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February 20, 2025

## Via Email

Brian Clements  
Director of Permit Services  
San Joaquin Valley Unified Air Pollution Control District  
1990 East Gettysburg Avenue  
Fresno, CA 93726

RE: Tiering Environmental Review Off Kings County's Dairy Element

Dear Mr. Clements,

On February 20, 2025, the California Attorney General's Office sent the enclosed letter to Kings County ("County") regarding the County's implementation of its Dairy Element, which was originally adopted by the County's Board of Supervisors in 2002. As described below and in that letter, because the County does not appear to be implementing or enforcing mitigation measures it adopted for the Dairy Element, reliance on the Dairy Element's streamlined approval process to approve any new dairies or dairy expansion projects at this time would violate the California Environmental Quality Act ("CEQA"). Additionally, because the County is not implementing the mitigation measures for the Dairy Element, environmental review for new dairies or dairy expansion projects cannot be tiered off of the Programmatic Environmental Impact Report ("PEIR") for the Dairy Element. Accordingly, when reviewing permit applications related to new or expanding dairies in Kings County, the San Joaquin Valley Unified Air Pollution Control District ("Air District") cannot tier its environmental review off of the PEIR for the Dairy Element until the County has either (1) fully implemented the Dairy Element mitigation measures, including the Dairy Monitoring Program, or (2) completed a supplemental Environmental Impact Report ("EIR") to modify or delete mitigation measures for the Dairy Element.

### **I. CEQA REQUIRES MITIGATION MEASURES TO BE IMPLEMENTED.**

CEQA requires public agencies to identify and disclose the potentially significant environmental impacts of a proposed project, alternatives to the project, and measures to mitigate those impacts, if feasible. Under CEQA, agencies are required to implement all mitigation measures adopted at the time of project approval. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 524–525.) An agency must "provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures." (Pub. Resources Code, § 21081.6, subd. (b); see CEQA Guidelines, § 15126.4, subd. (a)(2).) In

addition to requiring the implementation of CEQA mitigation measures, the CEQA Guidelines require an agency to implement a mitigation monitoring program to ensure compliance with, and monitor the implementation of, the mitigation measures. (CEQA Guidelines, § 15097, subd. (a).) “The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.” (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.)

Once incorporated, mitigation measures cannot be defeated by ignoring them or by “attempting to render them meaningless by moving ahead with the project in spite of them.” (*Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1167 [internal quotations omitted].) This is true even where subsequent approvals are ministerial. (*Katzeff v. California Department of Forestry & Fire Protection* (2010) 181 Cal.App.4th 601, 614.) A public agency may only modify or delete a mitigation measure if it reviews the continuing need for the mitigation, states a legitimate reason for deleting the earlier adopted mitigation measure, and supports that statement of reason with substantial evidence. (*Lincoln Place Tenants Association v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508-09; *Katzeff, supra*, at p. 614.) Additionally, a “previously adopted mitigation measure cannot be deleted ‘without a showing that it is infeasible.’” (*Lincoln Place Tenants Association, supra*, at p. 1509 [quoting *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 359].) Importantly, those determinations and showings must be made through a supplemental EIR. (*Lincoln Place, supra*, at p. 1509.)

If a public agency proceeds with a project without complying with the adopted mitigation measures, or without preparing and circulating a supplemental EIR for the deletion or modification of the mitigation measures, the public agency has failed to comply with CEQA. (See *Lincoln Place Tenants Association, supra*, 130 Cal.App.4th at p. 1510.) In that situation, a writ of mandate and injunction can be issued to prevent further implementation of the project until the public agency complies with the mitigation measures or modifies or deletes the mitigation measures through a supplemental EIR. (*Ibid.*)

## **II. BECAUSE THE COUNTY IS NOT IMPLEMENTING THE MITIGATION MEASURES FOR THE DAIRY ELEMENT, APPROVING DAIRY PROJECTS UNDER THE DAIRY ELEMENT WOULD VIOLATE CEQA.**

In 2002, the County adopted its Dairy Element as an optional element to its General Plan. When the County adopted the Dairy Element, it completed a PEIR to comply with CEQA. In finalizing the PEIR and adopting the Dairy Element, the County concluded that the Dairy Element would have significant impacts and adopted certain mitigation measures as required under CEQA. However, based on the information the County has provided to the Attorney General’s Office, it appears that the County is not implementing the adopted mitigation measures for the Dairy Element, and it does not appear that the County has modified or deleted its adopted mitigation measures through a supplemental EIR. Consequently, the County would violate CEQA by proceeding with streamlined approvals for dairy projects under the Dairy Element. Additionally, because the County has not implemented the Dairy Element mitigation measures, tiering environmental review off of the PEIR for the Dairy Element would violate CEQA. Accordingly,

the Air District cannot tier its environmental review for new or expanding dairy projects in Kings County off of the PEIR for the Dairy Element until the County has either (1) implemented all of the Dairy Element mitigation measures, including *fully* implementing the Dairy Monitoring Program, or (2) completed a supplemental EIR to modify or delete mitigation measures for the Dairy Element.

The Attorney General's Office looks forward to working cooperatively with the Air District to ensure dairy projects proceed in compliance with CEQA. The Attorney General's Office requests that, by March 24, 2025, the Air District respond to this letter to confirm that it will not tier its environmental review for new dairies or dairy expansion projects until the County complies with CEQA. If you have any questions regarding this letter, please contact me via email at [taylor.wetzel@doj.ca.gov](mailto:taylor.wetzel@doj.ca.gov).

Sincerely,

/s/ Taylor Wetzel  
TAYLOR WETZEL  
Deputy Attorney General

For    ROB BONTA  
          Attorney General

Enclosures:

February 20, 2025, Letter from California Attorney General to Kings County



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February 20, 2025

**Via Email**

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Community Development Director  
Diane Freeman  
County Counsel  
County of Kings  
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Hanford, CA 93230  
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RE: Implementation of Kings County's Dairy Element and the County's CEQA Compliance

Dear Mr. Kinney and Ms. Freeman,

In July 2024, Christie Vosburg and I met with Mr. Kinney to discuss Kings County's ("County") implementation of the Dairy Element of its General Plan, which was originally adopted by the County's Board of Supervisors in 2002. At that meeting and through subsequent email, the County stated that it does not have a code compliance division, and it has not prepared the annual report required under the Dairy Element. The code compliance division and the annual report are key parts of the Dairy Monitoring Program, which were adopted as mitigation measures for the significant impacts associated with the Dairy Element. Per the Dairy Monitoring Program, the code compliance division is supposed to be staffed with a compliance specialist who is familiar with environmental issues associated with dairy operations and is supposed to review the dairy-level monitoring data and use that data to assess whether individual dairies in the County are complying with the Dairy Element.

The California Environmental Quality Act ("CEQA") requires that mitigation measures be implemented—not merely adopted. Because the County does not appear to be implementing or enforcing mitigation measures it adopted for the Dairy Element, reliance on the Dairy Element's streamlined approval process to approve any new dairies or dairy expansion projects at this time would violate CEQA. To comply with CEQA, the County must conduct individualized environmental review for all proposed new dairies and dairy expansion project, until it has either (1) fully implemented the Dairy Element mitigation measures, including the Dairy Monitoring Program, or (2) completed a supplemental Environmental Impact Report ("EIR") to modify or delete mitigation measures for the Dairy Element.

## **I. CEQA REQUIRES MITIGATION MEASURES TO BE IMPLEMENTED.**

CEQA requires public agencies to identify and disclose the potentially significant environmental impacts of a proposed project, alternatives to the project, and measures to mitigate those impacts, if feasible. Under CEQA, agencies are required to implement all mitigation measures adopted at the time of project approval. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 524–525.) An agency must “provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures.” (Pub. Resources Code, § 21081.6, subd. (b); see CEQA Guidelines, § 15126.4, subd. (a)(2).) In addition to requiring the implementation of CEQA mitigation measures, the CEQA Guidelines require an agency to implement a mitigation monitoring program to ensure compliance with, and monitor the implementation of, the mitigation measures. (CEQA Guidelines, § 15097, subd. (a).) “The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.” (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.)

Once incorporated, mitigation measures cannot be defeated by ignoring them or by “attempting to render them meaningless by moving ahead with the project in spite of them.” (*Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1167 [internal quotations omitted].) This is true even where subsequent approvals are ministerial. (*Katzeff v. California Department of Forestry & Fire Protection* (2010) 181 Cal.App.4th 601, 614.) A public agency may only modify or delete a mitigation measure if it reviews the continuing need for the mitigation, states a legitimate reason for deleting the earlier adopted mitigation measure, and supports that statement of reason with substantial evidence. (*Lincoln Place Tenants Association v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508-09; *Katzeff, supra*, at p. 614.) Additionally, a “previously adopted mitigation measure cannot be deleted ‘without a showing that it is infeasible.’” (*Lincoln Place Tenants Association, supra*, at p. 1509 [quoting *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 359].) Importantly, those determinations and showings must be made through a supplemental EIR. (*Lincoln Place, supra*, at p. 1509.)

If a public agency proceeds with a project without complying with the adopted mitigation measures, or without preparing and circulating a supplemental EIR for the deletion or modification of the mitigation measures, the public agency has failed to comply with CEQA. (See *Lincoln Place Tenants Association, supra*, 130 Cal.App.4th at p. 1510.) In that situation, a writ of mandate and injunction can be issued to prevent further implementation of the project until the public agency complies with the mitigation measures or modifies or deletes the mitigation measures through a supplemental EIR. (*Ibid.*)

## **II. BECAUSE THE COUNTY IS NOT IMPLEMENTING THE MITIGATION MEASURES FOR THE DAIRY ELEMENT, APPROVING DAIRY PROJECTS UNDER THE DAIRY ELEMENT WOULD VIOLATE CEQA.**

In 2002, Kings County adopted its Dairy Element as an optional element to its General Plan. When the County adopted the Dairy Element, it completed a Programmatic Environmental

Impact Report (“PEIR”) to comply with CEQA. In finalizing the PEIR and adopting the Dairy Element, the County concluded that the Dairy Element would have significant impacts and adopted certain mitigation measures as required under CEQA. As relevant here, the Dairy Monitoring Program was incorporated into the Dairy Element as a mitigation measure for some of the Dairy Element’s significant impacts and reduced some impacts to a less than significant level. (See e.g., Final PEIR, at Table 2-1; Dairy Element of the Kings County General Plan – CEQA Findings of Fact and Statement of Overriding Considerations, at pp. 14, 27-30, 38-39, 42, 44, 46-48, 50-53, 77-79, 84, 87, 94, 100.) Specifically, the Dairy Monitoring Program was intended to mitigate the impacts on air quality, greenhouse gas emissions, water quality, and odors, among other impacts. (See Final PEIR, at Table 2-1.) The Dairy Monitoring Program also serves as the mitigation monitoring program required under CEQA Guidelines Section 15097. (See Dairy Element, at p. DE-41.)

The Dairy Monitoring Program states that the County’s code compliance division must review the dairy-level monitoring data and use that data to assess whether individual dairies in the County are complying with the Dairy Element, and generate an annual report that identifies whether any changes in the standards or conditions in the Dairy Element are necessary. (Dairy Element, pp. DE-41, DE-42.) Importantly, those conclusions were to be made publicly available through the annual report that would be presented to the Planning Commission. (*Id.*, at p. DE-42.) In doing so, the Dairy Monitoring Program would allow the County to assess whether all the mitigation measures adopted for the Dairy Element were being implemented and ensure that those measures were mitigating the associated impacts as expected. (*Ibid.*) If not, the County would then need to assess whether changes were necessary to ensure impacts were mitigated. (*Ibid.*)

However, based on the information Kings County has provided to the Attorney General’s Office, it appears that the County no longer has a code compliance division (or other staff performing these functions) and has not completed the Dairy Element’s required annual reports. As a result, the County has not been reviewing the dairy-level monitoring data to assess whether (1) the mitigation measures for the Dairy Element are being implemented; (2) individual dairies are complying with the requirements of the Dairy Element, and (3) the Dairy Element is protective of the environment and whether it needs to be modified. Accordingly, the County has failed to assess dairies’ compliance with the Dairy Element, which may mean that environmental impacts are not actually being mitigated. Additionally, the County has not assessed whether the Dairy Element is protective of the environment, whether the mitigation measures in the Dairy Element have mitigated the anticipated impacts, or whether the Dairy Element must be modified to better protect the environment. Furthermore, the County’s failure to monitor and issue annual reports results in the public not being informed about the status of the County’s implementation of the Dairy Element and lacking the opportunity to provide input on whether the Dairy Element needs to be modified to protect the environment. The failure to produce annual reports cuts against a key purpose of CEQA, which is to increase public transparency and public participation in agency decision making. (See *Laurel Heights Improvements Association v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123 [explaining that public participation is an essential part of the CEQA process].)

Because the County is not implementing the adopted mitigation measures for the Dairy Element, including the Dairy Monitoring Program, and it does not appear that the County has modified or deleted its adopted mitigation measures through a supplemental EIR, the County would violate CEQA by proceeding with streamlined approvals for dairy projects under the Dairy Element at this time. To approve new dairies or dairy expansion projects in compliance with CEQA, the County must conduct individualized environmental review for all proposed new dairies or dairy expansion projects, until it either (1) implements all of the Dairy Element mitigation measures, including *fully* implementing the Dairy Monitoring Program as described below, or (2) completes a supplemental EIR to modify or delete that mitigation measure.

Reinstatement of the code compliance division alone will not constitute full implementation of the Dairy Monitoring Program. Rather, to fully implement the Dairy Monitoring Program, the County must reinstate the code compliance division, staff the division with a compliance specialist who is familiar with environmental issues associated with dairy operations, and present an annual report to the Planning Commission, as well as implement any other portions of the Dairy Monitoring Program that are currently not being implemented. (Dairy Element, at p. DE-42 [setting forth Policy DE 6.1a, which requires an annual report, and Policy DE 6.1b].) The Attorney General's Office looks forward to working cooperatively with the County to ensure dairy projects proceed in compliance with CEQA.

The Attorney General's Office requests that, by March 24, 2025, Kings County respond to this letter to confirm that it will not approve new dairies or dairy expansion projects until it complies with CEQA and explain how it intends to fulfill its CEQA obligations with regard to both the Dairy Element and future proposed dairy projects. If you have any questions regarding this letter, please contact me via email at [taylor.wetzel@doj.ca.gov](mailto:taylor.wetzel@doj.ca.gov).

Sincerely,

*/s/ Taylor Wetzel*  
TAYLOR WETZEL  
Deputy Attorney General

For     ROB BONTA  
          Attorney General