment of the expanded herd. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

Mitigation Measure AQ-3:

Prior to the initiation of operations on the Michael Brasil Dairy Expansion, the applicant shall implement all air quality provisions of the ACO, including Chapter 18.48.50 U and OO; comply with all applicable SJVAPCD Rules including but not limited to: Rule 2010 – apply for an Authority to Construct/Permit to Operate; Rule 2201 New Source Review and implement BACT appropriate for this dairy operation to be developed during permit review in cooperation with SJVAPCD staff including but not limited to all applicable required measures in Table 7-6 of the DEIR; Rule 4570, Confined Animal Facilities; and Rules 4701 and 4702, Internal Combustion Engines.

Table 7-6 presents the various BACT measures that could apply to the proposed dairy.

Table 7-6 Dairy Potential BACT Requirements and Mitigation Measures for Reducing Project-Related Impacts on Air Quality

Measure Number	Control Technology/Mitigation Technique	Required?
Cow Housing		
a1	Concrete freestall and drylot feed lanes and walkways	Required
a2	Feed lanes and walkways to be flushed four times a day, scraped four times daily, or vacuumed four times daily	Required
a3	Drylots sloped to facilitate runoff and drying minimum of a three percent slope	Required
a4	Remove feed from feedlane on a daily basis to prevent decomposition	Required
a5	Pave feedlane at least 8 feet on the corral side of the fence	Required
a6	Control drylots by windbreaks (downwind and upwind shelterbelts)	Required
a7	Provide shade structures in open corrals	Required
a8	Weekly scraping and/or manure removal using a pull type manure harvesting equipment in morning hours when moisture in air except during periods of rainy weather	Required
a9	Feed young stock (heifers and calves) near dusk	Required
a10	Individual calve hutches (calves under three months)	Required
a12	Limit animal movements and install water sprays or use soil stabilizers	Required
a13	Freestall enclosure with biogas vented to a biofiltration system	Technologically Feasible
Milking Barn		
b1	Flush/Spray after each batch of milking	Required
Land Application of Liquid and Solid Manure		
c1	Liquid Manure Handling: Irrigation of crops using liquid and slurry manure from a holding / storage pond	Required
c2	Slurry Manure Handling: Liquid injection of manure	Required
c3	Solid Manure Handling: Rapid incorporation of the manure into the soil after land application	Required
Liquid Manure Management		
d1	Aerobic lagoon (aeration)	Technologically Feasible
d2	Anaerobic digester system with 95% VOC control of captured biogas (IC engine w/catalyst or equivalent)	Technologically Feasible
d3	Anaerobic Treatment Lagoon designed according to NRCS Guideline (two cell system: Mechanical separator – anaerobic treatment lagoon – Storage Pond – Flush from storage Pond)	Required
Mechanical Separators		
e1	Dewatering press to reduce moisture content of separated solids (dehydrator or screw press or similar)	Required
e2	Weekly removal of separated solids	Required
Settling basins/Weeping Walls		
f1	Dry contents in basins within a 2-week period	Required
f2	Contents must either be directly incorporated into land or spread in thin layers, harrowed and dried	Required

Table 7-6 Dairy Potential BACT Requirements and Mitigation Measures for Reducing Project-Related Impacts on Air Quality

Measure Number	Control Technology/Mitigation Technique	Required?
Feed		
g1	Animals fed in accordance with Natural Resources Conservation Services or other District approved guidelines utilizing routine nutritional analysis for rations	Required
g2	Cover or ensile all silage piles except the face of pile	Required
g3	Silage Face Management	Required
g4	All dry grain to be stored in commodity barns	Required

Source: San Joaquin Valley Air Pollution Control District, Draft Potential BACT Requirements for Dairies 2009b; Ellington Personal Communications 2009; Ramon Norman Personal Communications 2010.

Findings on Proposed Mitigation

The Planning Commission finds that the above-stated mitigation measures are made conditions of approval of the Michael Brasil Dairy Expansion project. 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 Michael Brasil Dairy Expansion project by requiring the implementation of measures to reduce ozone precursor emissions. This would be a significant and unavoidable impact for the following reasons: the BACT required by the above Mitigation Measure AQ-3 has not been formally adopted by the SJVAPCD and may not reduce project VOC emissions below the threshold of significance; and the San Joaquin Valley Air Basin is in severe nonattainment for 1-hour state ozone standard and extreme nonattainment for 8-hour federal ozone standard. No additional feasible measures are available to reduce this impact below a level of significance (Pub. Resources Code, §21002; CEQA Guidelines, §§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.

Impact AQ-6: Greenhouse gas emissions from project construction and operation (DEIR, pps. 7-34 to 7-38)

Finding: This would be a significant and unavoidable impact

Explanation:

Construction and operation of the Michael Brasil Dairy Expansion project would result in greenhouse gas emissions from direct and indirect sources.

Construction activities associated with the Michael Brasil Dairy Expansion project would result in short-term CO₂ emissions, a greenhouse gas. Construction-related emissions were calculated using URBEMIS Version 9.2.4 (see DEIR Appendix E-2). GHG emissions from site preparation and facilities construction for the proposed project would result in 76.5 t of CO₂e.

As estimated in DEIR Table 7-9, the project would result in the emissions of approximately 26,115 metric tons of CO₂ equivalents per year from operations, an approximate increase of 10,985 metric tons from existing operations. According to Merced County General Plan Update Background Reports, 3.78 million t of CO₂ equivalent gases were emitted in Merced County in 2005. The proposed project's net increase in CO₂ equivalent emissions is approximately 0.3 percent of Merced County's 2005 GHG emissions.

The project would qualify as a major source of greenhouse gas emissions as established by the EIR significance threshold of 25,000 t/y CO₂e. However, it is unlikely the project would be required to report its emissions under the EPA greenhouse gas mandatory reporting regulation since operators of facilities with less than 3,200 dairy cows will likely not need to report under this rule. The proposed project would result in an increment of increase in CO₂e emissions of 10,985 metric tons, which is greater than the 10,000 t/y CO₂e significance threshold (DEIR, p. 6-42 to 6-44).

Finding on Significance of Impact

Based on the analysis contained within the DEIR and the FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission finds that the potential impact from greenhouse gas emissions is expected to be significant since the proposed project would exceed the significance thresholds for GHG emissions established in the DEIR. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

Mitigation Measure AQ-6a:

To reduce methane and CO₂ emissions from the proposed dairy expansion, the applicant shall implement the requirements of Chapter 18.48.050 U and OO of the Merced County Animal Confinement Ordinance, BACT appropriate for this dairy operation to be developed during permit review in cooperation with SJVAPCD staff including but not limited to all applicable measures in Table 7-6 of the DEIR, and any future regulations promulgated by the EPA, the CARB, and the SJVAPCD.

Mitigation Measure AQ-6b:

In order to minimize greenhouse gas emissions and optimize equipment efficiency, all equipment shall be operated in accordance with manufacturer specifications and approved design specifications.

Mitigation Measure AQ-6c:

All ruminant animal feed shall include at least six percent cottonseed, or, upon SJAPCD approval, based on sufficient demonstration that use of cottonseed is not feasible, an equivalent substitute.

Mitigation Measure AQ-6d:

Manure from animal housing areas for mature cows shall be removed and transferred into appropriate treatment facilities at least four times a day and at least once a day for all other animals.

Mitigation Measure AQ-6e:

Manure shall be incorporated into soil within 24 hours after application.

Mitigation Measure AQ-6f:

The project applicant shall obtain from the appropriate utility company a full facility audit under the company's energy management program. The project applicant shall implement all no cost items identified in the energy audit, and additionally shall implement their choice of low cost and/or investment grade opportunities to reach a total reduction of 10 percent in the energy consumption in the facility. The implementation shall be verified by submission of the utility "Installation Completion Form" or equivalent to Merced County Division of Environmental Health.

Findings on Proposed Mitigation

The Planning Commission finds that the above-stated mitigation measures are made conditions of approval of the Michael Brasil Dairy Expansion project. 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 Michael Brasil Dairy Expansion project by requiring the implementation of measures to reduce greenhouse gas emissions. This would be a significant and unavoidable impact because the reduction in greenhouse gas emissions from required measures cannot be quantified, and due to the important nature of GHG emissions and the enormity of their potential environmental effects as established in the DEIR. No additional feasible measures are available to reduce this impact below a level of significance (Pub. Resources Code, §21002; CEQA Guidelines, §§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.

F. HAZARDS

Hazards setting information for the Michael Brasil Dairy Expansion project is set forth in pages 8-1 through 8-3 of the DEIR. The impact evaluation criterion used in assessing impacts due to hazards as a result of implementing the Project are set forth in the DEIR on page 8-4. This information is incorporated into these findings as though fully set forth herein. Considering the above information, and the potential impacts identified in the FEIR, the findings of the Planning Commission are as follows.

Impact HAZ-1: Contamination from manure pathogens from exported dry manure (DEIR, pps. 8-4 to 8-6)

Finding: This would be a significant and unavoidable impact

Explanation:

The proposed dairy expansion would increase the dairy herd size from 1,385 cows to 2,400 cows, and would result in an increased volume of manure and associated pathogens produced at the project site. The manure could also contain residual amounts of contaminants such as hormones, antibiotics, or pesticides. Therefore, manure process water applied to fields may contain these pathogens and contaminants. While implementation of the ACO and the Merced County Well Ordinance would minimize potential impacts from pathogen contamination on site, the proposed dairy expansion includes the export of all dry manure generated from the facility. Exported dry

manure would be sold as fertilizer to an off-site agricultural operation that may not be regulated to the same extent as dairy operations in the County. Therefore, there is the potential for over-application of manure or surface water runoff from the receiving agricultural fields. Potential impacts to surface water quality at these off-site fields would be reduced since a significant amount of adsorption¹ of nutrients to soil particles and inactivation of pathogenic organisms would be expected to occur in the fields (DEIR, pps. 8-4 to 8-5).

Finding on Significance of Impact

Based on the analysis contained within the DEIR and the FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission finds that the potential impact due to adverse health impacts from the increased export of dry manure is expected to be significant because no groundwater monitoring is required at non-dairy facilities to determine if groundwater contamination is occurring. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

Mitigation Measure HAZ-1:

Over the course of dairy operations, the project sponsor shall obtain written agreement from the recipients of manure exported off site for the following:

- All manure shall be applied to cropland at rates and times which are reasonable for the crop, soil, climate, special local situations, and management system. Manure applications shall be timed and managed to minimize nitrogen movement below the root zone and to minimize percolation of waste constituents to groundwater.
- All stormwater that is or has been in contact with manure shall be maintained on site. No storm drainage that has been in contact with manure shall be allowed to flow or seep onto adjacent properties or public roads, or into any waterway.
- Where the commingling of water containing manure can take place with irrigation wells and irrigation and/or drainage district facilities, these facilities shall be protected from pollution by a backflow device or method that is approved by the Merced County Division of Environmental Health and Public Works Building & Safety Division, and/or the appropriate irrigation/drainage district. It is the obligation of the property owner to install and maintain or cause to be installed and maintained the backflow device or method.
- Manure shall not be applied within 100 feet of any domestic well, irrigation well, or surface water body. Surface water bodies include creeks, streams, lakes and reservoirs, but do not include canals constructed above grade. Adequate protection of surface water bodies or irrigation wells shall prevent discharge or infiltration of manure constituents to the water body or well.

The project sponsor shall provide the most recent analysis of the dry manure, in writing, to the manure recipient. The signed agreement between the project sponsor and the recipient of manure

¹ Adsorption is the adhesion of molecules to a surface.

exported off site shall be submitted to the Merced County Division of Environmental Health for review.

Findings on Proposed Mitigation

The Planning Commission finds that the above-stated mitigation measure is made a condition of approval of the Michael Brasil Dairy Expansion project. The Planning Commission further finds that the above measure is appropriate and feasible, and would substantially lessen, but not avoid the potential adverse environmental effects associated with the Michael Brasil Dairy Expansion project by requiring written agreements from the recipients of manure exported off site to implement measures to protect surface and groundwater quality. This would be a significant and unavoidable impact because there is no mechanism for the County to track the implementation of the measure and ensure compliance. No additional feasible measures are available to reduce this impact below a level of significance (Pub. Resources Code, §21002; CEQA Guidelines, §§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.

G. CUMULATIVE IMPACTS

The assessment of cumulative effects for the Michael Brasil Dairy Expansion project is tiered from the EIR for the Merced County Animal Confinement Ordinance Revision (ACO) project certified by the Merced County Board of Supervisors 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 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.

FINDING ON TIERING FROM THE EIR FOR THE MERCED COUNTY ANIMAL CONFINEMENT ORDINANCE REVISION 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 Michael Brasil Dairy Expansion project EIR, which focus primarily on issues unique to a smaller project within the larger program or plan. 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. 1-5).

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 Michael Brasil Dairy Expansion project is subject to the requirements of the ACO for new and expanding confined animal facilities, those previously adopted mitigation measures and conditions apply to the Michael Brasil Dairy Expansion project, and would continue to apply after approval of the currently requested actions. Therefore, the ACO EIR is related to the Michael Brasil Dairy Expansion project and, pursuant to CEQA Guidelines §15152(a), the Merced County Planning Commission finds that tiering of environmental documents is appropriate (DEIR; p. 1-5).

The DEIR for the Michael Brasil Dairy Expansion project stated that the County is using the tiering concept, incorporated the ACO EIR by reference, summarized the environmental effects contained in the ACO EIR, and set forth a location for public review of the ACO EIR consistent with CEQA Guidelines §15152 (DEIR; pps. 1-5 to 1-7). The Planning Commission finds that the proper procedures for tiering were employed in the Michael Brasil Dairy Expansion project EIR, consistent with the requirements of CEQA Guidelines §15152.

EVALUATION OF CUMULATIVE EFFECTS

Considering the above information, and the potential cumulative impacts identified in the FEIR, the findings of the Planning Commission are as follows:

Impact CUM-1: Air Quality Effects (Michael Brasil Dairy Expansion project EIR, pps. 10-2 to 10-3; ACO FEIR, pps. 4-123 to 4-129)

Finding: This would be a significant and unavoidable impact

Explanation:

The facts concerning air quality conditions relied upon by the Board of Supervisors in their consideration of cumulative air quality effects were set forth in the findings for the Animal Confinement Ordinance Revisions EIR dated October 22, 2002. Summarily, as set forth in the FEIR for the Animal Confinement Ordinance Revisions (pps. 4-123 to 4-129), these facts as identified by the Board in 2002 are:

- Air quality effects associated with animal confinement facility development adversely affect the ambient air quality within the San Joaquin Valley Air Basin.
- Air emissions inventories and site-specific monitoring data on relevant parameters (e.g., ROG, hydrogen sulfide, PM₁₀ and methane) for other animal confinement facilities within the San Joaquin Valley air basin are not available.
- The primary threshold of significance for cumulative air quality impacts is defined by Ambient Air Quality Standards, which define the attainment status of the air basin.
- Air emissions in the San Joaquin Valley air basin are forecast to increase between the present and the year 2020, especially emissions of Total Organic Gases, Total Particulate Matter, and Particulate Matter less than 10 microns in diameter. Cumulative development and operation of confined animal facilities in the San Joaquin Valley Air Basin is expected to result in increased air emissions.

- Confined animal facility development is forecast to increase in the valley, leading to increased emissions of air pollutants from this source.

As a result of the foregoing assessment, the following cumulative significant effects were identified for air quality:

- Fugitive Dust Emissions from Construction Activities
- Ozone Precursor Emissions (Reactive Organic Gases and Nitrogen Oxides) from Dairy Operations, Farm Equipment and Increased Traffic
- PM₁₀ Emissions from Fugitive Dust During Project Operations
- Ammonia and Hydrogen Sulfide Emissions from Confined Animal Facility Operations
- Greenhouse Gas Emissions from Confined Animal Facility Operations

The facts relied upon by the Board regarding this cumulative impact are hereby incorporated by reference as though fully set forth herein.

Merced County has adopted the mitigation measures identified for this cumulative impact in the ACO EIR, and applied the measures to the Michael Brasil Dairy Expansion project. Because emissions of construction-related ozone precursors and fugitive dust would not exceed the threshold values used by the SJVAPCD for stationary sources, and the project would be required to implement construction dust control measures, impacts due to fugitive dust emissions from construction activities were determined less than significant. Similarly, impacts due to hazardous pollutant emissions of ammonia and hydrogen sulfide impacts were determined less than significant. However, even with implementation of air quality mitigation measures for impacts from ozone precursors (VOCs and NO_x), because the Air Basin is in nonattainment for both Federal and State ozone standards, these emissions would be considered cumulatively significant. Further, even with implementation of air quality mitigation measures for impacts from greenhouse gas emissions, because of the large volume of the proposed project's greenhouse gas emissions, the proposed project would make a cumulatively considerable contribution to a cumulatively significant effect.

Finding on Significance of Cumulative Impact

Based on the analysis contained within the Animal Confinement Ordinance Revisions DEIR and FEIR, other considerations in the record, and the impact evaluation criteria, the Board 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. While the San Joaquin Valley Air Pollution Control District enforces measures that would minimize air quality emissions, cumulative air quality impacts would be significant and unavoidable since confined animal facility development would contribute to the nonattainment status of the San Joaquin Valley Air Basin, and due to the lack of federally approved Attainment Plans. The findings of the Board 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 Michael Brasil Dairy Expansion project DEIR and FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission specifically finds that the contribution from the Michael Brasil Dairy Expansion project to

cumulative air impacts is expected to be cumulatively considerable. The Planning Commission finds emissions to be considered to be cumulatively considerable for the following reasons:

- The San Joaquin Valley Air Basin has been designated as nonattainment for ozone, PM₁₀ (for only state standards), and PM_{2.5} as well. Any additional emissions from any source would make attainment more difficult.
- No attainment plan for PM_{2.5} is currently accepted by federal air regulatory agencies. Any additional emissions from any source would make attainment more difficult.
- Livestock wastes and other agriculture-related activities account for a large portion of existing ozone precursor, PM_{2.5} precursor, and PM₁₀ emissions. Their percentage of the total emissions in future years is expected to increase as the relative contributions from regulated sources decrease.
- Current levels of air emissions in the San Joaquin Valley result in high levels of chronic lung disease, and increased morbidity and mortality. Increased pollutant concentrations in the future due to increased emissions could be expected to increase existing levels of chronic lung disease, and to increase morbidity and mortality.
- Current levels of air emissions in the San Joaquin Valley result in decreased crop yields and damaged forest vegetation in the Sierra Nevada. Increased pollutant concentrations in the future due to increased emissions could be expected to decrease crop yields further and result in additional damage to forest vegetation.

Because of these factors, operation of the dairy would make a cumulatively considerable contribution to these significant and unavoidable cumulative effects. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Adopted Mitigation

The following measures were adopted by the Board to reduce the magnitude of these potential air quality effects. Since implementation of several of the measures is outside the jurisdictional authority of Merced County, and the County cannot fully implement the measures unilaterally, these cumulative impacts would remain significant and unavoidable.

Mitigation Measure CUM-1a:

Implement San Joaquin Valley Air Pollution Control District (SJVAPCD) Rules 8020 and 8021, and the following requirements of the Merced County Animal Confinement Ordinance - Chapter 18.48.050 U, HH, II, and OO.

Mitigation Measure CUM-1b:

The U.S. Environmental Protection Agency (EPA), California Air Resources Board (CARB), and/or SJVAPCD should sponsor and complete detailed emissions studies of air emissions from all areas of animal confinement facilities, including emissions rates from various sources, activities, and facilities. Concurrently, these agencies should evaluate and document the effectiveness of various emissions control options for managing or lessening air pollutant emissions from animal confinement facilities.

Mitigation Measure CUM-1c:

Upon completion of the emissions studies set forth above, and should it be determined that controls on emissions from animal confinement facilities are necessary to reach attainment status, the

SJVAPCD should incorporate the resulting emissions inventory into its attainment planning for criteria pollutants for which the Air Basin is in nonattainment.

Findings on Adopted Mitigation

Mitigation measures within Merced County have been adopted by the Board of Supervisors in its certification of the Animal Confinement Ordinance Revisions EIR and approval of the revised Animal Confinement Ordinance. For areas outside of Merced County, the Board of Supervisors found that the above-stated mitigation measures are within the responsibility and jurisdiction of another public agency and not the County of Merced. The Board's findings on these mitigation measures are hereby incorporated by reference as though fully set forth herein.

Because emissions of the Michael Brasil Dairy Expansion project would be cumulatively considerable, the requirements of these measures are made requirements of the Michael Brasil Dairy Expansion project where applicable. For findings on the effectiveness of the air quality mitigation measures applicable to the Michael Brasil 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.

Impact CUM-2: Biological Resources Effects (Michael Brasil Dairy Expansion project EIR, p. 10-4; ACO FEIR, pps. 4-129 to 4-130)

Finding: This would be a less-than-significant impact

Explanation:

The facts concerning biological resource conditions relied upon by the Board of Supervisors in their consideration of cumulative biological resource effects were set forth in the findings for the Animal Confinement Ordinance Revisions EIR dated October 22, 2002. Summarily, as set forth in the FEIR for the Animal Confinement Ordinance Revisions (pps. 4-129 to 130), these facts are:

- The CDFG's Section 1600 permitting process lacks mitigation standards to compensate for the loss and/or degradation of riparian habitat.

As a result of the foregoing assessment, the following cumulatively significant impact was identified for biological resources:

- Loss and/or degradation of riparian habitat outside of Merced County.

The facts relied upon by the Board regarding this cumulative effect are hereby incorporated by reference as though fully set forth herein.

An animal confinement facility development in Merced County, with the implementation of mitigation identified in the ACO EIR, is expected to have a less-than-significant effect on all biological resources impacts (except for riparian habitats). Mitigation measures adopted by Merced

County reduce the potential effect to riparian habitats within the County to less than significant. The potential impacts to riparian habitat throughout the San Joaquin Valley is expected to be cumulatively considerable, since mitigation measures adopted by Merced County have no effect in areas outside the County. Merced County has adopted the mitigation measures identified for this cumulative impact in the ACO EIR, and applied the measures to the Michael Brasil Dairy Expansion project, where applicable. Additionally, as established in the IS/NOP, impacts to biological resources were determined less than significant with implementation of previously identified mitigation measures.

Finding on Significance of Cumulative Impact

Based on the analysis contained within the Animal Confinement Ordinance Revisions DEIR and FEIR, other considerations in the record, and the impact evaluation criteria, the Board found that the potential impact to riparian habitat throughout the San Joaquin Valley is expected to be cumulatively considerable, since mitigation measures adopted by Merced County have no effect in areas outside the County. Confined animal facility development in Merced County is not expected to be cumulatively considerable because of the requirements of the Animal Confinement Ordinance and mitigation measures adopted by the Board in its certification of the Animal Confinement Ordinance Revisions EIR and approval of the revised Animal Confinement Ordinance. The findings of the Board regarding this impact 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 Michael Brasil Dairy Expansion project DEIR and FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission specifically finds that the contribution from the Michael Brasil Dairy Expansion project to the cumulative loss or degradation of riparian resources is not expected to be cumulatively considerable because construction and operation of the Michael Brasil Dairy Expansion project is expected to have a less-than-significant effect on such resources. Notwithstanding the existence of significant and unavoidable adverse cumulative effects throughout the San Joaquin Valley as identified above, the Michael Brasil Dairy Expansion project would not result in a cumulatively considerable contribution to this significant and unavoidable effect. Thus, the cumulative impact of the Michael Brasil Dairy Expansion on biological resources would be less than significant. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

The Planning Commission further finds that because the contribution of the Michael Brasil Dairy Expansion project to cumulative impacts on biological resources is expected to be less than cumulatively considerable, no additional mitigation measures beyond those previously adopted by Merced County for confined animal facilities would be required. Under CEQA, no mitigation measures are required for impacts that are less than significant (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15091, 15126.4, subd. (a)(3)). The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Impact CUM-5: Hazards (Michael Brasil Dairy Expansion project DEIR, p. 10-4; ACO FEIR, p. 4-131)

Finding: This would be a less-than-significant impact

Explanation:

For hazards, no cumulatively significant effect was identified in the ACO FEIR. Merced County has adopted the mitigation measures identified for this cumulative impact in the ACO EIR, and employed the measures on the Michael Brasil Dairy Expansion project where applicable. With implementation of previously identified mitigation measures, the nuisance effects of the Michael Brasil Dairy Expansion project would be less than significant. Further, because hazard effects as evaluated in the ACO EIR are considered a localized issue, and because the Michael Brasil Dairy is located in an agricultural area with a low density of animal confinement facilities, the construction and operation of the dairy would not make a cumulatively considerable contribution to this less-than-significant cumulative effect (ACO FEIR, p. 4-131 and Michael Brasil Dairy Expansion project DEIR, p. 10-4).

Finding on Significance of Cumulative Impact

Based on the analysis contained within the Animal Confinement Ordinance Revisions DEIR and FEIR, other considerations in the record, and the impact evaluation criteria, the Board found that the potential cumulative impacts are expected to be less than significant. Confined animal facility development in Merced County, including the Michael Brasil Dairy Expansion project, is not expected to be cumulatively considerable because of the requirements of the Animal Confinement Ordinance and mitigation measures adopted by the Board in its certification of the Animal Confinement Ordinance Revisions EIR and approval of the revised Animal Confinement Ordinance. The findings of the Board regarding this impact 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 Michael Brasil Dairy Expansion project DEIR and FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission specifically finds that the cumulative contribution from the Michael Brasil Dairy Expansion project due to hazards are a localized effect that would be reduced below a level of significance by the operation of regulatory requirements identified as identified in Section XI.B of these Findings, so that implementation of the Project would not make a cumulatively considerable contribution to the less-than-significant cumulative effect. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

The Merced County Planning Commission further finds that because the contribution of the Michael Brasil Dairy Expansion project to cumulative impacts due to hazards is expected to be less than cumulatively considerable, no additional mitigation measures beyond those previously adopted by Merced County for confined animal facilities would be required. Under CEQA, no mitigation measures are required for impacts that are less than significant (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15091, 15126.4, subd. (a)(3)). The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Impact CUM-6: Hydrology and Water Quality Effects (Michael Brasil Dairy Expansion project DEIR, p. 10-5; ACO FEIR, p. 4-131 through 4-137)

Finding: This would be a significant and unavoidable impact

Explanation:

The facts concerning water quality conditions relied upon by the Board of Supervisors in their consideration of cumulative water quality effects were set forth in the findings for the Animal Confinement Ordinance Revisions EIR dated October 22, 2002. Summarily, as set forth in the FEIR for the Animal Confinement Ordinance Revisions (pps. 4-131 to 137), these facts are:

- Nitrogen and salt production from confined animal facilities could increase by 90 percent in Merced County by 2010. The County currently has adequate acreage, properly zoned, to take up the potential doubling in nitrogen loading. The provisions of the Animal Confinement Ordinance requiring a Comprehensive Nutrient Management Plan (CNMP) for all dairies address the proper application of wastewater. As assessed in 2002, 42,014 tons of nitrogen was produced annually by dairies, compared to Countywide nitrogen requirements by crops of 152,675 tons. Accordingly, within Merced County, impacts to water quality would be less than significant.
- Other Counties within the watershed have no such protections for the over application of salts and nutrients, especially in Fresno County where confined animal facilities are permitted by right without the need to obtain a County permit. In this County, regulation of confined animal facilities is under the jurisdiction of the RWQCB. Over application of salts and nutrients in these counties could result in the retirement of land that has become too salty for crop production, and result in the human health effects.

As a result of the foregoing assessment, the following cumulatively significant impact was identified for surface water and groundwater quality:

- Contamination of groundwater or surface waters outside of Merced County.

The facts relied upon by the Board regarding this cumulative effect are hereby incorporated by reference as though fully set forth herein.

Merced County has adopted the mitigation measures identified for this cumulative impact in the ACO EIR, and employed the measures on the Michael Brasil Dairy Expansion project where applicable. With implementation of water quality mitigation measures, because the surface water and groundwater effects of the Michael Brasil Dairy Expansion would be less than significant, construction and operation of the Michael Brasil Dairy Expansion would not make a cumulatively considerable contribution to these water quality significant and unavoidable effects. However, disposal of manure from the Michael Brasil Dairy Expansion to off-site locations was found to be significant and unavoidable and would make a cumulatively considerable contribution to this significant and unavoidable water quality impact due to pathogens and other contaminants.

Finding on Significance of Cumulative Impact

Based on the analysis contained within the Animal Confinement Ordinance Revisions DEIR and FEIR, other considerations in the record, and the impact evaluation criteria, the Board 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 in its certification of the Animal Confinement Ordinance Revisions EIR and approval of the revised Animal Confinement Ordinance. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Findings on Contribution of Project to Cumulative Impact

Based on the analysis contained within the Michael Brasil Dairy Expansion project DEIR and FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission specifically finds that the contribution from the Michael Brasil Dairy Expansion project to the cumulative impairment of surface water and groundwater quality is expected to be cumulatively considerable. Because disposal of manure from the Michael Brasil Dairy Expansion to off-site locations, including those outside of Merced County, was found to be significant and unavoidable, the construction and operation of the Michael Brasil Dairy Expansion would make a cumulatively considerable contribution to this significant cumulative effect. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Adopted Mitigation

The following measures were adopted by the Board to reduce the magnitude of the potential cumulative effect. Since implementation of one of the measures is outside the jurisdictional authority of Merced County, and the County cannot fully implement the measure unilaterally, this cumulative impact would remain significant and unavoidable.

Mitigation Measure CUM-6a:

Implement §7.13.040 A, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, V, Z, AA, BB, DD, EE, JJ, KK, LL and NN; §7.13.045 A, B, C.4.d, C.8.m, D, E, and F; and §7.13.050 A, D, E, G, H, I, K, L, M, Q, S, and T of the Animal Confinement Ordinance.

Mitigation Measure CUM-6b:

The following Best Management Practices shall be implemented by all dairies and confined animal facilities as applicable:

1. Positive drainage shall be included in project design and construction to ensure that excessive ponding does not occur. The design shall comply with Title 3, Division 2, Chapter 1, Article 22, §646.1 of the Food and Agriculture Code for construction and maintenance of dairy or facility surroundings, corrals, and ramps, as described below.
2. Dirt or unpaved corrals, or unpaved lanes, shall not be located closer than 25 feet from the milking barn or closer than 50 feet from the milk house. Corral drainage must be provided.

3. A paved (concrete or equivalent) ramp or corral shall be provided to allow the animals to enter and leave the milking barn. This paved area shall be curbed (minimum of 6 inches high and 6 inches wide) and sloped to a drain. Cow washing areas shall be paved (concrete or equivalent) and sloped to a drain. The perimeter of the area shall be constructed in a manner that will retain the wash water to a paved drained area. Paved access shall be provided to permanent feed racks, mangers, and water troughs. Water troughs shall be provided with: (1) a drain to carry the water from the corrals; and (2) pavement (concrete or equivalent) which is at least 10 feet wide at the drinking area.
4. The cow standing platform at permanent feed racks shall be paved with concrete or equivalent for at least 10 feet back of the stanchion line.
5. As unpaved areas are cleaned, depressions tend to form, allowing ponding and increased infiltration. Regular maintenance shall include filling of depressions. Personnel shall be taught the correct use of manure collection machines (wheel loaders or elevating scrapers).

Mitigation Measure CUM-6c:

For all new or expanding confined animal facilities, the Division of Environmental Health shall make a final inspection of the facility prior to the commencement of operations to confirm the dairy meets all local and state requirements.

Mitigation Measure CUM-6d:

All existing water supply wells at a proposed new or modified animal confinement facility site (including those located away from the confined animal facilities in the cropland areas) shall be inspected by the Merced County Division of Environmental Health to ensure that each well is properly sealed at the surface to prevent infiltration of waterborne contaminants into the well casing or surrounding gravel pack. If any of the wells are found not to comply with the Merced County Well Ordinance standards described in impact HAZ 3, the applicant or confined animal facility operator shall retain a qualified professional as described in the County Well Ordinance to install the required seal or functional equivalent. Documentation of the inspections and seal installations, if any, shall be provided to the County Environmental Health Division prior to commencement of dairy operations.

Mitigation Measure CUM-6e:

The Regional Water Quality Control Board should evaluate the potential emissions to groundwater of salts, nutrients, and other substances from all areas of confined animal facilities, including corrals, treatment ponds, and cropped application fields.

Mitigation Measure CUM-6f:

Based on the results of this study, the Regional Water Quality Control Board should adopt uniform standards that apply to all confined animal facilities within the Central Valley for permitted seepage rates from all areas, including corrals, treatment ponds, and application fields; maximum permeability rates for areas that require lining to prevent groundwater degradation; and implementation of an antidegradation policy for groundwater.

Findings on Adopted Mitigation

Mitigation measures within Merced County have been adopted by the Board of Supervisors in its certification of the Animal Confinement Ordinance Revisions EIR and approval of the revised

Animal Confinement Ordinance. For areas outside of Merced County, the Board of Supervisors found that the above-stated mitigation measures are within the responsibility and jurisdiction of another public agency and not the County of Merced. The Board's findings on these mitigation measures are hereby incorporated by reference as though fully set forth herein.

Because hydrology and water quality impacts of constructing and operating the Michael Brasil Dairy Expansion project would be cumulatively considerable, the requirements of these measures are made requirements of the Michael Brasil Dairy Expansion project where applicable. For findings on the effectiveness of the water quality mitigation measures applicable to the Michael Brasil Dairy Expansion project, see Section XI.D 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.

Impact CUM-7: Land Use (Michael Brasil Dairy Expansion project DEIR, p. 10-5; ACO FEIR, p. 4-137)

Finding: This would be a less-than-significant-impact

Explanation:

Merced County has adopted the mitigation measures identified for this cumulative impact in the ACO EIR, and applied the measures to the Michael Brasil Dairy Expansion project where applicable. Because the land use effects of the Michael Brasil Dairy Expansion project would be less than significant, construction and operation of the dairy would not make a cumulatively considerable contribution to this significant cumulative effect (ACO FEIR, p. 4-137 and Michael Brasil Dairy Expansion project DEIR, p. 10-5).

Finding on Significance of Cumulative Impact

Based on the analysis contained within the Animal Confinement Ordinance Revisions DEIR and FEIR, other considerations in the record, and the impact evaluation criteria, the Board determined that cumulative land use and nuisance effects to isolated rural residences from existing confined animal facilities closer than 1,000 feet to such residences would be significant and unavoidable because such residences would be located within the 1,000 foot setback between active dairy areas and residences established by the Board to control nuisance land use effects. The findings of the Board regarding these cumulative impacts are hereby incorporated by reference as though fully set forth herein.

Finding on Contribution of Project to Cumulative Impact

Based on the analysis contained within the Michael Brasil Dairy Expansion project DEIR and FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission specifically finds that the contribution from the Michael Brasil Dairy Expansion project to cumulative land use impacts is expected to be less than cumulatively considerable. Because the Michael Brasil Dairy Expansion project maintains the 1,000-foot setback between the proposed

dairy and the nearest off site residence for the presumptive control of nuisance conditions, this impact would be less than significant. Therefore, the Michael Brasil Dairy Expansion project would not make a cumulatively considerable contribution to this significant cumulative effect. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

None required.

Findings on Proposed Mitigation

Mitigation measures within Merced County have been 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 Board adopted proposed revisions to Zoning Code §18.48.040 in the ACO EIR to reduce the magnitude of these potential land use compatibility effect effects, and applied the measures to the Michael Brasil Dairy Expansion project where applicable. The Merced County Planning Commission further finds that because the contribution of the Michael Brasil Dairy Expansion project to cumulative land use impacts is expected to be less than cumulatively considerable, no additional mitigation measures beyond those previously adopted by Merced County for confined animal facilities would be required. Under CEQA, no mitigation measures are required for impacts that are less than significant (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15091, 15126.4, subd. (a)(3)). The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Impact CUM-10: Transportation and Circulation Effects (Michael Brasil Dairy Expansion project DEIR, pps. 10-5 through 10-6; ACO FEIR, pps. 4-138 through 4-139)

Finding: *This would be a less-than-significant impact*

Explanation:

The facts concerning roadway integrity and traffic conditions relied upon by the Board of Supervisors in their consideration of cumulative transportation and circulation effects were set forth in the findings for the Animal Confinement Ordinance Revisions EIR dated October 22, 2002. Summarily, as set forth in the FEIR for the Animal Confinement Ordinance Revisions (pps. 4-138 to 139, and DEIR, p. 5-261), these facts are:

- Cumulative impacts related to transportation and circulation are limited to roadway integrity effects from the passage of heavy vehicles. Confined animal facilities are often located in more remote areas served only by farm-to-market roads that are not constructed to modern engineering standards. Truck traffic associated with current dairy and other confined animal operations carries heavier loads, is daily in nature, and thus is much more destructive to the roads. Because of the weight of milk tankers and feed trucks, the pavement surface of these roadways can rapidly deteriorate, causing unsafe

driving conditions. Such effects can cross County boundaries because routes from dairies to supporting facilities can cross County lines.

- No cumulative effects to roadway capacity are expected because of the cumulative roadway capacity of the roadway network in the San Joaquin Valley, the generally high levels of service of farm to market roads serving confined animal facilities, and the dispersion of truck traffic serving regional confined animal facilities. An additional factor is the generally low volume of traffic serving confined animal facilities.

Merced County has adopted the mitigation measures identified for this cumulative impact in the ACO EIR, and applied the measures to the Michael Brasil Dairy Expansion project where applicable. All trips currently access First Avenue via a private driveway. Since First Avenue is within Merced County, it would be subject to the adopted roadway integrity mitigation measure. With implementation of ACO roadway integrity mitigation measures, the roadway integrity effects of the Michael Brasil Dairy Expansion project would be less than significant, and construction and operation of the dairy expansion would not make a cumulatively considerable contribution to this significant and unavoidable effect.

Finding on Significance of Cumulative Impact

Based on the analysis contained within the Animal Confinement Ordinance Revisions DEIR and FEIR, other considerations in the record, and the impact evaluation criteria, the Board found that the potential cumulative impact to roadway integrity is expected to be significant in areas outside of Merced County. Confined animal facility development in Merced County is not expected to be cumulatively considerable because of the requirements of the Animal Confinement Ordinance and mitigation measures adopted by the Board in its certification of the Animal Confinement Ordinance Revisions EIR and approval of the revised Animal Confinement Ordinance. The findings of the Board regarding this impact 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 Michael Brasil Dairy Expansion project DEIR and FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission specifically finds that the contribution from the Michael Brasil Dairy Expansion project to cumulative impacts to roadway integrity is not expected to be cumulatively considerable. As determined by the County Road Division, the roadway integrity effects of the Michael Brasil Dairy Expansion project would be less than significant with implementation of mitigation. Notwithstanding the existence of adverse cumulative effects throughout the San Joaquin Valley as identified above, the contribution from Michael Brasil Dairy Expansion project is expected to be less than cumulatively considerable, and construction and operation of the dairy expansion would not make a cumulatively considerable contribution to this significant and unavoidable effect. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

The Planning Commission further finds that because the contribution of the Michael Brasil Dairy Expansion project to cumulative impacts on transportation and circulation is expected to be less than cumulatively considerable, no additional mitigation measures beyond those previously adopted

by Merced County for confined animal facilities would be required. Under CEQA, no mitigation measures are required for impacts that are less than significant (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15091, 15126.4, subd. (a)(3)). The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Other Effects: Cumulative Impacts to Cultural Resources, Geological Resources, Mineral Resources, Noise, Utilities and Service Systems (Michael Brasil Dairy Expansion project DEIR, pps. 10-4 to 10-6; ACO FEIR, pps. 4-123 through 4-139)

Finding: These would be less-than-significant impacts

Explanation:

For cultural resources, no cumulatively significant effect after the imposition of mitigation was identified in the ACO FEIR. Merced County has adopted the mitigation measures identified for this cumulative impact in the ACO EIR, and employed the measures on the Michael Brasil Dairy Expansion project where applicable. Impacts to cultural resources are isolated incidents that are project specific and generally do not contribute to a cumulative condition. The Planning Commission specifically finds that with implementation of Merced County conditions relating to undiscovered cultural resources, the cultural resource effects of the Michael Brasil Dairy Expansion project would 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. Thus, the cumulative impact of the Michael Brasil Dairy Expansion project on cultural resources would be less than significant (ACO FEIR, p. 4-131 and Michael Brasil Dairy Expansion project DEIR, p. 10-4.)

For geological resources, no cumulatively significant effect after the imposition of mitigation was identified in the ACO FEIR. Merced County has adopted the mitigation measures identified for this cumulative impact in the ACO EIR, and employed the measures on the Michael Brasil Dairy Expansion project where applicable. The Planning Commission specifically finds that because of the operation of this measure, the fact that the Michael Brasil Dairy Expansion project would have no above-ground impoundments (the subject of the cumulative impact identified in the ACO EIR), and because the geological resource effects of the Michael Brasil Dairy Expansion project would be less than significant, construction and operation of the dairy expansion would not make a cumulatively considerable contribution to this less-than-significant cumulative effect. Thus, the cumulative impact of the Michael Brasil Dairy Expansion project on geological resources would be less than significant (ACO FEIR, p. 4-131 and Michael Brasil Dairy Expansion project DEIR, p. 10-4).

For mineral resources, no cumulatively significant effect after the imposition of mitigation was identified in the ACO FEIR. Merced County has adopted the mitigation measure identified for this cumulative impact in the ACO EIR, and applied the measures on the Michael Brasil Dairy Expansion project where applicable. The Planning Commission specifically finds that because the mineral resource effects of the Michael Brasil Dairy Expansion project would be less than significant, construction and operation of the dairy would not make a cumulatively considerable contribution to this less-than-significant cumulative effect. Thus, the cumulative impact of the Michael Brasil Dairy Expansion project on mineral resources would be less than significant (ACO FEIR, p. 4-137 and Michael Brasil Dairy Expansion project DEIR, p. 10-5).

For noise, no cumulatively significant effect after the imposition of mitigation was identified in the ACO FEIR. Merced County has adopted the mitigation measure identified for this cumulative impact in the ACO EIR, and applied the measure on the Michael Brasil Dairy Expansion project where applicable. The Planning Commission specifically finds that because the noise effects of the Michael Brasil Dairy Expansion project would be less than significant, construction and operation of the dairy would not make a cumulatively considerable contribution to this less-than-significant cumulative effect. Thus, the cumulative impact of the Michael Brasil Dairy Expansion project on noise would be less than significant (ACO FEIR, p. 4-137 and Michael Brasil Dairy Expansion project DEIR, p. 10-5).

For utilities and service systems, no cumulatively significant effect after the imposition of mitigation was identified in the ACO FEIR. Merced County has adopted the mitigation measure identified for this cumulative impact in the ACO EIR, and applied the measure to the Michael Brasil Dairy Expansion project where applicable. The Planning Commission specifically finds that because the utilities and services effects of the Michael Brasil Dairy Expansion project would be less than significant with implementation of ACO mitigation requirements regarding conflicts with public irrigation facilities, construction and operation of the dairy would not make a cumulatively considerable contribution to this significant cumulative effect. Thus, the cumulative impact of the Michael Brasil Dairy Expansion project on utilities and services would be less than significant (ACO FEIR, p. 4-137 and Michael Brasil Dairy Expansion project DEIR, p. 10-6).

Finding on Significance of Cumulative Impacts

Based on the analysis contained within the Animal Confinement Ordinance Revisions DEIR and FEIR, other considerations in the record, and the impact evaluation criteria, the Board found that the potential cumulative impacts are expected to be less than significant with implementation of mitigation identified by the Board (cultural resources, geological resources, mineral resources, noise, and utilities and service systems). For those environmental topics listed above that could be reduced by implementation of mitigation adopted by the Board, or for which no significant effect was identified, the contribution of confined animal facility development in Merced County, including the Michael Brasil Dairy Expansion project, is not expected to be cumulatively considerable because of the requirements of the Animal Confinement Ordinance and mitigation measures adopted by the Board in its certification of the Animal Confinement Ordinance Revisions EIR and approval of the revised Animal Confinement Ordinance. The findings of the Board regarding this impact are hereby incorporated by reference as though fully set forth herein.

Finding on Contribution of Project to Cumulative Impacts

Based on the analysis contained within the DEIR and the FEIR, other considerations in the record, and the impact evaluation criteria, the Merced County Planning Commission finds that the contribution to the above-cited effects from operations at the Michael Brasil Dairy Expansion project is expected to not be cumulatively considerable because the Michael Brasil Dairy Expansion project has no identified impacts in these areas. This conclusion is consistent with CEQA Guidelines 15130(a)(3). The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

The Merced County Planning Commission further finds that because the contribution of the Michael Brasil Dairy Expansion project to cumulative impacts of Cultural Resources, Geological Resources, Mineral Resources, Noise, Utilities and Service Systems is expected to be less than cumulatively considerable, no additional mitigation measures beyond those previously adopted by Merced County for confined animal facilities would be required. Under CEQA, no mitigation measures are required for impacts that are less than significant (Pub. Resources Code, §21002; CEQA Guidelines, §§15091, 15126.4, subd. (a)(3)). The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

H. GROWTH INDUCEMENT

The definition of growth inducement and setting information for the Michael Brasil Dairy Expansion project is set forth in pages 10-6 through 10-7 of the DEIR. The impact evaluation criteria used in assessing impacts of growth inducement as a result of implementing the Project are set forth in the DEIR on page 10-6. This information is incorporated into these findings as though fully set forth herein. Considering the above information, and the potential impacts identified in the Final EIR, the findings of the Planning Commission are as follows.

Impact: *Growth Inducement (DEIR, pps. 10-6 to 10-7)*

Finding: *This would be a less-than-significant impact*

Explanation:

Implementation of the Michael Brasil Dairy Expansion project would not result in any direct growth inducement. There are eight existing onsite residences associated with the existing dairy and agricultural operations. The dairy currently employs a staff of six workers. With implementation of the proposed project, the number of employees would increase to 10 or 11 workers. No new residences would be constructed onsite. The existing workforce within Merced County (107,900 workers, of whom 19.9 percent, or 21,500 people, were unemployed in April 2010) could accommodate additional labor needs for construction or operation of the project without requiring the importation of large numbers of workers. Similarly, any additional housing demands caused by project employees could be accommodated by existing and planned housing resources within Merced County (DEIR, p. 10-6).

The proposed Michael Brasil Dairy Expansion project is located in an active agricultural district. Because animal confinement facilities do not require additional public facilities beyond those typically provided in agricultural areas, the animal confinement operations themselves would not be expected to increase the demand for public facilities beyond the levels provided and planned for by public utilities. The project is not growth inducing from the perspective of adding new infrastructure because no new infrastructure that could induce growth is proposed or required by the proposed project. The Michael Brasil Dairy Expansion is currently served by some services and infrastructure, and would not result in the need for any major new systems or substantial alterations to these utility systems (see DEIR Appendix A, *Notice of Preparation and Initial Study*) (DEIR, p. 10-7).

The proposed dairy project is consistent with County land use plans, and does not include any changes in zoning or land use designations which would directly increase the potential for growth. Therefore, the Michael Brasil Dairy Expansion project would not induce growth beyond that which has been anticipated in County planning documents (DEIR, p. 10-7).

Finding on Significance of Impact

Based on the analysis contained within the DEIR and the FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission finds that the potential impact of growth inducement caused by the Michael Brasil Dairy Expansion project is expected to be less than significant because the project would not result in any direct growth inducement by the creation of housing units or an increased demand for housing, and any added employees could be accommodated by the local labor pool; would not result in the lowering of any infrastructure barriers to growth; and would not result in any land use policy changes that could result in additional development within the County. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

The Merced County Planning Commission further finds that because the potential impact of the growth inducement from the Michael Brasil Dairy Expansion project is expected to be less than significant, no mitigation measures are required (DEIR, p. 10-7). Under CEQA, no mitigation measures are required for impacts that are less than significant (Pub. Resources Code, §21002; CEQA Guidelines, §§15091, 15126.4, subd. (a)(3)). The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

I. ENERGY

The definition of energy impacts and setting information for the Michael Brasil Dairy Expansion project is set forth on pages 10-7 and 10-8 of the DEIR. The impact evaluation criteria used in assessing impacts due to inefficient and wasteful consumption of energy as a result of implementing the Project are set forth in the DEIR on page 10-8. This information is incorporated into these findings as though fully set forth herein. Considering the above information, and the potential impacts identified in the Final EIR, the findings of the Planning Commission are as follows.

Impact: *Inefficient and wasteful consumption of energy (DEIR, pps. 10-7 to 10-8)*

Finding: *This would be a less-than-significant impact after mitigation*

Explanation:

Proposed dairy and additional agricultural operations at the Michael Brasil Dairy Expansion project site require use of electricity, natural gas, and other fossil fuels associated with agricultural production (see DEIR Chapter 7, *Air Quality*, for a discussion of energy consumption and contribution to greenhouse gases). Development of the proposed Michael Brasil Dairy Expansion project would entail energy consumption that includes both direct and indirect expenditures of energy. Indirect energy would be consumed by the use of construction materials for the project (e.g., energy resource exploration, power generation, mining and refining of raw materials into

construction materials used, including placement). Direct energy impacts would result from the total fuel consumed in vehicle propulsion (e.g., construction vehicles, heavy equipment, and other vehicles using the facility). No unusual materials, or those in short supply, are required in the construction of the project.

To reduce electricity use and increase efficiency, conducting energy audits on the dairy and acting on those recommendations have generated significant cost savings and reduced GHG emissions from energy use. The energy efficiency savings identified in a farm energy audit vary greatly and are not correlated with farm size. However, it is estimated that, as a rough average, farms across the U.S. may be able to achieve 10 percent to 15 percent energy savings through a farm energy audit (DEIR, pps. 10-7 to 10-8).

Finding on Significance of Impact

Based on the analysis contained within the DEIR and the FEIR, other considerations in the record, and the impact evaluation criteria, the Planning Commission finds that the potential impact of inefficient and wasteful energy consumption caused by the Michael Brasil Dairy Expansion project is expected to be significant because electricity and energy use at a dairy may be inefficient. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

Mitigation Measure ENER-1:

Implement Mitigation Measure AQ-6f, which requires that the project applicant shall obtain from the appropriate utility company a full facility audit under the company's energy management program. The project applicant shall implement all no cost items identified in the energy audit, and additionally shall implement their choice of low cost and/or investment grade opportunities to reach a total reduction of 10 percent in the energy consumption in the facility. The implementation shall be verified by submission of the utility "Installation Completion Form" or equivalent to Merced County Division of Environmental Health.

Findings on Proposed Mitigation

The Planning Commission finds that the above-stated mitigation measure is made a condition of approval of the Michael Brasil 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 Michael Brasil Dairy Expansion project by requiring an energy audit and implementation of no cost and low cost measures to reduce energy consumption and increase energy efficiency. The above-stated measure would reduce the magnitude of this impact to a less-than-significant level (Pub. Resources Code, §21002; CEQA Guidelines, §§15091, 15126.4, subd. (a)(2)). The Planning Commission has been presented with no evidence to contradict their conclusion in this regard.

XII. 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 sponsor’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 Sequoiah Hills, *supra*, 23 Cal.App.4th at 715).

The detailed discussion in Section XI demonstrates that many 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:

- Ozone precursor emissions (Volatile Organic Compounds (VOC)/Reactive Organic Gases (ROG) and Nitrogen Oxides) emissions from dairy operations, farm equipment, and increased traffic (Impact AQ-3)
- Greenhouse gas emissions from project construction and operation (Impact AQ-6)
- Contamination from manure pathogens from exported dry manure (Impact HAZ-1)
- Cumulative air quality impacts (Impact CUM-1)
- Cumulative hydrology and water quality impacts (Impact CUM-6)

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 Pub. Resources Code, § 21002). As the succeeding discussion will show, no identified alternative is both feasible and environmentally superior with respect to the unmitigated impacts.

To fully account for these unavoidable significant effects, 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 impacts. The Findings will also assess whether each alternative is feasible in light of the project sponsor’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. As set forth by the project sponsor, the specific Project objectives are:

- 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 sponsor without the need to purchase additional land.
- To use all available land (which is not otherwise used for the dairy) for the production of feed for the herd. This also 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 can 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. 3-7).

The EIR identified and evaluated one development alternative and also evaluated the environmental impacts of the No Project alternative. In accordance with CEQA Guidelines §15126.6(f), several alternatives were considered for the Michael Brasil Dairy Expansion project, but rejected as infeasible. These alternatives rejected as infeasible included: Additional Acreage for Solid Manure Disposal Alternative; and Alternative Sites Outside the San Joaquin Valley. 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.

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 Michael Brasil Dairy, as well as expected agricultural development at the site under the current zoning requirements (DEIR, p. 9-2).

Under the No Project Alternative, construction of the Michael Brasil Dairy Expansion would not occur. The existing dairy and agricultural operations currently developed on the project site would continue under the No Project Alternative. The existing herd size of 1,385 animals, including approximately 745 milk cows and 640 support stock, would be maintained on the project site 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, agricultural activities permitted by Merced County zoning designations and currently developed on the project site would continue under the No Project Alternative (DEIR, p. 9-2).

Evaluation of Alternative 1

There are five significant and unavoidable impacts that have been identified for the proposed project—three for air quality, one for water quality, and one for contamination from manure pathogens from exported dry manure. 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 impacts and offsite transport of manure pathogens from the proposed project. The No Project Alternative would not create any construction impacts or provide a source of additional flies, mosquitoes, or odors. Based on the foregoing, the No Project Alternative would result in fewer environmental effects than the proposed Michael Brasil Dairy Expansion project (DEIR, p. 9-2).

Implementation of the No Project Alternative would not fully meet the following goals of the project applicant in proposing the Michael Brasil 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 (*no dairy expansion would be developed to maintain competitive operations*).
- To fully use land and facilities currently owned and operated by the project sponsor without the need to purchase additional land (*no dairy expansion would be developed to maximize production from the existing land base*).
- To generate dry manure 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*) (DEIR, pps. 9-3 to 9-4).

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 sponsor for pursuing the Michael Brasil 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 September 2010 regarding the sponsor's Project objectives, pages 9-2 through 9-4 of the DEIR dated September 2010 regarding the environmental effects of the Alternative, and the information presented in Section XIII, 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 – ANAEROBIC DIGESTER ALTERNATIVE

Definition of Alternative 2

Under the Anaerobic Digester Alternative, the existing wastewater lagoon would be covered and reconstructed as an anaerobic digester. All other improvements and the increase in herd size associated with the proposed dairy expansion project would occur under the Anaerobic Digester Alternative. This alternative was selected to reduce greenhouse gas emissions (DEIR, p. 9-4).

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 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. Of the 15 operating anaerobic digesters at California dairies as reported by the U.S. EPA AgSTAR program, the average methane emission reduction is 7,654 metric tons CO₂ equivalents per year, or a 3.9 metric tons CO₂ equivalents per year reduction per dairy cow. (DEIR, pps. 9-4 to 9-5)

The methane from a digester is destroyed through combustion in an engine, flare, or other device. Combustion actually produces CO₂ and water (H₂O). 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. There will be a reduction in CO₂ emissions from not burning that fossil fuel. (DEIR, p. 9-5)

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. Uncontrolled emissions from combustion of biogas may contain between 200 to 300 ppm NO_x. The anaerobic treatment process creates intermediates such as ammonia, hydrogen sulfide, orthophosphates, and various salts, all of which must be properly controlled or captured. In addition, 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 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. 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. 9-5)

Evaluation of Alternative 2

There are five significant and unavoidable impacts that have been identified for the proposed project—three for air quality, one for water quality, and one for contamination from manure pathogens from exported dry manure. The Anaerobic Digester Alternative would reduce the magnitude of anticipated environmental impacts associated with the proposed project. The Anaerobic Digester Alternative would reduce, but not avoid, greenhouse gas emissions. While the anaerobic digester would reduce pathogens in the liquid manure stored in the lagoon and applied to cropland offsite, because the dry manure exported offsite 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 offsite. Based on the foregoing, the Anaerobic Digester Alternative would result in fewer environmental effects than the proposed Michael Brasil Dairy Expansion project (DEIR, p. 9-5).

Implementation of the Anaerobic Digester Alternative would not fully meet the following goals of the project applicant in proposing the Michael Brasil 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, and wouldn't ensure compliance with applicable laws and regulations to the extent that the project would*).
- To construct improvements that can be permitted within a reasonable time frame and would represent commensurate benefit with cost (*this alternative may be difficult to permit with the SJV APCD since the digester typically results in increased ozone precursor emissions*). (DEIR, p. 9-7)

Finding of Feasibility on Alternative 2

The Merced County Planning Commission rejects Alternative 2, 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 sponsor for pursuing the Michael Brasil 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 September 2010 regarding the sponsor's Project objectives, pages 9-4 through 9-7 of the DEIR dated September 2010 regarding the environmental effects of the Alternative, and the information presented in Section XIII, 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 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.

XIII. 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 §21081; CEQA Guidelines §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 (XIII), 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. 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 sustainable agriculture outweighs its other environmental impacts.

B. PRESERVATION OF OPEN SPACE AREAS

Approval and implementation of the Michael Brasil 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 16.3 percent unemployment rate, compared to a rate of 12.0 percent for the state as a whole (<http://www.labormarketinfo.edd.ca.gov/> [October 2010]). Growth of the dairy industry, including at the Michael Brasil 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 Michael Brasil 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 OTHER GENERAL PLAN POLICIES AND RIGHT-TO-FARM ORDINANCE

Approval of the Michael Brasil Dairy Expansion project promotes the goals, objectives, and policies included in the Merced County General Plan, including the Land Use, Open Space/Conservation and Agricultural, which seek to protect and preserve agricultural soils, lands, and uses. Goal 7 of the Land Use Element is "*Conservation of productive agricultural and other valuable open space lands.*" (General Plan, p. I-57) Goals 1 through 3 of the Agricultural Element include: "*1) The financial viability of the agricultural sector is improved; 2) Agricultural areas are protected from conversion to nonagricultural uses*" (General Plan, pps. VII-38 through VII-43). 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 and 17.12.070) that encourages the County to "protect agricultural land, operations, and facilities from conflicting uses due to the encroachment of incompatible, non-agricultural uses of the land 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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