

11 LAND USE COMPATIBILITY

This land use chapter provides an evaluation of land use compatibility for the proposed Oliveira Dairy Expansion project. As established in the Initial Study (IS) for the proposed project (see Appendix A, *Notice of Preparation and Initial Study*), due to the proximity of off-site residences to the project facilities, the proposed dairy expansion could be incompatible with existing land uses. Further, the proposed dairy expansion could conflict with Merced County Code setback requirements. Additional potential land use effects have been previously evaluated in the project IS and will not be evaluated further in this chapter. (These less-than-significant impacts are briefly summarized in Section 11.3 below.)

The following assessment provides a discussion of the relationship of the proposed project to the policies and procedures of the Merced County General Plan, the Merced County Animal Confinement Ordinance (ACO) (a chapter of the Merced County Zoning Code), and other provisions of the Merced County Zoning Code.

11.1 REGULATORY FRAMEWORK

11.1.1 LAND USE REGULATION

Merced County has implemented extensive regulation of land use for areas within its jurisdiction. This regulation generally occurs through the County's General Plan and Zoning Ordinance. Land use within the project area is currently regulated by Merced County through the various plans and ordinances adopted by the County.

MERCED COUNTY GENERAL PLAN AND ZONING ORDINANCE

The 2030 General Plan (Merced County 2013)¹ is a long-range, generalized planning policy document to guide development of the county over the next 20 years. The General Plan consists of a policy document and a series of land use and circulation maps and diagrams. The narrative policy document sets forth the adopted policies of the County regarding issues of public interest and regulation. Merced County's five guiding principles - agriculture, economic development, environmental quality, public facilities and services, and transportation - reflect a general community consensus about the key considerations of the General Plan. Topics addressed in the General Plan include goals, policies, and programs regarding: land use and community character; agriculture; transportation and circulation; housing; public facilities and services; natural resources; recreation and cultural resources; health and safety; air quality; and water resources.

The project site and the areas surrounding the site are designated Agricultural on the Merced County General Plan Land Use Diagram. As set forth in the 2030 Merced County General Plan, the Agricultural land use designation:

... provides for cultivated agricultural practices which rely on good soil quality, adequate water availability, and minimal slopes. This is the largest County land use

¹ The 2030 Merced County General Plan was adopted on December 10, 2013. The document is available at the Merced County Community and Economic Development Department or at: <<https://www.co.merced.ca.us/index.aspx?NID=2018>>

designation by area in the County and is typically applied to areas on the valley floor. (Merced County 2013)

The project site and the area surrounding the site in Merced County are located in the A-1 (General Agricultural) zoning district of Merced County. The purpose of the General Agriculture zone is to provide for areas of intensive farming operations dependent on higher quality soils, water availability, and relatively flat topography; and to host agricultural and/or industrial uses dependent on proximity to agricultural production or requiring a location in sparsely populated areas. Parcels smaller than 40 acres down to a minimum of 20 acres can be considered under the General Agriculture zone where the agricultural productivity of the property will not be reduced.

Animal confinement facilities such as dairies may be permitted in all agricultural zones within Merced County subject to approval of an Administrative Permit or Conditional Use Permit (CUP) as determined by the number of off-site dwellings within the windshed, and whether animal confinement facility criteria are met. Animal confinement facilities face greater regulatory scrutiny if greater than five off-site residential dwellings are located within the windshed, defined as an area of 1,320 feet upwind to 2,640 downwind of the periphery of the animal facility, or if the animal confinement facility does not meet other locational criteria as defined by County Code Section 18.48.040 (B). For the Oliveira Dairy Expansion project, there are several off-site residences located within the windshed of the dairy. There are also four off-site residences within 1,000 feet of existing active animal facilities. Because there are off-site residences that are situated at a distance that is less than the setback distances established in the Merced County Code locational criteria, Merced County is considering the dairy project under its Conditional Use Permit process.

Within Merced County, Conditional Use Permits are discretionary permits that require special review and control to ensure that a use of land is compatible with the neighborhood and surrounding residences. Land uses subject to a CUP are considered more likely to have greater impacts than uses permitted by right, or uses permitted under Administrative Permits (Merced County Code Section 18.50.020 (B)(3)). The proponents of the proposed Oliveira Dairy Expansion project have made application to the County of Merced for a Conditional Use Permit (CUP16-005) to construct and operate the proposed dairy expansion.

Open Space Action Plan

The 2030 Merced County General Plan contains an Open Space Action Plan (OSAP). The Open Space Development Review System (OSDRS) is one of the primary implementing tools of the County's Open Space Action Plan. Through such a review system, daily planning and permit approval decisions should reflect and implement the adopted policies and development standards of the 2030 General Plan. The system is intended for utilization by developers in the design and building of projects, and by planners and decision makers in their review of projects for conformance with County policy. The system is fundamentally a process for assessing the appropriateness of proposed developments, including their compatibility with surrounding environmental constraints and resources. This system of review is required of all projects for which a building permit or other entitlement is necessary, such as a land division or use permit, as well as during policy and ordinance amendment. For project consistency with the OSDRS, see Table 11-2 in Section 11.3 of this chapter. Potential impacts to biological resources were evaluated in Chapter 6, *Biological Resources*, of this EIR.

Merced County Code and Animal Confinement Ordinance

Merced County's ACO acts to provide a comprehensive set of environmental compliance regulations affecting animal confinement facilities in Merced County. These regulations include several locational criteria to minimize land use conflicts with urban and sensitive land uses, and adjacent rural residences. To address these potential land use impacts, the EIR prepared for the ACO contains mitigation measures that require implementation of applicable chapters of the Merced County Code during environmental review of animal confinement facility projects such as the Oliveira Dairy Expansion project.

Chapter 18.48.040 (B)(1)(b) of the Merced County Code requires a setback of at least 1,000 feet between new animal confinement facilities and any off-site residences. For an existing facility such as the Oliveira Dairy, if the separation distances are less for the uses or boundaries described in Chapter 18.48.040 (B)(1), modification or expansion of the facility may not decrease the existing separation distance unless the off-site property owner provides written permission (Merced County Code Chapter 18.48.040 (B)(2)). The setback distance is measured from the nearest point of active areas of the animal confinement facility to the nearest point of the residence. For the Oliveira Dairy, there are four off-site residences within 1,000 feet; construction of the proposed facilities would not reduce the existing separation distances to off-site residences within 1,000 feet. Further, construction of the proposed facilities would not reduce the distance to residences currently greater than 1,000 feet from active dairy facilities to a separation distance less than 1,000 feet.

The ACO prohibits new dairies within one-half mile of urban areas, areas zoned for residential uses, or concentrations of rural residences (Merced County Code Chapter 18.48.040 (B)(1)(a)). The ACO also protects sensitive uses such as schools, hospitals, jails, public parks, or federally or State owned wildlife refuges from the nuisance effects of dairies by establishing a one-half mile setback from new dairies². For an existing facility, modification or expansion of the dairy facility must not decrease the existing separation distance if it is less than one-half mile. There are no urban areas, areas zoned for residential uses, concentrations of rural residences, or sensitive uses specified by the ACO within one-half mile of active dairy facilities. The City of Merced (city limits) is located approximately two miles east of the active dairy facilities. The project site is located 1.25 miles north of the Grasslands Area Focus Boundary, and 2.25 miles north of the Grasslands Ecological Area.

Table 11-3 in Section 11.3 of this chapter lists locational criteria contained in the ACO, and project compliance with these regulations. (For a complete listing of Merced County Regulations Pertaining to Dairies and Other Animal Confinement Facilities, see Appendix C.)

² 2030 Merced County General Plan Policies LU-4.7 and LU-1.13 prohibit rural commercial and industrial uses, secondary residences, and ancillary agricultural uses within a half-mile of either federal or State wildlife refuges, or managed wetlands within the Grasslands Ecological Area when it is determined by the County that there could be an unmitigated impact to natural resources or habitat. See Table 11-1 for a discussion of project consistency with these policies.

11.2 ENVIRONMENTAL SETTING

11.2.1 PROJECT LOCATION AND SETTING

The existing Oliveira Dairy is located in unincorporated Merced County. The project site is located on the southwest corner of West Oak Avenue and North Gurr Road in the Merced area (for additional project area information, see Chapter 3, *Project Description*). Adjacent existing land uses include several off-site single-family residences associated with other agricultural operations (see Figure 3-2 and Table 3-2). There are several off-site residences located within the windshed of the dairy (defined as an area of 1,320 feet upwind to 2,640 downwind of the periphery of the animal facility) (see Figure 3-6). There are four off-site residences within 1,000 feet: residences approximately 610 and 700 feet south of the wastewater storage ponds and west of Gurr Road; and residences 880 feet and 940 feet southwest of the feed storage area north of Dickenson Ferry Road (see Figure 3-10 in Chapter 3, *Project Description*). There are other animal confinement facilities in the vicinity of the project area, including a facility immediately southwest of the Oliveira Dairy, and additional facilities located west and north of the project area.

11.2.2 MERCED COUNTY PERMITTING HISTORY

Merced County records indicate there are several permits on file for the project site. In June 1992, AP 203 was issued to re-establish the dairy for 287 total animal units. There is also a permit for a second residence on file. The NMP indicates that the facility has been in operation since 1970. To allow for the expansion of the dairy, the project sponsor has submitted an application for issuance of a new Conditional Use Permit (CUP16-005) from the County.

11.3 ENVIRONMENTAL EFFECTS

11.3.1 SIGNIFICANCE CRITERIA

As set forth in Appendix G to the State CEQA Guidelines, Section XI, *Land Use and Planning*, the following criteria have been established to quantify the impact of an adverse effect for evaluation pursuant to CEQA. A project would normally result in a significant impact if the project would:

- Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. (XI.b)

An additional land use assessment criterion previously evaluated in the project IS/NOP was whether the project would:

- Physically divide an established community. (XI.a)

This impact was found to be less than significant; therefore, it will not be evaluated further in this chapter.

PROJECT CONSISTENCY WITH ADOPTED MERCED COUNTY PLANS AND POLICIES

The following discussion evaluates the consistency of the proposed Oliveira Dairy Expansion project with Merced County policies. The policies of the 2030 Merced County General Plan, the

consistency of the proposed dairy project with those policies, and the reasoning for the conclusions are set forth in Table 11-1.

Because compliance or noncompliance with adopted plans and policies does not in itself result in a physical impact to the environment, no environmental impacts are identified in this analysis; rather, the evaluation concentrates on the proposed project’s compliance with adopted Merced County policy. Where a policy regulates or sets standards for an aspect of the environment, for instance in setting flood proofing standards for areas subject to 100-year frequency floods, the impact is identified and evaluated in the appropriate topical section of this report, so that agency policies as environmental standards are used in evaluating specific environmental impacts.

Policy compliance is often a matter of interpretation. Unless their decision is appealed to the Board of Supervisors, the Merced County Planning Commission is the ultimate arbiter of public policy for this project, and their judgment regarding the project and a specific policy may be different from that set forth in this report. Thus, the following policy evaluation should be viewed as preliminary, with the ultimate decision to be made by the appropriate appointed and elected officials.

Table 11-1 Consistency of the Proposed Oliveira Dairy Expansion Project with the 2030 Merced County General Plan Policies		
Objective or Policy	Consistency	Discussion
Land Use Element		
Policy LU-1.13: Wetland Habitat Area Separation Do not allow rural commercial and industrial uses, secondary residences, and ancillary agricultural uses within a half mile of either State or Federal wildlife refuges, or managed wetlands within the Grasslands Ecological Area when it is determined by the County that there could be an unmitigated impact to natural resources or habitat.	Yes	There are no protected habitat areas, such as wildlife refuges or wildlife management areas, within two miles of the project site. The project site is well beyond the minimum one-half mile setback for these uses, and is outside of the Grasslands Focus Area boundary. The proposed project consists of an expansion of existing dairy facilities and does not include ancillary uses such as additional farm worker housing as described in Policy LU-2.4 below.
Policy LU-2.3: Land Use Activity Limitations Limit allowed land use within Agricultural and Foothill Pasture areas to agricultural crop production, farm support operations, and grazing and open space uses.	Yes	The existing and proposed dairy facility is an allowed use in the agricultural land use designation subject to approval of an Administrative Permit or Conditional Use Permit.
Policy LU-2.4: Secondary Uses in Agricultural Areas Except as otherwise provided by law, limit ancillary uses in Agricultural and Foothill Pasture areas to include secondary single-family residences, farm worker housing, agricultural tourism related uses, and agricultural support services, provided that such uses do not interfere with historic agricultural practices or result in adverse health risks, or conflict with sensitive habitats or other biological resources.	Yes	The existing uses at the project area include a dairy facility, associated cropland, and secondary single-family residences. The proposed project includes an expansion of the existing dairy facilities.

Table 11-1 Consistency of the Proposed Oliveira Dairy Expansion Project with the 2030 Merced County General Plan Policies

Objective or Policy	Consistency	Discussion
<p>Policy LU-2.7: Rural Energy Production Allow the development of ethanol production, co-generation, solar, and wind facilities in Agricultural and Foothill Pasture areas that produce renewable energy, support agricultural-related industries, and/or use agricultural waste, provided that such uses do not interfere with agricultural practices or conflict with sensitive habitats or other biological resources.</p>	n/a	There is no renewable energy production included with the proposed dairy expansion.
<p>Policy LU-4.7: Wetland Habitat Area Separation Do not allow rural commercial and industrial uses, secondary residences, and ancillary agricultural uses within a half mile of either State or federal wildlife refuges, or managed wetlands within the Grasslands Ecological Area when it is determined by the County that there could be an unmitigated impact to natural resources or habitat.</p>	Yes	See Policy LU-1.13 above.
<p>Policy LU-10.12: Consultation with State and Federal Agencies, as follows: Continue to consult with applicable State and Federal regulatory agencies during project review and permitting activities.</p>	Yes	The Notice of Preparation of an EIR for the Oliveira Dairy Expansion project was filed with the Office of Planning and Research (OPR) on August 21, 2018. The NOP and Initial Study were circulated to the public, local and state agencies, and other interested parties to solicit comments on the proposed project. This Draft EIR similarly will be circulated for public review and comment.
<p>Policy LU-10.14: Consultation with Grassland Resources Regional Working Group Consult with the Grasslands Resources Regional Working Group during project review and conservation planning efforts for projects within the boundaries of the Grasslands Focus Area.</p>	Yes	Consultation as required by this policy is not necessary since the project site is approximately 2.25 miles north of the Grasslands Ecological Area boundary and outside of the Grasslands Focus Area boundary.
Agricultural Element		
<p>Policy AG-3.1: Right-to-Farm Ordinance Continue to implement the Right-to-Farm Ordinance to define and limit instances where agricultural operations may be considered a nuisance to surrounding rural residential, residential or urban development.</p>	Yes	The existing dairy is consistent with agricultural uses in the surrounding area. Mitigation measures have been included in this chapter to ensure land use compatibility of the expanded dairy with existing off-site residential uses.

Table 11-1 Consistency of the Proposed Oliveira Dairy Expansion Project with the 2030 Merced County General Plan Policies

Objective or Policy	Consistency	Discussion
<p>Policy AG-3.9: New Confined Animal Facility Location Requirements Require new or expanded confined animal facilities to be located, at a minimum:</p> <p>a) One-half mile from any Rural Center or Urban Community boundary; residentially-designated or zoned property; sensitive uses such as schools, hospitals, jails, Federal wildlife areas, State wildlife areas, and public parks; or concentrations of five or more off-site residences. This does not include areas for municipal uses such as wastewater treatment facilities, airports, or solid waste recycling or disposal facilities located outside urban areas; and</p> <p>b) One thousand feet from any off-site residence, unless there is written permission from the off-site property owner.</p>	Yes	The proposed project would be compliant with setback provisions for the protection of the specified uses, including federal and State wildlife areas (see Impact LU-3). There are no residentially zoned areas or concentrations of rural residences within the 0.5-mile setback distance. The Merced Specific Urban Development Plan (SUDP) boundary is located over two miles from the active dairy facilities. There are four off-site residences located within 1,000 feet of the existing facility. The proposed dairy expansion would not reduce the distance to off-site residences within 1,000 feet (see Impact LU-1 and LU-2).
Transportation and Circulation Element		
<p>Policy CIR-1.8: Private Roadway Improvements Require private roads and related improvements to be designed and installed to County standards as contained in the Improvement Standards and Specifications Manual (Title 16 of County Code) and Subdivision Code (Title 17), unless it can be demonstrated to the satisfaction of the approval authority that alternative improvements will be provided sufficient to fulfill the goals and objectives of this Chapter and the respective Codes.</p>	n/a	The Oliveira Dairy Expansion project impact to traffic on County roadways was evaluated in the IS/NOP. No modifications to any existing roadway are proposed either during project construction or operation.
<p>Policy CIR-1.14: Required Structural Improvements Require developers of mining, large commercial, agricultural commercial, and industrial projects to either make appropriate roadway improvements and/or provide a funding mechanism for maintenance of the structural sections of County roadways when such projects could result in appreciable increases to commercial truck traffic and/or compromise the integrity of existing road sections.</p>	Yes	The proposed dairy expansion would result in an increase from 24 to 40 average daily trips, an increase of 16 daily trips, including an additional 5 heavy truck trips per day. Based on the level of traffic increase, there are no roadway improvements or payments required by the Merced County Department of Public Works.

Table 11-1 Consistency of the Proposed Oliveira Dairy Expansion Project with the 2030 Merced County General Plan Policies

Objective or Policy	Consistency	Discussion
<p>Policy CIR-1.15: Right-of-Way and Roadway Improvement Requirements Require right-of-way dedication and roadway improvements to offset project-related traffic and roadway impacts on all discretionary land use entitlement approvals.</p>	Yes	See above.
<p>Policy CIR-1.18: Right-of-Way Work Require encroachment permits for work within a right-of-way.</p>	n/a	At this time, the proposed project would not require an Encroachment Permit since there is no work proposed within any right-of-way.
Public Facilities and Services Element		
<p>Policy PFS-7.10: Adequate Fire Flows for Agricultural Facilities Require all agricultural commercial facilities to have adequate water supply and fire flows to meet the Uniform Fire Code and other State and local ordinances.</p>	Yes	As described in the IS/NOP, the Merced County Fire Department generally imposes requirements for on-site water storage for fire protection. Compliance with measures as set forth by the Fire Department would be required as conditions of approval and would reduce fire risk and hazard to levels found acceptable by the Merced County Fire Department.
Natural Resources Element		
<p>Policy NR-1.7: Agricultural Practices Encourage agricultural, commercial, and industrial uses and other related activities to consult with environmental groups in order to minimize adverse effects to important or sensitive biological resources.</p>	Yes	See response to Policy LU-10.12 above.
<p>Policy NR-1.17: Agency Consultation Consult with private, local, State, and Federal agencies to assist in the protection of biological resources and prevention of degradation, encroachment, or loss of resources managed by these agencies.</p>	Yes	See response to Policy LU-10.12 above.
<p>Policy NR-2.9: Energy Conservation Encourage and maximize energy conservation and identification of alternative energy sources (e.g., wind or solar).</p>	Yes	Operations at the Oliveira Dairy would be considered energy efficient from statewide and Valley-wide perspectives. Impact GHG-2 describes several energy efficiency upgrades that have been incorporated into existing operations.
<p>Policy NR-3.1: Soil Protection Protect soil resources from erosion, contamination, and other effects that substantially reduce their value or lead to the creation of hazards.</p>	Yes	Merced County’s environmental procedures and standard conditions of approval include erosion control measures for both public and private development projects within the county. Additionally, the project will be required to comply with requirements of the General Permit for Discharges of Storm Water Associated with Construction Activity.
<p>Policy NR-3.2: Soil Erosion and Contamination Require minimal disturbance of vegetation during construction to improve soil stability, reduce erosion, and improve stormwater quality.</p>	Yes	See above.

Table 11-1 Consistency of the Proposed Oliveira Dairy Expansion Project with the 2030 Merced County General Plan Policies

Objective or Policy	Consistency	Discussion
Recreation and Cultural Resources Element		
Policy RCR-1.7: Agricultural Land Use Compatibility Consider agriculture as a compatible land use and appropriate buffer for public and private recreation areas.	n/a	There are no public or private recreation uses immediately adjacent to the project site or area.
Policy RCR-2.5: Human Remains Discovery Require that, in the event of the discovery of human remains on any project construction site, all work in the vicinity of the find will cease and the County Coroner and Native American Heritage Commission will be notified.	Yes	Chapter 7, <i>Cultural Resources and Tribal Cultural Resources</i> of this EIR includes conditions of approval that would require stopping work in the event of human remains discovery until the County coroner and Native American Heritage Commission (NAHC) are notified and appropriate action is taken.
Policy RCR-2.10: Tribal Consultation Consult with Native American tribes regarding proposed development projects and land use policy changes consistent with Planning and Zoning Law at Government Code Section 65351, and the OPR Tribal Consultation Guidelines (2005).	Yes	Chapter 7, <i>Cultural Resources and Tribal Cultural Resources</i> of this EIR, written notification and consultation with Native Americans was conducted during the Draft Program EIR preparation process for the 2030 General Plan Update. There were no responses received, and no sacred lands sites were identified as areas of concern with implementation of the 2030 General Plan. Lead agencies, such as Merced County, must consult with California Native American Tribes who are traditionally and culturally affiliated with the geographic area of the proposed project, and who have requested such consultation in writing. As of the date of this Draft EIR (<i>Guerrero, pers. comm.</i> 2018), no tribes have requested such consultation with Merced County.
Health and Safety Element		
Policy HS-5.1: Compliance with Safety Standards Require that hazardous materials are used, stored, transported, and disposed of in a safe manner, in compliance with local, State, and Federal safety standards.	Yes	The on-site storage of any hazardous material over threshold quantities (55 gallons; 200 cu. ft.; or 500 pounds) would require a HMBP to be filed with the Merced County DEH. The HMBP and annual update for the Oliveira Dairy has been filed with the DEH.
Air Quality Element		
Policy AQ-1.3: Agricultural Operations Emission Reduction Strategies Promote greenhouse gas emission reductions by encouraging agricultural operators to use carbon efficient farming methods (e.g., no-till farming, crop rotation, cover cropping); install renewable energy technologies; protect grasslands, open space, oak woodlands, riparian forest and farmlands from conversion to other uses; and develop energy-efficient structures.	Yes	The proposed dairy expansion includes maintaining the cultivation of cropland for the production of feed for the cows on site. As evaluated in Chapter 8, <i>Greenhouse Gas Emissions and Energy Use</i> , of this EIR, impacts from greenhouse gas emissions were considered less than significant. Operations at the Oliveira Dairy would be considered energy efficient from statewide and Valley-wide perspectives, and several energy efficiency features are used in agricultural operations (see Impact GHG-2).

Table 11-1 Consistency of the Proposed Oliveira Dairy Expansion Project with the 2030 Merced County General Plan Policies

Objective or Policy	Consistency	Discussion
<p>Policy AQ-2.2: Development Review Process Use the development review process to achieve measurable reductions in criteria pollutant, toxic air contaminants, and greenhouse gas emissions.</p>	Yes	As part of the development review process, this EIR evaluates air quality and greenhouse gas emission impacts of the proposed Oliveira Dairy Expansion project (see Chapter 5, <i>Air Quality and Odors</i> , and Chapter 8, <i>Greenhouse Gas Emissions and Energy Use</i> , of this EIR) and includes mitigation measures to minimize impacts.
<p>Policy AQ-2.3: Cumulative Impacts Encourage the reduction of cumulative air quality impacts produced by projects that are not significant by themselves, but result in cumulatively significant impacts in combination with other development.</p>	n/a	Potential project impacts due to both project specific and cumulative air quality effects have been determined to be significant and unavoidable. Air quality impacts of the proposed Oliveira Dairy Expansion project are evaluated in Chapter 5, <i>Air Quality and Odors</i> , of this EIR, and mitigation measures are included to minimize impacts.
<p>Policy AQ-2.4: Mitigation Require that local and regional air quality impacts identified during CEQA review for projects reviewed and approved by the County are consistently and fairly mitigated.</p>	Yes	See above.
<p>Policy AQ-2.5: Innovative Mitigation Measures Encourage innovative mitigation measures and project redesign to reduce air quality impacts by coordinating with the San Joaquin Valley Air Pollution Control District, project applicants, and other interested parties.</p>	Yes	See above.
<p>Policy AQ-2.7: Air District Best Performance Standards Require the County to use the Best Performance Standards adopted by SJVAPCD during the development review and decision-making process to ensure new projects meet the targets set by the district.</p>	Yes	As part of the development review process, this EIR evaluates air quality of the proposed Oliveira Dairy Expansion project and requires implementation of SJVAPCD Best Performance Standards, including compliance with Regulation VIII, the ATC/PTO permit process, and implementation of Best Available Control Technology to be developed during permit review (see Chapter 5, <i>Air Quality and Odors</i> , of this EIR).
<p>Policy AQ-6.1: Particulate Emissions from Construction Support the San Joaquin Valley Air Pollution Control District's efforts to reduce particulate emissions from construction, grading, excavation, and demolition to the maximum extent feasible and consistent with State and Federal regulations.</p>	Yes	As discussed in Chapter 5, <i>Air Quality and Odors</i> , of this EIR, the project applicant would be required to comply with applicable SJVAPCD Rules and Regulations, including Regulation VIII, which specifies control measures for PM ₁₀ emissions from construction related activities, including demolition.

Table 11-1 Consistency of the Proposed Oliveira Dairy Expansion Project with the 2030 Merced County General Plan Policies

Objective or Policy	Consistency	Discussion
<p>Policy AQ-6.8: Voluntary Emissions Reduction Agreement Require all project applicants, where project emissions have been evaluated to exceed SJVAPCD significance thresholds, to consult with the SJVAPCD regarding the establishment of a Voluntary Emissions Reduction Agreement between the applicant and the SJVAPCD. Support the SJVAPCD in its efforts to fund the Emission Reduction Incentive Program.</p>	Yes	Chapter 5, <i>Air Quality and Odors</i> , of this EIR includes mitigation requiring the project applicant to consult with the SJVAPCD regarding a Voluntary Emissions Reduction Agreement (see Mitigation Measure AQ-3).
Water Element		
<p>Policy W-2.4: Agricultural and Urban Practices to Minimize Water Contamination Encourage agriculture and urban practices to comply with the requirements of the Regional Water Quality Control Board for irrigated lands and confined animal facilities, which mandate agricultural practices that minimize erosion and the generation of contaminated runoff to ground or surface waters by providing assistance and incentives.</p>	Yes	As discussed in Chapter 10, <i>Hydrology, Water Quality, and Soil Erosion</i> , the existing dairy is subject to the requirements of the Central Valley Regional Water Quality Control Board General Order for Existing Milk Cow Dairies. The proposed expansion would require obtaining coverage under Individual Waste Discharge Requirements, which will include additional measures to minimize these effects.
<p>Policy W-2.5: Septic Tank Regulation Enforce septic tank and onsite system regulations of the Regional Water Quality Control Board to protect the water quality of surface water bodies and groundwater quality.</p>	Yes	The proposed dairy expansion would involve the installation of a new septic system at the proposed milking parlor. Impact HYD-9 in Chapter 10, <i>Hydrology, Water Quality, and Soil Erosion</i> , includes mitigation to ensure the safe treatment and disposal of wastewater and the maintenance of groundwater quality.
<p>Policy W-2.6: Wellhead Protection Program Enforce the wellhead protection program to protect the quality of existing and future groundwater supplies by monitoring the construction, deepening, and destruction of all wells within the County.</p>	Yes	As discussed in Impact HYD-7 in Chapter 10, <i>Hydrology, Water Quality, and Soil Erosion</i> , existing wells at the project site meet current Merced County standards for well protection, and no mitigation would be required.
<p>Policy W-3.13: Agricultural Water Reuse Promote and facilitate using reclaimed wastewater for agricultural irrigation, in accordance with Title 22 and guidelines published by the State Department of Public Health.</p>	Yes	Tailwater return used on land application fields are discussed in Chapter 10, <i>Hydrology, Water Quality, and Soil Erosion</i> .

Source: Merced County, 2013; Planning Partners, 2018.

Table 11-2 includes an evaluation of project consistency with the Open Space Development Review System as set forth in the County’s General Plan Open Space Action Plan.

Table 11-2 Consistency of the Proposed Oliveira Dairy Expansion Project with the Merced County General Plan Open Space Development Review System		
Question	Response	Discussion
1. Basic Land Use Category, Zone Code Consistency and Community Service Availability Determination	Yes	The proposed project is consistent with the Merced County Agricultural land use designation. The project is consistent with the General Agricultural zoning designation. As evaluated in the IS/NOP, the Oliveira Dairy Expansion project impact to County services and facilities has been found to be less than significant.
2. Open Space Inventory Map and Data Base Review	Yes	Agriculture is considered an open space use. The proposed dairy expansion project would be a continuation of existing agricultural uses.
3. Demonstration by the permit applicant of consultation with the California Department of Fish and Wildlife, the Central Valley Regional Water Quality Control Board, the State Water Resources Control Board, the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and/or the Army Corps of Engineers, and any water purveyor serving the project area, as appropriate, to evaluate resources that could be affected by the proposed action; and proof of issuance of permits by these agencies, as required	Yes	Through development of the EIR and the CEQA process, consultation with applicable agencies has been conducted on behalf of the project applicant. Where mitigation measures have been suggested by resource agencies, they have been included in the EIR.
4. Environmental Determination	Yes	With issuance of the NOP, an environmental determination was made that the proposed project may have a significant effect on the environment, and an EIR is required. This Draft EIR represents the record of expanding upon the determination.
5. Land Use and Sensitive Resource Compatibility Determination	To be determined by the Planning Commission	The proposed project is located in an agricultural district in Merced County. Adjacent land uses include similar agricultural uses, dairy farms, and crop production areas. The project would be consistent with the requirements of the Merced County Zoning Ordinance with implementation of mitigation measures. Impacts LU-2 and LU-3 of this chapter evaluate compatibility with nearby sensitive resources. These impacts were found to be less than significant following mitigation. The Merced County Planning Commission will make the ultimate compatibility finding.

Source: Merced County, 2013; Planning Partners, 2018.

Table 11-3 below lists locational criteria contained in the ACO, and project compliance with these regulations. (For a complete listing of Merced County Regulations Pertaining to Dairies and Other Animal Confinement Facilities, see Appendix C.)

Table 11-3 Consistency of the Proposed Oliveira Dairy Expansion Project with the Locational Requirements of the Merced County Code		
Requirement	Consistency	Discussion
Chapter 18.48.040 Locational Criteria		
B. OTHER LOCATIONAL CRITERIA		
1. New Facilities		
<p>a. The new facility shall be located more than one-half mile from the nearest boundary of the following: Specific Urban Development Plan, Rural Residential Center, Highway Interchange Center, or Agricultural Services Center; residentially designated property in the General Plan or residentially zoned property; sensitive uses such as schools, hospitals, jails, public parks, Federal or State owned and managed wildlife areas; or concentrations of five or more offsite residences, provided that to qualify as a “concentration,” residences must be legally established, occupied, located within a contiguous area and must equal or exceed a density of one dwelling unit per acre. Any of the previously mentioned urban boundaries shall not include areas for municipal uses such as wastewater treatment facilities, airports, or solid waste recycling or disposal facilities located outside urban areas.</p>	n/a	The Oliveira Dairy Expansion project involves the expansion of an existing dairy facility and not a new facility. See the consistency evaluation under Section 18.48.040 (B)(2) below.
<p>b. The new facility shall be located at least 1,000 feet from any offsite residence, except that any new facility may locate closer than 1,000 feet from an offsite residence with written permission from the offsite property owner(s). New goat facilities shall be located at least 500 feet from any offsite residences.</p>	n/a	See above.
<p>c. An application for a new facility or modification of an existing facility which has submitted a complete land use permit application to Community and Economic Development shall be exempt from the setbacks in subsection (B)(1)(b) of this section from offsite residences, provided the new offsite single-family residence obtained the building permit after the facility submitted a complete application for a land use permit.</p>	n/a	See above. All adjacent off-site residences are existing and previously permitted residences.
<p>2. Existing Facilities. For an existing facility, if the separation distances are less for the uses or boundaries described in subsection (B)(1) of this section, modification or expansion of the facility must not decrease the existing separation distance, except that expansion or modification of existing facilities may occur if the separation distance is less than one thousand (1,000) feet from on offsite residence and if the offsite property owner(s) provides written permission.</p>	Yes	There are four off-site residences located within 1,000 feet of the existing facility. The proposed dairy expansion would not reduce the distance to these residences. The Merced SUDP boundary is located over two miles from the active dairy facilities.

Table 11-3 Consistency of the Proposed Oliveira Dairy Expansion Project with the Locational Requirements of the Merced County Code

Requirement	Consistency	Discussion
3. Offsite Residences a. New single-family residences not a part of an existing animal confinement facility are prohibited within 1,000 feet of an existing facility with any of the following exceptions: (1) The animal facility owner gives written permission for locating the offsite residence closer than 1,000 feet or; (2) The existing residence is being remodeled or; (3) The existing residence is replaced with another dwelling no closer than the existing separation distance.	n/a	There are no new single-family off-site residences included in the proposed project.

Source: Merced County, 2013; Planning Partners, 2018.

11.3.2 ENVIRONMENTAL IMPACTS

The following discussion examines the potential impacts of the proposed project based on the impact thresholds criterion described above.

Impact LU-1: Consistency with Merced County Land Use Plans and policies adopted to protect the environment, including setback standards (Criterion XI.b)

As proposed, the Oliveira Dairy Expansion project would be consistent with Merced County land use policies, including setback standards for animal confinement facilities. Because the proposed project would comply with land use regulations established by Merced County under the 2030 General Plan, ACO, and Zoning Code provisions, this would be considered a less-than-significant impact.

As indicated in Tables 11-1 and 11-2, the proposed Oliveira Dairy Expansion project would be consistent with the policies and requirements of the Merced County General Plan and the Open Space Action Plan. Table 11-3 indicates that the proposed project would be consistent with the locational requirements of the Merced County Code (Chapter 18). These locational requirements are described in detail below.

The ACO (Merced County Code Chapter 18.48.040 (B)(1)(a)) and Merced County General Plan Policy AG-3.9 prohibit new dairies within one-half mile of urban areas, areas zoned for residential uses, or concentrations of rural residences. For an existing facility, modification or expansion of the dairy facility must not decrease the existing separation distance if it is less than one-half mile. The proposed dairy expansion project is located approximately two miles from the City of Merced SUDP – well beyond the minimum one-half mile setback for urban uses. Also, there are no residentially zoned areas or concentrations of rural residences within the 0.5-mile setback distance. The proposed dairy expansion would not decrease the existing distance to less than 0.5-mile for active dairy facilities to these areas.

The ACO also protects sensitive uses such as schools, hospitals, jails, public parks, or federally or State owned wildlife refuges from the nuisance effects of dairies by establishing a one-half mile setback from new dairies³. For an existing facility, modification or expansion of the dairy facility must not decrease the existing separation distance if it is less than one-half mile. There are no protected habitat areas, such as wildlife refuges or wildlife management areas, within two miles of the project site. For a discussion of consistency with these ACO requirements and land use compatibility with existing wildlife areas, including those within the Grasslands Ecological Area, see Impact LU-3.

Chapter 18.48.040 of the Merced County Code and Merced County General Plan Policy AG-3.9 require at least a 1,000-foot setback between animal confinement facilities such as the Oliveira Dairy and off-site residences. The setback distance is measured from the nearest point of active areas of the animal confinement facility to the nearest point of the residence. For the Oliveira Dairy, there are four off-site residences within 1,000 feet: residences approximately 610 and 700 feet south of the wastewater storage ponds and west of Gurr Road; and residences 880 feet and 940 feet southwest of the feed storage area north of Dickenson Ferry Road (see Figure 3-10 in Chapter 3, *Project Description*). According to Merced County Code Chapter 18.48.040 (B)(2), the modification or expansion of an existing facility must not decrease the existing separation distance from off-site residences less than 1,000 feet unless the off-site property owner provides written permission. Construction of the proposed facilities would occur predominantly west of existing facilities and would not reduce the distance to off-site residences within 1,000 feet. Also, the proposed expansion would not reduce the distance to less than 1,000 feet for any off-site residence currently greater than 1,000 feet from existing active dairy facilities (see Figure 3-10).

Because the proposed dairy expansion would meet Merced County setback requirements, this would be a less-than-significant impact.

Significance of Impact: Less than significant.

Mitigation Measure LU-1: None required.

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

Implementation of the proposed Oliveira Dairy Expansion project could be incompatible with existing off-site residences due to the siting of active dairy facilities in close proximity to these uses. While there have been no nuisance complaints for the dairy, the proposed dairy expansion would not meet Merced County setback requirements for the control of nuisance conditions. This would be a significant impact.

³ 2030 Merced County General Plan Policies LU-4.7 and LU-1.13 prohibit rural commercial and industrial uses, secondary residences, and ancillary agricultural uses within a half-mile of either federal or State wildlife refuges, or managed wetlands within the Grasslands Ecological Area when it is determined by the County that there could be an unmitigated impact to natural resources or habitat. See Table 11-1 for a discussion of project consistency with these policies.

The major land uses adjacent to the dairy project are agricultural and open space land uses. For the proposed Oliveira Dairy, there are four off-site residences located within 1,000 feet of the existing facility. No official nuisance complaints have been reported at the Oliveira Dairy and submitted to DEH (Merced County 2018). While the existing agricultural character of the vicinity would tend to minimize incompatibility to existing uses in the project vicinity, implementation of the dairy expansion project could introduce an additional source of odors, flies, and other insects in the area of these residences. (These potential adverse odor and nuisance insect effects are evaluated in Chapter 5, *Air Quality and Odors* and Chapter 9, *Nuisance Conditions from Insects* of this EIR.) The combination of these nuisance effects contributes on a cumulative level to determine land use compatibility with existing residents in the area.

Merced County regulates land use through the General Plan and Zoning Code. The EIR prepared for the Merced County ACO assesses potential land use conflicts with rural residences for new and expanding animal confinement facilities in Merced County. In efforts to minimize these conflicts and protect agricultural uses, the ACO requires a minimum setback between new or expanded animal confinement facilities and individual off-site rural residents to 1,000 feet, and generally prohibits the construction of new off-site dwellings within 1,000 feet of an existing animal confinement facility, with some exceptions. The ACO also prohibits new dairies within one-half mile of areas designated for residential uses. According to Merced County Code Chapter 18.48.040 (B)(2), the modification or expansion of an existing facility must not decrease the existing separation distance from specified uses. Construction of the proposed facilities would occur predominantly west of existing facilities, and would not reduce the distance to off-site residences within 1,000 feet or areas designated for residential uses within one-half mile. Also, the proposed expansion would not reduce the distance to less than 1,000 feet for any off-site residence currently greater than 1,000 feet from existing active dairy facilities.

While no official nuisance complaints have been reported at the Oliveira Dairy, because the active dairy facilities are located less than 1,000 feet from several off-site residences, there would be an increased potential for nuisance conditions at these residences with implementation of the proposed dairy expansion, and the following mitigation would be required.

Significance of Impact: Significant.

Mitigation Measure LU-2a:

Implement the odor control measures set forth in Mitigation Measure AQ-7a.

Mitigation Measure LU-2b:

Implement the nuisance control measures set forth in Mitigation Measures HAZ-1a and HAZ-1b.

Potential Environmental Effects of Measure: All physical improvements or activities that could result in changes to the physical environment required by this measure would be located within the project area. The impacts of implementing such measures, if any, would be similar to those identified for the project in Chapters 5 to 11 of this EIR.

Significance after Mitigation: Implementation of the foregoing measures would reduce the magnitude of this potential effect by requiring housekeeping and management measures to minimize nuisance insect and odor conditions. While there may be an increased potential for nuisance conditions with the dairy expansion, the proposed expansion would not reduce the setback distances

specified by the ACO, and with implementation of the above mitigation measures, the potential impacts related to land use incompatibility with existing off-site residences would be reduced to less than significant.

Implementation/Monitoring: The Merced County Community and Economic Development Department and Division of Environmental Health shall monitor for compliance. Mitigation Measure LU-2a (AQ-7a) shall be implemented prior to final inspection or prior to initiation of new operations and throughout ongoing operations. Mitigation LU-2b shall be implemented: prior to issuance of a building permit and throughout ongoing operations (MM HAZ-1a and MM HAZ-1b).

Impact LU-3: Land use compatibility with existing wildlife uses adjacent to the project area (ACO)

Implementation of the proposed Oliveira Dairy Expansion project would not be incompatible with adjacent wildlife areas since there are none in the project vicinity. Because the proposed dairy expansion is consistent with the setback requirements of the Merced County ACO and 2030 General Plan; adjacent land uses consist of similar agricultural activities to those present and proposed on site; and no managed wildlife habitat is located adjacent to the project, this would be a less-than-significant impact.

The major land uses adjacent to the dairy project are agricultural and open space land uses. The Merced County Zoning Code Section 18.48.040(B)(1)(a) requires that new animal confinement facilities shall be located more than one-half mile from the nearest boundary of federal and State owned wildlife areas, and the modification or expansion of existing facilities within one-half mile of these areas must not decrease the existing separation distance (Merced County Zoning Code Section 18.48.040(B)(2)). There are no protected habitat areas, such as wildlife refuges or wildlife management areas, within one-half mile of the project site. In addition, 2030 Merced County General Plan Policies LU-4.7 and LU-1.13 prohibit rural commercial and industrial uses, secondary residences, and ancillary agricultural uses within a half mile of either State or Federal wildlife refuges, or managed wetlands within the Grasslands Ecological Area when it is determined by the County that there could be an unmitigated impact to natural resources or habitat. The project site is approximately 2.25 miles north of the Grasslands Ecological Area boundary and outside of the Grasslands Focus Area boundary. The proposed project would be compliant with setback provisions within the ACO and the Merced County General Plan for the protection of federal and State wildlife areas, and managed wetlands within the Grasslands Ecological Area.

Therefore, because the proposed project would be compliant with Merced County setback standards to nearby wildlife area boundaries and managed wetlands, and nearby uses consist of privately owned agricultural activities similar to those at the project area, the proposed expansion would not conflict with adjacent wildlife activities. Impacts related to land use compatibility with existing wildlife uses in the project area would be less than significant.

Significance of Impact: Less than significant.

Mitigation Measure LU-3: None required.

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