



**RESOURCE
MANAGEMENT AGENCY
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

ALLEN ISHIDA
District One

CONNIE CONWAY
District Two

PHILLIP A. COX
District Three

J. STEVEN WORTHLEY
District Four

MIKE ENNIS
District Five

AGENDA DATE: March 20, 2007

Public Hearing Required	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Published Notice Required	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Advertised Published Notice	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Meet & Confer Required	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Electronic file(s) has been sent	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Personnel Resolution attached	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Resolution, Ordinance or Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s) Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>			
CONTACT PERSON: Celeste Perez PHONE: 559-733-6291			

SUBJECT: Continued Public Hearing (public testimony is closed) to consider Special Use Permit No. PSP 96-072 to construct and operate two dairies and a waiver of the \$300 appeal fee.

REQUEST(S):

That the Board of Supervisors:

- 1) Approve a waiver of the \$300 appeal filing fee,
- 2) Certify the Environmental Impact Report (EIR) for the project as being in compliance with the California Environmental Quality Act (CEQA),
- 3) Adopt a mitigation monitoring plan and a statement of overriding considerations,
- 4) Adopt findings and approve Special Use Permit No. PSP 96-072, subject to conditions, and
- 5) Direct the Clerk of the Board of Supervisors to return the Notice of Determination to the Resource Management Agency for future filing with the County Clerk.

SUMMARY:

Special Use Permit No. PSP 96-072 was requested by Sam Etchegaray, P.O. Box 964 Visalia, CA 93279 (Agent: David R. Albers) for establishment of two dairies in the AE-40 (Exclusive Agricultural - 40 acre minimum) Zone: the Earlimart Ranch

SUBJECT: Continued Public Hearing PSP 96-072
DATE: March 20, 2007

Dairy facilities to be located on 160 acres in the northeast quarter of Section 3 (APN 333-180-01) and house 5,715 animal units (3,500 Holstein milk cows plus support stock) and the Phillips Ranch Dairy facilities on 160 acres approximately one mile to the west in the northern half of Section 33 (APN 313-030-01, 02) to contain 6,535 animal units (4,000 Holstein milk cows plus support stock) on a 2,692-acre project site. The remaining acreage, will remain in its current agricultural production and available for irrigation with reclaimed dairy wastewater. The subject site is located east of State Highway 43 and south of Avenue 56, northeast of Allensworth.

On December 5, 2006, your Board tentatively approved PSP 96-072, closed the public testimony and continued the public hearing to March 20, 2007 for staff to prepare findings and a resolution for certification of the EIR and approval of the special use permit.

FISCAL IMPACT/FINANCING:

None

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

The County's five year strategic plan includes the Economic Well-Being Initiative. The approval of Special Use Permit No. PSP 96-072 helps fulfill this initiative by continuing to protect the County's agriculture-based economy.

ALTERNATIVES:

N/A

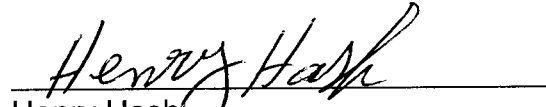
INVOLVEMENT OF OTHER DEPARTMENTS OR AGENCIES:

County Counsel, Clinton Sims

SUBJECT: Continued Public Hearing PSP 96-072
DATE: March 20, 2007

ADMINISTRATIVE SIGN-OFF:


George Finney
Assistant Director, Planning


Henry Hash
Director

cc: Auditor/Controller
County Counsel
County Administrative Office (2)
Sam and Suzanne Etchegaray, P.O. Box 964, Visalia, CA 93279
David R. Albers, Inc., 200 New Stine Road, Suite 220, Bakersfield, CA 93309
Quad-Knopf, Inc., Harry Tow

Attachment(s)

NOTICE OF DETERMINATION

TO: Tulare County Clerk
Room 105, Courthouse
Visalia, CA 93291

FROM: Tulare Co. Resource Mgmt Agency
5961 S. Mooney Blvd.
Visalia, CA 93277-9394

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resource Code.

Project Title/Case File No. PSP 96-072

Applicant: Etchegaray Dairy
Address: PO Box 964
Visalia, CA 93279

State Clearinghouse No. (if any): 2004031051

Lead Agency: Tulare County Resource Management Agency

Staff Contact Person: Beverly Cates

Telephone Number: 733-6291

Project Location: East side of State Highway 43, south of Avenue 56, approximately 3.5 miles west of Earlimart and north of Allensworth.

Project Description: A Special Use Permit to establish two new dairies in the AE-40 (Exclusive Agricultural – 40 acre minimum) Zone.

This is to advise that the TULARE COUNTY BOARD OF SUPERVISORS has approved the above described project on March 20, 2007 and has made the following determinations regarding the above described project:

1. The project (X) will () will not have a significant effect on the environment
2. (X) An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.

() A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.

The EIR or Negative Declaration and record of project approval may be examined at:
5961 S. Mooney Blvd., Visalia, California 93277-9394

3. Mitigation measures (X) were, () were not, made a condition of the approval of the project.
4. A Statement of Overriding Considerations (X) was, () was not, adopted for the project.

() COFE Attached
(X) D.F.& G. Fees Req'd
(X) E.I.R.
() N.D.

By: _____
Tulare County Board of Supervisors

Filed with the Tulare County Clerk on _____, 2007.

cc: Calif. Dept. of Fish & Game, 1416 Ninth Street, 12th Floor, Sacramento, CA 95814

Note: Authority cited: Section 21083, Public Resource Code; Reference: Sections 21108, 21152 and 21167, Public Resource Code.

BEFORE THE BOARD OF SUPERVISORS COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER OF A CONTINUED PUBLIC)
HEARING (PUBLIC TESTIMONY IS CLOSED)) RESOLUTION NO. _____
TO CONSIDER SPECIAL USE PERMIT)
NO. PSP 96-072 TO CONSTRUCT AND)
OPERATE TWO DAIRIES AND A WAIVER)
OF THE \$300 APPEAL FEE)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD ON MARCH 20,
2007, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: C. BRIAN HADDIX
COUNTY ADMINISTRATIVE OFFICER
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

- 1) Approved a waiver of the \$300 appeal filing fee,
- 2) Certified the Environmental Impact Report (EIR) for the project as being in compliance with the California Environmental Quality Act (CEQA),
- 3) Adopted a mitigation monitoring plan and a statement of overriding considerations,
- 4) Adopted findings and approved Special Use Permit No. PSP 96-072, subject to conditions, and
- 5) Directed the Clerk of the Board of Supervisors to return the Notice of Determination to the Resource Management Agency for future filing with the County Clerk.

BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER OF CERTIFYING THE)	
FINAL ENVIRONMENTAL IMPACT REPORT)	
FOR THE ETCHEGARAY DAIRIES (SCH #2004031051)))	
AS BEING IN COMPLIANCE WITH THE)	
CALIFORNIA ENVIRONMENTAL QUALITY ACT;)	
ADOPTING PROJECT FINDINGS; ADOPTING A)	RESOLUTION NO.
MITIGATION MONITORING PLAN; ADOPTING A)	
STATEMENT OF OVERRIDING CONSIDERATIONS;)	
APPROVING A FINAL ENVIRONMENTAL IMPACT)	
REPORT FOR THIS PROJECT; AND APPROVING)	
SPECIAL USE PERMIT (PSP 96-072) FOR)	
<u>ETCHEGARAY DAIRIES</u>)	

WHEREAS, this resolution of the Tulare County Board of Supervisors relates to the certification of the Final Environmental Impact Report (SCH #2004031051) ("Final EIR"), for the Etchegaray Dairies, as being in compliance with the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines and the County's Procedures Implementing CEQA;

WHEREAS, this resolution adopts findings for the project, a mitigation monitoring plan and a statement of overriding considerations, and approves the Final EIR and the Special Use Permit (PSP 96-072) for this dairy facilities project;

WHEREAS, the applicant and owner (Ethchegaray Dairies and Sam Etchegaray, respectively) filed with the Tulare County Resource Management Agency ("RMA") a project application for a Special Use Permit (PSP 96-072) for two dairy operations pursuant to Government Code Sections 65800 *et seq.* and Section 16 of the Tulare County Zoning Ordinance;

WHEREAS, the applicant also requested from the California Regional Water Quality Control Board for the Central Valley Region ("Regional Board") approval of a Notice of Intent under a General Waste Discharge Order, or approval of site specific Waste Discharge Requirements and approval of an Authority to Construct Permit from the San Joaquin Valley Air Pollution Control District ("Air District");

WHEREAS, Quad Knopf is the agent retained by the applicant to assist in the preparation of an environmental impact report for the necessary environmental and land use action requested by the Etchegaray Dairies, which constitutes establishment and operation of two new dairies in the AE-40 (Exclusive Agricultural-40 acre minimum) Zone: the Earlimart Ranch Dairy facility

will be located on 160 acres and will house 5,715 animal units (3,500 Holstein milk cows and support stock) while the Phillips Ranch Dairy Facility will be located on 160 acres and house 6,535 animal units (4,000 Holstein milk cows plus support stock). Both dairy facilities will be located on a 2,692-acre project site. The balance of the acreage will remain under cultivation and available for irrigation with reclaimed dairy wastewater;

WHEREAS, an environmental impact report has been prepared by the applicants' consultants; reviewed and approved for public review by the County's Environmental Assessment Officer; submitted for public review, comment and response; and reviewed and independently considered by the Board;

WHEREAS, the subject property or site is located in Tulare County, California, more particularly (a) on the south side of Avenue 56 and east of State Highway 43, northeast of Allensworth, and (b) in Sections 32, 33, & 34, Township 23 South, Range 24 East, and Sections 3, 4, 5, & 9, Township 24 South, Range 24 East, MDB&M;

WHEREAS, the Assessor's Parcel Numbers – to which this dairy project relates – are identified as 311-030-01, 02, 03, 04, 05 / 313-270-02, / 331-100-01, 02, 03, 04, 05, 06, 07, 08, 09, 10 / 313-040-007, 008, / 313-030-004 / 331-090-002, 001, / 331-180-001 / 331-130-001 / 331-130-001 / 331-120-002, 001 / 333-350-036 / 333-180-002.

WHEREAS, a site map and a site plan, depicting the nature, extent and location of this dairy project, are attached together as Exhibit "A" and incorporated by reference herein;

WHEREAS, Staff of the Tulare County RMA has conducted the necessary investigations (including environmental review of this matter); prepared written Staff Reports (made a part hereof) for Special Use Permit No. PSP 96-072; provided additional information affecting these land use applications at the public hearings noticed, convened and conducted for this matter; and, based on substantial evidence, submitted these land use applications for the consideration of, and action by, the Board;

WHEREAS, public hearings were conducted for this matter at regular meetings of the Planning Commission ("Commission") held on April 26, May 17, June 14, July 26, August 9, and September 13, 2006;

WHEREAS, the Commission could not find an action with a majority consensus of the members present at their meeting of September 13, 2006;

WHEREAS, when the Commission is unable to decide for approval or denial of a project, the Board of Supervisors ("Board") is the final decision-making body;

WHEREAS, public hearings were noticed and conducted for this matter at regular meetings of the Board held on October 24 and December 5, 2006;

WHEREAS, oral testimony and documentary evidence relating to this application was received from RMA Staff, the applicants, the applicants' representatives, and various members of the public, and such testimony and evidence were duly considered by the Board;

WHEREAS, on March 8, 2003 Tulare County distributed the Notice of Preparation for the project indicating a 30-day review period, commencing on March 12, 2003 and ending on April 19, 2003;

WHEREAS, on or about March 20, 2006, a Notice of Availability of Draft Environmental Impact Report ("Draft EIR") and the requisite number of copies of the Draft EIR, were delivered to the State Clearinghouse and mailed to affected public agencies, organizations and interested parties;

WHEREAS, the Draft EIR was duly circulated for a 45-day public review period, commencing on March 20, 2006 and ending on May 4, 2006;

WHEREAS, on March 3, 2006, a Notice of Availability of Draft Environmental Impact Report and Notice of Public Hearing were duly published in the Tulare Advance Register, a newspaper of general circulation in Tulare County;

WHEREAS, in accordance with state law and local ordinance, RMA Staff has given due notice of public hearing regarding the proposed EIR and Special Use Permit, and said notice of public hearing provided that the hearing would be held for the purpose of having the Board consider taking action on the proposed EIR (SCH #2004031051) and Special Use Permit (PSP 96-072) for the dairy operation described herein;

WHEREAS, comments were submitted during the public comment period by various public agencies and members of the public and responded to before adoption of this resolution in the Final EIR, Responses to Late Comments and the Final EIR and comments heard and received at the October 24, 2006 meeting;

WHEREAS, no new issues were raised that had not already been addressed in previous documentation at the public hearing on October 24, 2006, including the proximity of the site to the Colonel Allensworth State Historic Park and lands protected by the Kern Wildlife Refuge;

WHEREAS, the Final EIR for this dairy project consists of the Draft EIR, the Technical Appendices thereto, the Comments to the Draft EIR, and the written Responses to said Comments, all of which documents constitute and shall be collectively referred to herein as the "Final EIR";

WHEREAS, the project is expected to have a significant effect on the environment; extensive mitigation measures are proposed for inclusion into the project; said mitigation measures are proposed for adoption as required conditions of approval of the project; a mitigation monitoring plan is proposed for approval; project findings are proposed for adoption; and a statement of overriding considerations is proposed for adoption;

WHEREAS, the applicants, based on substantial evidence, maintain that the requested Special Use Permit is not detrimental to the public health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood or to the general welfare of the County (thereby complying with Section 16 of the Tulare County Zoning Ordinance), and is consistent with the relevant provisions of the Tulare County General Plan and all other affected laws and ordinances.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Board finds and declares that on October 24, 2006, the Board duly opened, conducted and continued the public hearing relating to the various matters affecting the applicant's dairy project; and during said hearing, evidence was submitted by County staff and other interested parties, and said evidence was independently reviewed and considered by the Board.

2. The Board further finds and declares that public hearings were conducted for this matter at regular meetings of the Planning Commission held on May 17, June 14, July 26, and August 9, 2006 and September 13, 2006, and the Board of Supervisors on October 24, 2006 and December 5, 2006 and the Board duly closed said public hearing on December 5, 2006.

3. The Board certifies and finds, based on substantial evidence, that it has reviewed and considered the information presented in the Final EIR and other relevant evidence to determine compliance with CEQA, the State CEQA Guidelines and the County's Procedures Implementing CEQA. The Board further certifies and finds that prior to taking action on the project, it independently reviewed and considered the information contained in the Final EIR and other relevant evidence. Accordingly, based on the Board's exercise of its independent judgment when reviewing and considering the information in the Final EIR and other relevant evidence presented thereto (including the Staff Reports made a part hereof), the Board further certifies and finds that the Final EIR required for this dairy project is adequate, and said Final EIR has been prepared and completed in compliance with CEQA, the State CEQA Guidelines and the County's Procedures Implementing CEQA.

4. The Board, after considering all of the evidence presented and based on substantial evidence, further finds and declares that the foregoing recitals (made a part hereof) are true, and makes further findings concerning the environmental impacts relating to the project as described in the Final EIR. These findings are set forth more specifically in attached Exhibit "B" which is incorporated herein by reference. These findings, which are based on substantial evidence, are hereby adopted by the Board. These findings reflect that except for certain significant effects relating to cumulative impacts involving air quality and groundwater, certain project level air quality impacts, a project level impact relating to off-site disposal of manure, and cumulative level impacts to loss of foraging habitat for predators in the San Joaquin Valley occasioned by dairy facility construction, all potentially significant environmental effects will be substantially lessened, reduced to a level of insignificance, or avoided through the adoption and implementation of feasible mitigation measures proposed in the Final EIR. These findings also

reflect that changes or alterations have been required in, or incorporated into, the project which feasibly mitigate, substantially lessen, or avoid the significant effects on the environment specified in the Final EIR.

5. The Board hereby approves and adopts the Mitigation Monitoring Plan to monitor the changes or alterations that have been required in, or incorporated into, the project in order to mitigate feasibly, substantially lessen, or avoid the potentially significant environmental effects, and thus, the Board hereby commits that the County will enforce said plan, if necessary. The Mitigation Measures and the Mitigation Monitoring Plan are set forth in attached Exhibit "C" which is incorporated by reference herein.

6. The Board further finds and declares that certain significant environmental effects relating to cumulative impacts involving air quality and groundwater cannot be mitigated fully, substantially lessened, or avoided; that certain project level air quality impacts cannot be mitigated fully, substantially lessened, or avoided; that a project level impact relating to off-site disposal of manure cannot be mitigated fully, substantially lessened, or avoided; and cumulative level impacts to loss of foraging habitat for predators in the San Joaquin Valley occasioned by dairy facility construction cannot be mitigated fully, substantially lessened, or avoided; and that specific economic, legal, social, technological or other considerations make infeasible the mitigation measures or project alternatives identified in the Final EIR. The Board further finds and declares that changes or alterations have been required in, or incorporated into, the project which feasibly mitigate, substantially lessen, or avoid substantially all of the significant effects on the environment, except as noted in the Final EIR. However, despite these mitigation measures, there still are significant and unavoidable environmental impacts from this project. Accordingly, after balancing these interests, the Board hereby adopts the Statement of Overriding Considerations which is based on substantial evidence, which is set forth in attached Exhibit "D", and which is incorporated herein by reference.

7. The Board further finds and declares that (a) responses have been prepared to the comments submitted by the members of the public or public agencies; (b) prior to adoption of this resolution, a copy of the written responses to the comments to the Draft EIR was duly sent to affected public agencies and interested parties; (c) and, after due consideration of said responses, the Board finds that said responses and findings associated therewith are adequate, complete and hereby adopted.

8. The Board further finds and declares, based on substantial evidence, that the requested Special Use Permit is not detrimental to the public health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood or to the general welfare of the County (thereby complying with Section 16 of the Tulare County Zoning Ordinance), and is consistent with the relevant provisions of the Tulare County General Plan pursuant to Government Code Section 65860, based on the following alternative grounds:

- (a) The Board further finds and declares, based on substantial evidence, that the proposed Special Use Permit is not detrimental to the public health, safety, peace, morals, comfort and general welfare of persons residing or working in

the neighborhood or to the general welfare of the County, thereby complying with Section 16 of the Tulare County Zoning Ordinance. Section 16 provides that a special use permit may be granted subject to such conditions as will insure compliance with the aforementioned standards. Support for this finding is contained in the Final EIR, this resolution certifying the approval of the Final EIR, the Staff Reports prepared by RMA, the mitigation measures set forth in the Final EIR, the conditions of approval attached to this resolution as Exhibit "E" (which is incorporated by reference herein), the public hearing testimony and other evidence relating to this project, and any other evidence contained in the public record of proceedings. Detailed and numerous conditions of approval are set forth in Exhibit "E" as a basis to insure that this permit is not detrimental to the public health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood or to the general welfare of the County. Accordingly, these conditions of approval are hereby approved and adopted for this project and shall be enforced, if necessary.

- (b) The Board further finds and declares, based on substantial evidence, that the proposed Special Use Permit is consistent with the relevant provisions of the Tulare County General Plan in that the land use authorized by the proposed project is consistent with the objectives, policies, general land uses and programs specified therein, and will further and not obstruct the relevant goals, objectives and policies of the General Plan. Support for this finding is contained in the Final EIR, this resolution certifying the approval of the Final EIR, the Staff Reports prepared by RMA, the mitigation measures set forth in the Final EIR, the conditions of approval attached to this resolution as Exhibit "E" (which is incorporated herein by reference), the public hearing testimony and other evidence relating to this project, and any other evidence contained in the public record of proceedings. Further support for this finding is provided as follows:

- (i) In connection with the Land Use Element of the General Plan, the site is designated "agriculture." Hence, the requested Special Use Permit approving the subject dairy facilities project is consistent with and furthers the goals, objectives and policies of this designation and does not obstruct their attainment since dairies are deemed an agriculture use. In addition, the subject site is located within the Rural Valley Lands Plan ("RVLP"), a component of the Land Use Element. The RVLP provides that the conversion or division of agricultural lands to nonagricultural uses and parcel sizes shall be discouraged, and limited nonagricultural activities and necessary agriculturally-related industries in selected rural areas shall be provided. In addition, with respect to land use and planning, detailed environmental review for this project indicates that there will not be any significant project-level impacts

involving agriculture and land use. (See, e.g., Final EIR, Sections 3.2 and 3.9.) Further, the proposed project is within the AE-40 (Exclusive Agricultural-40 acre minimum) Zone and is allowed since each parcel thereof meets the minimum size requirement of said zone, and since the proposed project will be devoted to exclusive agriculture. Thus, the requested Special Use Permit is compatible with and furthers these land use goals, objectives and policies and does not obstruct their attainment because the subject dairy facilities are agricultural uses which are allowed and encouraged in the County's exclusive agricultural zones.

- (ii) In connection with the Urban Boundaries Element, the proposed project is not within the boundaries of any urban area. Thus, the requested Special Use Permit for two dairies is compatible with and will further the goals, objectives and policies of the Urban Boundaries Element, and will not obstruct their attainment since the project is designed and will be operated so as to avoid a conflict with any urban boundary.
- (iii) In connection with the Open Space Plan of the Environmental Resources Management Element (ERME), the Open Space Plan encourages the maintenance of agricultural lands as agriculture. The proposed dairy facilities project is located within an area designated "Extensive Agriculture", and as such, the proposed dairy facilities project maintains the commitment to extensive agricultural use. In addition, the Final EIR indicates that the dairy facilities are located in an area of minimal flooding and are not located in a flood channel. The project also is designed and will be constructed so as to avoid a substantial alteration of existing drainage patterns. (Final EIR, Section 3.8.) Further, pursuant to the discussion in paragraph 8 (b) (viii) below, the ACFP is now part of the ERME and this project is consistent with the policies and standards of the ACFP. Thus, the requested Special Use Permit (which includes numerous conditions of approval) is compatible with and furthers the goals, objectives and policies of the ERME and does not obstruct their attainment.
- (iv) In connection with the Circulation Element of the General Plan, the proposed project will utilize the existing public road system. Access to the subject site will occur from Avenue 56, Remix Asphalt over Original Ground, surfaced, right of way, located adjacent to the site. Environmental review indicates that the project will not cause any significant traffic impacts, and as such, the project is compatible with the existing circulation system. (Final EIR, Section 3.14.) Thus, the requested Special Use Permit is

consistent with and furthers the goals, objectives and policies of the Circulation Element and does not obstruct their attainment.

- (v) In connection with the Noise Element of the General Plan, the subject site is located outside any noise-impacted area and environmental review indicates that the proposed project will not cause any significant traffic, operational or short-term construction noise impacts. (Final EIR, Section 3.10.) Hence, the requested Special Use Permit is consistent with and furthers the goals, objectives and policies of the Noise Element and does not obstruct their attainment.
- (vi) In connection with the Housing Element of the General Plan, the requested Special Use Permit will not affect the County's housing needs projections and there is no evidence that the project would interfere with the County's housing program because it will not encourage population growth in this rural area. This is also consistent with the County's AE-40 Zone (which apply to the subject site) because this is an exclusive agricultural zone which encourages intensive and extensive agricultural uses, as well as uses which are necessary and integral parts of the agricultural operation. (Final EIR, Section 3.11.) In addition, the project will not cause the relocation of any dwellings on the site or on surrounding properties. Environmental review indicates that there will not be any significant housing impacts from this project. (Final EIR, Section 3.11.) Thus, the requested Special Use Permit is consistent with and furthers the goals, objectives and policies of the Housing Element and does not obstruct their attainment.
- (vii) In connection with the Safety Element, the subject site is not in an area of exceptional wildland fire hazards, or within an area of seismic activity hazards. In addition, environmental review for this project indicates (1) that there will not be any significant hazard impacts, or alternatively, (2) that any hazard impacts will be mitigated a level of insignificance. (Final EIR, Sections 3.6 and 3.7.) Hence, the requested Special Use Permit is compatible with and furthers the goals, objectives and policies of the Safety Element and does not obstruct their attainment.
- (viii) In connection with the ACFP of the Environmental Resources Management Element, and as indicated in the Final EIR and Staff Report applicable hereto and made a part hereof, the proposed project conforms with all relevant policies and standards of the ACFP Support for this determination and finding is provided as follows:

- (1) This new dairies are in conformity with the minimum site size requirement of Policy No.1 because the project site exceeds 160 acres. The entire site consists of 2,692 acres.
- (2) This new dairies are in conformity with the animal density policies and standards of Policy No. 2 based on the following grounds:
 - (a) As to the maximum overall animal density per acre requirement, the total on-site proposed animal unit density for this project is 5.47 animal units per crop acre. This is well below the maximum allowed density of 10 animal units per crop acre. In addition, the milk cow density of 3.47 animal units per crop acre is well below the maximum density of 8 animal units per acre.
 - (b) As to the salts loading requirements applicable to this project, the maximum allowed density per crop acre is 4.56 animal units. A Comprehensive Nutrient Management Plan (CNMP) was prepared for this project and duly circulated for public review (Final EIR, Appendix H.). Consistent with Policy No. 2, the Board determines that this CNMP will function as a Salts Loading Report for this project. The average density per crop acre for this project is below the maximum allowed and the CNMP indicates that the project has adequate crop land for liquid manure distribution based on salts. To insure compliance with the ACFP's animal density standards applicable to salt loading, the applicant has committed to follow the requirements of the ACFP and Title 27 of the California Code of Regulations as administered by the California Regional Water Quality Control Board for the Central Valley Region ("Regional Board"). (See attached Exhibit "E" (Conditions Nos. 1-3 and 35-36.) Thus, based on the requirement that this dairy facilities project shall comply with these standards, this project is consistent with the Salts Loading requirements of Policy No. 2. As to the nitrogen loading requirements, the project is in conformance with Policy No. 2 because the total nitrogen management capability for the site is 15,942 animal

units and the maximum allowed herd size for this project is 12,250 animal units.

- (3) In connection with Policy No. 3, the nearest existing dairy is 3.5 miles from the proposed northern dairy (Phillips Dairy), and there is one mile separation between the Phillips Dairy and the Earlimart Ranch Dairy on-site, thereby complying with the one-half mile separation standard of Policy No. 3. (Final EIR, Section 3.9.4 and Figure 3.9-2.)
- (4) In connection with the community windshed requirements of Policy No. 4, the proposed project, as designed and proposed to be operated, does not conflict with the windshed area of any community or other land use as defined by AFCP Locational and Animal Density Policy No. 4. (Final EIR, Section 3.9.7 and 3.9.8) This includes more than 1,000 feet of the boundary of a public park.
- (5) Concerning the Micro-Windshed setbacks of Policy No. 5, the proposed dairy will not be located within the micro-windsheds of existing residences and orchards. (Final EIR, Section 3.9.5, 3.9.6, 3.9.7, and Figure 3.3-2) In addition, Policy Nos. 6, 7 and 8 are irrelevant to this project because the project is for new dairies and not a legally existing dairy, and the project does not require a deviation from the micro-windshed requirements of Policy No. 5. (Final EIR Section 3.9.6. and 3.9.7)

9. The Board further finds and declares that (a) with the approval of this Special Use Permit, this dairy facilities project is consistent with the applicable zoning (AE-40) because the subject property includes parcels which constitute 40 acres minimum and which will be devoted, as dairies, to exclusive agriculture (Final EIR, Sections 3.2 and 3.9), and (b) this project is consistent with the Building Line Setback Ordinance because all above- and below-ground facilities relating to this project are required to be constructed at least 50 feet from the centerline of Avenue 56.

10. Accordingly, the Board, after considering all of the evidence presented and based on substantial evidence, hereby approves the Final EIR for the project as described and delineated in said EIR, and hereby certifies that said Final EIR thereto is in compliance with CEQA, the State CEQA Guidelines and the County's Procedures Implementing CEQA; and in connection therewith, the Board on behalf of the County hereby adopts, approves and intends to implement, monitor and enforce (if necessary) all mitigation measures set forth in the Final EIR as conditions of approval of the subject dairy facilities project. These mitigation measures and conditions of approval are set forth more specifically in the Final EIR and in Exhibit "C" to this

resolution. These mitigation measures and conditions, which are based on substantial evidence, are hereby approved and adopted by the Board.

11. The Board further finds and declares that this resolution, which also contains project findings, a mitigation monitoring plan and a statement of overriding considerations, provides adequate support for the project application for this Special Use Permit for the applicant's dairy operations (PSP 96-072); and as such, the Board hereby approves said Special Use Permit.

12. Prior to the issuance of building permits, the owners and operators of the subject dairies shall execute and record with the Tulare County Recorder an acceptance of conditions along with a certified copy of this resolution, both of which shall run with, and apply to, the land.

13. The Board directs that RMA Staff prepare, execute and file a Notice of Determination (NOD) in accordance with the State CEQA Guidelines, provided, however, that the owners and operators shall pay the required fees/costs associated with the filing of the NOD and the recording of the acceptance of conditions and this resolution.

14. The Board confirms that the documents and other materials that constitute the record of proceedings (which supports the Board's decision made herein, this resolution, the CEQA findings, the mitigation monitoring plan and the statement of overriding considerations) are located at the Tulare County Resource Management Agency at 5961 South Mooney Boulevard, Visalia, California 93277 (Telephone No. (559) 733-6291). The custodian for these documents and other materials is Beverly Cates, Manager, Project Review Division, Development Services Branch, Tulare County Resource Management Agency.

The foregoing resolution was adopted upon motion of Supervisor _____, seconded by Supervisor _____, at a regular meeting of the Board of Supervisors on the 20th day of March, 2007, by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

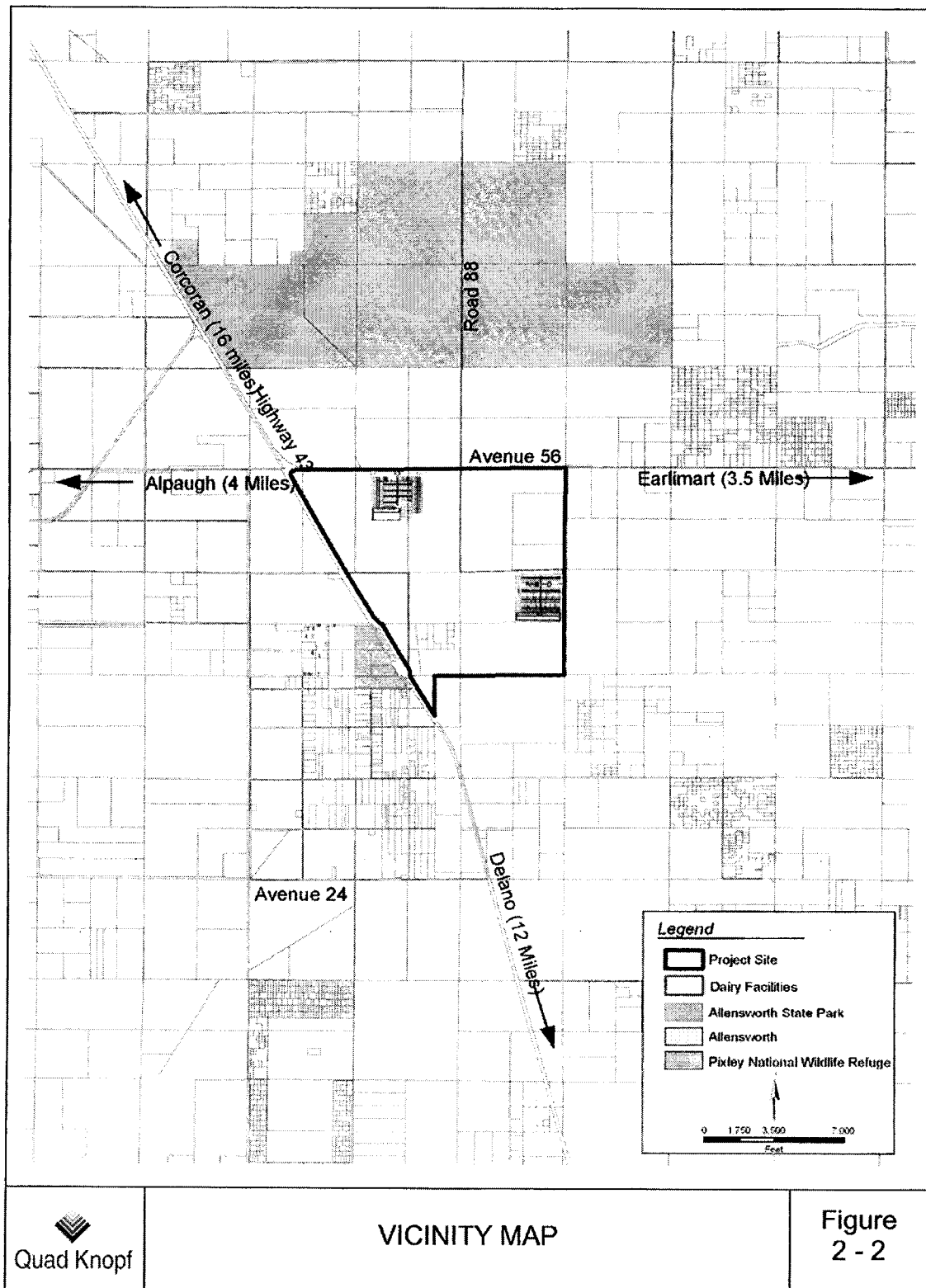
ATTEST: C. BRIAN HADDIX
COUNTY ADMINISTRATIVE OFFICER
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

EXHIBIT “A”

PROJECT SITE MAP AND PROJECT SITE PLAN

ETCHEGARAY DAIRIES



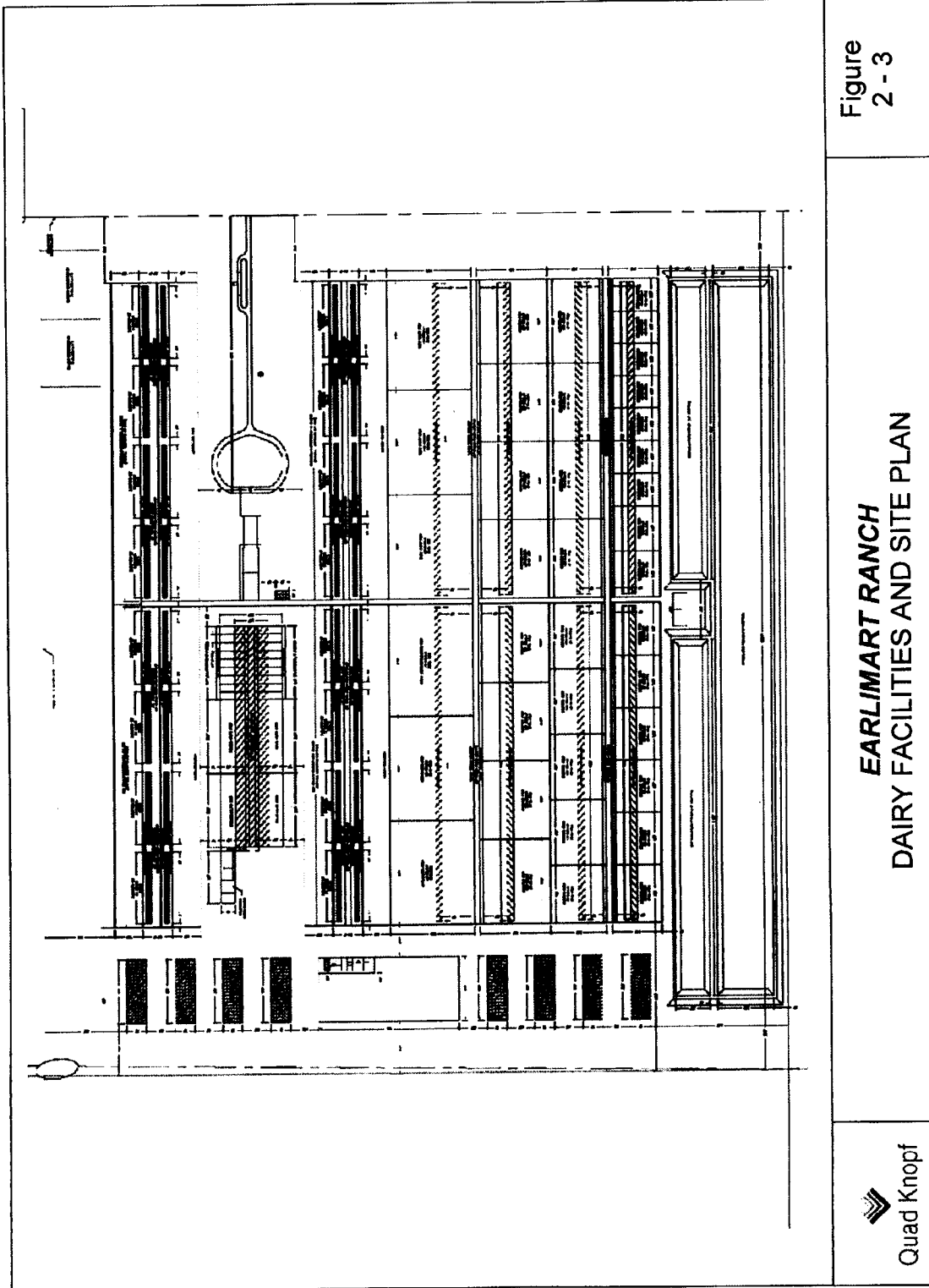


Figure
2 - 3

EARLIMART RANCH
DAIRY FACILITIES AND SITE PLAN

 Quad Knopf

December 2005
2 - 4

Sam Etchegaray Dairies
Draft Environmental Impact Report
PSP 96-072

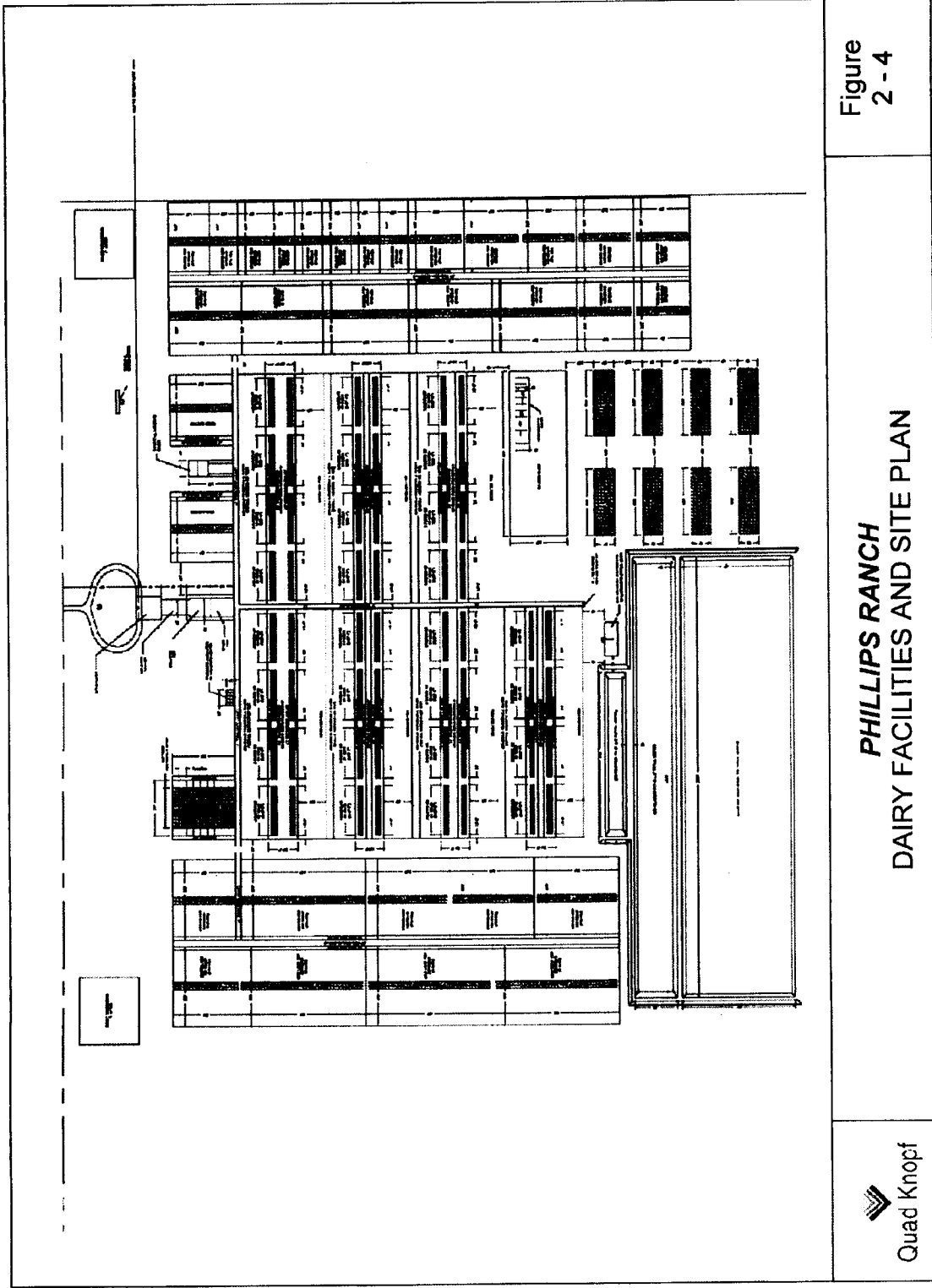


Figure
2 - 4

PHILLIPS RANCH
DAIRY FACILITIES AND SITE PLAN

 Quad Knopf

December 2005
2 - 5

Sam Etchegaray Dairies
Draft Environmental Impact Report
PSP 96-072

EXHIBIT “B”

CEQA FINDINGS

ETCHEGARAY DAIRIES

CERTIFICATION OF FINAL ENVIRONMENTAL IMPACT REPORT FOR THE
ETCHEGARAY DAIRIES AS BEING IN COMPLIANCE WITH THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT; ADOPTING PROJECT FINDINGS;
ADOPTING A MITIGATION MONITORING PLAN; ADOPTING A STATEMENT
OF OVERRIDING AND CONSIDERATIONS; AND APPROVING THE FINAL
ENVIRONMENTAL IMPACT REPORT FOR THIS DAIRY PROJECT

I

INTRODUCTION

The Board of Supervisors (“Board”) of the County of Tulare (“County”) intends to approve the dairy project identified as the Etchegaray Dairies (“Project”). The Project constitutes a proposed new two-dairy operation designed to accommodate a maximum of 5,715 total animal units (3,500 milk cows) within a built facility covering approximately 160 acres, and a maximum of 6,535 animal units (4,000 milk cows) on approximately 160 acres, all part of a 2,692-acre site, with the balance of the acreage remaining under cultivation and available for irrigation with reclaimed dairy water.

To approve this Project, the Board must consider and take action on the Project application for a Special Use Permit for the dairy operations (“PSP 96-072”). Separately, the applicant must obtain approval of a Notice of Intent under a General Waste Discharge Order, or obtain approval of waste discharge requirements, or a waiver thereof, from the Central Valley Regional Water Quality Control Board (“Regional Water Board”) pursuant to Title 27 of the California Code of Regulations, and approval of an Authority to Construct Permit from the San Joaquin Valley Air Pollution Control District (“Air District”). In the context of the California Environmental Quality Act (“CEQA”), the County is the “lead agency” and the Regional Board and the Air District are each a “responsible agency” in consideration and approval of this Project.

II

CERTIFICATION OF FINAL ENVIRONMENTAL IMPACT REPORT
FOR THE ETCHEGARAY DAIRIES

The Board hereby certifies and finds that it has considered the information presented in the Final EIR and other relevant evidence to determine compliance with CEQA, the State CEQA Guidelines and the County’s Procedures Implementing CEQA. The Board further certifies and finds that prior to taking action on the Project, the Board independently reviewed and considered the information contained in the Final EIR and other relevant evidence presented thereto. Accordingly, based on the Board’s exercise of its independent judgment when reviewing and considering the Final EIR and other relevant evidence presented thereto, the Board further certifies and finds that the Final EIR required for the project is adequate, and has been prepared and completed in

compliance with CEQA, the State CEQA Guidelines and the County's procedures implementing CEQA.

III

FINDINGS CONCERNING ENVIRONMENTAL IMPACT FOR THE ETCHEGARAY DAIRIES CONDITIONAL USE PERMIT (SCH #2004-031051)

The California Environmental Quality Act ("CEQA") requires that certain findings be made with respect to significant environmental impacts, mitigation measures and alternatives. To satisfy this requirement, the Board hereby adopts and incorporates by reference the draft EIR and related appendices dated December 2005, Responses to Comments dated June 2006 and related appendices identified as Final EIR, and responses to late comments and final EIR, and responses to late comments and Final EIR comments dated August 2006, November 2006 and December 2006 (collectively "EIR"). In making these findings, the Board, has independently reviewed and considered (1) the information contained in the EIR; (2) the various reports (both oral and written) provided by county staff to the Board throughout the administrative process for the project (the "Staff Reports"); (3) the information submitted during the public hearings conducted for this project; and (4) other evidence contained in the public record of proceedings. In doing so, the Board finds and declares that the factual discussion and analysis contained in the EIR, the Staff Reports, and other evidence in the public record of proceedings provide a sufficient basis for approval of the project pursuant to CEQA.

As to each potentially significantly environmental impact identified in the EIR, the Board finds either that (1) changes or alterations have been required in, or incorporated into, the project which mitigate, avoid or substantially lessen the significant environmental effects identified in the EIR; (2) such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding and such changes or alterations have been or can be and should be adopted by such agencies; or (3) specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures or project alternatives identified in the EIR. Additionally, the Board finds that mitigation measures suggested by certain commentators that were not adopted are rejected because they are infeasible. Support for this finding is more specifically provided in the Responses to Comments, the public hearing testimony of various expert witnesses, and the draft EIR itself.

Consistent with Public Resources Code Section 21081 in Guidelines Section 15091 through 15093 (including Public Resources Code § 21061.1 and Guidelines § 15264) relating to the definition of "feasibility", the Board hereby makes the following findings relating to the significant effects identified in the EIR for this dairy project.

1. Project Impact.

a. Impact No. 3.1.1 (Visual Compatibility).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial evidence in the public record of proceedings, that visual compatibility impacts are less than significant, and therefore no mitigation is required.

In support of this finding, the dairy structures, including the milking barns, freestall barns, and feed storage barns, will be approximately 30 feet in height; the general design of the proposed dairies will be consistent with other dairies in Tulare County, and compatible with adjacent farm operations. The applicant has provided site plans that designate the locations of freestall barns, shaded corrals, separator ponds, lagoons, the milking barns and hay and feed storage facilities.

The Tulare County Zoning Ordinance, Section 9.7, limits the height of structures to “[n]ot more than fifty (50) feet to the uppermost part of the roof except that water tanks, silos, granaries, wind machines, barns and other agricultural accessory structures may exceed fifty (50) feet in height provided they do not project into the landing or take-off zone, or other restricted areas of an airport, established pursuant to section 7-13-1000 – 7-13-1085 of the Ordinance Code of Tulare County.”

The proposed project will be located in an agricultural area characterized by other agricultural operations and similar structures and facilities. Colonel Allensworth State Park is located approximately 1.2 miles southwest of the Earlimart Dairy Facilities; the community of Allensworth is located approximately 1.5 miles to the southwest. No identified scenic vista will be blocked by the project facilities. Testimony was offered that with the existence of the elevated railroad parallel to Highway 43 and separating the project from the State Parks, the dairies will be largely not visible. Therefore, development of a dairy at the project site will not have an adverse effect on a scenic vista or degrade the existing visual character of the project vicinity.

b. Impact No. 3.1.2 (Light and Glare).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that light and glare impacts are potentially significant, and that changes or alterations have been required in the project which substantially lessen the impact to a less than significant level.

In support of this finding, development of the dairy will include lighting. The effects of this lighting could result in a loss of darkness in the night sky that may be noticeable to residents in the area; some sky glow and light ‘spillage’ could occur.

All lighting shall be principally under roofs and designed to be directed downward and inward to illuminate specific areas.

The implementation of this measure will reduce the project’s light and glare impact to less than significant. The mitigation measure shall be incorporated in the conditions of approval for the Special Use Permit and shall be the responsibility of the

applicant and applicant's contractor. Monitoring will be the responsibility of the Tulare County Resource Management Agency.

c. Impact No. 3.2.1 (Loss of Farmland).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial evidence in the public record of proceedings, that impacts from loss of farmland are less than significant, and therefore no mitigation is required.

In support of this finding, the proposed project converts 320 acres of agricultural land that is in intensive agricultural, row crop, use to dairy facilities.

There will be no farmland converted to non-agricultural use; dairies are an agricultural use and consistent with the County's agricultural use policies.

d. Impact 3.2.2 (Zoning Conflicts).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial evidence in the public record of proceedings, that no zoning conflicts exist, and therefore impacts are less than significant. Accordingly, no mitigation is required.

In support of this finding, the site is zoned for agricultural use AE-40 (Exclusive Agriculture – 40 Acre Minimum). Dairies are permitted by the Tulare County Zoning Ordinance upon the granting of a Special Use Permit. (See Section 3.9 for an additional discussion of the Animal Confinement Facilities Plan's land use restrictions.) The use permit provisions of the zoning ordinance allow for animal operations to be considered on a case-by-case basis and approved subject to conditions deemed appropriate based on individual circumstances (Tulare Co. Zoning Ordinance, 1972). The project location complies with the provisions of the County's Land Use Element and with the Rural Valley Lands Plan, both of which would consider a dairy to be an agricultural use consistent with the County's "agricultural" land use degradation. It is included in a Williamson Act Agricultural Preserve and the proposed dairy usage is consistent with approved uses under Section 4 of Tulare County's Uniform Rules, Williamson Act.

Testimony was presented regarding whether the Project was inconsistent with the Colonel Allensworth State Historic Park ("CASHP"). A number of visual aids were presented, as well as testimony, concerning the distance between the Project and the CASHP, as well as required mitigation, and the Board weighed the evidence, including the spacing requirements set forth in the Animal Confinement Facilities Plan.

The proposed project site is in compliance with Tulare County's land use plans and Zoning Ordinance. There are no environmental impacts involving land use or zoning.

e. Impact No. 3.2.3 (Conversion of Farmland).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial evidence in the public record of proceedings, that development of the dairies is not the conversion of farmland, and therefore will have a less than significant impact. Accordingly, no mitigation is required.

In support of this finding, the proposed project is an agricultural use. Development of this project is compatible with existing land uses and will support continued intensive agricultural land use within the project vicinity.

The project will not involve and will not encourage, farmland conversion. The project will replace various row crop usages at the dairy facilities sites with another agricultural use (the dairy), and will as a condition of County approval of the project, continue existing row crop farming on the balance of the project site.

f. Impact No. 3.3.1 (Construction Particulate Matter (PM₁₀) and Fine Particulate Matter (PM_{2.5}) Impacts).

The Board finds, pursuant to Public Resources Code Section 21081(a) based on substantial evidence in the public record of proceedings, that construction phase fugitive dust impacts are potentially significant, and that changes or alterations have been required in or incorporated into, the project with substantially less than the impact to a level less than significant. However, as the project is within a non-attainment air basin for PM₁₀, the impact is considered to be cumulatively significant, considerable and unavoidable.

In support of this finding, project construction will result in numerous activities that generate dust. The silty soils in the project area exacerbate the potential for dust, particularly in the summer months. Grading, earthmoving and excavation are the activities that generate the most PM₁₀ and PM_{2.5} emissions.

Construction activities associated with project development include site preparation, soil excavation, grading, equipment traffic on paved and unpaved surfaces, and the construction of dairy structures. The duration of construction for this project is projected to be six to nine months.

Because prediction of PM₁₀/PM_{2.5} generation depends on a large number of variables which may change from project to project or from day to day, the SJVAPCD has recommended a qualitative, rather than a quantitative, approach to assessing impact significance for PM₁₀/PM_{2.5} construction activity emissions.

The Air District has developed a menu of PM₁₀/PM_{2.5} control options that define the minimum content of a construction dust control program. The control measures are divided into three components: Regulation VIII control measures, enhanced control measures and additional control measures. Regulation VIII control measures are required for all construction projects to reduce the amount of PM₁₀/PM_{2.5} emissions generated from fugitive dust sources. Enhanced and additional control measures provide a greater degree of PM₁₀/PM_{2.5} reduction compared to Regulation VIII. According to SJVAPCD

guidance, enhanced control measures are applicable to construction projects that would be expected to generate large PM₁₀/PM_{2.5} emissions, and additional control measures are applicable to projects with large construction sites, located near sensitive receptors, or that for other reasons warrant additional emissions reductions.

PM₁₀/PM_{2.5} air quality impacts will be mitigated with implementation of the applicable Regulation VIII procedures of the SJVAPCD. These provisions currently are:

1. All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizers/suppressants, covered with a tarp or other similar cover, or vegetative ground cover.

2. All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer suppressant.

3. All land clearing, grubbing, scraping, excavating, land leveling, grading, demolition, and cut and fill activities shall be effectively controlled to minimize fugitive dust emissions utilizing application of water or by pre-soaking.

4. When materials are transported off-site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from top of the container shall be maintained.

5. All operations shall limit, or expeditiously remove the accumulation of mud or dirt from, adjacent public streets at the end of each workday when operations are occurring (the use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit visible dust emissions; use of blower devices is expressly forbidden).

6. Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/ suppressant.

7. Limit construction traffic speeds on unpaved roads to 15 mph.

8. Suspend excavation and grading activities when winds exceed 20 mph.

9. Limit area subject to excavation, grading and other construction activity at any one time.

10. Install wheel washes for all exiting trucks or wash off all trucks and equipment leaving the site.

11. The applicant, or the contractor acting as the applicant's agent, shall prior to the initiation of construction submit a Dust Control Plan in accord with the requirements of Rule 8021 of the SJVAPCD.

The implementation of the above measures will reduce PM₁₀/PM_{2.5} impacts to a level that, under SJVAPCD criteria, is less than significant. SJVAPCD's Guide for Assessing and Mitigating Air Quality Impacts recommends that the size of the construction area and nature of the activities that will occur be considered in evaluating PM₁₀/PM_{2.5} emission impacts from construction. Despite the relatively large project area and projected intensity of dust-producing activities during construction, PM₁₀/PM_{2.5} emissions generated during construction are deemed to nevertheless constitute a temporary potentially significant impact, possibly exposing residents downwind to elevated PM₁₀ concentrations and contributing to the regional PM₁₀/PM_{2.5} emission burden.

Mitigation for this impact is set forth in Mitigation No. 3.3.1. Such mitigation is hereby adopted for this Project. These mitigation measures shall be implemented by the applicant and shall be a condition of the Special Use Permit. Monitoring shall be the responsibility of the RMA.

From the perspective of the SJVAPCD, compliance with Regulation VIII for all sites and other implementation of all other SJVAPCD control measures indicated will constitute sufficient mitigation to reduce PM₁₀ impacts to a level below significance. As the project is within a non-attainment air basin for PM₁₀, the impact is considered to be cumulatively significant, considerable and unavoidable.

Accordingly, based on substantial evidence in the Public Record of Proceedings, the Board finds and declares that changes or alterations have been required in, or incorporated into, the Project which will lessen construction impacts for criteria pollutant PM₁₀. However, the Board further finds that this impact cannot be avoided, mitigated fully or substantially lessened, and that specific economic, legal/public policy, social and technological benefits outweigh these significant environmental effects which are not mitigated to a level of insignificance. Despite these mitigation measures, significant and unavoidable environmental impacts from this Project remain. After balancing these interests, the Board hereby adopts the Statement of Overriding Considerations which is based on substantial evidence, is set forth in attached Exhibit "D," and is incorporated herein by reference.

- g. Impact No. 3.3.2 (Construction Equipment Exhaust Emissions (Carbon Monoxide (CO), Reactive Organic Gases (ROG), Nitrogen Oxide (NOx), Sulfur Dioxide SO₂), Particulate Matter (PM₁₀) Fine Particulate Matter (PM_{2.5})).

The Board finds, pursuant to Public Resources Code Section 21081(a) based on substantial evidence in the public record of proceedings, that construction equipment exhaust emission impacts are potentially significant, and that changes or alterations have been required in or incorporated into, the project with substantially less than the impact to a level less than significant. However, as the project is within a non-attainment air basin

for PM₁₀ and ozone, PM₁₀, NO_x and ROG emissions remain cumulatively significant and are considered to be cumulatively significant and unavoidable.

In support of this finding, several pieces of diesel-powered heavy equipment typically operate during the site preparation phase of the project. Site preparation activity emissions have been estimated based on a construction vehicle fleet of two scrapers, a grader, a dozer, a loader, and two water trucks. The construction project will be less than one year in duration.

As a condition of Special Use Permit approval by the Tulare County Resource Management Agency, and to be monitored by such Agency, the owner/operator and construction crew shall ensure that the following control measures are implemented prior to and during construction activities to reduce exhaust emissions from construction related equipment:

1. Attend a preconstruction meeting at the Agency.
2. The idling time of all construction equipment used at the site shall not exceed ten minutes.
3. The hours of operation of heavy-duty equipment shall be minimized.
4. All equipment shall be properly tuned and maintained in accord with manufacturer's specification.
5. When feasible, alternative fueled or electrical construction equipment shall be used at the project site.
6. The minimum practical engine size for construction equipment shall be used.
7. When feasible, electric carts or other smaller equipment shall be used at the project site.
8. Gasoline-powered equipment shall be equipped with catalytic converters.
9. The facilities construction contractor shall comply with Rule 4641 of the SJVAPCD.

It should be noted that these mitigation measures are not required to reduce project construction exhaust emissions to less than significant, but are recommended to further reduce such impacts. Since dairy construction will take less than one year, the project impacts are considered less than significant because they are less than the thresholds. In terms of cumulative impacts, since the Basin is in non-attainment for PM₁₀ and ozone, PM₁₀, NO_x and ROG emissions remain cumulatively significant, considerable and unavoidable.

Mitigation for this impact is set forth in Mitigation No. 3.3.2. Such mitigation is hereby adopted for this Project. These mitigation measures shall be implemented by the applicant and shall be a condition of the Special Use Permit. Monitoring shall be the responsibility of the RMA.

The mitigation measures shall be implemented by the construction contractor, and shall be a condition of the Special Use Permit. Monitoring shall be the responsibility of the Tulare County Resource Management Agency.

In support of this finding, the evidence in the Final EIR and the Public Record of Proceedings indicates that equipment used to construct the Project will emit certain pollutants, and that the adopted mitigation measures will not reduce Project construction exhaust emissions to a level less than significant, but are recommended to further reduce such impacts. In terms of cumulative impacts, since the basin is in non-attainment, PM₁₀ and ozone, CO, PM₁₀, NO_x, SO_x, and ROG emissions remain cumulatively significant and unavoidable.

Therefore, based on substantial evidence in the Final EIR and the Public Record of Proceedings, the Board finds and declares that changes or alterations have been required in, or incorporated into, the Project which will lessen construction exhaust impacts for CO, ROG, NO_x, SO_x, PM₁₀. However, the Board further finds that this cumulative impact cannot be avoided, mitigated fully or substantially lessened, and that specific economic, legal/public policy, social and technological benefits outweigh these significant environmental effects which are not mitigated to a level of insignificance. Despite these mitigation measures, significant and unavoidable environmental impacts from this Project remain. After balancing these interests, the Board hereby adopts the Statement of Overriding Considerations which is based on substantial evidence, is set forth in attached Exhibit "D," and is incorporated herein by reference.

h. Impact No. 3.3.3.A (Operational Emission of Criteria Pollutants, Particulate Matter (PM₁₀) and Fine Particulate Matter (PM_{2.5})).

The Board finds, pursuant to Public Resources Code Section 21081(a) based on substantial evidence in the public record of proceedings, that operational fugitive dust impacts are potentially significant, and that changes or alterations have been required in or incorporated into, the project which substantially lessen the impact to a level less than significant. However, as the project is within a non-attainment air basin for PM₁₀, the impact is considered to be cumulatively significant, considerable and unavoidable.

In support of this finding, PM₁₀/PM_{2.5} will be generated by several activities associated with dairy operations including principally PM₁₀ emissions from cattle movement on and periodic maintenance of unpaved surfaces, and continued farming operations.

PM_{2.5} emissions are based on conversions of PM₁₀ to PM_{2.5} by multiplying CARB-derived fractions for each source category.

Ammonia gas (a base) is known to react with acids in the atmosphere (typically nitric or sulfuric acid) to form ammonium nitrates or sulfates, which are particles. In the eastern portions of the country, sulfates predominate because of the burning of sulfur-containing fuels, while in California nitric acid predominates. Nitric acid is a product of photochemical reactions in the atmosphere. Ammonia is thus a potential secondary source of particulates, since the particulates result from a chemical reaction in the atmosphere.

While it is known that the release of ammonia gas is a participant in the formation of ammonium nitrate, there is currently no capability to forecast how much ammonium nitrate would be created by release of a certain amount of ammonia. The reaction that forms ammonium nitrate is dependent on the presence of other chemicals which are in turn part of a complex photochemical process occurring in the atmosphere. At the same time, both ammonia and ammonium nitrate are subject to removal processes that constantly remove the pollutants from the atmosphere (e.g., deposition, removal by rain, participation as nuclei, etc.)

Ammonia emissions act as a precursor of $PM_{2.5}$ in the atmosphere. This is analogous to the quantification of emissions of ROG and NO_x as precursors to the formation of ozone. Just as it is not possible to convert new emissions of ozone precursors into amounts or concentrations of ozone in the atmosphere, it cannot be done for ammonia-related $PM_{2.5}$. In the absence of a significance threshold, it has been concluded that the ammonia emissions from the proposed project would be significant and unavoidable. However, given the current uncertainty in emission rates for ammonia and the lack of a method of calculating $PM_{2.5}$ conversion from ammonia emissions, any calculation of secondary $PM_{2.5}$ would be speculative.

Although the project may be required by the SJVAPCD to incorporate a digester or other emission mitigation measures, a lack of definitive data as to such systems removal efficiency does not permit calculation of emissions to be modified. Absent such speculation, and based on best available data for PM_{10} emissions from fugitive dust, annual emissions of PM_{10} and $PM_{2.5}$ have been estimated. New project-related, emissions are estimated to be 5.72 tons per year for PM_{10} and 0.13 ton per year for $PM_{2.5}$. Existing, farming-related PM_{10} emissions which would continue as a part of the project are estimated to be 42.45 tons per year for PM_{10} and 10.35 tons per year for $PM_{2.5}$. For comparative purposes, estimates of current Air Basin PM_{10} emissions are 356.5 tons/day (130,123 tons/year); $PM_{2.5}$ emissions for the Air Basin are 148.1 tons/day (54,057 tons/year) are currently being developed.

The SJVAPCD has adopted, for all agricultural operations within its purview, Rule 4550 requiring compliance with "one or more" of a list of Construction Management Practices designed to reduce fugitive dust emissions.

The project would result in an increase in PM_{10} and $PM_{2.5}$. The increase, under SJVAPCD significance criteria, would be less than significant. The Basin is in non-attainment for this (PM_{10}) criteria pollutant. The implementation of the described

operational PM₁₀/PM_{2.5} mitigation measure(s) will reduce incremental PM₁₀/PM_{2.5} impacts to less than significant (although total project emissions, including those from continued farming, are greater than significant). Such impacts are considered cumulatively significant, considerable and unavoidable, because of the Air Basin's non-attainment status for PM₁₀/PM_{2.5}.

Mitigation for this impact is set forth in Mitigation No. 3.3.3.A. Such mitigation is hereby adopted for this Project. These mitigation measures shall be implemented by the applicant and shall be a condition of the Special Use Permit. Monitoring shall be the responsibility of the RMA.

Implementation of the operational PM₁₀ and PM_{2.5} mitigation measures will maintain PM₁₀ and PM_{2.5} impacts at a less than significant level. Such impacts, however, are considered cumulatively significant and unavoidable because of the air basin's non-attainment status for PM₁₀.

Therefore, based on substantial evidence in the Final EIR and the Public Record of Proceedings, the Board finds and declares that changes or alterations have been required in, or incorporated into, the Project which will lessen operational PM₁₀ and PM_{2.5} mitigation measures relating to PM₁₀ and PM_{2.5} impacts. However, the Board further finds that this cumulative impact cannot be avoided, mitigated fully or substantially lessened, and that specific economic, legal/public policy, social and technological benefits outweigh these significant environmental effects which are not mitigated to a level of insignificance. Despite these mitigation measures, significant and unavoidable environmental impacts from this Project remain. After balancing these interests, the Board hereby adopts the Statement of Overriding Considerations which is based on substantial evidence, is set forth in attached Exhibit "D," and is incorporated herein by reference.

i. Impact No. 3.3.3.B (Operational Emission of Criteria Pollutant Reactive Organic Gas (ROG)).

The Board finds, based on substantial evidence of the public record of proceedings, that there are no feasible mitigation measures or alternatives, other than those adopted for project level impacts, that the Board could adopt at this time which would reduce reactive organic gas emissions to a less than significant level. This impact therefore remains significant and unavoidable. To the extent this adverse impact will not be eliminated or lessen to a less than significant level, the Board finds that specific economic, social, and other consideration identified in the Statement of overriding consideration support approval of the project despite unavoidable residual impacts.

In support of this finding, project-related reactive organic gases are principally generated by manure decomposition, and also by exhausts from equipment used in dairy operations (tractors, etc.), and exhausts from on- and off-road project-related auto and truck traffic.

Accordingly, based on substantial evidence in the Final EIR and Public Record of Proceedings, the Board finds and declares that changes or alterations have been required in, or incorporated into, the Project which will lessen impacts from operational emissions of criteria pollutant ROG. However, the Board further finds that this impact cannot be mitigated fully or substantially lessened, and that specific economic, legal/public policy, social and technological benefits outweigh these significant environmental effects which are not mitigated to a level of insignificance. Despite these mitigation measures, significant and unavoidable environmental impacts from this Project remain. After balancing these interests, the Board hereby adopts the Statement of Overriding Considerations which is based on substantial evidence, and is set forth in attached Exhibit "D," and is incorporated herein by reference.

Mitigation for this impact is set forth in Mitigation No. 3.3.3.B. Such mitigation is hereby adopted for this Project. These mitigation measures shall be implemented by the applicant and shall be a condition of the Special Use Permit. Monitoring shall be the responsibility of the RMA.

In support of this finding, evidence is contained in the Final EIR and the Public Record of Proceedings that ROG is produced wherever anaerobic decomposition of manure takes place, and that despite four broad approaches for minimizing the effects of manure decomposition, there is no consensus among experts in support of the feasibility, effectiveness and beneficial secondary effects of the various technological control options analyzed in the Final EIR for minimizing the air quality impacts of manure decomposition. In view of the absence of proven viability and effectiveness of the various procedures and facilities which have been the subject of experimental programs and installation, all feasible mitigation measures have been adopted for this project. There is no evidence to the contrary in the Public Record of Proceedings.

j. Impact No. 3.3.4 (Operational Emission of Criteria Pollutant Nitrous Oxide (NO_x)).

The Board finds, pursuant to Public Resources Code Section 21081(a) based on substantial evidence in the public record of proceedings, that operational emissions of Nox are potentially significant, and that changes or alterations have been required in or incorporated into the project which substantially lessen the impact to a level less than significant. However, cumulative NOx impacts are not fully mitigable and are significant or considerable and unavoidable.

In support of this finding, evidence is contained in the Final EIR and the Public Record of Proceedings that NOx emissions will continue during Project operations from farm equipment exhaust(24.61 tons per year), and that new sources of NOx emissions will be introduced from Project-related truck exhaust and employee vehicles (5.61 tons per year). The SJVUAPCD, in its guide for assessing and mitigating air quality impacts (January 10, 2002), has identified measures to reduce NOx emissions, all of which have been adopted as mitigation measures for this Project. No other feasible mitigation measures exist, and there is no evidence to the contrary in the Public Record of Proceedings.

Accordingly, based on substantial evidence in the Final EIR and the Public Record of Proceedings, the Board finds and declares that changes or alterations have been required in, or incorporated into, the Project which will lessen impacts from operational emissions of criteria pollutant, NOx. However, the Board further finds that this impact cannot be avoided, mitigated fully or substantially lessened, and that specific economic, legal/public policy, social and technological benefits outweigh these significant environmental effects which are not mitigated to a level of insignificance. Despite these mitigation measures, significant and unavoidable environmental impacts from this Project remain. After balancing these interests, the Board hereby adopts the Statement of Overriding Considerations which is based on substantial evidence, is set forth in attached Exhibit "D," and is incorporated herein by reference.

Mitigation for this impact is set forth in Mitigation No. 3.3.4. Such mitigation is hereby adopted for this project. These mitigation measures shall be implemented by the applicant and shall be a condition of the Special Use Permit. Monitoring shall be the responsibility of the RMA.

Implementation of the adopted mitigation measures will reduce direct impacts to a less than significant level, but do not eliminate cumulative operating equipment and employee trip exhaust impacts on the San Joaquin Valley Air Basin NOx and Ozone levels due to the air basin's non-attainment status for Ozone.

k. Impact No. 3.3.5 (Methane (CH₄) Generation).

The Board finds, pursuant to Public Resources Code Section 21081(a) based on substantial, uncontroverted evidence in the public record of proceedings, that there are no existing local or state guidelines or threshold of significance for methane. Accordingly, a finding of significance would be speculative. All new and feasible mitigation measures have been acquired. As a result, project level impacts are less than significant. However, the level of emissions is still considered a cumulatively significant impact.

In support of this finding, the breakdown of cellulose fiber by beneficial bacteria in cattle stomachs creates methane gas. Smaller amounts of methane are also generated by the decomposition of manure. Project-related emissions of methane are estimated in Table 3.3-4 as 2,450.69 tons per year. The project would make an exceedingly small contribution to greenhouse gases in light of all methane sources globally. Project emissions of methane represent a 0.00833 percent increase in emissions from the United States.

Accordingly, based on substantial evidence in the Final EIR and the Public Record of Proceedings, the Board finds and declares that changes or alterations have been required in, or incorporated into, the Project which will avoid, mitigate or substantially lessen impacts from operational emissions of criteria pollutant Methane (CH₄). However, the Board further finds that this impact cannot be mitigated fully or substantially lessened, and that specific economic, legal/public policy, social and technological benefits outweigh these significant environmental effects which are not mitigated to a level of insignificance. Despite these mitigation measures, significant and

unavoidable environmental impacts from this Project remain. After balancing these interests, the Board hereby adopts the Statement of Overriding Considerations which is based on substantial evidence, is set forth in attached Exhibit “D,” and is incorporated herein by reference.

Mitigation for this impact is set forth in Mitigation No. 3.3.5. Such mitigation is hereby adopted for this project. These mitigation measures shall be implemented by the applicant and shall be a condition of the Special Use Permit. Monitoring shall be the responsibility of the RMA.

In support of this finding, evidence is contained in the Final EIR in the Public Record of Proceedings that methane gas is created by the breakdown of cellulose fiber by beneficial bacteria in cattle stomachs, and smaller amounts are generated by the decomposition of manure. Factors that influence methane production include general herd health, feed quality, feed rates and inter-cattle species differences. Methane generation impacts are reduced by management procedures that include cattle housing design features, health practices and tracking procedures, feed quality, quantity and scheduling, and the use of supplements to upgrade feed quality and reduce rumination time. The above-referenced mitigation measures, which have been adopted for this Project, will reduce Project methane emissions. No other feasible mitigation measures exist, and there is no evidence to the contrary in the Public Record of Proceedings.

Although implementation of mitigation measures will reduce Project methane emissions, the Project’s methane emissions effects and contribution to greenhouse gases are considered to be directly and cumulatively considerable and unavoidable impacts because no definitive significance threshold for methane emissions has been adopted.

The emission level at which a project’s methane emissions would constitute a potentially significant cumulative impact has not been defined, and no definitive significance threshold for methane emissions has been adopted. Therefore, even with application of the above mitigation measure, the proposed project’s methane emissions effects and contribution to greenhouse gases are considered to be direct and cumulatively significant, considerable and unavoidable impacts per *CEQA Guidelines Section 15130*.

The measures shall be incorporated in the conditions of approval for the Special Use Permit for the project by the Tulare County Resource Management Agency, requiring implementation by the applicant/operator. Monitoring by the Tulare County Resource Management Agency, with such monitoring for Measure 3.3.5.1 to be based upon nutritionist analyses to be maintained on-site by the operator.

1. Impact No. 3.3.6 (Ammonia (NH-3)).

The Board finds, pursuant to Public Resources Code Section 21081(a) based on substantial evidence in the public record of proceedings, that there exists a lack of credible method of calculating PM2.5 conversion from ammonia emissions, and therefore any calculations of secondary PM2.5 would be speculative. In the absence of any

significant threshold for ammonia or secondary PM2.5, for which ammonia precursor, project emission of ammonia are considered potentially significant and considerable.

In support of this finding, ammonia is a chemical that gives urine its characteristic odor. Ammonia emissions, when combined in the atmosphere with other pollutants may produce particulate matter that can decrease air quality and visibility. The proposed project would create 596.63 tons of airborne ammonia per year.

The ammonia emission estimates shown in Table 3.3-4 utilize emission rates for dairy cows recommended by the California Air Resources Board. Published emission rates for dairy cows range from 17 to over 87 pounds per head per year. Based on tests in Southern California, a value of 20 pound per head per year was developed. Based on European tests, values as high as 87 pounds per head per year were estimated. The Air Resources Board's current estimate used in this analysis is 74.0 pound/head per year for dairy cows. This factor is based on research conducted by the University of California at Davis in summer 2001. These factors are considered to be the most accurate available at this time.

Since ammonia is produced during anaerobic decomposition of manure, and since manure is produced and stored wherever cows are housed and nutrients are collected and stored, ammonia emissions will be dispersed over much of the project site. There is no opportunity for the ammonia to be contained, and therefore it will likely exist in relatively low concentrations and would be unlikely to cause adverse affects in the human population, including sensitive receptors.

Ammonia gas (a base) is known to react with acids in the atmosphere (typically nitric or sulfuric acid) to form ammonium nitrates or sulfates, which are particles. In the eastern portions of the United States sulfates predominate because of the burning of sulfur-containing fuels, while in California the nitric acid predominates. Nitric acid itself is a product of photochemical reactions in the atmosphere. Ammonia is thus a potential secondary source of particulates, since the particulates result from a chemical reaction in the atmosphere. (Donald Ballanti, Certified Consulting Meteorologist.

While it is known that the release of ammonia gas is a participant in the formation Accordingly, based on substantial evidence in the Final EIR and the Public Record of Proceedings, the Board finds and declares that changes or alterations have been required in, or incorporated into, the Project which will avoid, mitigate or substantially lessen impacts from operational emissions of criteria pollutants, hydrogen sulfide. However, the Board further finds that this impact cannot be avoided, mitigated fully or substantially lessen, and that specific economic, legal/public policy, social and technological benefits outweigh these significant environmental effects which are not mitigated to a level of insignificance. Despite these mitigation measures, significant and unavoidable environmental impacts from this Project remain. After balancing these interests, the Board hereby adopts the Statement of Overriding Considerations which is based on substantial evidence, is set forth in attached Exhibit "D," and is incorporated herein by reference.

Mitigation for this impact is set forth in Mitigation No. 3.3.7. Such mitigation is hereby adopted for this project. These mitigation measures shall be implemented by the applicant and shall be a condition of the Special Use Permit. Monitoring shall be the responsibility of the RMA.

m. Impact No. 3.3.7 (Hydrogen Sulfide (H₂S) from Manure Decomposition).

The Board finds, pursuant to Public Resources Code Section 21081(a) based on substantial evidence in the public record of proceedings, that in the absence of any accepted significance threshold for hydrogen sulfide, project emissions of hydrogen are considered potentially significant and considerable.

In support of this finding, hydrogen sulfide is created when sulfur compounds react anaerobically. Hydrogen sulfide, even at low concentrations, has a distinct odor, and is very toxic. The emission rate for hydrogen sulfide during manure decomposition is unknown.

Accordingly, based on substantial evidence in the Final EIR and the Public Record of Proceedings, the Board finds and declares that changes or alterations have been required in, or incorporated into, the Project which will avoid, mitigate or substantially lessen impacts from operational emissions of criteria pollutants, hydrogen sulfide. However, the Board further finds that this impact cannot be avoided, mitigated fully or substantially lessen, and that specific economic, legal/public policy, social and technological benefits outweigh these significant environmental effects which are not mitigated to a level of insignificance. Despite these mitigation measures, significant and unavoidable environmental impacts from this Project remain. After balancing these interests, the Board hereby adopts the Statement of Overriding Considerations which is based on substantial evidence, is set forth in attached Exhibit "D," and is incorporated herein by reference.

Mitigation for this impact is set forth in Mitigation No. 3.3.7. Such mitigation is hereby adopted for this project. These mitigation measures shall be implemented by the applicant and shall be a condition of the Special Use Permit. Monitoring shall be the responsibility of the RMA.

n. Impact No. 3.3.8 (Odor Emissions).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial evidence in the public record of proceedings, that odor impacts are less than significant, and therefore no mitigation is required.

In support of this finding, although odors from raising livestock are exempt from direct regulation by the local air quality jurisdiction under California state law [California Health and Safety Code, Section 41705 (a)], odor can still be considered a perceived nuisance and an environmental impact.

Odor formation and transport from dairy operations – corrals, lagoons, freestalls – is a complex process. Odor formation is most rapid during hot weather when anaerobic conditions set in the fastest. Conversely, atmospheric dispersion is best when heated surfaces induce gusty winds and convective turbulence. There is therefore no time of day when odor potential is minimized. Odors “generate” faster in the day, but disperse faster. Slower nocturnal chemistry is offset by more stagnant meteorology.

Odor perception is strongly influenced by exposure duration. A person living on a dairy may be oblivious to the odor unless it is extremely pungent. Dairies historically have a farmhouse where the dairy owner, family, and often employees live, eat, sleep, etc. among the strongest odor concentration without any perceived nuisance. Project-related odor impacts will therefore be noticeable more to passing travelers.

The prevailing wind direction in Tulare County is toward the southeast based upon Fresno-Yosemite Airport wind rose records. Factors which impact the analysis of the significance of odor impacts include the influence of the proposed dairy’s modern design incorporating concrete-base, flushed, freestalls and walk lanes and water drainage to separator facilities, together with operational mitigation measures for other impacts resulting in odor reduction as a supplemental benefit.

For example, operational mitigation measures required by other potential impacts include:

- Utilization of manure water will be in thin layers, blending such manure water with irrigation water in compliance with the nutrient management plan appended hereto, Mitigation Measure #3.3.3.B-5, ROG).

The proposed dairy facility complies with the following odor-related measures described in the Tulare County Animal Confinement Policies and Standard Conditions:

Policy 4. A new dairy or other animal confinement facility shall not be located as follows:

- *Within any Windshed Area for incorporated and unincorporated communities or within the Windsheds for areas zoned for residential use and containing at least thirty (30) legally-established dwelling units (for which the Windshed Area shall be measured from the outermost residential zoning boundary) – a ‘Windshed Area’ is defined as a one-mile setback from an incorporated or unincorporated community’s Urban Area Boundary (however,*

for those communities that have an Urban Development Boundary but do not have an Urban Area Boundary, the Urban Development Boundary line shall be used) or urban-type residential zoning boundary line;

- *Within 1000 feet of the boundary of a public park;*
- *Within one-half mile (2640 feet) of school grounds or of the nearest point of a dwelling structure in a concentration of ten (10) or more occupied private residences [to qualify as a 'concentration', such residences must be legally established, occupied, located within a contiguous area, and exceed a density of one dwelling unit per acre, excluding travel trailers]. As used herein, 'legally established' residences are defined as residences "established in accordance with all applicable building and zoning regulations".*

[NOTE: The Community Windshed shall not apply where the decision-making body determines that a portion of a community's Urban Area Boundary has been expanded to include municipal uses such as sewage treatment facilities, airports, and waste disposal sites that are located well beyond the city's Urban Development Boundary. In such cases, the decision-making body shall determine the location of the Community Windshed area; however, in no instance shall a Community Windshed setback of less than one mile be allowed from a community's Urban Development Boundary.]

Policy 5. A new dairy or other animal confinement facility shall not be located closer than the distances shown on Micro-Windshed Diagram "A" (Residential) to an occupied dwelling owned by a property owner other than the animal confinement facility site owner/operator or employee.

The nearest residential windshed boundary is approximately ½ mile north of Phillips Ranch Dairy facilities site. Residential units in the general vicinity of the dairy facility site, together with their respective windshed boundaries are depicted on Figure 3.3-2. There are 2 off-site dwelling units within a mile of the proposed dairy facilities site. The Colonel Allensworth State Historic Park is more than one mile from the nearest dairy facility.

The project site is in compliance with all odor-related measures of the Tulare County Animal Confinement Policies and Standard Conditions (page 31 ACFP) relating to residential Micro-Windshed and Community Windsheds. The dairy facilities sites are 3 ½ miles east of the Alpaugh Community Windshed Area boundary and 2 ½ miles west of Earlimart's Windshed boundary. These facilities are not within the residential windsheds of homes in the community of Allensworth located 1.2 miles to the southwest. The nearest school (preschool/daycare) is located in Allensworth approximately 1 ¾ miles southwest of the nearest dairy facilities site. In addition, an HAPS analysis was conducted in response to an Air District request, and no exceedances occurred.

It is concluded, based upon the above data and analysis, that the project will not create objectionable odors affecting a substantial number of people, and that the impact of project-generated odors is therefore less than significant. However, as a condition of approval, the applicant will plant a screen of trees around the dairy facilities sites, and along the east side of Highway 43 near the community of Allensworth.

o. Impact No. 3.3.9 (Local Carbon Monoxide Concentrations).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that carbon monoxide impacts are less than significant, and therefore no mitigation is required.

In support of this finding, concentrations of this pollutant are related to the levels of traffic and congestion along streets and at intersections.

The SJVAPCD's *Guide for Assessing and Mitigation Air Quality Impacts* provides screening criteria to identify situations where modeling is warranted. If neither of the following criteria is met at intersections affected by the project, the project is concluded to have no potential to create a violation of the carbon monoxide standards:

- The Level of Service (LOS) on one or more streets or at one or more intersections in the project vicinity will be reduced to LOS E or F, and
- The project will substantially worsen an already existing LOS F on one or more streets or at one or more intersections in the project vicinity.

Although not stated expressly, the above criteria are to be applied to signal controlled intersections rather than stop sign controlled intersections. The project is served by rural streets and highways with stop sign controlled intersections with good levels of service, indicating little potential for exceedance of the carbon monoxide standards. The project would result in a maximum of 65 daily auto trips and about 11 net daily one-way truck trips and have a less-than-significant effect on traffic congestion.

No mitigation measures are required.

Based on the SJVAPCD criteria and the limited amount of project-related traffic on Avenue 56, the project would have no potential to create a violation of the carbon monoxide standards. Any carbon monoxide concentration increases resulting from the proposed project would be less than significant. There is no evidence to the contrary in the Public Record of Proceedings.

p. Impact No. 3.3.10 (Cumulative Air Quality Impacts).

The Board finds, based on substantial evidence of the public record of proceedings, that there are no feasible mitigation measures or alternatives, other than those adopted for project level impacts, that the Board could adopt at this time which

would reduce reactive organic gas emissions and particulates (PM₁₀ and PM_{2.5}), nitrogen oxide, methane, ammonia and hydrogen sulfide emissions to a less than significant level. These impact, therefore remain significant and unavoidable. To the extent this adverse impact will not be eliminated or lessen to a less than significant level, the Board finds that specific economic, social, and other consideration identified in the Statement of overriding consideration support approval of the project despite unavoidable residual impacts.

In support of this finding, the California Environmental Quality Act defines cumulative impacts as two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. Cumulative impacts can result from individually minor but collectively significant projects. According to SJVAPCD's *Guide for Assessing and Mitigation Air Quality Impacts (2002)* an adequate cumulative impact analysis considers a project over time and in conjunction with other related past, present, and reasonably foreseeable future projects whose impacts might compound or be interrelated with those of the project being assessed.

Air quality impacts that are regional in nature are incrementally cumulative, as are emissions which contribute to criteria pollutant non-attainment conditions. The project was found to have a significant or potentially significant regional impact with respect to particulate matter (PM₁₀), reactive organic gases (ROG), nitrogen oxide (NO_x), ammonia (NH₃), hydrogen sulfide (H₂S), (odors), and methane (CH₄).

It is the position of the SJVAPCD that exceeding the identified significance thresholds of individual impact significance is evidence of a substantial worsening of regional air quality. The fact that adopted significance thresholds are individually exceeded is therefore evidence that the project impact is also cumulatively significant on a regional basis, even though the project would create only a very small increase in basin-wide emissions from dairy operations. Additionally, when levels of criteria pollutants result in non-attainment designation, emissions of such pollutants or their precursors are deemed cumulatively significant even if project-related emissions are below SJVAPCD thresholds.

As of January 2005, information shows 442,853 milk cows on 334 dairies in Tulare County and 1,406,00 milk cows on 1,500 dairies in the eight-county San Joaquin Valley. With permitted, but un-built dairies, together with dairies in the permitting process, the projected number of milk cows in the San Joaquin Valley Air Basin is just over 2 million.

Complete mitigation measures for cumulative particulate matter (PM₁₀), fine particulate matter (PM_{2.5}), reactive organic gases (ROG), nitrogen oxide (NO_x), and methane (CH₄), ammonia (NH₃) and hydrogen sulfide (H₂S, odor) emissions are limited and would, at this time, require additional regulatory agency action or significant operationally feasible technological advances. To reduce cumulative emissions, however, the following project-level mitigation measures shall be implemented:

1. Particulate Matter and Fine Particulate Matter (PM₁₀ / PM_{2.5}): The applicant shall comply with the measures set out in Sections 3.3.1, 3.3.2 and 3.3.3.A
2. Reactive Organic Gas (ROG): The applicant shall comply with the measures set out in Section 3.3.3.B.
3. Nitrogen Oxide (NO_x): The applicant shall comply with the measures set out in Section 3.3.4
4. Methane (CH₄): The applicant shall comply with the measures set out in Section 3.3.5.
5. Ammonia (NH₃): The applicant shall comply with the measures set out in Section 3.3.6.
6. Hydrogen Sulfide (H₂S): The applicant shall comply with the measures set out in Section 3.3.6 and 3.3.7.
7. To the extent legally required, the applicant shall comply with SB 700 (Flores) and the Conservation Management Practices for Dairy Operations.

The anticipated long term reduction effectiveness of construction related PM₁₀ reduction measures can be estimated at 75 percent of the non-mitigated value. While reducing the project's contribution to the cumulative impacts of dairy expansion in the San Joaquin Valley, cumulative particulates (PM₁₀ effects as well as PM_{2.5}), reactive organic gas (ROG), nitrogen oxide (NO_x), methane (CH₄), ammonia (NH₃) and hydrogen sulfide (H₂S) emissions will remain cumulatively significant, considerable and unavoidable long-term impacts.

All listed emissions reduction measures are included as conditions of approval of the Special Use Permit. The Tulare County Resource Management Agency shall monitor the dairy operation for compliance. At this time, other than the mitigation measures adopted and referenced above, no feasible mitigation measures exist. There is no evidence to the contrary in the Public Record of Proceedings.

- q. Impact No. 3.4.1 (Substantial Adverse Effect on Candidate, Special-Status or Sensitive Species).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that adverse impacts on candidate, special-status or sensitive species are potentially significant, and that changes or alternations have been required in the project which substantially lessen the impact to a less than significant level.

In support of this finding, the conversion of 320 acres of potential seasonal foraging habitat for Swainson's hawk represents a loss of approximately 11 percent of

available potential foraging habitat on the project site. This impact could be viewed as potentially significant even in light of the fact that 2,241 acres of the project site will continue to be maintained in agricultural production for dairy feed crops. The project impact can be mitigated to a less than significant level through the implementation of measures referenced in the California Department of Fish and Game *Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (Buteo swainsoni) in the Central Valley of California*. However, because of the number of dairy facilities that may be constructed in the Valley in the future, the cumulative impact may be significant and unavoidable. Because of the potential for construction of the proposed dairies to result in cumulative impact on Swainson's hawk due to foraging habitat loss, mitigation thereof is required.

Construction of the two proposed dairy facilities could result in potentially significant impacts on candidate, special-status or sensitive species. Another potential issue is whether project activities, most of which constitute no change to baseline-existing agricultural conditions, would result in a "take" of the San Joaquin kit fox within the meaning of the Endangered Species Act. Whether a "take" will occur in violation of Section 9 of the Endangered Species Act turns on the definition of "harm". While the definition of harm as set forth at 50 CFR Section 173 may include significant habitat modification or degradation, such habitat modification or degradation does not constitute harm unless it actually kills or injures wildlife. (*Defenders of Wildlife v. Bernal* 204 F3d 920 (9th CIR. 1999)). As proposed, the dairy project will remove approximately 11 percent of the site acreage from its present cultivated status. The mere possibility that a kit fox could reach the project site is not evidence of harm. In fact, San Francisco State University reports that kit foxes cannot live in areas that are being cultivated in the manner of the project.

Mitigation for this impact is set forth in Mitigation No. 3.4.1. Such mitigation is hereby adopted for this Project. The mitigation for this impact shall be a requirement that the applicant comply with the mitigation set forth in the California Department of Fish and Game's Staff Report regarding mitigation measures for impacts to Swainson's hawks in the Central Valley of California, and any other mitigation measures currently established pursuant to law by the applicable wildlife regulatory agencies relative to the 2,241 net crop acres for wastewater disposal requirements.

r. Impact No. 3.4.2 (Riparian Habitat/Sensitive Natural Community Impacts).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that riparian habitat impacts are less than significant, and therefore no mitigation is required.

In support of this finding, riparian vegetation can be found in association with the excavated irrigation basin on the project site. This vegetation has likely voluntarily been established after the construction of the irrigation basin. The construction of the proposed dairy facilities will not impact this basin or the associated vegetation.

The proposed project does not include any plans to alter or otherwise engage in activities that would result in alterations to the irrigation basin, its artificial hydrology, or any associated vegetation along its edges. In addition, no sensitive plant communities are located elsewhere within the proposed dairy site. Therefore, construction of the proposed dairy will not result in any impacts to any riparian or sensitive natural vegetation communities. It should be noted that the irrigation basin is a man-made structure identified by the National Wetlands Inventory Map as a palustrine unconsolidated shore artificially flooded seasonally flooded excavated. This irrigation basin would not be considered by the Army Corps of Engineers as jurisdictional. Likewise, the CDFG would not consider this basin subject to the provisions of Section 1600 et. seq. of the California Fish and Game Code. Provisions for the protection or of the vegetation associated with the irrigation basin would not be provided under these regulations. Therefore, there will not be any riparian habitat/sensitive natural community impacts.

s. Impact No. 3.4.3 (Impacts on Migratory or Resident Wildlife).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that migratory or resident wildlife impacts are potentially significant, and that changes or alterations have been required in the project which substantially lessen the impact to a less than significant level.

In support of this finding, several species of resident and migratory birds were observed during field investigations in the project area and in the surrounding vicinity. In addition, nocturnal species of birds and other wildlife (e.g., owls, skunks, raccoons, opossums, etc.) not observed during field investigations likely occur in the area. Dairy operation lights and noise provide potential disturbance to such resident and migratory species.

All lighting and paging loudspeakers associated with the new dairy facilities shall be directed inward on the dairy facilities portion of the project site.

This measure will decrease impacts to less than significant. Such mitigation is hereby adopted for this Project. The mitigation measures shall be incorporated into the conditions of approval in the Special Use Permit applicable to this Project and shall be the responsibility of the applicant and his contractor. RMA shall enforce this condition.

t. Impact No. 3.4.4 (Wetland Impacts).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that wetland impacts are less than significant, and therefore no mitigation is required.

In support of this finding, approximately 30 acres of the project area contains an excavated irrigation basin.

The leveed irrigation basin will not be disturbed and will remain as a part of the farming operation's irrigation system. There is no significant impact. Thus, no mitigation measures are required.

u. Impact No. 3.4.5 (Local Policy/Plan Conflict).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that local policy/plan impacts are less than significant, and therefore no mitigation is required.

In support of this finding, there are no applicable or pertinent tree preservation policies or ordinances habitat conservation plans, or natural community preservation plans. However, the *Recovery Plan for Upland Species of the San Joaquin Valley, California* identifies the project site as being located within a geographic area where connectivity and linkage areas should be promoted. Because nearly 90 percent of the project site will remain in cultivated agriculture and the construction of dairy facilities will not result in the prohibition of wildlife movement within the vicinity of the project, there is no impact.

v. Impact No. 3.5.1 (Cultural or Historic Resources, Skeletal Remains).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial evidence in the public record of proceedings, that cultural impacts are potentially significant, and that changes or alterations have been required in the project which substantially lessen the impact to a less than significant level.

In support of this finding, although there is no record evidence of archaeological sites on the project site, there is limited potential during project-related excavation and construction and continued farming on the project site for the discovery of cultural resources. Such discovery would be a potentially significant, but can be mitigated to a less than significant level. There could be a disturbance or destruction of cultural or historic resources resulting from the construction activities associated with the project.

If, in the course of project construction or project operation, any archaeological or historical resources are uncovered, discovered, or otherwise detected or observed, activities within 50' of the find area shall cease. A qualified archaeologist shall be contacted and advise the County of the site's significance. If the findings are deemed significant by the County's Environmental Assessment Officer, appropriate mitigation measures shall be required prior to any resumption of work in the affected area of the project.

This measure will assure that appropriate procedures are followed with respect to unidentified skeletal remains or Native American burial grounds that may be found during project construction or operation. The measure will assure that any Native

American burial sites encountered are avoided, treated in accordance with the recommendations of the most likely descendant (for Native American remains), or relocated. This measure will also assure that any historical or cultural resources are properly evaluated, and will reduce this impact to a less than significant level.

This requirement shall be included in the conditions of approval and shall be implemented by the applicant, construction contractors, the County Environmental Assessment Officer, County Coroner, and NAHC or local Native American organizations. Monitoring shall be performed by the Tulare County Resource Management Agency during project construction.

w. Impact No. 3.6.1 (Seismic Effects).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that seismic impacts are less than significant, and therefore no mitigation is required.

In support of this finding, there are no known earthquake faults, active or inactive, at or near the project site, although several faults are within an 80-mile radius of the project site.

The Five-County Seismic Safety Element places the project site in an area of minimal ground shaking, with no likelihood of ground failure or liquefaction. Project structures will be required to comply with Building Code regulations including seismic requirements. There are no significant seismic-related project impacts, and therefore no mitigation is required.

x. Impact No. 3.6.2 (Landslides).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that landslide impacts are less than significant, and therefore no mitigation is required.

In support of this finding, site topography is essentially level, less than two percent slope prior to land leveling for agricultural production.

There is no potential landslide impact, and therefore no mitigation is required.

y. Impact No. 3.6.3 (Soil Erosion, Topsoil Loss).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that soil erosion impacts are less than significant, and therefore no mitigation is required.

In support of this finding, the slopes at the dairy sites are minimal and soils are not highly erodible. The balance of the project site, with slopes generally not exceeding two percent, will be double-cropped or maintained in alfalfa.

The project will not create soil erosion or occasion loss of topsoil; there will not be an impact, and thus no mitigation is required.

z. Impact No. 3.6.4 (Soil Instability).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that soil instability impacts are less than significant, and therefore no mitigation is required.

In support of this finding, landslide potential and liquefaction potential have been discussed, and found to be less than significant, under Impacts #3.6.2 and #3.6.1, respectively. There is no evidence in the geologic record that “Old Alluvium” or its derivative soils are subject to lateral spreading. Subsidence is due to non-compacted, wind-deposited, soils consolidation under load, to oil or gas production or to ground water overdraft; no such soils, production or overdraft currently exists at the project site. Ground water overdraft associated with water level declines prior to 1963 allowed ground subsidence of approximately five feet in the project area. Such subsidence has been reduced to less than one foot in recent decades due to importation of surface water to the subbasin.

There will be no soil instability impacts, and thus no mitigation is required.

aa. Impact No. 3.6.5 (Expansive Soil Hazards).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that expansive soil impacts are less than significant, and therefore no mitigation is required.

In support of this finding, the proposed dairy facilities will be constructed on Atesh-Jerryslu association, Gareck-Garces association and Kimberlina fine sandy loam soils which are classified as low with respect to expansion attributes. No multi-story or pile-supported structures are to be constructed as a part of the project. Design modification of footings or slabs will therefore not be required, but only normal compliance with Uniform Building Code requirements.

There are no expansive soil hazard-related significant impacts, and thus no mitigation is required.

bb. Impact No. 3.6.6 (Unsuitable Soils for Domestic Waste Disposal; Soil Contamination).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that soil contamination impacts are less than significant, and therefore no mitigation is required.

In support of this finding, adequate area for leach line disposal of domestic wastewater and for leach line replacement is available adjacent to the dairy facilities portion of the site regardless of soil characteristics, and onsite soils have suitable permeability for leach field disposal. A permit from the County's Environmental Health Division will be required for domestic waste disposal facilities construction. Dairy operations will not contaminate underlying soils.

There is no impact, and no mitigation is required.

cc. Impact No. 3.6.7 (Mineral Resources).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that mineral resource impacts are less than significant, and therefore no mitigation is required.

In support of this finding, neither the site nor the surrounding area is identified in the Tulare County Environmental Resources Management Element as a mineral resource area.

No impacts to existing mineral resources will occur as a result of the construction and operation of a dairy at this site, and thus no mitigation is required.

dd. Impact No. 3.7.1 (Operational Hazards).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that operational hazard impacts are potentially significant, and that changes or alterations have been required in the project which substantially lessen the impact to a less than significant level.

In support of this finding, hazardous materials will be used for the operation of the proposed dairy and continued agricultural production at the project site, but will be applied by contract and not stored on the project site. Due to the hazardous nature of some materials that will be utilized by the dairy, operational hazards are potentially significant. The use of fuel stored in above ground tanks, lubricants, and cleaning solutions will be required for the operation and maintenance of equipment during and after construction. Pesticides (for control of vectors) and medicines for dairy cattle will be used at the dairy. Agricultural chemicals, including insecticides, herbicides, and fertilizer, will be used for continued farming at the site. No such materials or explosives will be stored or used at the site.

The RWQCB requires that a Storm Water Pollution Prevention Plan (SWPPP) be prepared for the dairy, complying with the provisions of the General Waste Discharge Requirements for Milk Cow Dairies, as a component of the waste discharge requirements for the project. The SWPPP is required to include provisions for the safe storage, use, and disposal of hazardous materials. In addition, all use of restricted agricultural chemicals is controlled by Federal and State laws and regulations enforced by the California Department of Pesticide Regulations (DPR). The Tulare County Environmental Health Division will not require a Hazardous Business Plan to be filed, as the dairy will not reach threshold quantities set forth in State and County regulations. Hazardous materials are typically labeled with precautionary statements, such as “Flammable, Poison, Combustible, Corrosive, or Toxic”. A business plan must be submitted by businesses that handle or store hazardous materials equal to or greater than the following threshold quantities: 55 gallons of liquid; 500 pounds of a solid; 200 cu. ft. of compressed gas; or radioactive material (Joel Martens, Tulare County Environmental Health, personal contact, March 2003).

Mitigation for this impact is set forth in Mitigation No. 3.7.1. Such mitigation is hereby adopted for this Project. This mitigation measure shall be implemented by the applicant and shall be a condition of the Special Use Permit. Monitoring shall be the responsibility of the RMA.

ee. Impact No. 3.7.2 (Site Hazards).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that site hazard impacts are less than significant, and therefore no mitigation is required.

In support of this finding, the site is not on or near a hazardous waste site as verified by review of Tulare County Resource Management Agency’s records.

No evidence exists that the site contains hazardous materials; there is no impact, and no mitigation required.

ff. Impact No. 3.7.3 (Airport Hazards).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that airport hazards impacts are less than significant, and therefore no mitigation is required.

In support of this finding, there is no active public or private airstrip within two miles of the project, and no airport related hazards exist at or near the project site.

There are no airport hazards impacts, and thus no mitigation required.

gg. Impact No. 3.7.4 (Emergency Evacuation and Wildland Fires).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that evacuation and wildland fire impacts are less than significant, and therefore no mitigation is required.

In support of this finding, the proposed project to be developed on private farmland will not interfere with the County's public emergency evacuation plan. Surrounded by farmland, the project is not within a recognized wildland fire hazard area.

No environmental impacts will occur, and thus no mitigation is required.

hh. Impact No. 3.7.5 (Other Health Hazards).

The potential for health hazards related to air quality and water quality concerns is addressed in paragraphs III(A)(1)(f) through (p), (rr) through (tt), and Section IV.A & B herein.

ii. Impact No. 3.7.6 (Vector Generation).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial evidence in the public record of proceedings, that vector impacts are potentially significant, and that changes or alterations have been required in the project which substantially lessen the impact to a less than significant level.

In support of this finding, the generation and storage of manure, manure-water, animal feed and other organic materials at dairies present the possibility of increased vector activities. Mosquito and fly infestations have been observed at dairies in the past, particularly at manure separation pits and lagoons that have not been properly maintained, and at poorly managed feed areas.

Mitigation for this impact is set forth in Mitigation No. 3.7.6. Such mitigation is hereby adopted for this Project. These mitigation measures shall be implemented by the applicant and shall be a condition of the Special Use Permit. Monitoring shall be the responsibility of the RMA with respect to facility design and construction. Monitoring of mosquito control will be the responsibility of the Tulare Mosquito Abatement District. Monitoring of fly control will be the responsibility of the Tulare County Environmental Health Services Division.

Project design, facility maintenance and cleanliness are the keys to proper control of fly and mosquito populations. The Earlimart Ranch Dairy facility, the easterly of the two facilities, is located in the Tulare Mosquito Abatement District. The Phillips Dairy facility is located in the Delano Mosquito Abatement District.

The Tulare and Delano Mosquito Abatement Districts, public agencies funded by property taxes, have certain design and maintenance requirements. These requirements are adopted as mitigation measures to the Project. A successful fly control program is a

result of controlling larva production. Larva production occurs where manure build-up is allowed and vegetation grows.

Accordingly, mitigation measures have been adopted consistent with proper fly control measures concerning the design and maintenance of the facility. The mitigation measures adopted will reduce the potential vector impacts to a level less than significant. Mosquito infestations can occur if vegetation becomes established around lagoon perimeters and/or excessive floatable material persists in pits and lagoons.

Nuisance flies associated with confined animal agriculture facilities can be a concern because they potentially carry a large number of disease-causing pathogens such as salmonella bacteria and trachoma virus (bovine pink eye) and may be responsible for infecting animals or people with these pathogens. While high numbers of flies can be a nuisance to nearby residences or businesses, disease transmission by nuisance flies merits greater concern. According to the University of California Cooperative Extension, nuisance fly dispersal behavior is poorly understood and difficult to predict. Accordingly, control of fly development is the only effective means to prevent nuisance fly problems at nearby receptors.

jj. Impact No. 3.7.7 (Cumulative Fly Generation).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial evidence in the public record of proceedings, that cumulative fly impacts are potentially significant, and that changes or alterations have been required in the project which substantially lessen the impact to a less than significant level.

In support of this finding, the California Environmental Quality Act defines cumulative impacts as two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. Cumulative impacts can result from individually minor but collectively significant projects.

The Delano Mosquito Abatement District and the Tulare County Environmental Health Department were consulted to determine if any fly complaints have been made at dairy facilities within a three-mile radius of the proposed project. The results indicate that there have been no complaints of flies in the dispersal area.

There are no dairies on other confined animal facilities within three miles of the proposed dairy facilities. Within a five-mile radius there are five dairies and two heifer ranches. Dairy inspection records on each of these five dairies are on file at the Tulare County Environmental Health office. A review of dairy inspections over a five-year period, for these five dairies discloses a total of 5 dairy fly control corrections required, as a result of 108 inspections, a correction rate of 4.6 percent. The dairies were in compliance after making such corrections. Expressed differently, 95 percent of the inspections found existing dairies to be in compliance with respect to fly correctiveness.

Based on evidence that there are no reported fly problems in the area of the proposed project, on the absence of any other dairies or confined animal facilities within three miles of the proposed dairy facilities and on the dairy design and operational considerations of the proposed project being consistent with the University of California Cooperative Extension Guidelines, as well as mitigation measures imposed, cumulative fly impacts will be less than significant.

kk. Impact No. 3.8.1 (Drainage Pattern Alteration).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that drainage pattern impacts are less than significant, and therefore no mitigation is required.

In support of this finding, the project as designed does not alter or redirect existing surface drainage patterns consisting of minimal flows toward the west.

Project construction and operation will result in no structural damage or drainage pattern alteration-induced erosion or siltation, and thus no mitigation is required.

ll. Impact No. 3.8.2 (Surface Runoff Increase or Pollution).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial evidence in the public record of proceedings, that surface runoff impacts are potentially significant, and that changes or alterations have been required in the project which substantially lessen the impact to a less than significant level.

In support of this finding, the project facilities are designed to retain all storm runoff on-site during a 25-year storm, plus the runoff from 120 days of December through March average rainfall plus all dairy wastewater, discharging such runoff to the wastewater lagoon.

The portion (approximately 760 acres) of the farmed area of the project site which is within the 100-year flood plain could conceivably contribute, at that time interval, pollutant discharge to the balance of the flood plain area (ten square miles or more, “upstream”). The lack of residential development, the degree of dilution available, and the infrequency of this potential occurrence render this possibility remote.

The dairy operator shall not spread manure solids during the period from November to April on the approximately 760 acres subject to 100-year flooding, and shall comply with Regional Board regulations regarding prompt incorporation of manure into surface soils after manure application.

Deer Creek drains a low-level watershed; the period from December through March is therefore that during which flooding may occur. The absence of dry manure solids on the 760-acre area during this period, and compliance with Regional Board regulations regarding prompt incorporation of manure into surface soils, will mitigate potential impacts due to flooding of the farmed area of the project to less than significant.

Mitigation for this impact is set forth in Mitigation No. 3.8.2. Such mitigation is hereby adopted for this Project. These mitigation measures shall be implemented by the applicant and shall be a condition of the Special Use Permit. Monitoring shall be the responsibility of the RMA and the State Regional Water Quality Control Board.

mm. Impact No. 3.8.3 (100-year Flood Hazards).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that 100-year flood hazard impacts are potentially significant, and that changes or alterations have been required in the project which substantially lessen the impact to a less than significant level.

In support of this finding, the Earlimart Ranch Dairy site and the Phillips Ranch Dairy site are designated by FEMA and by Tulare County's Open Space Element of the General Plan as being in Zone C, an "area of minimal flooding". Approximately 760 acres of farmed area is within Zone A, a 100-year sheet flood area of indeterminate depth.

The dairy facilities shall be elevated a minimum of one foot above natural grade. The south half of the Phillips Ranch dairy facilities west boundary and the west half of the Phillips Ranch south boundary shall be additionally protected from 100-year flooding by the construction and maintenance of a berm of two (2) feet height above the surrounding ground level on such boundaries.

The impact will be less than significant. The project creates no impediments or obstructions to flood flows and places no facilities in areas subject to 100-year sheet flooding.

nn. Impact No. 3.8.4 (Dam Failure).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that dam failure impacts are less than significant, and therefore no mitigation is required.

In support of this finding, the only upstream dams or levees which could conceivably affect the dairy site are Success Dam east of Porterville on the Tule River and Terminus Dam northeast of Exeter on the Kaweah River. Information obtained from the Corps of Engineers, the agency responsible for dam operation indicates that if catastrophic failure of either of these Dams were to occur, the project site would be beyond or at the extreme downstream edges of the calculated three-foot depth inundation areas, with flood waters arriving more than eight hours after (Success) or twelve to sixteen hours (Terminus) such failure occurred. This period would allow time to prepare the site for expected flooding and evacuation of workers, particularly since this is a rural area and urban congestion along evacuation routes would not be expected.

The low probability of the occurrence of dam failure, the large volume of flood water available for dilution of potential pollutants, and the relatively long warning period to ready the site for flooding indicate that inundation related to dam failure is not a significant risk to the project site, or thus, a significant impact. No mitigation is required.

oo. Impact No. 3.8.5 (Seiche, Tsunami, Mudflow Impacts).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that seiche, tsunami and mudflow impacts are less than significant, and therefore no mitigation is required.

In support of this finding, the project is not located near a body of water which could generate seiche or tsunami effects; site topography, as described in the Setting portion of this topical analysis, does not permit mudflow events.

There are no possible seiche, tsunami, or mudflow impacts, and thus no mitigation required.

pp. Impact No. 3.8.6 (Violation of Water Quality Standards or Waste Discharge Requirements).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that water quality standard impacts are less than significant, and therefore no mitigation is required.

In support of this finding, the Basin Plan establishes Water Quality Objectives for Ground Waters. These objectives are further defined in and supplemented by State Water Board water quality control policies and State Water Quality Control Board water quality control plans, as applicable to the Tulare Lake Basin and outlined in Section V of the Basin Plan. It is against this background that possible violation of Water Quality Standards is evaluated. The Regional Water Quality Control Board conducts further evaluation, and establishes project-specific requirements, in permitting dairy operation.

The Geological/Hydrological Report for the project indicates water in the unconfined aquifer under the project site contains 109 to 160 parts per million of total dissolved solids (TDS), a level satisfactory for irrigation usage. It further indicates that the shallow groundwater under the project site is essentially not usable for agricultural irrigation or for domestic water supply, with electrical conductivities of 2,330 to 4,490 micromhos/cm and nitrate levels as high as 121 mg/l. However, because of shallow groundwater conditions in the project area, separation pond and lagoon designs have been modified to maintain the Basin Plan-required five-foot separation between pond/lagoon and highest-measured or recorded groundwater.

The applicant has proposed that all pond depths be 12 feet. He further proposes that all ponds be built with pond bottoms above grade, thus maintaining the Basin Plan-required 5 feet of separation from the highest anticipated elevation of groundwater.

It is impractical to maintain the 10 feet separation suggested by the County in Standard Conditions of Approval No. 16. It should be noted in this regard that these conditions are preceded in the County's Animal Facilities Plan by the following text (page 36):

“Listed below are suggested conditions of approval for applications for Special Use Permits for dairies and other bovine animal confinement facilities. Conditions may be added and/or deleted prior to or during the course of public hearing on specific applications...”

It is particularly appropriate for this project that the 10 foot separation condition be deleted because of the demonstrated unusable water quality of the perched aquifers under the project site.

The project applicant has submitted a ‘comprehensive nutrient management plan’ which demonstrates that the proposed dairy facility will, after offsite disposal of corral-scraped and separator basin-settled solid wastes, comply with the nitrogen loading and salt loading groundwater protection requirements of the Regional Water Quality Control Board (RWQCB) and the Tulare County ACFP.

The comprehensive nutrient management plan calculations demonstrate compliance with suggested ACFP Condition 19. New sewage disposal (septage) systems for employees have adequate area for installation and operation without violating setbacks; there is no “waterway that runs off the dairy site”. The project applicant will be required by the Tulare County Environmental Health Department and the Tulare County Resource Management Agency to comply with ACFP Conditions 10, 11, 12, 13, and 16 regarding well and lagoon design and operation with the exception of Condition 16 regarding separations of lagoons from groundwater since the shallow groundwater is essentially useless, and any leakage thereto which might occur from lagoon operation would improve its quality.

The Regional Water Quality Control Board, in its comments on another, recent, EIR in Tulare County has required testing and possible casing sealing of agricultural wells within 100 feet of onsite cropland where manure is applied. The rationale for and efficacy of this requirement is subject to dispute since irrigation supply wells are customarily surrounded by numerous agricultural operations involving fertilizer usage or farm animal husbandry.

Nevertheless, the project applicant will, in accordance with the RWQCB's direction, and as a condition of obtaining approval of site-specific waste discharge requirements or project approval under General Waste Discharge Order No. 96-270, undertake the following steps:

Obtain available subsurface geologic and well construction data for all wells “within 100-feet of proposed wastewater retention ponds, corrals or cropland where wastewater will be applied” to determine whether casing seals or other construction details will prevent vertical migration of dairy wastewater.

When such positive determination cannot be made from well records, the applicant will:

Periodically, upon a schedule and with procedures approved by the RWQCB, test wells to assure that vertical migration of dairy wastewater is not taking place, and, when indicated by test results, and construct casing seals, as approved by the RWQCB, to prevent such migration. Since the wells are not associated with an identified or identifiable environmental impact, these procedures are not specified as mitigation measures. However, the applicant agrees to take these voluntary steps as part of his compliance with the Tulare County Environmental Health Division’s and the RWQCB’s requirements; these requirements shall be made conditions of approval in the Special Use Permit.

Project construction and operation will result in no violation of water quality standards or waste discharge requirements, and no mitigation is required.

qq. Impact No. 3.8.7 (Depletion of Groundwater Supplies).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that groundwater supply impacts are less than significant, and therefore no mitigation is required.

In support of this finding, water for continued farming and for dairy operations on the project site will be provided by onsite wells, as is water for current farming operations on the site.

The groundwater in the project area is of generally good quality for irrigation and, dependent upon regional rainfall/drought cycles, the water table ranges in depth below ground surface from 70 to 240 feet. It should be noted that most of the water quality data discussed in this appendix relates to water more than 200 feet below ground surface; newer agricultural wells in the area for which data is available, are generally perforated from 300 to 1,600 feet below ground surface. (The shallow groundwater is not utilized.) Aquifer transmissivities are adequate for irrigation well/agricultural well production.

The comprehensive nutrient management plan calculates net dairy facility water usage to be 480 acre-feet per year. This conservatively estimated net usage is based on the Regional Water Quality Control Board’s water utilization rate per cow of 80 gallons per day, and the recycling of 191 acre feet per year of such dairy water for crop irrigation.

If the 320 acre dairy facilities sites had remained in crop production they would have utilized on the order of 3.75 acre feet per acre, or 1,200 acre feet per year for irrigation. The dairy usage is therefore 720 acre-feet less than if the project facilities sites remained in agricultural production and less than significant in comparison to the Kaweah-Tule River groundwater storage unit's estimated 14 million acre feet of groundwater down to 600 feet below ground surface.

Groundwater usage for the remaining cropped area of the project site will be slightly (191 acre feet per year) less than at present because of dairy facilities water recirculation to the cropped area.

Project construction and operation will result in no significant depletion of groundwater supplies, and thus no mitigation is required.

rr. Impact No. 3.8.8.1 (Groundwater Degradation from Dairy Facilities).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial evidence in the public record of proceedings, that groundwater degradation impacts are potentially significant, and that changes or alterations have been required in the project which substantially lessen the impact to a less than significant level.

Accordingly, based on substantial evidence in the Final EIR and the Public Record of Proceedings, the Commission finds and declares that changes or alterations have been required in, or incorporated into, the Project which will mitigate or substantially lessen any groundwater degradation from dairy facilities to a level of insignificance.

Mitigation for this impact is set forth in Mitigation No. 3.8.8.1. Such mitigation is hereby adopted for this Project. The mitigation measure shall be incorporated into the conditions of approval in the Special Use Permit applicable to this Project and shall be the responsibility of the applicant and his contractor. The RMA and the Central Valley Regional Water Quality Control Board shall monitor compliance with this mitigation measure and shall enforce this condition pursuant to its enforcement powers allowed by law and the mitigation monitoring program adopted for this Project.

In support of this finding, evidence is contained in the Final EIR and in the Public Record of Proceedings that the Project has a number of design and operational features which are intended to prevent groundwater degradation. The geologic/hydrologic report prepared for the Project analyzes groundwater conditions and expected dairy design features. The evidence also indicates that there is little or no nitrate and salt contribution to the subsurface as a result of cattle in corrals. The evidence also analyzes measures to be taken to prevent the spread of pathogens and to prevent any public health impacts. Finally, the evidence indicates that the above-referenced mitigation measures, as adopted, will reduce potential Project-related water quality impacts to less than significant levels. There is no evidence to the contrary in the Public Record of Proceedings.

The Geological/Hydrological Report for the project which is required by Tulare County notes that the shallow groundwater at the project site is of unusable quality. The depth to such groundwater from lagoon bottoms may require an exception to Regional Board Order No. 96-270 with respect to such separation. Prior to obtaining a permit to discharge waste from the Regional Water Quality Control Board, the Board will require certification by a registered engineer or geologist that the lagoon lining meets the Title 27 requirements or any modifications thereof that may be required because of lagoon/shallow groundwater constraints.

ss. Impact No. 3.8.8.2 (Groundwater Contamination from Cropped Areas of the Project Site).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial evidence in the public record of proceedings, that groundwater contamination impacts are less than significant, and therefore no mitigation is required.

In support of this finding, the comprehensive nutrient management plan (CNMP) demonstrates that a sufficient area is available at the project site to receive the nitrogen application and salt uptake associated with the expected volume of manure water. Current American Society of Agricultural Engineers (ASAE) and Natural Resources Conservation Service (NRCS) design standards are the basis for nutrient balance planning in the CNMP. Recent data provided by the University of California has not been reviewed and approved by these national organizations/agencies and, therefore, it would be inappropriate to use this data at this time. It is noted that RWQCB staff (David Sholes, March 16, 2005) indicates that results of the study are not finalized. Nutrient management planning, using “book” excretion rates, is only an estimating tool for land use requirements. Actual land application rates will be determined by on-site nutrient testing and crop requirements.

Land application of all “dry” manure generated on-site is not possible since the allowable uptake of salt would be exceeded. The comprehensive nutrient management plan for the project indicates that approximately 7,694 tons per year of “dry” manure must be transported to and utilized off-site.) If the proposed cropping pattern changed substantially in the future to the extent that the projected application of nitrogen and/or uptake of salts can not be accommodated on-site, additional excess manure would be marketed off-site. The total number of animals that will occupy the site is determined by standards established by the California Regional Water Quality Control Board, and the County of Tulare.

Tailwater on the project site is returned to the head of the irrigation systems, preventing concentrations of manure water/irrigation water.

There will be no degradation of groundwater from the usage of manure or manure water on the agricultural portion of the site in accord with the comprehensive nutrient management plan. The Regional Water Quality Control Board may elect, under NPDES permit procedures, to require measurement of nutrient and salt uptake during dairy operations. Since available current data evaluated in the Comprehensive Nutrient

Management Plan does not indicate that groundwater will be degraded by project operations such a requirement is not included herein as a mitigation measure. However, if after monitoring and/or inspection activities, there is evidence of groundwater degradation, then the applicant shall comply with Title 27 and take such measures that will feasibly and effectively mitigate such condition. No mitigation is required.

tt. Impact No. 3.8.8.3 (Groundwater Contamination of Manure Re-use Sites).

The Board finds, based on substantial evidence of the public record of proceedings, that there are no feasible mitigation measures or alternatives, other than those adopted for project level impacts, that the Board could adopt at this time which would reduce groundwater contamination impacts at manure re-use sites to a less than significant level. This impact, therefore remain significant and unavoidable.

In support of this finding, there is no way to predict to which agricultural lands in the San Joaquin Valley the project-generated manure which will be sold for off-site usage will be applied. Users of the manure have no incentive to apply the manure at other than proper agronomic rates as such application could be counter-productive, inhibiting crop production, and would be economically impractical; however, there is no way to monitor each application site.

The Board further finds that this impact cannot be fully mitigated or substantially lessened, and that specific economic, legal/public policy, social, and technological benefits outweigh the significant environmental effects which are not mitigated to a level of insignificance. Despite these mitigation measures, there are still significant and unavoidable environmental impacts from this Project. Accordingly, after balancing these interests, the Commission hereby adopts the Statement of Overriding Considerations which is based on substantial evidence, set forth in the attached Exhibit "D," and is incorporated herein by reference.

Mitigation for this impact is set forth in Mitigation No. 3.8.8.3. Such mitigation is hereby adopted for this Project. Mitigation measures shall be incorporated into the conditions of approval in the Special Use Permit applicable to this Project and shall be the responsibility of the applicant and his contractor. The Tulare County Resource Management Agency and the Regional Board shall enforce this condition, pursuant to its enforcement powers allowed by law and the mitigation monitoring program adopted for this Project.

In support of this finding, evidence is contained in the Final EIR and the Public Record of Proceedings that users of manure exported from the Project site have an economic incentive to apply the manure at proper agronomic rates, but there is no way to monitor each application site. Application of manure in excess of agronomic rates potentially leads to a build-up of salts in the soil and eventually the groundwater. Excessive salt loading can result in a degraded water supply. Groundwater underlying agricultural fields fertilized with over-applied manure may be more susceptible to salt loading increases. Excess nitrogen and groundwater is a significant problem in some agricultural areas. The effect of nitrates on human health is a concern. The

above-referenced and adopted mitigation measure requires the dairy facility's operator to provide an invoice with each load of manure exported from the Project site stipulating that it must be applied in full compliance with all applicable federal, state and local laws and regulations. The applicant will also keep records of tonnage of manure exported off site for review by RMA. The impact remains possibly significant and unavoidable due to the inability to monitor use of the exported manure.

uu. Impact No. 3.9.1 (Division of an Established Community).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that community division impacts are less than significant, and therefore no mitigation is required.

In support of this finding, the location of the proposed dairy is not within any established community. The project is beyond the windshed boundary of the nearest community, and the existence of the railroad between the project and Allensworth renders the site nearly not visible.

There is no community division impact, and no mitigation is required.

vv. Impact No. 3.9.2 (Zoning/Special Use Permit Conformance).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial evidence in the public record of proceedings, that zoning impacts are less than significant, and therefore no mitigation is required.

Accordingly, based on substantial evidence in the Final EIR and the Public Record of Proceedings, the Commission finds and declares that the Project will not cause a significant impact involving the Zoning/Special Use Permit conformance, and thus, no mitigation is necessary or required.

In support of this finding, evidence is contained in the Final EIR and the Public Record of Proceedings that the Project is located on land zoned AE-40, and land surrounding the Project site is used for intensive agricultural and zoned AE-40. Granting a Special Use Permit for this Project will not conflict with the existing zoning. Accordingly, no significant environment impact will occur. There is no evidence to the contrary in the Public Record of Proceedings.

ww. Impact No. 3.9.3 (Animal Confinement Facility Plan Compliance –Animal Densities (Policy No. 2)).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that ACFP compliance impacts regarding animal densities are potentially significant, and that

changes or alterations have been required in the project which substantially lessen the impact to a less than significant level.

Mitigation for this impact is set forth in Mitigation No. 3.9.3. Such mitigation is hereby adopted for this Project. The mitigation measures shall be incorporated into the conditions of approval in the Special Use Permit applicable to this Project and shall be the responsibility of the applicant and his contractor. The RMA and the Central Valley Regional Water Quality Control Board shall monitor compliance with this mitigation measure and shall enforce this condition pursuant to their respective enforcement powers allowed by law and the mitigation monitoring program adopted for this Project.

In support of this finding, evidence is contained in the Final EIR and in the Public Record of Proceedings that although the animal densities of the Project will conditionally result in compliance with the Regional Water Quality Control Board Requirements for mitigation and salt loadings and with the Tulare County standards for animal densities, manure must be removed from the site in amounts specified in the Final EIR to meet salt loading requirements of the Regional Water Quality Control Board regulations. The evidence indicates that the above-referenced mitigation measure, as adopted, will reduce potential project-related animal density impacts to less than significant levels. There is no evidence to the contrary in the Public Record of Proceedings.

xx. Impact No. 3.9.4 (Animal Confinement Facility Plan Compliance – Proximity to Existing Dairy (Policy No. 3)).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that ACFP compliance impacts regarding proximity to existing dairies are less than significant, and therefore no mitigation is required.

In support of this finding, new dairy facilities (animal barns, corrals, and pens; wastewater lagoons/swamps; manure and feed storage areas excluding hay barns) must be located at least one-half mile (2,640 feet) from the nearest dairy, swine, poultry, or other animal confinement facility.

The proposed new dairies (Earlimart Ranch Dairy and Phillips Ranch Dairy) will be a mile apart. The nearest existing dairy is 3.5 miles to the northeast. The impact is less than significant, and no mitigation is required.

yy. Impact No. 3.9.5 (Animal Confinement Facility Plan Compliance – Residential Windshed (Policy No. 5)).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial evidence in the public record of proceedings, that ACFP compliance impacts regarding residential windshed are less than significant, and therefore no mitigation is required.

In support of this finding, a new dairy facility shall not be located closer than the distance established in the “Micro-Windshed Diagram A (Residential)”.

There are 4 residential dwellings on the project site, and within a 1-mile radius of the dairy facilities sites there are 2 dwellings to the north. The southern boundary of the residential Micro-Windsheds nearest to the Phillips Ranch Dairy facilities site is 1/3 mile. The project site is in compliance with the ACFP. The impact is less than significant, and no mitigation is required.

zz. Impact No. 3.9.6 (Animal Confinement Facility Plan Compliance-Agricultural Windsheds).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial evidence in the public record of proceedings, that ACFP compliance impacts regarding agricultural windshed are less than significant, and therefore no mitigation is required.

In support of this finding, the proposed dairy facilities sites will occupy 320 acres of the total project site. The remaining acreage will remain in field crop production. The nearest vineyard is situated approximately ¼ mile northeast of the Earlimart Dairy facilities site. There are also orchards located approximately ½ mile to the east. Neither of the dairy facilities are within the agricultural Micro-Windshed for either the vineyard or the orchard. The impact is less than significant, and no mitigation is required.

aaa. Impact No. 3.9.7 (Animal Confinement Facility Plan Compliance – Community Windshed Area).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial evidence in the public record of proceedings, that ACFP compliance impacts regarding community windsheds are less than significant, and therefore no mitigation is required.

In support of this finding, a new dairy shall not be located within a Windshed Area for incorporated or unincorporated communities, or within the Windsheds for areas zoned for residential use and containing 30 dwelling units.

The proposed dairy facilities sites are situated approximately 4 miles east of Alpaugh, and 3.8 miles west of Earlimart.

The dairy facilities sites are 3 ½ miles east of the Alpaugh Community Windshed Area boundary and 2 ½ miles west of Earlimart’s Windshed boundary. These facilities are not within the residential windsheds of homes in the community of Allensworth located 1.2 miles to the southwest. The impact is less than significant, and no mitigation is required.

bbb. Impact No. 3.9.8 (Animal Confinement Facility Plan Compliance-Relationship to Other Land Uses (Policy No. 4)).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial evidence in the public record of proceedings, that ACFP compliance impacts regarding other land uses are less than significant, and therefore no mitigation is required.

Accordingly, based on substantial evidence in the Final EIR and the Public Record of Proceedings, the Commission finds and declares that the Project will not cause any significant impacts involving animal confinement facility plan compliance concerning the relationship to other land uses (Policy No. 4). No mitigation is necessary or required.

In support of this finding, evidence is contained in the Final EIR and the Public Record of Proceedings that ACFP Policy No. 4 requires that a new dairy shall not be located within a windshed area for incorporated and unincorporated communities or within the windsheds for areas zoned for residential use in containing at least 30 legally established dwelling units. New dairy facilities must also not be located in primary flood plains, within 1,000 feet of a public park, in sink holes or areas draining into sink holes, or within one-half mile of school grounds or of the nearest point of the dwelling structure in a concentration of 10 or more occupied private residences. The evidence indicates that a field and map inspection verified that the Project does not violate any portion of ACFP Policy No. 4, and accordingly, there is no impact. There is no evidence to the contrary in the Public Record of Proceedings.

ccc. Impact No. 3.9.9 (General Plan Land Use Conflicts).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial evidence in the public record of proceedings, that general plan land use impacts are less than significant, and therefore no mitigation is required.

In support of this finding, the project is in compliance with all applicable Tulare County land use plans and policies which include the Environmental Resources Management Element, Safety Element, Noise Element and Rural Valley Lands Plan Element. The project site is located outside of any adopted Urban Area Boundary and is therefore subject to the land use policies of the Rural Valley Lands Plan. The Rural Valley Lands Plan designates the site for Agriculture. The Environmental Resources Management Element indicates that animal agricultural uses are appropriate in most agricultural areas with conditions established to preclude nuisance or hazard to adjoining landowners. The proposal is, therefore, consistent with the General Plan.

The proposed project is consistent with existing County land use plans or policies. There is no project impact, and no mitigation is required.

ddd. Impact No. 3.10.1 (Short-term Construction Noise).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that short

term construction noise impacts are less than significant, and therefore no mitigation is required.

In support of this finding, the nearest off-site receptor (a home) that would be potentially affected by construction noise is located over one-half mile from the dairy facilities sites. Construction noise levels at this receptor would be, at maximum, in the 70 to 80 dBA range. This range is conditionally acceptable for agricultural land uses, and this does not create significant impacts because of the short, daytime occurrence of construction-generated noise. No mitigation is required.

eee. Impact No. 3.10.2 (Traffic Noise).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that traffic noise impacts are less than significant, and therefore no mitigation is required.

In support of this finding, the project will generate a total of 172 trips per day of vehicular traffic that includes the transport of milk from the site, delivery of feed and supplies, animal delivery trucks, tallow trucks, and employees working at the project site.

This additional vehicular traffic will result in an increase in noise level of less than two decibels along the primary roadway (Avenue 56) in the project vicinity. This minimal increase in existing traffic noise levels is not generally detectable, and is therefore not a potentially significant impact. Thus, no mitigation is required.

fff. Impact No. 3.10.3 (Operational Noise).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that operational noise impacts are less than significant, and therefore no mitigation is required.

In support of this finding, dairy operations will generate noise levels above the existing ambient conditions.

The only sensitive receptors are the rural residences located one-half mile or more from the dairy facilities site. No impact will occur, and no mitigation is required.

ggg. Impact No. 3.11.1 (Population and Housing).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that population and housing impacts are less than significant, and therefore no mitigation is required.

In support of this finding, construction and operation of the dairy is consistent with the County's General Plan Land Use Element, Rural Valley Lands Plan, and zoning designations, and will not encourage additional population growth in this rural area of the County. Four new dwellings will be constructed and one existing dwelling on the project site will be relocated or removed as a result of the project.

There will not be any adverse impacts on population or housing conditions in the project area or from the project. The employment of 60 persons will have little or no impact on housing demand or population growth given the current high unemployment rate in the County.

hhh. Impact No. 3.12.1 (Public Services).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that public services impacts are less than significant, and therefore no mitigation is required.

In support of this finding, construction and operation of a dairy at this site will not require the employment of additional fire fighters or law enforcement officers. The existing facilities and equipment can maintain the current level of service.

The potentially impacted school districts mitigate increased student enrollment impacts by the imposition of school impact fees. No other public service will be affected by the project. While new agricultural businesses increase the potential for impacts on educational and public safety services, the increased tax revenue, service fees, and school impact fees associated with such businesses reduce the impacts of such increase to a less than significant level. No mitigation is required.

iii. Impact No. 3.12.2 (Exceedance of Regional Water Quality Control Board Requirements).

Pursuant to the discussion in 3.12.2 of the Final EIR, there will not be a significant impact to the environment involving exceedances of Regional Water Control Board requirements. The Board concurs in this analysis.

Accordingly, based on substantial evidence in the Final EIR and the Public Record of Proceedings, the Board finds and declares that the Project will not cause any significant impacts involving any exceedances of Regional Water Quality Control Board requirements. No mitigation is necessary or required.

In support of this finding of no significant impact, refer to the discussion in Section 3.8 of the Final EIR and the appendices, and Part III, Sections 3.8.6 and 3.8.8.1 and 2 of this exhibit.

jjj. Impact No. 3.12.3 (Water, Sewer, Storm Drainage and Refuse Services).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that visual compatibility impacts are less than significant, and therefore no mitigation is required.

In support of this finding, onsite water, sewer and storm drainage will be provided by the applicant.

Refuse service will be provided by a private refuse collection business with disposal to Tulare County's Woodville Landfill. As no public water, sewer or storm drainage services will be required, no impacts will result. Refuse service will be provided by a private refuse collector with the cost of this service covered by service fees. Approximately four cubic yards of refuse per week is expected to be transported to the Woodville Landfill. Equivalent to refuse service from four or five residential units, the project-related solid waste to be added to the County's landfill will have a less than significant impact. Accordingly, no mitigation is required.

kkk. Impact No. 3.13.1 (Recreational Facilities).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that recreational facility impacts are less than significant, and therefore no mitigation is required.

In support of this finding, the employment opportunities provided by the project may tend to attract or retain families in the Allensworth/Earlimart/Alpaugh area.

With the high unemployment in Tulare and Kern Counties, employment will most likely center on hiring persons currently living in either County. Even if some of the 60 new employees move to the Allensworth/Earlimart/Alpaugh area, the impact on existing recreation facilities will be less than significant. Thus, no mitigation is required.

lll. Impact No. 3.14.1 (Substantial Traffic Increase vs. Road Capacity/Exceedance of Level of Service Standard).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that traffic impacts are less than significant, and therefore no mitigation is required.

In support of this finding, the applicant has estimated that the dairy will have 60 employees at full development, generating a maximum of 120 trips per day at the intersection with Avenue 56, 90 percent going east from the site, 10 percent going west. (Population centers at which employees are likely to live are east of the project (Earlimart, Tipton, Pixley, Delano, Tulare); a similar origin, State Route 99, will prevail for other visitors.) Salesmen or other miscellaneous passenger vehicle traffic will involve 5 vehicles, 10 trips per day. It is also estimated by the applicant that the operation will

require 8 feed trucks per day to supplement onsite feed, generating 16 trips per day, 9 milk trucks per day, 18 trips, to transport dairy products, and less than 3 trucks per day, 6 trips to transport cattle or carcasses. It is assumed that all truck traffic will approach and leave equally in each direction on Avenue 56.

Accordingly, based on substantial evidence in the Final EIR and the Public Record of Proceedings, the Board finds and declares that the Project will not cause any significant impacts involving substantial traffic increases or exceedance of the level of service standards for roads. No mitigation is necessary or required.

mmm. Impact No. 3.14.2 (Increase in Air, Rail or Water-borne Traffic).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that air, rail and water-borne traffic impacts are less than significant, and therefore no mitigation is required.

In support of this finding, the project will have no effect on these transportation modes.

There is no impact, and thus no mitigation is required.

nnn. Impact No. 3.14.3 (Safety Hazards).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that safety hazards impacts are less than significant, and therefore no mitigation is required.

In support of this finding, there is a potential for increased risk of accidents involving truck traffic turning into or exiting the project site from Avenue 56, a 55 mile per hour roadway.

There will, however, be only an average of 70 passenger vehicle and truck entrances and 70 such exits per day. Assuming that 90 percent of the traffic on Avenue 56 occurs during a 16-hour period, the average interval between vehicles will be approximately 50 seconds, allowing a distance interval of 4,400 feet, a more than adequate time and distance interval to permit this limited number of vehicle turning movements without traffic hazards. There are no curves, hills, or other visual impediments in the roadway within the calculated one-mile interval. It should be further noted that car and truck traffic serving dairies and farmsteads does not exhibit typical urban roadway peak hour timing and characteristics. "Peak hour" analysis of turning movement constraints is therefore meaningless given this traffic pattern and the non-peak timing of truck movements to and from the project site. The impact is less than significant.

The estimated additional traffic at the intersection of Avenue 56 and State Route 43, 22 trips per day, does not warrant analysis of impacts at that intersection; such impacts are clearly less than significant.

ooo. Impact No. 3.14.4 (Emergency Access Adequacy, Parking Capacity Adequacy, Bike or Bus Transportation Constraints Impacts).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that access and parking impacts are less than significant, and therefore no mitigation is required.

In support of this finding, there is no discernible or possible project effect on emergency access or alternative transportation formats. Onsite parking will be provided for project employees, visitors, and truck services.

There is no impact, and no mitigation is required.

ppp. Impact No. 3.14.5 (Road Deterioration).

The Board finds, pursuant to Public Resources Code Section 21081(a) and based on substantial, uncontroverted evidence in the public record of proceedings, that road determination impacts are potentially significant, and that changes or alterations have been required in the project which substantially lessen the impact to a less than significant level.

Mitigation for this impact is set forth in Mitigation No. 3.14.5. Such mitigation is hereby adopted for this Project. The mitigation measures shall be incorporated into the conditions of approval in the Special Use Permit applicable to this Project and shall be the responsibility of the applicant and his contractor. The RMA shall monitor compliance with this mitigation measure and shall enforce this condition pursuant to their enforcement powers allowed by law and the mitigation monitoring program adopted for this Project.

In support of this finding, the proposed project has the potential to substantially accelerate the physical deterioration of public roads. The project truck route is from the site entrance on Avenue 56 west to SR 43, and from the site entrance on Avenue 56 east to SR 99.

IV

CUMULATIVE IMPACTS

A. Air Quality Impacts.

Pursuant to the discussion in Section 5.1 of the Final EIR, given the state of the air quality in the San Joaquin Valley, certain air quality impacts of the Project are cumulatively significant. The Board concurs in this analysis.

Accordingly, based on substantial evidence in the Final EIR and the Public Record of Proceedings, the Board finds and declares that changes or alterations have been required in, or incorporated into, the Project which will partially lessen any significant

impacts to cumulative air quality; however, the Board further finds that there are specific economic, legal/public policy, social or other considerations which make infeasible any further mitigation measures or project alternatives. Since the cumulative impact relating to air quality is significant and unavoidable and will not be reduced to a level of insignificance, this impact is addressed in the Statement of Overriding Considerations set forth in the attached Exhibit "D" which is incorporated herein by reference.

In support of this finding, the evidence indicates that the types of development and geographic area analyzed for cumulative impacts include dairy facilities in the southern San Joaquin Valley, including existing and probable future facilities. The air quality effects associated with the proposed Project may affect the ambient air quality within the San Joaquin Valley Air Basin. The air basin has geographic boundaries which encompass approximately 25,000 square miles of land, including portions of eight counties. The air quality within the basin is affected by a wide range of human activities, including stationary sources of air emissions (e.g. industrial facilities and power plants), mobile sources (e.g., cars, trucks, and mobile equipment), and biogenic or natural sources (e.g., methane emissions from decomposition of organic materials, including sewage). The air basin is also affected by emissions generated by a wide range of agricultural activities, such as dairy operations and crop production. The basin has been designated as severe non-attainment status for PM₁₀ and Ozone.

Agricultural activities are, for the most part, not subject to land use permits or air quality permits. Consequently, comprehensive information is not available from either air quality control districts or counties regarding air emissions generated by agricultural activities. Although the California Air Resource Board ("CARB") and SJVUAPCD have developed emissions inventories for select air pollutants from some agricultural activities (e.g., land preparation, harvesting, and beef cattle feedlots), air emissions, inventories and site-specific monitoring data regarding relevant parameters (e.g., ROG, hydrogen sulfide, PM₁₀, and methane) for animal confinement facilities (including dairies) within the San Joaquin Valley air basin are not available. General inventories of estimated emissions from agricultural activities are under development but are not based on site-specific conditions (i.e., the number of animals, volume of manure generated, area of animal confinement, or process water management). In contacting local lead agencies within the air basin during preparation of this EIR, it became evident that complete records of conditions at, and operations of, all animal confinement facilities are not available.

The lack of available quantitative data makes accurate representative analysis of all cumulative sources of air emissions impossible. The primary thresholds of significance for cumulative air quality impacts are defined by Ambient Air Quality Standards which provide a basis for measurement of the attainment status of the air basin. These ambient standards do not discern which sector of sources contributes to air pollution (or how much), but nevertheless act to trigger the significance classification of cumulative impacts. All sources (point or non-point sources, permitted and unpermitted sources) of air emissions for which the air basin is not in attainment (e.g., PM₁₀ and ozone precursors) contribute to the non-attainment condition.

Lacking other specific data, a projection of cumulative impacts from dairy development in the San Joaquin Valley was made based on existing inventories, on dairy cow use permits issued or pending (but not constructed), and on projections by Tulare County and Kings County of maximum potential increases in dairy inventory. Table 5-1 of the Final EIR describes current and projected milk cow/dairy population in the eight-county area. Based on the preceding discussion of the lack of precise data on the number of cows on each individual dairy within the air basin, this EIR does not evaluate the individual cumulative impacts of each dairy; however, a cumulative analysis thereof is provided based on the best available data.

The SJVAPCD is currently developing guidelines for agricultural conservation practices to reduce the emissions from agricultural activities including livestock management. However, significant emissions of PM10, PM2.5 and ROG from dairies will likely occur even after implementation of these measures. Therefore, the emission of these pollutants will still be a cumulative significant unavoidable impact.

ROG and particulate matter are regional air quality issues whose impacts on receptors are extremely difficult, if not impossible to quantify reasonably. The primary source of particulate matter on dairies is fugitive dust sources which are released from ground level, are not thermally buoyant, and are expected to decrease with distance. Therefore, although particulate matter is considered a cumulatively significant and unavoidable impact on a regional basis because of the air basin's non-attainment status, the potential cumulative impact on local ambient air quality is expected to be less than significant.

Despite the incorporation in modern dairy design and operation of numerous best management practices for this Project, the only currently feasible mitigation for cumulative air quality degradation impacts may be the adoption and implementation of additional regulations, which are currently under study by the County. No additional mitigation measures are available for this project for such cumulative impact, other than the required Project-level mitigation measures, until new technologies can be demonstrated to be economically and practically feasible at operational dairy levels and to quantitatively achieve mitigation of emissions.

B. Water Quality Degradation Impacts.

Pursuant to the discussion in Section 5.2 of the Final EIR, the incremental impact of the Project may cause a potentially cumulatively significant impact on groundwater degradation. The Board concurs in this analysis.

Accordingly, based on substantial evidence in the Public Record of Proceedings, the Board finds and declares that changes or alterations have been required in, or incorporated into, the Project which will lessen any significant impacts to cumulative ground water quality. However, the Board further finds that there are specific economic, legal/public policies, social or other considerations which make infeasible any further mitigation measures or project alternatives. Since the cumulative impact relating to air quality is significant and unavoidable, will not be reduced to a level of insignificance, this

impact is addressed in the statement of overriding considerations set forth in the attached Exhibit "D" which is incorporated herein by reference.

In support of this finding, the evidence indicates that the Project is committed to follow the regulations of the County's Animal Confinement Facility's Plan and the Regional Water Quality Control Board's Title 27 regulations. By following these requirements, there will not be any Project-level significant impacts, and there should not be any cumulative groundwater quality impacts. However, it is recognized that it is possible that there may be a cumulative impact, which may be de minimus. Nonetheless, all feasible mitigation measures have been required for, or incorporated into, the Project. Mitigation monitoring is also required for this Project by the County and the Regional Water Quality Control Board. If any groundwater quality impacts are identified, appropriate corrective action will be required by these public entities.

C. Loss of Habitat for Predators.

Pursuant to the discussion in Section 5.3 of the Final EIR, there will not be a significant cumulative impact as a result of approval on the Project on the loss of foraging habitat for predators. The Board concurs in this analysis.

Accordingly, based on substantial evidence in the Public Record of Proceedings, the Board finds and declares that changes or alterations have been required in, or incorporated into, the Project which will partially lessen any significant impacts to cumulative habitat loss for avian predators. However, the Board further finds that there is specific economic, legal/public policy, social or other considerations which make infeasible any further mitigation measures or project alternatives. Since the cumulative impact relating to air quality is significant and unavoidable and will not be reduced to a level of insignificance, this impact is addressed in the Statement of Overriding Considerations set forth in the attached Exhibit "D" which is incorporated herein by reference.

In support thereof, assuming that the loss of such habitat from the construction and operation of this dairy is typical (i.e., 320 acres for 12,250 animal units, assuming 1,400 pound Holstein cows), that there are .024 acres per animal unit and that projected Valley dairies embrace approximately 700,000 additional milk cows, such projected dairy construction and operation could remove 23,000 acres of predator foraging habitat. Although the San Joaquin Valley area includes 4,793,000 acres of irrigated land utilized as such foraging habitat, the cumulative loss described is significant because of the special-status or sensitive designations of several predators which utilize this habitat.

In terms of mitigation of cumulative biological impacts, the project is required to mitigate, and will mitigate, its contribution to any cumulative impact resulting from the potential loss of habitat for avian predators. Specifically, the project is required to preserve a net of 2,241 acres of row crops to satisfy its wastewater disposal requirements. In this way, there will be more than sufficient acreage to mitigate project-level contribution to any significant cumulative impact involving the potential loss of foraging habitat for predators. In addition, the project is required to comply with the mitigation

measures set forth in the California Department of Fish and Game's *Staff Report regarding Mitigation Measures for Impacts to Swainson's Hawks (Buteo swainson) in the Central Valley of California* (November 1, 1994) and any other mitigation measure currently established pursuant to law by the applicable wildlife regulatory agencies. This is sufficient mitigation for any potentially significant cumulative biological impact.

Further, in connection with mitigation of cumulative biological impacts caused by dairies inside and outside the boundaries of Tulare County, such mitigation measures would, under these circumstances, be unreasonable and legally infeasible because there is no nexus between such requirement and the mitigated project biological impact. It would be unreasonable and legally infeasible to compel a project proponent to mitigate any cumulative biological impact outside the boundaries of Tulare County.

V

GROWTH-INDUCING IMPACTS

Pursuant to the discussion in Section 6.1 of the Final EIR and consistent with Public Resources Code Section 21100(b)(5) and CEQA Guidelines Section 15126.2(b), the Board finds and declares that there are no direct growth-inducing impacts resulting from this Project.

Accordingly, based on substantial evidence in the Final EIR and the Public Record of Proceedings, the Board finds and declares that the Project will not cause a significant growth-inducing impact, and as such, no mitigation is necessary or required. There is no evidence to the contrary in the Public Record of Proceedings.

In support of this finding, the evidence indicates that the development of the Project is unlikely to result in or contribute to population growth inducement because it is unlikely that a significant number of workers will be locating to the Allensworth area. Although badly needed and beneficial to Tulare County's impacted work force, the additional employment resulting from the Project will be less than significant when compared to Tulare County's double-digit rate of unemployment, and as such, the additional employment cannot be considered growth-inducing. Consequently, the additional employment will likely come from the existing and substantial body of the unemployed and not from in-migration.

Further, the Project consists of the construction and operation of a dairy and associated growing of crops for feed. Thus, the site would continue in agricultural use as permitted by the zoning for the site. The Project does not propose any infrastructure projects to serve areas outside of the Project site. The Project is needed to serve plant capacity at local milk processing plants. Therefore, there are no direct growth-inducing activities associated with this Project and no indirect growth-inducing impacts are likely.

VI

SIGNIFICANT ENVIRONMENTAL EFFECTS THAT CANNOT BE AVOIDED

Pursuant to the discussion in Section 6.2 of the Final EIR and consistent with Public Resources Code Section 21100(b)(2)(A) and the State CEQA Guidelines Section 15126.2(b), the Board finds and declares that there are significant environmental effects that cannot be avoided, including cumulative and project-related air quality impacts, a potential cumulative water quality impact, a project-level impact relating to groundwater contamination at manure re-use sites, and a cumulative biological impact relating to the loss of predator foraging habitat.

In support of this finding, the evidence indicates that there are various implications from the significant environmental effects. In connection with cumulative and project-related air quality impacts, there are no feasible mitigation measures, other than those required and adopted for this Project that will reduce these impacts to a level of insignificance. With respect to the potentially significant cumulative water quality impacts, there are no feasible mitigation measures, other than those required and adopted for the Project that will reduce these impacts to a level of insignificance. With respect to the potentially significant project-level impact relating to groundwater contamination at manure re-use sites, there are no feasible mitigation measures, other than those required and adopted for the Project that will reduce these impacts to a level of insignificance. Concerning the cumulative biological impact relating to the loss of predator foraging habitat, there are no feasible mitigation measures, other than those required and adopted, that will reduce these impacts to a level of insignificance.

Notwithstanding the significant and unavoidable environmental effects, the Project is proposed and approved to enable the applicant to achieve the Project's basic objectives, including (1) to build and operate economically viable and competitive dairy facilities in compliance with applicable laws and regulations, (2) to optimally utilize available land resources, and (3) to mitigate environmental impacts to the extent feasible. However, alternative designs or locations which would possibly achieve these objectives would not reduce the identified cumulative impacts to a level with insignificance. In addition, all feasible mitigation measures have been required for this Project; and despite the imposition of all feasible mitigation measures, there are cumulative environmental impacts which remain significant and unavoidable. These significant and unavoidable environmental effects are discussed herein. Such discussion is incorporated by reference.

VII

ALTERNATIVES

In connection with alternatives, CEQA and the State CEQA Guidelines require that an EIR provide a reasonable range and discussion of alternatives. (Public Resources Code §§ 21002, 21002.1; Guidelines § 15126.6.)

A. Alternatives.

The proposed Project constitutes two new dairy operations designed to accommodate a total maximum of 12,250 total animal units (7,500 Holstein milk cows plus support stock), within two built facilities covering 160 acres each of a 2,692-acre

site, with the balance of the acreage remaining under cultivation and available for irrigation with reclaimed dairy water.

Specifically, the applicant filed with RMA and application for a Special Use Permit (PSP 96-072).

The basic objectives of the Project, as described in the Final EIR, are to build and operate economically viable and competitive dairy facilities in compliance with applicable laws and regulations, optimally utilizing the available land resource and mitigating any environmental impacts to the extent feasible.

CEQA requires that an EIR analyze a reasonable range of alternatives. (Public Resources Code Sections 21102, 21002.1 and Guidelines Section 15126.6.) The alternatives that were considered in the Final EIR are described as the no-project alternatives, alternate sites, and reduced herd size alternatives, as well as an environmentally superior alternative. The comparison of these environmental effects was made in Section 4 of the Final EIR. Table 4-1 (made a part hereof) of the Final EIR provides a matrix which compares the environmental impacts of the Project and the Project alternatives. Each of these alternatives is now addressed.

1. No Project Alternatives (Alternative No. 1).

The purpose of the no-Project alternative is to allow the lead agency to compare the impacts of the proposed projects with the impacts of not approving it. The no-project alternative assumes that the land is used pursuant to existing zoning authorized under the County's General Plan.

a. Alternative No. 1A (No Project Sub-Alternative: No Further Development)

The dairy facility would not be built. The land would continue to be used for intensive agricultural cultivation. Existing conditions and historic agricultural uses at the project site indicate that the most suitable future agricultural use of the project site would be continued row and field crop production. A comparison of the environmental effects of these Alternatives and the Project are discussed as follows:

▪ Air Quality

The ROG, methane, ammonia and hydrogen sulfide/odor impacts of the project would be eliminated. PM₁₀/PM_{2.5} impacts would be diminished, although such effects would be replaced to some lesser degree by necessary plowing, and by soil cultivation-generated PM₁₀. Nitrogen oxide emissions from agricultural production would, because of the additional 320 acres being farmed, slightly increase. Unpaved roads on the site and farming operations would continue to create PM₁₀ - PM_{2.5} emissions.

- Biological Resources

Approximately 320 acres of predator foraging habitat would be retained, eliminating project-related biological resources cumulative impacts.

- Water Quality

Any possible direct water quality impacts of the project would be eliminated. The application of irrigation water and fertilizers to irrigated agriculture at the project site will continue to have water quality impact potential if mismanaged.

2. Alternative Sites.

These alternatives are alternative, larger, sites. The purpose of reviewing alternative sites is to provide the decision-maker with an analysis of other sites where the environmental effects that are expected from the subject project may be reduced.

There are alternative locations for the construction of a dairy of this size in Tulare County. Utilizing criteria contained in the ACFP policies and standards (e.g., prohibiting new facilities within windsheds) the Tulare County Resource Management Agency has determined that approximately 100,000 acres of land in Tulare County would be available for the construction of a new dairy.

There are included in that figure, existing dairy lands, dairy lands approved and dairy lands pending permit issuance. The utilization of some of these sites might involve impacts not present on the project site – incompatible land uses or transportation/ traffic effects on minor roads, for example. Because of the status of the air quality in the San Joaquin Valley Air Basin, there is no evidence that there are any other sites in Tulare County which would not have comparable air quality impacts or cumulative biological resource habitat impacts.

There is no evidence that there are any other sites in Tulare County which would have less potential for cumulative water quality impacts from project-size dairy facilities or direct impacts from on-site manure fertilization.

However, the potential impacts associated with improper application of manure as a fertilizer and soil amendment at offsite locations (see Impact No. 3.8.8.3) could be eliminated if an alternative site were available and selected which had sufficient acreage that all manure could be utilized onsite at agronomic rates. Such a site would require about 3,137 acres under agricultural production with crops similar to those on the project site, an increase of 445 acres over the acreage available at the project site.

To allow a thorough analysis, two typical, larger, Tulare County sites have been selected for comparative alternative analysis, even though such sites are not under the control of the project applicant, are in multiple ownership and may not be available for

purchase. Each of the sites is located in areas designated by the Tulare County Resource Management Agency as available for dairy development and is properly zoned (AE 40).

a. Alternative Site No. 2.A.

This site is located north of Visalia, south of Avenue 384 between Road 86 and Road 108. It has access to a roadway which is on the County's Select System (Avenue 360). It is assumed to be 3,251 acres in size. It is bordered by a major dairy one-half mile to the east and by other dairies and scattered rural residencies to the south and west. There are no dairies within one-half mile. There are no orchards or vineyards located within County "windshed" boundaries, nor is it located in a County-defined Community Windshed. There are no wetlands or areas of native vegetation in the site vicinity; however, burrowing owls were observed on site ditch banks. The majority of the site is in a 500-year flood zone. Depth to perched groundwater averages from seven to 20 feet; depth to groundwater approximately 70 feet. Soils are sandy loams. Nitrogen levels in area groundwater range from eight (deep wells) to 70 (perched groundwater) parts per million of $\text{NO}_3\text{-N}$. Shallow water table salinity ranges from 890 to 1620 E_c ; deeper water quality salinity is satisfactory.

An analysis of the impacts of a 12,250 animal unit dairy on a 3,251-acre site at this alternative location is compared to the impacts for the project as follows:

- Aesthetics: Potentially significant impact (light and glare), mitigable to less than significant.

There are no physical features in the area whose aesthetic value would be diminished by dairy construction. The site is occupied by an older farm residence and minor, old, agricultural buildings and fences. Adjacent properties are vacant. The glare impacts of nighttime lighting can be diminished to less than significant by directing security lighting at dairy structures downward and inward.

- Agriculture Resources: No significant impact.

The project site will remain in agricultural production. Currently unused portions of the site will be converted to intensive agriculture.

- Air Quality: Significant project-level impacts similar to those of the project.

With a project herd of the same size, incremental project air quality impacts will be the same as those of the project.

- Biological Resources: Potentially significant impact, mitigable to less than significant.

A biological survey of the site disclosed no wetlands or areas of native vegetation in the site vicinity. No endangered or threatened species, or species of special concern, were found on the site with the exception of burrowing owls on site ditchbanks. Avoidance of disturbance of owl burrows during nesting season will mitigate any significant biological impacts.

- Cultural Resources: Potentially significant impacts (disturbance of cultural or historical resource skeletal remains) mitigable to less than significant.

There is always, in the San Joaquin Valley, the potential for disturbance of cultural or historical artifacts or skeletal remains. There are, however, no known historical sites on the alternative project site, and no streams traversing the property on which cultural habitation sites might be anticipated. Standard mitigation measures involving construction cessation and notification procedures would mitigate any potential impacts to less than significant.

- Geology, Soils and Mineral Resources: No significant impact.

The site is not located in an area of the Valley in which any mineral resources have been found. There will be no soils impacts; all of the site will remain in agricultural usage, and the flat slopes in the area mitigate against soil erosion.

- Hazards and Hazardous Materials: Potentially significant impacts (operationally hazards) mitigable to less than significant.

As with the project, hazardous materials would be used by a dairy operation at this site. Documentation of, and compliance with, SB 198 employee safety programs, a Storm Water Pollution Prevention Plan and the permitting requirements of the California Department of Pesticide Regulations will reduce the potential impact to less than significant.

- Hydrology and Water Quality: Potentially significant impacts mitigable to less than significant (with elevated ponds and supplemental pond sealing measures required by the Regional Water Quality Control Board, similar to the pond elevation and pond sealing required by that Board at a recently-permitted adjacent dairy).

The project's location in an area of high groundwater creates the need for specialized mitigation measures.

- Land Use and Planning: No significant impacts; the site is in compliance with all land use and planning regulations.

The site is remote from clusters of residences, and from orchards. It is over one-half mile to the nearest dairy. It is properly zoned (AE-40).

- Noise: No significant impacts.

There are no nearby sensitive receptors or residential areas.

- Population and Housing: No significant impacts.

The alternative's employment generation potential is the same as that of the project. It is within easy commute distance from communities with existing high unemployment levels and thus unlikely to generate population growth or housing demand.

- Public Services and Utilities: No significant impacts.

Like the project, the alternative creates no demand for public utility services, and can be served by existing County law enforcement and fire suppression services.

- Recreation: No significant impacts.

The alternative creates no demand for additional recreation facilities. Employees will live and recreate in existing communities served by such facilities provided by the communities or the County of Tulare.

- Transportation/Traffic: No significant impacts.

The alternative has direct access to Avenue 360, a component of the County's Select System, and from that Avenue to Road 80, partially mitigates the potential for traffic-related or road deterioration impacts, but it appears that pavement cross-section on Avenue 360 may not be constructed to an engineered standard and that further mitigation for the alternative's project-related road degradation would be required.

As with the project, there would be significant cumulative impacts with respect to air quality, possible cumulative water quality impacts and cumulative loss of avian predator foraging habitat, but it appears that the pavement cross-section on Avenue 360 may not be constructed to engineered standards and that mitigation for alternative project-related road degradation would be required.

b. Alternative Site No. 2.B.

This site is located south of the intersection of County Road 152 and County Avenue 160. It has direct access to Road 152, a County's Select System collector. It is

assumed to be 3,311 acres in size. It is located over one-half mile from the nearest confined-animal facility (a calf ranch). Properties adjacent to the site are in intensive row and field crop agriculture. There are no orchards, vineyards or concentrations of rural residences located within County “windshed” boundaries, nor is the site located in a County-defined Community Windshed. Groundwater beneath the site is at 40 to 130 feet depth below ground surface and is of good quality. Surface soils are fine sandy loam. The site is located within a Zone C flood boundary, “area of minimal flooding”.

An analysis of the impacts of a 12,250 animal unit dairy on a 3,311-acre site at this alternative location is compared to the impacts for the project as follows:

- Aesthetics: Potentially significant impact (light and glare), mitigable to less than significant.

There are no physical features in the area whose aesthetic value would be diminished by dairy construction. Adjacent properties are essentially vacant. The glare impacts of nighttime lighting can be diminished to less than significant by directing security lighting at dairy structures downward and inward.

- Agriculture Resources: No significant impact.

The project site will remain in agricultural production.

- Air Quality: Significant project-level impacts similar to those of the project.

With a project herd of the same size, incremental project air quality impacts will be the same as those of the project.

- Biological Resources: Potentially significant impact, mitigable to less than significant.

There is no evidence of wetlands or areas of native vegetation in the site vicinity, or of endangered or threatened species, or species of special concern, on the site except that the area may be used for foraging by avian predators.

- Cultural Resources: Potentially significant impacts mitigable to less than significant.

There is always, in the San Joaquin Valley, the potential for disturbance of cultural or historical artifacts or skeletal remains. There are, however, no known historical sites on the alternative project site, and no streams traversing the property on which cultural habitation sites might be anticipated. Standard mitigation measures involving construction

cessation and notification procedures would mitigate any potential impacts to less than significant.

- Geology, Soils and Mineral Resources: No significant impact.

The site is not located in an area of the Valley in which any mineral resources have been found. There will be no soils impacts; all of the site will remain in agricultural usage, and the flat slopes in the area mitigate against soil erosion.

- Hazards and Hazardous Materials: Potentially significant impacts mitigable to less than significant.

As with the project, hazardous materials would be used by a dairy operation at this site. Documentation of, and compliance with, SB 198 employee safety programs, a Storm Water Pollution Prevention Plan and the permitting requirements of the California Department of Pesticide Regulations will reduce the potential impact to less than significant.

- Hydrology and Water Quality: Potentially significant impacts mitigable to less than significant.

Groundwater at the site is at approximately 40 to 130 feet depth below ground surface. A portion of the site is within a FEMA Zone C flood area, area of minimal flooding.

- Land Use and Planning: No significant impacts.

The site is in compliance with all land use and planning regulations. The site is remote from clusters of residences, and from orchards. It is over one-half mile to the nearest confined animal facility. It is properly zoned (AE-40).

- Noise: No significant impacts.

There are no nearby sensitive receptors or residential areas.

- Population and Housing: No significant impacts.

The alternative's employment generation potential is the same as that of the project. It is within relatively easy commute distance from communities with existing high unemployment levels and thus unlikely to generate population growth or housing demand.

- Public Services and Utilities: No significant impacts.

Like the project, the alternative creates no demand for public utility services, and can be served by existing County law enforcement and fire suppression services.

- Recreation: No significant impacts.

The alternative creates no demand for additional recreation facilities. Employees will live and recreate in existing communities served by such facilities provided by the communities or the County of Tulare.

- Transportation/Traffic: No significant impacts.

The alternative has direct access to County Road 152, and will be required to construct access thereto under the restrictions of an encroachment permit from the County. The site location, road condition and minimal traffic flows on Road 152 partially mitigate the potential for traffic-related or road deterioration impacts.

As with the project, there would be significant cumulative impacts with respect to air quality, potential cumulative water quality impacts and loss of cumulative avian predator foraging habitat.

3. Reduced Herd Sizes.

The project proposes a herd size of approximately 12,250 animal units. This analysis evaluates alternatives incorporating reduced herd sizes of approximately 7,350 and 4,900 animal units, 60 percent and 40 percent of project levels and representative of other dairy applications currently on file with Tulare County.

With these reduced herd sizes, the amount of acreage needed for feed production and for liquid and solid manure utilization will be significantly decreased; at both the reduced animal unit levels all liquid and dry manure can be reused onsite, eliminating the possibility of offsite manure usage-related water quality impacts.

The possibility of any on-site cumulative water quality impacts will be proportionately reduced. Lagoon sizing is significantly affected by dairy facilities drainage requirements and by manure production. Such lagoon dimensions are determinants of any possible seepage to groundwater as is corral sizing for support stock. Irrigation cropping impacts reduction will be proportional. None of these water quality-related impacts have been quantified; the calculations and discussions in Section 3.8 have determined that such possible project impacts were mitigated as to be de minimus and less than significant.

The reduced herd size emissions assume that all of the existing farmland will remain in cultivation even if not totally required for liquid manure or solid manure utilization. Similarly, they attempt no correction for lesser truck exhaust or employee

travel emissions; such emissions are not substantial in evaluating criteria pollutants against thresholds and have no substantial or no impact on PM_{2.5}, ammonia and methane emissions.

Project ROG emissions remain above SJVAPCD thresholds at the assumed reduced herd sizes; incremental project NO_x and PM₁₀ levels are below SJVAPCD thresholds for the project and the reduced herd size alternatives; project emissions of methane and ammonia are proportionately reduced by the reduced herd size alternatives.

As set forth in the Final EIR, the 7,350 animal unit and 4,900 animal unit herd sizes were found to be not economically feasible; a reduction in herd size to about 1,080 animal units, even more economically infeasible, would be required to bring ROG emissions below the SJVAPCD threshold.

There is a proportional reduction in avian predator foraging habitat “loss” engendered by dairy development at reduced herd sizes.

4. Environmentally Superior Alternatives.

CEQA requires that in addition to the analysis of individual alternatives, the alternatives must be ranked according to which alternatives have the lesser environmental effects. The no-project alternative is environmentally superior, followed by the lesser herd size and alternate-site alternatives. The reduced herd size alternatives reduce air quality impacts, and thus, are environmentally superior alternatives. However, neither of these two alternatives fully achieves the basic objectives of the project. The alternate, larger, site alternatives have the limited environmental advantage of precluding the potential for non-agronomic utilization of solid manure.

5. Feasibility Evaluation of Alternatives.

The no-project alternative although environmentally superior is not feasible because it does not meet the project objectives because the dairy facility would not be built.

Additionally, there is a commensurate cost associated with the purchase of replacement and additional land which makes the larger site alternatives infeasible. The applicant has an investment of over \$7,800,000 in land and \$250,000 in entitlement documentation for the existing site. Without a dairy permit there is no assurance that these investments could be recovered at an alternate site. The costs of purchase of an alternate, larger-size site, estimated to cost over \$13,400,000 given current replacement land costs per acre with new entitlement documentation costs, make these alternatives infeasible (Appendix T). In addition, assuming suitable alternative sites are available, then the applicant, in order to make the acquisition of any of these sites economically feasible, would have to recover his original multi-million dollar investment in the acquisition of the subject property, which is highly speculative at this time given market

conditions, and which contributes further to the economic infeasibility of selecting alternative sites.

Neither of the reduced herd size, environmentally superior, alternatives fully achieve the basic objective of the project. The significant costs of permitting, and the limited profit margins in the dairy industry combine to confirm a determination that the 7,350 animal unit alternative is not economically feasible, and the 4,900 animal unit alternative does not allow for any economic fluctuation or any return on investment (see Appendix T).

As set forth in the Final EIR, the economic infeasibility of the reduced herd size alternatives is summarized and reiterated as follows;

- The costs of land purchase, dairy design and consulting services to meet County and Regional Board requirements, and County permit/environmental processing have been significant (over \$ 8,000,000).
- The dairy facilities site area will support the project-design dairy herd; the project's cropped area is designed to support the project-design dairy herd and support stock.
- Lesser dairy herd sizes than those proposed for the project will not permit a financeable return on investment; the added costs make the project impractical.

C. Overriding Considerations.

The Final EIR concludes that there are certain environmental impacts that are significant, unavoidable and not fully mitigable, including certain Project-level air quality impacts, groundwater contamination at manure re-use sites, cumulative air quality, cumulative potential groundwater quality and cumulative biological impacts. Accordingly, it is necessary to consider and adopt a Statement of Overriding Considerations to approve the Final EIR and associated entitlements for the Project.

Based on the information contained in the Final EIR and in the Statement of Overriding Considerations set forth in Exhibit "D," and based on substantial evidence in the Public Record of Proceedings, the specific benefits of this Project outweigh the Project's significant and unavoidably adverse impacts and these impacts are deemed acceptable in light of the benefits to be conferred. Thus, the Final EIR and associated entitlements for this Project should be approved to allow these benefits to be conferred on Tulare County and its residents.

VIII

MITIGATION REPORTING AND MONITORING PROGRAM

Consistent with Public Resources Code Section 21081.6 and Section 22 of the Tulare County Zoning Ordinance, the Board finds and declares that a mitigation compliance reporting and monitoring program is necessary and appropriate for this Project. Accordingly, the Board requires a mitigation monitoring and reporting program for the mitigation measures set forth in this Final EIR and adoptive by the Board as part of this resolution. The monitoring and reporting program shall adhere to the mitigation requirements delineated in the Final EIR and this resolution.

The Board further finds and declares that the mitigation monitoring and reporting program describes the resource-specific impacts, the proposed mitigation to minimize, reduce or avoid these impacts, the time span for implementation of the required mitigation. Thus, the Board hereby adopts for this Project the mitigation monitoring and reporting program set forth in the Final EIR. Attached as Exhibit "C" is a true and correct copy of that program which is incorporated herein by reference.

The Board further finds and declares that if there are any mitigation measures delineated in the Final EIR which are not delineated in the program/plan, then the mitigation measures set forth in the Final EIR shall be implemented also by the owners/operators because it is the intent of the County as expressed by the Board to require the applicant to implement all mitigation measures which have been established for this Project.

Accordingly, the Board finds and declares that the applicant is willing to commit, and does commit, in good faith to implement all mitigation measures required for this Project, and the County will enforce this commitment to mitigate, if necessary.

IX

LAND USE CONFORMITY

The Board hereby finds, based on substantial evidence, that the Project is consistent with, conforms to, or is otherwise compatible with the Tulare County General Plan (including the Animal Confinement Facilities Plan) and the Tulare County Zoning Ordinance. Specific findings are set forth in the accompanying land use entitlement resolution relating specifically to the requested Special Use Permit, which resolution is hereby incorporated by reference. These findings, which are based on substantial evidence, are hereby adopted by the Board.

X

CONDITIONS OF APPROVAL

The Board finds and declares, based on substantial evidence, that the Project as designed and the mitigation measures described in the Final EIR, and the Mitigation Reporting and Monitoring Program/Plan, are adequate for this Project. To ensure that these Project design components and mitigation measures will be implemented by the

applicant and will be enforceable by the County, the Board finds and declares that (1) the Project design components and mitigation measures are deemed to be part of and are incorporated into the Project; (2) the Project design components and mitigation measures are deemed conditions of approval which must be carried out by the applicant; (3) the applicant commits in good faith to implement the Project design components and mitigation measures delineated in the Final EIR; and (4) the County intends to see to it that these conditions (including without limitation the land use and environmental regulations and standards expressly incorporated into the use permit conditions of approval) are carried out by the applicant and will be enforced by the County, if necessary.

XI

CONCLUSION

Based on the foregoing, the Board further finds, declares and concludes that the Final EIR prepared for the Project, this CEQA resolution and exhibits thereto provide adequate support for approval of this dairy project through the Project application for the Special Use Permit for the applicant's dairy operation (PSP 96-072); and as such, the Final EIR should be approved and certified as being in compliance with CEQA, the State CEQA Guidelines and the County's procedures implementing CEQA.

EXHIBIT “C”

MITIGATION MEASURES AND MITIGATION MONITORING PLAN

ETCHEGARAY DAIRIES

Exhibit C **Mitigation Monitoring Program for Etchegaray Dairies**

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
Impact #3.1.2: Light and Glare	Mitigation Measure #3.1.2: All lighting shall be principally under roofs and designed to be directed downward and inward to illuminate specific areas.	Condition of Special Use Permit, to be the responsibility of applicant and applicant's contractor.	County of Tulare Resource Management Agency	Completed at time of final building inspection.
Impact #3.3.1: Construction Particulate Matter (PM₁₀) and Fine Particulate Matter (PM_{2.5}) Impacts	Mitigation Measure #3.3.1: PM ₁₀ /PM _{2.5} air quality impacts will be mitigated with implementation of the applicable Regulation VIII procedures of the SJVAPCD (see Appendix F for Table 6.2 of the SJVAPCD Guide (2002) for Assessing and Mitigating Air Quality Impacts listing all provisions; those provisions involving building demolition, urban areas and construction vehicle trips exceeding 150 per day are not applicable to this project). These provisions currently are: 1. All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust	Condition of Special Use Permit that mitigation measures be incorporated into construction contract between applicant and contractor.	County of Tulare Resources Management Agency and SJV Air Pollution Control District.	Beginning with construction permit and terminating with issuance of Notice of Completion.

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	emissions using water, chemical stabilizers/suppressants, covered with a tarp or other similar cover, or vegetative ground cover.			
	2. All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer suppressant.			
	3. All land clearing, grubbing, scraping, excavating, land leveling, grading, demolition, and cut and fill activities shall be effectively controlled to minimize fugitive dust emissions utilizing application of water or by pre-soaking.			
	4. When materials are transported off-site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	top of the container shall be maintained.			
	5. All operations shall limit, or expeditiously remove the accumulation of mud or dirt from, adjacent public streets at the end of each workday when operations are occurring (the use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit visible dust emissions; use of blower devices is expressly forbidden).			
	6. Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.			
	7. Limit construction traffic speeds on unpaved roads to 15 mph.			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<p>8. Suspend excavation and grading activities when winds exceed 20 mph.</p> <p>9. Limit area subject to excavation, grading and other construction activity at any one time.</p> <p>10. Install wheel washes for all exiting trucks or wash off all trucks and equipment leaving the site.</p> <p>11. The applicant, or the contractor acting as the applicant's agent, shall prior to the initiation of construction submit a Dust Control Plan in accord with the requirements of Rule 8021 of the SJVAPCD (see Appendix R).</p>			
<p>Impact #3.3.2: Construction Equipment Exhaust Emissions</p>	<p>Mitigation Measure #3.3.2: As a condition of Special Use Permit approval by the Tulare County Resource Management Agency, and to be monitored by such Agency, the owner/operator and construction crew shall ensure that the following control measures are</p>	<p>Condition of Special Use Permit that mitigation measures be incorporated into construction contract between applicant and contractor.</p>	<p>County of Tulare Resources Management Agency and SJV Air Pollution Control District.</p>	<p>Beginning with construction permit and terminating with issuance of Notice of Completion.</p>

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	implemented prior to and during construction activities to reduce exhaust emissions from construction related equipment:			
	1. Attend a preconstruction meeting at the Agency.			
	2. The idling time of all construction equipment used at the site shall not exceed ten minutes.			
	3. The hours of operation of heavy-duty equipment shall be minimized.			
	4. All equipment shall be properly tuned and maintained in accord with manufacturer's specification.			
	5. When feasible, alternative fueled or electrical construction equipment shall be used at the project site.			
	6. The minimum practical engine size for construction equipment shall be used.			
	7. When feasible, electric carts or other smaller			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	equipment shall be used at the project site.			
	8. Gasoline-powered equipment shall be equipped with catalytic converters.			
	9. The facilities construction contractor shall comply with Rule 4641 of the SJVAPCD.			
Impact #3.3.3.A: Operational Emissions of Criteria Pollutants, Particulate Matter (PM₁₀) and Fine Particulate Matter (PM_{2.5})	Mitigation Measure #3.3.3.A: <ol style="list-style-type: none"> The owner/operator shall minimize fugitive dust emissions from cattle movement within and in/out of unpaved corrals using soil stabilizers that are safe for both the ambient environment and cattle. In addition to daily flushing of paved areas, manure shall be removed from all cattle areas as required to prevent pulverization of dried manure. Maintain a manure pack less than two inches deep. 	Condition of the Special Use Permit	County of Tulare Resource Management Agency	Continued monitoring during dairy operation

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	4. Refrain from spreading dry manure on nutrient application areas when wind speeds exceed 10 miles an hour.			
	5. Disc dry manure into nutrient application fields immediately after spreading.			
	6. Field perimeter roads and onsite dairy facility roads shall be stabilized such that no visible dust clouds extend beyond the site boundary from manure spreading or agricultural service vehicles using these roads. All onsite dairy facility roads shall be surfaced with gravel or decomposed granite.			
	7. Mud or dirt on project-adjacent public roads which originates from project operations shall be removed within 24 hours of deposition.			
	8. Dry feed storage shall be protected on three sides to prevent material loss and transport due to wind action.			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<p>9. Trees shall be planted around the dairy facilities site.</p> <p>10. The owner/operator shall comply with SJVAPCD Rules 8061, 8071 and 8081.</p>			
<p>Impact #3.3.3.B: Operational Emissions of Criteria Pollutants, Reactive Organic Gas (ROG)</p>	<p>Mitigation Measure #3.3.3.B: Based on the preceding discussion, it is clear that there is no consensus among experts in support of the feasibility, effectiveness and beneficial secondary impacts of the various technological control options for minimizing the air quality impacts of manure decomposition. In view of the lack of proven viability and effectiveness of the various high-technology treatment procedures and facilities which have been the subject of experimental programs and installation, the following effective ROG mitigation measures have been incorporated in this project:</p>	<p>Condition of the Special Use Permit; Owner/Operator</p>	<p>County of Tulare Resource Management Agency; Owner/Operator/Nutritionist (Measure 1)</p>	<p>Continued Monitoring during dairy operation</p>
	<p>1. All animals shall be fed in accord with National</p>			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	Research Council Guidelines, utilizing routine dairy nutritionist analyses of rations and maintaining feed analyses on-site for regulatory agency monitoring.			
	2. Feed lanes shall be cleared daily.			
	3. Silage piles shall be covered with tarps.			
	4. Project dairy facilities design and construction will include concrete-base freestalls and walk lanes, and water drainage to separator facilities.			
	5. Utilization of manure water and manure will be in thin layers, blending such manure water with irrigation water at a ratio of 1:4 respectively, in compliance with the nutrient management plan appended hereto.			
	6. Design, construction, and operation of the new dairy shall comply with applicable San Joaquin			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	Valley Air Pollution Control District requirements.			
Impact #3.3.4: Operational Emissions of Criteria Pollutants, Nitrogen Oxide (NOx)	Mitigation Measure #3.3.4: <ol style="list-style-type: none"> Idling time of on-site project farming and dairy operations equipment shall be minimized. All on-site equipment shall be properly tuned and maintained in accord with manufacturer's specifications. Whenever feasible, alternative fueled or electrical on-site equipment shall be utilized. Minimum practicable on-site engine sizes shall be used. On-site gasoline-powered equipment shall be equipped with catalytic converters. Employees will be encouraged to carpool-travel to and from the project site. 	Condition of the Special Use Permit; Owner/Operator	County of Tulare Resource Management Agency	Continued monitoring during dairy operation

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<p>7. The above measures are excerpted and extrapolated from the SJVAPCD's Guide for Assessing and Mitigating Air Quality Impacts, January 10, 2002. No other feasible mitigation measures exist.</p>			
Impact #3.3.5: Methane (CH₄) Generation	<p>Mitigation Measure #3.3.5:</p> <ol style="list-style-type: none"> All animals shall be fed in accord with National Research Council guidelines, utilizing routine dairy nutritionist analyses of rations and maintaining feed analyses on-site for regulatory agency monitoring. Feed lanes shall be cleared daily. Silage piles shall be covered with tarps. Project dairy facilities design and construction will include concrete-base freestalls and walk lanes, and water drainage to separator facilities. 	<p>Condition of the Special Use Permit; Owner/Operator</p>	<p>County of Tulare Resource Management Agency</p> <p>Owner/Operator/Nutritionist (Measure 1.)</p>	<p>Continued monitoring during dairy operation</p>

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
Impact #3.3.6: Ammonia (NH₃)	5. Utilization of manure water and manure will be in thin layers, blending such manure water with irrigation water, in compliance with the nutrient management plan appended hereto.			
	6. Design, construction, and operation of the new dairy shall comply with applicable San Joaquin Valley Air Pollution Control District requirements.			
	Mitigation Measure #3.3.6: 1. All animals shall be fed in accord with National Research Council guidelines, utilizing routine dairy nutritionist analyses of rations and maintaining feed analyses on-site for regulatory agency monitoring. 2. Feed lanes shall be cleared daily. 3. Silage piles shall be covered with tarps. 4. Project dairy facilities design and construction	Condition of the Special Use Permit; Owner/Operator	County of Tulare Resource Management Agency Owner/Operator/Nutritionist (Measure 1.)	Continued monitoring during dairy operation

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	will include concrete-base freestalls and walk lanes, and water drainage to separator facilities.			
	5. Utilization of manure water and manure will be in thin layers, blending such manure water with irrigation water, in compliance with the nutrient management plan appended hereto.			
	6. Design, construction, and operation of the new dairy shall comply with applicable San Joaquin Valley Air Pollution Control District requirements.			
Impact #3.3.7: Hydrogen Sulfide (H ₂ S) from Manure Decomposition	Mitigation Measure #3.3.7: Reduction of manure-related ROG and methane emissions would concurrently reduce emissions of hydrogen sulfide. The appropriate mitigation measures are, therefore: 1. All animals shall be fed in accord with National Research Council guidelines, utilizing	Condition of Special Use Permit; owner/operator.	Tulare County Resource Management Agency Owner/Operator (Measure 3.3.7-1.)	Continued monitoring during dairy operation.

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<p>routine dairy nutritionist analyses of rations and maintaining feed analyses on-site for regulatory agency monitoring (National Research Council).</p> <p>2. Feed lanes shall be cleared daily.</p> <p>3. Silage piles shall be covered with tarps.</p> <p>4. Project dairy facilities design and construction will include concrete-base freestalls and walk lanes, and water drainage to separator facilities.</p> <p>5. Utilization of manure water and manure will be in thin layers, blending such manure water with irrigation water at a ratio of 1:4 respectively, in compliance with the nutrient management plan appended hereto.</p> <p>6. Design, construction, and operation of the new dairy shall comply with applicable San Joaquin Valley Air Pollution</p>			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	comply with the measures set out in Section 3.3.3.B.			
	3. Nitrogen Oxide (NO _x): The applicant shall comply with the measures set out in Section 3.3.4			
	4. Methane (CH ₄): The applicant shall comply with the measures set out in Section 3.3.5.			
	5. Ammonia (NH ₃): The applicant shall comply with the measures set out in Section 3.3.6.			
	6. Hydrogen Sulfide (H ₂ S): The applicant shall comply with the measures set out in Section 3.3.6 and 3.3.7.			
	7. To the extent legally required, the applicant shall comply with SB 700 (Florez) and the Conservation Management Practices for Dairy Operations (Appendices E, R and BB).			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
Impact #3.4.1: Substantial Adverse Effect on Candidate, Special Status or Sensitive Species	<p>Mitigation Measure #3.4.1: The project proponent will preserve 2,241 net crop acres to satisfy its wastewater disposal requirements. This will be more than sufficient acreage preserved to mitigate any biological impact resulting from the potential loss of habitat or dispersal area for San Joaquin kit fox or avian predators. In addition, the project proponent is required to comply with the mitigation measures set forth in the California Department of Fish and Game's <i>Staff Report regarding Mitigation Measures for Impacts to Swainson's Hawks (Buteo swainsoni) in the Central Valley of California</i> (November 1, 1994) (see Appendix Y); the <i>Draft Staff (CDFG) Report on Burrowing Owl Mitigation</i> (see Appendix DD), and any other mitigation measures currently established pursuant to law by the applicable wildlife regulatory agencies. The project proponent may receive a habitat credit from such agencies for the crop</p>	Condition of Special Use Permit, to be the responsibility of the applicant and applicant's contractor	County of Tulare Resource Management Agency	Continued monitoring during dairy operation

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	acres preserved for wastewater disposal.			
	<p>a. A qualified biologist or ornithologist will conduct pre-construction surveys for burrowing owls during the non-breeding season.</p> <p>If burrowing owls are detected on site during the non-breeding season, they shall be passively relocated by placing one-way doors in the burrows and leaving them in place for a minimum of three days. Once it has been determined that owls have vacated the site, the burrows can be collapsed and ground disturbance can proceed.</p> <p>b. Prior to harvesting any dairy silage crop which may occupy the dairy facilities site prior to dairy facilities construction, a qualified biologist or ornithologist shall inspect the site. If tricolor blackbirds are nesting thereon, site clearance by crop harvesting preceding</p>			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	dairy facilities construction shall be delayed until the biologist finds that the nesting season has been completed.			
	c. The applicant shall conduct pre-construction surveys for the kit fox. These pre-construction surveys shall be conducted by a qualified biologist no less than 14 days and no more than 30 days prior to any construction-related activities. The primary objective is to identify kit fox habitat features (potential dens and refugia) on the project site or within a 200-foot buffer zone, and evaluate them sufficiently to ascertain if they are being used by a kit fox. If an active kit fox den is detected within the area of work or the 200-foot buffer zone, the CDFG and USFWS will be contacted immediately to determine the best course of action. If no kit fox activity is detected, the work shall continue as			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	planned and a brief written report will be submitted to the CDFG and USFWS within five days after completion of the surveys.			
	While kit foxes are not expected to access the site during development, the applicant shall as a matter of caution, implement the following measures:			
	Project-related vehicles shall observe a 20-mph speed limit in all project areas, except on county roads and State and Federal highways; this is particularly important at night when kit foxes are most active. To the extent possible, nighttime construction shall be minimized. Off-road traffic outside of designated project areas should be prohibited.			
	Kit foxes are attracted to den-like structures such as pipes and may enter stored pipe becoming trapped or injured. All construction pipes,			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<p>culverts, or similar structures with a diameter of 4-inches or greater that are stored at a construction site for one or more overnight periods shall be thoroughly inspected for kit foxes before the pipe is subsequently buried, capped, or otherwise used or moved in anyway. If a kit fox is discovered inside a pipe, that section of pipe shall not be moved until the CDFG and USFWS have been consulted. If necessary, and under the direct supervision of the biologist, the pipe may be moved once to remove it from the path of construction activity, until the fox has escaped.</p> <p>All food-related trash items such as wrappers, cans, bottles, and food scraps shall be disposed of in closed containers and removed at least once a week from a construction or project site.</p>			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	In the case of trapped animals, escape ramps or structures shall be installed immediately to allow the animal(s) to escape, or the USFWS should be contacted for advice.			
	Any contractor, employee(s), who inadvertently kills or injures a San Joaquin kit fox shall immediately report the incident to the project owner. The owner shall contact the CDFG immediately in the case of a dead, injured or entrapped kit fox. The CDFG contact for immediate assistance is State Dispatch at (916) 445-0045. They will contact the local warden or biologist.			
	The Sacramento Fish and Wildlife Office and CDFG shall be notified in writing within three working days of the accidental death or injury to a San Joaquin kit fox during project related activities. Notification must include the date,			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	time, and location of the incident or of the finding of a dead or injured animal and any other pertinent information. The USFWS contact is the Chief of the Division of Endangered Species, 2800 Cottage Way, Suite W2605, Sacramento, CA 95825-1846, (916) 414-6620. The CDFG contact is Mr. Ron Schlorff at 1416 9 th Street, Sacramento, CA 95814, (916) 654-4262.			
	d. The applicant, as a condition of approval, shall comply with all reasonable and feasible mitigation measures suggested in the biological survey referenced in Appendix M, and with all mitigation measures reasonably and feasibly required by the California Fish and Game Department and/or the U.S. Fish and Wildlife Service.			
Impact #3.4.3: Impacts on Migratory or Resident Wildlife	Mitigation Measure #3.4.3: All lighting and paging loudspeakers associated with			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	the new dairy facilities shall be directed inward on the dairy facilities portion of the project site.			
Impact #3.5.1: Disturbance or Destruction of Cultural or Historic Resources	<p>Mitigation Measure #3.5.1: If, in the course of project construction or project operation, any archaeological or historical resources are uncovered, discovered, or otherwise detected or observed, activities within 50 feet of the find area shall cease. A qualified archaeologist shall be contacted and advise the County of the site's significance. If the findings are deemed significant by the County's Environmental Assessment Officer, appropriate mitigation measures shall be required prior to any resumption of work in the affected area of the project.</p> <p>If, in the course of the project construction or project operation, any skeletal remains are uncovered, discovered, or otherwise detected or observed, activities in the affected area shall cease. A qualified archaeologist, the County</p>	<p>Condition of Special Use Permit that mitigation measure be incorporated into construction contract between applicant and contractor</p>	<p>County of Tulare Resource Management Agency's Building Inspector</p>	<p>During construction period</p>

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	Environmental Assessment Officer, the County Coroner and local Native American organizations shall be consulted, and appropriate measures shall be required that may include avoidance of the burial site or reburial of the remains.			
Impact #3.7.1: Operational Hazards	<p>Mitigation Measure #3.7.1: Prior to issuance of the Final Occupancy Permit for the dairy operation, the owner/operator shall submit documentation to the Tulare County Resource Management Agency that appropriate permits and notifications regarding the storage, transport, use, and disposal of hazardous materials have been completed and acquired. The documentation shall include, at minimum, evidence of compliance with:</p> <ol style="list-style-type: none"> 1. Employee safety program in accord with California Labor Code Section 6401:7. 2. RWQCB Waste Discharge Requirements, including a Storm Water Pollution Prevention Plan 	Condition of Special Use Permit; Owner/Operator	County of Tulare Resource Management Regional Water Quality Control Board	Prior to construction

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	incorporating provisions for the safe storage, use, and disposal of hazardous wastes.			
	3. Permitting requirements of the California Department of Pesticides.			
Impact #3.7.6: Vector Generations	1. As a condition of project approval, the project operator shall agree to follow Delano Mosquito Abatement District and Tulare Mosquito Abatement District requirements concerning vector control at the dairy facility. The following are standard requirements established by the District's (Requirement (a) is a Delano MAD regulation which applies to the Phillips Ranch Dairy facilities site only):	Conditions of Special Use Permit	Delano Mosquito Abatement District (mosquito control); Tulare County Resource Management Agency and Tulare County Department of Health Services (fly control)	Continued monitoring during operation
	(a) Wastewater ponds shall not exceed 100 feet in width.			
	(b) All dairy wastewater holding and solids separator ponds shall be surrounded			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	by lanes at least twenty feet in width and nothing (i.e., calf pens, utility lines, hay stacks, silage, tires, ag-equipment, etc.) shall be placed in the area of the holding ponds which would prevent passage or use of vector control equipment.			
	(c) Fencing around the wastewater and solids ponds shall be placed on the outside of the twenty-foot lanes and gates provided for easy access.			
	(d) All four interior banks of holding and separation ponds shall be graded 1:1 or steeper for the first ten feet, soil type permitting, but no greater than 1:2.			
	(e) Two or more solids separator ponds are required. These ponds shall not be			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	more than sixty feet in width.			
	(f) No drainage lines shall by-pass the separator ponds, except those, which provide for normal corral run-off. All such drain inlets must be sufficiently grated to prevent solids accumulation in the holding ponds.			
	(g) Floatage of any solid substance, which could provide harborage for immature mosquito stages should be kept out of all wastewater holding ponds. Mechanical agitators may be very helpful in this regard.			
	(h) The owner shall be responsible for keeping vegetative growth from all areas of the wastewater and solids separation ponds. This includes access lanes,			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<p>interior pond embankments and any weed growth, which might become established on pond surfaces. Weed control within the Delta Vector Control District can be achieved by cooperating in the District's weed control program.</p> <p>(i) Dairy wastewater discharge for irrigation purposes shall be managed so that it does not stand for more than four days. Discharges which do stand for more than four days could cause severe mosquito emergence.</p> <p>(j) Any deviations desired from these requirements must be submitted to the District for its review and approval prior to construction.</p>			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	2. As a condition of project approval, the project operator shall implement the following fly abatement program:			
	(a) Project dairy facilities design and construction will include concrete-base freestalls and walk lanes, and water drainage to separator facilities.			
	(b) Utilization of manure and manure water shall be in thin layers, blending such manure water with irrigation water in compliance with the nutrient management plan appended hereto.			
	(c) Manure in corrals shall be scraped as required for effective fly control.			
	(d) Feed lanes shall be cleared daily.			
	(e) Owner/operator must comply with RWQCB Waste Discharge Requirements, or permits. Monitoring well design, locations and sampling program shall be approved by the			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	Regional Water Quality Control Board.			
	(f) All manured areas shall be sloped to prevent ponding and to convey all precipitation and moisture to drainage systems, including the lagoons. The applicant shall, at a minimum of once per year, backfill any slope loss with compacted, non-manured material, to maintain pre-existing slopes.			
	(g) All water systems shall be checked weekly to look for breaks, leaks, and overflows, including the water pressure systems, water troughs and mister lines.			
	(h) The owner/applicant shall submit to the Tulare County Health Services Division before initiation of dairy operations, and shall continuously and fully implement during dairy operations, an Integrated Pest Management Plan for fly control which contains the following specific requirements:			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<p>(1) Monitoring on-site of fly numbers on a weekly basis utilizing spot cards, bait traps and animal counts.</p> <p>(2) Utilization of parasitoids, and judicious use of pesticides, for fly suppression as needed based on monitoring results. Such utilization, under the direction of a licensed pest control operator, shall be initiated, at the minimum, whenever 3- by 5-inch spot cards vertically deployed at no less than five locations at the dairy facilities average 100 spots per week.</p> <p>(3) Maintenance of records onsite, for regulatory agency inspection, regarding monitoring results, maintenance and disposal activities and parasitoid and</p>			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	pesticide suppression.			
Impact #3.8.2: Surface Runoff Increase or Pollution	<p>Mitigation Measure #3.8.2: The dairy operator shall not spread manure solids during the period from November to April on the approximately 760 acres subject to 100-year flooding, and shall comply with Basin Plan regulations regarding prompt incorporation of manure into surface soils after manure application.</p>	<p>Condition of Special Use Permit</p>	<p>Tulare County Resource Management Agency San Joaquin Valley Regional Water Quality Control Board</p>	Continued monitoring during operation of dairy
Impact #3.8.3: 100-Year Flood Hazards	<p>Mitigation Measure #3.8.3: The dairy facilities shall be elevated a minimum of one foot above natural grade.</p>	<p>Condition of Special Use Permit</p>	<p>Tulare County Resource Management Agency</p>	Continued monitoring during operation of dairy
Impact #3.8.8.1: Groundwater Degradation from Dairy Facilities	<p>Mitigation Measure #3.8.8.1: 1. Owner/operator shall construct pond and lagoon lining in accord with Regional Water Quality Control Board standards (including NRCS Standards, Appendix S hereto), and shall line ponds and lagoons with manure prior to operation to decrease initial percolation rates.</p>	<p>Condition of Special Use Permit</p>	<p>Tulare County Resource Management Agency San Joaquin Valley Regional Water Quality Control Board Tulare County Department of Health Services</p>	<p>Prior to construction and continued monitoring during operation of dairy</p>

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<p>2. A monitoring well sampling and testing program shall be established if required by the Regional Water Quality Control Board. Samples shall be tested to determine the presence of measurable contaminant leakage, including pathogens, and significant continuing increases in nitrate nitrogen, from separation ponds and lagoons. Testing shall include tests for soil moisture content and electrical conductivity and nitrogen compounds. Evidence of contaminant increase, based on such testing, shall be the basis for required additional lining, or relining, of ponds and lagoons.</p> <p>3. The domestic well supplying dairy facilities shall be regularly sampled by the Tulare County Health Department for pathogen detection. Evidence of leakage shall be the basis for required additional</p>			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	lining, or relining of ponds and lagoons.			
	<p>4. Owner/operator must comply with RWQCB Waste Discharge Requirements, or permits, required by Title 27 or other applicable water quality control laws. Monitoring well design, locations and sampling program shall be approved by the Regional Water Quality Control Board if the Board requires such an additional leakage/water quality degradation program.</p> <p>5. All manured areas shall be sloped to prevent ponding and to convey all precipitation and moisture to drainage systems, including the lagoons. The applicant shall, at a minimum of once per year, backfill any slope loss with compacted, non-manured material, to maintain pre-existing slopes.</p>			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
Impact #3.8.8.3: Groundwater Contamination at Manure Re-use sites	Mitigation Measure #3.8.8.3: 1. The dairy facilities operator shall provide to each manure hauler from the project site an invoice stipulating that manure re-use shall be undertaken only in full compliance with all applicable State and Federal laws and regulations. 2. Records of tonnage of manure sold shall be kept by the dairy facilities operator on site for review upon request by the Tulare County Resource Management Agency.	Condition of Special Use Permit	County of Tulare Resource Management Agency	Continued monitoring during dairy operation
Impact #3.9.3:	Mitigation Measure #3.9.3: Remove manure from the project site annually as required to meet Regional Water Quality Control Board and Tulare County salt loading requirements.	Condition of Special Use Permit	County of Tulare Resource Management Agency	Continued monitoring during dairy operation
Impact #3.14.5	Mitigation Measure #3.14.5: The project applicant must comply with the following mitigation measures:	Condition of Special Use Permit	Tulare County Resource Management Agency	Pursuant to demand letter by the County

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<p>1. The project applicant shall agree, as a condition of the issuance of a special use permit, to deposit with the County following said issuance, an amount equal to \$45,165. The 10-year deposit, adjusted in accordance with the increase in the Engineering News Record 20-City Construction Cost Index or an agreed upon published index that accounts for oil and steel costs, and therefore based on a 3.5% annual inflation rate would equal \$63,710. These deposits will be used by the County to provide appropriate surface maintenance as described herein. Funds will be placed in a trust fund earning interest until the subject road segments require surface maintenance. The Tulare County Resource Management Agency Director of Transportation will base the schedule for</p>			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<p>maintenance on the determination of need.</p> <p>2. Should the road segments along the project truck route deteriorate at a rate where the total project mitigation measure funds have been expended, and prior to the end of a 20-year period starting at the time of project construction, the County may take reasonable action that is in the best interest of the County. Such action for the truck route road segment may include, but is not limited to, removal of the road segment or portions thereof, from the County's maintained mileage system, posting of "rough road" signs, performance of surface maintenance, pothole patching, or other.</p>			
CUMULATIVE AIR QUALITY, WATER QUALITY AND BIOLOGICAL IMPACTS				
5.1 Air Quality	The applicant shall comply with all feasible pertinent requirements of the SJVAPCD including	Condition of Special Use Permit	County of Tulare Resource Management Agency	Continued monitoring during dairy operations.

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	Conservation Management Practices.			
5.3 Predator Foraging Habitat Loss	<p>The project is required to preserve 2,241 acres of row crops to satisfy its manure water disposal requirements.</p> <p>The project is required to comply with the mitigation measures set forth in the California Department of Fish and Game's <i>Staff Report Regarding Mitigation Measures for Impacts to Swainson's Hawks (Buteo swainsoni) in the Central Valley of California</i> (November 1, 1994) and any other mitigation measure currently established pursuant to law by the applicable wildlife regulatory agencies.</p>	<p>Condition of Special Use Permit; Owner/Operator</p> <p>Condition of Special Use Permit; Owner/Operator</p>	<p>County of Tulare Resource Management Agency</p> <p>County of Tulare Resource Management Agency</p>	<p>Continued monitoring during dairy operations.</p> <p>Continued monitoring during dairy operations.</p>

EXHIBIT “D”

STATEMENT OF OVERRIDING
CONSIDERATIONS

ETCHEGARAY DAIRIES

STATEMENT OF OVERRIDING CONSIDERATIONS
FINAL ENVIRONMENTAL IMPACT REPORT
ETCHEGARAY DAIRIES
PSP 96-072

Consistent with the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines and the County's CEQA Implementing Procedures, the Tulare County Board of Supervisors hereby adopts this Statement of Overriding Considerations concerning the significant and unavoidable impacts of the Etchegaray Dairies (PSP 96-072) ("the project") to support its conclusion that the project's economic, legal, social, technological and other considerations and benefits override and outweigh the project's significant and unavoidable impacts that cannot be substantially lessened or avoided even with the adoption of feasible mitigation measures or feasible project alternatives.

Pursuant to Public Resources Code Section 21081(b) and Guidelines Section 15093, a public agency may find that specific overriding economic, legal, social, technological, or other benefits outweigh any significant effects on the environment identified for the project. The significant and unavoidable impacts relating to this project are generally described as air quality impacts, groundwater quality impacts and biological impacts. More specifically, as set forth in the Final Environmental Impact Report for the Etchegaray Dairies ("Final EIR") on page 5-1 to 5-14, the potentially significant and unavoidable impacts are (1) certain cumulative impacts relating to air quality, groundwater quality and biology, (2) certain project-level air quality impacts, (3) a project-level impact relating to disposal of off-site manure, and (4) cumulative level impacts to loss of foraging habitat for predators in the San Joaquin Valley occasioned by dairy facility construction.

The Final EIR for this project has proposed mitigation measures that will address these significant and unavoidable impacts, and the Board has expressly adopted these mitigation measures for this project. See the Final EIR and the Mitigation Measures and Mitigation Monitoring Program for the Etchegaray Dairies attached hereto as Exhibit "C" which is incorporated by reference herein. See also the Conditions of Approval attached as Exhibit "E" which is incorporated herein by reference.

Despite these mitigation measures, there are still significant and unavoidable impacts from this project; however, this project will confer manifest and substantial benefits to the County of Tulare and its residents. In general terms, these benefits can be described as economic, social, legal/public policy and environmental/technological; and as such, this Board hereby finds that the project's remaining significant and unavoidable impacts are acceptable in light of the project's benefits. Each benefit set forth below constitutes an overriding consideration warranting approval of the project, independent of the other benefits, despite significant and unavoidable impacts.

Overriding Considerations

The Board hereby finds that specific economic, legal, social, technological or other considerations make infeasible the mitigation measures or project alternatives identified in the Final EIR. Specifically, the Board finds that these overriding considerations and benefits are economic, social, legal/public policy and environmental/technological, are deemed to be substantial, and are set forth in more detail as follows:

1) Economic Considerations.

The project is expected to provide approximately 60 full-time jobs. Tulare County has an unemployment rate of 8.2 percent. Approving this project will assist in reducing that level of unemployment.

In addition, there are substantial, direct and positive economic multiplier effects from the dairy industry in Tulare County. According to information developed in connection with the approval of Dairy/Bovine Animal Confinement Facilities Plan - Phase I, derivative businesses in Tulare County benefit economically from dairy projects. See also the economic information developed and presented herein by CARES (Community Alliance for Responsible Environmental Stewardship). Final EIR Appendix D.

Accordingly, based on the foregoing discussion, the Board finds and concludes separately and independently that there is a substantial and overriding economic benefit that will be conferred in Tulare County by allowing this dairy project to proceed.

2) Social Considerations.

Based on the public comments submitted to the EIR approved for the Dairy/Bovine Animal Confinement Facilities Plan - Phase I in 2000 and to several other dairy project-level EIRs approved in 2002 to the present date, there is substantial and overwhelming public support for dairy projects in Tulare County.

When considering and weighing the support for dairy projects in Tulare County and the opposition to the subject project, the Board concludes, based on substantial evidence in the record, that there is public support for dairy projects, including support for this dairy project, in Tulare County. However, a number of people testified in opposition to the project, primarily concerning the relative location of the project to, and potential impacts on, the Colonel Allensworth State Historic Park. The Board has considered the views of the dairy project supporters and opponents as well as written comments and those received during public hearings.

Accordingly, based on the foregoing discussion and substantial evidence in the record, the Board finds and concludes separately and independently that there is a substantial and overriding social benefit that will be conferred in Tulare County by allowing this dairy project to proceed.

3) Legal/Public Policy Considerations.

Pursuant to the Tulare County Rural Valley Lands Plan, the Dairy/Bovine Animal Confinement Facilities Plan - Phase I, the Zoning Ordinance, the Right to Farm Ordinance and other existing county planning policies and regulations, there is a legally established and pervasive public policy in Tulare County to promote agriculture, including dairy production. Tulare County now ranks first in the nation and is a world leader in agricultural production, particularly in dairy production. According to recent information developed by the Tulare County Agriculture Commissioner and as reported in the press, milk is the County's premier agricultural commodity, valued at approximately \$1 billion.

However, because of CEQA litigation and preparation of environmental documents during the past seven years, 16 special use permits for dairies have been issued since 1999. Approval of this dairy project will implement and further the legally established and pervasive public policy within Tulare County to promote agricultural uses, particularly dairy uses.

To insure that the relevant environmental issues have been addressed adequately, this dairy project has been subjected to searching, extensive and rigorous environmental analysis. The size and scope of the Final EIR (including all appendices related thereto) objectively evidences the length and depth of the reasonable and good faith analysis conducted for this project.

To further evidence the reasonable and good faith effort of the applicant in this regard, the applicant has expended a substantial sum of money in the preparation of this Final EIR. During the preparation and circulation of the environmental documentation for this dairy project, the County solicited widely the comments of the public and accorded the public ample opportunities to express their views, whether in favor of or against the project.

Accordingly, based on the foregoing discussion and substantial evidence in the record, the Board finds and concludes separately and independently that there is a substantial and overriding public policy benefit that will be conferred in Tulare County by approving this dairy project.

4) Environmental / Technological Considerations.

This project will implement numerous innovative mitigation measures which will address air quality and groundwater quality impacts (e.g., additional dust control measures, compliance with National Resource Council Guidelines regarding animal nutrition, extensive groundwater monitoring, and additional lining of wastewater holding ponds, if warranted). (See Final EIR, Sections 3.3 and 3.8 and Appendix F, H, Q, R, S).

Consequently, these innovative environmental / technological measures would not be implemented but for this project, and as such, these measures will serve as an effective guide for future dairy development and environmental protection in Tulare County.

Conclusion

When balancing the interests in this matter, the Board finds that while there is opposition to this project, the full range of benefits realized in Tulare County will provide a positive influence. It is also noted that there is pervasive economic and social support for this project, and this support comes from a cross-section of societal interests in Tulare County.

In addition, the Board finds that the land use planning and regulatory documents of Tulare County reflect, both generally and specifically, a strong and pervasive public policy established and continued by the elected representatives of the County that supports agriculture, including the dairy industry; and in doing so, Tulare County has made the remarkable achievement of being the number one agricultural county in the nation, particularly in dairy production. Approving this dairy project continues and implements that public policy which promotes the overall public welfare of Tulare County.

Moreover, the Board finds that this project will generate employment and economic benefits which are needed to assist in relieving Tulare County's high unemployment rate. The project is expected to generate 60 permanent jobs in the County and satellite businesses are expected to benefit from the project, namely, cheese manufacturers together with their workers, construction contractors, workers and suppliers. Thus, the project will contribute to the substantial, direct and positive economic multiplier effect from the dairy industry in Tulare County.

Furthermore, the Board finds that the County has required that this applicant undertake extensive mitigation measures which are very restrictive for a dairy project approved in Tulare County.

When considering these public benefits, the County also is mindful of opposition to this project, and as such, the County through a very extensive environmental review and public hearing process has required that the applicant undertake all feasible mitigation of adverse environmental impacts. However, it is not in the public interest for the County to stop socially desirable, necessary and enlightened progress which is both environmentally and economically sound.

In light of the foregoing discussion and when balancing these interests, the Board finds and concludes that these considerations and benefits are deemed to be substantial, that the project will cause significant and unavoidable environmental effects, and that the project should be approved notwithstanding these environmental effects that are significant and unavoidable.

Finally, the Board finds and concludes that each benefit discussed herein constitutes a separate overriding consideration warranting approval of the project, independent of the other benefits, despite each and every significant and unavoidable impact affecting the environment.

EXHIBIT “E”

CONDITIONS OF APPROVAL

ETCHEGARAY DAIRIES

SPECIAL USE PERMIT NO. PSP 96-072

CONDITIONS OF APPROVAL APPLICABLE TO
ETCHEGARAY DAIRIES

1. The dairy sites shall consist of 160 acres each (gross). There shall be 2,372 acres made available for distribution of nutrient-laden irrigation water discharged from the dairy facility. The permittee shall provide adequate distribution facilities to deliver recycled lagoon water to the crop acreage and shall make all reasonable efforts to apply manure and recycled lagoon water to crop land at rates which are reasonable for the crop, soil, climate, special local situations, management system, and type of manure.

The total animal units on the Earlimart Dairy shall not exceed a maximum of 5,715 while the total number of milk cows will not exceed 3,500. The total number of animal units at the Phillips Ranch Dairy shall not exceed 6,535 while the total number of milk cows will not exceed 4,000. [Resource Management Agency (RMA)]

Notwithstanding this condition, which is in conformance with Tulare County's animal density policies, the Regional Water Quality Control Board may limit the dairy operation to a lower maximum herd size than is approved under this Special Use Permit, or require other adjustments (such as additional acreage) which could require an amendment to the special use permit.

Animal units shall be calculated (based on a common denominator of one animal unit equals a 1,400 pound animal) as follows:

cow or bull	=	1.00 animal unit
heifer or steer (2 years and up)	=	0.75 animal unit
heifer or steer (1-2 years)	=	0.70 animal unit
heifer or steer (3 months to 1 year)	=	0.40 animal unit
calf (up to 3 months)	=	0.17 animal unit

2. Cropping patterns and disposal of manure shall be such as to maintain this facility in conformance with the animal density parameters set forth in Policy No. 2 of the Tulare County Dairy/Animal Confinement Facility Policies as adopted pursuant to the Animal Confinement Facilities Plan.
3. The dairy operation is subject to and shall comply with the requirements contained in the California Code of Regulations, Title 27 - pertaining to "Confined Animal Facilities" and "Closure and Post Closure Plans", as administered by the Regional Water Quality Control Board (RWQCB). The permittee shall submit completed applications, technical reports, and any required filing fee to the RWQCB prior to issuance of any building permits and at least 120 days prior to discharge. A copy of the material shall be submitted to the Code Compliance Coordinator at the time of

submittal to RWQCB. Failure to submit the material in the required time will result in immediate notification sent to the RWQCB and a recommendation to the Planning Commission for initiating the process of revocation of this Special Use Permit. (RWQCB, RMA)

4. Sufficient on-site parking shall be provided for all cars and trucks. The parking area and the entrance roads shall be treated with an acceptable dust-retarding treatment so that dust and mud will not create conditions detrimental to the surrounding area and roads. Said treatment shall be maintained at all times. (RMA)
5. All drive approaches at driveways and major entrances to the improved portion of the site shall be constructed and surfaced as per the Tulare County Improvement Standards, and the permittee or his contractor shall obtain an encroachment permit from the Tulare County Resource Management Agency prior to issuance of any building permits for construction and/or prior to doing work within any County road right-of-way. (RMA)
6. All public road approaches, driveways and off-street parking areas shall be maintained so that mud, dust, gravel, and manure do not create conditions detrimental to the surrounding roadways. (RMA)
7. All grading activities, with the exception of minor grading incidental to driveway approach installation or grading otherwise exempt by ordinance, shall be confined to areas on the project site which are set back a minimum distance of 100 feet from all adjacent property boundaries, including County road rights-of-way. Such grading within the prescribed 100-foot setback area may be considered agriculturally exempt from permit requirements under the Tulare County Grading Ordinance. (RMA)
8. The permittee shall make all arrangements for the relocation of all overhead and underground public utility facilities that interfere with any improvement work to be performed by the permittee. The permittee shall also make arrangements with the public utility company affected for the cost of relocating such facilities and no portion of relocation cost will be paid by Tulare County. (RMA)
9. The facility shall meet the requirements of Division 15 of the Food and Agricultural Code, and Title 3 of the California Code of Regulations as administered by the Tulare County Milk Inspection Service. [Tulare County Environmental Health (TCEHD)]
10. The permittee shall provide detailed plans of the facility to the Milk Inspection Service for review and approval prior to issuance of any building permits. (TCEHD)
11. All new wells shall comply with the construction requirements of the Tulare County Well Ordinance. (TCEHD)
12. No well shall be located closer than 100 feet from any animal enclosure, nor shall such enclosure encroach within 100 feet of an existing well. (TCEHD)

13. Inactive wells shall be properly destroyed in accordance with the Tulare County Well Ordinance. (TCEHD)
14. All agricultural wells shall have an overhead air gap at the standpipes. (TCEHD)
15. Lagoons shall meet a minimum 150 foot setback from all wells, public ditches, and public waterways. (TCEHD)
16. Animal confinement areas, manure storage areas, lagoons, and crop lands shall be properly managed to prevent a nuisance of odors, dust, and vector harborage and breeding. (TCEHD)
17. Lagoons shall be designed for maximum efficiency of recycled water disposal. Lagoons shall not be deeper than twenty (20) feet and shall maintain a minimum of ten (10) feet of separation from the highest recorded groundwater table. The lagoons shall not cause pollution of groundwater by meeting soil texture requirements of the RWQCB. Verification of final depth shall be provided by the contractor to the RMA's Planning Compliance Coordinator, in the form of a written statement prior to any discharge of any liquid into the lagoon and after a final inspection has been conducted. (TCEHD and RMA)
18. All new sewage disposal systems shall meet all construction standards and minimum setbacks of 100 feet from all wells, ditches, and waterways. (TCEHD)
19. No liquid waste material shall be discharged into any water-way that runs off the dairy site nor shall there be any pollution of same. (TCEHD and RWQCB)
20. Lagoons shall provide capacity to hold 120 days accumulation of liquids. (RWQCB)
21. A surfaced fire apparatus access, twelve (12) feet in width, shall be provided to within five (5) feet of the fresh water holding tank and the water pressure tank. (Fire Warden)
22. A 30 inch by 30 inch hinged inspection cover shall be located on the fresh water holding tank. The inspection cover shall be located along the portion of the tank that fronts on the surfaced access. (Fire Warden)
23. The fresh water pressure tank shall be plumbed with a valved, 2-1/2 inch hose connection (National Hose Thread) in such a manner as to provide ready access for pumper connection. All plumbing from the tank to the valve shall be a minimum of 4 inches O.D. (Fire Warden)
24. Portable fire extinguishers shall be installed in the milk house as per N.F.P.A. Pamphlet #10 (10# ABC type). (Fire Warden)

25. All activities associated with this dairy operation must comply with the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Regulation VIII Fugitive Dust Rules, such as construction, unpaved roads and open service areas. (SJVUAPCD)
26. All agricultural burning shall comply with the SJVUAPCD Rules and Regulations. (SJVUAPCD)
27. No portion of the 2,692 acres covered by this application shall be sold or used for purposes other than those expressly permitted under this use permit unless an amendment to the use permit is approved by the County. This shall not restrict the sale of the entire parcel of property as a unit subject to all of the conditions required herein. In addition, if there is any change in the area available for recycled water disposal, the permittee shall immediately notify the Planning Director to advise of the change and, if determined necessary by the Director, apply for an amendment to the use permit. (RMA)
28. Dead animals shall be removed from the site within 48 hours and shall not be visible from the public road while awaiting removal. (TCEHD and RMA)
29. A fly abatement program shall be used to keep flies under control on site so that they do not become a nuisance on site or to surrounding property owners. (RMA)
30. The dairy operation shall meet all of the requirements of the Tulare Mosquito Abatement District for design and maintenance. (See Attachment No. 1 made a part hereof, which contains nine (9) specific requirements for construction and management of dairy wastewater systems in order to accomplish mosquito control.) (Tulare Mosquito Abatement District)
31. Should any additional residences or mobilehomes be constructed or installed, all densities and setbacks (separations from animal confinement and waste facilities, etc.) shall be in compliance with the AE-40 Zone. (Tulare County Zoning Ordinance)
32. If more than five (5) unrelated employees are housed on the site, the dairy operator shall contact the Resource Management Agency to determine if a Permit to Operate Employee Housing is required by Section 7-23-1000 et seq. of the Tulare County Ordinance Code and, if required; obtain such permit prior to occupancy.
33. The permittee shall file a Right to Farm Notice in accordance with Section 7-29-1070(a) of the Tulare County Ordinance Code. The required form of notice will be provided to the permittee by RMA.
34. Buildings housing dairy animals, corrals, sump pits, and silage and haylage storage areas for a new dairy shall not be located closer than 100 feet from all property lines at the perimeter of the new dairy site.

35. All mitigation measures set forth in the Final Environmental Impact Report (which is incorporated by reference herein) are required for this project and shall be implemented by the permittee or his successors-in-interest. (See also Exhibit "C" hereto made a part hereof.) In connection with air quality mitigation measures relating to digesters, biogas recovery systems and offsets, and as set forth in the Final EIR, the County, consistent with its Compliance Monitoring Program contained in the Animal Confinement Facilities Plan (ACFP), is committed to continue to study these matters in good faith and to explore making amendments to the ACFP which are scientifically, economically and legally feasible and which can be made legally applicable to this project. (RMA) In addition, the applicant shall obtain the National Pollution Discharge Elimination System (NPDES) permit designed to govern confined animal feeding operations; in addition, since SB 700 (Florez) has become law, the applicant shall comply therewith and obtain the necessary air quality permit (when available) from the San Joaquin Valley Air Pollution Control District, or any other applicable air quality regulatory authority.
36. Standardized conditions as set forth in Planning Commission Resolution No. 5976, as amended by Resolution Nos. 6013, 6334, and 6702, shall apply to this application. (See Attachment No. 2 made a part hereof.) (RMA)

STANDARD CONDITIONS OF APPROVAL FOR SPECIAL USE PERMITS

(Planning Commission Resolution No. 5976 as amended by 6013, 6334 and 6702)

1. Development shall be in accordance with the plan(s) as submitted by the applicant and/or as modified by the Planning Commission (P.C.) (Exhibit "A"), and with the Site Plan Development Standards pertaining to a use of this type adopted by the Planning Commission on February 20, 1970.
2. Regardless of Condition No. 1 above, the Planning and Development Director is authorized to approve minor modifications in the approved plans upon a request by the applicant, or successors, as long as said modifications do not materially affect the determination of the Planning Commission. Such modification shall be noted on the approved plans and shall be initialized by the Planning and Development Director.
3. All exterior lighting shall be so adjusted as to deflect direct rays away from public roadways and adjacent properties.
4. The proposed facility shall be maintained and operated in accordance with all State and County health regulations.
5. Any structures built shall conform to the building regulations and the building line setbacks of the Ordinance Code of Tulare County insofar as said regulations and setbacks are applicable to such structures.
6. If there are conditions set down herein which require construction of improvements, they shall be complied with before the premises shall be used for the purposes applied for, in order that the safety and general welfare of the persons using said premises, and the traveling public, shall be protected. The Planning Commission may grant exceptions to this condition upon request by the applicant.
7. This use permit shall automatically be null and void two (2) years after the date upon which it is granted by the Planning Commission, unless the applicant, or successors, has actually commenced the use authorized by the permit within said two year period. The Planning Commission may grant one or more extensions of said two year time, upon request by the applicant.
8. This use permit will not be effective until ten (10) days after the date upon which it is granted by the Planning Commission and until the applicant, at his own expense, has executed and filed with the County Recorder, a certified copy of the resolution of the Planning Commission granting said permit with a duly authorized acceptance, in the form approved by the County Counsel, endorsed thereon.
9. All standard conditions and all special conditions of approval of this Special Use Permit must be complied with at all times in order to continue the use or uses allowed. Compliance with such conditions is subject to review at any time. Unless a sooner review is required, an initial review of the compliance shall be conducted by the Tulare County Planning Commission twelve months after the granting of the Special Use Permit. Additional reviews may be undertaken at the discretion of the Planning Commission.
10. This Special Use Permit shall automatically expire and become null and void two (2) years after the use for which it was granted is discontinued or abandoned. However, upon application by the applicant, or successors, the Planning Commission may extend the expiration date in accordance with the procedures set forth in the Zoning Ordinance.