

Notice of Determination

Appendix D

To:

☒ Office of Planning and Research

For U.S. Mail: Street Address:
P.O. Box 3044 1400 Tenth St.
Sacramento, CA 95812-3044 Sacramento, CA 95814

☒ County Clerk

County of: Tulare
Address: 221 South Mooney Blvd.
Visalia, CA 93291-4593

From:

Public Agency: Tulare County Resources Management Agency
Address: 5961 South Mooney Blvd.
Visalia, CA 93277
Contact: Karen Dennis
Phone: (559) 733-6291

Lead Agency (if different from above):

Address: _____
Contact: _____
Phone: _____

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

State Clearinghouse Number (if submitted to State Clearinghouse): 2006101075

Project Title: FM Jerseys Dairy Establishment, Case File No: PSP 05-060, Applicant: Frank Mendonsa, 16777 S. I Dr, Tulare, CA 93274

Project Location (include county): South of Ave 164 between Road 120 and Road 124 approx 1 mile northeast of Tipton, Tulare County

Project Description:

To construct and operate a new dairy to accommodate a maximum of 2,637 total animal units (3,200 Jersey milk cows plus support stock). The dairy facility occupy approximately 77 acres of a 479 non- contiguous acres of land. The balance of the acreage will continue to be cultivated and will be irrigated with reclaimed dairy wastewater.

This is to advise that the Tulare County Planning Commission has approved the above described project on March 11, 2009 and has made the following determinations regarding the above described project:
(Date)

1. The project [☒ will ☐ will not] have a significant effect on the environment.
2. ☒ 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.
3. Mitigation measures [☒ were ☐ were not] made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [☒ was ☐ was not] adopted for this project.
5. A statement of Overriding Considerations [☒ was ☐ was not] adopted for this project.
6. Findings [☒ were ☐ were not] made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, or the negative Declaration, is available to the General Public at: Tulare County Resources Management Agency, address above, D.F.&G. Fees Required - EIR

Signature (Public Agency) [Signature]

Title Project Planner

Date March 12, 2009

Date Received for filing at OPR [Signature]



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2009-0024258

Recorded
Official Records
County of
Tulare
GREGORY B. HARDCASTLE
Clerk Recorder

REC FEE 284.00

10:09AM 23-Apr-2009 L5
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RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

Tulare County RMA
5961 S. Mooney Blvd.
Visalia, CA 93277-9394

THIS SPACE FOR RECORDER'S USE ONLY

Resolution 8427 for Certification of FEIR, adopting
a mitigation monitoring plan, and adopting a
statement of overriding consideration

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(ADDITIONAL RECORDING FEE APPLIES)

12/93

BEFORE THE PLANNING COMMISSION

COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER OF CERTIFYING THE)
FINAL ENVIRONMENTAL IMPACT REPORT)
FOR THE FM JERSEYS DAIRY ESTABLISHMENT)
(SCH#2006101075) AS BEING IN COMPLIANCE WITH)
THE CALIFORNIA ENVIRONMENTAL QUALITY) RESOLUTION NO. 8427
ACT; ADOPTION OF A MITIGATION MONITORING)
PLAN ; AND ADOPTING A STATEMENT OF)
OVERRIDING CONSIDERATIONS)

WHEREAS, this resolution of the Tulare County Planning Commission relates to the certification of the Final Environmental Impact Report SCH #2006101075) ("Final EIR"), for the FM Jerseys Dairy establishment, 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 for this dairy project;

WHEREAS, the owner/applicant (Frank Mendonsa) filed with the Tulare County Resource Management Agency ("RMA") an application for a Special Use Permit (PSP 05-060) to establish a dairy facility 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 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 consultant retained by the applicants to assist in the preparation of an Environmental Impact Report for the necessary environmental and land use actions proposed by the FM Jerseys Dairy, which constitutes the establishment and operation of a dairy facility in the AE-40 (Exclusive Agricultural-40 acre minimum) Zone to accommodate a maximum of 2,637 total animal units (3,200 Jersey milk cows plus support stock) on 77 acres of a 479-acre project site, and the balance of the acreage that is not occupied by the dairy facility will remain under cultivation and will be used for cultivation and disposal of 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 Commission;

WHEREAS, the subject property or site is located in Tulare County, California, more particularly on the south side of Avenue 164 between Road 120 and Road 124, approximately 1 mile northeast of Tipton in Tulare County;

WHEREAS, the Assessor's Parcel Numbers – to which this dairy project relates – are identified as 232-120-025 (dairy facilities), 232-120-026, 232-130-001, 232-110-010 in Sections 20, 22, & 29, Township 21 South, Range 25 East, MDB&M. Parcels 232-120-025 and 026 were subject to a lot line adjustment that was approved October 16, 2006;

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 05-060, 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 Commission;

WHEREAS, public hearings were conducted for this matter at the regular meetings of the Planning Commission held on December 3, 2008 and January 14, 2009, February 25, 2009 and March 11, 2009;

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 Planning Commission;

WHEREAS, on September 8, 2006, Tulare County distributed the Notice of Preparation for the Environmental Impact Report indicating a 30-day review period, commencing on October 10, 2006 and ending on November 9, 2006;

WHEREAS, on or about November 3, 2008, 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 November 3, 2008 and ending on December 17, 2008;

WHEREAS, on November 22, 2008, a Notice of Availability of Draft Environmental Impact Report and Notice of Public Hearing were duly published in the Visalia Times Delta/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 said notice of public hearing provided that the hearing would be held for the purpose of receiving comment on the EIR (SCH #2006101075) for the dairy operation described herein;

WHEREAS, written comments were submitted during the public comment period by various public agencies and members of the public, and after consideration thereof, written responses were prepared for said comments by the applicants' consultant and reviewed by County Staff;

WHEREAS, no new issues were raised that had not already been addressed in previous documentation at the public hearings;

WHEREAS, on or about February 12, 2009, a copy of the written responses to the timely public comments was duly sent by mail to the commenting public agencies and interested parties in a manner that public agencies and interested parties received said responses at least 10 days before the action taken on this date with respect to the Final EIR;

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 constitutes 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;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Planning Commission finds and declares that on December 3, 2008, the Planning Commission 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 Commission.

2. The Commission further finds and declares that the public comment period for the draft EIR closed December 17, 2008 and continued public hearings for the special use permit were conducted at the regular meetings of the Planning Commission held on December 3, 2008, January 14, 2009, February 25, 2009.

3. The Commission 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 for implementing CEQA. The Commission 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 Commission'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 Commission further certifies and finds that the Final EIR prepared 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 for implementing CEQA.

4. The Commission, 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 Commission. These findings reflect that except for certain significant effects relating to cumulative impacts involving air quality, groundwater quality, greenhouse gas/climate change, loss of predator foraging habitat, and a project level impact relating to off-site disposal of manure, 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 Commission 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 Commission 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 Commission further finds and declares that certain significant environmental effects relating to cumulative impacts involving air quality, groundwater quality, greenhouse gas/climate change and loss of predator foraging habitat 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 that specific economic, legal, social, technological or other considerations make infeasible the mitigation measures or project alternatives identified in the Final EIR. The Commission 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 Commission 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 Commission further finds and declares that (a) written responses have been prepared to the comments submitted by the members of the public during the hearings held for this matter; (b) on December 4, 2008, a copy of the written responses to the comments to the Draft EIR was duly and timely sent by mail to affected public agencies and interested parties; (c) said responses were received at least 10 days before the action taken on the Final EIR; and (d) the County has elected to respond in good faith to these comments and after due consideration of said responses, the Commission finds that said responses and findings associated therewith are adequate, complete and hereby adopted, and that the responses and findings in the Final EIR associated are adequate, complete and hereby adopted.

8. The Commission further finds and declares, based on substantial evidence, that the proposed dairy project 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 Commission further finds and declares, based on substantial evidence, that the proposed dairy project 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, and the conditions of approval attached to the special use permit resolution which are 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 the special use permit resolution 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.
- (b) The Commission further finds and declares, based on substantial evidence, that the proposed dairy project is consistent with the relevant provisions of the Tulare County General Plan in that the proposed land use 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 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 as "agriculture" land use. Hence, the proposed dairy project is consistent with and furthers the goals, objectives and policies of this designation and does not obstruct their attainment since a dairy is 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 Zone (Exclusive Agriculture - 40 acre minimum) and is allowed since each parcel thereof meets the minimum parcel size requirement of said zone, and since the proposed project will be devoted to exclusive agriculture. Thus, the proposed dairy project is compatible with and furthers these land use goals, objectives and policies and does not obstruct their attainment because the subject dairy is an

agricultural use which is 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 proposed dairy use 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 in agriculture. The proposed dairy project is located within an area designated "Extensive Agriculture", and as such, the proposed dairy project maintains the commitment to agricultural use. In addition, the Final EIR indicates that the project is not located in a designated 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 proposed dairy project 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 be from Road 124. The project-related traffic will travel north on Road 124 to Avenue 164 then west on Avenue 164 to State Route 99. Traffic analysis performed for this project has indicated that the project will not impact the Level of Service (LOS) for surrounding roads and intersections. (Final EIR Section 3.14) However, the increase in project-related traffic would accelerate the deterioration of the local roadways. These roads have not been constructed to an engineered standard. In connection with the road condition/structure, a Road Impact Assessment to evaluate the impacts, if any, as a result of the additional traffic generated by the project was included in the Final EIR. This assessment concluded that the one mile segment of Avenue 164 from the entrance on Road 124 to D168/Road 112 and D168/Road 112 from Avenue 164 to Avenue 184. The cost of this maintenance has been addressed through proposed mitigation measures as outlined in Section 3.14.5 of the Final EIR. Therefore, there will not be any impact on the LOS and the structure of county roads. Thus, the proposed dairy project 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

agricultural use which is 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 proposed dairy use 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 in agriculture. The proposed dairy project is located within an area designated "Extensive Agriculture", and as such, the proposed dairy project maintains the commitment to agricultural use. In addition, the Final EIR indicates that the project is not located in a designated 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 proposed dairy project 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 be from Road 124. The project-related traffic will travel north on Road 124 to Avenue 164 then west on Avenue 164 to State Route 99. Traffic analysis performed for this project has indicated that the project will not impact the Level of Service (LOS) for surrounding roads and intersections. (Final EIR Section 3.14) However, the increase in project-related traffic would accelerate the deterioration of the local roadways. These roads have not been constructed to an engineered standard. In connection with the road condition/structure, a Road Impact Assessment to evaluate the impacts, if any, as a result of the additional traffic generated by the project was included in the Final EIR. This assessment concluded that the one mile segment of Avenue 164 from the entrance on Road 124 to D168/Road 112 and D168/Road 112 from Avenue 164 to Avenue 184. The cost of this maintenance has been addressed through proposed mitigation measures as outlined in Section 3.14.5 of the Final EIR. Therefore, there will not be any impact on the LOS and the structure of county roads. Thus, the proposed dairy project 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 or operational noise impacts; however, short-term noise from the construction of the dairy facilities may impact a residence that is 660 north of the project site. Mitigation measures have been included to minimize these impacts (see Final EIR, Section 3.10.) Hence, the proposed dairy project 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 proposed dairy project 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 which applies to the entire project site, because this is an exclusive agricultural zone which encourages intensive and extensive agricultural uses, as well as uses which are a necessary and integral part of the agricultural operation (Final EIR, Section 3.11). There are no dwellings on the site and only scattered residences in the local vicinity. Thus, the project will not cause the relocation of any dwelling on the site or surrounding properties. The Environmental Impact Report indicates that there will not be any significant housing impacts from this project (Final EIR, Section 3.11). Thus, the proposed dairy project 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 to a level of insignificance (Final EIR, Section 3.7). Hence, the proposed dairy project 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 Animal Confinement Facilities Plan (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 dairy is in conformity with the minimum site size requirement of Policy No.1 because the project site exceeds 160 acres. The entire site consists of 479 acres.
 - (2) This new dairy is 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 6.8 animal units per crop acre. This is well below the maximum allowed density of 10 animal units per crop acre. In addition, the Jersey milk cow density of 5.9 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 5.71 animal units if both liquid and solid manure were utilized onsite. 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 Commission determines that this CNMP will function as a Salts Loading Report for this project. The Report indicates that the project has adequate crop land for liquid manure distribution based on salts, however, 5,083 tons of solid manure will be removed from the site for other agricultural uses. 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. Thus, based on the requirement that this dairy project shall comply with the standards listed above, 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 3,014 animal units and the maximum allowed herd size for this project is 2,637 Jersey animal units.
- (3) In connection with Policy No. 3, there are no existing dairy facilities within a 1/2 mile radius of the proposed dairy facilities. The project is consistent with the separation standard set forth in Policy No. 3. (Final EIR, Section 3.9.4 and Figure 3.9-2.) 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 any designated community windshed area as defined by ACFP Locational and Animal Density Policy No. 4 (Final EIR, Section 3.9.7 and Figure 3.9-5).
- (4) 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, Sections 3.9.5, 3.9.6

and Figures 3.3-2 and 3.9-4). In addition, Policy Nos. 6, 7 and 8 are irrelevant to this project because the project does not require a deviation from the micro-windshed requirements of Policy No. 5.

9. Accordingly, the Commission, 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 are in compliance with CEQA, the State CEQA Guidelines and the County's procedures for implementing CEQA; and in connection therewith, the Commission 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 project. These mitigation measures are set forth more specifically in the Final EIR and in Exhibit "C" to this resolution. These mitigation measures which are based on substantial evidence are hereby approved and adopted by the Commission.

10. The Commission 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.

11. The Commission confirms that the documents and other materials that constitute the record of proceedings (which supports the Commission'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 (559) 733-6291. The custodian for these documents and other materials is Tulare County Resource Management Agency.

12. The Commission confirms that public hearings were conducted for this matter at the regular meetings of the Planning Commission held on December 3, 2008 and January 14, 2009, February 25, 2009 and March 11, 2009.

Upon motion of Commissioner Whitlach, seconded by Commissioner Pitigliano, the foregoing resolution was adopted at a regular meeting of the Planning Commission held this 11th day of March, 2009 by the following vote:

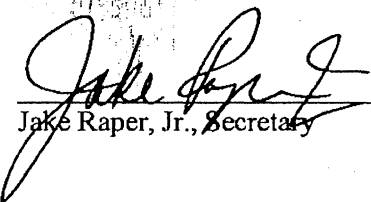
AYES: Elliott, Pitigliano, Whitlach, Millies, Dias, Gong

NOES: None

ABSTAIN: None

ABSENT: None

TULARE COUNTY PLANNING COMMISSION



Jake Raper, Jr., Secretary

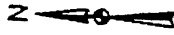
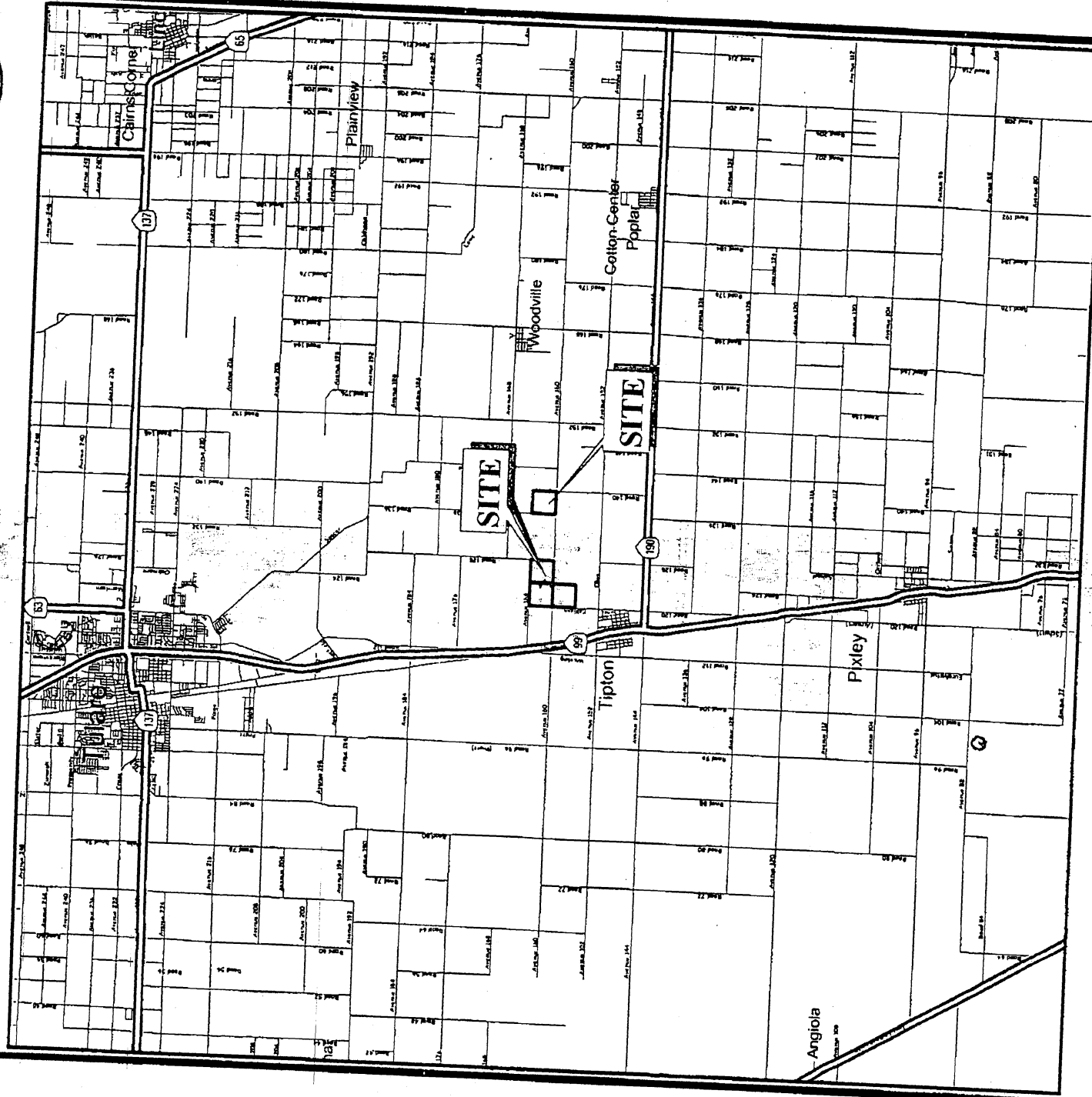
EXHIBIT "A"

PROJECT SITE MAP
AND
PROJECT SITE PLAN

FM JERSEYS DAIRY ESTABLISHMENT

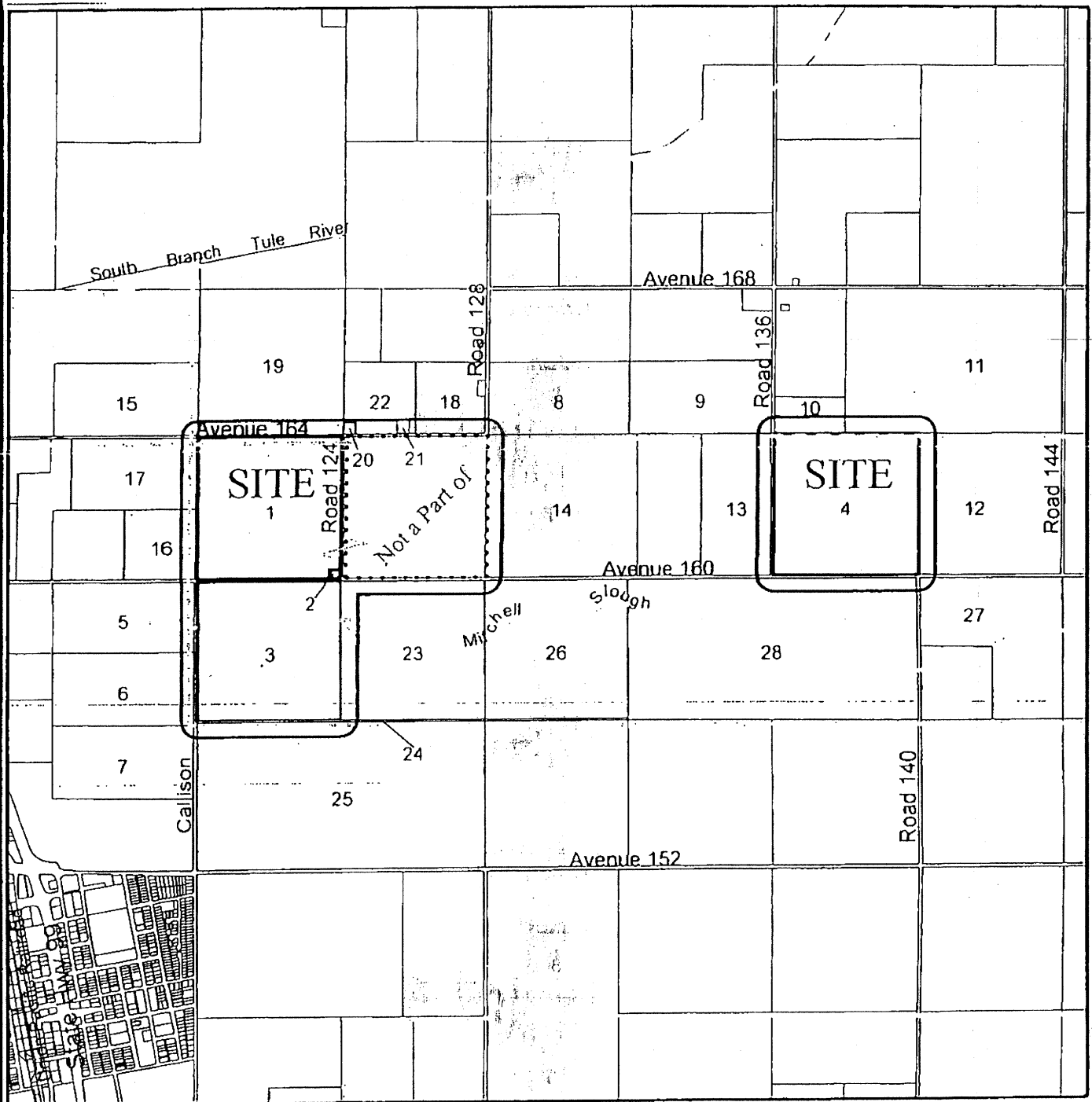


Vicinity Map for PSP 05-060





Vicinity Map for PSP 05-060



Owner: MENDONSA ANN M (TR J MENDONSA FAM R
Address: 12750 AVE 160
City, State ZIP: TIPTON CA 93272
Applicant: FRANK MENDONSA
Agent: BRUCE LIVINGSTON
Supervisory District #2
Assessors Parcel # 232110010, A part of 232120025, 232120026, 232130001

0.25 0 0.25 0.5 0.75 Miles

1 - 4

Project Site for PSP 05-060

5 - 28

Properties within 300' of project site,
to receive written notification of proposal
(as required by State Law)



EXHIBIT "B"

CEQA FINDINGS

FM JERSEYS DAIRY ESTABLISHMENT

EXHIBIT "B"

CERTIFICATION OF FINAL ENVIRONMENTAL IMPACT REPORT FOR THE FM JERSEYS DAIRY ESTABLISHMENT AS BEING IN COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; ADOPTING PROJECT FINDINGS; ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS

I

INTRODUCTION

The Planning Commission ("Commission") of the County of Tulare ("County") intends to approve the dairy project identified as the FM Jerseys Dairy ("Project"). The Project constitutes the establishment of a new dairy operation to accommodate a maximum of 2,637 animal units (3,200 Jersey milk cows and support stock) on a 77 acre portion of a 479 non-contiguous acre project site. The balance of the acreage that is not occupied by the dairy facility will remain under cultivation and will be used for disposal of reclaimed dairy wastewater.

To approve this Project, the Commission must separately consider and take action on the Project application for a Special Use Permit for a dairy operation ("PSP 99-052"). Separately, the applicant must obtain approval of a Notice of Intent under an Individual Waste Discharge Order (No. R5-2007-035), and any other applicable approval, including the new National Pollution Discharge Elimination System (NPDES) permit, from the Central Valley Regional Water Quality Control Board ("Regional Water Board") pursuant to Title 27 of the California Code of Regulations. The applicant shall obtain the necessary air quality permits from the San Joaquin Valley Air Pollution Control District (SJVAPCD), or any other applicable air quality regulatory authority. In the context of the California Environmental Quality Act ("CEQA"), the County is the "lead agency" and the Regional Board and Air Pollution Control District are "responsible agencies" in consideration and approval of this Project.

II

CERTIFICATION OF FINAL ENVIRONMENTAL IMPACT REPORT FOR THE FM JERSEYS DAIRY EXPANSION

The Commission 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 Commission further certifies and finds that prior to taking action on the Project; the Commission independently reviewed and considered the information contained in the Final EIR and other relevant evidence presented thereto. Accordingly, based on the Commission's exercise of its independent judgment when reviewing and considering the

Commission's exercise of its independent judgment when reviewing and considering the Final EIR and other relevant evidence presented thereto, the Commission 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 IMPACTS

The recitals contained in the accompanying resolution have been independently reviewed and considered by the Commission, are found to be true and are hereby adopted in support of approval of the Project.

Additionally, CEQA requires that certain findings be made with respect to significant environmental impacts, mitigation measures and alternatives. To satisfy this requirement, the Commission hereby adopts and incorporates by reference the Final EIR which includes the Final EIR, the Draft EIR, and the Technical Appendices thereto, the Comments to the Draft EIR, and the Responses to Comments and related appendices thereto. It should be noted that any reference herein to the Final EIR includes a reference to the Final EIR, the Draft EIR, the Technical Appendices thereto, the Comments to the Draft EIR, and the Responses to Comments and related appendices thereto.

In making these findings, the Commission has independently reviewed, considered and relied on (1) the information contained in the Final EIR and appendices thereto; (2) the various reports (both oral and written) provided by County Staff to the Commission; (3) the information submitted during the public hearings conducted for the Project; and (4) other evidence contained in the public record of such hearings. In doing so, the Commission finds and declares that the factual discussion and analysis contained in the Final 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.

A. Environmental Impacts and Mitigation Measures.

As to each potentially significant environmental impact identified in the Final EIR, the Commission 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 Final 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 Final EIR.

1. Project Impacts.

Consistent with Public Resource Code section 21081 and Guidelines sections 15091 through 15093 (including Public Resources Code section 21061.1 and Guidelines section 15364 relating to the definition of "feasibility"), the Commission hereby makes various findings relating to the significant effects identified in the Final EIR for the Project.

a. Impact No. 3.1.1 Visual Compatibility.

Pursuant to the discussion in Section 3.1.1 of the Final EIR, there will not be a significant impact of the visual character of the environment within the Project's vicinity. The Commission concurs with this analysis.

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 to the visual character within the Project's vicinity, and thus, no mitigation is necessary or required.

In support of this finding, the evidence indicates that the dairy structures, as designed (including the main milking barn, freestalls and feed storage barns), will be under 35 feet in height, with most of the structures approximately 20-28 feet, and the applicant has provided site plans that designate the locations of the freestall barns, shaded corrals, separator ponds, and lagoons. No identified scenic vista will be blocked by the Project facilities. Thus, development of a dairy site will not have an adverse effect on a scenic vista or degrade the existing visual character within the Project's vicinity. There is no evidence to the contrary in the Public Record of Proceedings.

b. Impact No. 3.1.2 Light and Glare.

Pursuant to the discussion in Section 3.1.2 of the Final EIR, the Project may cause a potentially significant impact to the environment from light and glare. The Commission concurs with this analysis.

Accordingly, based on substantial evidence in 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 substantially lessen any impacts associated from light and glare.

Mitigation for this impact is set forth in Mitigation Measure No. 3.1.2. Such mitigation is hereby adopted for this Project. This mitigation measure shall be implemented by the applicant and the applicant's construction contractor and shall be a condition of the Special Use Permit. Monitoring shall be the responsibility of the RMA.

In support of this finding, the evidence indicates that the establishment of the dairy, including the inclusion of inward-direction lighting within the new freestall barns,

will result in a minimal change in the night sky. Rural residents within view of the dairy are already experiencing night-time lighting effects of other animal confinement facilities in the project vicinity, and from passing vehicles on County roads. The implementation of the mitigation measure will reduce the project's light and glare impact to less than significant. There is no evidence to the contrary in the Public Record of Proceedings.

c. Impact No. 3.2.1 Loss of Farmland.

Pursuant to the discussion in Section 3.2.1 of the Final EIR, there will not be a significant impact to the environment involving the loss of farmland. The Commission concurs with this analysis.

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 to the environment involving the loss of farmland because the dairy and cropping uses will maintain the farmland use and will not cause any loss thereof, and thus, no mitigation is necessary or required.

In support of this finding, the evidence indicates that the project site includes 479 non-contiguous acres. All of the acreage will be put to agricultural use, namely, dairy operations and supporting crop production. All of the Project acreage is subject to Tulare County's Williamson Act/Agricultural Preserve Contract Requirements. Dairies are considered agricultural uses under the County's Zoning Ordinance and its Uniform Williamson Act Rules. Consequently, the intended land uses of the Project are consistent therewith and will not result in a loss of farmland. There is no evidence to the contrary in the Public Record of Proceedings.

d. Impact 3.2.2 Zoning Conflicts.

Pursuant to discussion in Section 3.2.2 there will not be a significant impact to the environment involving zoning conflicts. The Commission concurs with this analysis.

Accordingly, based upon 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 zoning conflicts because there are none, and thus, no mitigation is necessary or required.

In support of this finding, the evidence indicates that the site is zoned AE-40 (Exclusive Agricultural-40 acre minimum). The project location complies with the provisions of Tulare County's General Plan Land Use Element and the Rural Valley Lands Plan, both of which consider a dairy to be an agricultural use consistent with the County's "agricultural" land use designation. There is no evidence to the contrary in the Public Record of Proceedings.

e. Impact No. 3.2.3 Conversion of Farmland.

Pursuant to the discussion in Section 3.2.3 of the Final EIR, there will not be a significant impact to the environment involving the conversion of farmland. The Commission concurs with this analysis.

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 to the environment involving any conversion of farmland because the Project will not convert any existing farmland, and thus, no mitigation is necessary or required.

In support of this finding, the evidence indicates that the Project consists of the establishment of a dairy operation supplemented by crop production to support the dairy. Existing planning policies and zoning regulations affecting the subject property allow and encourage agricultural uses in the unincorporated area of Tulare County. The subject dairy project is consistent with, and implements, these agricultural policies and regulations. There is no evidence to the contrary in the Public Record of Proceedings.

f. Impact No. 3.3.1 Health Impacts.

Pursuant to the discussion in Section 3.3.1 of the Final EIR, there will not be a significant impact to the environment involving health impacts. The Commission concurs with this analysis.

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 to the environment involving health impacts because the Project will not exceed any health standards, and thus, no mitigation is necessary or required.

In support of this finding, the air modeling evidence indicates that operation of the proposed Project will not contribute to adverse health conditions. Existing planning policies and zoning regulations affecting the subject property allow and encourage agricultural uses in the unincorporated area of Tulare County. The subject dairy project is consistent with, and implements, these agricultural policies and regulations. There is no evidence to the contrary in the Public Record of Proceedings.

g. Impact No. 3.3.2 Construction PM10 / PM2.5 Impacts.

Pursuant to the discussion in Section 3.3.2 of the Final EIR, the Project may cause a potentially significant impact to the environment from PM₁₀ and PM_{2.5} construction impacts. From the perspective of the SJVAPCD, compliance with Regulation VIII and implementation of the project-pertinent SJVAPCD control measure will constitute sufficient mitigation to reduce PM₁₀ impacts below significance for this project. The Commission concurs with this analysis.

Accordingly, based on substantial evidence in 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 substantially lessen any construction impacts from PM₁₀ and PM_{2.5} to a level of insignificance under SJVAPCD criteria. However, the Commission 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 Commission 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 Construction Equipment Exhaust Emissions (CO, VOC, NOx, SOx, PM₁₀/PM_{2.5}).

Pursuant to the discussion in Section 3.3.3 of the Final EIR, the Project may cause a potentially cumulatively significant impact to the environment from construction equipment exhaust emissions. Project-related emissions are less than significant because they are less than the thresholds. The Commission concurs with this analysis.

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 avoid, mitigate or substantially lessen any Project-level impact to the environment from construction equipment exhaust emissions to a level of insignificance. However, the Commission 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 Commission 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. 3.3.4.A Operational Emission of Criteria Pollutants PM₁₀ and PM_{2.5}.

Pursuant to the discussion in Section 3.3.4.A of the Final EIR, the Project may cause a potentially significant impact to the environment from operational emissions of criteria pollutants PM₁₀ and PM_{2.5}. Compliance with applicable requirements of SJVAPCD Rule 4550, Conservation Management Practices is mandatory. The Commission concurs with this analysis.

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 avoid, mitigate or substantially lessen any impact to the environment from construction equipment exhaust emissions to a level of insignificance. However, the Commission 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 Commission 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.

j. Impact No. 3.3.4.B Operational Emission of Criteria Pollutant Volatile Organic Compounds (VOC).

Pursuant to the discussion in Section 3.3.4.B of the Final EIR, the Project may cause a potentially significant impact to the environment from operational emissions of criteria pollutant VOC. Compliance with applicable requirements of SJVAPCD Rule 4570, Confined Animal Facilities is mandatory. The Commission concurs with this analysis.

Accordingly, based on substantial evidence in the Final EIR and Public Record of Proceedings, the Commission 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 VOC.

Mitigation for this impact is set forth in Mitigation Measure No. 3.3.4.B. such mitigation is hereby adopted for this Project. This mitigation measure shall be implemented by the application and shall be a condition of the Special Use Permit. Monitoring shall be the responsibility of the RMA.

In support of this finding, the evidence contained in the Final EIR and the Public Record of Proceedings that VOC is produced wherever anaerobic decomposition of manure takes place. VOCs are a subset of total organic gases (TOGs). TOGs are mostly methane which is photochemically non-reactive, is not considered an ozone precursor, and is addressed separately as a greenhouse gas. The Project is required to comply with SJVAPCD Rule 4570 Confined Animal Facilities which will reduce Project VOC impacts but the impact will remain cumulatively significant, considerable and unavoidable. There is no evidence to the contrary in the Public Record of Proceedings.

Implementation of the adopted mitigation measure will reduce VOC production, but will not reduce such emissions below the SJVAPCDs significance threshold of 10 tons per year. Project impacts on regional ozone pre-cursor levels would remain

and unavoidable, as would cumulative impacts.

Therefore, 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 less VOC impacts.

However, the Commission 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 Commission 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.

k. Impact No. 3.3.5 Operational Emission of Criteria Pollutant Nitrous Oxide (NOx).

Pursuant to the discussion in Section 3.3.5 of the Final EIR, the Project may cause a potentially significant impact to the environment from operational emissions of criteria pollutant NOx. Compliance with SJVAPCD Rule 2201, New and Modified Stationary Source Review, is mandatory. The Commission concurs with this analysis.

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 lessen impacts from operational emissions of criteria pollutant, NOx. However, the Commission 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.

Mitigation for this impact is set forth in Mitigation No. 3.3.5. 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.

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, and that new sources of NOx emissions will be introduced from Project-related truck exhaust and employee vehicles. No other feasible mitigation measures exist, and there is no evidence to the contrary in the Public Record of Proceedings.

Implementation of the adopted mitigation measure 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.

After balancing these interests, the Commission 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.

1. Impact No. 3.3.6 Methane (CH₄) Generation

Pursuant to the discussion in Section 3.3.6 of the Final EIR, the Project may cause a potentially significant impact to the environment from operational emissions of methane (CH₄). Compliance with applicable requirements of SJVAPCD Rule 4570, Confined Animal Facilities is mandatory. The Commission concurs with this analysis.

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 avoid, mitigate or substantially lessen impacts from operational emissions methane (CH₄). However, the Commission 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 Commission 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.

m. Impact No. 3.3.7 Ammonia (NH₃)

Pursuant to the discussion in Section 3.3.7 of the Final EIR, the Project may cause a potentially significant impact to the environment from operational emissions of ammonia (NH₃). Compliance with applicable requirements of SJVAPCD Rule 4570, Confined Animal Facilities is mandatory. The Commission concurs with this analysis.

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 avoid, mitigate or substantially lessen impacts from operational emissions of ammonia (NH₃). However, the Commission 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 Commission 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.

n. Impact No. 3.3.8 Hydrogen Sulfide (H₂S)

Pursuant to the discussion in Section 3.3.8 of the Final EIR, the Project may cause a potentially significant impact to the environment from hydrogen sulfide (H₂S) from manure decomposition. Compliance with applicable requirements of SJVAPCD Rule 4570, Confined Animal Facilities is mandatory. The Commission concurs in this analysis.

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 avoid, mitigate or substantially lessen impacts from operational emissions of criteria pollutants, hydrogen sulfide. However, the Commission 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 Commission 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.

o. Impact No. 3.3.9 Odor Emissions.

Pursuant to the discussion in Section 3.3.9 of the Final EIR, the project will not cause a significant impact the environment from odor emissions. Air modeling was prepared for the project site and showed no exceedance of ammonia (NH₃) or hydrogen sulfide (H₂S) thresholds. The Commission concurs with this analysis.

Accordingly, based upon substantial evidence in the Final EIR and the Public Record of Proceedings, the Commission finds and declares that the Project will not cause a potentially significant impact to the environment from odor emissions and no mitigation is required or necessary. It should be noted that the Project, as designed, also includes various facility and windshed separations or setbacks required by the Animal Confinement Facilities Plan (ACFP).

In addition, the potential for odor impacts at nearby rural residences is low given the relative infrequency of winds in directions that would carry odors from the dairies to

those residences, and the fact that the nearest residential windshed boundary is more than 1/2 mile from the dairy facilities site.

Furthermore, the discussion of health impacts modeling described in the Final EIR shows that the Project does not have the potential to frequently expose members of the public to objectionable odors, which is the standard under SJVAPCD guidance. The Project design features will maintain odors at a less than significant level. There is no evidence to the contrary in the Public Record of Proceedings.

p. Impact No. 3.3.10 Local Carbon Monoxide Concentrations.

Pursuant to the discussion in Section 3.3.10 of the Final EIR, the Project will not cause a potentially significant impact to the environment from local carbon monoxide concentrations. The Commission concurs in this analysis.

Accordingly, based on substantial record in the Final EIR and the Public Record of Proceedings, the Commission finds and declares that the Project will not cause a potentially significant impact to the environment from local carbon monoxide concentrations and no mitigation is required or necessary.

In support of this finding, evidence is contained in the Final EIR and the Public Record of Proceedings that modeling was not warranted for local carbon monoxide concentrations because under SJVAPCD guidance, the level of service of the streets impacted does not rise to the level triggering such analysis. Accordingly, the Project would have no potential to create a violation of the carbon monoxide standards, and therefore, any local 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.

q. Impact No. 3.3.11 Ambient Air Quality.

Pursuant to the discussion in Section 3.3.11 of the Final EIR, the Project may cause a potentially significant impact to the ambient air quality during days when crops are harvested. This is limited to 2-3 days in the Spring and 2-3 days in the Fall when silage is harvested. Onsite road dust emissions, partially controlled by watering, are the major component of the "worst case" analyses. In the "normal" operations analysis, corral dust (modeled uncontrolled with no BACT mitigation) was the principal component. Compliance with applicable requirements of SJVAPCD Rule 4570, Confined Animal Facilities is mandatory. The Commission concurs in this analysis.

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 avoid, mitigate or substantially lessen any impact to the environment from "normal" operations emissions. However, the Commission 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 Commission 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.

r. Impact No. 3.3.12 Cumulative Air Quality Impacts.

Pursuant to the discussion in Section 3.3.12 and Chapter 5 of the Final EIR, the Project may cause significant and unavoidable cumulative air quality impacts relating to PM₁₀, PM_{2.5}, VOC, NO_x, methane, ammonia, and hydrogen sulfide. The Commission concurs with this analysis.

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 lessen any impacts relating to PM₁₀, PM_{2.5}, VOC, NO_x, Methane, Ammonia, and Hydrogen Sulfide. All of such air quality impact mitigation measures set forth in the Final EIR (e.g., Sections 3.3.1 to 3.3.12) are hereby adopted for this Project.

However, the Commission further finds that these impacts cannot be mitigated fully 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, which is fully set forth in the attached Exhibit "D," and is incorporated herein by reference.

In support of these findings, evidence is contained in the Final EIR and the Public Record of Proceedings that there is projected growth in the number of milk cows in the San Joaquin Valley Air Basin. In 2007, there were 1,493,380 milk cows in the 8-County San Joaquin Valley. Based on permitted (but unbuilt) dairies, together with dairies in the permitting process, the projected number of milk cows and support stock in the San Joaquin Valley Air Basin is 1,822,722 million. The pattern of dairy expansion could have a significant cumulative regional impact for those pollutants associated with dairies. 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.

After balancing these interests, the Commission 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.

s. Impact No. 3.3.A Greenhouse Gases.

Pursuant to the discussion in Section 3.3.A and Chapter 5 of the Final EIR, the Project may cause significant and unavoidable cumulative air quality impacts relating to greenhouse gases—carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, haloalkanes, and perfluorocarbons (CO₂, CH₄, N₂O, SF₆, HFCs, and PFCs). Of these six gases, only carbon dioxide, methane and nitrous oxide are found on dairies. The Commission concurs with this analysis.

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 lessen any impacts relating to greenhouse gases. All of such air quality impact mitigation measures set forth in the Final EIR (e.g., Section 3.3.A) are hereby adopted for this Project.

However, the Commission further finds that these impacts cannot be mitigated fully 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, which is fully set forth in the attached Exhibit "D," and is incorporated herein by reference.

After balancing these interests, the Commission 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.

t. Impact No. 3.4.1.1- 3.4.1.3 Substantial Adverse Effect on Candidate, Special-Status or Sensitive Species.

Pursuant to the discussion in Section 3.4.1 of the Final EIR, the Project may result in a loss of habitat for candidate, special-status or sensitive species. The Commission concurs with this analysis.

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 avoid, mitigate or substantially lessen impacts on candidate, special status or sensitive species.

Mitigation for San Joaquin Valley Kit Fox is set forth in Mitigation No. 3.4.1; mitigation for other sensitive birds is set forth in Mitigation No. 3.4.1.2; mitigation for Swainson's hawk is set forth in Mitigation No. 3.4.1.3. Such mitigations are hereby adopted for this Project. The mitigation for these impacts includes the preservation of 386 acres of cropland. Compliance with the "Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance" developed

by the U.S. Fish and Wildlife Service is required. The primary purpose of these protection measures is to ensure that a kit fox is not inadvertently harmed or killed during construction. Compliance with the California Department of Fish and Game's Staff Report "Mitigation Measures for Impacts to Swainson's hawks in the Central Valley" is required. The primary purpose of these protection measures is to ensure that the hawks are not disturbed during the breeding season. It shall also be a requirement that the applicant implement the protection measures identified for special-status species and their foraging habitat during the nesting season (February 15- September 15).

In support of this finding, the evidence indicates that the Project area is planted in various row crops and has been in agricultural use for many years. A systematic biological assessment survey and observations were performed by qualified biologists. No evidence of sensitive species was observed on the project site. The existence of prey species on site provides foraging habitat for avian predators. Large trees preferred by Swainson's hawks are absent from the site. The project proponent will preserve 386 acres to satisfy its wastewater disposal requirements, providing sufficient acreage to mitigate any biological impact resulting from the potential loss of habitat for avian predators. As noted at the time of the field survey, no evidence of kit fox exists on the site and there is a low occurrence of dens on cultivated cropland in the geographic area. Although the occurrence of kit fox on the site is unlikely, there is a remote possibility that one or more could pass through during construction. The adopted mitigation measures referenced above will ensure that sensitive species are not inadvertently harmed or killed during construction. There is no evidence to the contrary in the Public Record of Proceedings.

After balancing these interests, the Commission 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.

u. Impact No. 3.4.2 Adverse Affect on any Riparian Habitat or Other Sensitive Natural Community and Impact 3.4.3 Disturbance to Wetlands and Jurisdictional Waters.

Pursuant to the discussion in Section 3.4.2 and 3.4.3 of the Final EIR, there will not be any significant impact to any riparian habitat or other sensitive natural community nor will there be any significant impact related to disturbance to wetlands and jurisdictional waters. The Commission concurs with this analysis.

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 to the native pasture as no part of the dairy operation is proposed for the area. Therefore, no mitigation is necessary or required.

In support of this finding, the evidence indicates that protecting the native pasture from construction and operation activities will cause no harm to the habitat. Accordingly, no impact to the native pasture is expected. There is no evidence to the contrary in the

Public Record of Proceedings.

v. Impact No. 3.4.4 (Interference with Movement of Native Wildlife).

Pursuant to the discussion in Section 3.4.4 of the Final EIR, there will not be interference with the movement of native wildlife caused by the project. The Commission concurs with this analysis.

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 to movement of native wildlife. The preservation of the native pasture along the Cross Creek flow way will provide wildlife access. Therefore, no mitigation is necessary or required.

In support of this finding, the evidence indicates that protecting the native pasture from construction and operation activities will cause no harm to the habitat. Accordingly, no impact to the native pasture is expected. There is no evidence to the contrary in the Public Record of Proceedings.

w. Impact No. 3.4.5 Local Policy/ Plan Conflict.

Pursuant to the discussion in Section 3.4.5 of the Final EIR, there will not be significant impacts to any applicable local policy/plans. The Commission concurs with this analysis.

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 to any local policies/plans because there are no applicable or pertinent tree preservation policies or ordinances, habitat conservation plans, or natural community preservation plans affecting the subject property and the Project. There is no impact, thus, no mitigation is necessary or required. There is no evidence to the contrary in the Public Record of Proceedings.

x. Impact No. 3.4.6 Habitat Conservation Plan or Other Plan Conflict.

Pursuant to the discussion in Section 3.4.6 of the Final EIR, there will not be significant impacts to any applicable habitat conservation plan or other plans. The Commission concurs with this analysis.

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 to any applicable habitat conservation plan or other plans because there are no applicable or pertinent tree preservation policies or ordinances, habitat conservation plans, or natural community preservation plans affecting the subject property and the Project. There is no impact, thus, no mitigation is necessary or required.

There is no evidence to the contrary in the Public Record of Proceedings.

y. Impact No. 3.5.1 Disturbance of Cultural or Historic Resources, Skeletal Remains).

Pursuant to the discussion in Section 3.5.1 of the Final EIR, the Project may cause a potentially significant impact to the environment from disturbance of cultural or historic resources, skeletal remains. However, any potentially significant impact can be reduced to a level of insignificance. The Commission concurs with this analysis.

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 avoid, mitigate or substantially lessen any impacts to the environment from disturbance of cultural or historic resources and skeletal remains.

Mitigation for this impact is set forth in Mitigation No. 3.5.1. Such mitigation is hereby adopted for this Project. This mitigation measure shall be implemented by the applicant, construction contractor, the County Environmental Assessment Officer, County Coroner, NAHC, or local Native American organizations, 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 there could be a disturbance or destruction of cultural or historical resources resulting from further construction activities associated with the Project. However, there is no recorded evidence of archeological sites at the Project site. The adopted mitigation measure will assure that any Native American burial sites or unidentified skeletal remains encountered are either avoided, treated in accordance with the recommendations of the most likely decedent, or relocated, and will assure that any historical or cultural resources are properly evaluated, thereby reducing this impact to a less than significant level. There is no evidence to the contrary in the Public Record of Proceedings.

z. Impact No. 3.6.1 Seismic Effects.

Pursuant to the discussion in Section 3.6.1 of the Final EIR, there will not be any significant impacts to the environment involving seismic effects. The Commission concurs with this analysis.

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 seismic effects. Thus, no mitigation is necessary, or required.

In support of this finding, the evidence indicates that there are no known

earthquake faults at or near the Project site, although several faults are located within an 80 mile radius of the project site. The subject property is located within an area of minimal ground shaking according to the Five-County Seismic Safety Element. However, there is no likelihood of ground failure or liquefaction based on an analysis of site conditions. Accordingly, there are no seismic safety impacts associated with this Project. There is no evidence to the contrary in the Public Record of Proceedings.

aa. Impact No. 3.6.2 Landslides.

Pursuant to the discussion in Section 3.6.2 of the Final EIR, there will not be any significant impacts to the environment involving landslides. The Commission concurs in this analysis.

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 have any significant impacts involving landslides. Therefore, no mitigation is necessary or required.

In support of this finding, the slopes on the Project site are minimal, zero to two percent prior to land leveling for agricultural production. Accordingly, there are no landslide impacts associated with this Project. There is no evidence to the contrary in the Public Record of Proceedings.

bb. Impact No. 3.6.3 Soil Erosion, Topsoil Loss.

Pursuant to the discussion in Section 3.6.3 of the Final EIR, there will not be any significant impacts to the environment involving soil erosion or topsoil loss. The Commission concurs in this analysis.

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 have any significant impacts involving soil erosion or topsoil loss. Therefore, no mitigation is necessary or required.

In support of this finding, the slopes at the Project site are minimal, less than two percent. Slopes at the dairy facility are expected to be minimal and soils are not highly erodible. Accordingly, there is no soil erosion or topsoil loss impacts associated with this Project. There is no evidence to the contrary in the Public Record of Proceedings.

cc. Impact No. 3.6.4 Soil Instability.

Pursuant to the discussion in Section 3.6.4 of the Final EIR, there will not be any significant impacts to the environment involving soil instability. The Commission concurs in this analysis.

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 have any significant impacts involving soil instability. Therefore, no mitigation is necessary or required.

In support of this finding, 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. None of these causative conditions are present at the project site. Accordingly, there are no soil instability impacts associated with this Project. There is no evidence to the contrary in the Public Record of Proceedings.

dd. Impact No. 3.6.5 Expansive Soil Hazards.

Pursuant to the discussion in Section 3.6.5 of the Final EIR, there will not be any significant impacts involving expansive soils. The Commission concurs on this analysis.

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 have any significant impacts involving expansive soils. Therefore, no mitigation is necessary or required.

In support of this finding, the evidence indicates that the soils at the site would be classified as moderate with respect to expansion attributes as defined in Table 18-1-B of the 2007 Uniform Building Code. No multi-story or pile-supported structures are to be constructed as a part of the Project. Design modifications of footings or slabs will, therefore, not be required. Only normal compliance with Uniform Building Code requirements is necessitated. Thus, there are no significant impacts. There is no evidence to the contrary in the Public Record of Proceedings.

ee. Impact No. 3.6.6 Unsuitable Soils for Domestic Waste Disposal; Soil Contamination.

Pursuant to the discussion in Section 3.6.6 of the Final EIR, there will not be any significant impacts involving unsuitable soils for domestic waste disposal or soil contamination. The Commission concurs in this analysis.

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 have any significant impacts involving suitable soils for domestic waste disposal or soil contamination. Therefore, no mitigation is necessary or required.

In support of this finding, the evidence indicates that no housing is proposed on site. Adequate area for leach line disposal of domestic wastewater is available adjacent to the dairy facilities portion of the site regardless of the soil characteristics. Additionally, dairy operations will not contaminate underlying soils due to permitting requirements for domestic waste disposal facilities construction by the County's

Environmental Health Division. There is no evidence to the contrary in the Public Record of Proceedings.

ff. Impact No. 3.6.7 Mineral Resources.

Pursuant to the discussion in Section 3.6.7 of the Final EIR, there will not be any significant impacts involving mineral resources. The Commission concurs in this analysis.

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 have any significant impacts involving mineral resources. Therefore, no mitigation is necessary or required.

In support of this finding, the evidence indicates that neither the site nor the surrounding area is identified in the Tulare County Environmental Resources Management Element (ERME) as a mineral resource area. Accordingly, no impacts to existing mineral resources are expected. There is no evidence to the contrary in the Public Record of Proceedings.

gg. Impact No. 3.7.1 Operational Hazards.

Pursuant to the discussion in Section 3.7.1 of the Final EIR, the Project may cause a potentially significant impact to the environment from operational hazards. However, any potentially significant impact can be reduced to a level of insignificance with mitigation. The Commission concurs with this analysis.

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 avoid, mitigate or substantially lessen any impacts to the environment from operational hazards.

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. In support of this finding, evidence is contained in the Final EIR in the Public Record of Proceedings that the Project will use an amount of hazardous materials less than the threshold quantities set forth in State and County regulations to require filing of a Hazardous Materials Business Plan.

hh. Impact No. 3.7.2 Site Hazards.

Pursuant to the discussion in Section 3.7.2 of the Final EIR, there will not be any significant impacts involving site hazards. The Commission concurs in this analysis.

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 have any significant impacts involving site hazards. Therefore, 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 site is not on or near a hazardous waste site. Accordingly, there is no impact involving site hazards. There is no evidence to the contrary in the Public Record of Proceedings.

ii. Impact No. 3.7.3 Airport Hazards.

Pursuant to the discussion in Section 3.7.3 of the Final EIR, there will not be any significant impacts involving airport hazards. The Commission concurs with this analysis.

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 have any significant impacts involving airport hazards. Therefore, 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 there is no active public or private airstrip within two miles of the dairy facility site and there are no airports related hazards existing at or near the project site. Accordingly, there is no impact involving airport hazards. There is no evidence to the contrary in the Public Record of Proceedings.

jj. Impact No. 3.7.4 Emergency Evacuation and Wildland Fires.

Pursuant to the discussion in Section 3.7.4 of the Final EIR, there will not be any significant impacts involving emergency evacuation and wildland fires. The Commission concurs in this analysis.

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 have any significant impacts involving emergency evacuation and wildland fires. Therefore, 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 surrounded by farmland and is not within a recognized wildland fire hazard area. Accordingly, there is no impact involving emergency evacuation and wildland fires. There is no evidence to the contrary in the Public Record of Proceedings.

kk. Impact No. 3.7.5 Other Health Hazards.

The potential for health hazards related to air quality and water quality concerns is

addressed in Section IVA & B herein, and in Sections 3.3, 3.8 and 5 of the Final EIR.

II. Impact No. 3.7.6 Vector Generation and Impact 3.7.7 Cumulative Fly Generation.

Pursuant to the discussion in Section 3.7.6 and 3.7.7 of the Final EIR, the Project may cause a potentially significant impact to the environment from vector and fly generation. However, any potentially significant impact can be reduced to a level of significance with mitigation. The Commission concurs with this analysis.

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 avoid, mitigate or substantially lessen any impacts to the environment from vector generation.

Mitigation for these impacts 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.

In support of this finding, evidence is contained in the Final EIR and the Public Record of Proceedings that generation and storage of manure and process water, as well as vegetative growth and the use of process water as fertilizer for agricultural fields at the site present the possibility of increased vector activity. 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. Project design, facility maintenance and cleanliness are the keys to proper control of fly and mosquito populations. The Tulare Mosquito Abatement District, a public agency funded by property taxes, has 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. There is no evidence to the contrary in the Public Record of Proceedings.

mm. Impact No. 3.8.1 Drainage Pattern Alteration.

Pursuant to the discussion in Section 3.8.1 of the Final EIR, construction activities have the potential to impact drainage flow and surface water quality. The Commission concurs with this analysis.

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 substantially lessen any impacts.

Mitigation for this impact is set forth in Mitigation Measure No. 3.8.1. 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.

In support of this finding, evidence is contained in the Final EIR and the Public Record of Proceedings that the requirement to secure a National Pollution Discharge Elimination System General Permit from the Central Valley Regional Water Quality Control Board (RWQCB) prior to the start of construction will reduce the construction impact to less than significant. The location of the Project relative to existing surface drainage patterns as well as Project design features which do not substantially alter or redirect existing surface drainage patterns will result in no drainage pattern alteration-induced erosion or silting. There is no evidence to the contrary in the Public Record of Proceedings.

After balancing these interests, the Commission 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.

nn. Impact No. 3.8.2 Surface Runoff Increase or Pollution.

Pursuant to the discussion in Section 3.8.2 of the Final EIR, there will not be any significant impact associated with the increase of surface runoff or pollution. The Commission concurs with this analysis.

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 avoid, mitigate or substantially lessen any significant impacts involving surface runoff increase or pollution.

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 with respect to facility design and construction.

In support of this finding, evidence is contained in the Final EIR and the Public Record of Proceedings that project construction and operation will result in no runoff which would exceed onsite storage capacity or provide a source of polluted runoff. To the extent that runoff could occur from the project fields fertilized with manure, such runoff is, and will be, contained on site with irrigation return systems and bermed fields

In support of this finding, the evidence indicates that the only upstream dam or levy which could conceivably affect the dairy site is Success Dam east of Porterville on the Tule River. Information from the U.S. Army Corps of Engineers indicates that if a catastrophic failure of this dam were to occur, the Project site would be 8-12 hours downstream and project employee evacuation would be effective prior to dam-break inundation. The low probability of the occurrence of dam failure, project site berming, 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, and thus not a significant impact. There is no evidence to the contrary in the Public Record of Proceedings.

qq. Impact No. 3.8.5 Seiche, Tsunami, Mudflow Impacts.

Pursuant to the discussion in Section 3.8.5 of the Final EIR, there will not be any significant impact to the environment involving seiche, tsunami or mudflow. The Commission concurs with this analysis.

Accordingly, based on substantial evidence in the Final EIR and Public Record of Proceedings, the Commission finds and declares that the Project will not cause any significant impacts involving seiche, tsunami or mudflow because there are none, and thus, no mitigation is necessary or required.

In support of this finding, the evidence indicates that the Project is not located near a body of water which could generate these conditions, and site topography will not engender mudflow events. Accordingly, there are no possible seiche, tsunami or mudflow impacts. There is no evidence to the contrary in the Public Record of Proceedings.

rr. Impact No. 3.8.6 Violation of Water Quality Standards or Waste Discharge Requirements.

Pursuant to the discussion in Section 3.8.6 of the Final EIR, there will not be a violation of water quality standards or waste discharge requirements from Project construction or operation. The Commission concurs with this analysis.

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 violation of water quality standards or waste discharge requirements because there are none, and thus, no mitigation is necessary or required. However, the applicant has agreed to take further steps to ensure compliance with the requirements of the Tulare County Environmental Health Division and RWQCB. These mitigations include: project lagoons and separator ponds shall be lined in accord with RWQCB requirements to effectively preclude significant leakage to groundwater; and, the project applicant shall comply with measures imposed by the RWQCB in conditions appurtenant to the Waste Discharge Report and meet RWQCB cropping/area requirements. Monitoring will be conducted the Tulare County Resource Management

Agency and the Regional Water Quality Control Board.

In support of this finding, evidence is contained in the Final EIR and the Public Record of Proceedings that the Geohydrologic Report prepared for the Project by a qualified hydro-geologist and the Comprehensive Nutrient Management Plan prepared for the Project demonstrate that Project design, construction and operation will not result in any violation of water quality standards or waste discharge requirements. Thus, the impact is less than significant. There is no evidence to the contrary in the Public Record of Proceedings.

ss. Impact No. 3.8.7 Depletion of Groundwater Supplies.

Pursuant to the discussion in Section 3.8.7 of the Final EIR, there will not be a significant impact to the environment involving depletion of groundwater supplies. The Commission concurs with this analysis.

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 depletion of groundwater supplies because there are none, and thus, no mitigation is necessary or required.

In support of this finding, the evidence indicates that water for farming and dairy operations on the Project site will be provided by on-site wells, as is water for current farming operations on the site. The groundwater in the Project area is generally of satisfactory quality for irrigation, and dependent on regional rainfall/drought cycles, the water depth averages 20 to 80 feet below ground surface. Groundwater is generally unconfined and aquifer transmissivities are adequate for irrigation and agricultural well production. The evidence indicates that groundwater usage for the cropped area of the Project site would be slightly less than at present because of dairy facilities water recirculation to the cropped area.

Accordingly, Project construction and operation will result in no significant depletion of groundwater supplies. There is no evidence to the contrary in the Public Record of Proceedings.

tt. Impact No. 3.8.8.1: Groundwater Degradation from Dairy Facilities.

Pursuant to the discussion in Section 3.8.8.1 of the Final EIR, there may be a significant impact to the environment relating to groundwater degradation from dairy facilities. The Commission concurs with this analysis.

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.

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. These include: construction of pond and lagoon linings in accord with RWQCB groundwater separation standards (including Natural Resources Conservation Service Standards and Title 27), or line ponds and lagoons with a RWQCB-approved plastic or engineered-design liners; implementation of the well sampling and testing program as required by RWQCB; the domestic well supplying the dairy facilities shall be regularly sampled by the Tulare County Health Department for pathogen detection; all manured areas shall be sloped to prevent ponding and to convey all precipitation and moisture to drainage systems, including lagoons. The geologic/hydrologic report prepared for the Project analyzes groundwater conditions and expected dairy design features. 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.

uu. Impact No. 3.8.8.2 Groundwater Contamination from Cropped Areas of the Project Site.

Pursuant to the discussion in Section 3.8.8.2 of the Final EIR, there will not be a significant impact to the environment involving groundwater degradation from cropped areas of the Project site. The Commission concurs with this analysis.

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 groundwater degradation from cropped areas of the Project site. 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 Comprehensive Nutrient Management Plan 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. The same plan shows that if the proposed cropping pattern changed substantially in the future to the extent that the projected application of nitrogen and salts could not be accommodated on site, additional excess manure would be marketed offsite. The plan calculates the amount of dry manure that needs to be exported to comply with the plan. A copy of the annual report required by the Regional Water Quality Board will be sent to Tulare County Planning; currently this report is due July 1.

Accordingly, based on substantial evidence in the Public Record of Proceedings, there would be no degradation of groundwater from the usage of manure or manure water on the agricultural portion of the site in accordance with the Comprehensive Nutrient Management Plan. No evidence to the contrary is contained in the Public Record of Proceedings.

vv. Impact No. 3.8.8.3 Groundwater Contamination at Manure Re-Use Sites.

Pursuant to the discussion in Section 3.8.8.3 of the Final EIR, there may be a potentially significant impact to the environment relating to groundwater contamination at manure re-use sites. The Commission concurs with this analysis.

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 mitigate or lessen any groundwater contamination at manure re-use sites.

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 no economic incentive to apply the manure at higher than agronomic rates. Application of manure in excess of agronomic rates potentially leads to a build-up of salts and nitrogen (as nitrates) in the soil and eventually the groundwater. Groundwater underlying agricultural fields over-fertilized with commercial fertilizers or manure may be more susceptible to salt and nitrogen loading increases. The effect of excessive nitrates on human health can be a concern. The above-reference and adopted mitigation measures require the dairy facilities' operator to provide to each manure hauler from the Project site an invoice with each load of manure exported, stipulating that any manure re-use shall be undertaken only in full compliance with all applicable federal, State and local laws and regulations. Records of tonnage of manure sold will be kept by the dairy facilities operator on site for review upon request by RMA. The impact remains possibly significant and unavoidable due to the inability to monitor use of the exported manure.

After balancing these interests, the Commission 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.

ww. Impact No. 3.9.1 Division of an Established Community.

Pursuant to the discussion in Section 3.9.1 of the Final EIR, there will not be a significant impact involving the division of an established community. The Commission concurs with this analysis.

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 division of an established community, and thus, no mitigation is necessary or required.

In support of this finding, the evidence indicates that the Project is not within an established community. The area is characterized as rural agriculture. Accordingly, there is no impact. There is no evidence to the contrary in the Public Record of Proceedings.

xx. Impact No. 3.9.2 Zoning/Special Use Permit Conformance.

Pursuant to the discussion in Section 3.9.2 of the Final EIR, there will not be a significant impact involving the zoning/special use permit conformance. The Commission concurs in this analysis.

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 (Exclusive Agriculture Zone-40 Acre Minimum), and land surrounding the Project site is used for intensive agricultural and zoned AE-40. Accordingly, no significant environmental impact will occur. There is no evidence to the contrary in the Public Record of Proceedings.

yy. Impact No. 3.9.3 Animal Confinement Facility Plan Compliance – Dairy Site Size and Animal Densities (Policies No. 1 and 2).

Pursuant to the discussion in Section 3.9.3 of the Final EIR, there will not be a significant impact to the environment related to dairy site size and animal densities of the Project. The Commission concurs with this analysis.

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 dairy site size or animal densities.

In support of this finding, evidence is contained in the Final EIR and in the Public Record of Proceedings that the Project is in compliance with the Regional Water Quality Control Board Requirements for salt and nitrogen balance requirements and with the Tulare County standards for animal densities, when 5,038 tons of solid manure are removed annually from the site. The total on-site animal units proposed for this Project is 6.8 animal units per crop acre which is below the maximum allowed density of 10 animal units per acre.

The Comprehensive Nutrient Management Plan (CNMP) that was prepared for this project indicates that the project has adequate crop land, based on nitrogen and salt loading, for both liquid manure and solid manure with 5,038 tons of the solid manure required to be transported offsite. The total milk cow density for the project is 5.9 animal units per crop acre, well below the maximum allowed density of 8 animal units per acre. The maximum allowed herd size for this project is 2,637 animal units. There is no evidence to the contrary in the Public Record of Proceedings.

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

Pursuant to the discussion in Section 3.9.4 of the Final EIR, there will not be a significant impact to the environment involving Animal Confinement Facility Plan (ACFP) compliance concerning proximity to existing dairies. The Commission concurs with this analysis.

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 ACFP compliance concerning proximity to an existing dairy. No mitigation is necessary or required.

In support of this finding, evidence contained in the Final EIR and in the Public Record of Proceedings reflects that the ACFP requires at least a one-half mile separation between new dairy facilities from neighboring operations involving dairy, swine, poultry or other animal confinement facilities. The evidence further indicates that the nearest dairies are outside the 1/2-mile radius distance from the proposed dairy facilities site. There is no evidence to the contrary in the Public Record of Proceedings.

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

Pursuant to the discussion in Section 3.9.5 of the Final EIR, there will not be a significant impact to the environment involving Animal Confinement Facility Plan (ACFP) compliance concerning residential windsheds (Policy No. 5). The Commission concurs in this analysis.

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 ACFP compliance concerning residential windsheds (Policy No. 5). 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 ACFP requires that new dairy facilities shall not be located closer than the distance established in the micro-windshed diagram "A" (Residential). The Project will not be located within a residential micro-windshed.

Accordingly, there is no impact. There is no evidence to the contrary in the Public Record of Proceedings.

bbb. Impact No. 3.9.6 Animal Confinement Facility Plan Compliance-Agricultural Windsheds (Policy No. 5).

Pursuant to the discussion in Section 3.9.6 of the Final EIR, there will not be a significant impact to the environment involving Animal Confinement Facility Plan (ACFP) compliance concerning agricultural windsheds (Policy No. 5). The Commission concurs with this analysis.

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 ACFP compliance concerning agricultural windsheds (Policy No. 5). 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 will have no citrus groves, vineyards, deciduous fruit/nut orchards, or vegetable agricultural enterprises within the agricultural windshed boundary applicable to this dairy facilities site. Accordingly, there is no impact. There is no evidence to the contrary in the Public Record of Proceedings.

ccc. Impact No. 3.9.7 Animal Confinement Facility Plan Compliance – Community Windshed Area (Policy No. 4).

Pursuant to discussion in Section 3.9.7 of the Final EIR, there will not be a significant impact to the environment involving Animal Confinement Facility Plan (ACFP) compliance concerning community windshed areas (Policy No. 4). The Commission concurs in this analysis.

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 ACFP compliance concerning community windshed areas (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 locational and animal density Policy No. 4 requires that a dairy facility site not be located within a community windshed area. Thus, ACFP locational and animal density Policy No. 4 will not be violated. There is no evidence to the contrary in the Public Record of Proceedings.

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

Pursuant to the discussion in Section 3.9.8 of the Final EIR, there will not be a significant impact to the environment involving Animal Confinement Facility Plan

(ACFP) compliance concerning the relationship to other land uses (Policy No. 4). The Commission concurs with this analysis.

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 is not located in any of the significant areas of concern. There are no significant impacts associated with ACFP Policy No. 4 compliance. There is no evidence to the contrary in the Public Record of Proceedings.

eee. Impact No. 3.9.9 General Plan Land Use Conflicts.

Pursuant to the discussion in Section 3.9.9 of the Final EIR, there will not be a significant impact to the environment involving general plan land use conflicts. The Commission concurs in this analysis.

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 general plan land use conflicts. No mitigation is necessary or required.

In support of this finding, evidence contained in the Final EIR and the Public Record of Proceedings demonstrates that the Project is in compliance with all applicable Tulare County land use plans and policies which include the ERME, Safety Element, Noise Element and the RVLP. Accordingly, the proposed Project will not have any adverse effect on existing county land use plans or policies and there is no Project impact. There is no evidence to the contrary in the Public Record of Proceedings.

fff. Impact No. 3.10.1 Short-term Construction Noise.

Pursuant to the discussion in Section 3.10.1 of the Final EIR, there may be a short-term potentially significant impact to the nearest resident (660 feet northeast of the Project site) relating to short-term construction noise. The Commission concurs with this analysis.

Accordingly, based on substantial evidence in the Final EIR and the Public Record of Proceedings, the Commission finds and declares that changes have been required in, or incorporated into the Project will mitigate or substantially lessen any construction noise levels.

Mitigation for this impact is set forth in Mitigation No. 3.10.1, which states that construction activities are limited to between 6:00 a.m. and 7:00 p.m. Monday through Saturday; if nighttime construction is required, spot noise monitoring will be required to assure that noise levels from construction activities do not exceed 65 L_{max} at the property line of the nearest residence; construction equipment noise shall be minimized during project construction by muffling and shielding intakes and exhaust on construction equipment (per the manufacturer's specifications) and by shrouding or shielding impact tools; all equipment shall have sound-control devices no less effective than those provided by the manufacturer; material stockpiles and vehicle staging areas during construction shall be located as far as practicable from residences. Such mitigation is hereby adopted for the 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 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 the nearest offsite receptor, approximately 660 feet northeast of the dairy facilities, may be affected by construction noises from the dairy facilities site. Construction noise levels at this nearest receptor would be above the 60 dBA but no more than 85 dBA during construction which is expected to last nine months to one year. Noise levels up to 60 dBA range are considered acceptable for rural farm residences. Accordingly, the proposed project may have an adverse effect on nearby receptors due to short-term construction noise, however, mitigation measures have been included which are intended to minimize construction noise. The evidence indicates that the above-referenced mitigation measures, as adopted, will reduce potential Project-related noise impacts to less than significant levels. There is no evidence to the contrary in the Public Record of Proceedings.

ggg. Impact No. 3.10.2 Traffic Noise.

Pursuant to the discussion in Section 3.10.2 of the Final EIR, there will not be a significant impact to the environment involving traffic noise. The Commission concurs with this analysis.

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 the environment from traffic noise, and thus, no mitigation is necessary or required.

In support of this finding, the evidence indicates that the Project will not generate

more vehicular traffic, on a daily basis, that the current farming production use. In addition, the traffic produced by the dairy will be during daytime hours. There are no sensitive receptors adjacent to the facility to be effected by changes in traffic pattern, thus no impact will occur. There is no evidence to the contrary in the Public Record of Proceedings.

hhh. Impact No. 3.10.3 Operational Noise.

Pursuant to the discussion in Section 3.10.3 of the Final EIR, there will not be a significant impact to the environment involving operational noise. The Commission concurs in this analysis.

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 to the environment from operational noise, and thus, no mitigation is necessary or required.

In support of this finding, the evidence indicates that dairy operations will generate noise levels above the existing ambient conditions. The only sensitive receptors are rural residences, the closest of which is located approximately 660 feet northeast of the dairy facilities site. Accordingly, there is no impact. There is no evidence to the contrary in the Public Record of Proceedings.

iii. Impact No. 3.11.1 Population and Housing.

Pursuant to the discussion in Section 3.11.1 of the Final EIR, there will not be a significant impact to the environment involving population and housing. The Commission concurs in this analysis.

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 to population and housing, and thus, no mitigation is necessary or required.

In support of this finding, the evidence indicates that construction of the Project 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. No dwellings on the project site or rural homes in the surrounding area will be relocated, built or demolished as a result of the Project. Accordingly, there will not be any impacts on population or housing conditions in the Project area vicinity. There is no evidence to the contrary in the Public Record of Proceedings.

jjj. Impact No. 3.12.1 Public Services.

Pursuant to the discussion in Section 3.12.1 of the Final EIR, there will not be a

significant impact to the environment involving public services. The Commission concurs in this analysis.

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 to public safety services, and thus, no mitigation is necessary or required.

In support of this finding, the evidence indicates that construction and operation of a dairy at this site will not require the employment of additional firefighters or law enforcement officers. The existing facilities and equipment can maintain the current level of service. No other public services will be affected by the Project. The potentially affected school districts can mitigate increased student enrollment impacts by the imposition of school impact fees. While new agricultural businesses increase the potential for public services, the associated increase of tax revenue of the Project, service fees and school impact fees reduce the impacts to a level less than significant. There is no evidence to the contrary in the Public Record of Proceedings.

kkk. 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 Commission concurs with this analysis.

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 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 (rr), (tt), (uu) and (vv) of this Exhibit B.

lll. Impact No. 3.12.3 Water, Sewer, Storm Drainage and Refuse Services.

Pursuant to the discussion in Section 3.12.3 of the Final EIR, there will not be a significant impact to the environment involving water, sewer, storm drainage or refuse services. The Commission concurs with this analysis.

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 water, sewer, storm drainage or refuse services. 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 on-site 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 Landfill, with the cost of this service covered by service fees paid by the applicant. Accordingly, no impacts to these public services will result. There is no evidence to the contrary in the Public Record of Proceedings.

mmm. Impact No. 3.13.1 Recreational Facilities.

Pursuant to the discussion in Section 3.13.1 of the Final EIR, there will not be a significant impact to recreational facilities within the Project's vicinity. The Commission concurs with this analysis.

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 to recreational facilities within the Project's vicinity and thus, no mitigation is necessary or required.

In support of this finding, the evidence indicates that with the high unemployment in Tulare County, employment will most likely center on hiring persons currently living in the county. Even if some of the new employees move to the Tipton area, the impact on existing recreation facilities will be less than significant. There is no evidence to the contrary in the Public Record of Proceedings.

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

Pursuant to the discussion in Section 3.14.1 of the Final EIR, there will not be a significant impact to the environment involving substantial traffic increases or exceedance of the level of service standards. The Commission concurs with this analysis.

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 substantial traffic increases or exceedance of the level of service standards for roads. No mitigation is necessary or required.

In support of this finding, evidence is contained in the Final EIR and Public Record of Proceedings that the project may generate up to 43.5 passenger vehicle and truck trips per day. When the dairy is in operation, it is estimated that 100 percent of the feed produced on the site will be utilized onsite. This translates to a net decrease in the truck traffic generated by onsite production and offsite usage. Accordingly, the impact is less than significant. There is no evidence to the contrary in the Public Record of Proceedings.

ooo. Impact No. 3.14.2 Increase in Air, Rail of Water-borne Traffic.

Pursuant to the discussion in Section 3.14.2 of the Final EIR, there will not be a significant impact to the environment involving increase in air, rail or water-borne traffic. The Commission concurs with this analysis.

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 increase in air, rail or water-borne traffic. No mitigation is necessary or required.

In support of this finding, evidence is contained in the Final EIR and Public Record of Proceedings that the Project will have no discernable or possible effect on these transportation modes, and thus there is no impact. There is no evidence to the contrary in the Public Record of Proceedings.

ppp. Impact No. 3.14.3 Safety Hazards.

Pursuant to the discussion in Section 3.14.3 of the Final EIR, there will not be a significant impact to the environment involving safety hazards. The Commission concurs in this analysis.

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 safety hazards. No mitigation is necessary or required.

In support of this finding, evidence is contained in the Final EIR and Public Record of Proceedings that the Project will have no discernable or possible effect on project related safety hazards, and thus there is no impact. There is no evidence to the contrary in the Public Record of Proceedings.

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

Pursuant to the discussion in Section 3.14.4 of the Final EIR, there will not be a significant impact to the environment involving emergency access adequacy, parking capacity adequacy, or bike or bus transportation constraints. The Commission concurs with this analysis.

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 emergency access adequacy, parking capacity adequacy, or bike or bus transportation constraints. No mitigation is necessary or required.

In support of this finding, the evidence indicates that there is no discernable or possible Project effect on the emergency access or alternative transportation formats.

On-site parking is provided in the Project design for Project employees, visitors and truck services. Accordingly, there is no impact. There is no evidence to the contrary in the Public Record of Proceedings.

rrr. Impact No. 3.14.5 Road Deterioration.

Pursuant to the discussion in Section 3.14.5 of the Final EIR, there may be a significant impact to the environment related to road deterioration by the Project. The Commission concurs with this analysis.

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 impacts from road deterioration of the Project to a level of less than significant.

Mitigation for this impact is set forth in Mitigation No. 3.14.5. 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 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.

Mitigation Measure No. 3.14.5 requires that set deposits shall be made with the County to mitigate costs associated with road maintenance required pursuant to the development of the proposed dairy facility. These deposits are consistent with the following findings:

1. Tulare County General Plan Policy Summary (dated December 2001) Section 8 Transportation/Circulation, Policy 8.B.1, states that "[p]riority will be given to the maintenance of the existing system"; Section 16 of the Tulare County Zoning Ordinance states that a "Special Use Permit shall be granted only if it is found that the establishment, maintenance and operation of the use of building or land applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood or to the general welfare of the County" and such use permits "may be granted subject to such conditions as will insure compliance with the aforementioned standards"; and the California Environmental Quality Act (CEQA) and State CEQA Guidelines both require that governments should "[i]dentify the ways that environmental damage can be avoided or significantly reduced" and "[p]revent significant, avoidable damage by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible";

2. The mitigation of significant impact deposits are necessary and will provide for resurfacing or construction, if sufficient funding is made available for such work, of the project truck route as defined above, and such mitigation deposits are consistent with the Tulare County General Plan, Zoning Ordinance, CEQA and the State CEQA Guidelines;
3. The reasonable relationship between the amount of the fee and the cost of a portion of the public facility is based on a ratio of the project's truck loadings to the existing truck loadings and projected truck loadings;
4. As described in paragraphs 2 and 3 above, the funds will be placed in a separate capital facilities account and invested as allowed by law. A public report that is available to the public will be prepared within 180 days after the last day of each fiscal year discussing (i) brief description of the fee, (ii) fee amount, (iii) beginning and ending balance of the account or the fund, (iv) the amount of fees collected and interest earned, (v) identification of the date on which construction is expected to commence, (vi) description of any interfund transfer or loan, and (vii) the amount of any refunds paid and any allowed allocations.

The evidence indicates that the above-referenced mitigation measure, as adopted, will reduce potential project-related road deterioration impacts to less than significant levels. There is no evidence to the contrary in the Public Record of Proceedings.

IV

CUMULATIVE IMPACTS

A. Air Quality Impacts.

Pursuant to the discussion in Section 5.1.1 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 Commission concurs with this analysis.

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 partially lessen any significant impacts to cumulative air quality; however, the Commission further finds that there are specific economic, legal/public policy, social or other considerations which make any further mitigation measures or project alternatives infeasible. 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 extreme non-attainment status for PM₁₀ and ozone.

Until 2004, agricultural activities were 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 SJVAPCD 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., VOC, hydrogen sulfide, PM₁₀, and methane) for animal confinement facilities (including dairies) within the San Joaquin Valley air basin are limited. 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).

The lack of available quantitative data makes accurate representative analysis of all cumulative sources of air emissions difficult. 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.

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, PM_{2.5} and VOC from dairies will likely occur even after implementation of these measures. Therefore, the emission of these pollutants will remain a cumulative significant unavoidable impact.

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.

The project incorporates the best available control technologies in modern dairy design and operation. There are no additional feasible mitigation measures for cumulative air quality degradation impacts reasonably available for this project. Tulare County continues to study the potential of additional regulations, which are currently under development.

The SJVAPCD may require, as a condition of their permit issuance, the installation of digesters or covered lagoons; quantitative data regarding their effectiveness has yet to be determined. The SJVAPCD has adopted various regulations including Dairy Confined Animal Facility Mitigation Measure Requirements and Conservation Management Practices (CMPs) which have as their objective the reduction of cumulative air quality impacts from agricultural operations, including dairies.

Mitigation for this impact is set forth in Mitigation No. 5.1 which requires the applicant to comply with all feasible pertinent requirements of the SJVAPCD including Dairy Confined Animal Facility Mitigation Measure Requirements, Conservation Management Practices, and Control Measures for Construction Emissions of PM₁₀ as described in Appendices "F" (SJVAPCD Regulation VIII) and "J" (SJVAPCD Rules 3190, 4550, and 4570). 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 these mitigation measures and shall enforce this condition pursuant to their enforcement powers allowed by law and the mitigation monitoring program adopted for this Project.

Compliance with these mitigation measures will reduce cumulative project impacts, however, such impacts will remain significant, considerable and unavoidable.

B. Climate Change/Greenhouse Gas Emissions

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 with respect to greenhouse gas emissions and the potential for climate change. The Commission concurs with this analysis.

Accordingly, based on substantial evidence in 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 lessen any significant impacts to cumulative air quality in respect to the generation of greenhouse gas emissions. 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 such as anaerobic digesters or vented enclosures with biofilters. In addition, the Commission further finds that there are specific economic, legal/public policies, social or other considerations which make

further mitigation measures or project alternatives infeasible. 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 Project is committed to follow the regulations of the County's Animal Confinement Facilities Plan and the San Joaquin Valley Air Pollution Control District regulations. By following these requirements, the Project-level impacts will be reduced to less than significant. However, it is recognized that it is possible that there may be a cumulative impact. Nonetheless, all feasible mitigation measures (including the requirement of Best Available Control Technology for dairy design and operation) have been required or incorporated into the Project. Mitigation monitoring is also required for this Project by the County and the San Joaquin Valley Air Pollution Control District.

After balancing these interests, the Commission 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.

C. Water Quality Degradation Impacts

Pursuant to the discussion in Section 5.3 of the Final EIR, the incremental impact of the Project may cause a potentially cumulatively significant impact on groundwater degradation. The Commission concurs with this analysis.

Accordingly, based on substantial evidence in 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 lessen any significant impacts to cumulative ground water quality. In addition, the Commission further finds that there are specific economic, legal/public policies, social or other considerations which make infeasible any further mitigation measures or project alternatives. While there is little doubt that Valley groundwater is reflecting the long-term effect of agricultural impacts, the extent to which such impacts are dairy related is not certain. Even less certain is whether or not dairy facilities constructed and operated in full accord with current RWQCB requirements will significantly contribute to cumulative groundwater degradation with nitrates, salts or other contaminants. Incorporation of project-specific mitigation measures will reduce the potential project impacts to less than significant.

In support of this finding, the evidence indicates that the Project is committed to follow the regulations of the County's Animal Confinement Facilities 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. Nonetheless, all feasible mitigation measures (including the requirement of Best Available Control Technology for lagoon design) have been required for, and 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 5.4 of the Final EIR, the incremental impact of the Project may cause a potentially cumulatively significant impact on the loss of habitat for predators. The Commission concurs with this analysis.

Accordingly, based on substantial evidence in 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 lessen any significant impacts to 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 predators. These measures are set forth in Mitigation Measures Nos. 5.4.1, 5.4.2, 5.4.3 and 5.4.4. Specifically, the project is required to preserve 386 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 habitat for predators. In addition, the project is required to comply with mitigation measures currently established pursuant to law by the applicable wildlife regulatory agencies. This is sufficient mitigation for any potentially significant cumulative biological impact.

In support of this finding, the evidence indicates that with respect to further mitigation of cumulative biological impacts caused by dairies both inside and outside the boundaries of Tulare County, such additional mitigation measures would be unreasonable and legally infeasible because there is no essential nexus between such requirement and the mitigated project biological impact. In addition, it would be unreasonably and legally infeasible to compel the project applicant to mitigate any cumulative biological impact occurring outside the boundaries of Tulare County.

D. Conclusion.

In further support of the foregoing discussion, the applicant shall comply with (a) the Mitigation Monitoring Plan adopted for this project, and (b) compliance with the multiple regulations of the San Joaquin Valley Air Pollution Control District. Copies of these regulations are contained in Appendices "F" (SJVAPCD Regulation VIII), "J" (SJVAPCD Rules 3190, 4550, and 4570), and "L" (SJVAPCD Rules 2201 and 2301) to the Final EIR for this project.

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 Commission 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 Commission 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 near the Tipton 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. 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 Commission finds and declares that there are significant environmental effects that cannot be avoided, including project-related and cumulative air quality impacts, potentially cumulative groundwater quality impacts, and cumulative loss of predator habitat, a biological impact.

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 cumulative loss of predator habitat, 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.

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 establish and operate an economically viable and competitive dairy facility in compliance with applicable laws and regulations, (2) to optimally utilize available land resources, and (3) to mitigate environmental impacts to the extent feasible. In addition, alternative designs or locations which would possibly achieve these objectives would not reduce the identified cumulative impacts to a level of insignificance. Furthermore, 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 the establishment of a dairy operation designed to accommodate a maximum of 2,637 total animal units (3,200 Jersey milk cows plus support stock), covering approximately 77 acres of a 469 non-contiguous 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 an application for a Special Use Permit (PSP 05-060).

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

now addressed.

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 alternative and alternate facility sizes. An environmentally superior alternative was identified. The comparison of these environmental effects was made in Chapter 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.

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. 1 (No Project Alternative: No Further Development)

The dairy facility would not be built and the land will continue to be used for intensive agricultural cultivation. Any project-level or cumulative environmental effects associated with facilities construction and operation, including emissions of VOC, NO_x, methane, PM₁₀ and PM_{2.5} and ammonia would be avoided. Any potential for incremental direct project-related impact on groundwater would be avoided. Project farming-related air quality impacts would remain at their current level. The continued row and field crop production activities would have similar air emissions to those of existing conditions. A comparison of the environmental effects of these Alternatives and the Project are discussed as follows:

▪ Air Quality

The methane, ammonia and hydrogen sulfide/odor impacts of the project would be eliminated. PM₁₀ and PM_{2.5} impacts would be virtually the same due to plowing and soil cultivation-generated PM₁₀. Nitrogen oxide emissions (a greenhouse gas) from agricultural production would, because of the additional 77 acres being farmed, slightly increase. Unpaved roads on the site and farming operations would continue to create PM₁₀ and PM_{2.5} emissions. VOC would be reduced significantly but not eliminated.

▪ Water Quality

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 from salt buildup, nitrates and pesticides.

- Biological Resources

Approximately 77 acres of avian predator foraging habitat would be retained, eliminating project-related biological resources cumulative impacts. There would be no controls regulating the timing of harvests and/or plowing to benefit wildlife.

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. Figure 4-1 shows lands zoned AE-40 which is the required zoning (together with a Special Use Permit) for a new dairy.

Also shown are 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.

There is no evidence that there are any other sites of comparable size 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, off-site manure application, and cumulative loss of avian predator foraging habitat.

However, the possible impacts associated with improper application of manure as a fertilizer and soil amendment at offsite locations (see Impact 3.8.8.3) could be eliminated if an alternative site were available and selected which has sufficient acreage that all manure could be utilize onsite at agronomic rates. Such a site would require about 577 acres under agricultural production with crops similar to those on the project, an increase of 191 acres over the acreage available at the project site. Two larger sites were selected for a comparative alternative analysis. As with the project, significant cumulative impacts with respect to air quality, possible cumulative water quality impacts and loss of cumulative avian predator foraging habitat would remain. Additionally, neither of these sites are under the control of the project applicant. The sites are in multiple ownership and may not be available for purchase.

3. Reduced Herd Size

These alternatives incorporate reduced herd sizes of 60 percent (1,582 animal units) and 40 percent (1,055 animal units) of project level 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 would be proportionately decreased. At 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. There is also a proportional reduction in avian predator foraging habitat "loss".

The reduced herd size air emissions assume that all of the existing farmland will remain in cultivation even if not totally required for liquid manure or solid manure utilization. Project VOC 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; project emissions of methane and ammonia are proportionately reduced by the reduced herd size alternatives. The 1,582 animal units and the 1,055 animal unit herd sizes were found to be economically infeasible; a reduction in herd size to about 1,000 animal units, even more economically infeasible, would be required to bring VOC emissions below the SJVAPCD threshold.

4. 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.

The alternative site alternatives involve the commensurate cost associated with the purchase (if the land is available for sale) of replacement land, which makes these alternatives patently infeasible. The applicant will have invested over \$5,200,000 in land and \$650,000 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 alternative, larger size site, estimated to be over \$15,424,757 including dairy facility construction costs and new entitlement documentation costs, make these alternatives infeasible (see 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 and development of the subject property, which is highly speculative at this time given entitlement risks and market conditions, contributing further to the economic infeasibility of selecting alternative sites.

Neither the alternative sites, the reduced herd sizes or the no project alternative (environmentally superior) 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 reduced herd size alternatives are not

economically feasible (see Appendix T). The economic infeasibility of the reduced herd size alternatives is summarized as follows: (1) 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; (2) 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; and (3) lesser dairy herd sizes than those proposed for the project will not permit a financeable return on investment and a project income minimally adequate to support the project applicant and his immediate family.

5. Environmentally Superior Alternatives.

CEQA requires that in addition to the analysis of individual alternatives, the alternatives must be ranked according to which alternative has the lesser environmental effects. The ranking is shown in Table 4.1-1. 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 are thus 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.

B. Overriding Considerations.

The Final EIR concludes that there are certain environmental impacts that are significant, unavoidable and not fully mitigable, including certain Project-level and cumulative air quality impacts, cumulative groundwater quality impacts, and cumulative loss of avian habitat.

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 for this Project should be approved so as 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 Commission finds and declares that a mitigation compliance reporting and monitoring program is necessary and appropriate for this Project. Accordingly, the Commission requires a mitigation monitoring and reporting program for the mitigation measures set forth in this Final EIR and adopted by the Commission 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 Commission 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, and the time span for implementation of the required mitigation. Thus, the Commission 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 Commission 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 Commission to require the applicant to implement all mitigation measures which have been established for this Project.

Accordingly, the Commission 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 Commission 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 Commission.

X

CONDITIONS OF APPROVAL

The Commission finds and declares, based on substantial evidence that the Project as designed, 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 Commission 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 Commission 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 05-060); 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 MONITORING PROGRAM
FM JERSEYS DAIRY ESTABLISHMENT**

Exhibit C **Mitigation Monitoring Program for FM Jerseys Dairy**

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
AESTHETICS				
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.	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.	Completed at time of final building inspection.
AIR QUALITY AND ODORS				
Impact #3.3.3: Construction Emissions (Carbon Monoxide (CO), Volatile Organic Compounds (VOC), Nitrogen Oxide (NOx), Sulfur Dioxide (SO ₂), Particulate Matter (PM ₁₀) Fine Particulate Matter (PM _{2.5}))	<p>Mitigation Measure #3.3.3: To further reduce project-related construction impacts Tulare County requires that the owner/operator and construction crew shall implement the following control measures prior to and during construction activities to reduce exhaust emissions from construction related equipment:</p> <ol style="list-style-type: none"> 1. The idling time of construction equipment used at the site shall not exceed five (5) minutes during any one idle period. 2. The hours of operation of heavy-duty equipment shall be minimized. 3. As much as possible, alternative fueled or catalyst-equipped diesel construction equipment shall be used at the project site. 4. Electrically driven equivalents to fossil-fueled equipment shall be utilized when 	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 and the San Joaquin Valley Air Pollution Control District.	Beginning with construction permit and terminating with issuance of Notice of Completion.

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	feasible and available, provided they are not charged via a portable generator.			
	5. Construction shall be curtailed during periods of high ambient pollution concentrations.			
Impact #3.3.4.B: Operational Emission of Criteria Pollutants, Volatile Organic Compound (VOC)	<p>Mitigation Measures:</p> <ol style="list-style-type: none">1. Feed according to National Research Council (NRC) guidelines.2. Remove feed from area where animals stand to eat at least once every 14 days.3. Feed or dispose of rations within 48 hours of grinding and mixing.4. Store grain in a weatherproof storage structure from October through May.5. Cover horizontal surface of silage piles, except area where feed is being removed.6. Flush or hose milk parlor immediately prior to, immediately after, or during each milking.7. Flush freestalls more frequently than the milking schedule.8. Inspect water pipes and troughs and repair leaks at least once every 14 days.9. Clean corrals at least once between April and July and at least once between October and December.	<p>The listed implementation measures will be a condition of the Special Use Permit for the project. The owner/operator of the project will be responsible for their implementation.</p>	<p>Monitoring thereof will be the continuing responsibility of the Tulare County Resource Management Agency and the San Joaquin Valley Air Pollution Control District.</p>	Continued monitoring during dairy operation

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
Impact #3.3.5: Operational Emission of Criteria Pollutants,	10. Manage corrals such that animal waste depth in corral does not exceed 12 inches, except for in-corral mounding.			
	11. Maintain surface of corrals and dry lots so that puddles do not form and remain more than 48 hours.			
	12. Harrow, rake, or scrape pens sufficiently to maintain a dry surface.			
	13. Install corral shade structures uphill of any slope.			
	14. Allow liquid animal waste to stand in the field not more than 24 hours after irrigation.			
	15. Apply no solid animal waste with a moisture content of 50% or more.			
	16. Remove animal waste from the facility within seventy-two (72) hours of removal from the pens or corrals.			
	17. Cover dry animal waste piles outside the pens with a weatherproof covering from October through May, except for times, not to exceed 24 hours per event when wind events remove the covering.			
	18. Remove solids from the waste system with a solid separator system prior to the waste entering the lagoon.			
	Mitigation Measures #3.3.5, NOx: Although project impacts are less than significant the following mitigation measures are recommended to further reduce NOx emissions:	The listed implementation measures will be a condition of the Special Use Permit for	Monitoring thereof will be the continuing responsibility of the Tulare County Resource	Continued monitoring during dairy operation

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Impact	Mitigation Measures	Implementation	Monitoring	Time Span
Nitrogen Oxide (NOx)				
	<ol style="list-style-type: none"> 1. The idling time of construction equipment used at the site shall not exceed five (5) minutes during any one idle period. 2. The hours of operation of heavy-duty equipment shall be minimized. 3. As much as possible, alternative fueled or catalyst-equipped diesel construction equipment shall be used at the project site. 4. Electrically driven equivalents to fossil-fueled equipment shall be utilized when feasible and available, provided they are not charged via a portable generator. 5. Construction shall be curtailed during periods of high ambient pollution concentrations. 6. Employees will be encouraged to carpool to and from the project site. 	<p>the project. The owner/operator of the project will be responsible for their implementation.</p>	<p>Management Agency and the San Joaquin Valley Air Pollution Control District.</p>	
Impact #3.3.12: Cumulative Air Quality Impacts	<p>Mitigation Measure #3.3.12: This facility is permitted by Tulare County for 3,200 Jersey milk cows and support stock totaling 2,637 animal units on 386 crop acres. The owner/operator shall annually provide a copy of the required Dairy Annual Compliance Report to the Tulare County Planning, Project Review section which will allow ongoing monitoring of any changes which may impact overall air quality within Tulare County. Currently this report is due in November of each year.</p> <p>Further mitigation measures for cumulative particulate matter (PM₁₀), fine particulate matter</p>	<p>Implementation of and compliance with the referenced regulations or project-level mitigation measures will reduce the project's contribution to the cumulative impacts of dairy expansion in the San Joaquin Valley. However, cumulative emissions will remain significant, considerable and unavoidable long-</p>	<p>The County of Tulare shall include all listed emissions reduction measures as conditions of approval of the Special Use Permit. The Tulare County Resource Management Agency shall monitor the dairy operation for compliance.</p>	<p>Continued monitoring during dairy operation</p>

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	(PM _{2.5}), volatile organic compounds (VOC), nitrogen oxide (NOx), ammonia (NH ₃) and hydrogen sulfide (H ₂ S, odor) would, at this time, require regulatory agency action or significant technological advances.	term impacts.		
	Each cumulative pollutant is listed below with its referenced regulatory compliance measures and any additional mitigation measures that may be applicable.			
	<ol style="list-style-type: none"> 1. Particulate Matter and Fine Particulate Matter (PM₁₀/PM_{2.5}) Construction Impacts: Compliance with SJVAPCD's Regulation VIII and Rules 4101, 4102, 4201, 4550, and 4570 as required by law. 2. Volatile organic compound (VOC): Compliance with SJVAPCD's Rule 4570 as required by law. 3. Nitrogen Oxide (NOx): NOx emissions were less than SJVAPCD regulatory limits. To further mitigate NOx emissions the following mitigations are recommended: <ul style="list-style-type: none"> ▪ The idling time of construction equipment used at the site shall not exceed five (5) minutes during any one idle period. ▪ The hours of operation of heavy-duty equipment shall be minimized. ▪ As much as possible, alternative fueled or catalyst-equipped diesel construction equipment shall be used at the project site. 			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<ul style="list-style-type: none"> Electrically driven equivalents to fossil-fueled equipment shall be utilized when feasible and available, provided they are not charged via a portable generator. Construction shall be curtailed during periods of high ambient pollution concentrations. 			
	4. Methane (CH ₄): Compliance with SJVAPCD's Rule 4570 as required by law.			
	5. Ammonia (NH ₃): Compliance with SJVAPCD's Rule 4570 as required by law.			
	6. Hydrogen Sulfide (H ₂ S): Compliance with SJVAPCD's Rule 4570 as required by law.			
Impact #3.3.A: Greenhouse Gases	<p>Mitigation Measure #3.3.A: In addition to the regulatory measures previously specified for other pollutants, incorporation of SJVAPCD required BACT features in the project design and compliance with required SJVAPCD regulations, implementation of the following mitigation measures will act to further reduce the generation of greenhouse gases attributable to the project:</p> <ul style="list-style-type: none"> The owner/applicant/contractor shall participate in the Energy Management Solutions for Dairies program (or equivalent) sponsored by his/her utility company. This program will review the facility operations, provide an energy analysis (energy audit), and identify no cost, low cost and investment grade 			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<p>conservation opportunities. All no cost energy savings will be promptly implemented at the facility. Low cost and investment grade options will be implemented as appropriate to the facility. A copy of the energy analysis results will be made available to Tulare County as part of the mitigation monitoring. Potential energy savings are 10-40%. Any greenhouse gas or emission reduction credits resulting from implementing these conservation practices will accrue to the dairy.</p> <ul style="list-style-type: none"> • Maintain an impervious covering on silage and manure piles year-round. • Include dietary aids (e.g., cottonseed) in feed rations. • Feed according to National Research Council (NRC) guidelines. • Remove feed from area where animals stand to eat at least once every 14 days. • Feed or dispose of rations within 48 hours of grinding and mixing. • Store grain in a weatherproof storage structure from October through May. • Cover horizontal surface of silage piles, except area where feed is being removed. • Flush or hose milk parlor immediately 			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	prior to, immediately after, or during each milking.			
	<ul style="list-style-type: none"> • Flush freestalls more frequently than the milking schedule. • Inspect water pipes and troughs and repair leaks at least once every 14 days. • Clean corrals at least once between April and July and at least once between October and December. • Manage corrals such that animal waste depth in corral does not exceed 12 inches, except for in-corral mounding. • Maintain surface of corrals and dry lots so that puddles do not form and remain more than 48 hours. • Harrow, rake, or scrape pens sufficiently to maintain a dry surface. • Install corral shade structures uphill of any slope. • Allow liquid animal waste to stand in the field not more than 24 hours after irrigation. • Apply no solid animal waste with a moisture content of 50% or more. • Remove animal waste from the facility within seventy-two (72) hours of removal from the pens or corrals. 			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
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- Cover dry animal waste piles outside the pens with a weatherproof covering from October through May, except for times, not to exceed 24 hours per event when wind events remove the covering.
- Remove solids from the waste system with a solid separator system prior to the waste entering the lagoon.

BIOLOGICAL RESOURCES

Impact #3.4.1: Substantial Adverse Effect on Candidate, Special-Status or Sensitive Species or Habitat of Sensitive Species	Mitigation Measure #3.4.1: Because there is a potential for kit fox to forage and den on and in the vicinity of the project site, the applicant should follow the <i>Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance</i> (USFWS 1999). The measures that are listed below have paraphrased from these guidelines.	The mitigation measures shall be implemented by the construction contractor and the applicant, and shall be a condition of the Special Use Permit.	County of Tulare Resource Management Agency	Prior to Construction								
	<p>1. Pre-construction surveys shall be conducted no less than 14 days and no more than 30 days prior to the beginning of ground disturbance and/or construction activities, or any project activity likely to impact the San Joaquin kit fox. Exclusion zones shall be observed in accordance with USFWS Recommendations:</p> <table><tr><td>Potential den</td><td>50 feet</td></tr><tr><td>Known den</td><td>100 feet</td></tr><tr><td>Natal/pupping den (occupied and unoccupied)</td><td>Contact USFWS</td></tr><tr><td>Atypical den</td><td>50 feet</td></tr></table>	Potential den	50 feet	Known den	100 feet	Natal/pupping den (occupied and unoccupied)	Contact USFWS	Atypical den	50 feet			
Potential den	50 feet											
Known den	100 feet											
Natal/pupping den (occupied and unoccupied)	Contact USFWS											
Atypical den	50 feet											

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<p>2. If dens must be removed, they shall be appropriately monitored and excavated by a trained wildlife biologist. Replacement dens will be required. Destruction of natal dens and other "known" kit fox dens must not occur until authorized by USFWS.</p> <p>3. Project-related construction 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 should be avoided. Off-road construction traffic outside of designated project areas shall be prohibited.</p> <p>4. To prevent inadvertent entrapment of kit foxes or other animals during the construction phase of the project, all excavated, steep-walled holes or trenches more than 2 feet deep shall be covered at the close of each working day by plywood or similar materials, or provided with one or more escape ramps constructed of earth fill or wooden planks. Before such holes or trenches are filled, they should be thoroughly inspected for trapped animals. If at any time a trapped or injured kit fox is discovered, the procedures under numbers 8 and 9 of this section must be followed.</p>			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<p>5. Kit foxes are attracted to den-like structures such as pipes and may enter stored pipe, becoming trapped or injured. All construction pipes, 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 any way. If a kit fox is discovered inside a pipe, that section of pipe shall not be moved until the USFWS has 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>6. 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> <p>7. No firearms shall be allowed on the project construction site.</p> <p>8. To prevent harassment, mortality of kit foxes or destruction of dens by dogs or cats, no pets shall be permitted on project construction sites.</p> <p>9. A representative shall be appointed by the project proponent who will be the contact source for any employee or</p>			

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Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	contractor who might inadvertently kill or injure a kit fox or who finds a dead, injured or entrapped individual. The representative's name and telephone number shall be provided to the USFWS.			
	10. In the case of trapped animals, escape ramps or structures shall be installed immediately to allow the animal(s) to escape, or the USFWS shall be contacted for advice.			
	11. Any contractor, employee(s), or military or agency personnel who inadvertently kills or injures a San Joaquin kit fox shall immediately report the incident to their representative. This representative shall contact the CDFG immediately in the case of a dead, injured or entrapped kit fox. The CDFG contact for immediate assistance in State Dispatch at (916) 445-0045. They will contact the local warden or biologist.			
	12. 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, 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			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	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.			
	Mitigation Measure #3.4.1.2: Prior to harvesting any grain crop on, and prior to clearing and grading of, the dairy facilities site for project construction (if during the nesting season, February 15 through September 15), a qualified biologist or ornithologist shall inspect the site. If Tricolor Blackbirds or other sensitive or migratory birds are nesting in a grain crop or fallow field on the dairy facilities site, then site harvesting, clearance, and grading shall be delayed until young have fledged.	The mitigation measures shall be implemented by the construction contractor and the applicant, and shall be a condition of the Special Use Permit.	Monitoring shall be responsibility of the Tulare County Resource Management Agency	Continued monitoring during dairy construction and during operations
	Mitigation Measure #3.4.1.3: No Swainson's hawks or active nests were observed onsite. However, to protect Swainson's hawks that may from time to time be foraging onsite, the CDFG has prepared a staff report that is summarized here and presented in its full text in Appendix X, the provisions of which must be implemented by the applicant. 1. There shall be no intensive new disturbances which may cause nest abandonment within 1/4 mile of an active nest between March 1 and September 15. 2. The conditional use permit requirement to commit 386 acres to permanent cropland mitigates for the potential loss of foraging habitat if an active nest becomes established.	The mitigation measures shall be implemented by the construction contractor and the applicant, and shall be a condition of the Special Use Permit.	Monitoring shall be responsibility of the Tulare County Resource Management Agency	Continued monitoring during dairy construction and during operations

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
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CULTURAL RESOURCES

Impact #3.5.1: Disturbance of Cultural or Historic Resources, Skeletal Remains	Mitigation Measure #3.5.1: If, in the course of project construction 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.	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.	During construction period
	If, in the course of project construction or operation, any skeletal remains are uncovered, discovered, or otherwise detected or observed, activities in the affected area shall cease. A qualified archaeologist, the County 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.			

HAZARDS AND HAZARDOUS MATERIALS/HEALTH RISKS/VECTORS

Impact #3.7.1: Operational Hazards	Mitigation Measure #3.7.1: Prior to issuance of the final occupancy permit for the dairy, 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.	This requirement shall be a condition of the County of Tulare Special Use Permit.	Monitoring thereof shall be the responsibility of the Tulare County Resource Management Agency, and the Regional Water Quality Control Board.	Prior to construction
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Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<p>The documentation shall include, at minimum, evidence of compliance with:</p> <ol style="list-style-type: none"> 1. An employee safety program in accord with California Labor Code Section 6401.7. 2. The RWQCB requirements, including a Storm Water Pollution Prevention Plan incorporating provisions for the safe storage, use, and disposal of hazardous wastes. 3. The permitting requirements of the California Department of Pesticide Regulation. 			
Impact #3.7.6: Vector Generation	<p>Mitigation Measure #3.7.6: As a condition of project approval, the project operator shall agree to follow Tulare Mosquito Abatement District requirements concerning mosquito control at the dairy facility. The following are requirements established by the District:</p> <p>(a) <i>All dairy wastewater holding and solids separator ponds shall be surrounded 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.</i></p> <p>(b) <i>Fencing around the wastewater and solids ponds shall be placed on the outside of the twenty-foot lanes and gates provided for easy access.</i></p> <p>(c) <i>All four interior banks of holding and</i></p>	<p>Implementation will be the responsibility of the applicant and operator.</p>	<p>Monitoring shall be the responsibility of the Tulare Mosquito Abatement District with regard to mosquito control. Monitoring shall be the responsibility of the Tulare County Resource Management Agency with respect to facilities design and construction, and the Tulare County Department of Health Services with respect to operational practices resulting in fly complaints.</p>	Continued monitoring during operation

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	separations shall be graded 1:1 or steeper for the first ten feet, soil type permitting, but no greater than 1:2.			
	(d) Two or more solids separator ponds are required. These ponds shall not be more than sixty feet in width.			
	(e) 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.			
	(f) Floating of any solid substance that 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.			
	(g) The owner shall be responsible for keeping vegetative growth from all areas of the holding ponds. This includes access lanes, interior pond embankments and any weed growth, which might become established on the pond surface.			
	(h) 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.			
	(i) Any deviations desired from these requirements must be submitted to the			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	District for its prior review and approval.			
	The owner/applicant shall submit to the Tulare County Health Services Division prior to dairy facility operation and shall continuously and fully implement during dairy operations, an Integrated Pest Management Plan for fly control which contains the following specific requirements:			
	(1) Manure and feed storage maintenance, and prompt dead animal disposal, to minimize fly breeding.			
	(2) Utilization of parasitoids and judicial use of pesticides, for fly suppression as needed based on monitoring results.			
	(3) Maintenance of records onsite, for regulatory agency inspection, regarding monitoring results, maintenance and disposal activities and parasitoid and pesticide suppression.			
HYDROLOGY AND WATER QUALITY				
Impact #3.8.1: Drainage Pattern Alterations	Mitigation Measure #3.8.1: Prior to commencement of construction, the owner/operator shall file a Notice of Intent to comply with the National Pollution Discharge Elimination System (NPDES) General Permit for Discharge of Storm Water Associated with Construction Activity Water Quality Order 99-08-DWQ. The Notice of Intent is to be submitted to the State Water Resources Control Board and a Storm Water Pollution Prevention Plan prepared.	The dairy facilities designer and builder will be responsible for implementation.	The Tulare County Resource management Agency will be responsible for ongoing monitoring.	During construction

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
Impact #3.8.3: 100-year Flood Hazard	Mitigation Measure #3.8.3: The western 156-acre portion of the project site shall be protected from 100-year flooding by the construction and maintenance of an elevated perimeter road to be constructed at least 2 feet above the adjacent field grade. The perimeter road design shall be determined by a registered engineer to be sufficient to protect the project from a 100-year flood.	The dairy facilities designer and builder will be responsible for implementation.	The Tulare County Resource management Agency will be responsible for ongoing monitoring.	Prior to and during construction.
Impact #3.8.8.1: Groundwater Degradation from Dairy Facilities	Mitigation Measure #3.8.8.1: The owner/applicant shall comply with Wastewater Discharge Requirements which have been adopted by the Regional Water Board.	The dairy facilities owner/operator will be responsible for implementation.	The Tulare County Resources Management Agency will be responsible for ongoing monitoring.	Continued monitoring during dairy operation.
Impact #3.8.8.2: Groundwater Contamination from Cropped Areas of the Project Site	Mitigation Measure #3.8.8.2: This facility is permitted by Tulare County for 3,200 Jersey milk cows and support stock totaling 2,637 animal units on 386 crop acres. The owner/operator shall annually provide a copy of the required annual filing with the RWQCB to Tulare County Planning, Project Review section which will allow ongoing monitoring of any changes which may impact nutrient balance within Tulare County. Currently this report is due July 1 of each year.	The dairy facilities owner/operator will be responsible for implementation.	The Tulare County Resources Management Agency will be responsible for ongoing monitoring.	Continued monitoring during dairy operation.
Impact #3.8.8.3: Groundwater Contamination at Manure Re-use Sites	Mitigation Measure #3.8.8.3: 1. The dairy facilities operator will 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 will be	The dairy facilities operator will be responsible for implementation.	The Tulare County Resources Management Agency will be responsible for ongoing monitoring.	Continued monitoring during dairy operation

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
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kept by the dairy facilities operator on site for review upon request by the Tulare County Resource Management Agency.

NOISE

3.10.1 Short-Term Construction Noise	<p>Mitigation Measure #3.10.1:</p> <ol style="list-style-type: none"> Construction activities shall be limited to between 6:00 a.m. and 7:00 p.m., Monday through Saturday. If nighttime construction is required, spot noise monitoring will be required to assure that noise levels from construction activities do not exceed 65 L_{max} at the property line of the nearest residence. Measure to reduce nighttime construction noise levels may include creating noise barriers or reducing the amount of construction activity until noise levels are below the nighttime significant criterion. Construction equipment noise shall be minimized during project construction by muffling and shielding intakes and exhausts on construction equipment (per the manufacturer's specifications) and by shrouding or shielding impact tools. All equipment shall have sound-control devices no less effective than those provided by the manufacturer. Material stockpiles and vehicle staging areas during construction shall be located as far as practicable from residences. 	The dairy facilities operator will be responsible for implementation.	The Tulare County Resources Management Agency will be responsible for enforcement of this mitigation measure.	During construction of dairy facilities
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TRANSPORTATION/TRAFFIC

3.14.5: Road	Mitigation Measure #3.14.5:	The dairy facilities	The Tulare County	Monitoring from 2007 to
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FM Jerseys Dairy
Draft Environmental Impact Report
PSP 05-060

September 2008
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Impact	Mitigation Measures	Implementation	Monitoring	Time Span
Deterioration	<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 \$12,499. 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 \$17,631. 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 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>	owner will be responsible for implementation	Resource Management Agency will be responsible for enforcement of this mitigation measure.	2027

CUMULATIVE AIR QUALITY, WATER QUALITY AND BIOLOGICAL IMPACTS

FM Jerseys Dairy
Draft Environmental Impact Report
PSP 05-060

September 2008
7 - 20

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
5.1: Air Quality Degradation	<p>Mitigation Measure #5.1: The facility is permitted by Tulare County for 3,200 Jersey milk cows and support stock totaling 2,637 animal units on 386 crop acres. The owner/operator shall annually provide a copy of the required Dairy Annual Compliance Report to Tulare County Planning, Project Review section which will allow ongoing monitoring of any changes which may impact overall air quality within Tulare County. Currently this report is due in November of each year.</p> <p>The owner/operator shall comply with all feasible pertinent requirements of the SJVAPCD including BACTs and CMPs (Appendices F and J).</p>	Condition of Special Use Permit	The Tulare County Resource Management Agency and the SJVAPCD.	Continued monitoring during dairy operations.
5.4: Loss of Habitat for Special-Status Animals	<p>Mitigation Measure #5.4.1: The project is required to preserve 386 acres of row crops to satisfy its wastewater disposal requirements.</p> <p>Mitigation Measure #5.4.2: Because there is potential for kit foxes to forage and den on and in the vicinity of the project site, the developer shall follow the <i>Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance</i> (USFWS 1999) and any other mitigation measure currently established pursuant to law by the applicable wildlife regulatory agencies.</p> <p>Mitigation Measure #5.4.3: Prior to harvesting any grain crop on, and prior to clearing and grading for, dairy facilities construction (if during the nesting season, February 15 through September 15), a qualified biologist or ornithologist should inspect the site. If tricolor blackbirds or other sensitive or migratory birds</p>	<p>The mitigation measures shall be incorporated in the conditions of approval for the project by the Tulare County Resource Management Agency, requiring implementation by the applicant and the operator.</p> <p>Monitoring of compliance shall be the responsibility of the based on records to be maintained by the operator</p>		Continued monitoring during dairy operations.

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	are nesting in the grain crop or in a fallowed field on the site, then site harvesting, clearance and grading shall be delayed until young have fledged.			
	<p>Mitigation Measure #5.4.4: No Swainson's hawks or active nests were observed onsite.</p> <p>However, to protect Swainson's hawks that may from time to time be forage onsite, the CDFG has prepared a staff report that is summarized here and presented in its full text in Appendix X, which must be implemented by the applicant.</p> <ol style="list-style-type: none"> 1. There shall be no intensive new disturbances which may cause nest abandonment within 1/4 mile of an active nest between March 1 and September 15. 2. The requirement to commit 386 acres to permanent cropland will mitigate for potential loss of foraging habitat if an active nest becomes established. 			

EXHIBIT "D"

**STATEMENT OF OVERRIDING
CONSIDERATIONS**

FM JERSEYS DAIRY ESTABLISHMENT

STATEMENT OF OVERRIDING CONSIDERATIONS
FINAL ENVIRONMENTAL IMPACT REPORT

FM Jerseys Dairy
PSP 05-060

Consistent with the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines and the County's CEQA Implementing Procedures, the Tulare County Planning Commission hereby adopts this Statement of Overriding Considerations concerning the significant and unavoidable impacts of the FM Jerseys Dairy (PSP 05-060) ("the project") to support its conclusion that the project's economic, public policy, 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. These impacts are discussed extensively in Sections 3.3.1 to 3.3.A, 3.8.8 to 3.8.8.3 and 5.1 to 5.3 the Final EIR.

The Final EIR for this project has proposed mitigation measures that will address these significant and unavoidable impacts, and the Planning Commission has expressly adopted these mitigation measures for this project. See the Final EIR and the Mitigation Measures and Mitigation Monitoring Program for the FM Jerseys Dairy attached hereto as Exhibit "C" which is incorporated by reference herein.

Despite these mitigation measures, there are still significant and unavoidable impacts from this project; however, this project will confer and manifest substantial benefits to the County of Tulare and its residents. In general terms, these benefits can be described as socio-economic, in that the project will generate additional property tax revenue for the County and additional employment for County residents; and as such, the Planning Commission 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 Planning Commission hereby finds that specific economic, legal, social, technological or other considerations make infeasible the mitigation measures or project alternatives identified in the Final EIR. More specifically, the Commission hereby finds

that the applicable 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 total dairy project is expected to provide approximately 16 full-time direct year-round jobs. Tulare County has an unemployment rate ranging from 10 to 18.5%. Thus, approving this project will help reduce the unemployment crisis in this county. 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) and by the project applicant (see Final EIR, Sections 2.3, 4.5 and 6.1, and Appendices "D" and "T".) Accordingly, based on the foregoing discussion, the Planning Commission 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 Facilities Plan (Phase I) in 2000 and to several other dairy project-level EIRs approved by the County (e.g., Hilarides, Van Beek, and Mineral King Dairies), there is substantial and overwhelming public support for dairy industry in Tulare County. When considering and weighing the countywide support for the project and the absence of opposition to the project, the Planning Commission concludes, based on substantial evidence in the record, that there is overwhelming public support for this dairy project. Thus, based on this discussion and substantial evidence in the record, the Planning Commission 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 operations. 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, reported in the press and presented in the Final EIR, milk is the County's premier agricultural commodity, valued at approximately \$1.85 billion.

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 Planning Commission 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, lining of wastewater holding ponds, if warranted, compliance with Best Conservation Management Practices delineated by the San Joaquin Valley Air Pollution Control District; and extensive road improvements and maintenance, see Final EIR, Sections 3.3, 3.8, and 3.14, Chapter 5, and Appendices "F", "H", "J", "L", and "O".)

Consequently, these innovative environmental/technological measures would 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 Planning Commission finds that there is support for this project.

In addition, the Planning Commission 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 Planning Commission finds that this project will generate employment and economic benefits which are needed to assist in relieving Tulare County's high unemployment rate. The total dairy project is expected to generate 16 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 Planning Commission finds that the County has required that this applicant undertake extensive mitigation measures which are the very restrictive for a dairy project approved in Tulare County. Thus, it is in the public interest for the County to advance 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 Planning Commission 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 Planning Commission 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.



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Page 1 of 40

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Resolution 8428 for PSP 05-060

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(ADDITIONAL RECORDING FEE APPLIES)

12/93

BEFORE THE PLANNING COMMISSION

COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER OF SPECIAL USE PERMIT)
APPLICATION NO. PSP 05-060)

RESOLUTION NO. 8428

Resolution of the Planning Commission of the County of Tulare approving a Special Use Permit requested by Frank Mendonsa, 16777 South I Drive, Tulare, CA 93274 to allow the development and operation of a new dairy facility for 2,637 animal units (3,200 Jersey milk cows and support stock) on 479 non-contiguous acres in the AE-40 (Exclusive Agricultural – 40 acre minimum). The facility will be located south of Avenue 164 between Road 124 and Road 120, approximately 1 mile northeast of Tipton. The dairy facility site will utilize 77 acres and the balance of the acreage will remain under cultivation and will be used for cultivation and disposal of reclaimed dairy wastewater. The animal densities are 6.8 animal units per crop acre and 5.9 milk cows per crop acre which is in compliance with the animal densities required by the Tulare County Animal Facilities Confinement Plan. The dairy project relates to Assessor's Parcel Numbers 232-120-025 (dairy facilities), 232-120-026, 232-130-001, and 232-110-010 in Sections 20, 22, and 29, Township 21 South, Range 25 East MDB&M. Parcels 232-120-025 and 026 were subject to a lot line adjustment that was approved October 16, 2006;

WHEREAS, an application has been filed pursuant to the regulations contained in Section 16 of Ordinance No. 352, the Zoning Ordinance, and

WHEREAS, the Planning Commission has given notice of its intention to consider the granting of a Special Use Permit as provided in Section 18 of said Ordinance No. 352 and as provided in Section 65905 of the Government Code of the State of California, and

WHEREAS, Staff has performed necessary investigations, prepared a written report, and recommended approval of this application subject to conditions, and

WHEREAS, a public hearing was held and an opportunity for public testimony was provided at a regular meeting of the Planning Commission on December 3, 2008, January 14, 2009, February 25, 2009 and March 11, 2009, and

WHEREAS at those meetings of the Planning Commission, public testimony was received and recorded from Frank Mendonsa (applicant) and Bruce Livingston (agent) in support of the proposal. Mr. Jan L. Kahn of Kahn, Soares & Conway, LLP spoke in opposition to the proposal.

NOW, THEREFORE, BE IT RESOLVED as follows:

A. This Planning Commission hereby certifies that it has reviewed and considered the information contained in the Final EIR for the proposed project in compliance with the California Environmental Quality Act and the State Guidelines for the Implementation of the California Environmental Quality Act of 1970 prior to taking action on the project.

B. This Planning Commission hereby adopts the following findings of fact as to the reasons for approval of this application:

1. The applicants have requested a Special Use Permit to allow the development and operation of a new dairy facility for 2,637 animal units (3,200 Jersey milk cows and support stock) on 479 non-contiguous acres in the AE-40 (Exclusive Agricultural – 40 acre minimum). The facility will be located south of Avenue 164 between Road 124 and Road 120, approximately 1 mile northeast of Tipton. The dairy facility site will utilize 77 acres and the balance of the acreage will remain under cultivation and will be used for cultivation and disposal of reclaimed dairy wastewater.
2. The site will be utilized for a commercial dairy operation. Dairies are 24 hour operations; however, nighttime operations are limited to maintaining cow comfort.
3. There is sufficient area in front of the milk barn to facilitate parking and thereby comply with Planning Commission Development Standards. The site plan submitted by the applicant does not indicate a number of spaces, but the area in front of the milk barn is sufficient for the parking of all vehicles related to this use.
4. The site is zoned AE-40 (Exclusive Agriculture – 40 acre minimum) and is cultivated with field crops such as corn and wheat. The surrounding areas are zoned AE-40 and contain scattered residences, similar field crop cultivation, other dairy facilities, orchards.
5. The AE-40 Zone is an exclusive zone for intensive and extensive agricultural uses and for those uses which are a necessary and integral part of agricultural operations in the county. The purpose of this zone is to protect the general welfare of the agricultural community from unrelated uses which, by their nature, would be injurious to the physical and economic well-being of the agricultural community and the community at large. Establishment of a dairy, when more than 25 animals are on the property at any time, is allowed in the AE-40 Zone subject to approval of a use permit. Expansions of permitted dairies or substantial modifications to existing grandfathered dairies are also subject to approval of a use permit (Section 9.7 E. 8 of County Zoning Ordinance).
6. Section 16 of Ordinance No. 352, as amended (Zoning Ordinance), states the following:

"A Special Use Permit shall be granted only if it is found that the establishment, maintenance, and operation of the use of the building or land applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood or to the general welfare of the County. Special Use Permits may

be granted subject to such conditions as will insure compliance with the aforementioned standards."

6. This proposal indicates a maximum of 2,637 animal units (3,200 Jersey milk cows and support stock) will be maintained onsite.

7. The project is consistent with the General Plan. Briefly, Land Use Element: The subject site is located outside of any Urban Area Boundary as designated in the Urban Boundaries Element, and is therefore subject to the policies of the Rural Valley Lands Plan (RVLP), a component of the County Land Use Element. The RVLP designates the site as agricultural and provides the following policy objectives: Discourage the conversion or division of agricultural lands to nonagricultural uses and parcel sizes; Provide for limited nonagricultural activities and necessary agricultural related industries in selected rural areas. Since dairy facilities are agricultural industries, this proposal meets the General Plan policies as they pertain to the RVLP.

Urban Boundaries Element: The site is outside of any urban area boundary.

Open Space Plan: The ERME Open Space Plan designates the site as "Extensive Agriculture". This plan encourages the maintenance of agricultural lands for agricultural purposes. This plan also shows the subject site as outside of any Community Windshed designated in the ACFP.

Circulation Element: The site is located south of Avenue 164 between Road 120 and Road 124. The entrance to the dairy is proposed to be located off of Road 124, a County designated Minor Collector. According to the discussion under Section 3.14 of the Final EIR (Transportation/Traffic, pages 3-154 through 3-160), the project will have no significant impact on the Level Of Service of surrounding roads and intersections. In addition, the applicant shall deposit funds with the County for improvements to and maintenance of Road 124 and Avenue 164. The first deposit of \$12,499 will be made prior to the issuance of an occupancy permit. The second deposit of \$17,631 will be made to the County in the year 2015. The funds will be utilized by the County to supplement existing funding for the maintenance of truck route roads in accordance with the County's requirements. The project site is not within a designated unincorporated community and therefore not covered under a Community Land Use and Circulation Plan.

Noise Element: The subject site is located outside of any noise-impacted areas as designated in the 1988 Noise Element. As discussed in Section 3.10 of the final EIR (pages 3-143 through 3-148), the potential project-related noise levels do not exceed the adopted noise levels.

Housing Element: The proposed project would not affect the housing needs projections of the 2003 Housing Element and there is no evidence that it would interfere with the housing program adopted therein because it will not encourage population growth in this rural area of the County. Also, no dwellings on

surrounding properties will be relocated as a result of the project (Final EIR, Section 3.11, pages 3-149 and 3-150).

Safety Element: The subject site is not in an area of exceptional wildland fire hazards or seismic activity hazards. The project does not interfere with any Safety Element implementation policies, or programs as adopted in the 1975 Safety Element or the 1975 Seismic Safety Element because the environmental review found no effects from the proposed project related to hazards (Final EIR, Section 3.7, page 3-94 through 3-103).

Other Applicable Policies and Elements: On April 11, 2000, the Board of Supervisors adopted the Animal Confinement Facilities Plan (ACFP), Phase I: Dairy/Bovine Animal Confinement Facilities (GPA 99-005). This Plan is an amendment to the 1974 Environmental Resource Management Element of the General Plan. The ACFP policies are included as Appendix "B" to the Final EIR. The policies that specifically address land use and planning issues associated with the operation of a dairy are Locational and Animal Density Policies No. 2, 3, 4, 5 and 8. Refer to Pages 3-126 through 3-143 of the Final EIR for a complete analysis. There is another application for a new dairy across Avenue 164 from this project which has potential to create a separation issue; however, the proposal, while still considered active, has not been pursued. The analysis in the Final EIR concludes that under present conditions, the proposal complies with the policies of the ACFP.

8. Appropriate State, County and local agencies were contacted regarding the proposal. Some recommended conditions to assure that the use would not be detrimental to the environment and surrounding area. The conditions have been incorporated into the conditions of approval.
9. The Planning Commission has certified the Final EIR prepared for PSP 05-060 for public review which indicates that the project may have potentially significant environmental impacts. Mitigation measures to reduce these potential impacts are included in the Final EIR and included as conditions of this PSP by reference.

C. This Planning Commission, after considering all of the evidence presented, found that the establishment, maintenance, and operation of a new dairy as applied for with PSP 05-060 would not, under the circumstances of the particular case, be detrimental to the health, safety, and general welfare of persons residing or working in the neighborhood or to the general welfare of the County.

AND, BE IT FURTHER RESOLVED as follows:

A. This Planning Commission hereby finds said Special Use Permit will have a significant effect on the environment and certifies that a Final EIR, a Mitigation Monitoring Plan, and a Statement of Overriding Considerations for said Special Use Permit have been adopted in

compliance with the California Environmental Quality Act and the State Guidelines for the Implementation of the California Environmental Quality Act of 1970.

B. This Planning Commission hereby approves Special Use Permit Application No. PSP 05-060, subject to the following conditions:

Planning Conditions:

1. All mitigation measures set forth in the Mitigation Monitoring Report (Exhibit B) shall be implemented by the permittee or his successors-in-interest.
2. The dairy site shall consist of 479 non-contiguous acres (gross). There shall be 386 acres made available for distribution of nutrient-laden irrigation water discharged from the dairy facility, and shall be double cropped annually per the Comprehensive Nutrient Management Plan (EIR, Appendix H). The permittee/applicant (which includes at all times his successors-in-interest) 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 dairy site shall not exceed a maximum of 2,637. The number of milk cows on site shall be limited to 3,200 Jersey milk cows.

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

Milk 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

3. 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.
4. No portion of the 479 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 479-acre 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 in writing of the change and, if determined necessary by the Director, apply for an amendment to the use permit.

5. A fly abatement program shall be implemented by the applicant to keep flies under control on site so that they do not become a nuisance on site or to surrounding properties.
6. The dairy operation shall meet all of the requirements of the Tulare Mosquito Abatement District for design and maintenance. The Tulare Mosquito Abatement District has indicated in its letter of review dated November 13, 2008 it is satisfied with the mitigation measures identified in Impact No. 3.7.6 and 3.7.7 of the Mitigation Monitoring Program.
7. Should any additional residences or mobile homes 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).
8. 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.
9. 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.
10. 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.
11. When such a positive determination cannot be made from well records, the applicant will:
 - Periodically, upon a schedule and with procedures approved by the Regional Water Quality Control Board (RWQCB), test wells to assure that vertical migration of dairy wastewater is not taking place, and, when indicated by test results.
 - Construct casing seals, as approved by the RWQCB, to prevent such migration.

General Conditions:

12. Development shall be in accordance with the plan(s) as attached in Planning Commission 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 (per Planning Commission Resolution No. 5976, adopted 9/28/1983).

applicant, or his successors as long as said modifications do not materially affect the determination of the Planning Commission. Such modifications shall be noted on the approved plans and shall be initialed by the Planning and Development Director (per Planning Commission Resolution No. 5976, adopted 9/28/1983).

14. All exterior lighting shall be so adjusted as to deflect direct rays away from public roadways and adjacent properties (per Planning Commission Resolution No. 5976, adopted 9/28/1983).
15. The proposed facility shall be maintained and operated in accordance with all State and County Health regulations.
16. 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 (per Planning Commission Resolution No. 5976, adopted 9/28/1983).
17. The conditions set down herein which require construction of improvements 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 and Development Director may grant exceptions to this condition upon request by the applicant (per Planning Commission Resolution No. 5976, adopted 9/28/1983).
18. This Special Use Permit shall automatically become null and void two (2) years after the date upon which it is granted by the Planning Commission, unless the applicant, or his/her successor, 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. (Per Planning Commission Resolution No. 5976, adopted 9/28/1983; amended by Planning Commission Resolution No. 6334, adopted 2/25/1987).
19. This Special Use Permit will not be effective until ten (10) days after the date upon which it is granted by the Planning Commission (per Planning Commission Resolution No. 5976, adopted 9/28/1983).
20. All general 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 allowed. Compliance with such conditions is subject to review at any time. Normally, an initial review of compliance shall be conducted by the Tulare County Planning Commission twelve (12) months after the granting of said permit; however, the Planning Commission may schedule the review sooner under certain circumstances. Additional reviews may be undertaken at the discretion of the Planning Commission (per Planning Commission Resolution No. 5976,

adopted 9/28/1983; amended by Planning Commission Resolution No. 6013, adopted 2/8/1984; and Planning Commission Resolution No. 6702 adopted 10/11/1989).

Right to Farm:

21. 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.

Engineering:

22. Sufficient on-site parking shall be provided for all cars and trucks. The parking area and the entrance roads shall be surfaced with a material that would prevent creation of dust and carrying mud onto public roads. Said surface shall be maintained at all times.
23. 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.
24. All public road approaches and driveways shall be surfaced so that mud, dust, gravel and manure do not create conditions detrimental to the surrounding roadways.
25. 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.
26. 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.

Fire:

27. An all weather 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.

28. 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.
29. 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.
30. Portable fire extinguishers shall be installed in the milk house as per N.F.P.A. Pamphlet #10 (10# ABC type.)

Health & Human Services:

31. 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.
32. 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.
33. All new wells shall comply with the construction requirements of the Tulare County Well Ordinance.
34. 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.
35. Inactive wells shall be properly destroyed in accordance with the Tulare County Well Ordinance.
36. All agricultural wells shall have an overhead air gap at the standpipes.
37. Lagoons shall meet a minimum 150 foot setback from all wells, public ditches, and public waterways.
38. 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.
39. 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 Code

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.

40. All new sewage disposal systems shall meet all construction standards and minimum setbacks of 100 feet from all wells, ditches, and waterways.
41. 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.
42. Dead animals shall be removed from the site within 48 hours and shall not be visible from the public road while awaiting removal.

State of California Regional Water Quality Control Board:

43. 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 RMA's 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.
44. Lagoons shall provide capacity to hold 120 days accumulation of liquids. (RWQCB)

State of California Air Resources Board, San Joaquin Valley Air Pollution Control District:

45. All activities associated with this dairy operation shall comply with the San Joaquin Valley Air Pollution Control District (SJVAPCD) Regulation VIII Fugitive Dust Rules, such as construction, unpaved roads and open service areas.
46. All agricultural burning shall comply with the SJVAPCD Rules and Regulations.

The foregoing resolution was adopted upon motion of Commissioner Pitigliano, seconded by Commissioner Dias, at a regular meeting of the Planning Commission on the 11th day of March, 2009, by the following roll call vote:

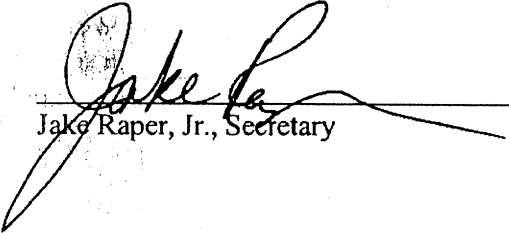
AYES: Elliott, Pitigliano, Whitlach, Millies, Dias, Gong

NOES: None

ABSTAIN: None

ABSENT: None

TULARE COUNTY PLANNING COMMISSION



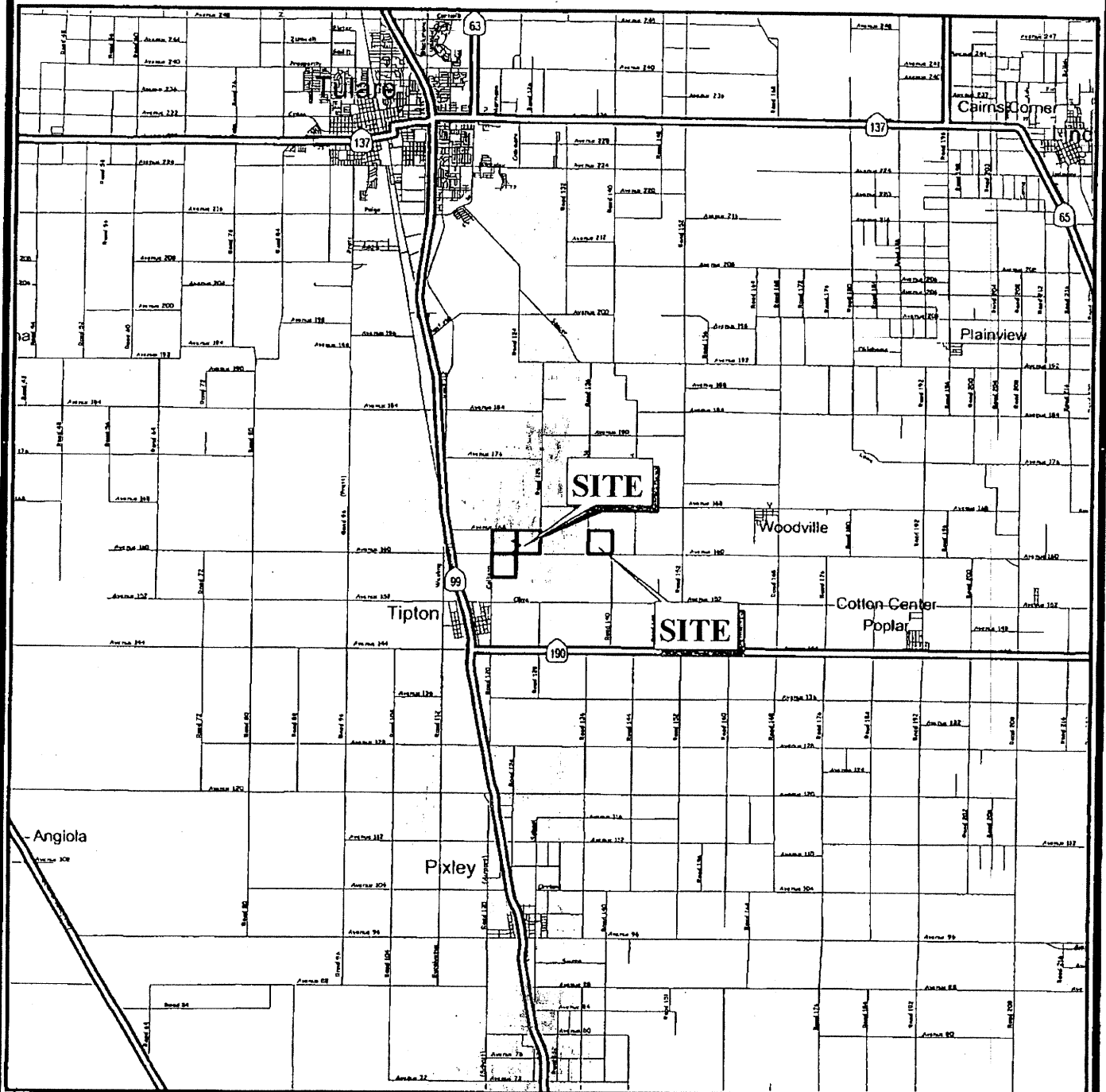
Jake Raper, Jr., Secretary

EXHIBIT "A"
PROJECT SITE MAP
AND
PROJECT SITE PLAN

FM JERSEYS DAIRY ESTABLISHMENT



Vicinity Map for PSP 05-060

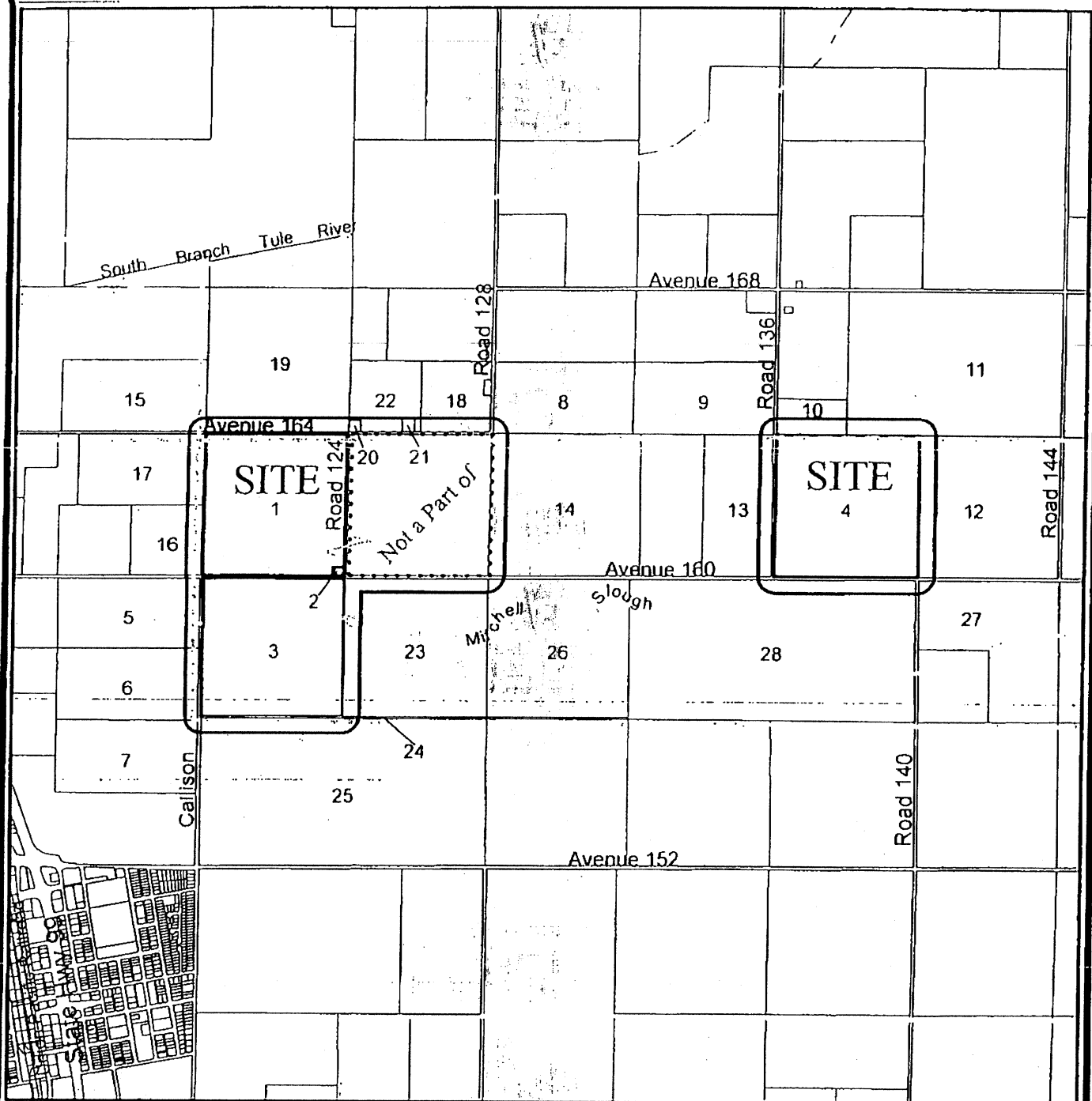


1.5 0 1.5 3 4.5 6 Miles





Vicinity Map for PSP 05-060



Owner: MENDONSA ANN M (TR J MENDONSA FAM R
Address: 12750 AVE 160
City, State ZIP: TIPTON CA 93272
Applicant: FRANK MENDONSA
Agent: BRUCE LIVINGSTON
Supervisory District #2
Assessors Parcel # 232110010, A part of 232120025, 232120026, 232130001

0.25 0 0.25 0.5 0.75 Miles

1 - 4 Project Site for PSP 05-060

5 - 28 Properties within 300' of project site,
to receive written notification of proposal
(as required by State Law)



EXHIBIT "B"

**MITIGATION MEASURES
AND
MITIGATION MONITORING PLAN
FM JERSEYS DAIRY ESTABLISHMENT**

Exhibit B
Mitigation Monitoring Program for FM Jerseys Dairy

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
AESTHETICS				
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.	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.	Completed at time of final building inspection.
AIR QUALITY AND ODORS				
Impact #3.3.3: Construction Emissions (Carbon Monoxide (CO), Volatile Organic Compounds (VOC), Nitrogen Oxide (NOx), Sulfur Dioxide (SO ₂), Particulate Matter (PM ₁₀) Fine Particulate Matter (PM _{2.5}))	<p>Mitigation Measure #3.3.3: To further reduce project-related construction impacts Tulare County requires that the owner/operator and construction crew shall implement the following control measures prior to and during construction activities to reduce exhaust emissions from construction related equipment:</p> <ol style="list-style-type: none"> 1. The idling time of construction equipment used at the site shall not exceed five (5) minutes during any one idle period. 2. The hours of operation of heavy-duty equipment shall be minimized. 3. As much as possible, alternative fueled or catalyst-equipped diesel construction equipment shall be used at the project site. 4. Electrically driven equivalents to fossil-fueled equipment shall be utilized when 	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 and the San Joaquin Valley Air Pollution Control District.	Beginning with construction permit and terminating with issuance of Notice of Completion.

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	feasible and available, provided they are not charged via a portable generator.			
	5. Construction shall be curtailed during periods of high ambient pollution concentrations.			
Impact #3.3.4.B: Operational Emission of Criteria Pollutants, Volatile Organic Compound (VOC)	<p>Mitigation Measures:</p> <ol style="list-style-type: none">1. Feed according to National Research Council (NRC) guidelines.2. Remove feed from area where animals stand to eat at least once every 14 days.3. Feed or dispose of rations within 48 hours of grinding and mixing.4. Store grain in a weatherproof storage structure from October through May.5. Cover horizontal surface of silage piles, except area where feed is being removed.6. Flush or hose milk parlor immediately prior to, immediately after, or during each milking.7. Flush freestalls more frequently than the milking schedule.8. Inspect water pipes and troughs and repair leaks at least once every 14 days.9. Clean corrals at least once between April and July and at least once between October and December.	<p>The listed implementation measures will be a condition of the Special Use Permit for the project. The owner/operator of the project will be responsible for their implementation.</p>	<p>Monitoring thereof will be the continuing responsibility of the Tulare County Resource Management Agency and the San Joaquin Valley Air Pollution Control District.</p>	<p>Continued monitoring during dairy operation</p>

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	10. Manage corrals such that animal waste depth in corral does not exceed 12 inches, except for in-corral mounding.			
	11. Maintain surface of corrals and dry lots so that puddles do not form and remain more than 48 hours.			
	12. Harrow, rake, or scrape pens sufficiently to maintain a dry surface.			
	13. Install corral shade structures uphill of any slope.			
	14. Allow liquid animal waste to stand in the field not more than 24 hours after irrigation.			
	15. Apply no solid animal waste with a moisture content of 50% or more.			
	16. Remove animal waste from the facility within seventy-two (72) hours of removal from the pens or corrals.			
	17. Cover dry animal waste piles outside the pens with a weatherproof covering from October through May, except for times, not to exceed 24 hours per event when wind events remove the covering.			
	18. Remove solids from the waste system with a solid separator system prior to the waste entering the lagoon.			
Impact #3.3.5: Operational Emission of Criteria Pollutants,	Mitigation Measures #3.3.5, NOx: Although project impacts are less than significant the following mitigation measures are recommended to further reduce NOx emissions:	The listed implementation measures will be a condition of the Special Use Permit for	Monitoring thereof will be the continuing responsibility of the Tulare County Resource	Continued monitoring during dairy operation

FM Jerseys Dairy
 Draft Environmental Impact Report
 PSP 05-060

September 2008
 7 - 3

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
Nitrogen Oxide (NOx)	1. The idling time of construction equipment used at the site shall not exceed five (5) minutes during any one idle period.	the project. The owner/operator of the project will be responsible for their implementation.	Management Agency and the San Joaquin Valley Air Pollution Control District.	
	2. The hours of operation of heavy-duty equipment shall be minimized.			
	3. As much as possible, alternative fueled or catalyst-equipped diesel construction equipment shall be used at the project site.			
	4. Electrically driven equivalents to fossil-fueled equipment shall be utilized when feasible and available, provided they are not charged via a portable generator.			
	5. Construction shall be curtailed during periods of high ambient pollution concentrations.			
	6. Employees will be encouraged to carpool to and from the project site.			
Impact #3.3.12: Cumulative Air Quality Impacts	<p>Mitigation Measure #3.3.12: This facility is permitted by Tulare County for 3,200 Jersey milk cows and support stock totaling 2,637 animal units on 386 crop acres. The owner/operator shall annually provide a copy of the required Dairy Annual Compliance Report to the Tulare County Planning, Project Review section which will allow ongoing monitoring of any changes which may impact overall air quality within Tulare County. Currently this report is due in November of each year.</p> <p>Further mitigation measures for cumulative particulate matter (PM₁₀), fine particulate matter</p>	Implementation of and compliance with the referenced regulations or project-level mitigation measures will reduce the project's contribution to the cumulative impacts of dairy expansion in the San Joaquin Valley. However, cumulative emissions will remain significant, considerable and unavoidable long-	The County of Tulare shall include all listed emissions reduction measures as conditions of approval of the Special Use Permit. The Tulare County Resource Management Agency shall monitor the dairy operation for compliance.	Continued monitoring during dairy operation

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	(PM _{2.5}), volatile organic compounds (VOC), nitrogen oxide (NOx), ammonia (NH ₃) and hydrogen sulfide (H ₂ S, odor) would, at this time, require regulatory agency action or significant technological advances.	term impacts.		
	Each cumulative pollutant is listed below with its referenced regulatory compliance measures and any additional mitigation measures that may be applicable.			
	<ol style="list-style-type: none"> 1. Particulate Matter and Fine Particulate Matter (PM₁₀/PM_{2.5}) Construction Impacts: Compliance with SJVAPCD's Regulation VIII and Rules 4101, 4102, 4201, 4550, and 4570 as required by law. 2. Volatile organic compound (VOC): Compliance with SJVAPCD's Rule 4570 as required by law. 3. Nitrogen Oxide (NOx): NOx emissions were less than SJVAPCD regulatory limits. To further mitigate NOx emissions the following mitigations are recommended: <ul style="list-style-type: none"> ▪ The idling time of construction equipment used at the site shall not exceed five (5) minutes during any one idle period. ▪ The hours of operation of heavy-duty equipment shall be minimized. ▪ As much as possible, alternative fueled or catalyst-equipped diesel construction equipment shall be used at the project site. 			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<ul style="list-style-type: none"> Electrically driven equivalents to fossil-fueled equipment shall be utilized when feasible and available, provided they are not charged via a portable generator. Construction shall be curtailed during periods of high ambient pollution concentrations. 			
	4. Methane (CH ₄): Compliance with SJVAPCD's Rule 4570 as required by law.			
	5. Ammonia (NH ₃): Compliance with SJVAPCD's Rule 4570 as required by law.			
	6. Hydrogen Sulfide (H ₂ S): Compliance with SJVAPCD's Rule 4570 as required by law.			

**Impact #3.3.A:
Greenhouse Gases**

- Mitigation Measure #3.3.A:** In addition to the regulatory measures previously specified for other pollutants, incorporation of SJVAPCD required BACT features in the project design and compliance with required SJVAPCD regulations, implementation of the following mitigation measures will act to further reduce the generation of greenhouse gases attributable to the project:
- The owner/applicant/contractor shall participate in the Energy Management Solutions for Dairies program (or equivalent) sponsored by his/her utility company. This program will review the facility operations, provide an energy analysis (energy audit), and identify no cost, low cost and investment grade

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<p>conservation opportunities. All no cost energy savings will be promptly implemented at the facility. Low cost and investment grade options will be implemented as appropriate to the facility. A copy of the energy analysis results will be made available to Tulare County as part of the mitigation monitoring. Potential energy savings are 10-40%. Any greenhouse gas or emission reduction credits resulting from implementing these conservation practices will accrue to the dairy.</p> <ul style="list-style-type: none"> • Maintain an impervious covering on silage and manure piles year-round. • Include dietary aids (e.g., cottonseed) in feed rations. • Feed according to National Research Council (NRC) guidelines. • Remove feed from area where animals stand to eat at least once every 14 days. • Feed or dispose of rations within 48 hours of grinding and mixing. • Store grain in a weatherproof storage structure from October through May. • Cover horizontal surface of silage piles, except area where feed is being removed. • Flush or hose milk parlor immediately 			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	prior to, immediately after, or during each milking.			
	<ul style="list-style-type: none"> • Flush freestalls more frequently than the milking schedule. • Inspect water pipes and troughs and repair leaks at least once every 14 days. • Clean corrals at least once between April and July and at least once between October and December. • Manage corrals such that animal waste depth in corral does not exceed 12 inches, except for in-corral mounding. • Maintain surface of corrals and dry lots so that puddles do not form and remain more than 48 hours. • Harrow, rake, or scrape pens sufficiently to maintain a dry surface. • Install corral shade structures uphill of any slope. • Allow liquid animal waste to stand in the field not more than 24 hours after irrigation. • Apply no solid animal waste with a moisture content of 50% or more. • Remove animal waste from the facility within seventy-two (72) hours of removal from the pens or corrals. 			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
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- Cover dry animal waste piles outside the pens with a weatherproof covering from October through May, except for times, not to exceed 24 hours per event when wind events remove the covering.
- Remove solids from the waste system with a solid separator system prior to the waste entering the lagoon.

BIOLOGICAL RESOURCES

Impact #3.4.1: Substantial Adverse Effect on Candidate, Special-Status or Sensitive Species or Habitat of Sensitive Species	Mitigation Measure #3.4.1: Because there is a potential for kit fox to forage and den on and in the vicinity of the project site, the applicant should follow the <i>Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance</i> (USFWS 1999). The measures that are listed below have paraphrased from these guidelines.	The mitigation measures shall be implemented by the construction contractor and the applicant, and shall be a condition of the Special Use Permit.	County of Tulare Resource Management Agency	Prior to Construction
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1. Pre-construction surveys shall be conducted no less than 14 days and no more than 30 days prior to the beginning of ground disturbance and/or construction activities, or any project activity likely to impact the San Joaquin kit fox. Exclusion zones shall be observed in accordance with USFWS Recommendations:

Potential den	50 feet
Known den	100 feet
Natal/pupping den (occupied and unoccupied)	Contact USFWS
Atypical den	50 feet

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<p>2. If dens must be removed, they shall be appropriately monitored and excavated by a trained wildlife biologist. Replacement dens will be required. Destruction of natal dens and other "known" kit fox dens must not occur until authorized by USFWS.</p> <p>3. Project-related construction 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 should be avoided. Off-road construction traffic outside of designated project areas shall be prohibited.</p> <p>4. To prevent inadvertent entrapment of kit foxes or other animals during the construction phase of the project, all excavated, steep-walled holes or trenches more than 2 feet deep shall be covered at the close of each working day by plywood or similar materials, or provided with one or more escape ramps constructed of earth fill or wooden planks. Before such holes or trenches are filled, they should be thoroughly inspected for trapped animals. If at any time a trapped or injured kit fox is discovered, the procedures under numbers 8 and 9 of this section must be followed.</p>			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<p>5. Kit foxes are attracted to den-like structures such as pipes and may enter stored pipe, becoming trapped or injured. All construction pipes, 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 any way. If a kit fox is discovered inside a pipe, that section of pipe shall not be moved until the USFWS has 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>6. 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> <p>7. No firearms shall be allowed on the project construction site.</p> <p>8. To prevent harassment, mortality of kit foxes or destruction of dens by dogs or cats, no pets shall be permitted on project construction sites.</p> <p>9. A representative shall be appointed by the project proponent who will be the contact source for any employee or</p>			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<p>contractor who might inadvertently kill or injure a kit fox or who finds a dead, injured or entrapped individual. The representative's name and telephone number shall be provided to the USFWS.</p> <p>10. In the case of trapped animals, escape ramps or structures shall be installed immediately to allow the animal(s) to escape, or the USFWS shall be contacted for advice.</p> <p>11. Any contractor, employee(s), or military or agency personnel who inadvertently kills or injures a San Joaquin kit fox shall immediately report the incident to their representative. This representative shall contact the CDFG immediately in the case of a dead, injured or entrapped kit fox. The CDFG contact for immediate assistance in State Dispatch at (916) 445-0045. They will contact the local warden or biologist.</p> <p>12. 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, 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</p>			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	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.			
	Mitigation Measure #3.4.1.2: Prior to harvesting any grain crop on, and prior to clearing and grading of, the dairy facilities site for project construction (if during the nesting season, February 15 through September 15), a qualified biologist or ornithologist shall inspect the site. If Tricolor Blackbirds or other sensitive or migratory birds are nesting in a grain crop or fallow field on the dairy facilities site, then site harvesting, clearance, and grading shall be delayed until young have fledged.	The mitigation measures shall be implemented by the construction contractor and the applicant, and shall be a condition of the Special Use Permit.	Monitoring shall be responsibility of the Tulare County Resource Management Agency	Continued monitoring during dairy construction and during operations
	Mitigation Measure #3.4.1.3: No Swainson's hawks or active nests were observed onsite. However, to protect Swainson's hawks that may from time to time be foraging onsite, the CDFG has prepared a staff report that is summarized here and presented in its full text in Appendix X, the provisions of which must be implemented by the applicant. 1. There shall be no intensive new disturbances which may cause nest abandonment within 1/4 mile of an active nest between March 1 and September 15. 2. The conditional use permit requirement to commit 386 acres to permanent cropland mitigates for the potential loss of foraging habitat if an active nest becomes established.	The mitigation measures shall be implemented by the construction contractor and the applicant, and shall be a condition of the Special Use Permit.	Monitoring shall be responsibility of the Tulare County Resource Management Agency	Continued monitoring during dairy construction and during operations

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
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CULTURAL RESOURCES

Impact #3.5.1: Disturbance of Cultural or Historic Resources, Skeletal Remains	Mitigation Measure #3.5.1: If, in the course of project construction 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. If, in the course of project construction or operation, any skeletal remains are uncovered, discovered, or otherwise detected or observed, activities in the affected area shall cease. A qualified archaeologist, the County 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.	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.	During construction period
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HAZARDS AND HAZARDOUS MATERIALS/HEALTH RISKS/VECTORS

Impact #3.7.1: Operational Hazards	Mitigation Measure #3.7.1: Prior to issuance of the final occupancy permit for the dairy, 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.	This requirement shall be a condition of the County of Tulare Special Use Permit.	Monitoring thereof shall be the responsibility of the Tulare County Resource Management Agency, and the Regional Water Quality Control Board.	Prior to construction
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Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	<p>The documentation shall include, at minimum, evidence of compliance with:</p> <ol style="list-style-type: none"> 1. An employee safety program in accord with California Labor Code Section 6401.7. 2. The RWQCB requirements, including a Storm Water Pollution Prevention Plan incorporating provisions for the safe storage, use, and disposal of hazardous wastes. 3. The permitting requirements of the California Department of Pesticide Regulation. 			
Impact #3.7.6: Vector Generation	<p>Mitigation Measure #3.7.6: As a condition of project approval, the project operator shall agree to follow Tulare Mosquito Abatement District requirements concerning mosquito control at the dairy facility. The following are requirements established by the District:</p> <p>(a) <i>All dairy wastewater holding and solids separator ponds shall be surrounded 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.</i></p> <p>(b) <i>Fencing around the wastewater and solids ponds shall be placed on the outside of the twenty-foot lanes and gates provided for easy access.</i></p> <p>(c) <i>All four interior banks of holding and</i></p>	<p>Implementation will be the responsibility of the applicant and operator.</p>	<p>Monitoring shall be the responsibility of the Tulare Mosquito Abatement District with regard to mosquito control. Monitoring shall be the responsibility of the Tulare County Resource Management Agency with respect to facilities design and construction, and the Tulare County Department of Health Services with respect to operational practices resulting in fly complaints.</p>	Continued monitoring during operation

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	separations shall be graded 1:1 or steeper for the first ten feet, soil type permitting, but no greater than 1:2.			
	(d) Two or more solids separator ponds are required. These ponds shall not be more than sixty feet in width.			
	(e) 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.			
	(f) Floatage of any solid substance that 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.			
	(g) The owner shall be responsible for keeping vegetative growth from all areas of the holding ponds. This includes access lanes, interior pond embankments and any weed growth, which might become established on the pond surface.			
	(h) 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.			
	(i) Any deviations desired from these requirements must be submitted to the			

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
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District for its prior review and approval.

The owner/applicant shall submit to the Tulare County Health Services Division prior to dairy facility operation and shall continuously and fully implement during dairy operations, an Integrated Pest Management Plan for fly control which contains the following specific requirements:

- (1) Manure and feed storage maintenance, and prompt dead animal disposal, to minimize fly breeding.
- (2) Utilization of parasitoids and judicious use of pesticides, for fly suppression as needed based on monitoring results.
- (3) Maintenance of records onsite, for regulatory agency inspection, regarding monitoring results, maintenance and disposal activities and parasitoid and pesticide suppression.

HYDROLOGY AND WATER QUALITY

Impact #3.8.1: Drainage Pattern Alterations	Mitigation Measure #3.8.1: Prior to commencement of construction, the owner/operator shall file a Notice of Intent to comply with the National Pollution Discharge Elimination System (NPDES) General Permit for Discharge of Storm Water Associated with Construction Activity Water Quality Order 99-08-DWQ. The Notice of Intent is to be submitted to the State Water Resources Control Board and a Storm Water Pollution Prevention Plan prepared.	The dairy facilities designer and builder will be responsible for implementation.	The Tulare County Resource management Agency will be responsible for ongoing monitoring.	During construction
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Impact	Mitigation Measures	Implementation	Monitoring	Time Span
Impact #3.8.3: 100-year Flood Hazard	Mitigation Measure #3.8.3: The western 156-acre portion of the project site shall be protected from 100-year flooding by the construction and maintenance of an elevated perimeter road to be constructed at least 2 feet above the adjacent field grade. The perimeter road design shall be determined by a registered engineer to be sufficient to protect the project from a 100-year flood.	The dairy facilities designer and builder will be responsible for implementation.	The Tulare County Resource management Agency will be responsible for ongoing monitoring.	Prior to and during construction.
Impact #3.8.8.1: Groundwater Degradation from Dairy Facilities	Mitigation Measure #3.8.8.1: The owner/applicant shall comply with Wastewater Discharge Requirements which have been adopted by the Regional Water Board.	The dairy facilities owner/operator will be responsible for implementation.	The Tulare County Resources Management Agency will be responsible for ongoing monitoring.	Continued monitoring during dairy operation.
Impact #3.8.8.2: Groundwater Contamination from Cropped Areas of the Project Site	Mitigation Measure #3.8.8.2: This facility is permitted by Tulare County for 3,200 Jersey milk cows and support stock totaling 2,637 animal units on 386 crop acres. The owner/operator shall annually provide a copy of the required annual filing with the RWQCB to Tulare County Planning, Project Review section which will allow ongoing monitoring of any changes which may impact nutrient balance within Tulare County. Currently this report is due July 1 of each year.	The dairy facilities owner/operator will be responsible for implementation.	The Tulare County Resources Management Agency will be responsible for ongoing monitoring.	Continued monitoring during dairy operation.
Impact #3.8.8.3: Groundwater Contamination at Manure Re-use Sites	Mitigation Measure #3.8.8.3: 1. The dairy facilities operator will 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 will be	The dairy facilities operator will be responsible for implementation.	The Tulare County Resources Management Agency will be responsible for ongoing monitoring.	Continued monitoring during dairy operation

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	kept by the dairy facilities operator on site for review upon request by the Tulare County Resource Management Agency.			

NOISE

3.10.1 Short-Term Construction Noise	<p>Mitigation Measure #3.10.1:</p> <p>1. Construction activities shall be limited to between 6:00 a.m. and 7:00 p.m., Monday through Saturday. If nighttime construction is required, spot noise monitoring will be required to assure that noise levels from construction activities do not exceed 65 L_{max} at the property line of the nearest residence. Measure to reduce nighttime construction noise levels may include crating noise barriers or reducing the amount of construction activity until noise levels are below the nighttime significant criterion.</p> <p>2. Construction equipment noise shall be minimized during project construction by muffling and shielding intakes and exhausts on construction equipment (per the manufacturer's specifications) and by shrouding or shielding impact tools. All equipment shall have sound-control devices no less effective than those provided by the manufacturer.</p> <p>3. Material stockpiles and vehicle staging areas during construction shall be located as far as practicable from residences.</p>	The dairy facilities operator will be responsible for implementation.	The Tulare County Resources Management Agency will be responsible for enforcement of this mitigation measure.	During construction of dairy facilities
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TRANSPORTATION/TRAFFIC

3.14.5: Road	Mitigation Measure #3.14.5:	The dairy facilities	The Tulare County	Monitoring from 2007 to
<i>FM Jerseys Dairy</i> <i>Draft Environmental Impact Report</i> <i>PSP 05-060</i>				
				September 2008 7 - 19

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
Deterioration	<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 \$12,499. 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 \$17,631. 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 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>	owner will be responsible for implementation	Resource Management Agency will be responsible for enforcement of this mitigation measure.	2027

CUMULATIVE AIR QUALITY, WATER QUALITY AND BIOLOGICAL IMPACTS

FM Jerseys Dairy
Draft Environmental Impact Report
PSP 05-060

September 2008
7 - 20

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
5.1: Air Quality Degradation	<p>Mitigation Measure #5.1: The facility is permitted by Tulare County for 3,200 Jersey milk cows and support stock totaling 2,637 animal units on 386 crop acres. The owner/operator shall annually provide a copy of the required Dairy Annual Compliance Report to Tulare County Planning, Project Review section which will allow ongoing monitoring of any changes which may impact overall air quality within Tulare County. Currently this report is due in November of each year.</p> <p>The owner/operator shall comply with all feasible pertinent requirements of the SJVAPCD including BACTs and CMPs (Appendices F and J).</p>	Condition of Special Use Permit	The Tulare County Resource Management Agency and the SJVAPCD.	Continued monitoring during dairy operations.
5.4: Loss of Habitat for Special-Status Animals	<p>Mitigation Measure #5.4.1: The project is required to preserve 386 acres of row crops to satisfy its wastewater disposal requirements.</p> <p>Mitigation Measure #5.4.2: Because there is potential for kit foxes to forage and den on and in the vicinity of the project site, the developer shall follow the <i>Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance</i> (USFWS 1999) and any other mitigation measure currently established pursuant to law by the applicable wildlife regulatory agencies.</p> <p>Mitigation Measure #5.4.3: Prior to harvesting any grain crop on, and prior to clearing and grading for, dairy facilities construction (if during the nesting season, February 15 through September 15), a qualified biologist or ornithologist should inspect the site. If tricolor blackbirds or other sensitive or migratory birds</p>	<p>The mitigation measures shall be incorporated in the conditions of approval for the project by the Tulare County Resource Management Agency, requiring implementation by the applicant and the operator.</p> <p>Monitoring of compliance shall be the responsibility of the based on records to be maintained by the operator</p>		Continued monitoring during dairy operations.

Impact	Mitigation Measures	Implementation	Monitoring	Time Span
	are nesting in the grain crop or in a fallowed field on the site, then site harvesting, clearance and grading shall be delayed until young have fledged.			
	<p>Mitigation Measure #5.4.4: No Swainson's hawks or active nests were observed onsite. However, to protect Swainson's hawks that may from time to time be forage onsite, the CDFG has prepared a staff report that is summarized here and presented in its full text in Appendix X, which must be implemented by the applicant.</p> <ol style="list-style-type: none"> 1. There shall be no intensive new disturbances which may cause nest abandonment within 1/4 mile of an active nest between March 1 and September 15. 2. The requirement to commit 386 acres to permanent cropland will mitigate for potential loss of foraging habitat if an active nest becomes established. 			

ACCEPTANCE

I/we, Frank Mendonsa

do hereby accept the Special Use Permit granted by the foregoing resolution of the Planning Commission and agree that I/we, my/our heirs, executors, administrators, and assigns will well and faithfully observe all of the conditions and qualifications to said Special Use Permit set forth in the foregoing resolution of the Planning Commission attached thereto, and I/we, acknowledge and agree that should I/we, my/our heirs, executors, administrators, or assigns, fail to observe any of the said conditions or qualifications to said Special Use Permit, the Planning Commission or any body or officer designated by law or ordinance may, on its own motion, revoke or modify said Special Use Permit pursuant to the procedure established by law or ordinance and said Special Use Permit shall thereupon be null and void and of no further effect.

Frank Mendonsa

(signatures)

State of California }
County of Tulare }

On 4/20/09 before me, Juanita Sustaita, Notary Public,
personally appeared Frank Mendonsa who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature of Notary Public



DO NOT RECORD UNTIL THIS SECTION HAS BEEN SIGNED OFF BY
THE RESOURCE MANAGEMENT AGENCY

Compliance Fees \$9,565.25 Received by Melody Syboun Receipts Nos. 07750 &
Date 3/2/09 & 3/11/09

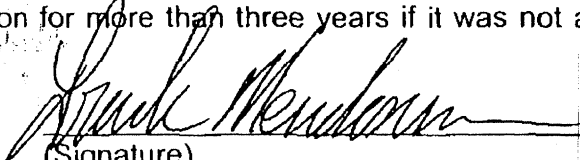
RIGHT TO FARM NOTICE

RE: Use Permit No. PSP 05-060 FM Jerseys Dairy

In accordance with Section 7-29-1070(a) of the Tulare County Ordinance Code; and as a condition of approval of the above-referenced use permit, parcel map, subdivision map or mining and reclamation plan, the undersigned hereby acknowledges that:

It is the declared policy of Tulare County to conserve, enhance and encourage agricultural operations within the County. Residents of property on or near agricultural land should be prepared to accept the inconveniences and discomfort associated with agricultural operations, including, but not necessarily limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery (including aircraft) during any 24 hour period, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. Consistent with this policy, California Civil Code Section 3482.5 provides that no agricultural operation, as defined and limited by that section, conducted and maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality, shall be or become a nuisance, private or public, due to any changed condition in or about the locality, after the same has been in operation for more than three years if it was not a nuisance at the time it began.

Dated: 4-20-09

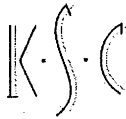

(Signature)

Frank Mendonsa
(Print Name)

Dated: _____

(Signature)

(Print Name)



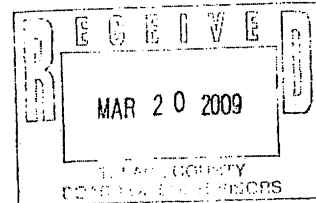
KAHN, SOARES & CONWAY, LLP

ATTORNEYS AT LAW

JAN L. KAHN
HANFORD OFFICE
jkahn@kschanford.com

March 19, 2009

Tulare County Board of Supervisors
2800 W. Burrel
Visalia, California 93291



Re: Appeal of Approval of Use Permit No. PSP 05-060

Dear Board of Supervisors:

On behalf of Ribeiro Dairy, we hereby appeal the decision of the Tulare County Planning Commission on March 11, 2009, to certify the Environmental Impact Report (SCH No. 2006101075) and to approve Use Permit No. PSP 05-060, 2009, through their Resolution No. 8428. Enclosed is our firm's check in the sum of \$300.00 as and for the appeal fee.

Please notify me of the time and place of the hearing on this appeal.

Sincerely,

KAHN, SOARES & CONWAY, LLP

Jan L. Kahn

cc: Mike Riberio
Tulare County Resource Management Agency
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