

CEQA FINDINGS OF FACT
OF THE
MERCED COUNTY PLANNING COMMISSION
FOR THE
HILLCREST DAIRY PROJECT
ENVIRONMENTAL IMPACT REPORT

FEBRUARY 2012

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I. INTRODUCTION

The Environmental Impact Report (“EIR”) prepared for the Hillcrest Dairy project (the “Project”) addresses the potential environmental effects associated with permitting 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 new Conditional Use Permit to bring the existing dairy facilities and dairy herd into compliance with Merced County’s permit requirements; there would be no expansion of the dairy herd or facilities with the proposed 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

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

“CEQA” means California Environmental Quality Act

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

“CO” means carbon monoxide

“CO₂” means carbon dioxide

“CUP” means Conditional Use Permit

“CVRWQCB” means Central Valley Regional Water Quality Control Board

“DEH” means Merced County Division of Environmental Health

“DEIR” means Draft Environmental Impact Report for the Hillcrest Dairy project, dated December 2011

“District” means San Joaquin Valley Air Pollution Control District

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

“FEIR” means Final Environmental Impact Report for the Hillcrest Dairy project, dated February 2012

“GHG” means Greenhouse Gas

“IS” means Initial Study

“MMP” means Mitigation Monitoring Program for the Hillcrest Dairy project, dated February 2012

“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

“ROG” means reactive organic gases

“ROWD” means Report of Waste Discharge

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

“VOC” means Volatile Organic Compounds

“WDRs” means Waste Discharge Requirements

IV. PROJECT DESCRIPTION

A. PROJECT DESCRIPTION

The project sponsor has applied for issuance of a new Conditional Use Permit (CUP10-005) to bring the existing dairy facilities and dairy herd into compliance with Merced County's permit requirements; there would be no expansion of the dairy herd or facilities with the proposed project.

The milk cows and support stock would continue to be housed in open corrals with freestall barns and a flush system. There would be no physical improvements necessary for the dairy CUP project. Dairy facility operations would continue as described in Existing Conditions. See DEIR Figures 3-5, 3-6, and 3-7 for the dairy site plan, dairy fields, and an illustration of the nutrient cycling process used to manage animal excrement at the dairy. DEIR Figure 3-8 shows a cross-section of a freestall dairy barn. There would be no change in periods of operation, employment, or daily vehicle trips with the dairy CUP project (DEIR, pps. 3-9 to 3-14).

B. PROJECT LOCATION

The existing Hillcrest Dairy is located on approximately 157 acres of 14 parcels totaling 1,995 acres in an unincorporated area of Merced County, west of Hayden Road, and 0.75 miles north of Highway 140 in the Planada area. The project's location is within the central California region (see DEIR Figures 3-1 and 3-2). The active dairy facilities are located on portions of Merced County Assessor's Parcel Numbers (APN) 053-100-042 and -043. The entirety of the project is located on several parcels identified in DEIR Table 3-1 and shown on DEIR Figure 3-3. The project site is located in Sections 11, 14 (Section of active dairy facilities), 15, 22, 23, 26, and 27, Township 7 South, Range 15 East, Mount Diablo Base and Meridian; 37° 18' 46.52"N, 120° 18' 31.82"W (DEIR, p. 3-1).

C. EXISTING SITE CONDITIONS

The existing animal confinement facility is located on approximately 157 acres of the 1,995-acre project site. The existing facilities include the following: milk barn, corrals and animal freestalls, 2 settling basins, 3 wastewater storage ponds, commodity barn, mechanical manure separator and pit, solid manure stacking area, sand trap, tailwater recovery pond, and feed storage. Approximately 1,646 acres of the project site are currently used for the production of crops, including forage crops and pistachios; however, only 1,265 acres of this cropland currently receives manure process water and/or solid manure. Approximately 381 acres of cropland is planted in non-bearing pistachios, and the young orchards are not projected to receive solid manure for several more seasons. The pistachios would not be used as feed for the dairy herd. The remaining 192 acres consist of on-site roadways and ancillary uses to the dairy, in addition to two on-site residences (DEIR, p. 3-5).

As established at the time the Notice of Preparation (March 2011), there are approximately 8,050 animals at the dairy, including 4,000 milk cows, 750 dry cows, 1,400 bred heifers (15-24 months), 500 heifers (7-14 months), and 1,400 calves (4-6 months). The existing facility consists of flush and scrape systems that are used to collect and process wastewater and solid manure. Animal wastes from freestall and other concrete-surfaced areas are flushed to an on-site waste management system that consists of three settling basins, two wastewater storage ponds, and a sand trap with four mechanical separators. Solid manure within corral areas is scraped (DEIR, p. 3-5).

Wastewater is mixed with irrigation water and applied to cropland. Stormwater runoff is directed to the wastewater ponds. Receiving fields are graded to guide excess applied irrigation water to an existing tailwater return system. Collected tailwater is recycled and returned to the nearest field pipe access for reapplication. The dairy facility uses both surface water and groundwater resources for farm operations. Dry manure is separated from liquids, accumulated on site, and processed for bedding material or hauled off site as piles accumulate for use as fertilizer and soil amendments. Corrals are scraped at least two times per year or as reflected in the dairy's operations. Solid manure currently is stock piled in uncovered piles. The solid manure is land applied and is also hauled off site (DEIR, p. 3-5).

There are several off-site single-family residences associated with other agricultural operations located on parcels to the north, south, east, and west of the project site. There are several off-site residences located within the windshed of the dairy (defined as an area of 1,320 feet upwind to 2,640 downwind of the periphery of the animal facility) (see DEIR Figure 3-4). The Hillcrest Dairy is situated approximately 0.73 miles north of the community of Planada. There are several farm labor housing facilities located in the vicinity of the Hillcrest Dairy along North Plainsburg Road. The nearest farm labor facility is located approximately 0.45 mile west of active dairy facilities; a recently constructed but currently uninhabited farm labor housing facility is located approximately 0.6 miles southwest of active dairy facilities; and an additional farm labor housing facility is located at the intersection of Highway 140 and North Plainsburg Road, approximately 0.9 miles southwest of active dairy facilities (DEIR, pps. 3-6 to 3-7).

D. REGULATORY COMPLIANCE AUDIT

The Merced County Division of Environmental Health (DEH) performed a regulatory compliance audit of the Hillcrest Dairy at the request of the Planning and Community Development Department as part of the CUP evaluation process. The May 24, 2011 dairy inspection evaluated the facility for compliance with the Merced County Animal Confinement Ordinance (ACO) (Merced County Code Chapter 18.48). DEH concluded that overall conditions at the facility were good, with some minor non-compliance issues detailed in a staff report submitted to the project applicant and the Planning and Community Development Department. The project NMP and WMP have been modified to respond to DEH comments (dated September 23, 2011), and DEH has conducted a follow-up inspection to ensure operational compliance. The project applicant has included additional operational and facility modifications as project commitments to improve existing project operations, as outlined below. (DEIR, p. 3-15)

Project Commitments

The proposed project would incorporate several environmental project commitments to improve existing project operations. These environmental commitments will be made conditions of approval of the project. (DEIR, pps. 3-15 to 3-19)

Odors

1. To minimize potential for odor nuisance conditions, within thirty (30) days following project approval, the applicant will prepare an Odor Control Plan for submission and approval by the Merced DEH. Following approval of the Plan, the applicant will implement the approved Plan. The following odor control measures will be included in the Plan:

- Liquid manure utilized for irrigation purposes will be managed so that it does not stand in the application field for more than 24 hours.
- Implement odor control measures as contained in the Plan, which may include, but not be limited to the following:

Ration/ diet manipulation: This approach involves the alteration of feed in order to reduce the volume of substrate available for anaerobic activity. The approach includes reducing the nitrogen content of food, phase feeding, repartitioning agents, improved animal genetics, and various feed additives.

Manure management: Utilize best management practices for manure management, including minimizing the time between excretion and application, and aeration of retention basins.

- Additionally, implement the following additional best management practices:

Manure Collection Areas

- Clean out manure generated at the freestall barns and corrals at a frequency that would minimize odors;
- Keep cattle as dry and clean as possible at all times;
- Scrape manure from the corrals and bedding from the freestall barns and corrals at a frequency that would reduce or minimize odors.

Manure Treatment and Application

- Minimize moisture content of stockpiled manure/retained solids to a level that would reduce the potential for release of odorous compounds during storage;
- Minimally agitate stockpiled manure during loading for off-site transport;
- Mix process water with irrigation water prior to irrigation (dilution rate will be adequate to minimize odor levels and maintain appropriate nutrient content in effluent);
- Clean up manure spills upon occurrence;
- Maintain and operate settling ponds and retention ponds to minimize odor levels.

General

- In the event of odor complaints, implement dust suppression measures to prevent the release of odorous compound-carrying fugitive dust;
- During project operations, the dairy operator/owner will respond to odor complaints confirmed by DEH and take appropriate corrective action.

Biological Resources

2. Within thirty (30) days following project approval, the project applicant will minimize and direct away or shield dairy operations-related lighting from sensitive areas that may be used as potential foraging habitat, such as cropland. 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 night-time predation rates on the dairy and adjacent agricultural fields.

Energy/Greenhouse Gas Emissions

3. The project applicant has recently participated in a lighting replacement program from PG&E under the company's energy management program. The project applicant has implemented all recommended lighting replacement to reach a total reduction of 40 percent in the energy consumption for lighting at the facility. The applicant will maintain these energy reduction measures throughout project operations.

Nuisance Insects

4. Within thirty (30) days following project approval, the project applicant will prepare a vector control plan to meet the requirements of the Animal Confinement Ordinance Chapter 18.48.055 C.8.c. The vector control plan will be submitted to the Merced County Division of Environmental Health for review and approval. The applicant will implement all measures within the approved vector control plan throughout the active life of the dairy. The project applicant will ensure that sanitation measures included in the vector control plan are clearly understood by all employees, fly monitoring is conducted year round, and fly threshold levels are determined to indicate when greater fly control efforts need to be instituted.
5. The project applicant will implement the following operational measures identified in the EIR for the ACO.
 - All confined animal facilities will 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 will 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 will 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 will be repaired or replaced immediately;
 - j. If necessary, flytraps will be set throughout barns at strategic locations. The traps are inspected monthly, or more frequently if necessary, and replaced when saturated with captured flies.
- In addition to fly management practices in the cattle housing and milking areas of dairy facilities, the following sanitation practices will be implemented at animal confinement facilities to control fly populations:
 - a. Dead animals will be stored in a secured area at the dairy facility and off-site rendering plant operators will immediately be notified for pickup of carcasses;
 - b. Residual feed will be removed from infrequently used feeding areas;
 - c. All garbage will be 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 will be removed from the site for off-site disposal or reuse (as feed or soil amendment).
6. The project applicant will include the following operational measures to be implemented during project operations in the vector control plan for mosquitoes required by the Merced County ACO:
 - Owners will be responsible for weed and floatage control.
 - Separator bypass drains must be managed to prevent excessive pond floatage.
 - Solids floating on the surface of ponds and lagoons (not including settling basins) will be removed no less frequently than weekly.
 - Lagoon/Pond-to-field discharges will not stand more than 4 days.
 7. A few fence lines are located within the drainage channel of a drylot pen, which may result in areas of wet manure along fence lines that are not disturbed and compacted by the animals. During the next grading of these drylot pens, the project applicant will move drainage channels entirely outside the drylot pen.
 8. When the fields located south of the active dairy facility are fallow, or when the corn crop is young and still very low to the ground, the project applicant will ensure that all necessary and reasonable measures are implemented to keep nuisance fly activity low to reduce the potential for fly dispersal to Planada.
 9. Currently, manure beneath fence lines is removed when it reaches the height of fence post sleeves. During the summer months when fly activity peaks, the project applicant will remove manure beneath fence lines weekly.

10. Currently, manure separated from wash water is piled on a concrete pad for temporary storage for up to one week before incorporation into wind rows for composting. The project applicant will continue to remove this separated manure pile into windrows at intervals of no more than one week during the summer months.
11. During the summer months when rainfall is limited, the project applicant will repair as necessary the commodity pad drainage that may be compromised by vehicle traffic.

Water Quality

12. Over the course of dairy operations, the project applicant will obtain written agreement from the recipients of manure exported off site for the following:
 - All manure will be applied to cropland at rates and times that are reasonable for the crop, soil, climate, special local situations, and management system. Manure applications will 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 will be maintained on site. No storm drainage that has been in contact with manure will 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 must be protected from pollution by a backflow device or method that is approved by the Division of Environmental Health 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 will 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 will prevent discharge or infiltration of manure constituents to the water body or well.

The project applicant will provide the most recent analysis of the dry manure, in writing, to the manure recipient. The signed agreement between the project applicant and the recipient of manure exported off site will be submitted to the Merced County Division of Environmental Health for review.

13. The project applicant will comply with requirements of the NMP/WMP, and implement applicable CVRWQCB requirements as required by the General Order No. R5-2007-0035 for Existing Milk Cow Dairies, and with all Merced County ACO requirements not superseded by the conditions of the General Order.

14. Thirty (30) days following project approval, all existing water supply wells at the facility site and property will 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 will retain a qualified professional as described in the respective Ordinance to install the required seal or functional equivalent including setback distances of 100 feet from manured areas as required by the CVRWQCB General Order. Documentation of the inspections and seal installations, if any, will be provided to the County Division of Environmental Health.

Hazards

15. The project applicant will file for an Aboveground Storage Tank (AST) and submit a Hazardous Materials Business Plan (HMBP) with the Merced County Division of Environmental Health within thirty (30) days following project approval.

E. PROJECT OBJECTIVES

The objectives of the project applicant 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 applicant 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 and solid manure 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 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. 3-9).

F. DISCRETIONARY ACTIONS

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

- Certify the Environmental Impact Report; and,
- Approve Conditional Use Permit No. CUP10-005.

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

G. MINISTERIAL ACTIONS

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

- A fly and odor control program must be submitted to Merced County Division of Environmental Health to address manure storage issues.
- Filing of a Hazardous Material Business Plan (HMBP), which is required for the storage of any hazardous material stored on site over threshold quantities (55 gallons; 200 cu. ft.; or 500 pounds). Any quantity of hazardous waste generated on site also requires that a HMBP be filed.

V. BACKGROUND

PROJECT HISTORY

The dairy facility was originally constructed in 2002 under Merced County Administrative Permit (AA) 166. The AA 166 permit allowed for 2,050 milking cows plus support stock, to total 3,885 animal units¹. The existing dairy herd is inconsistent with this herd limitation. To bring the existing dairy facility in compliance with Merced County permit requirements, the applicant has submitted an application for issuance of a new Conditional Use Permit (CUP10-005) from the County.

The dairy is currently regulated by the Central Valley Regional Water Quality Control Board (CVRWQCB) under the General Order for Existing Milk Cow Dairies (Order No. R5-2007-0035). Coverage under the General Order for Existing Milk Cow Dairies requires approval and implementation of a Nutrient Management Plan (NMP) for the application of waste to land application areas, and a Waste Management Plan (WMP) to ensure proper compliance with the General Order. As established by the Report of Waste Discharge (ROWD) submitted to the CVRWQCB as required in October 2005, the State permitted herd size for the dairy is 4,750 milk and dry cows combined, with regulatory review required for expansions of 15 percent above this value (above 5,463 milk and dry cows combined)². The current herd size is consistent with the requirements of the General Order, and would continue to be so after obtaining a CUP from Merced County (DEIR, p. 3-7).

¹ An animal unit is a standardized measure of agricultural animals. A 1,000-pound beef cow is the standard measure of an animal unit.

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

CEQA PROCESS AND REQUIREMENTS

On March 7, 2011, Merced County Department of Planning and Community Development issued a Notice of Preparation (NOP) for the Hillcrest Dairy project EIR. The NOP, and subsequent comments on the NOP, identified the following focused list of issue areas to be evaluated in the environmental document:

- Air Quality and Odors
- Biological Resources
- Greenhouse Gas Emissions and Energy Use
- Hazards, Health Risks, and Vectors
- Hydrology and Water Quality
- Land Use Compatibility

All other CEQA Guidelines checklist issue areas were identified to be addressed in the EIR commensurate with their possibility of occurrence. The Draft Hillcrest Dairy project EIR (DEIR) was made available for public and agency review and comment from December 5, 2011 to January 19, 2012. 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 one written comment on the DEIR during the review period.

Subsequent to the receipt of comments on the DEIR, the Planning and Community Development Department prepared a Final EIR that responded to 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 February 2012.

Together, the following documents compose the EIR for the Hillcrest Dairy project:

- DEIR (December 2011)
- FEIR (February 2012)

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 Hillcrest Dairy project EIR, these requirements may be found in the following documents:

Guidelines §15132 Content Requirement	DEIR (12/2011)	FEIR (02/2012)
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 Notice of Preparation (March 7, 2011), 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 December 5, 2011, 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 Hillcrest Dairy 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 45-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 related to the Project and submitted to the County;
- All findings and resolutions adopted by County decision makers in connection with the Project, and all documents cited or referred to therein;
- All reports, studies, memoranda, maps, staff reports, or other planning documents relating to the Project prepared by the County, consultants to the County, and responsible or trustee agencies with respect to the County's compliance with the requirements of CEQA and with respect to the County's actions on the Project;
- All documents submitted to the County by other public agencies or members of the public in connection with the Project, up through the close of the public hearing on February 22, 2012;
- Notice of Public Hearing issued in connection with Planning Commission hearing on the Project, which was issued in February 2012;
- 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 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 Hillcrest Dairy 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 Hillcrest Dairy 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 Hillcrest Dairy 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

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 § 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.

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 implementing the Project. All of the feasible mitigation measures that will avoid or substantially lessen the significant effects of the Hillcrest Dairy project are binding upon the project applicant at the time of approval of the Hillcrest Dairy 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. FINDINGS ON ESTABLISHING THE PROPER “BASELINE” FOR THE PROPOSED DAIRY CUP PROJECT

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 § 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 Hillcrest Dairy project, the applicant is in the process of permitting the existing dairy herd and associated dairy operations. The Planning Commission finds that, in accordance with State CEQA Guidelines § 15125(a), the baseline herd to be used in this environmental analysis is the herd count at the time of NOP preparation, comprising a total of 8,050 animals, including 4,000 milk cows. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

XI. LESS THAN SIGNIFICANT ENVIRONMENTAL IMPACTS

The EIR for the proposed project identified numerous environmental impacts that were found to be less than significant, and therefore do not require mitigation. 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 Impact AQ-1: Compliance with SJVAPCD and ACO rules and regulations related to air quality.* Dairy operations and the Hillcrest Dairy are in substantial compliance with SJVAPCD and ACO Rules and Regulations. This would be a less-than-significant impact (DEIR, pps. 5-15 to 5-16).

2. Less-than-Significant Impact AQ-2: Conflict with or obstruct implementation of the applicable air quality. Implementation of the dairy CUP project would not conflict or obstruct implementation of the SJVAPCD air quality attainment plans. This impact would be less than significant (DEIR, p. 5-16).
3. Less-than-Significant Impact AQ-3: Construction-related emissions. There would be no construction activities associated with the Hillcrest Dairy project and no associated short-term air emissions. Because there would be no construction-related emissions of ozone precursors or fugitive dust and it would not exceed the threshold values used by the SJVAPCD for stationary sources, this would be a less-than-significant impact (DEIR, pps. 5-16 to 5-17).
4. Less-than-Significant Impact AQ-4: Carbon monoxide (CO) emissions from operational equipment and traffic. Operation of equipment used at the Hillcrest Dairy for processing and farming results in the emissions of carbon monoxide; however, because there would be no change in operation with implementation of the dairy CUP project, there would be no increase in emissions of carbon monoxide, and this would be a less-than-significant impact (DEIR, p. 5-17).
5. Less-than-Significant Impact AQ-5: Ozone precursor emissions (Volatile Organic Compounds (VOC)/Reactive Organic Gases (ROG) and Nitrogen Oxides) from dairy operations, farm equipment, and traffic. Dairy operations, farm equipment, and traffic at the Hillcrest Dairy result in ozone precursor emissions; however, because there would be no change in operation with implementation of the dairy CUP project, there would be no increase in ozone precursor emissions, and this would be a less-than-significant impact (DEIR, pps. 5-18 to 5-19).
6. Less-than-Significant Impact AQ-6: PM₁₀ and PM_{2.5} emissions from fugitive dust during project operations. Operations from the Hillcrest Dairy 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. However, because there would be no change in operation with implementation of the dairy CUP project, there would be no increase in fugitive dust emissions, and pollutant concentrations would not exceed SJVAPCD emissions thresholds. This would be a less-than-significant impact (DEIR, pps. 5-19 to 5-20).
7. Less-than-Significant Impact AQ-7: Hazardous pollutant emissions from project operations and impacts to ambient air quality. The dairy is a potential source of hazardous air pollutants and impacts to ambient air quality. However, since there would be no change in operations with the dairy CUP project and no increase in air emissions, this project would not result in an increase in any toxic air emissions and would not change health risks or ambient air quality. This would be a less-than-significant impact (DEIR, pps. 5-20 to 5-21).
8. Less-than-Significant Impact AQ-8: Adverse odor from project operations. Operations and manure management at the Hillcrest Dairy may emit odors that may be bothersome to rural residents or residents located in the community of Planada. The dairy CUP project would not increase the number of dairy cows or modify existing active dairy facilities, and would not thereby increase the potential for odors. This would be a less-than-significant impact (DEIR, pps. 5-21 to 5-24).

9. Less-than-Significant Impact AQ-9: Involve the construction of a sensitive receptor located within one mile of an existing substantial point source emitter. Implementation of the dairy CUP project would not involve the construction of a sensitive receptor located within one mile of an existing substantial point source emitter. This impact would be less than significant (DEIR, p. 5-24).
10. Less-than-Significant Impact BIO-1: Loss of special-status species or wildlife habitat. Implementation of the proposed Hillcrest Dairy project would not result in substantial adverse effects to any species identified as a candidate, sensitive, or special-status species or result in the loss or degradation of wildlife habitat. This would be a less-than-significant impact (DEIR, pps. 6-19 to 6-20).
11. Less-than-Significant Impact BIO-2: Loss and/or degradation of riparian habitat or sensitive natural community. Implementation of the dairy CUP project would not result in the loss of riparian habitat, since no construction or project modifications would occur. This would be a less-than-significant impact (DEIR, p. 6-20).
12. Less-than-Significant Impact BIO-3: Loss and/or modification to wetlands. Implementation of the dairy CUP project would not result in substantial adverse effects to wetlands, since no construction or project modifications would occur, and there are no wetlands on site. This would be a less-than-significant impact (DEIR, p. 6-20).
13. Less-than-Significant Impact BIO-4: Interference with animal migratory routes and night-active wildlife. Implementation of the proposed Hillcrest Dairy project would not result in increased interference with animal migratory routes or night-active wildlife since no construction or change in operations would occur. This would be a less-than-significant impact (DEIR, p. 6-21).
14. Less-than-Significant Impact BIO-5: Conflict with local policies or ordinances protecting biological resources or the provisions of a habitat conservation plan. Implementation of the proposed Hillcrest Dairy project would not conflict with local policies protecting biological resources or the provisions of a habitat conservation plan. This would be a less-than-significant impact (DEIR, p. 6-21).
15. Less-than-Significant Impact BIO-6: Potential selenium and heavy metals effects to biological resources. The continued use of supplemented feeds at the Hillcrest Dairy could result in the introduction of heavy metals into the environment by the application of dairy waste to agricultural fields and retention in ponds. The dairy CUP project would not increase the number of dairy cows and associated dairy waste, and would not thereby increase the potential heavy metal contamination. This would be a less-than-significant impact (DEIR, pps. 6-21 to 6-22).
16. Less-than-Significant Impact GHG-1: Generation of greenhouse gas emissions from project operation. Operations at the Hillcrest Dairy result in greenhouse gas emissions from direct and indirect sources; however, because there would be no change in operation with implementation of the dairy CUP project, there would be no increase in greenhouse gas emissions, and this would be a less-than-significant impact (DEIR, pps. 7-16 to 7-17).

17. Less-than-Significant Impact GHG-2: Wasteful or inefficient use of energy. Operations at the Hillcrest Dairy result in the use of electricity, natural gas, and other fossil fuels. However, because there would be no change in operation with implementation of the dairy CUP project, there would be no increase in wasteful or inefficient use of energy, and this would be a less-than-significant impact (DEIR, p. 7-18).
18. Less-than-Significant Impact HAZ-1: Create significant nuisance conditions due to flies. Operations and manure management at the Hillcrest Dairy could result in the generation of flies that can adversely affect animal and human health, and become a nuisance for other adjacent land uses; however, there have been no nuisance fly complaints for the dairy. The dairy CUP project would not increase the number or dairy cows or modify existing active dairy facilities and operations, and would not thereby increase the potential for nuisance flies. This would be a less-than-significant impact (DEIR, pps. 8-11 to 8-13).
19. Less-than-Significant Impact HAZ-2: Create significant nuisance conditions due to mosquitoes. Operations at the Hillcrest Dairy could provide mosquito-breeding habitat. However, the dairy CUP project would not modify existing active dairy facilities and operations, and would not thereby increase the potential for mosquitoes. This would be a less-than-significant impact (DEIR, pps. 8-13 to 8-14).
20. Less-than-Significant Impact HAZ-3: Contamination from manure pathogens during project operations. Operations at the Hillcrest Dairy include export of dry manure and associated pathogens and residual contaminants, potentially causing adverse human health impacts. However, the dairy CUP project would not increase the number or dairy cows or modify existing active dairy facilities and operations, including export of dry manure, and would not thereby increase the potential for contamination from manure pathogens and other contaminants off site. This would be a less-than-significant impact (DEIR, pps. 8-14 to 8-15).
21. Less-than-Significant Impact HAZ-4: Routine use of hazardous materials. Operations at the Hillcrest Dairy include the routine use of hazardous materials. However, the dairy CUP project would not increase the number or dairy cows or modify existing active dairy facilities and operations, including use of hazardous materials, and would not thereby increase the potential for release of hazardous materials into the environment. This would be a less-than-significant impact (DEIR, p. 8-16).
22. Less-than-Significant Impact HAZ-5: Hazardous materials near an existing school. Operations at the Hillcrest Dairy would not result in the release of hazardous materials within 0.25 miles of an existing school. This would be a less-than-significant impact (DEIR, p. 8-16).
23. Less-than-Significant Impact HAZ-6: Hazardous waste site. The Hillcrest Dairy is not listed as a hazardous waste site pursuant to Government Code §65962. This would be a less-than-significant impact (DEIR, p. 8-17).
24. Less-than-Significant HAZ-7: Interfere with emergency response. The Hillcrest Dairy does not interfere with emergency response, and the dairy CUP project would not result in the modification or blockage of any evacuation route. This would be a less-than-significant impact (DEIR, p. 8-17).

25. Less-than-Significant Impact HAZ-8: Risks from wildland fire. The Hillcrest Dairy site is subject to low risk from wildland fire, and there is adequate fire protection in the area. This would be a less-than-significant impact (DEIR, p. 8-17).
26. Less-than-Significant Impact HYD-2: Degradation of surface water or groundwater quality from construction activities at the Hillcrest Dairy. There would be no construction activities associated with the Hillcrest Dairy project; therefore, there would be no associated short-term impact activities that could affect surface water quality or construction disturbance pathways to affect surface water or groundwater quality. This would be a less-than-significant impact (DEIR, p. 9-22).
27. Less-than-Significant Impact HYD-3: Degradation of surface water quality from operations at the Hillcrest Dairy. Existing operations at the Hillcrest Dairy may result in degradation of surface water quality. However, the dairy CUP project would not increase the number or dairy cows or modify existing active dairy facilities and operations, and would not thereby increase the potential for degradation of surface water quality. This would be a less-than-significant impact (DEIR, pps. 9-23 to 9-24).
28. Less-than-Significant Impact HYD-4: Groundwater contamination from operations at the Hillcrest Dairy. Existing operations at the Hillcrest Dairy may affect underlying groundwater quality with nutrients, salts, and other compounds; however, because there would be no change in operations with implementation of the dairy CUP project, there would be no increase in risk of release of contaminants to groundwater, and this would be a less-than-significant impact (DEIR, pps. 9-24 to 9-25).
29. Less-than-Significant Impact HYD-5: Hillcrest Dairy water supply pathways for pollutant migration. Existing water supply wells on site and adjacent to the proposed dairy may represent preferred pathways for pollutant migration to groundwater. However, the dairy CUP project would not increase the number of dairy cows or modify existing active dairy facilities and operations, and would not thereby increase the potential for groundwater contamination from water supply wells with implementation of the dairy CUP project. This would be a less-than-significant impact (DEIR, p. 9-26).
30. Less-than-Significant Impact HYD-6: Depletion of groundwater resources from operation of the Hillcrest Dairy. There would be no increase in water use at the Hillcrest Dairy or of the amount of groundwater extracted to supplement fresh surface water sources (canal) or on-site precipitation, runoff, or wastewater with implementation of the dairy CUP project. Therefore, this would be a less-than-significant impact (DEIR, pps. 9-26 to 9-27).
31. Less-than-Significant Impact HYD-7: Exposure to flood risks and degradation of surface water quality. The project site is located in an area of minimal flood hazards and 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, causing impacts to surface water quality. Since there would be no increase in impacts to surface water due to flooding with implementation of the dairy CUP project, this would be a less-than-significant impact (DEIR, p. 9-27 to 9-28).

32. Less-than-Significant Impact HYD-8: Increased risk of Hillcrest Dairy inundation by seiche, tsunami, or mudflow. Existing water supply wells on site and adjacent to the proposed dairy may represent preferred pathways for pollutant migration to groundwater. However, the dairy CUP project would not increase the number of dairy cows or modify existing active dairy facilities and operations, and would not thereby increase the potential for groundwater contamination from water supply wells with implementation of the dairy CUP project. This would be a less-than-significant impact (DEIR, p. 9-28).
33. Less-than-Significant Impact HYD-9: Modification of surface water drainage patterns, runoff, or erosion and flooding. The Hillcrest Dairy project would not modify surface water drainage patterns, and would not cause localized off-site migration of runoff, erosion, and/or flooding. This would be a less-than-significant impact (DEIR, p. 9-28).
34. Less-than-Significant Impact LU-1: Physically divide an established community. The Hillcrest Dairy is an existing facility located in an agricultural area, and would not physically divide an established community. This would be a less-than-significant impact (DEIR, p. 10-15).
35. Less-than-Significant Impact LU-2: Consistency with Merced County Zoning Code. The Hillcrest Dairy CUP project would be consistent with the Merced County Zoning Code. Because there would be no change in project facilities or operations, and because the dairy was approved prior to approval of the revised ACO, the proposed project would comply with land use regulation exercised by Merced County under Zoning Code provisions, and this would be considered a less-than-significant impact (DEIR, p. 10-16).
36. Less-than-Significant Impact LU-3: Land use compatibility with existing off-site residential uses adjacent to the project area. The Hillcrest Dairy could be incompatible with existing off-site residences due to active dairy facilities located in close proximity to these uses. However, the dairy CUP project would not increase the number of dairy cows or modify existing active dairy facilities, and would not thereby increase the potential for incompatible uses. This would be a less-than-significant impact (DEIR, pps. 10-17 to 10-18).
37. Less-than-Significant Impact: Aesthetics. The project site is currently in agricultural use (agricultural crops and an existing dairy) and surrounded by agricultural uses and associated residences. Implementation of the dairy CUP project would not result in any new construction or changes to the existing dairy operations. Because no construction or project modifications would occur, there would be no change to the scenic environment, and no impact would result with implementation of the dairy CUP project (DEIR, pps. 11-1 to 11-2).
38. Less-than-Significant Impact: Agriculture and Forest Resources. The project site is currently in agricultural use and surrounded by similar agricultural uses and associated residences. The dairy CUP project would represent a continuation of the currently existing agricultural uses, and no impact would result (DEIR, pps. 11-2 to 11-4).
39. Less-than-Significant Impact: Cultural Resources. The project site is actively cultivated for agricultural use. Since no new construction or grading would occur with the dairy CUP project, and there are no known resources there would be little likelihood of disturbing cultural remains, and no impact would result with project implementation (DEIR, pps. 11-4 to 11-5).

40. *Less-than-Significant Impact: Geology, Soils, and Mineral Resources.* Since no new construction would occur with the dairy CUP project, no significant risks from geologic hazards would occur as a result of the dairy CUP project, and no impact would result with project implementation (DEIR, pps. 11-5 to 11-7).
41. *Less-than-Significant Impact: Noise.* Because no construction or change in operations would occur with the dairy CUP project, there would be no increase in noise levels, and no impact would result (DEIR, pps. 11-7 to 11-8).
42. *Less-than-Significant Impact: Population and Housing.* There would be no increase in employees with implementation of the project. The dairy CUP project would not result in direct or indirect growth inducement, and no impact would result (DEIR, pps. 11-8 to 11-9).
43. *Less-than-Significant Impact: Public Services.* Because no new residences are to be constructed on site, and no new employees would be required, no increase in population is expected to result from the dairy CUP project, and no increases in the demands for public services requiring the construction of new facilities are expected. This, coupled with the lack of population increase, indicates that no increased demands for services would be expected. No impacts to public services would result with project (DEIR, pps. 11-9 to 11-10).
44. *Less-than-Significant Impact: Recreation.* No increase in population would occur with implementation of the project. Thus, there would be no increase in the demand for neighborhood or regional parks or other recreational facilities that would require the construction of new facilities or modification of existing recreation resources. No existing public recreational resources are located on the project site or in the vicinity. No adverse effect would occur, and no mitigation would be necessary (DEIR, pps. 11-10).
45. *Less-than-Significant Impact: Transportation/Traffic.* There would be no increase in daily trips with the dairy CUP project. The dairy CUP project would not conflict with any congestion management programs or standards. No impact would result with project implementation (DEIR, pps. 11-11 to 11-12).
46. *Less-than-Significant Impact: Utilities and Service Systems.* Because confined animal facilities, including dairies, would not require additional public facilities beyond those typically provided in agricultural areas, and because the dairy CUP project does not entail an increase in dairy herd or facilities, the dairy CUP project would not be expected to increase the demand for public facilities beyond the levels provided and planned for by public utilities (DEIR, pps. 11-12 to 11-13).

47. *Less-than-Significant Impact: Growth Inducement.* Implementation of the Hillcrest Dairy project would not result in any direct growth inducement. The proposed Hillcrest Dairy 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, and the proposed dairy CUP project would not result in a change in operations or increase in the dairy herd, the existing 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. Thus, implementation of the Hillcrest Dairy project would not serve to reduce an infrastructure barrier to growth. The proposed dairy project is consistent with County land use plans, and does not include any changes in zoning or land use designations that would directly increase the potential for growth (DEIR, pps. 13-5 to 13-6).
48. *Less-than-Significant Impact: Irreversible Commitment of Resources.* Implementation of the proposed project would not result in the construction of any additional dairy facilities. Since there would be no construction or change in operations with the proposed dairy CUP project, implementation of the proposed project would not require either direct or indirect expenditures of energy. There would be no incremental increase in the depletion of resources, including renewable and non-renewable resources, and no irreversible commitment of resources (DEIR, p. 13-9).
49. *Less-than-Significant Impact: Potential Environmental Damage from Accidents.* The project proposes no change in existing operations, and its continued operation would not be expected to cause environmental accidents that would affect other areas (DEIR, p. 13-9).

XII. SIGNIFICANT EFFECTS AND MITIGATION MEASURES

The DEIR identified one significant environmental effect (or “impact”) that the Hillcrest Dairy project could cause. This Section XII presents in greater detail the Planning Commission’s findings with respect to the environmental effects of the Project.

A. HYDROLOGY AND WATER QUALITY

Hydrology and Water Quality setting information for the Hillcrest Dairy project is set forth in pages 9-1 through 9-19 of the DEIR and DEIR Appendix I. The impact evaluation criteria used in assessing impacts on hydrology and water quality as a result of implementing the Project are set forth in the DEIR on page 9-20. This information is incorporated into these findings as though fully set forth herein. Considering the above information, and the potential impacts identified in the DEIR, the findings of the Planning Commission are as follows.

Impact HYD-1: Compliance with the CVRWQCB General Order and ACO rules and regulations related to water quality (DEIR, pps. 9-21 to 9-22)

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

Explanation:

On May 24, 2011, the Merced County DEH completed a facility inspection of the Hillcrest Dairy to evaluate on-site compliance conditions relative to the ACO. According to the inspection staff report, the facilities and operations appeared generally good, but some non-compliance issues were noted that could have implications for water quality. The project NMP and WMP have been modified to respond to DEH comments (dated September 2011), and DEH has conducted a follow-up inspection to ensure operational compliance. However, existing operations are non-compliant with ACO Section 18.48.050 E, which prohibit the discharge of any water that has come into contact with manure to any surface water. Field 24 is currently designed to drain via lift pump into the Merced Irrigation District Canal, and Fields 25 and 26 use gravity drainage into Miles Creek. The project applicant has approved funding from the Natural Resources Conservation Service (NRCS) to install a tailwater recovery system for return to the top of fields for reuse rather than discharging into surface waters; however, the projected installation of the tailwater system is early 2012, with the system becoming fully operational prior to July 2012 (DEIR, p. 9-21).

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 conflict with the CVRWQCB General Order and ACO rules related to water quality is expected to be significant since the Hillcrest Dairy project is not compliant with CVRWQCB and ACO rules and regulations. The Planning Commission has been presented with no evidence to contradict its conclusion in this regard.

Proposed Mitigation

Mitigation Measure HYD-1:

The project operator shall cease applying manure to Fields 24, 25, and 26 immediately following project approval to prevent discharge to surface waters. Solid manure that would otherwise be applied to these fields shall be exported off site to maintain nutrient balance as reported in the 2011 NMP for the Hillcrest Dairy. Following installation of the tailwater recovery system for these fields and prior to the dairy operator resuming manure application on these fields, DEH shall inspect the adequacy of the return system.

Findings on Proposed Mitigation

The Planning Commission finds that the above-stated mitigation measure is made a condition of approval of the Hillcrest Dairy 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 Hillcrest Dairy project by requiring corrective actions in order to comply with CVRWQCB and ACO rules and regulations. 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. CUMULATIVE IMPACTS

The assessment of cumulative effects for the Hillcrest Dairy 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 Hillcrest Dairy 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 Hillcrest Dairy 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 Hillcrest Dairy project, and would continue to apply after approval of the currently requested actions. Therefore, the ACO EIR is related to the Hillcrest Dairy 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 Hillcrest Dairy 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 Hillcrest Dairy 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 ACO FEIR, the findings of the Planning Commission are as follows:

Cumulative Impacts (Hillcrest Dairy Project DEIR, pps. 13-2 to 13-5; ACO FEIR, pps. 4-123 through 4-139)

Finding: These would be less-than-significant impacts

Explanation:

Air Quality. Merced County has adopted the mitigation measures identified for this cumulative impact in the ACO EIR, and applied the measures to the Hillcrest Dairy project, where applicable. Because there would be no construction or changes in operations, no construction-related emissions of ozone precursors or fugitive dust would occur, and this would be a less-than-significant impact. Similarly, because there would be no change in operation with implementation of the dairy CUP project, there would be no increase in air emissions, including greenhouse gas emissions, and a less-than-significant impact would result. The Planning Commission specifically finds that while the Air Basin is in nonattainment for state AAQS for PM₁₀ and for both federal and state ozone standards, because there would be no project-level impact to air quality, there would be no cumulatively considerable contribution to this significant and unavoidable effect. Thus, the cumulative impact of the Hillcrest Dairy on air quality would be less than significant (ACO FEIR, pps. 4-123 to 4-129 and Hillcrest Dairy Project DEIR, pps. 13-2 to 13-3).

Biological Resources: Merced County has adopted the mitigation measures identified for this cumulative impact in the ACO EIR, and applied the measures to the Hillcrest Dairy project, where applicable. The entire project site previously has been converted to flood-irrigated cropland and agricultural facilities, and there is no remaining native habitat on the site. The Planning Commission specifically finds that because implementation of the dairy CUP project would not result in the conversion of any additional habitat since no construction or change in operations would occur, impacts to biological resources were determined less than significant, and there would be no cumulatively considerable contribution to this significant and unavoidable effect. Thus, the cumulative impact of the Hillcrest Dairy on biological resources would be less than significant (ACO FEIR, pps. 4-129 to 130 and Hillcrest Dairy Project DEIR, p. 13-3).

Cultural Resources. Merced County has adopted the mitigation measures identified for this cumulative impact in the ACO EIR, and employed the measures on the Hillcrest Dairy 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 since no new construction or grading would occur with the dairy CUP project, there would be no likelihood of destroying unknown cultural resources, the cultural resource effects of the Hillcrest Dairy 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 Hillcrest Dairy project on cultural resources would be less than significant (ACO FEIR, p. 4-131 and Hillcrest Dairy Project DEIR, p. 13-3).

Geological Resources: 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 Hillcrest Dairy project where applicable. The Planning Commission specifically finds that because of the operation of this measure, the fact that the Hillcrest Dairy 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 Hillcrest Dairy project would be less than significant, implementation of the dairy CUP project would not make a cumulatively considerable contribution to this less-than-significant cumulative effect. Thus, the cumulative impact of the Hillcrest Dairy project on geological resources would be less than significant (ACO FEIR, p. 4-131 and Hillcrest Dairy Project DEIR, p. 13-3).

Hazards: Merced County has adopted the mitigation measures identified for this cumulative impact in the ACO EIR, and employed the measures on the Hillcrest Dairy project where applicable. The dairy CUP project would not increase the number or dairy cows or modify existing active dairy facilities and operations, and would not thereby increase the potential for nuisance insect intensity or frequency, and the nuisance effects of the Hillcrest Dairy project would be less than significant. The Planning Commission specifically finds that because hazard effects as evaluated in the ACO EIR are considered a localized issue, and the dairy CUP project would not increase the number of dairy cows or modify existing active dairy facilities and operations, including use of hazardous materials, implementation of the dairy CUP project would not make a cumulatively considerable contribution to this less-than-significant cumulative effect. Thus, the cumulative impact of the Hillcrest Dairy project due to hazards would be less than significant, and no mitigation would be necessary (ACO FEIR, p. 4-131 and Hillcrest Dairy Project DEIR, p. 13-4).

Hydrology and Water Quality: Merced County has adopted the mitigation measures identified for this cumulative impact in the ACO EIR, and employed the measures on the Hillcrest Dairy project, where applicable. The Planning Commission specifically finds that with implementation of water quality mitigation measures, because the surface water and groundwater effects of the Hillcrest Dairy would be less than significant, implementation of the dairy CUP project would not make a cumulatively considerable contribution to these water quality significant and unavoidable effects. Thus, the cumulative impact of the Hillcrest Dairy on surface water and groundwater quality would be less than significant, and no mitigation would be necessary (ACO FEIR, pps. 4-131 to 4-137 and Hillcrest Dairy Project DEIR, p. 13-4).

Land Use: Adverse effects to existing rural residences adjacent to existing animal confinement facilities were identified as significant and unavoidable in the ACO EIR. Merced County has adopted the mitigation measures identified for this cumulative impact in the ACO EIR, and applied the measures to the Hillcrest Dairy project, where applicable. The Planning Commission specifically finds that adverse effects to existing rural residences adjacent to existing animal confinement facilities were identified as less than significant since the dairy CUP project would not increase the number of dairy cows or modify existing active dairy facilities, and would not thereby increase the potential for incompatible uses. For these reasons, implementation of the dairy CUP project would not make a cumulatively considerable contribution to this significant cumulative effect, and the cumulative impact of the Hillcrest Dairy project to land use would be less than significant (ACO FEIR, p. 4-137 and Hillcrest Dairy Project DEIR, p. 13-4).

Mineral Resources: 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 Hillcrest Dairy project where applicable. The Planning Commission specifically finds that because the mineral resource effects of the Hillcrest Dairy 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 Hillcrest Dairy project on mineral resources would be less than significant (ACO FEIR, p. 4-137 and Hillcrest Dairy Project DEIR, p. 13-4).

Noise: 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 Hillcrest Dairy project where applicable. The Planning Commission specifically finds that because the noise effects of the Hillcrest Dairy project would be less than significant, implementation of the dairy CUP project would not make a cumulatively considerable contribution to this less-than-significant cumulative effect. Thus, the cumulative impact of the Hillcrest Dairy project on noise would be less than significant (ACO FEIR, p. 4-137 and Hillcrest Dairy Project DEIR, pps. 13-4 to 13-5).

Transportation and Circulation: Potential adverse effects to roadway integrity were identified in the ACO EIR as a significant cumulative impact for areas outside of Merced County. Merced County has adopted the mitigation measures identified for this cumulative impact in the ACO EIR, and applied the measures to the Hillcrest Dairy project, where applicable. North Hayden Road, a county roadway, serves the project site. The Merced County Planning Department will include appropriate conditions of approval to maintain adequate roadways as required by the Public Works Department, Roads Division. The Planning Commission specifically finds that the dairy CUP project would not result in additional truck trips from existing conditions, and would not result in increased deterioration to roadways from that currently occurring, and no impact would result with project implementation. Implementation of the dairy CUP project would not make a cumulatively considerable contribution to this significant and unavoidable effect (ACO FEIR, pps. 4-138 to 4-139 and Hillcrest Dairy Project DEIR, p. 13-5).

Utilities and Service Systems: 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 Hillcrest Dairy project where applicable. The Planning Commission specifically finds that because the utilities and services effects of the Hillcrest Dairy project would be less than significant, implementation of the dairy CUP project would not make a cumulatively considerable contribution to this significant cumulative effect. Thus, the cumulative impact of the Hillcrest Dairy project on utilities and services would be less than significant (ACO FEIR, p. 4-137 and Hillcrest Dairy Project DEIR, p. 13-5).

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 of Supervisors found that the potential cumulative impacts are expected to be less than significant with implementation of mitigation identified by the Board of Supervisors. For those environmental topics listed above that could be reduced by implementation of mitigation adopted by the Board of Supervisors, or for which no significant effect was identified, the contribution of confined animal facility development in Merced County, including the Hillcrest Dairy project, is not expected to be cumulatively considerable because of the requirements of the Animal Confinement Ordinance and mitigation measures adopted by the Board of Supervisors in its certification of the Animal Confinement Ordinance Revisions EIR and approval of the revised Animal Confinement Ordinance. The findings of the Board of Supervisors 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 Hillcrest Dairy project is expected to not be cumulatively considerable because the Hillcrest Dairy 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 Hillcrest Dairy project to cumulative 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.

XIII. PROJECT ALTERNATIVES

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

The detailed discussion in Section XII demonstrates that all 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. There would be no significant and unavoidable impacts.

The County can fully satisfy its CEQA obligations by determining whether any alternatives identified in the EIR are both feasible and environmentally superior with respect to these impacts (Laurel Hills, *supra*, 83 Cal.App.3d at pp. 520-521 and pp. 526-527); Kings County Farm Bureau v. City of Hanford, *supra*, 221 Cal.App.3d at pp. 730-731; and Laurel Heights I, *supra*, 47 Cal.3d at pp. 400-403; see also 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 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 applicant's objectives for the Project.

The County's review of project alternatives is guided primarily by the need to reduce potential impacts associated with the Project, while still achieving the basic objectives of the Project. As set forth by the project applicant, 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 applicant 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 and solid manure 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 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. 3-9).

The EIR identified and evaluated one development alternative and also evaluated the environmental impacts of the No Project alternative. The potentially feasible alternative was analyzed in relation to the objectives of the Project and in relation to its 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 Hillcrest Dairy, as well as expected agricultural development at the site under the current zoning requirements (DEIR, p. 12-1).

Under the No Project Alternative, the existing dairy and agricultural operations currently developed on the project site would continue. Without approval of the Conditional Use Permit (CUP), the dairy would continue to be non-compliant with Merced County permit requirements. Further, the environmental commitments included by the project applicant as part of the project would not be implemented. The existing herd size of 8,050 animals, including approximately 4,000 milk cows, 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. 12-1).

Evaluation of Alternative 1

The No Project Alternative would increase the magnitude of anticipated environmental impacts associated with the proposed project because the environmental commitments included as part of the project by the project applicant would not be implemented. Based on the foregoing, the No Project Alternative would result in more environmental effects than the proposed Hillcrest Dairy project (DEIR, pps. 12-1 to 12-4).

Implementation of the No Project Alternative would not fully meet the following goal of the project applicant in proposing the Hillcrest Dairy project since the existing operations would not be compliant with Merced County permit requirements.

- To maintain a modern, efficient, and competitive dairy operation that operates in full compliance with applicable county, state, and federal laws and regulations (*no Merced County CUP would be obtained for existing operations*) (DEIR, p. 12-4).

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 applicant for pursuing the Hillcrest Dairy project.

The basis for the foregoing determination can be found in Section IV of these Findings and Section 3.2 of the DEIR dated December 2011 regarding the applicant's Project objectives, and pages 12-1 through 12-4 of the DEIR dated December 2011 regarding the environmental effects of the Alternative.

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

B. ALTERNATIVE 2 – COUNTY PERMIT COMPLIANT ALTERNATIVE

Definition of Alternative 2

Under the County Permit Compliant Alternative, the dairy herd would be reduced from existing numbers to 2,050 milking cows plus support stock to total 3,885 animal units³ as authorized under Merced County Administrative Permit 166. All existing dairy facilities would remain, though underutilized. With the reduction in herd size, the following would result: a reduction in the amount of manure generated; fewer truck trips since manure export and commodity deliveries would be reduced; a reduction in the number of workers employed at the dairy site; decreased potential for odors, nuisance flies and mosquitoes, and associated land use compatibility issues. While there would be a reduced nutrient load in the animal housing area and wastewater storage ponds, application of fertilizers on agricultural fields would remain the same as the proposed project with the exception that commercial fertilizers would be substituted for manure application (DEIR, pps. 12-4 to 12-7).

Evaluation of Alternative 2

The County Permit Compliant Alternative would decrease the magnitude of several environmental impacts associated with the proposed project. However, because the environmental commitments included as part of the project by the project applicant would not be implemented, Alternative 2 would also increase the magnitude of several environmental impacts. Based on the foregoing, the County Permit Compliant Alternative would result in similar, though slightly fewer environmental effects than the proposed Hillcrest Dairy project (DEIR, p. 12-5).

³ An animal unit is a standardized measure of agricultural animals. A 1,000-pound beef cow is the standard measure of an animal unit.

Implementation of the County Permit Compliant Alternative would not fully meet the following goals of the project applicant in proposing the Hillcrest Dairy project since it would require reduction of the existing herd and the economic return on investment would 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 (*while the dairy herd would be compliant with Merced County permit requirements, a reduced herd size would make it difficult to maintain competitive operations.*)
- 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 and solid manure from dairy operations, which in turn reduces the need for imported fertilizers (*a reduced herd size would not 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 (*a reduced herd size would not generate as much dry manure to be land applied or sold as a commodity.*)
- 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 (*with a reduced herd size, fewer employees may be required under this alternative.*) (DEIR, p. 12-8)

Finding of Feasibility on Alternative 2

The Merced County Planning Commission rejects Alternative 2, County Permit Compliant 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 County Permit Compliant Alternative is rejected as infeasible because it does not fully advance the adopted Project objectives of the project applicant for pursuing the Hillcrest Dairy project.

The basis for the foregoing determination can be found in Section IV of these Findings and Section 3.2 of the DEIR dated December 2011 regarding the applicant's Project objectives, and pages 12-5 through 12-7 of the DEIR dated December 2011 regarding the environmental effects of the Alternative.

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